

A Mexican
Utopia

The Rule of Law is Possible

By Luis Rubio



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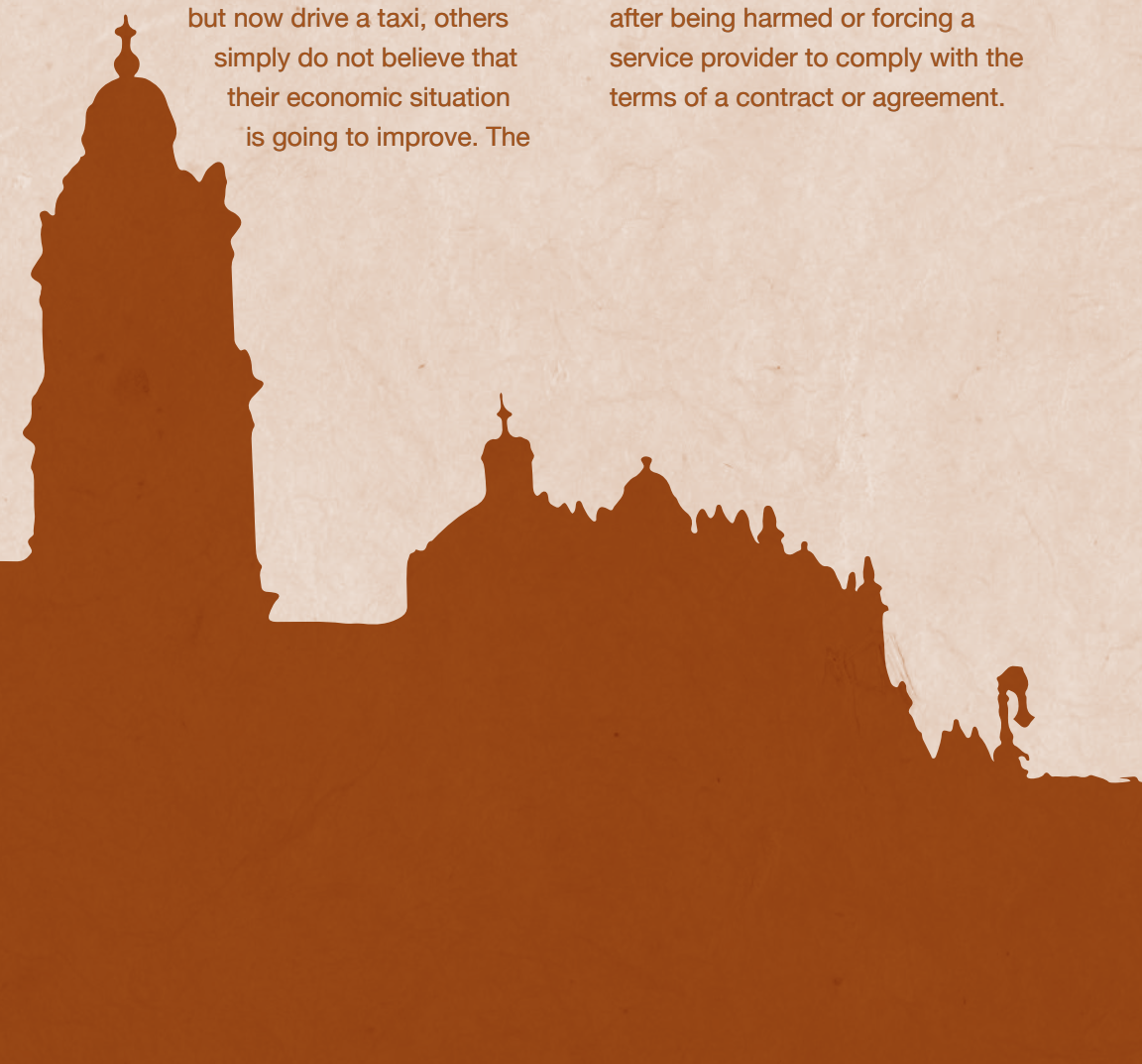
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Preface

The dismay never fails to surprise. I visit various places in Mexico and hear the same complaints and concerns: how is it possible that the deterioration of the country continues? Some worry about the insecurity, others went to college but now drive a taxi, others simply do not believe that their economic situation is going to improve. The

question is no longer when but if it will be possible to emerge from the hole at all. This is especially true in the case of those who, in addition to the anguish, must also undergo the Via Crucis that is confronting the judiciary to exact compensation after being harmed or forcing a service provider to comply with the terms of a contract or agreement.



Many, those who voted for now-President Peña Nieto as well as those who voted for someone else, do not understand how it is possible that a governor, who was so efficient at the state level and in his presidential campaign, now performs so poorly as President. Although it was reasonable for his programs to take time to bear fruit, it is now impossible to deny the obvious: the vision with which the administration started was simply not equal to the circumstances and the rhetoric is no longer sufficient to justify the errors and shortcomings.

The great merit of the Peña Nieto administration has been, without a doubt, the President's skill in driving the set of structural reforms that the country needed to seize opportunities in the era of globalization. However, it is now evident that there is no vision of development behind the reforms. It is merely a list of items that needed to be addressed rather than a strategic plan for development: a set of themes more than an integrated vision for the transformation of the country. President Peña Nieto bought into the idea of the reforms as a fetish, as something necessary, but without the vision that is indispensable for making them work.

The vision is much more important than the reforms. Mexico lacks a strategic enterprise that will transform its economic structures and release its strengths and productive capacities. The country does not require a government dedicated to spending on projects with poor yields; instead, it requires one that functions: one that creates conditions for the economy to prosper, one that guarantees public security, one that gives certainty to the population. The main problem of the country is the *deficit of government*, that is, the absence of the basic functions that a

government must perform which are a precondition for a society and an economy to successfully function.

After independence, Mexico had two successful eras in terms of economic development: the first at the end of the 19th century and the second in the fifties and sixties of the 20th century.

The common characteristic of both periods was the existence of a “hard” government that had the capacity to confer certainty and provide

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leadership. However, the key to their success resided more in leadership than in hardness; in fact, they both ended up collapsing in good measure due to their political deficit, i.e. imposition and authoritarianism went only so far. There was a need to expand the governing coalition, cater to the population at large and develop a sound foundation of trust and credibility. The idea that a hard and controlling government constitutes a prescription for a successful presidency implies ignorance of all that has changed in Mexico and throughout the world over the last decades. Mexico today has a population that is not only larger but also more diverse, participative, demanding, dispersed. And, above all, it is connected with the rest of the world through economic, family, technological, academic and commercial networks that not only make the restoration of a “hard” government impossible but make such a governance model unviable.

The great deficit of Mexico is one of government, in its functional dimension (that is, a government that fulfills its most basic responsibilities) as well as in its political dimension: in the leadership that it should exercise to carry out the transformation that emerges from its discourse. Mexico requires a strong government that is capable of completing these two tasks but also a limited government that does not exceed its functions and responsibilities. A strong and limited government is not a contradiction: it is the reverse, an effective government is one that is capable of exercising the leadership that the society and the moment demand, but also one that will act within institutional limits.

The thesis of this text is that the only way to achieve successful development is with a government that works. For development to succeed, it is indispensable for the President himself to impose limits on his informal powers which are infinitely greater than his constitutional ones. Using the example of NAFTA, in which the government accepted limits to its ability to make decisions that could prejudice or alter the conditions under which private investment operates, the President himself should embrace the urgent need for the Rule of Law as a precondition for development.

With the perspective bequeathed by time, if one has observed the results of the diverse presidential efforts of the last decades, it is evident that presidents who left office not politically battered are the exceptions. I have no doubt that each of them believed that they would transform the country but practically none of them achieved that and nearly all ended up like Richard Nixon, political outcasts even if not cast out of office. In a famous Abel Quezada

cartoon of 1982, the ship captain blamed the passengers for the disaster that he had led them into. The opportunity for President Peña Nieto lies in breaking with the presidential curse by focusing on the transformation of his own presidential powers.

“There is nothing more difficult to carry out, nor more doubtful of success, nor more dangerous to handle, than to initiate a new order of things. For the reformer has enemies in all those who profit by the old order, and only lukewarm defenders in all those who would profit by the new order.”

N. Machiavelli, the Prince and the Discourses.



Introduction

“The reformer who attempts to do everything all at once ends up accomplishing little or nothing.”

- Samuel Huntington, *Political Order in Changing Societies*

All presidents think that they are destined to change the world.

But very few, in fact almost none, achieve the destiny they expect. However, this clear fact has never convinced aspirants to the presidency, much less those who have been elected and acquired omnipotence once there.

But the problem does not lie in the desire to change the world, which is legitimate, but in the fact that the majority of presidents believe that the mere fact of sitting in the presidential seat leads to a change in reality. History shows that it is not like that: power is not for saving and accumulating but for using. There is nothing more futile and nothing more ephemeral than presidential power.

The question then is for what does President Enrique Peña Nieto want the power that he is concentrating? This is not an idle question. The country has been adrift for decades and, save for some moments of exceptional transcendence and vision, it has been incapable of setting itself on a path toward development. Reasons are many but, at the heart of the problem, there are two that are really one: the persistent pattern of attempting to reinvent the wheel every time a new president comes to office and the excessive concentration of power. These two factors translate into discontinuity, uncertainty and illegitimacy for the political system, including and especially for the president when he concludes his term.

Anyone who looks back will see the obvious, though it is not easy to appreciate from the pinnacle of power that is the presidency: presidential power is ephemeral and it does not endure, especially for the president himself as he concludes his term. The only way a president can endure is to construct solid, reliable and autonomous institutions. There is no other way; only those who have achieved this have transcended.

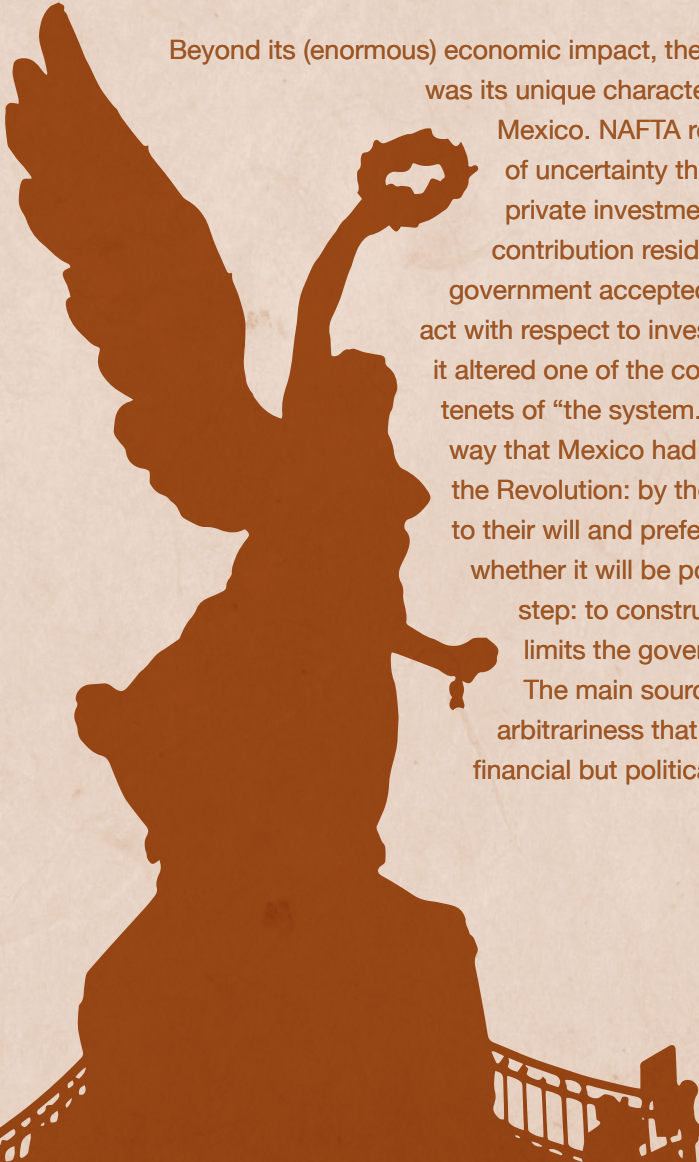
In this regard, President Peña Nieto can devote himself to concentrating his power and hoping that this will transcend or to using that power to construct something that none of his predecessors (with one partial exception) was able to build. In order to transcend, the President has to design a mechanism that curbs presidential power. In other words, use power to limit power.

What Mexico requires is, in a metaphorical sense, a NAFTA for politics: in other words, the Rule of Law.

A NAFTA for Politics

“Learn from the mistakes of others. You can never live long enough to make them all yourself.”

- Groucho Marx

A large, dark silhouette of the Angel of Independence, a winged figure holding a wreath and a sword, stands on the left side of the page. The background is a textured, light brown color.

Beyond its (enormous) economic impact, the true relevance of NAFTA was its unique character in the public life of Mexico. NAFTA resolved the main source of uncertainty that impeded the flow of private investment; however, its unique contribution resides in the fact that the government accepted limits to its ability to act with respect to investors and in the fact that it altered one of the core characteristics and tenets of “the system.” The “system” was the way that Mexico had been governed since the Revolution: by the victors and according to their will and preferences. I ask myself whether it will be possible to take the next step: to construct a mechanism that limits the government’s capacity to act. The main source of real and potential arbitrariness that exists right now is not financial but political.

In its original conception, the objective of the North American Free Trade Agreement was long-term certainty for investors. The context within which that objective was developed is important: Mexico was just emerging from a stage of financial instability, high levels of inflation, bank expropriations and, in general, an investment regime that repudiated foreign investment and sought to regulate and limit private investment. Although the rules in Mexico had changed, investors were not showing a willingness to pour capital into the nation as the government at the time imagined. Risk-averse investors needed certainty. NAFTA was the recognition that an audacious step was required to attract that investment.

NAFTA constituted a milestone in the political life of the country because it entails a set of “disciplines” (as the negotiators called them) that are basically impediments to a government’s acting as it feels or as the various interests that operate within the political apparatus would like. Acceptance of this set of disciplines is a decision to “self-limit,” that is, to accept that there are rules of the game and that there is a severe cost for violating these norms. In short, the government ceded power in order to gain credibility and attract investment. This ceding of power allowed the country to generate huge new growth as a result of foreign investment and exports. Without this giving up of powers, the country would have at best muddled along for the next twenty years.

Beyond the economic challenges the country encounters today (which are neither few in number nor simple), Mexico continues to face a fundamental challenge in politics and this one is not conceptually distinct from that which existed when NAFTA was approved. To the extent that the governor can say ‘yes’ or ‘no’ according to his own personal, political, or party calculations and without concern for whether that decision violates the law, the

Rule of Law does not exist. This state of affairs makes the country dependent upon one individual (a model that tends to reproduce itself at the state level) which impedes the successful completion of plans, projects, and careers because everything is limited to the duration of that individual's six-year term in power.

What a cynic called the "sexennial metric system" (everything starts and ends within the span of a presidential term) is a national reality that not even the recent PAN administrations (2000-2012) altered. The propensity for reinventing the world every time a new government takes over and to negate the value of everything that existed before has consequences in all areas. For example, there are no master plans for the development of cities; investment –public as well as private-- is designed for the short term; pacts and agreements among parties are personal rather than institutional; decisions on matters of permits and appointments are guided by preferences for friends; and there is no enduring government policy in basic areas such as education, health, the fight against poverty, and foreign relations.

Each administration feels that it is the country's owner and it does not see its management as part of a long-term process. Of course each president believes that his projects will last and that he will be enshrined in the pantheon along with the leaders of the nation's Independence and Benito Juárez and that his name will go down in history as one of the great builders of the

It is instructive and sobering to observe that, in the last decades, the only Mexican president that avoided the opprobrium of history and the population's reproach was the least ambitious of them all.

country. But few take note of the fact that builders of the country are infrequent because the country's way of being impedes the growth and consolidation of independent institutions, leads to pernicious dependencies, and limits the potential for success of any individual administration. In short, there is no permanent frame of reference for political and social interaction and that limits both the citizens and the president because there are no permanent rules and no institutions.

There is a reason that some nations achieve development and it has less to do with the rates of economic growth than with the strength of the institutions that engender growth in the long term. A president attempting to leave a legacy beyond his term would do much better to cede the arbitrary powers, what Mexicans call "meta-constitutional" attributes and powers, in the interests of consolidating an institutional system.

What nations such as Chile and South Korea, among others, have achieved is instituting the Rule of Law as their prime institution. Each of these countries followed its own process, but the common denominator was the government's willingness to self-limit. This crucial step, which in the case of NAFTA transpired in a specific context, is the most tangible example of the challenge that Mexico faces. The country will not move on to the "major leagues" unless it takes that step.

POWER FOR WHAT?

My impression from four decades of observing eight Mexican presidents is that when a president assumes office and, above all when he consolidates his power, he feels that the world owes him a living and that he has "got it made." Victory is assured and reality will change automatically. History illustrates that dreams

of grandeur are just that—dreams. The real thing is hard work. Unfortunately, very few presidents perceive that power is to be employed, and thus few will accomplish their goals.

Years ago, I visited one of the Tutankhamen and The Golden Age of the Pharaohs exhibitions. No group of sovereigns ever enjoyed the illusion of such great power. Ramses II reigned for 66 years: judging from the images of power, the pyramids and the colossal monuments at Luxor and Abu Simbel, the impact was enormous; But nothing at all remains of all that power. All that power vanished and all that is left, centuries afterward, is a poor country with few opportunities for development. On leaving the exhibition, I pondered the futility of power, the impotence that it represents.

It did not go much better for Napoleon Bonaparte. In the summer of 1812, he led an army of over one million that marched toward the gates of Moscow. Three years later, he was in jail on the island of Elba. In 1940, Hitler commanded the most powerful army in the world; in 1945, he complained that only Eva Braun and his dog remained faithful to him. At the end of his life, according to the story told by his personal physician, Li Zhisui, Mao Tse-tung was a pathetic figure who no longer inspired even the least bit of respect. History is saturated with once-powerful and frustrated men.

It is instructive and sobering to observe that, in the last decades, the only Mexican president that avoided the opprobrium of history and the population's reproach was the least ambitious of them all. The sole president who won the respect of the population is the one who devoted himself body and soul to a set of limited but realistic objectives: he saw to the problems of the moment, leaving dreams of grandeur and historical transcendence in the closet. Ernesto Zedillo could perhaps have taken aim at something grander but, with the perspective given by time, he is the only one who achieved what he proposed.

The grandeur of power is not found in symbols, appearances or gratuitous accolades, but in the results of its exercise. As the saying goes, the most difficult year of the Mexican presidency is the seventh because that is when reality sets in. It is at that moment when the recent ex-president starts to look out at the world as it is and not how he imagined it would be. The presidents

History suggests that it is imperative to learn the need to assess power with humility, as something temporary and in the last instance, ephemeral. Power is not possessed but used.

that stand out are those who can look back and see at least one respectable legacy. History suggests that it is imperative to learn the need to assess power with humility,

as something temporary and in the last instance, ephemeral.

Power is not possessed but used.

The point here is not to deny the value or transcendence of power but to observe its limitations and possibilities. A powerful president can do immense good but also immense harm. Those who are successful accept reality and use their power to get every possible benefit from it.

In this era of the world and of Mexico, potential for development is measured by two simple things: the degree of the institutionalization of power and society and the growth of productivity. It might appear sophomoric to reduce the scope of presidential power to these two elements, but this deals with something that is by no means trivial: these are the factors that could transform Mexico. A president willing to exert leadership dedicated to developing the Rule of Law would set the foundation

for a legacy that was impossible for seven of the last eight presidents to achieve.

Institutionalization of the country is a promise that goes back to Plutarco Elías Calles, the first president who understood the need to achieve it but, like a little child who knows what should not be done but does it anyway, he preferred the benefits of power to those of institutionalization. Institutionalizing power implies limiting the president's powers which is why nearly none of them have promoted it. The paradox is that only a powerful president can drive an agenda of institutionalization that limits his own powers forward: Rule of Law.

It is sufficient to observe the painful spectacle offered by entities such as the IFE, the IFAI and various economic regulatory organisms as they recognize that the country has not achieved institutionalization of its main executive functions. Mexicans boast about these entities but we all know about the flimsiness with which they have been constructed. The obvious temptation would be to abolish the concept and ordain trustworthy representatives. Despite the new category of "constitutional autonomy" that has been granted to these new entities, nothing guarantees a better outcome because the key issue has not been addressed: in the absence of the Rule of Law, the strength and power of these entities depends wholly on the president's whim.

In the absence of a structure that communicates to the members of the boards of these entities the message that their mandate will not be violated, the viability of the entities will always be relative not due to the quality of the individuals but to the reality of power in the country. A regulatory agency in both the economic sphere and the political arena is designed to guarantee the functioning of an activity or sector. To achieve that, it requires a structure of

legal protection that allows it to confront the government when circumstances require. The latter is impossible in today's context, not due to lack of will but due to the reality of the location of power.

In the economic area even non-experts know that the success factor is productivity. Everything that contributes to economic growth should be welcome; everything that hinders it should be eradicated. The keys to productivity are competition, elimination of obstacles, less bureaucracy and red tape, and zero preferences and discrimination, positive or negative. All the rest impedes the growth of productivity, the factor that drives rising incomes.

NAFTA was conceived to limit the arbitrary powers of the government and with it promote the growth of the economy. Its success has been remarkable in that specific regard: attracting investment. The other part has been less successful because the country never undertook the required policies.

For the president to transcend, power should be focused on building institutions and increasing productivity. It might seem like a small thing, but it is everything, and much more than President Peña Nieto's predecessors were able to accomplish in the past four decades.

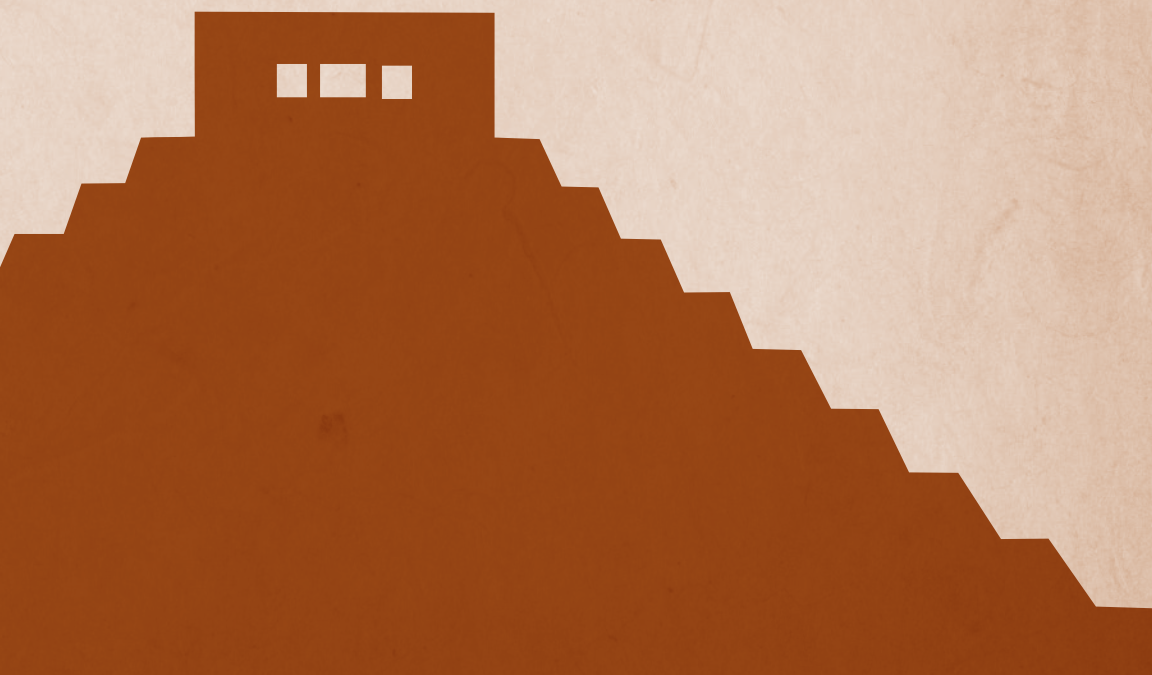
The Old Dilemma that Is Yet To Be Squared

“The darkest places in hell are reserved for those who maintain their neutrality in times of moral crisis.”

- *Dante Alighieri*

When Plutarco Elías-Calles proposed the need to “cease being a country of political bosses or caudillos to become a country of institutions” he proposed a first take on the central problem of the country. Unfortunately, viewed in retrospect, the solution that he

found in constructing what ended up becoming the “Mexican political system”, with the party as the central figure, did not constitute a lasting solution. And Mexicans are still paying the price.



Decades of political peace and economic growth cannot be ignored even with a pithy affirmation such as that of the previous paragraph; but, if we analyze the coming-into-being of the country throughout the post-revolutionary period, the result is not as benign as it would appear at first glance. It cannot be denied that between the end of the 1920s and the 1960s, the resulting economic growth was spectacular by any standard. However, the economic and political

The system that was constructed from 1929 on (and that, for all practical purposes, continues to be in place) emphasized loyalty and discipline, but not by way of developing of strong and enduring institutions.

performance of the country from the mid-60s onward has been very poor. Economic growth has averaged scarcely over 1% per capita in this

period and the crises to which we have been witnesses -electoral, currency exchange, legitimacy, guerrillas, political assassinations, kidnappings, narcos- reveal a much less kind and promising reality.

The point is not to blame or to accuse, but rather, to analyze the ills that beset us. The system that was constructed from 1929 on (and that, for all practical purposes, continues to be in place) emphasized loyalty and discipline, but not by way of developing strong and enduring institutions. Rather, it was by developing a cultural hegemony based on the revolutionary myth and, above all, on the exchange of loyalty and discipline for benefits in the form of appointments and access to opportunities for corruption. The system achieved control of the country and of the population by means that were as benign (e.g., economic growth) as they were authoritarian. But the system did not achieve or even attempt the creation of an institutionalized system of government.

While the Calles system was able to eradicate *caudillismo*, at least at the presidential level (and those who tried to restore it were crucified, in a manner of speaking), it was unsuccessful in changing the country from one of individuals to one of institutions. The system was supremely successful in creating a class of competent political operators -- responsible and capable, experts at problem-solving, at avoiding crises, and emerging, time and again, from the mire-- but it did not generate the capacity for building a developed nation. The contrast between feeble institutionality and the fortitude of individuals with political skills is noteworthy: it is two sides of the same coin.

All countries generate competent public officials and politicians; but the exceptional feature in Mexico is the weak institutionality that characterizes them. The system generates absolute but impermanent allegiances during presidential terms and the alliances provide corresponding personal perquisites; but, as soon as the six-year term ends, the loyalty ends, too. The king is dead, and, as with the British Crown, long live the king. But the king in Mexico is the person: the individual politician who lives jumping from one appointed position to the next, surviving and attempting to become rich and powerful along the way. There are no institutions and no loyalties that survive the presidential term. The problem has persisted in the post-PRI era. Entities such as the Federal Electoral Institute (now called the *Instituto Nacional Electoral*), Federal Institute for Access to Public Information (*Instituto Federal de Acceso a la Información*) and similar bodies were generally constructed without a care for protecting their institutionality and are extremely vulnerable to the pummeling of personal political interests.

The cost of this reality is visible in all areas, and more so when they are contrasted with other nations that, little by little, have broken the causes of underdevelopment. We can see this in everything: in

the nonsensical drive to change all public policies (such as taxes) at every juncture; in a business community that, with few exceptions, has no long-term view; in investments in infrastructure that were not conceived for long term development (for example, Ciudad Juárez was the locus of the greatest economic growth and employment in the Mexican Republic between 1980 and 2008, but investment in infrastructure has been infinitesimal); in the paucity of attention to the obvious problem of oil production; and in an education policy intent on satisfying the teachers union and not to preparing the country, beginning with the children, for the world of competition based on the creative capacity of people. Examples abound.

There are so-called “de facto powers” because there are no institutions with effective counterweights obliging them to contribute to society and abide by the law instead of plundering. The networks of interests and privileges -economic and political- hold fast and multiply because there are no institutional mechanisms, the proverbial checks and balances, that limit and oblige people to abide by the law. The “real” rules of the game are not the same as the written laws and as long as there is space between them institutionality is impossible: everything depends on people, with their fallibilities, interests, and preferences. The Mexican political system continues to be hierarchical, virtually a monarchy, and has never developed effective counterweights or institutional devices that confer upon it the necessary flexibility for adapting itself and responding to growing challenges. The incentives that engender our reality induce political operators to engage in blackmail and wound the institutions for which they work. The question is how can we break this vicious cycle and move forward?

Today’s problem is not, in essence, different from the one faced by Calles. The country depends on people whose interests and

objectives are not (nor can they be) those of the country. What we require is an institutional framework that allows for the capacity and ability of all of these individuals in all spheres of life to flourish: business; rural areas; politics; the professions; and all the others. What we need is an arrangement among all the forces (including political ones) and

groups such that the issues of power and monies are defined, thus permitting the remainder of society to develop.

What we require is an institutional framework that allows for the capacity and ability of all individuals in all spheres of life to flourish: business; rural areas; politics; the professions; and all the others.

The theme is not

one of specific bills or of public policies that no one respects, but is rather one of the essence of power: how it will legitimize and institutionalize the system of government so that it can be effective.

Agreements of this nature arise under three types of circumstances: a consensus that translates into a pact as in Spain; a crisis that makes a response inevitable as in Germany and Japan after WW II; or great leadership that forges a transformation as in South Africa, Brazil, and Singapore. There are no perfect models, but what is sure is that the train conveying the Spanish-style pact never arrived at the Mexican station.

THE PROBLEM OF THE “UNWRITTEN RULES”

Today Mexicans no longer speak of the “unwritten rules” but they remain as in force as ever. The rules are not written because they refer to the preferences of the individual occupying the presidency. It is his word that counts and, for obvious reasons, the rules cannot be codified in the law or that can be changed at

the behest of the president. From the perspective of the president, the short-term benefit of managing according to unwritten rules is obvious: the president can create loyalty, reward and punish, and, above all, use his vast powers to advance projects of his choice. The social benefit is also great because, as the ease with which the constitutional reforms were carried out in 2013 shows, the country can change quickly. The problem is that there is another side of the coin.

In the twentieth century the issue of power was resolved through the imposition of two rules that were “unwritten” but clear: on the one hand, the president is everyone’s undisputed and indisputable lord and master; on the other hand, it is valid to compete for succession as long as the first rule is not violated. It was a simple and effective mechanism but one that did not emerge out of the blue. It was the product of the establishment of the rule and the capacity to make them stick. The latter was not automatic: it was only accomplished when Cárdenas exiled Plutarco Elías-Calles and submitted General Cedillo. Once the capacity to exact compliance with the rules was demonstrated, the system went into effect and functioned until the PRI was no longer representative of Mexican society and the unrepresented began to dispute the system’s legitimacy.

The electoral triumph of President Peña Nieto has allowed him to advance an important agenda in agreement with the main opposition parties. In this respect, although the problem of power in the country has not been resolved, the example of the Pact for Mexico suggests that there are huge opportunities for political transformation. Likewise, as the evolution of that same pact illustrates, those opportunities depend entirely on the way that the President chooses to institutionalize that power (or not).

The “unwritten” rules of Mexican political life were strict. The PRI-political system of the twentieth century operated under the principle of having implicit rules and, more importantly, of the idea that the whole legal scaffolding of the country –from the Constitution to the latest regulatory law– was a formality that could be violated at will.

It is impossible to build and strengthen the legitimacy of a system, including the acceptance of the rules of succession, when the institutional foundation of a political system is based on no more than unwritten rules and a legal system that is a mere formality for the actors involved.

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This problem is aggravated by the expectations that reforms (e.g., that of energy) generate that require a legal structure that is reliable for potential investors for their success. It will be difficult for a *de facto* political system based on unwritten rules to meet this requirement.

Before entering into this dimension, it is worthwhile to think about the implications of a regime based on unwritten laws and, worse still, a regime that combined a written legal system that was not the truly important one (but that would serve to satisfy the desires of the president) with one that was ever-changing and never codified, but that was the truly relevant one. If this appears confusing, it should not be. No actor who participated in Mexican public life, including economic and political life, ignored the fact

that the political, judicial and legal system was adaptable to the needs of the moment. And that worked for both the politician when he changed his mind and for the individual who came up against the government in a conflict. The system operated under the premise that the rules were changing and that they could be modified whether by presidential decision or by corruption at lower-middle levels of the bureaucracy.

It is not difficult to explain the lags that the country has experienced and its underdevelopment in general, given this capricious system that served (and continues to serve) to govern and provide norms for social interaction. When what is relevant for decision making are unwritten rules, no actor can be sure of what to expect. That implies, for example, that an individual who has a savings account also doubts the solidity of the banks and has misgivings about bankers; that an investor does not commit for longer than limited periods and invests in very rapidly maturing projects; and that politicians live worried about the mood changes of the individual who decides which rules will still be relevant if circumstances change. In this context, it is logical and natural for the country to function in the inconsistent and poorly committed way that it does.

The worst harm that the country still endures as a consequence of the era of unwritten rules is that no one can believe in the written rules. Instead of seeing a law as obligatory, the Mexican sees it as a guide, and that is when it is not an aspiration. No one feels obliged to comply with the law, above all when he observes that many others do not do so and even in the worst of circumstances application of the law can always be “negotiated.” This is all in absolute contradiction to the idea of the Rule of Law.

Unwritten rules supported the concentration of power and served as a means of control and discipline for the population and politicians. Given their “unwritten” nature, the rules were ultimately unknown to the majority of the country’s inhabitants. The citizens, but especially the politicians, had to infer them. Like every normative system, the system of unwritten rules had its limitations. A system of that nature works as long as the rules are not abused (that is to say, that they do not change frequently and capriciously) and when they achieve consistent and satisfactory results for the population in general. The period of Stabilizing Development (1940s-1970) responds well to this characterization: despite being based on unwritten rules, the system worked and its results in terms of economic growth, generation of employment and social mobility were evident. Perhaps that is why it came to be an attractive model for the present government, despite the fact that today’s circumstances –domestic and global- make it unrepeatable.

The crucial theme is that the average Mexican has never lived under a scheme of known and predictable rules that include legal recourse to protect the citizen; that is, a system with both rights and obligations in which both are part of an integral concept of the government-citizen relationship. Explaining why is relatively easy. What is complex is imagining ways to break the vicious cycle that the political system of yesteryear has left to Mexicans today. That is particularly important in the light of the inherent contradiction regarding the letter of the law and its application, above all because the PRI narrative continues to comprise a central component of the ideological perspective shared by a great part of the population.

THE LEGAL SYSTEM AND THE STRUCTURAL REFORMS

The reforms that began in 2013, potentially place Mexico in the world's big leagues, where the players are professionals and rules of the game are transparent. The very opportunity to play in that league constitutes an authentic milestone. At the same time, it is necessary to take note of the conditions that the country must still satisfy to put in at a good port, making it obvious that Mexico faces an extraordinary challenge to change its traditional ways.

The issue at large is the Rule of Law and the institutions that lend it form and make it possible, because therein dwells the heart of the success or failure of the reforms that have been passed, but particularly that of energy. While a company of contractors can work in the context of a middling and even parochial government,

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the awarding of contracts and concessions to the world's leading oil conglomerates implies world standards of transparency and are

subject to international arbitration mechanisms, a quantum leap in these matters. These enterprises are at home in all the countries of the world, work in the most amenable regions of the globe as well as in the most corrupt and mafia-ridden. Their experience is supported by hundreds of attorneys and an instantaneous, sometimes almost reflexive, disposition to litigate any significant issue before the courts. The question is whether Mexico is really prepared to play and even capable of playing in those leagues.

While a discussion on the Rule of Law tends to be abstract and high-level, the administration of complex processes based on first-world contracts is not abstract and theoretical at all. With respect to the coming into force of the reforms approved in 2013, and above all the energy reforms, the country will find itself confronting the reality of what the big leagues entail in this matter and, I have no doubt, it will become very clear very fast that this is an enormously complex challenge. .

As in sports, being in the big leagues implies submitting to a higher level of scrutiny from professional referees and arbitration tribunals over which the government has no control. That is, it implies assuming the responsibility for a level of professional conduct that is very distinct from the provincial practices that characterize Mexico. I ask myself how we will make the leap. The evidence to assess this possibility today is mixed.

In economic matters, one part of the country has clearly taken that step. The tourism industry has transformed itself into one that caters to and competes for the world's most demanding tourists. The same is true for exporters who have overtaken Japan in the U.S. automotive market. There is nothing in Mexicans' DNA that holds them back from achieving a higher rates of growth or development transformation or from competing successfully. However, the great difference between exporters or hoteliers with regard to the challenge of playing in the big leagues is that this is about individual actors who possess the flexibility to adapt with celerity and who are focused on very concrete affairs. This is not true for the energy sector.

In the case of energy and, in general, of a modern investment and trading regime is that it will have to stand by international standards. When a lawsuit comes about, prosecutors and

investigators will have to be able to supply reliable evidence, regulatory entities will have to be able to confront the government enforce their decisions, judges will have to hand down rulings susceptible to the scrutiny of non-traditional arbitration bodies, and so forth. To date, none of the country's legislative, judicial or regulatory institutions can boast of such a benchmark. For the country to be successful in the big leagues, it will be necessary to change everything about the way the Mexican government functions. This is a major undertaking and it will demand not only properly trained and competent personnel, but also exceptional leadership, *willing to address the complexity and backwardness of the political and judicial system*. I doubt that the current government comprehends the nature of the challenge.

The World Justice Project published a comparative index¹ that evaluates the degree to which the Rule of Law characterizes every country in the world. It uses eight indicators: limits to governmental authority, absence of corruption, governmental transparency, fundamental citizen rights, order and security, the capacity to ensure that regulations are complied with, civil justice, and criminal justice. Each of these indicators is the product of strong analytical foundations, and I doubt whether any Mexican would be surprised that the index ranks us 79th out of 99. Taken together, the indicators attempt to measure only one thing: does the government (including the legislative and the judicial branches) work to protect the rights of individuals (including investors) or not? Unfortunately, the verdict is wholly in synch with reality.

The great question, perhaps the key one for making a success of reforms like that of energy possible, is whether the country, beginning with its government, is willing to undertake institutional reforms that will make the installation of a system of government

capable of imparting continuity to the citizenry in terms of living in a safe environment, protected by laws and with ease of access to justice possible. If the response to this obvious question is no, the country is in big trouble; if Mexicans are not capable of making life simpler for the ordinary citizen, what makes one think that we would be capable of

attracting investors who have their own means of defense?

The challenge moving forward is monumental, basically every legal precedent derives from the nature of the political system: that which makes everything

dependent upon the word and preferences of the president. Sooner or later, Mexico will confront the dilemma of whether to preserve its nature as an informal, un-institutionalized country or fully embrace the Rule of Law. It is quite likely that the energy reform, once it begins to be implemented, will make this more than evident.

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A Transition Going Nowhere

“Transitions are long, uncertain and complex. Our country is no exception, we are not predestined by mere evolution to happiness and eternal glory. Democracy is only a technique of government, not a miracle ... Politics does not work by moral invocation, but by interests, incentives, opportunities, risks and needs.”

- Joaquín Villalobos

Mexico finds itself in a process of political transition that started in 1968 at the very least and has yet to conclude. The student movement of 1968 shook the political system, and the latter responded with

the populist policies of Luis Echeverría and José López-Portillo that ultimately drove the

economy to collapse. The manner in which the movement evolved and how the government responded ended up forcing the start of a painful process of change that never defined its objectives, nor did it enjoy the support or perceived legitimacy of the population and the political parties.

Decades of attempts to reform and construct the scaffolding of a functional electoral reform followed, but high and sustained economic growth did not happen and a political system that works and enjoys legitimacy has still not been created. Such a system is the foundation that the country requires for its long-term development.

In theory, the choice lies in attempting to recreate the old system “when it did work” or looking toward the future and constructing a political system that is able to respond to the circumstances and demands of a vigorous population and of a world that is infinitely more complex before. Returning to the past could seem like a feasible and easy option but it is not possible. The internal as well as external circumstances “when it did work” were not at all like those of the present. In fact, if it had been possible to maintain the *status quo*, all of the country’s history from 1968 on would have been different. The only possibility of getting ahead lies in constructing a new institutional foundation.

THE INTERMINABLE TRANSITION

From 1968 on, the PRI regime lost legitimacy in its use of force and, gradually, lost its ideological monopoly as well as moral legitimacy for the use of violence. All of this left Mexicans at the edge of an institutional abyss: the government without legitimacy, without a monopoly on violence, and without a legal structure that was perceived as legitimate by all. In addition to this, a broad segment of Mexicans began to perceive that acting outside of the legal or institutional frameworks constitutes a legitimate strategy for political struggle. The notion that ballot boxes are the means through which the winner of an electoral contest is determined has not been accepted by all of Mexican society, just as much as

the judiciary has succeeded in gaining credibility as a means to settle disputes.

The peace of Calles, the peace founded on the institutionalization of power (in his words, “passing the power of men to the power of institutions”) achieved stability, but did not resolve the fundamental dilemma of the struggle for power.

That is, although it permitted the pacification of the country, and the creation of a context that was advantageous for the growth of the economy after the Revolution and the

gradual development of the Mexican society, it did not establish a legitimate institutional structure. Once the regime lost its legitimacy (and above all, its capacity to impose force) all of its structures gave way. From that moment, it was simply a matter of time before the PRI lost its first election. The hegemonic system fell and it was not feasible to restore it despite the PRI’s returning to the presidency.

Since 1968 the country has undergone a contradictory and uncertain sort of institutional construction as well as an attempt to reinvent the political system. Successive electoral reforms have given rise to an ever more professional electoral system, but, the changes in its governing body still illustrate the power of the president and the politicians to control it and, above all,

Successive electoral reforms have given rise to an ever more professional electoral system; but, the changes in its governing body still illustrate the power of the president and the politicians to control it and, above all, the president’s tendency not to cede powers to supposedly independent entities even though they are theoretically autonomous.

the president's tendency not to cede powers to supposedly independent entities even though they are theoretically autonomous. The result has not been institutional solidity but greater uncertainty and growing economic cost. The institutions have been constructed to serve the power and not to provide continuity for the country. That is the logic that impedes the development of a long-term vision for development while centralization of power only makes the problem worse.

The country requires concluding its transition process with full institutionalization of its political processes, which is nothing more than the adoption of Rule of Law. In its most elementary acceptance, the Rule of Law is no more than the subordination of the entire population, beginning with the elected officials themselves, to a set of rules. The concept is not complex, but it entails the diminution of the power of persons in the political system. But the political system functions under the opposite premise: that the law be applied to the enemy but not to the government and its allies.

“The decisive step toward democracy”, says Prof. Adam Przeworski,² “is the devolution of power from a group of people to a set of rules.” The rules and principles on which the functioning of Mexican democracy is based are many, but they have never achieved the supremacy that is required for democracy. This does not imply that power continues to be concentrated in the presidency but it does imply that in Mexico the transition toward democracy has not yet put into the anticipated port. Power is dispersed but not institutionalized.

The transition toward democracy that began in Mediterranean Europe in the seventies created enormous expectations in the populations of countries living under the authoritarian heel as

well as among scholars and activists who dreamed of seeing it imitated. Decades later, Thomas Carothers says that it is time to recognize that the paradigm of the inevitability of the transition of authoritarianism to democracy is false.³ Rather, he says, the majority of countries that terminated their authoritarian regimes and attempted the transition ended up mired along the way in what, in the best of cases, can be called an “ineffective” democracy, while others remained paralyzed in a gray area characterized by a party, a personage, or a bevy of political forces that dominate the system, impeding the advance of democracy.

Carothers’ thesis, not very distinct from that of the “illiberal” democracy of Zakaria,⁴ obliges us to position ourselves in a distinct scenario from that which prevails in the collective consciousness of Mexican society. Instead of imagining that we find ourselves in a process that will inexorably lead to democracy, the scholar’s mind-set is that we have arrived at a distinct state and that only by recognizing this reality will it be possible to rethink what comes next.

Countries living in this “gray zone” and whose political life is marked, according to Carothers, “by feckless pluralism tend to have significant amounts of political freedom, regular elections, and alternation of power between genuinely different political groupings. Despite these positive features, democracy remains shallow and troubled. Political participation, though broad at election time, extends little beyond voting. Political elites from all the major parties or groupings are widely perceived as corrupt, self-interested, and ineffective. The alternation of power seems only to trade the country’s problems back and forth from one hapless side to the other... The political competition is between deeply entrenched parties that essentially operate as patronage networks and seem never to renovate themselves.” Sound familiar?

Within a context such as this there is little advancement, reforms are stuck in a quagmire, and there is an absolute inability to perform an objective diagnosis, much less debate practical rather than ideological solutions. The government does not have access to the necessary operational instruments and the demarcation line between the government and its party exhibits a tendency toward non-existence, leading the powers that be to manipulate

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political processes for their own benefit. With Russia as an example, the author states that instead of building on what already exists, each new government repudiates the legacy of its predecessor

and embarks upon destroying the achievements of former governments as a safety mechanism for its own power. I thought he was talking about Mexico.

The conclusion at which Carothers arrives, which treats the theme in generic fashion, is that the “transition” label is not useful for characterizing nations that were incapable of constructing the institutions necessary for operating an effective democracy. It is not that there are no democratic components or that the population has not benefitted from the political change inherent in open and competitive electoral processes, but rather that the distance between the party elites and the citizenry, as well as the unmet needs that the average Mexican experiences, tend to tarnish democratic life, diminish its legitimacy, and drive alternative electoral proposals, including the appearance of “saviors” rallying behind a return to an

idyllic past that (of course) never existed.

In this theme, we Mexicans fall for another one of the tricks that separates reality from fantasy. In its political discourse, Mexico is a democratic country that advances little by little toward development and plenty. The problem is that the implicit supposition is that the country is advancing toward democracy and development, which obscures the actual nature of the problem. For some, it does not matter where we are or how many changes are effected so sure they are of our eventual arrival at the safe haven of democracy. For others, those who cling to power or who benefit from its privileges, there is no cost to the disparity between rhetoric and reality, even though it adds to the system's illegitimacy. As a whole, both perspectives have had the effect of serving as the justification for political paralysis, and, in fact, for the justification of the democratic regression that we are experiencing.

Mexican democracy emerged from a set of electoral reforms that gradually conferred legitimacy on the electoral mechanism that consisted of directly elected representatives and government officials. It never advanced to the terrain of the institutional transformation that is crucial for the consolidation of a nation of rules to which the powerful are subordinate. This contradiction has opened up opportunities for marking off democratic spaces and, much more importantly, for sustaining an order that is not authoritarian but that is also not democratic. Such a system is, in Carothers' words, an ineffective democracy.

Examples abound: the impeachment attempt in 2005; the quest for means of guaranteeing artificial majorities; the 2007 electoral law reforms with the growing limitations on freedom of expression that they entail. It is not that the present situation

is ideal but instead that attempts to resolve its challenges entail curtailing citizen freedoms, protecting the parties, and consolidating a system where the citizenry serves the politicians and not the reverse. The way in which the constitutional reforms was conducted through 2013, in strict compliance with all requirements and forms, but doing away with any and all counterweights that could protect citizens from abuse is not, in a strict sense, different from other arbitrary actions. I do not pretend to suggest that the reforms were unnecessary or not urgent but instead that the way in which they were imposed, negating the legislative function as check on executive power, has consequences.

The good news is that it is impossible to reconstruct the old system, however great the yearning of some *PRIlistas* and *ex-PRIlistas*. This is what Lech Walesa meant when, with Poland already in the embrace of democracy and the former president defeated by the Communist Party, he quipped that “making fish soup from an aquarium is not the same as making an aquarium from fish soup.” There can be considerable regression but the possibility of the restoration of the vertical power structure of the past is nil. The bad news is that an ineffective democracy does not drive development.

THE OTHER SIDE OF THE REFORMS

Ralf Dahrendorf,⁵ a German-British professor, wrote that “conflict is a necessary factor in all processes of change.” As the reforms that the government has proposed begin to be implemented, the difficulty that such a process entails becomes clear.

In its economic dimension, the thrust inherent in all reforms is that the incentives of all of the parties involved require alignment

-sectors, social groups, and the government- for the country to progress. The sense of this concept is that a divergence currently lives on in the actions and motivations of the political and economic actors in Mexican society and that all that needs to be done is to align them. In conceptual terms, the proposal is impeccable but it suffers from a contradiction: the problem does not lie in the incentives but in the objectives. That is, it is not that some participants in the society or in the markets are mistaking their chosen path but that they have competing goals.

From the viewpoint of market functioning, informality presents a fundamental challenge due to the difficulty in carrying out exchanges between formal and informal actors (the latter cannot invoice). For similar reasons, informal enterprises cannot grow because their condition of informality hampers their obtaining credit or attracting personnel with skills that are tradable in the modern marketplace. The question is whether informality is what the economists term a market “failure” (or distortion) or whether it is a distinct phenomenon.

A great deal of informality results from the paperwork and red tape involved in registering new businesses and maintaining the condition of formality, especially in the areas of tax-compliance labor requirements, and social security. There are also circumstances that have made informality attractive and not only because informal businesses evade certain outlays (such as taxes) or costs (such as certain labor costs and the cost of bookkeeping for taxes) but that, for example, electricity costs go up when consumption rises or when the user is a company, and the costs of labor registration rises when the number of employees does.

All of these factors make the formalization of companies

expensive, but, as in the case of inconclusive (or failed) political transitions, they are not the only explanation. If the entire problem resided in the cost of formalization, the fiscal, labor, and Social Security authorities would have an enormous incentive to diminish those costs in order to promote their legalization. However, the problem is more complex than that and has a distinct explanation.

Much of the cost of registering enterprises resides with municipal authorities which have turned the informal businesspersons into a political base. For those authorities, the incentive does not lie in formalizing entrepreneurs and seeing them grow and prosper but in maintaining a political base so that the career of the municipal president, representative, or party member will flourish.

That is, *the politician's incentives are in perfect alignment with informality* and there is no reason, from their perspective, to modify the status quo. In addition to this political logic, there is an economic rationality inherent

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to the development of political patronage: what is not charged in the form of taxes is levied as informal dues, traditionally by representatives of the formal authority and, more recently, by organized crime.⁶

Something similar is happening in the manufacturing sector that has not modernized, is not highly productive, and is being pummeled by imports, which frequently enter the country as contraband. That non-modern and highly unproductive industrial sector has survived in its present state in good measure due

to subsidies and other means of protection, such as import duties. All of these tools keep a vast sector of the economy alive despite the lack of modernization because the authorities fear the unemployment that would be generated by the collapse of these companies.

But, as with informality, protection of these companies begins with a logic of serving the public (in this case blocking unemployment). While from an economic perspective, it would be better to induce a gradual liberalization that would have the effect of modernizing these enterprises, it would not take politicians long to identify the benefit of perpetuating their hunting grounds. In this way, what begins as a job preservation strategy rapidly becomes a mechanism for developing political patronage at the service of a private cause.

Informality and protection, those sources of a lack of productivity and which deduct growth from the Mexican economy, possess a flawless patronage rationale that renders them permanent.⁷ Within the context of the political transition that the country is presently undergoing, patronage has the effect of obstructing the democratic maturation of the country because it benefits the beneficiaries of political control. That is, political patronage lies behind informality and both undermine the growth of the economy.

Thus, it is not that the country is incapable of reforming itself but that there are all-powerful interests that profit from the *status quo*. Negotiating with those interests from a position of power is the only way to actually change the reality.



Why It Is Necessary

“There is no greater tyranny than that which is perpetrated under the shield of the law and in the name of justice.”

- Charles de Montesquieu, *The Spirit of the Laws*

The dilemma about governing the country is very simple: reestablish the control mechanisms of yesteryear or construct a new political structure. The first option, only modestly creative but easier to achieve, implies recentralizing power, imposing a set of control mechanisms in various areas, and attempting to subordinate society and above all the so-called “de facto powers” to the presidential

purpose. The alternative, which is much more complex and ambitious but also potentially much more durable, is redesigning the political system. At some level, the second stage implies finishing what was started by Plutarco Elías-Calles in the 1920s but adapted to the needs and circumstances of the 21st century.

The propensity for control has traditionally been explained two ways. One derives from the nature, instincts and history of the PRI, a party whose conformation was due to the search (and need) for control in the country in the post-Revolutionary era. The other explanation concerns what we have all observed and been witness to in the country in the last decades: the country has not been advancing, the economy shows a very poor performance, poverty has not been alleviated, and the political structures do not respond to the needs of the country nor do they solve its problems. When a country is adrift an effective government is clearly required. The question is whether efficacy is necessarily accompanied by greater control and whether greater control inexorably leads to efficacy.

In one of his articles, José Luis Reyna touched upon a crucial theme: “One difference between democracy and authoritarian systems is that few institutions and rules are required for governing in an authoritarian system; the will of the governor is sufficient for imposing his will, arbitrary or not, on others. In contrast, in a democratic regime the rules must be able to be followed, obeyed and respected. For that, institutions are needed to implement the agreements, the differences and their consequences.”⁸ Under this metric, Mexico continues to be, or at least behave as, an authoritarian regime.

One might conclude that the problem has resided in the poor quality of the leadership that has characterized the country in recent times, but that would constitute a benign self-interested and self-justifying reading. No one can doubt the leadership that the country has experienced in these times has been very poor, but it is impossible to ignore the change that the world, the outside context, the society, and the economy have undergone.

What is evident is that the country has evolved without leadership and a plan, but not so its system of government. The true challenge does not consist of restoring the presidency to primacy, although that could be a means, but rather constructing the scaffolding of a governmental –and political– system adapted to the world of the 21st century and the colossal challenges that accompany it.

WHAT HAS CHANGED

Alexis de Tocqueville,⁹ the astute French observer, noted “that chance can do nothing (without considering) antecedent facts, the nature of institutions, turns of mind, the state of mores are the materials from which chance composes those impromptu events that surprise and terrify us.” The ingredients that will shape the future of Mexican politics, and the country, are already there. The only thing that could change the patterns is an intelligent strategy from the president.

The first ingredient is doubtless the complex history that precedes us and that establishes inescapable frames of reference. For example, one peculiarity of the sort of authoritarianism that existed in the country during the PRI era is that practically no one in the political world recognized or accepted it. The *PRIlistas* have always believed the myth that Mexico is a democracy which makes many of them non-responsive to many of the changes that have occurred. Authoritarianism has not been discredited in many political sectors and many who exercised it (and who, in many instances, continue to be the instrument of its vices) do not accept that they do. The flip side of the coin is that democracy has become another myth to which bowing and scraping exist simultaneously with attempts to undermine it. The mechanisms to achieve this objective vary but the essence does not change:

the attempt to recentralize the power, the multiple and rebuilt mechanisms of control, the manipulation exercised by the television networks, the unwillingness to overcome the *de facto* powers, and attacks against supposedly autonomous entities.

The second ingredient is the way that the processes of transition in the economy and in politics were carried out. The country passed from an era of controls to one of fragmentation but without an agreed-upon blueprint, above all in the political space. The electoral reforms were reactive; with few exceptions, there was no construction of institutions that are inherent to and necessary in an open society; liberalization favored the consolidation of *de facto* powers that systematically defy society and the government; and all of this transpired without previous formal agreement. That

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is what has led to an important part of the people's believing that Mexican society is not yet a democratic society while the other thinks that it always has been. The contrast with Spain or Chile is extraordinary:

in those countries there was a clear project, consensus about the process, and a pledge to construct a distinct future. The fact that this has not happened in Mexico continues to be a challenge .

The previously mentioned fragility of the country's institutions is the third ingredient: not only have institutions fitting in a democratic schema for making the consolidation of a modern society possible not been constructed, but the existing ones keep

being undermined. Many of the efforts that have taken shape in civil society have ended up thwarted by the *de facto* powers that threaten and nip them in the bud.

The government has acted in this dimension but, revealingly, has strengthened itself rather than creating checks and balances.

No one can doubt that the entire party system is in crisis.

The Pact for Mexico, as the fourth ingredient, is a great idea, above all because it responds to the enormous frustration felt by the citizenry in the face of politicians' paralysis, but its nature entails risks for the parties participating in it and on which, in good measure, they have staked their future. On becoming a straitjacket, the Pact could end up keeping the opposition parties from serving as representatives of the citizenry, thus turning them into silent accomplices, the old-fashioned PRI way. On the other hand, if the pact becomes an instance of negotiation in which other agendas advance, the country could emerge hugely strengthened: with new institutions and improved performance.

Fifth, no one can doubt that the entire party system is in crisis. Although the PRI is governing and has been able to conceal its fissures, the circumstances of recent times allowed it to regain power without reforming itself and it can be anticipated that divisions will surface to the extent that the government attempts to affect interests (a natural outcome of any reform). The PRD's situation is different: it is the product of the fusion of two histories, the historical Left and the PRI Left. The party now faces a summons to construct a modern social-democracy and concurrently to recover the voter base that has supported a statist

and reactionary project that no longer squares with the PRI and that is incompatible with a modern and cosmopolitan left. The PAN finds itself confronting a division and a legitimacy crisis. The division reflects a deep struggle between the Calderón-led forces that were ignorant of how to employ power to construct a party and the more traditional *PANistas* who are the product of the citizenry. The PAN's legitimacy crisis reflects their poor political skills while in government and above all the corruption to which they fell prey when they assume power. For different reasons, none of the three major parties has it easy and none has reasons to jump for joy. Not by chance has the president of the PRI himself been the most ardent critic about what is necessary to stay in power.

These ingredients constitute the backdrop. What takes place in the upcoming years will depend on the way each of the components acts. In conceptual terms, there are two scenarios: one, the product of adjustment or resignation, would lead to waiving the profound changes that the country requires to be successful. The other implies converting the Pact (and other mechanisms) into instruments of institutional transformation. Inevitably, in a presidential system, the president must lead. The opposition parties, and the society in general, can cooperate (for better or worse) or can construct alternatives, but the opportunity lies in the hands of the government.

What does the future hold? Each political actor has their own incentives and the interaction among them will produce the potential scenarios. There is no doubt that there is a strong propensity to abandon the road of reform and settle for the control and power that both the style of government and the reforms that have been undertaken have allowed. The problem is that the road

of reform would only further the systematic deterioration that the country has been experiencing for decades in the quality of its government and would prevent the president from transcending despite his tremendous achievements in the early stages of reform. The issue is not new. In Carlos Salinas' presidential campaign, a woman remarked to the candidate: "It's better to seal off the ravine than to haul out the ox every six years."

CHANGE OF REGIME

The critical part of the Mexican reality is that since 1968 the centralized regime that concentrated power weakened until it virtually vanished; yet the country did not enter into a stage of institutional development. The result has not been the flowering of a society avid for democratic participation (although there are incipient manifestations of this) but rather the dispersion of power and the disappearance of responsibility. From what previously, within a very distinct domestic and international context, permitted the existence of a functional government (although not always as effective and grandiose as the legend suggests), the country passed into an era of entitlement claimants in which the whole society –from

the president to the most remote mayor, including legislators, business people, union and social

leaders-- defended privileges and perks, that is, the status quo. The authority and capacity for intimidation disappeared, at least at the federal level, but in all areas the forms continue to be authoritarian. It is the worst of all worlds: new mechanisms

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were not developed for resolving problems nor was there still capacity to use the mechanisms from before. Greater control and concentration of power will not change this reality.

The heart of the matter is whether the problem is one of persons or of political structures. Although all politicians have strengths and defects, Mexico's problems transcend its presidents. The paradox is not a small one: given the weakness of the institutions, an effective president has enormous space in which to maneuver and, with that, the opportunity to do great good or great damage to the country. An effective leader can construct the foundations of a promising future or can do harm to opportunities for such foundations. Echeverría and López-Portillo exemplify the costs of strong leadership that damages the country and creates disorder and costs that last for generations. Carlos Salinas modified the course of the development of the economy but did not consolidate it. The great statesmen of the past, such as Elías-Calles, ended up betraying themselves. The question for President Peña Nieto is whether he will go down in history as one more president who tried but could not and as the president who inflicted irreparable harm on development, or as the new constructor of institutions, who made the country's next stage possible. The challenge is the creation of a strong government that stems from the strength of its institutions.

In recent decades, we have been able to observe how the old regime died and governing capacity disappeared with it. The costs of this were not long in appearing: when the government is weak the risks are high. The narcos understood that and took advantage of the decomposition at the end of the PRI era and of the political transition to grab as much power as possible. A strong state would not have had to be at war: it is (or was) at war because it had few

choices due to its intrinsic weakness. The authoritarian state of the past imposed rules: a strong state, but not an authoritarian one, will need to impose rules by institutional means. The challenge: to transform the state so that it possesses the capacity to govern, institutionalize disputes, and be held accountable.

WHAT FOR?

Beyond the preferences of the current government and its desire to reaffirm the presidential power and the control of the government over the society, there is nothing that hides the basic contradiction that characterizes the country today and that can be summarized in one phrase: at present Mexico has first-world businesses but a fifth-world government. It is not that the government is small, but that it is ineffective and, above all, that it is not institutional. While the country's capacity for growth depends on the strength, productivity and capacity for innovation of companies, this will always be restricted by the absence of strong institutions that transcend presidential power. These are key in order for there to be continuity and development projects that are not limited to the duration of a presidential term.

The matter has several angles. Above all is the fact that the economic transformation that the country has been experiencing in the last decades, although real, has not delivered what was promised. In the last twenty five years numerous "investments" have been made that, little by little, have transformed the economy. Several are prominent: the liberalization of imports, which has drastically diminished the cost of industrial goods, but also the cost of meat, clothing and footwear. The growth of the physical infrastructure –highways, dams, bridges, and electrical generation capacity- which has driven a rise in companies' productivity, reduced costs in communications, and

more reliable delivery of electrical power. The country's export capacity has multiplied in volume and in geographic diversity. With all of its defects, the electoral system has transformed the political culture. The middle class has grown prodigiously. The productivity of successful enterprises today is comparable with that of economies much wealthier than our own. Despite all the limitations and problems, the country is transforming itself beneath the surface.

Lags certainly persist in economic matters and many of the goods and services that the state-owned companies supply, above all PEMEX, are key to development but are not competitive in price

On the one hand, federal institutions respond to the interests of the current president and change from term to term. On the other hand, the quality of administration at the state and municipal level is, generally, at the lowest possible level. Both phenomena decrease the likelihood of attracting long-term investment projects.

or reliable in delivery times. Similarly, there continue to be countless activities that are still protected, and thus enjoy the dubious privilege of not having to compete. The result of all of these ills is that the whole of the economy

is less competitive than it could be and, thus, that rather than generalizing the benefits of productive activity, these tend to be concentrated. But, still, what cannot be ignored is that today there are thousands of companies that are ultra-competitive and that, little by little, they are changing the face of the economy.

Even so, what has not changed is the quality of government administration. On the one hand, federal institutions respond

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The country suffers the shock of two worlds. On one hand, liberalization of the economy was and continues to be partial, leaving in its wake an infinity of cracks of lack of productivity. On the other hand, this leaves in its wake a political system that was never reformed, and that translates into criteria of pillaging rather than those of promotion on the part of the authority, at all levels of government.

In the old system, which still persists, governmental and political posts were handed out with the goal of rewarding loyalty fomenting group inclusion. That is, the system for naming civil servants responded to a political and corporatist logic and included an implied permission to utilize each post for personal ends. Loyalty to the system was rewarded with positions that granted access to power and/or corruption. A functionary saw the job not as an opportunity to generate economic development, attract companies to his locality, or to raise the productivity of an industry or sector, but rather as a means to enrich himself or the group.

This has not really changed anywhere. Municipal authorities and local delegations (the equivalent for the Mexico City Federal District, the DF) continue to understand their posts as means for benefiting their political clientele via patronage or for lining their own pockets or preparing for the next electoral campaign. In other words, corruption was and continues to be the *raison d'être* of the distribution of posts in the government. The civil servant -named

or elected- who understands his function as promoting economic development and paving the way for this to **take place is truly the exception.**

The regulatory entities, which are now being reformed, continue

Institutions, as Elías-Calles proposed, are the means through which power is depersonalized, thus they imply limiting presidential power. But, no president would accept the restriction of his power or see the benefit of doing so right off the bat.

with a similar logic: they look after clients, respond to political bosses and do not fulfill their role as checks on executive power.

Institutions, as Elías-Calles proposed, are the means

through which power is depersonalized, thus they imply limiting presidential power. But, no president would accept the restriction of his power or see the benefit of doing so right off the bat. In fact, a president, who has the power to do that has no incentive whatsoever to change his program or to articulate the benefits of limiting his power. The only reason he would do so would be to transcend.

The heart of the matter, the why of the construction of real institutions –those that effectively limit the presidential power– does not lie in the present but in the future. Mexican presidents of recent decades, at least from Díaz-Ordaz to date, ended up without transcending except in partial terms because they never changed the essential, because they always supposed that what

they had within their reach during their presidential terms would last forever. Afterward, during the so-called “seventh year” of the six-year term, some came to realize the error of not having constructed the scaffolding of their transcendence. Today, the central matter of the development of the country is not to be found in the series of reforms that have been advanced or that are lacking, however important these may be, but in the institutionalization of politics, which implies transferring part of the presidential power to truly independent institutions. That is, the president himself would have to limit his own power in order to transcend.

From this perspective, the problem of the country is not the corruption that we Mexicans complain about, but the absence of a credible frame of reference (like an index of corruption) that remain constant from one administration to the next. The dilemma for the country resides in following the six-year tendency to reinvent the wheel or constructing a modern country. The country requires the institutionalism of its governmental processes, the elimination of sources of arbitrariness that grant such great power to the president and his bureaucracy and that condemn the country to permanent instability.



How Did It Come About in Other Nations?

“I am not completely useless... I can at least serve as a bad example.”

- Les Luthiers

The origin of changes in the power of the head of government began with the so-called “Glorious Revolution” of 1688 in England. The parliament and the king had been disputing their respective responsibilities: the king was attempting to preserve absolute power and the parliament was trying to establish itself as the source of legal power. When in 1688 the last Jacobite sovereign, King James II, decided to ignore the laws of Parliament, he was promptly deposed. The revolution

institutionalized the principle of accountability and representative government, giving way to a process that eventually led to democracy. Beyond the specific history of England and of those nations that in the following three hundred years representative political institutions, the crucial issue is that nations that are successful in the long run are those that create functioning political systems, and all of them share the existence of effective checks and balances.

Each nation has pursued its own process but the common denominator was the struggle among distinct forces within society. In some countries, it was the army that limited the encroachment of government whereas in others it was the parliament. Sometimes it was civil society. There are examples that are directly relevant for Mexico because it was the government itself that opted for limiting its own power in order to guarantee the continuity of existing policies. Each nation has

Each nation has pursued its own process but the common denominator was the struggle among distinct forces within society.

followed its own history but what is obvious is that successful nations share strong institutions. At their

core, strong institutions mean that the president cannot do as he pleases: his power is limited and thus he has to negotiate with counterparts that are responsible for representing and looking after the interests of the citizenry. The modalities of that interaction are decisive and have to be worked out in each particular case; but, what is certain is that in the absence of strong institutions that are capable of limiting the actions of the government, development is impossible.

Francis Fukuyama identifies three categories of institutions that lie at the heart of a political system: the state, the Rule of Law, and an accountable government.¹⁰ For those of us who conceive of institutions as the large buildings that personify them the perspective of Fukuyama leads to the understanding of institutions as less a product of legal structures or great designs and pacts, and more a result of customs and norms that take shape through long-term evolutionary processes. Through this process the government and society, little by little, do their part and achieve a functional equilibrium.

What is perhaps most interesting about this author's analysis is his view of the way that traditional societies constructed institutions: first these societies centralized power, typically in the hands of tribal or military authorities who controlled a determined territory; then they created means to exercise that power. A second axis arises from daily practice: the authority defends the community against external aggression, while also responding to economic evolution and protecting the property that over time is being established by its members. What is interesting about Fukuyama's argument is that there is no preconceived plan of political evolution. Instead, institutions gradually take shape according to the needs and daily challenges that emerge. In this manner, in the third axis, the growing demands of the society to limit the excesses and abuses of the governor build themselves. In piecemeal fashion, those demands come to compel the encoding of practices and agreements which in turn give rise to written law. Over time representative bodies (assemblies and parliaments) are organized that formalize the obligation of the governor to render accounts to society. Modern democracy is born when governors accept the formal rules and subordinate themselves to them, which implies limiting their power and sovereignty, and recognize the collective will as expressed in frequently held elections.

The three elements (state, laws, accountability) are functional when they achieve a non-paralyzing equilibrium: each is the counterweight of the others, but the coming together of the three arrives at resolutions and decides on core matters. The population accepts, and confers legitimacy to the government because it serves its purposes. The Rule of Law ends up being the formula of interaction among distinct interests, some conflicting, and others simply different.

Not all countries reach a balance. For example, Singapore has a strong government as well as a strong Rule of Law, but lacks effective means of accountability. Russia, says Fukuyama, has a strong government and elections are frequent, but their governors do not feel obliged to submit to the Rule of Law. Afghanistan has a weak government and a fragmented society, incapable of exacting the rendering of accounts. In these terms, it is not difficult to characterize Mexico as a nation that experiences frequent electoral processes, where the law is a poor referent for social interaction, and the government (as well as society) is relatively weak.

The evolution of each country possesses a persistent genetic signature. In some nations war drove the development of the government, in others war enfeebled it; in some cases it was religion that caused the rise of a strong society that later led to the Rule of Law. Technology, geography, population density, and neighborhood are all explanatory factors. The interesting thing about the 20th century is that it demonstrated that it is possible under certain circumstances to break with what appeared to be historically determined. That opportunity, which nations such as South Korea, Spain, Chile and other similar countries took advantage of to transform themselves, should be the model that Mexico considers for the future.

According to Fukuyama's conceptual schema, Mexico is deficient in all three categories: weak government, defective Rule of Law, and a society that has not become an effective counterweight to the exercise of governmental power. Our history has a great deal to do with this. The only two times during which the country achieved true economic progress were the *Porfiriato* (1876-1911) and the PRI's good years (roughly 1940-1960). The common denominator of

both periods was a government capable of organizing the society and imposing itself on it. When the government overstepped itself (as in the 1970s) it produced chaos; when it managed to get the balance right (as it did between the late 1940s and the mid-1960s) success was noteworthy.

This history invites many to imagine that Mexico's problem lies in the decentralization that took place in recent decades and that therefore everything would be fixed by returning to centralized power. I tend to think that that is impossible due to the nature of this moment in history, the status of technology, and our particular geography. My impression is that the problem resides in the chaos of decentralization and in the lack of leadership in the construction of institutions and of

the mechanisms of accountability that make institutions possible. It is not that the state governors must go back to being pawns of the president or that society must

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be docile. Both are unviable propositions. What is lacking is a strategy of decentralization that entails the construction of government capacity (administrative, judicial, the police, etc.) that in turn leads to the construction of a modern country.

What we have today is a deteriorated political system that has not gelled and that, given the track that we are on, never will. What is required is leadership that is willing to build and then self-limit. It is obvious but not easy.

EACH CASE REQUIRES A SOLUTION OF ITS OWN.

The great challenge that authoritarian nations faced in the last several decades was changing the economic and political frame of reference in the world and transforming themselves to achieve the development of, or at least a substantive improvement in, the quality of life of their citizens. The dilemma was how to engage in opening without losing social and political cohesion and how to maintain that cohesion under economic referents that demand innovation, private investment, systematic productivity growth, and respect for the capacity of individuals. Very few countries have resolved this well.

Mikhail Gorbachev began by procuring the support of the Russian population by resorting to the mechanism that he called glasnost. His expectation was that public and private discussion (and catharsis) about the past would permit the structural transformation that the economy required to survive and prosper. Perestroika consisted of the adoption of market mechanisms to substitute for central planning. In the end, the plan failed: liberalization was not orderly, multiple interests seized the existing assets, and the Soviet Empire collapsed.

Carlos Salinas tried the opposite path: economic liberalization to avoid political collapse. The proposal was less ambitious than that of Gorbachev, but his conception was equally intrepid. Economic transformation was sought as a means for resolving problems of growth and revenue but without threatening the political status quo. In contrast to the Soviet Communist party, the PRI survived, but many of the instruments employed for the greatly longed-for transformation included the seeds of their own limitations. Privatizations were biased and did not lead, in the majority of cases, to competitive markets that served the consumer, and liberalization itself was limited to avoid affecting the interests of the

system's "preferred." The poor performance of the economy over the last decades is not the product of chance: it is a response to an inefficient plan for liberalization that was skewed and then unfinished.

China has opted to ignore the dilemma and its government has devoted itself to organizing the opening, maintaining iron-fisted political control, and nourishing its legitimacy with economic growth. The wager of its elite is that due to its size and millennial culture that is distinct from the West, it will be able to maintain power in the long term. The literature on this is so diverse and contradictory scenarios so abundant that only time will tell. But there is no doubt about one thing: its circumstances are not repeatable in Western nations which is why only a handful of exceptional cases –North Korea, Vietnam, Cuba- have tried it. The coin is in the air.

Spain, Chile and South Korea, each under its own circumstances, are nations that opted for breaking with the past and facing the future. Instead of protecting interests here and there or pretending that what existed could support the transformation that its populations called upon the political leadership to achieve, they decided to change with foresight. Each of these countries confronted its own crisis, challenges, and conditions, and in the end, the three moved forward. Even with all of their difficulties, none pretends that the past was better.

The present Mexican government returns to the old dilemma, but now its focus is equally contradictory. It intends, on the one hand, to correct the perceived errors in the functioning of the markets and, on the other, to recentralize power. Instead of taking a leap into the future by resolving the problems that past attempts created, the project is to recreate the old system, although under the current parameters. The contradictions are multiple and obvious: compete for investment in international markets, but control the

private sector at home; declare autonomous entities, but attempt to employ them as instruments of control; open formerly protected sectors, but safeguard the great hunting preserves for prevailing interests. In short, be modern on the outside, but continue being parochial on the inside.

That did not work the last time and it will not work now. The country is embedded in the global market, but the entirety of the nation has not made the world market its own because innumerable mechanisms persist and impede the markets' functioning, all of which translates into a dual economy that yields dramatically distinct productivities. Some of the obstacles were the product of specific decisions (e.g., privatizations), but the majority have to do with the unwillingness to allow the markets to function, which now adds up to the stubbornness of recreating the old-style presidency. What the country requires is a strong government that preserves security and peace, constructs an effective Rule of Law, and makes the general functioning of the country possible by means of these instruments,. Halfway measures will not be successful now the same as they were not before in Mexico or in other countries. Either the government focuses on the future or the country will remain behind.

The question is how and where Mexico will end up. Borrowing from Tolstoy's famous maxim that all happy families resemble each other and every unhappy family is unhappy in its own way, the choice lies in confronting the future to construct a modern nation and undertaking the costs and requirements of being part of the world's big leagues (the happy family) or continuing to look for excuses for maintaining (and renovating) the old centralized system that thwarts the growth of the economy, the prosperity of the population, and the development of the citizenry.

The Case of NAFTA

“Few things are harder to put up with than the annoyance of a good example.”

- Mark Twain

Perhaps the best example, though smaller in scope, of what the country needs is the North American Free Trade Agreement. That is the best, perhaps the only, example of a conscious governmental decision to limit its own power. NAFTA was the result of the search for guarantees for investors: the core objective at the start of the negotiations was less trade

than investment; the goal was to give credible assurance to investors that the policies adopted at that time would not be changed when a new government was inaugurated, and that is the significance: the government agreed to limit its ability to act, in this case in the area of investment regulation. The country needs something like that for the broader front of public and political life.



Mexico has been an independent nation for more than 200 years, and we Mexicans have seen everything: periods of light and periods of darkness, eras of growth and stages of crisis, times of peace and times of violence, moments of optimism and stretches of ill-fate. There have also been innumerable grandiose plans, the majority of which ended up producing the poorest possible results. Mistrust in the government is not recent nor is it the product of chance.

There are many reasons for such lean results but two are prominent: lack of continuity and lack of realism. The continuity problem is summed up in the fact that every six years, when a new administration is inaugurated, the wheel is reinvented. No plan in Mexico can withstand a new president: each administration must by necessity reinvent the wheel by slightly modifying existing programs (or just renaming them) or eliminating them to bring in new programs, generally without an objective evaluation of the existing one. What there was before was always bad, inadequate, or insufficient, which inevitably results in calls for change, often radical.

The lack of realism derives from the willfulness that tends to characterize the plans of the government: a new crowd comes into power, full of creative and innovative ideas, with which it expects to change the country down to the root. Some of these plans make sense, but the overwhelming majority have been mere bright ideas, sustained by the expectation that the new government, heir-apparent of the world, will accomplish its mission because it is competent whereas the previous one was feckless and inept. In addition to this, our governments and legislators have been extraordinarily prone to advancing great plans without effecting the changes that would be indispensable

for reaching their objective. Thus, Mexicans end up with a Constitution that is saturated with aspirations which are subject to frequent amendment without the least probability of these translating into the development of the country or the well-being of the population.

The result is that there is not a system of government to which the citizen can refer or in which it can place its trust. Everything depends on the president and his plan for his six-year term. What matters is not consolidating a system of government that treats all citizens equally and in an even-handed manner, but the plan and the cronies. Of course none of this cultivates the loyalty of the citizenry: instead, there is always, lurking in the wings, the fear of what is to come in the uncertain future.

The reforms of the eighties and nineties, as deep and biting as they were, did not vary from this pattern.

...NAFTA is nothing more than borrowing U.S. institutions for the benefit of Mexico. In this lies its essence but also its limitations.

Although there was a transformative spirit that animated them, the so-called “model” that lent coherence to the governing proposal, the plan was imbued with contradictions that explain a good part of the results. Some sectors remained subject to competition, others did not; the privatizations followed a logic of maximizing fiscal revenue instead of transforming the industrial structure; the economy, including imports, were liberalized but without deserting the darlings of the regime; regulations were eliminated but subsidies were upheld. In short, it was another set of grandiose plans that were supposed to transform the world.

NAFTA is the exception that actually has transformed the country.

It was conceived to give permanence to the reforms that had been carried out up to then. Good or bad, and with all of their shortcomings, those reforms brought about the opportunity to effectively transform reality, but only if they were preserved in the long term. In other words, the categorical imperative of

...What is crucial about NAFTA resides in the recognition of the incapacity of the existing institutions to give investors the type of guarantee that the investors require. In this regard...

NAFTA was affording certainty to the key factor of the reforms, the touchstone of the modernizing project of that moment: investment.

Revealing the nature of the political system, what is

crucial about NAFTA resides in the recognition of the incapacity of the existing institutions to give investors the type of guarantee that the investors require. In this regard, notwithstanding its two thousand pages, NAFTA is nothing more than borrowing U.S. institutions for the benefit of Mexico. In this lies its essence but also its limitations.

NAFTA was conceived to preserve what had been achieved but not to advance what was lacking. In this fashion, in yet another of the myriad contradictions of the reformer project, NAFTA achieved the elemental –creating certainty- but made it possible to abandon the reform process precisely when this was most important. Everything became paralyzed exactly when the whole of the Mexican economy and society needed to experience a transformation in productive structures and in education, in the nature of the government, and in the mechanisms of regulation

for raising productivity. NAFTA was the end of the reform process rather than the beginning of an era of transformation. What was urgent implied an integral transition to move from a closed and protected economy to an open and competitive one. In this manner, instead of this occurring, it wound up creating and preserving a dual economy in which one part is competitive and the other is an encumbrance to growth.

NAFTA contributed to the transformation of countless industrial sectors, opened up opportunities for the growth of enterprises and activities, heightened the productivity of considerable portions of the economy, and fulfilled its main objective with respect to investment.

Whatever one's opinion about NAFTA, no one can doubt its enormous relevance and its role in establishing a foundation of credibility for long-term investment, thus becoming the main growth engine for the Mexican economy. . What NAFTA cannot do is substitute for essential government functions. That is the great deficit that the Mexican society lives with and only when it is addressed will Mexico realize its tremendous potential.



Governing for the Future or Preserving the Status Quo?

“A disposition to preserve, and an ability to improve, taken together, would be my standard of a statesman.”

- Edmund Burke

Mexico is a country that lives through permanent and interminable wagers. Instead of an explicit or implicit strategy for development, the country transitions from one government to another, each of which reinvents everything: from political objectives to plans for infrastructure. There is no sense of direction and no continuity. The society, and the economy, live permanently in a state of

expectation. Given this context, the erratic economic performance and social behavior of Mexican social actors are not surprising. The prestige of presidents after their mandate follows a similar pattern: the few who emerge from office in good shape benefitted from exceptional circumstances or they constructed legacies that transcended. Not many have achieved the latter, probably only one in the last five decades.

The reason for this is not difficult to understand. Successful governments of the past possessed two characteristics that made ending well possible: first, they had a hegemonic party that allowed them to implement any policy –benign as well as damaging- and that conferred significant power on the president. When strategies were successful (e.g. the Stabilizing Development, at least in the stage prior to when the balance of payments began to show signs of trouble after 1965), the government delivered good results. When the strategies were disastrous, such as in the seventies, credibility of presidents hit a nadir.

The other factor that made it possible for past presidents to thrive on prestige was the international context. The post-war era created an exceptional environment worldwide for economic growth and countries that were successful in that environment were successful due essentially to the combination of two critical factors: governments that maintained economic and financial stability while simultaneously investing in infrastructure, and strong flows of private investment, above all in manufacturing. Stabilizing Development was an extraordinary era for Mexico, but it reached its economic limit when corn and other exports began to decline, creating a deficit in the trade balance of the country that, over time, destroyed the foundation that had supported the strategy.

From a political point of view, the characteristics of that era were a scarcely participatory society, a strong and authoritarian government, and an absence of information with respect to the rest of the world due to the muddled nature of the economic structure and due to the very low level of knowledge of the population about the international context. In other words, there was a small population, compared to today, and one without

access to information that the Internet currently allows and without the multiplicity of international connections that the country's population now has. Each and every one of these factors makes it impossible to return to the past.

The government of President Peña Nieto has returned to the tradition of betting. The wager this time is that the concentration of power permits economic growth. Independently of those specifics, it is the same bet as always: surpass the immediate circumstances and challenges without carrying out profound reforms that guarantee the transformation that the President himself has promised. It is a bet on the status quo instead of on the construction of a “new” and different future.

Mexicans continue living off wagers instead of creating a solid foundation that would lead to long-term development. While no one would minimize the success in approving important reforms, their relevance will be seen when these reforms are implemented and their worth is tested, something that is not possible to evaluate at this time.

Alexis de Tocqueville said that the government should be a means, not an objective in itself. When a government usurps all of the faculties, functions, obligations and rights from the people, it is impossible to imagine that the citizenry will behave like a responsible entity. Or, expressed another way, it is not that our citizenry is not democratic (“a democracy without democrats”), but rather, that all of the incentives favor non-democratic or non-institutional conduct. Why would someone adhere to the rules of the game if what delivers benefits is protesting, blocking streets, engaging in disputes, participating in marches, withdrawing from the Pact for Mexico, etc.? It is absolutely rational for political actors and citizens to transgress the formal rules that are only

applied when the government or a certain sector of the society benefits.

The discourse says that government seeks to construct a competitive, highly productive country, but it does not consider the fact that everything conspires to make that impossible: the political system is dysfunctional, the government is incompetent, the fiscal system is brutally complex, the regulations are often absurd, the judicial system is a black hole, and arbitrariness reigns throughout. Impunity is the norm rather than the exception.

Today's world is not like that of before; today information is ubiquitous and countries as well as societies can observe and compare. To the degree that all nations seek to attract the same tourists, consumers, and investors, true competitiveness lies in creating conditions that broaden the market, make the establishment of successful and profitable business ventures possible, and conferring judicial certainty. The government's strategy does not confront the central challenges of the country's development. Centralization is not a project: in the best of cases, it constitutes a means for achieving other purposes that, to date, are not evident. Centralizing power not only fails to address the roots of today's problems, it is also, even in the best of circumstances, an attempt to sidestep the core issues. It is a different way to do the same thing that all governments have been doing since 1965. Furthermore, the strategy entails a high risk of financial disruption in the form of high fiscal deficit.

THE OPPORTUNITY

President Enrique Peña Nieto's greatest asset is his capacity for political operation. While this is what is expected from a president,

political skill par excellence, it has not been the trait of recent presidents in the country. This asset, unusual in Mexican politics, is crucial because what makes an advance toward development is the interaction and conciliation of interests and groups with perspectives, visions, and distinct interests. The world moves with power agreements Independent of the objective being sought.

Mexico has been the exception to this rule for the last two decades. Although there was much more legislative activity from 1997 to 2012 than in years prior to 1997, the country has seen a political class that is all but incapable of committing itself and acting in favor of deep-seated challenges. This unwillingness to act has translated into serious lags, above all in economic matters. During those years, many reforms relative to social and political rights were passed but, up until the start of the current administration, there was no reform that affected vested interests and created conditions for Mexican players to compete head on in the global arena.

The explanation for this situation is obvious: the PRI arrangement that fostered decades of stability in the past century became undone due to the erosion that inexorably accompanies the exercise of power and, in no small measure, due to the evolution of Mexican society during this same period. The arrangements of the twenties, by which the grandfather of the PRI, the National Revolutionary Party (PNR), was born were primitive, but they matched the post-revolutionary moment. In essence, those arrangements engendered respect for the “maximum” leader (Plutarco Elias Calles and his successors), a procedure for presidential succession, and a mechanism for the distribution of benefits to those that had been loyal to the leader. That pact collapsed in the eighties, when the party divided (after the

party's Left abandoned it) and the mechanisms that had united the political class disappeared. The defeats of 1997 and 2000 were nothing more than tiny points of time in a system that had stopped working and that cannot be reconstructed.

Perhaps the greatest merit of President Peña Nieto was knowing how to use the structures of the party to construct a machinery capable of winning election. No less important has been the leadership of legislative processes: independent of who proposed the idea of the Pact for Mexico, its true transcendence was the capacity of the President to convert it into an effective instrument for governing. However, none of these achievements resolves the problems confronting the country nor do they annul the original causes of the deterioration of the PRI system. Opinion polls demonstrate this.

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From the end of the eighties, the country has worked, for good or for ill, according to the political and operational skill of the individuals who have occupied

the presidency. Salinas, a skillful politician, knew how to use the instruments of power; his successors, less skillful in these terrains, were incapable of achieving relevant change. But the case of Salinas is paradigmatic in another sense: even though he refocused the country's economy for good, the absence of checks and balances led to political violence and financial catastrophe. The factors that had made it possible to govern the country in the previous decades had eroded and the functionality

of the system as an instrument of control had disappeared. None of that has changed, which suggests that only a distinct institutional framework would allow achieving a sustainable political and economic recovery.

Mexico's problem is one of the organization and administration of power. The genius of the PRI system consisted of constructing authoritarian mechanisms that played the role of institutional structure and were thus perceived as legitimate. What is necessary today is institutional construction in a competitive and democratic environment. Today's context and the environment modify this perspective at the core: the structural conditions that characterized the country in the former PRI era are not the same, and the new reality demands another focus: a new institutional foundation.

The PRI structure worked around the PRI-presidential axis, which implied internal negotiations with a great capacity of implementation. The PRI, as a political control system, guaranteed that the decisions arrived at within that binomial were instrumented. It also incorporated disciplinary mechanisms that brought to a halt at least the worst excesses and abuses on the part of the functionaries, union leaders, entrepreneurs and politicians in general. At the same time, the most evident consequence of this authoritarian and centralized structure is that it never allowed the construction of functional institutions because these would have restricted the power of the center. That is the reason for the historic weakness of the state governments. Thus, with the collapse of central control, primitive replicas of the old system at the state level began appearing.

How can this be changed? In theory, there are three possibilities:

one, the favorite among those nostalgic for the old system (including some located on the left), consists of rebuilding the mechanisms of authoritarian control to recover the effectiveness of the old system. The second would imply a great institutional revolution whose essence would consist of limiting the powers of the presidency. The third would have as its objective institutional construction, but its proposal is procedural: more instruments, more coalitions and other means to expose the existing vices more than transforming it. There are promoters of each of these sources in each party.

MID-RIVER

The country finds itself in the middle of a process of change that appears not to have an end and, worse, lacks direction and driving force. Mexico went from an authoritarian political system to great political effervescence and citizen participation, at least in public debate and social networks, but a democratic culture did not develop. At present, the government is attempting to recentralize power but without the public support that it enjoyed in the past: in contrast with yesterday's PRI, whose authoritarianism enjoyed full legitimacy, today neither the government nor its strategy has anything similar. In other words, a strategy of concentration of power cannot be other than ephemeral unless it is associated with an institutional development project in which political centralization become a means to a more transcendent end.

If one observes the way in which public debate is conducted – excluding, threatening, disqualifying- we Mexicans continue to have an authoritarian and patrimonial political culture. Some brand this a “democracy without democrats” but, from the perspective of the changes that have taken place in the recent decades, it would probably be more accurate to see it as an authoritarian

political system in the process of disintegration, without democracy having taken roots. Instead of citizen participation and competition for participation, the parties preserve a culture of control more appropriate to an authoritarian system. They exercise a vertical pattern of internal government and use the population as an inert mass. All of their logic is one of property or patronage and centered on personalities; everything is organized within a corporatist framework. This evolution has led to a growing deterioration of the authority and the legitimacy of the government (whoever is in power), in addition to its growing fragility.

The factors that made possible the so-called “Mexican miracle” of the era of Stabilizing Development (1940–1970) have vanished. The center of political authority that gave stability to the system and integrated the elites, which in turn permitted the forging of a consensus, no longer exists. That has led to a permanent fragility due to the absence of authority. The old coherence that integrated the elites in an effective process of decision-making translated into economic growth and consolidated political stability. Today, as in Brazil in the sixties, the contrary occurs: there is no consensus among the political and economic elites, governmental economic policy (fiscal, competition, regulatory) is not conducive to the construction of agreements about the future, and the absence of a clear strategy of development creates a growing illegitimacy of the political system as a whole. It is ironic -and paradoxical- that a government so skillful in political operations and one that has achieved approval for fundamental reforms has not been capable of reaching a consensus among the country’s elites.

The Mexican system stopped being a stable authoritarian one and became an unstable corporatist structure which could as easily consolidate itself as succumb to a revolution or gradually

institutionalize itself until emerging as a democratic society. Everything depends on the existence of intelligent leadership directed toward a new phase of political interaction. Although there is no certainty and the risks are many, because each

In parallel with the deterioration of the political system, society has changed: civil organizations, autonomous entities, mechanisms devoted to demanding accountability, the migrants who have opened a world of knowledge and information on other ways to live, the women who have transformed the employment market and the familial reality, the democratic transition...

approved reform inevitably tends to generate winners and losers, there are reasons to be optimistic: it is not evident that the country will continue to be dysfunctional forever.

In parallel with the deterioration of the political system, society has changed: civil

organizations, autonomous entities, mechanisms devoted to demanding accountability, the migrants who have opened a world of knowledge and information on other ways to live, the women who have transformed the employment market and the familial reality, the democratic transition that will leave in its wake an overwhelming majority of young people who do not believe in the magical solutions of before and, no less important, today's society that, although scarcely organized to govern itself, is clearly indisposed to tolerate yet greater deterioration. In other words, Mexican society finds itself at an optimal moment for great leadership to steer the way to a great transformation. The

opportunity is enormous, but its attainment requires fundamental changes in the current government's approach.

CONSTRUCTING TRUST AND CREDIBILITY

An anecdote goes that, very soon after the fall of the Berlin Wall, Jeffrey Sachs, young and ready to conquer the world, spoke with the then Secretary General of the Organization for Economic Co-operation and Development (OECD), Mr. Jean-Claude Paye, about his economic strategy proposal for the Russian government. Sachs claimed that all that was needed to get the economy moving was to liberate Russia's animal spirits. Mr. Paye disagreed, saying that he thought that institutions would matter too, and argued that Sachs' proposal was not comprised of strictly economic decisions and that, to be successful, a strategy should include the construction of solid and appropriate institutions. Sachs turned a deaf ear to this, which led Paye to categorically state that "If you do not have good, strong institutions, all you will get will be the mafia."

If one thing can reveal the environment of violence, criminality, demonstrations in the streets and, in general, non-institutional behaviors in the country, it is our institutions lack of legitimacy. They generate distrust and thus rejection.

What Paye told Sachs is perfectly applicable to Mexico. Things worked before, fifty years ago, because it was a much smaller society (nearly one third of the present population), distant from the economic circuits of the rest of the world, much less informed and, above all, in a much simpler environment. The government was an all-powerful entity and the networks within the society revolved, most frequently, around the family, school, the church and diverse private organizations. It is not difficult to explain how,

within that context, everything seemed to operate normally: order, economic growth, and relatively little political conflict.

Everything has changed since then, outside as well as inside. On the one hand, the Mexican economy, as well as that of the world, has experienced a revolution: the sources and growth engines have nothing to do with those of yesteryear and the complexity is far greater. On the other hand, as society grew and some degree of political opening was achieved, the country began to decentralize. That decentralization possessed the enormous benefit of dispersing power and decision-making sources, but was so chaotic and disorganized that it was not accompanied by the construction of solid and functional institutions. Finally, while Mexico underwent economic crises and experimented with political decentralization (and, key here, decentralization of the security entities), the international context changed radically. The mix ended up being terrible for the country because it left Mexico with a criminal phenomenon without governmental structures capable of containing it: our system of government is 19th century, but the criminal mafias are 21st. Just as Paye understood.

The lesson is clear: if we want to change the reality, we must construct inclusive institutions; that is, make transparency the basic principle of government.

The crises –political, financial, and security- finished off any vestige of trust that the population had in the authorities.

An Indian summed up

his country in a way that is entirely à propos: India, he said, grows at night, when the bureaucracy sleeps. Two scholars, Acemoglu and Robinson, differentiate between inclusive and extractive

institutions to illustrate the point: where there are checks and balances (limits to the abusive action of the government), growth of the economy is possible: in contrast, in instances in which there are no effective limits (judicial or legislative) and where rights are not equal for all of the players (and where impunity, nepotism and abuse endure), the potential for growth is extremely limited.¹¹ What is normal, historically, they say, are extractive institutions in which, may I add, criminal organizations and mafias, proliferate.

It is not necessary to look very far into Mexico to determine the type of institutions that we have. Michoacán, Chiapas, various ex-governors, and all types of actors and decisions provide more than enough examples of the nature of our reality. The lesson is clear: if we want to change the reality, we must construct inclusive institutions; that is, make transparency the basic principle of government.

Douglass North, the Nobel Prize winner, wrote that formal rules (i.e., laws) are required, but that they are insufficient: the informal restrictions (behavioral norms, decency, codes of conduct) and, above all, the effectiveness of the mechanisms that enforce compliance with the laws and social norms are just as important.¹² When the government is weak, partial, and dysfunctional, its capacity to fulfill its role is minimal. At the same time, the capacity and disposition of the society to play its own role (public opprobrium, expulsion from private institutions, etc.) is limited wherever no community spirit exists.

An ex-director of Pemex related an anecdote that sums up our challenge: one day the president of one of the largest oil consortia in the world was asked how they deal with corruption in their companies, the presumption being that it is ubiquitous in the industry. The oilman responded that in reality it was an

unusual occurrence because when there is a case of corruption the company immediately notifies the competent authority (that is, the dissuasive element is enormous), but above all because the society itself penalizes it brutally: when there is a case, the family is expelled from the social club to which it belongs and the children are isolated from others in school. That is, the cost of an infraction is so great that very few risk committing it. At Pemex, concluded the functionary, when a transgressor is “disqualified” (that is, barred from working in the public sector), he returns inside of a month, a hero, as the representative of some supplier or contractor.

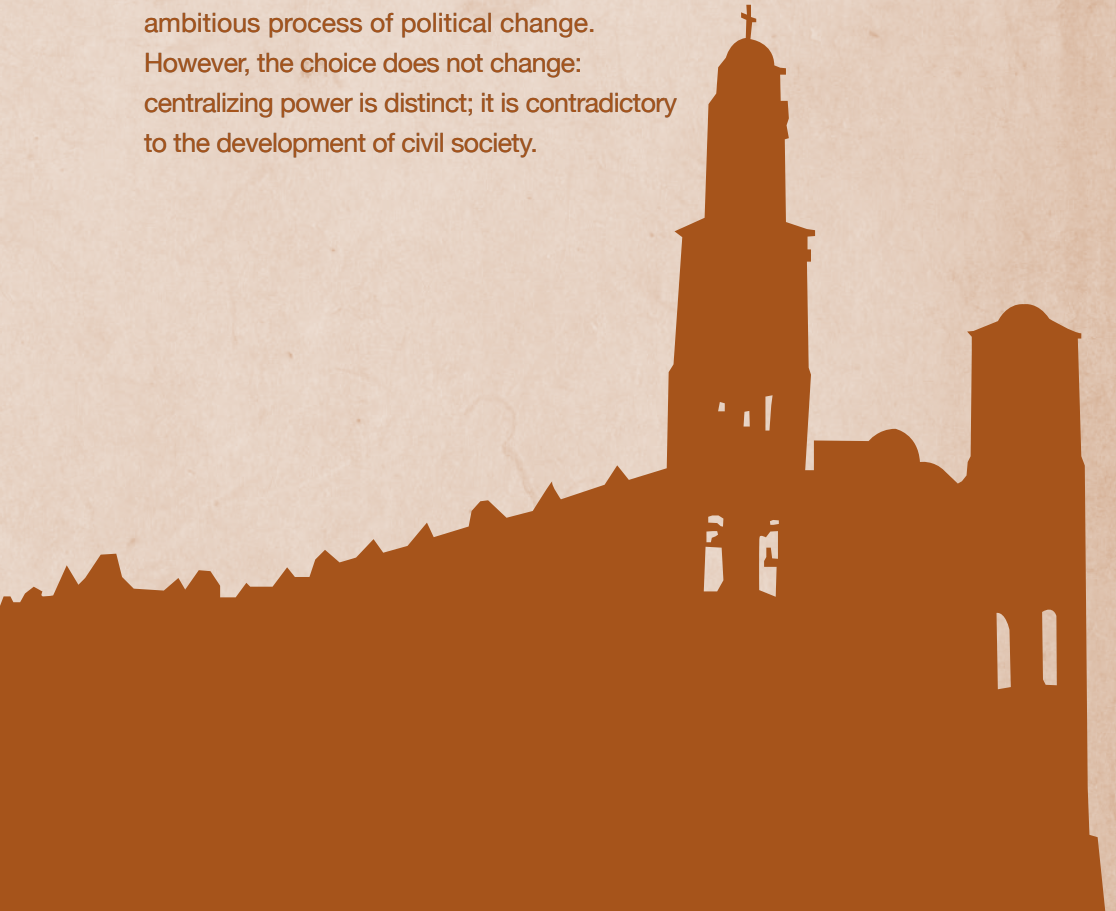
Constructing a regimen of legality and trust entails huge costs, but the benefits are immense. The main benefit is clear: the conflict-solving processes are institutionalized, which translates into social peace and the beginning of a permanent system of security. The costs are essentially personal: the president, and the governors and equivalent, cede personal powers. The counterpart of this is that they acquire legitimacy, and the potential to transcend that, as recent history shows, would be impossible to achieve any other way.

To Centralize vs. Civil Society

“A perfection of means, and confusion of aims, seems to be our main problem.”

- Albert Einstein

The choice is clear: centralize and concentrate the power or construct a new political era. This is about mutually exclusive visions, but there is not the least doubt that a government that is successful in concentrating power can use that strength as a tool for carrying out an ambitious process of political change. However, the choice does not change: centralizing power is distinct; it is contradictory to the development of civil society.



I have no doubt that the strategy of centralization of power is, at least in part, a response to the disorder that has characterized Mexican society in the last decades. However, the crux of the matter is that centralization of power is not the opposite of anarchy or disorder. The alternative to anarchy and disorder is a strong civil society that confers credibility on the political system, but its development requires institutions and these are opposed to the concentration of power. That is the dilemma of Mexican politics at present.

Seen from a long-term perspective, in the two successful epochs that the country has had, the first during the Porfiriato and the second during the era of Stabilizing Development, the common denominator was the centralization of power. Porfirio Díaz centralized power, combated regional cacique fiefdoms, ended decades of instability, uprisings, and revolutions and gave the country years of peace in which it could prosper. The PRI era of Stabilizing Development pacified the country, maintained stability, and reached an equilibrium leading to the growth of the economy. But both periods collapsed due to their inherent contradictions and limitations.

The lesson is clear: if we want to change the reality, we must construct inclusive institutions; that is, make transparency the basic principle of government.

To believe that in the future lies in the re-concentration of power through a strong government that promotes development through

a strategy similar to that of the era of Stabilizing Development or by way of repression and manipulation through Putin-type security ignores the nature of the economy in this current era and the

dynamic of the society. With the possible exception of China, a nation distinct from practically all the rest of the nations due to its culture and history as well as to the size of its population, it is not possible to see that the collapse of “hard” regimes during the last years is due to the obstacles that concentration of power puts in front of economic growth. Most of the open societies, where power is not concentrated in the government, are also the most prosperous. The degree of democracy that Mexico achieves will depend on countless factors, but the characteristic of successful nations, including China (at least potentially) is the strength of their institutions.

Re-concentration of power is not the way out because it is adverse to the growth of enterprises, to the generation of wealth, and to the development of the creativity of individuals, which is where the future lies. There can only be one alternative to the re-concentration of power: the development of institutions that give certainty to the citizenry, entrepreneurs, and investors. Criminality has grown because strong institutions -police, the judiciary, local governments- that have the capacity for action and that serve as a model and credible authority before the incredulous citizenry do not exist. In other words, Mexico’s problem is not the criminality or the violence, but the absence of the government, the absence of competent governmental institutions capable of maintaining order, imposing rules, and earning the respect of the citizenry. Achieving this requires a conscious decision: first, to construct government capacity and, second, for the government itself, the president, to accept submission to the resulting institutions.

That is where the dilemma for the country lies: converting Mexico into a modern country implies establishing a foundation for political order, which would entail the termination of privileges,

perks, and special benefits, including those of the presidency itself. Putting the country in order means reforming all areas of national life. Inasmuch as institutional order rules the life of the country in general, the existence of deviations becomes unacceptable, whether in the form of work stoppages or monopolies, terrorist acts or abuses of power, criminality or violence. An institutionalized society penalizes anomalous behaviors that happen every day in Mexico. The dilemma is much more profound than it first appears. Wishing to or talking about turning Mexico into a kinder and more successful country and achieving a substantial improvement in quality of life inexorably go hand in hand with discipline, order, and equality in the eyes of the law. Accomplishing these things would imply that these are accepted by the de facto powers, the rich, the politicians and the remaining beneficiaries of privileges: from the car watchmen on the streets to the president. For better or worse, only the president can lead the country in this direction: only the president has the power, and institutionalization and order are impossible without the president himself being willing to submit himself to the law.

IS AN EFFECTIVE GOVERNMENT SUFFICIENT?

At the beginning of President Peña Nieto's administration the fashionable notion was that this was a great opportunity for Mexico. It was the so-called "Mexican moment," and all that was needed to make it happen was an effective government. It was sufficiently convincing to a sufficient portion of the electorate that he was elected. However, the quotidian experience from this administration's inauguration day on only confirms what the population knows instinctively: although governmental effectiveness is necessary, and is in fact a condition sine qua non, effectiveness, such as the centralization of power, is a

means rather than an objective; it is insufficient to achieve or even advance the country's development. Success in development has nothing to do with the country's potential, however great, but with its actual performance, and this depends on more than an effective government. It requires strong institutions, a competent government (not the same as effective) and, above all, a consolidated Rule of Law.

At present, two years after the beginning of this administration, the country exhibits an enormous propensity for chaos, a reality in contrast with the governmental proposal of order, effectiveness, and stability. Millions of Mexicans adapt to the circumstances because they have no alternative, but their opportunities for development are limited due to the lack of stable institutions that are credible and effective. Contrary to what is proposed by the government, the economy and each citizen function less according known and reliable rules of the game than according to the traditional logic that holds sway in the country: the sexennial logic, where everything changes every time there is a new administration in place. That rationality allows the government to function but impedes the country's development. The reason is that only a long-term horizon in investment, saving, and development permits the type of transformation that the President has promised.

An effective government is indispensable for a country's functioning, but only when that effectiveness is not identified with arbitrariness, and the difference lies in the existence of institutions -checks and balances- that limit presidential power. It is clear that numberless abuses, opportunistic individuals, disorder, and criminals endure in the country, a circumstance that calls for a strong government, one that is capable of establishing order, that

limits those excesses, and creates an environment that supports development. But that effective government must exist and operate within an institutional context that delimits and avoids its own potential for excess.

THERE IS MORE HISTORY, BUT LESS SUCCESSFUL, THAN IT FIRST APPEARS.

At present, Mexico cannot be confused with a democracy. Despite having adopted some of the forms of democracy, above all in the electoral plane, there continue to be countless political practices that are closer to authoritarian and oligarchic systems than to democratic ones. That does not deny diverse advances on the political front, but this should be put in perspective. In any case, to be able to achieve a democratic political system, the country first would have to consolidate its governmental structures and construct governmental capacity for acting and maintaining order within an institutional structure.

Throughout the last decades the country has passed from an authoritarian era to one of disorder; the process of political liberalization was never straightforward or planned, but it nonetheless advanced from the 1970's onward. The first electoral reform of this era took place in 1978, followed by successive additions, none of which addressed the population as such: it was mostly about legitimizing and conferring means of access and financing to the opposition political parties. As a result of these, the PAN was able to win the presidency in 2000, but not even that led to a broad political liberalization, what many scholars call regime change. The latter notwithstanding, the complexity of the processes of political change has been enormous but lacked both a thorough commitment by the political parties and, more important, a sense of direction and an agreement on the

point of arrival. In one way, the country opted for transforming its political system into a democratic structure, but it never built the structures, institutions, and procedures necessary for democracy to be successful. The old structures of order were undermined but no new ones were created. The result has been that all of the political structures have undergone some degree of convulsion. The passing of a system from one in which there are vertical control mechanisms to one in which the citizen is the be all and end-all of the decision-making processes entails not only the creation of a transparent and credible electoral system, but also of a whole gamut of institutions that make it viable.

However, all of that was left to chance and the result has been reigning disorder evidenced by the actions of the press, the decomposition of the judicial system, the budgetary decentralization and, in general, the absence of clarity concerning the future for the government or for the country as a whole.

In contrast with an authoritarian political system, a democracy demands great institutional wealth and the development of this depends as much on the citizenry as on the government and government organisms (above all the legislative branch). However, the fact is that in Mexico has not advanced much beyond the electoral area and that has been due, and not to a small degree, to the absence of informed leadership on the one hand and to the disinclination of successive presidents to submit to the Rule of Law on the other.

At the beginning of the nineties, Ralf Dahrendorf, the famed German-British professor, wrote a long letter in the form of a book in which he addressed the political complexity confronting Eastern European countries. Out from under the Soviet yoke, the “new” nations faced the need to construct institutions that would allow

them to be governed, adopt strategies of economic development, and generate means for adapting to the world into which they would be incorporated. All of these new nations chose to be, at least nominally, democratic systems. They soon began to come up against the difficulties inherent in the development of mechanisms of checks and balances and the huge challenges involved in making it possible for a critical, analytical and independent media to grow and develop, one that would serve the citizenry more than themselves. By the same token, they soon began to confront the enormous challenge of constructing a legal order that defined rights and obligations, procedures and means for political, economic and social development.

After observing the intricacy of the processes of change that characterized those countries, Dahrendorf's conclusion was like a premonition: "It will take six months to reform the political systems, six years to change the economic systems, and sixty years to effect a revolution in the peoples' hearts and minds." The time for achieving this, continued Dahrendorf, depended on diverse factors, but one, the condition *sine qua non*, is the existence of capable leadership for making the transition successful.¹³ Individuals like Adolfo Suárez and Felipe González in Spain truly illustrate this.

It is impossible to skip stages in the political maturation of a society. But it is certainly possible to take well-aimed steps that, little by little, provide the platform for the consolidation of the institutions that are the essence of democracy. The constitutional exercise of 2013 shows that, contrary to what was observed in previous years, political agreement is possible in Mexico; however, beyond the political changes, the country's transformation depends on the functionality of its institutions. As a concrete example, we have yet to see whether the newly created regulatory entities will satisfy the mandate with which they were charged by the constitutional

reforms, a circumstance that is exceedingly uncertain due to the institutional weakness that characterizes the country: they are unlikely to be independent given the non-institutional dominance of the executive power.

Although the sources of political change that Mexican society has experienced across recent decades have been many –from demographic change to economic crises, passing through the erosion of the legitimacy of the PRI

The pressure of society forced the governments at the time to free up, often begrudgingly, distinct parts of the political structures.

and the expansion of other political forces- the most important step toward democracy was not abstract. The pressure of society forced the governments at the time to free up, often begrudgingly, distinct parts of the political structures. The successive electoral reforms illustrate the process of gradual opening that was partial at best and that always depended on the approval of the president in turn. That is, while no one can diminish the importance of the pressures experienced by the old system to liberalize Mexican politics, electoral consensus did not come into being by itself. Rather, it emerged from political negotiation with a government that was willing to advance in the matter, frequently with reluctance and despite infringing upon the preferences of its own party's members.

The choice now is whether to persevere on the pathway of liberalization, but with effective leadership, or to centralize power as an objective in itself. The recent politico-electoral reform is a good example of what happens when the content of a new initiative responds to a greater extent to the demands of one of

the parties than to a strategic vision of political transformation. It is paradoxical that the reform does not advance in any of the areas that are key for the country's transformation, such as new rules for interaction among political parties, the branches of government and the media, as well as the creation of effective checks and balances and means to make the government accountable.

Mexican democracy is now at a point of paralysis. The country's diversity is enormous and growing, and interests throughout the Mexican territory are extraordinarily diverse. Nothing better exemplifies the latter than the campaigns and disputes –and some of these are true battles royale- that currently take place inside the political parties themselves. That paralysis allowed the conversion of the Pact for Mexico into an ideal instrument for the advance of a legislative agenda. However, it does not provide a permanent solution.

The central characteristic of the old political system was discipline. Discipline permitted the articulation of consensus, on some occasions more voluntary than others, about the public agenda. Despite the success achieved in constitutional matters, it is improbable for that type of agreement among political parties to be sustainable in the medium term, as the negotiation of the secondary laws has shown. Inevitably, electoral logic will dominate the next stage, a factor that will lead to party polarization, at least in campaigns and elections.

The question at that time will be whether the current relationship among the political parties that sidesteps the legislative power continues, one which depends on obscure understandings and implies important transfers of government monies to those leaderships. It would be much more useful to support those interactions and negotiations with institutional structures that derive from the principle of the Rule of Law.

An Adolfo Suárez Moment?

A young man caught a small bird, and held it behind his back. He then asked, “Master, is the bird I hold in my hands alive or dead.” The boy thought this was a grand opportunity to play a trick on the old man. If the master answered “dead”, it would be let loose into the air. If the master answered “alive”, he would simply wring its neck. The master spoke, “The answer is in your hands.”

- Chinese proverb

A mature society, democratic and functional –the sine qua non for economic growth and peaceful coexistence- can only exist when effective checks and balances have been constructed. The problems

that Mexico encounters these days, and that without doubt will confront the next government, derive from Mexico’s suffering from this fundamental void.



In his campaign, President Peña offered something that Mexicans crave: an effective government. That offer corresponds directly to one of the greatest “lacks” of recent decades: there have been governments of varying characteristics but all have had very little capacity for execution; that is, they were not effective. The problem is that efficacy not only depends on executive talent in an administration: what is equally important is the institutional context in which it operates.

Seen through the optics of the team that prepared itself for governing, the last thing it wanted was restrictions on its capacity to act, including effective checks and balances. The best scenario for them would have been one of absolute control of the legislative branch so it could devote itself to “what is relevant,” decide, and act. More than a counterweight, the Pact for Mexico was a brilliant idea that allowed the president to advance a reform

Constructing counterweights should not be viewed as a concession to society or to the other political parties.

agenda without harming presidential powers. However, it is impossible not to recognize that

the same ease with which constitutional reforms were advanced could also be used to eventually reverse them. Only functioning institutions can accomplish permanent change and effective institutions mean a real ending to presidential power in exchange for permanence and transcendence.

Constructing counterweights should not be viewed as a concession to society or to the other political parties. The irony of the political moment is that the PAN governments, devoted historically to institution building, were incapable of advancing an agenda of this nature; but now a PRI president who enjoys full democratic legitimacy has the opportunity to achieve it.

Every government confronts the actions of diverse power groups that attempt to limit its scope of action. This is inevitable in a society characterized by diversity and dispersion (political, geographic, and economic). Despite the strength of the government, each of those powers has begun to exhibit its capacity to exert pressure and influence on the shape of public policies. Some will advance their agenda, some will not. However, there is no doubt that only a generalized institutional framework will permit constructing a system of government that is likely to effectively reorganize –the president says transform- the national reality. Sooner or later, the president will become aware of a basic fact: the existence of counterweights is in the best interest of everyone. Many of his predecessors understood this fact, although nearly always after their mandate was over, when they no longer had any capacity to achieve it.

In its essence, a society with counterweights implies that no one can impose their will on others: the president cannot impose it, the television companies cannot impose it, the unions and their leaders cannot impose it, the business community cannot impose it, the political parties cannot impose it. In short, no one, from the government to the most modest of citizens -including the (frequently brutal) de facto powers- can impose their will. The existence of counterweights implies that the society is institutionalized, a circumstance that limits all in the same manner.

Although there have been fundamental advances in matters of legislation, we have yet to see whether the reality has in fact changed. The same mechanism that can confer extraordinary powers on the president also exists outside of the scope of government. Diverse actors enjoy an enormous capacity for manipulating reality for their benefit and this will not stop until all are limited by effective checks and balances.

The great challenge of Mexican society is institutionalization and institutionalization is nothing other than the development of checks and balances. When there is an effective system of checks and balances, each of the actors and powers in the society know what to expect and, more importantly, come to realize that only the whole can achieve progress. The system wins when everyone wins not when someone can impose his terms on others. It sounds like a fairy tale but that is the essence of democracy: it only works when there are solid institutions that give it functionality.

When there is equilibrium, all entities become gears in a great machine that makes society work. That equilibrium does not result from an imposition of central power, but is the product of a negotiation by means of which everyone ends up constructing the best possible arrangement. Unfortunately, despite the fact that there were moments (above all with Fox) at which an arrangement of this nature could have been constructed, this never happened.

When there is equilibrium, all entities become gears in a great machine that makes society work. That equilibrium does not result from an imposition of central power, but is the product of a negotiation by means of which everyone ends up constructing the best possible arrangement.

At present, that arrangement is not only crucial but necessary: necessary so that the government can be as effective as it is successful. History seen in retrospect demonstrates that no president can know

for a fact whether he will succeed. Very few have been successful.

The great challenge of institutionalizing the country consists of constructing checks and balances that, while respecting the rights

of those participating, are limited so that none can abuse others. That is, what is required is a political negotiation that will yield the best arrangement possible, where all fit, but with limited rights and powers. Achieving this implies that the president is willing to limit his own power: this is the touchstone of the whole process. It requires, in metaphorical terms, the clarity and firmness of a statesman such as Adolfo Suárez in Spain.

An arrangement of that nature did not imply infringement of rights nor imposition but did imply negotiations, concessions, and exchanges: in other words, that which the president began to construct with the Pact for Mexico. It implies relentless and merciless dedication to institutional construction, where the objective comprises a political arrangement that bestows functionality on the system of government. It is about something we have not had since the eighties, a decade in which the old, by-then-worn-out, *Callista-PRlista* pact collapsed.

Institutionality may or may not take shape in laws but its essence resides in the construction of political agreements that lead to the transformation of the system of government. In turn, institutions confer legitimacy upon the presidency and to the winners in electoral processes. The counterpart is that an opposition that is legitimate (also known as “loyal” because it competes with but does not question the legitimacy of the government) can easily lead to an effective regimen of accountability. While indispensable, structural reforms such as those undertaken in 2013 will only come to fruition when there are institutions that make them feasible in reality.

WHY SUÁREZ?

Adolfo Suárez did not appear to be the ideal person to head the first Spanish Government after the death of Francisco Franco.

When the king named him Prime Minister, many objected because Suárez was a representative of the Falange Party. However, Suárez's grandeur lay in the fact that instead of attempting to preserve the existing order, he opted for transforming the Spanish political system, affording it long-term viability. Suárez could have headed a government devoted to administering the *status quo*, but instead, he dedicated himself to an ambitious process of institutional construction.

Suárez summoned representatives of all of the political and economic forces of the moment. Although there was a formal agenda for the meeting, its transcendence was the fact that he called together of the components of Spanish society and gave them their rightful place, regardless of party or ideological affiliations. The objective was to lay the foundation of the beginnings of institutionality.

The Moncloa Pacts were not an agreement on the “what.” The issue on the agenda at the time had to do with prices and salaries, crucial matters but of lesser political transcendence. The transcendence of that meeting in particular was concerned precisely with what we in Mexico have not achieved: agreements on procedure.

At the time, within a complex context after the death of the dictator, Adolfo Suárez was facing severe economic problems. In addition, although Franco had left in place a structure of succession, Spain was experiencing tremendous excitement and political expectation. The rest of Europe was moving towards unification and Spain was languishing. In theory, Adolfo Suárez could have attempted to navigate through the economic moment and get ahead with the instruments he had at hand. However, his genius and political greatness resided in the fact that he opted for

calling together all of the political forces to unify the country and to establish agreements about procedures.

Beyond the specific issues that were agreed upon that day in 1977 (many related to the economy), the two transcending issues were, first, the fact that all of the relevant economic and political forces were present: from the extreme left to the extreme right, the business community and the unions. After decades of exclusion, the presence of all of these forces, beginning with iconic figures recently returned from exile such as Dolores Ibárruri *La Pasionaria* and Santiago Carrillo, changed the national context. Presence spoke for itself.

Second, if Suárez had attempted to impose his world view, the entire scaffolding that led to that meeting would have collapsed. Suárez proposed the adoption of an array of specific topics pertinent to the Spanish moment (and that were approved by the Parliament immediately after). However, the key to the Moncloa Pacts was the implicit acceptance of Franco-ist legality until a new constitution was written and adopted. That is, a procedure was agreed upon by which Spain's government, the heir to Franco-ism, would transition to full democracy. No one agreed on the contents of the new constitution or on the way the government enterprises would be managed or how concessions would be granted to television networks. The decision on these affairs belonged to a future government. The agreements were on *how* they would be decided and not on *what* would be decided.

Might this be Enrique Peña Nieto's moment?



To Institutionalize

“[T]he essence of an effective constitution is that it is built on mistrust, not on faith.”

-W.H. Hutt's "Fragile" Constitutions

The problem today is not, in essence, distinct from that which confronted Calles at his moment. The country depends on persons whose interests and objectives are not (nor can they be) those of the country. What is required is an institutional framework that allows the blossoming of the capacity and skill of all individuals in all walks

of life: companies, the peasantry, politics, professions, and all the others. It is possible that the achievement of this institutional foundation requires, in the fashion of Adolfo Suárez's, an arrangement among all of the forces and political groups to define the issues of power and monies, which permits the development of the rest of society.



It is also possible that an act of authority by means of which the president himself would submit to the institutional guidelines would allow the commencement of a process of this nature and magnitude. That act of authority would be none other than the Rule of Law. In the final analysis, the matter is not one of initiatives of the law or of public policies that no one respects, but of the essence of power; how can the system of government be legitimized and institutionalized so that it can be effective in the long term. How, in other words, can the constitutional reforms carried out in 2013 be made permanent.

Perhaps he does not see this in the same way, but the dilemma facing President Peña Nieto is not different from that which in its time confronted Carlos Salinas: how to achieve the credibility of his reforms and grant certainty to those who would make them their own, in that case, the foreign investors. President Peña Nieto has gained approval in matters of reforms of great transcendence, but there is no guarantee that these will bear fruit in real life. Their success, and their permanence, is going to depend on the way that institutionalizing power in the country is achieved, beginning with the power of the President of the Republic himself.

THE INSTITUTIONAL PROBLEM

Political discourse always emphasizes the institutions of the Republic. However, the true nature of the political system was its authoritarianism. At the same time, the genius of the political system of yesteryear resided in its having achieved broad legitimacy, which gave rise to the loyalty that politicians in turn professed to the president. The defeat of the PRI in 2000 revealed that the country had lived under a system of authoritarian traits that imposed control but that never consolidated an institutional system that managed the power and that limited its governors.

The years of the PAN governments did not change what was basic in the old PRI system, except in a fundamental, although not intentional, way: the separation of the PRI from the presidency. Of course, merely managing appearances stopped working; however, the structure of those inherited governments stopped being operative not (only) because they were incompetent, but because the “divorce” of the PRI and the presidency entailed a migration of political power toward state governors, the political parties, and what are today called de facto powers.

The political reality changed not because of the alternation of parties in the presidency, but because of the profound transformation that the power relations in society underwent.

Although President Peña Nieto has now attempted to recentralize power, it appears evident that, however many advances there have been in reestablishing a semblance of order, the notion that the old system can be recreated in its entirety is in no way different from those who try to put the proverbial genie back in the bottle.

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In retrospect, the great surprise of the 2000 election was that one of the most important and ubiquitous rhetorical “truths” of the PRI system that originated in the Calles era of the 1920’s turned out to be false: Mexico was never a nation of institutions. As it

turns out, it was an authoritarian system that employed discipline to maintain control and did so with diligence and care, in such a way that repression was utilized only in exceptional cases: the system achieved widespread legitimacy for many decades, and this led to the fact that the distinct actors, and the population in general, would accept discipline not because of the threat of punishment as occurred in dictatorships, but because of rational but implicit calculation. In a manner of speaking, as Vargas-Llosa stated so clearly, the “perfect dictatorship” was attractive because it disguised its real nature very well. Much more than democracy and its complications, the true discovery that came with PRI’s defeat was that the country has no consolidated institutions, and perhaps many of its current challenges emanate from this.

Does this matter? Many of those who most actively promoted democratic change affirm that there is nothing exceptional in having weak institutions as a nation embarks in the process of political transition. In fact, many claim that what is exceptional in such transformative situations is an agreed-upon transition, in which formerly authoritarian institutions become democratic: typically, this situation is complex and requires that political actors, sooner or later, recognize that democratic consolidation will only be possible through collaboration and the establishment of accords and bridges. On the other end of the spectrum, above all among the *PRIlistas* and the *ex-PRIlistas* of the PRD, the conclusion is bewildering: for them, the democratic experiment failed and the course should be righted. Of course, in a world of political correctness, no one would dare to express this concept in such transparent fashion, but it is unnecessary to look too closely to understand how to read this. A candidate seeks to modify the so-called “governability clause” in such a way that the threshold is lowered for achieving an artificial legislative majority; that is, to

attempt to revitalize the old system through the back door. Others are even more forthcoming when they assert that Putin restored the order and viability of his country after a decade of supposedly democratic chaos.

Reflecting on the nature of Mexico's traditional political system, Susan Kaufman Purcell and John FH Purcell¹⁴ analyzed the Mexican political system and arrived at a series of conclusions that are useful for explaining to us the origin of our reality and, if fortune smiles, for clarifying for us what must be changed. Some of their thoughts in this celebrated article are the following:

- "The Mexican state is a "balancing act" because it is based on a constantly renewed political bargain among several ruling groups and interests representing a broad range of ideological tendencies and social bases."
- "The Mexican state is unique, however, in that it has never evolved from its original bargain into an institutional entity."
- "The system is held together not by institutions, but by the rigid discipline of the elites in not overstepping the bounds of the bargain. It is therefore less a set of institutionalized structures... than a complex of well-established, even ritualized, strategies and tactics appropriate to political, bureaucratic, and private interaction throughout the system."
- "We view Mexican political stability as resting primarily not upon institutionalized structures such as the party of the presidency, but upon the interaction of two principles of political action: political discipline and political negotiation."
- "Ideology is a mechanism both for linking elites to, and insulating them from, their potential constituencies."

- “Herein lies the great paradox of the Mexican political system: it is simultaneously an elitist and a mass-based system. The constituencies of the rulers run the gamut from the richest to the poorest in society.”
- “The political system established in the 1920s was essentially an alliance among elites for the distribution rather than the redistribution of wealth. It was a system concerned with ratifying existing political and economic relationships, not with changing them.”
- “The structured institutions of Mexican politics which receive the greatest attention -the dominant party, the presidency, and the bureaucracy- are simply convenient formal frameworks within which the true balancing act, so necessary to the survival of the heterogeneous Mexican state, is performed”
- “Mexico is less institutionalized that it might seem, given its history of stable government. In times of crisis... uncontrolled conflict and political breakdown are possibilities.”

The past cannot be changed but we can learn from it. We came from an authoritarian era and not from an era of institutions. This difference explains, to a considerable degree, the complexity

Only strong and legitimate institutions are likely to afford direction and stability to the system and, with this, viability to economic development.

entailed in decision-making processes at present and their frequent paralysis. It is also an invitation to ponder that only close and intense interaction

among clairvoyant and visionary leaders can make possible the construction of agreements and, eventually, of institutions. Only

strong and legitimate institutions are likely to afford direction and stability to the system and, with this, viability to economic development. In other words: we have no functional institutions, thus, only the interaction of persons capable of and willing to surmount the daily wrangles would permit us to emerge from the hole in which we find ourselves.

INSTITUTIONS: WHAT FOR?

To institutionalize means to limit authority; that is, establish rules that delineate and pre-establish the limits of action. Discretionary powers are indispensable, but for governmental actions not to be arbitrary, they must be mapped out by rules known to all *a priori*.

According to Samuel Huntington,¹⁵ an institution's relevance resides in two main elements: the first is administrative capacity; the second is trustworthiness and predictability, but the second is impossible without the first. His analysis of political development and his seminal book *Political Order in Changing Societies*, established that the essence of development does not lie in democracy *per se*, but instead in the existence of a system of government that works, that maintains order, and that makes economic development possible. In Huntington's view, a functional system of government is one that constructs and develops institutions capable of administration and, as a consequence, creates confidence and predictability. In this sense, institutions become the means through which the members of a society interact and resolve their disagreements; all of this is made possible by the coercive capacity of the government.

The PRI system created an extraordinary capacity for administering and governing a relatively simple society. It did this not through institutions but rather through a structure of

exchanges of loyalty. Susan Kaufman Purcell calls this a non-institutionalized transactional system. The system's failure, and its gradual collapse from 1968 on, was due to its inability to construct institutions that would supplant the personal arrangements and the concentration of decisions in the person of the president.

Many honest efforts have been undertaken to address the country's problems. However, despite the endless number of electoral reforms and institutions of the last several decades and the ongoing judicial reform (meant to create and adversarial criminal system), the country has not succeeded in developing the capacity to settle disputes, maintain order, and lay the foundations for development. Insofar as that loyalty continues to be to persons and not to institutions, there can be no trust in the permanence of decisions or laws. Energy and other types of reforms might be approved and ratified, but the country will not advance if it does not have a reliable system of government that depends not on the ability of one person but on the strength of its institutions. All of the reforms contribute a little or a lot to the development of the country but none has accomplished, not even advanced towards, institutionalizing Mexican politics.

THE RULE OF LAW

The great lack in the Mexican political system is, paradoxically, its dearth of institutionality. Deep down, its institutional weakness (or the absence thereof), and the discontinuity that characterizes Mexican politics (the reinvention of the wheel every six years), reveal the inexistence of the Rule of Law.

We Mexicans love to talk about the Rule of Law, although we know that we live in a state of absence of clarity -and, frequently-

judicial defenselessness. We talk about the interminable collection of laws and regulations that we have, but we never pay attention to them except when some functionary opts for arbitrariness in full. The laws and regulations are there not to protect the population but to harass it, obstruct it, and impede it from transforming itself into a determined, vigorous and successful citizenry. The unusual skill of President Peña Nieto's political operation and his own success in navigating the waters of Mexican politics constitutes an outstanding opportunity for laying the foundations of a Rule of Law in full.

The first question to be asked when speaking of the Rule of Law is its definition: What is the Rule of Law? The most frequent definition is related to compliance with the laws. Some lawyers and many functionaries affirm that if procedures are complied with and if the government adheres to letter of the law, we are living under the Rule of Law. Unfortunately, because this concerns, at the end of the day, a relationship of power things are not so simple.

Various administrations in the last decades have adhered in formal terms to the letter of the law when undertaking any action. In fact, there were few situations as critical in terms of flagrant violation of the letter of the law (and the constitution) such as with the expropriation of the banks. Then the administration justified its judicial arbitrariness (actually, it amended the constitution after the fact to make its previous action legal) after the deed was done. In fact, if there is something that distinguished the PRI governments in years past, the majority headed by lawyers at that time, it was their attention to formality. The problem is that formality is not a sufficient condition for the existence of the Rule of Law. Insofar as a government can change the laws or the rules of the game without the mediation of a public and open debate within a

context where there are real and effective checks and balances, the Rule of Law is non-existent.

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One example is worth a thousand words: while Mexico's constitutional changes have historically been a sexennial sport (including, paradoxically, during the fifteen years starting in 1997 when the

PRI lost the majority of Congressional seats), in other countries the constitutional amendment process is extremely difficult. In Denmark, for example, a constitutional amendment requires, first, the approval of Parliament, and, following a parliamentary election, a vote of the new Parliament. It also requires a referendum and the support of at least 40% of the population qualified to vote. In other words, it is a cumbersome process, long and uncertain, designed expressly so that any constitutional change carried out would be the product of popular consensus and not governmental or bureaucratic imposition. Perfunctory laws are not approved. The contrast with the constitutional changes made in Mexico in 2013 speaks for itself.

The existence of the Rule of Law is based on three essential characteristics: a) the political and judicial guarantee of individual and property rights; b) the existence of an effective judiciary that decreases transaction costs and effectively limits the predatory and bureaucratic behavior of the authorities; and c) the existence

of an environment of judicial security in which citizens can plan the performance of their own objectives within a context of known rules and with the certainty that the authorities will not employ coercive power in an arbitrary fashion against them.

These components of the Rule of the Law are central for human coexistence, for economic development, and for social peace. Under the Rule of Law, the authorities cannot affect the individual's sphere of rights without this ability's being written into the law (the principle of legality), and these written laws are not specific to persons, places or specific times. In turn, the individual affected should possess the possibility of defending himself and being heard (i.e., the guarantee of a hearing or the principle of due process of law).

In essence, according to Friedrich Hayek, the Rule of Law implies that "the government in all its actions is bound by rules fixed and announced beforehand --rules which make it possible to foresee with fair certainty how the authority will use its coercive powers in given circumstances."¹⁶ Legality, however, is not synonymous with the Rule of Law. Even though all of a government's actions are authorized by law this does not imply that the Rule of Law can be (or is) preserved. In centrally planned economies, there was no Rule of Law despite the fact that the law came to be respected. That was due to the fact that legislation granted authorities arbitrary and discretionary powers, leaving the decision to apply the law or not the law in a specific case in their hands, using the criteria of what as "just" or in the interest of "public good." When legislation is decreed in this manner, the principle of formal equality before the law is undermined and makes it possible for the government to bestow legal privileges on their support groups.

If one analyzes Mexico's legal structure, it is curious to observe that its main characteristics are analogous to those of the old communist regimes. There it was common to find laws and rules written in discretionary terms that referred to what the government considered at the time to be the common good. In Mexico, discretionary powers make the government's actions unpredictable, because the laws are ambiguous and able to be manipulated. In this context it is very difficult to limit excesses and abuses that are inherent to this type of government action, even though there have been improvements in the past few years with the development of some sources of autonomy in the judiciary.

In this context, Mexico faces three distinct problems. The first is due in good part to our laws, the judicial structure itself, which privileges the discretionary attributions of the authority. This confers enormous power upon the government and harms the environment within which citizens –from consumers to voters, savers and investors- must make their decisions. As long as the authority is perceived as acting capriciously and, worse yet, that the law confers this faculty upon it, the citizen has every incentive not to comply with the laws. In practice, this implies that while the citizen will continue behaving as if he is complying with the law (in all areas), he will only assume minimal risk when making investment or savings decisions as long as he continues to perceive the authorities as illegitimate and unpredictable. Thus, prior to mulling over a new constitutional architecture, the governmental and legislative task, as arduous and immense as it may seem, is none other than to begin to reconceive the structure and content of our laws, whether by handing down new laws or amending the preceding ones.

The second problem refers to the fixes that have been adopted in recent years to confer guarantees on the citizenry concerning their

rights being respected. In some areas, above all in commerce and investment, the most recent governments took important steps toward addressing this need. The best example of this, as noted previously, is the North American Free Trade Agreement (NAFTA), which incorporates diverse mechanisms to offer judicial certainty and even grant guaranteed compensation in the case of expropriation. It is ironic that, by virtue of NAFTA, foreign investors who seek shelter in those clauses obtain guarantees and a framework of judicial security that Mexicans do not enjoy. In this manner, we find ourselves with a scenario in which there are two levels of judicial security depending, in this case, on the nationality of the investor. It is imperative to expand these guarantees, not only in the economic area, but in all areas of national life.

Finally, the third group of problems has to do with the profound change that adoption of the Rule of Law would entail. Abusing the rhetoric of legality is easy and is common in daily political rhetoric. However, beginning to live in a world of legality in which the citizens' welfare and rights become the *raison d'être* of the government and where their rights take precedence over governmental activity, entails much more than a political decision. A president, a state governor or a mayor can be truly committed to the Rule of Law and believe that their actions are carried out within that area because they act in a determined manner. The truth is nearly the opposite: a governor or functionary cannot choose to act within or outside of the Rule of Law because to the degree that they have the prerogative to decide on abiding by the law, they deny the very existence of the Rule of Law. Thus, there is not the least doubt that it would not occur to any Danish politician, to continue with the prior example, to affirm that he would act within the law or that he would protect the sovereignty of the country. The fact of his not being able to act outside of the

law and of his country's sovereignty not being within his reach proves that in his country the Rule of Law is in full force.

We Mexicans have seen the advance of diverse aspects and components of what one day could end up being a Rule of Law, but this will not be consolidated until the president, the current or a later one, makes it his (or her) own and chooses to place limits on his own power. Legality and the Rule of Law cannot be achieved by waving a magic wand; rather, its consolidation will be the result of clear leadership that, starting with personal example, establishes the political bases that provide the backing for a new institutional order.

SOME IMPLICATIONS

Some years ago, there was an illustrative case in Spain. Narco traffickers received drugs on the high seas, and they unloaded them onto speedboats to ferry them to land for distribution . The drugs flowed without greater ado until the police developed the capacity to intercept these boats. In one specific instance that became paradigmatic, the police were able to detain one such craft. However, when officials boarded the boat, the drugs had disappeared into the sea. Although there were photographs of the cargo being loaded onboard the drug was no longer to be found on it. The prosecutor presented his arguments before the judge but the lack of proof was convincing: in this decision, the judge affirmed that he had no doubt about the contents of the boat's cargo but, from the perspective of the law, the lack of evidence carried more weight. The drug lords were set free, not because they were innocent, but because the judge put the Rule of Law first. In countries where the Rule of Law reigns, judges favor the rights of individuals (be they victims or alleged perpetrators); this sometimes mean that mere technicalities lead to freeing a guilty

party. The moment those rights and procedures, like due process of law, cease to be respected, the Rule of Law no longer exists.

The Rule of law is the principle that governmental authority is legitimately exercised only in accordance with laws that are written, publicly disclosed, adopted, and enforced in accordance with established procedure. The principle is intended to be a safeguard against arbitrary governance. This is the principle that judges, such as the previously mentioned one in Spain, affirm and with which they exact compliance. These are not mere technicalities; they are the essence of principle of legality, of the Rule of Law. When the government fails to carry out its mandate, for instance as prosecutor, it often ends up producing a failed case at the judiciary.

Asserting the rule of the law implies a commitment to a distinct social, political, and legal order. In principle, it entails a willingness to accept the law as the norm and mechanism of interaction among persons and between individuals and the government, whatsoever the matter shall be. It implies that the government (including the police and district attorneys) is required to be scrupulous in its actions. If one contemplates all of the themes in which the society interacts with the government (such as taxes, regulations, murders, robberies, permits, demonstrations), imposing the rule of the law would imply a radical change in our social and political reality. The number of instances in which we the population or the authorities violate the law is amazing.



What Makes People Abide by the Law?

“It will be of little avail to the people that the laws are made by men of their own choice if the laws be so voluminous that they cannot be read, or so incoherent that they cannot be understood.”

— James Madison

“When I visit a country”, wrote Montesquieu, “I am concerned less with knowing what the laws are than if they are applied.” The Rule of Law is a complex phenomenon not permitting facile definitions. Some presidents affirm that they respect the Rule of Law because they obey the law, never acknowledging that the problem is that a month ago they changed the law on a whim.

In the famous U.S. Supreme Court case on pornography, Judge Potter Stewart avoided having to define pornography by observing, “I know it when I see it.” Something similar could be said of the Rule of Law: when the citizenry lives peacefully because it knows that no one can freely abuse it, the Rule of Law exists.



The Rule of Law has two faces. On the one hand, the power of the authority to manipulate the law at will. This violates the essence of the principle of legality that consists in that the law should be public, known by all, and applied fairly. When a government official faces effective limitations to his plan of action, the country resides within a Rule of Law.

But there is another dimension that is not small and that is citizens' obeying the law. This is also a key matter, though perhaps implicit, that is related to security, the police, and legality.

According to the study of Tom R. Tyler, people obey the law when they consider it legitimate and not because they fear punishment.¹⁷ The conclusion of Tyler, who conducted an extensive, survey-based analysis, is that it is much more important

...There is a correlation between people's perception of the authorities' legitimacy and their obeying the law. If legitimacy is high, people obey; if legitimacy is low, people do not feel obliged by the law and only obey it when the risk of not doing so is too high.

for a legal system that the population respect it than that the population feels threatened by the probability of being punished. His principal statement is that authority's legitimacy is much more important for people than the instruments employed

for trying to make the law obeyed or punishing those who violate it. This argument stands in dramatic contrast with much of what is used in Mexico to combat criminality and tax evasion, to cite two obvious examples. If Tyler's conclusion is valid, the crucial question is how is that legitimacy achieved.

From the perspective of the authority responsible ensuring that the law is obeyed –and here Tyler supposes a condition of stability not typical of Mexico– what is decisive is less police surveillance or surveillance by other government bodies but the way people act in their daily lives. One thing is what the letter of the law says and another how individuals actually behave. The theoretical objective of any legal system is that there be no difference between norms and behavior. The question for Mexico is how to achieve that and what would make it possible.

According to Tyler, much of the legitimacy that a legal system generates derives from the interaction between the population and the authorities, especially with those directly associated with the legal-judicial process, such as police officers, judges, and public servants. His study shows that people generalize from those experiences to the political system. Were his conclusion equally applicable to Mexico, the implications would be monumental: based on the country's police officers as the model for evaluating the rest of the government, up to the president himself, the result would be catastrophic. That is to say, like it actually is.

According to the study, interaction with civil authorities conveys an enormous amount of information to the individual. The inferences derived there from frequently become permanent: what the individual perceives to be the motivations of the functionary is crucial. If the latter is perceived as impartial, devoted to his work and fair in his actions, the citizen perceives him as legitimate authority. Likewise, if he/she is perceived as self-interested, incompetent or unjust, it leads the citizen to qualifying the entire political-judicial system as such. Equally important is the

perception of how justice is meted out, especially in the case of trials, arrests, and decisions in matters of criminal cases.

From this perspective –taking Tyler’s analysis to Mexico- it is not by chance that the population condemns decisions such as that of extraditing Florence Cassez to France or that of letting some very visible person out of jail. Those situations are symptomatic of the conditions at which the author arrives in his study on Chicago: the population will not confer any legitimacy to the government or the judiciary if it does not believe that justice is being done, if it perceives politicians as corrupt and if it sees the police as committed to their own interests or incompetent in complying with their responsibility. In these circumstances, the population sees paradigmatic cases such as the extradition of Cassez not as vindication of the rights of an individual but as further abuse of the power of government. Thus its conclusion with respect to the legitimacy of the judicial system is devastating. It would not take much to extrapolate that to the whole political system.

The central implication of Tyler’s study is that there is a correlation between people’s perception of the authorities’ legitimacy and their obeying the law. If legitimacy is high, people obey; if legitimacy is low, people do not feel obliged by the law and only obey it when the risk of not doing so is too high. Expressed in other terms, legitimacy is crucial for the functioning of a society and constitutes a key strategic factor for a government attempting to advance compliance with the law, in any of its areas.

Matters such as energy liberalization and credibility in the government go hand in hand, and the point of departure is not encouraging. The relevant conclusion from this study is that only a political system that is perceived as legitimate can make the

population adhere to the rules and obey the law. What matters according to Tyler is the legitimacy of the political system. Investment, progress and stability end up depending on perceived legitimacy.

The implication of this study is that the key to compliance with the law is the legitimacy that the population attributes to authority; thus, it is imperative to understand the prevailing causes of illegitimacy. Recent studies suggest that the causes are not esoteric: the population mistrusts the authority and does not approve of it whatsoever, due fundamentally to the poor economic performance and the corruption with which those holding public posts are associated. In a more profound way, Mexican society suffers from a system of government that tends to preserve inequity and inequality, echoing the famous statement by GK Chesterton, "The poor complain that they are badly governed. The rich complain that they are governed at all."

In this context, one may ask what the president can do to make the population adhere to the rules and comply with the law.

The answer is not very difficult, at least in conceptual terms: the day that the population perceives that the law is complied with from the president on down and that the president

...The day that the population perceives that the law is complied with from the president on down and that the president pursues illegality and corruption, the president's legitimacy would rise and along with it complying with the law would begin to make more sense.

pursues illegality and corruption, the president's legitimacy would rise and along with it complying with the law would begin to make

more sense. At the end of the day, the key lies not in persecuting the population for its lack of compliance, but instead in making the president the first to adhere to the law and be limited by it.

Paradigmatic cases such as that of the Spanish drug case suggest that the population begins to appreciate the existence of a regime of legality when it is the same for all. One has to start somewhere.

The Law and the Economy

“Illegality is dangerous and complicated. It requires patience, shrewdness, vivacity and an always alert spirit.”

- Gabriela, clavo y canela, Jorge Amado

Enforcement of the law and a climate where the law rules are two key elements for political stability in any country. Paradoxically, but also logically and rationally, neither one exists without the other. As Tyler's argument suggests, obeying the law has a much stronger foundation in the conviction of citizens regarding the legitimacy of the governors than

in the fear of being punished for not obeying. The opposite is also true: legitimacy is achieved only when the performance of the government is bound by checks and balances, when there is an environment of peace and security, and when the government has effective limits on its ability to abuse the population.



The contrast between the discourse of the politicians and the reality in the streets has a great impact because they appear to be two contradictory worlds that ignore each other. There is a lot of this situation in Mexico and in the provincialism of its politics, but I am not referring to Mexico or, perhaps, not exclusively to Mexico. The great revelation of the film *The Square* is that today no one has a monopoly on information. The pertinent question for Mexicans is whether the recent reforms are consistent with that change in reality.

The Square, a documentary on the student rebellion in Tahrir Plaza, is a profile of six activists from the beginning of the demonstrations until the Army's assumption of power after overthrowing Egypt's elected President. It is a powerful testimony to a spontaneous social mobilization, perhaps one incited by years of contention and political repression. But the most important message of the film does not lie in the demonstrations themselves, but rather in the narrative of the mobilization.

When the so-called "Arab Spring" began many observers noted that electronic media, social networks, and other elements of the globalization era were what made this phenomenon possible. Some historians, less passionate, demonstrated how European 19th-century revolutions had followed a similar pattern: they took longer to spread but had the same impact. In other words, technology drove the speed but did not change the dynamic. What technology did achieve was dissolving the monopoly on truth.

As one of the lead characters in the film says, history used to be written by the winners, now each tells his/her own. Politicians are no longer sole possessors of the truth and their affirmations are immediately questioned, frequently with relevant data, and

relentless information. Now the traditional media compete with bloggers and, in fact, anybody with a cell phone camera in their pocket. No longer is there a sole truth or a sole perspective. The political implications of this fact are extraordinary.

To start with, no one controls events and the capacity of political actors to manipulate the media diminishes drastically. It is not inconceivable that, had it occurred one or two decades earlier, the attempted impeachment of López-Obrador (2005) would have been successful, but today it would be impossible because no one controls all the processes —not even the government.

As Aníbal Romero says, politics is not defined in the plane of good intentions but in that of results “and events often take a distinct and even contradictory tack with regard to what was intended.”¹⁸ This is dramatically magnified with the multiplicity of contradictory sources of information and the heightening of expectations, all of which fundamentally alter governmental activity.

The world of yesteryear was a paradise for controlling politicians and the population had few resources. Kings and feudal seigneurs (whatever their title) dominated thanks to their capacity to control basic goods. While there were exceptions, that capacity of control and manipulation remained unaltered until just a few decades ago. Today, as David Konzevik remarks, expectations swell 5% for each 1% of a rise in income: that is, they grow exponentially and it's not necessary for a person to do more than watch TV to know what he wants and that he wants it now. Governing in this context requires a very different way of understanding the world and very different responses.

In the Mexico of the many reforms, the question is whether their content and thrust are synchronous with today's world and

national reality. On occasion, it seems that instead of attempting to position the country ahead of the curve, what is really being done is legalizing or codifying the industrial revolution at the emergence of the 19th century.

Several things are very clear: first, it is no longer possible to hoodwink the citizenry or trade gold for shiny beads; second, the population is light years ahead of the politicians with respect to their desires and expectations and there is no way to meet these

...It is no longer possible to hoodwink the citizenry or trade gold for shiny beads; second, the population is light years ahead of the politicians with respect to their desires and expectations given that the government cannot control information flows or expectations its function should be to concentrate on providing people with the instruments and capacities to be successful in their own right.

with the instruments presently available; and third, given that the government cannot control information flows or expectations (and it would be ridiculous for it to try to do so), its function should be to concentrate on providing people with the instruments and

capacities to be successful in their own right.

The following list does not pretend to be exhaustive, but the implications in the area of reforms are clear: the reforms must concentrate on unleashing the productive capacity of the population (labor reform); give the people tools –essentially education and health- to have the skills and conditions to compete in such a complex and competitive world; furnish them with access to information (telecommunications); and create conditions so that their rights are protected (political-electoral and

physical security). The key is their focus: what are they meant to accomplish?

Two issues remain to be resolved: first, although the potential energy resources are evidently enormous and merit intense, rational and successful exploitation, why concentrate on typically 19th century issues instead of those of the 21st century? Another doubt: To what degree do the reforms that have been approved adhere to the logic of advancing what is crucial for the future?

In one of his films, Cantinflas said that what's most interesting in life is to be simultaneous and successive, at the same time. That is how the government should be thinking, but its concentration seems to be on other things.



Towards the Future

“Victorious warriors win first and then go to war, while defeated warriors go to war first and then seek to win.”

- Sun Tzu, *The Art of War*

In her essay on the crisis in education published in 1954, Hannah Arendt criticizes the philosophy that puts the child at the center of the education system.¹⁹ Her argument is that a permissive educative system engenders irreparable harm because it leads to the development of a churlish, demanding, and disrespectful child and a system in which parents

cede their function as educators to become their children's friends. This, she believes, has produced generations of adults who never learned to be adults. The essay caused me to reflect on the radicalization of Mexican youth and what that bodes for the development of a political system that should be simultaneously participatory and functional.

The theme is not a novel one. Alexis de Tocqueville wrote in the mid-19th century that one of the deficiencies of democracy lies in that it erodes the structures of authority until the underpinnings that make it work disappear, leading to the “tyranny of the majority.”²⁰ More than concern with the reign of the majority, my reflection is on the way Mexico’s immature democracy has evolved, opening spaces for protest and radicalization, but without effective participatory mechanisms.

In mature democracies, the rub is that politics has been fragmented or Balkanized by special interest groups, ever more narrow in their scope and interests, that seek the spotlight. Environmentalists do not care about growth, women push for equality, the poor want more and more subsidies, no one wants to compete with imports, and immigrants strike fear in the hearts of native populations. Narrow interests lead to sectarian actions. Observing the matters that consume European parliaments and U.S. legislative proceedings it is easy to see that the most stolid and close-minded views repeatedly have the upper hand.

In contrast with those nations, where the problem is “too much” participation, or the way that participation has thwarted decision making, in Mexico the issue is democratic immaturity or an unconsolidated polity where there is virtually no participation by the citizenry. In developed countries participation happens through mechanisms that are perfectly established and recognized as legitimate. The result of the process can be unsatisfactory for the participants (illustrated by the recent vote on migratory matters in Switzerland or the incapacity of the U.S. to legislate budgetary matters), but the mechanisms or responsible institutions themselves are not in dispute. In Mexico’s case, a very substantial part of the population disavows the mechanisms and does not

see the political process as legitimate. The problem in Mexico is one of essence.

Arendt believes that there is a deep contradiction at the heart of consolidated democracies which is summed up as the fact that authority or tradition cannot be spurned but, at the same time, we live in a society -and I would add, half a century later, in an era- in which tradition as well as authority are eroding at an unstoppable pace.

Mature democracies confront problems of process: how to make decisions in times of political fragmentation. We Mexicans face the challenge of how to organize ourselves to be able to construct that developed and consolidated society. It would be easy to say that I would love to have the problems of the Swiss or the Swedes, where their decisions are, in relative terms, marginal in character. Mexico's democratic problems start with the fact that at least one third of the population does not see the government and the array of institutions that embody the government as legitimate.

This situation generates doubts about the viability of the political system and the democratic model that has been such an uphill struggle to create.

The Pact for Mexico was a brilliant mechanism because it allowed for sharing the guilt or, at least, the costs, among the three big political parties, but it did

An honest exercise of leadership founded on legality would oblige the whole of society to join less due to fear of potential sanctions than because of the strength of the example.

not resolve the essence of our dilemmas, which is reflected, for example, in the flagrant manipulation of the Constitution last

year. I do not object to the reforms, far from it, but the procedure is at the very least doubtful because it implies that meta-constitutionality is cheaper than constitutionality, that buying votes in the Congress is an acceptable way to expedite and fulfill the formal requirements of the law.

The problem is that this does not improve the capacity of the government to govern, it does not strengthen the legitimacy of the authority it does not guarantee results in the economic plane, in security, or in the purely political. The Pact ends up being a useful media mechanism but it comes at an enormous cost to the development of the country. Worse yet, it does not attend to, to say nothing of resolving, the problem of that enormous

The Rule of Law is the existence of clear rules and rules encoded in the law, which everyone will know before the fact, that the government enforces in impartial fashion, and a judiciary that possesses real powers for modifying the decisions and actions of the executive branch when the law so demands.

mass of Mexicans who feel alienated from the institutions, who rebuke the institutions, and who are not willing to engage in a democratic process unless they are sure of winning. The López-Obrador phenomenon is not about a person but, rather, the personification of the phenomenon of challenging authority,

of rejecting the institutions, and of a permanent leaning toward radicalism.

The heart of the problem resides in the absence of mechanisms of participation that permit consolidating politics and defend it, affording spaces to all and legitimacy to the whole. Mexico

requires 21st-century solutions, not the poor adaptations of an era long passed. In his book *The Revenge of Geography*, Robert Kaplan says, in reference to Putin, that a visionary statesman would see that the way to get out of the hole is to construct a strong and participative society and that that is the only way that excesses are rendered impossible. Not a bad lesson for Mexico.

HOW CAN THIS BE CHANGED?

There are three pathways for advancing an agenda of legality: imposition, negotiation, and leadership.

The first literally implies a crusade in which the objective is to reach a point at which the government as well as the society submit themselves to the Rule of Law because the costs of the alternative become unacceptable. This is the pathway that dictatorial governors have followed who, by employing their capacity for imposition, little by little achieved bringing the population into the process, earning its confidence. The precondition for this is, of course, the government's setting the example, a circumstance that, in today's Mexico, sounds improbable: if the government cannot even maintain security, it would be hard for it to be very convincing in any other area.

The negotiation of a grand pathway is an alternative pathway to which many of us are attracted because the cases that serve as examples are so flamboyant, especially, but not exclusively, Spain. The notion of a pact that involves all the relevant groups, sectors, and political parties of the country possess a great attraction because this allows us to imagine a future of civility that is an integral part of a nation characterized by the Rule of Law. The problem with this pathway is that it is highly improbable that a government that has conceived its mandate as being above the

society and at the margin of many of its key sectors would accept involvement with all of those whom it has alienated. In addition, a negotiation of that nature would suppose that the sum of those involved would represent the society, something doubtful in the best of cases.

Finally, the third pathway, that of leadership, is probably that which best matches up with the skills, record, and objectives of President Enrique Peña Nieto. Heading an intended transformative process with his own example would have an enormous effect on the Mexican society because it would demonstrate the conviction that has been absent in the country literally from the Conquest. An honest exercise of leadership founded on legality would oblige the whole of society to join less due to fear of potential sanctions than because of the strength of the example. This might seem naive, but as Aníbal Romero said in the previous citation, what matters is the result. That is the relevant yardstick.

Leadership

"A real leader faces the music, even when he does not like the tune."

- Unknown

The great deficit of recent decades has been that of leadership. There has not been clarity of course nor ambition for transformation: there has been administration, but not the consolidation of a platform likely to lead Mexico toward a better future. This absence has not only impeded us from seizing

opportunities and changing circumstances into opportunities, but has also caused a retraction in society as a whole: each standing guard over their own and no one developing forward-looking projects. The notion of development virtually disappeared from the map.



The last major exercise of leadership that Mexico has experienced was at the end of the eighties and it was remarkably successful in forcing society to start thinking big, conceiving the country as part of the world and not as an isolated entity. That government modified structures and redefined the development of the country, creating huge growth potential. Unfortunately, both the personal contradictions of the leader and the 1995 crisis, as well as the poor political leadership that followed, ended up delegitimizing much of the liberalization project, sowed the seeds for López Obrador's political and economic project to emerge, and discredited the very idea of building a modern country of which the whole society could be part.

The country needs a major new leadership exercise, a transformative moment that revitalizes the opportunities for development, entices the people, and leads to a paradigm shift. A project of this magnitude can only be achieved by a president who enjoys democratic legitimacy, has won approval for various other significant reforms, and who has reshaped the presidency of the Republic as the heart of national politics. That is, only a strong president can achieve such a feat.

We Mexicans have a love-hate relationship with strong leadership

We Mexicans have a love-hate relationship with strong leadership in the presidency because the experience has not been benign on that front.

in the presidency because the experience has not been benign on that front: a long history of imposition has created enormous

resistance to any change, the performance of incompetent leaders has ended in enormous financial crises, and excesses

of power entailing erroneous decisions with grave economic consequences in the long run. However, in all of these cases, the problem was not one of leadership but the total lack of checks and balances.

While there has been some institutional construction over the last decades, the touchstone, the key to any transformation, lies in the president of the Republic himself. That is where the opportunities begin and end. Only a presidency that makes a transforming project his own and develops the vision that makes it possible would be able to lead it. Only a president willing to limit his power could achieve the construction of counterweights that are the key to the rest of the project that the government has advanced.

Despite the bad experiences, paradoxically, the country is avid for, and in the need of, a leader who is at once strong and effective but limited, and capable of understanding the context in which he operates. That is, one with good judgment. Isaiah Berlin defined good judgment as “a capacity for integrating a vast amalgam of constantly changing, multicolored, evanescent overlapping data.”²¹

In spite of the reforms that he has spearheaded, Mexico under Enrique Peña Nieto is stuck, each of its parts hedged in by its own labyrinth. The reforms have demonstrated the extraordinary political skills of the President, but these remain far from transforming the country. That is the contradiction that lies behind the dispute that has dominated the parliamentary debates surrounding the secondary reforms. In the absence of strong leadership that leads by example, the panorama will continue to be dominated by forces resistant to any change, or even outright reactionary, in the literal but not in the ideological sense of the word. In the face of a non-existent or insufficiently clear future,

it is natural to take refuge in the known: the past. The President has promised a transformation, but has limited himself to reforms whose viability in practice remains to be seen in good measure because the reforms all depend on the consolidation of the Rule of Law, absent at present. Therein the paradox.

As much as the letter of the law has changed, everyone knows that the old arrangements are alive and well: in fact, they are the ones that made these changes possible. Even if the reforms were to advance as their objectives propose, countless areas remain where they are not being dealt with and that are still key for large swaths of the population: the old manufacturing base that cannot compete and the poor and backward parts of the rural economy, bureaucratic practices, and corruption.

Everything now is leading toward protecting and maintaining the status quo and while some of the reforms could alter it, the overriding political rationale is of much greater transcendence than its economic content, thwarting its transforming potential. Within this context, success continues to be penalized and the cost of the error, or of a failure, is excessive.

Another way of saying all of this is that the country possesses huge capacities that are ready to transform it and the leadership reserves are immense. In contrast with Europe or the U.S., Mexico's structural situation is much more solid and promising and even more so with the approved reforms and that, with exemplary leadership, could achieve their purpose, even if further adjustments are called for. The country is ready to turn the page, but no one dares to take the great step. That is deficit in leadership.

The *status quo* ends up being convenient for everyone, but good for only the most protected and encumbered interests: political,

economic, bureaucratic, social or unions. This paradox can only be resolved with the presence of two simultaneous circumstances: on the one hand, effective leadership; on the other, learned leadership that comprehends the dynamic that characterizes the world and is capable of governing by example: limiting itself to the law.

The Mexico of some decades ago would permit and favor the nearly unipersonal exercise of power. Today, the domestic as well as international circumstances make such a scenario much more difficult, if not impossible, and that is where the paradox resides: a government that successfully advances an agenda, but does not achieve a matching popularity. A core characteristic of the country of today –and of the global economy– is decentralization of power and productive activity. Central controls are no longer functional and, in very many cases, not possible. What the country requires is clarity of course for its development, which implies, paradoxically, making possible the multiplication of sectoral and functional leaderships, all of these likewise limited, as would be that of the president himself.

President Peña Nieto has been able to change the inertia that paralyzed the country. Now, he must ensure that the movement he has caused becomes a wave will of development. The argument of this article is that this would only be possible and successful to the extent that the President accepts that solely by limiting his own power will he be able to achieve the transformation that he proposes.

Benjamin Disraeli, one of England's great Prime Ministers of the XIX Century, said that "Circumstances are beyond the control of man, but the way he conducts these is in his hands."²² The opportunity is immense and the complexity of the moment renders it even greater.



Which Utopia?

“The lion cannot protect himself from traps, and the fox cannot defend himself from wolves. One must therefore be a fox to recognize traps, and a lion to frighten wolves.”

- *Niccolo Machiavelli*

This text begins with the observation of what I have witnessed in diverse parts of the country and that is summed up in one line: the population does not believe that the country is changing. Others would go one step further. Many, perhaps the majority, think that the country cannot change or improve. This locks horns with the optimistic proposal of the government of President Peña Nieto and with the most revealing

evidence: for twenty years the mantra for solving the country's problems was the approval of a set of structural reforms and the assumption was that this alone would transform Mexico. Since 1994, no president has had the capacity and skill to advance this thesis as the present one has been able to, and yet, disappointment and disbelief dominate the panorama.

The great question is whether the problem is merely one of communication and perception or whether it concerns a more profound matter, one that is structural in character. The argument that I have set forth in these pages is insistent in that it is about a structural phenomenon, which cannot be corrected with better communication. And even more so, it cannot be corrected with the implementation of the ambitious program of reforms that the President has undertaken. These reforms are, of course, necessary, but they are not sufficient. The solution requires convincing the population that its security, in the broadest sense of the word, will be resolved and to confer on it the certainty of stability with a view to the long term. The population must feel that the road ahead is better because there are credible anchors that sustain it. Nothing other than that would achieve it.

The proposal of the book is very simple, and appears utopian, thus its title: the President makes the Rule of Law his own and decides not to violate its elementary principles for the sake of expediency. That is, that he break with all legal, presidential and political tradition that has historically permitted presidents to adapt the laws to their own needs and convenience, to impose their will on legislative and judicial powers, to control the state governors and, in short, enjoy enormous, albeit temporary, power. As practically all former presidents have found after their mandate, that power was in the last analysis ephemeral. The proposal is to institutionalize political power by means of the elevation of the Rule of Law by the President of the Republic.

Many will ask what has taken hold of the author of this book or, colloquially, what has he been smoking? From the very title of the book, I understand that the proposal is aggressive and even bold, but that it is still desirable and even indispensable.

The country requires profound changes, but these will not materialize until there is a solid foundation of trust that today, unfortunately remains absent. Legal reforms are necessary but are not everything. As with computers, the physical equipment, the hardware, is required, but the computer needs the program, the software, that makes it work. In the world of globalization, where centralized control is no longer possible, that software is the Rule of Law. There is no alternative.

For the reforms to have an effect, it is indispensable that there be reliability in their functioning, certainty of the permanence of the changes, clarity with respect to the rules of the game, and confidence that the problems that the population deals with daily –such as insecurity, unemployment, the challenges of informality and the absence of opportunities for development- will be attended to and resolved. However, the population does not trust the government, lives in fear due to the security situation, and does not see a promising panorama in the future. Foreign investors, on whom the government has made an extraordinary wager, above all in energy matters, will respond only to the extent that there is the institutional strength that allows them to assume long-term investment commitments. None of this will take place unless competent institutions are built. Constructing competent institutions implies creating conditions for the transformation that the country requires and that the population has been demanding for several decades. In today's world, only a schema of trustworthy rules would achieve this objective. Thus, the proposal is not one of limiting the attributions of the president just to do it, but one of establishing the Rule of Law as a form of interaction among Mexicans, beginning with the example of the government itself.

The country has been in a similar *conundrum*. In the eighties, ambitious reforms were carried out, all oriented toward attracting private investment, national as well as foreign but, as argued in a previous chapter, that investment did not materialize. The investors had put up with years of crisis, poor management, corruption and expropriations; even the positive reforms that had been adopted were insufficient to placate the memory of abuse and excesses, thus keeping the investors reticent. That is how the idea was born to procure an external mechanism that would confer guarantees on investment, a mechanism that ended up being NAFTA. The key to that treaty, thus the reason for its relevance at this moment in time, is that the Mexican government ceded the faculty of breaking the law –their own rules- in investment matters. That is the concept that resides at the heart of this proposal: that the government, beginning with the President himself, starts limiting his powers to those that the law decrees. In other words, that he voluntarily, and publicly, abandon the real powers that Mexican presidents can wield, those that have long been termed “meta-constitutional” powers.

The Rule of Law is the existence of clear rules and rules encoded in the law, which everyone will know before the fact, that the government enforces in impartial fashion, and a judiciary that possesses real powers for modifying the decisions and actions of the executive branch when the law so demands.

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impartial fashion, and a judiciary that possesses real powers for modifying the decisions and actions of the executive branch when

the law so demands. That is, the Rule of Law implies the transfer of the powers of persons (the president, the state governors, the municipal presidents and entire bureaucracy) to a set of rules that everyone obeys and that everyone knows up front.

The utopian component of the proposal is clear: in its most primitive meaning, whosoever possesses the power does not cede it. In this sense, proposing that the President would cede the power that he has accumulated would seem not only a contradiction, but above all an absurdity. The notion of never ceding power derives from a maxim of Machiavelli that every self-respecting politician understands down to the core of his being: power is not ceded nor shared. What is proposed here is not ceding the power of the president, but that the President act strictly within the mandate that the law confers on him and that obliges everyone else to behave under that norm. The president would do this not because of bonhomie, but instead because of the conviction that this would strengthen his project and the consolidation of his vision and make his reforms permanent and transcendent.

If the president wants to transcend, there is no more relevant and important matter or objective than that of building institutions in the country. No society can progress in the modern world without rules that are complied with and that are enforced. This is the reason that I used the example of NAFTA: the Mexican government accepted limiting its capacity of action in exchange for the certainty that investors demanded in order to risk their capital in the country. Now it is the Mexican society that demands equal certainty in order to live, prosper, develop itself, and be safe. The fact that the population does not believe in or trust the President and his government is a clear sign of the urgency of acting decisively and convincingly.

The achievement of a utopia of this type would consist, essentially, of accepting a radical change in the way the political system works. The first grand change would be of a cultural character: stop living under the mandate of a person to live under the yoke of the law. If he accepts this challenge, the President would have to devote himself to disciplining the politicians, heading a vast process of change, not only in practices but also, above all, in the manner of understanding daily politics. Limiting his own power would only be the beginning. That is, it would be a great exercise of leadership.

The second grand change would consist of modifying the way the laws are conceived of in the country, a colossal challenge. In Mexico, laws possess an aspirational rather than a normative character: laws with very strict content that are inapplicable in practice bestow enormous latitude on those responsible for their application and do not constitute a frame of reference that the population or whoever is responsible for their administration perceive as definitive. This is in contrast with the American system in which the law cannot be seen as an aspiration, but as a norm and its application is very strict. In practice, this reality confers enormous flexibility on politicians and functionaries, but limits the capacity of conferring certainty and credibility on the population. Serious countries have legal systems that do not entail flexibility in the law, even when judges can possess this at the moment of its application, precisely the opposite of what we have in Mexico.

The third grand change would lie in the adoption of clear and transparent rules: this would mean ending the very notion of "unwritten rules" in exchange for rules, both through legislation as well as, over time, in the social norms. As the rules are applied and respected, people would gradually grant them

legitimacy, breaking the current vicious circle. It would be of particular importance to create institutional structures so that state governors and municipal presidents work toward this same approach; that is, lay the foundations of a real federalism, with all that that implies in budgetary matters. In one word, the mission would be to construct a modern country for the 21st century, casting aside with it all of the structures, culture and rules that characterized the old system, which was designed for another reality nearly one hundred years ago.

Finally, the fourth grand change would consist of creating a system of real checks and balances, not as has been done to date in which the executive branch always reserves the powers for impeding the blossoming and fruition of the structure of counterweights that characterizes Mexico in formal terms, but in political reality. This would imply conceiving of regulatory entities and their novel “constitutional autonomy” as sources of counterweights and the system’s stability and not as instruments of the executive branch. Likewise, the system would seek to oblige the opposition parties to function under a scheme of new rules, in which their function would be that of loyal opposition and effective checks and balances, not one derived from opaque arrangements that serve the participating parties only,

The country is at a crucial moment in its development. The moment has been created by the reforms that President Peña Nieto has driven and on which he has wagered the success of his mandate. There are two risks that hamper that success: the first, that the current disenchantment, largely generated by the apparent incapacity to achieve and implement reforms that effectively modify the daily reality for good, will become permanent. That disenchantment is beginning to seem like that of

1994 and 2000, both culminating in and detonating later crises. The implementation of the reforms of telecommunications and energy, the two most ambitious changes undertaken by this administration will be of the greatest importance. The danger of disillusionment is real and should not be underestimated.

The second risk is that despite all the effort and skill with which the government projects have been advanced fail in their crucial stage, that of consolidation, due less to the content of the reforms (the first risk) than to the absence of mechanisms of certainty, generators of trust. It is there where this proposal of institutional transformation enters into the scene. This is, in my view, the only opportunity that the President will have to transcend: achieving a fundamental change in the country. Nothing is more fundamental than laying the foundations of the future, of the stature of the requirements of the XXI Century. Without a strong institutional framework, an integral Rule of Law, the viability of the presidential project is uncertain and the development of the country, impossible.

Historian Joyce Appleby affirms that “there can be no capitalism, as distinguished from select capitalist practices, without a culture of capitalism, and there is no culture of capitalism until the principal forms of traditional society have been challenged and overcome.”²³ That is the challenge: a modern country. Its essence is the Rule of Law.

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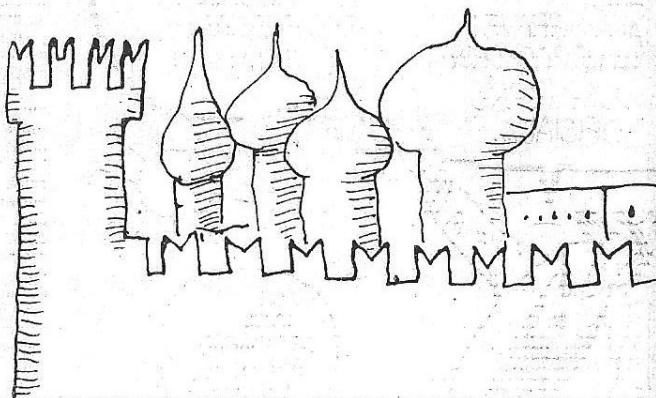
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CAMPEONATO MUNDIAL DE BUENAS NOTICIAS

Por Abel Quezada

EN LA URSS NO SE HUBIERA SABIDO NADA.
*
¿QUE HUBIERA OCURRIDO EN MÉXICO?

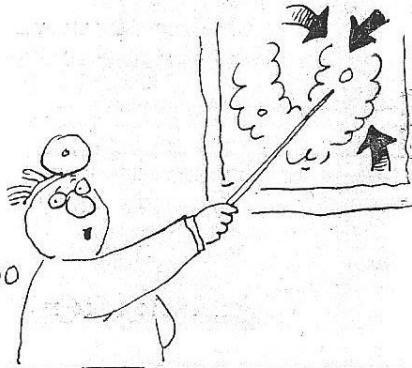


EN MÉXICO, LOS MEDIOS DARÍAN ASÍ LA INFORMACIÓN:



EN **EUA** SE
PUBLICARON TODOS
LOS DETALLES DE
LA OPERACION
PRACTICADA AL
PRESIDENTE REAGAN.

★
¿QUE HUBIERA OCURRIDO
EN LA **URSS** EN CASO
IGUAL?



¡AY!
¡AAAY!

GRITOS AHOGADOS DE
GORBACHOV AL SER
OPERADO



EL **PINERO**
LA ECONOMÍA SE
FORTALECE CON LA
OPERACION. **CANACO**
MEJORIA EN LA BALANZA DE PAGOS
YA SOLO FALTA QUE ENTENDAN EL IVA.

Oraciones
FIDEL DECLARA QUE
LA OPERACION ES
POSITIVA PARA EL PAIS.
EL SECTOR OBRERO
BENEFICIADO. DICE
LA OPERACION FAVORECE AL
MECANICA EN LA
TABLA DE POSIBILIDADES

EL **ABANDONADO**
LA CASACINTRA Y
LA CONCAMIN APOYAN
LA OPERACION.
COMO FUE VISTA
LA OPERACION EN
EL ACAPULCO

EL **PROGRESO**
LA OPERACION:
UN TRIUNFO MAS
DE MEXICO, DICE
BARTLETT.
SASAGOTEA OCEANICA
LA IP. RESPONDE
A LA OPERACION
LOS RONDOS AL PNEUMONICO
PIE LA IP.

