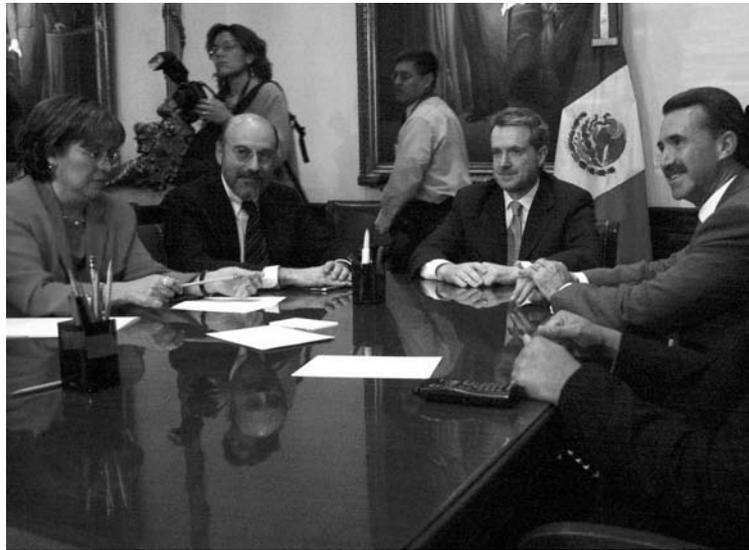


The Reform of the State Chronicle of an Impossibility

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Minister of the Interior Santiago Creel (third from the left) and the leaders of the three main parties.

Vicente Fox's electoral campaign and first few months as president were profuse in promises and encouragement for the reform of the state, a condition, it was said, for democracy not to be limited to alternation in office but to consolidate into a completely transformed political regimen. Almost two years into the Fox administration, an overall, coherent legislative proposal to reform the state has not been presented either by the administration itself or the legislature. Its appearance and disappearance in public debate according to the

needs of the political moment constitute a "chronicle of an impossibility."

The imagined objectives presuppose an arduous task. Seventy years of Institutional Revolutionary Party administrations based on a presidentialist political system with an almost total predominance of the hegemonic party forged a political regime that subordinated the rule of law to the exercise of power.

Little by little, human, civil and social rights, the municipality, state legislatures, the state governments, the federal government, Congress and the courts were carved in the image of the presidents and governing groups surrounding them. Taking the 1917 Constitution

that came out of the Mexican Revolution as the starting point, we can see that, 83 years later, the results of the evolution of the political regimen are stamped on more than 400 amendments to that document. What in the republican and democratic framework of the Constitution could have given rise to a democratic state, instead led to the authoritarian evolution in which the president, based first on the army and then on the corporate organization of society by the regime itself, became the only power capable of giving form to and controlling political and legal norms. In other words, presidential authority was placed above state norms and adapted them to the

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needs of the governing group and, above all, to the requirements of the discretionary exercise of political power.

It has not been by chance that over the last 20 years, political life has been marked by political actors' continual reference to the incongruities and adjustments needed in the Constitution. As new alternatives in the form of groups, movements and parties made their appearance and became stronger, the model organized around the centralist axis of presidentialism began to yield diminishing returns until it ended by offering up unsatisfactory results from the point of view of maintaining political stability and producing other public goods.

Thus, to the concerns about everyday politics was added an excess of matters linked to the organization of power and the effectiveness of state institutions. Political actors' growing unhappiness with the latter rarified the atmosphere for solving day-to-day problems, little by little forcing up the costs of political negotiation. As often happens in situations like this, the absence of spontaneous coordination by important political actors, derived from (non)conformity with the systems of decision-making rules, means that decisions become more difficult to make and discord about their meaning and legitimacy grows until it reaches the point where the consensus needed to govern has to be created *ad hoc*, case by case, since the system does not have a structure of equilibria that can *per se* produce the necessary agreement or acquiescence to the government's course.

In this situation, three basic questions emerge: What reforms are needed to achieve the required equilibria? How feasible is it that they be made? And, what effects would the current

stagnation or a change in the rules have on the political process?

THE NECESSARY REFORMS

The answer to the question of what reforms are needed will depend on your understanding of the situation.

If you see government inefficiency as the main problem, you will tend to propose reforms that attempt to guarantee effective government and rapid decision making. Once "effective suffrage" is a reality, the challenge is "effective government" (which will not necessarily be "effectively democratic"). If, by contrast, your analysis emphasizes deficiencies in the state's demo-

cratic functioning, your answers will tend to guarantee the extension of civil rights, the distribution of power and the creation of alternative mechanisms for strengthening representation. In addition to effective suffrage, an effective democratic government is considered necessary.

A perfect example of the first perspective is the proposal by renowned Italian political scientist Giovanni Sartori in the postscript of the latest, 2001 edition of his classic *Comparative Constitutional Engineering: An Inquiry into Structures, Incentives and Outcomes*: with small variations, returning to the letter of law on government organization

as laid out in the 1917 Constitution. For Sartori, constitutions are instruments of government, not programs for action. Their objective is to produce effective government and their main indicator for success will be the system's governability. For that reason, it should not be surprising that he proposes four reforms as the solution for the problems in the Mexican constitutional design: a) returning to the 1917 Constitution to avoid inconsistencies; b) allowing for reelection of deputies; c) instituting a second round of elections for deputies to eliminate small, non-representative parties; and d) limiting and reinforcing the powers of the presidency over those of Congress and establishing the presidential veto

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on legislative decisions. If the main obstacle to Mexico's government's effectiveness today is the imbalance in the relationship between the president and Congress, the solution is to make the changes needed for that relationship to function effectively with a divided government or a government that does not enjoy an overwhelming majority.

The main difficulty with this proposal is that it does not break with the *authoritarian legacy of the past*. In order to not overload the agenda with a profound constitutional reform that would make day-to-day decisions difficult or slow them down, it does not move forward with the reforms needed to break

with some institutional practices that have proved inoperative when the aim is to govern democratically.

With regard to the second perspective, combatting the deficiencies of the democratic functioning of the state, a position I subscribe to, the alternative is a profound review of the 1917 Constitution in order to adjust the institutional design of government as well as the declaration of rights and guarantees to deepen the democratic political process without losing sight of government effectiveness.

The achievement of this objective requires:

1. *A review of the declaration of rights and guarantees*, systematizing and

be an incentive for greater communication between representatives and the citizenry. Thirdly, improving the administration of justice by making a clear distinction between those who bring charges and those who judge. And fourthly, strengthening the judicial branch's attributions of judicial review to reduce the other branches' involvement in decisions that should be reserved to the judiciary.

3. *Broadening federalism* by giving the states the right to establish the internal regimen they deem appropriate, limited only by the Constitution; returning to them the powers usurped by the federal government and reorganizing the powers of the three

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making explicit unrestricted respect for human rights, bringing social rights up to date and incorporating so-called third generation rights: those of minorities, environmental rights, etc.

2. *An improved equilibrium among the branches of the federal government*, first by establishing rules that provide incentives for cooperation between Congress and the executive in order to avoid stalemates that delay measures the country needs.¹ Secondly, permitting reelection for the legislature, which would result in greater professionalism and specialization among legislators and would

levels of government, creating incentives for cooperation.

4. *Completing the democratic electoral reform* with rules favoring a greater inclusion of political parties in all levels of public life, as well as broadening out the channels for public representation through the authorization of regulated independent candidacies.²
5. *Redefining the state's economic function* through rules that combine the guarantee of an open economy with clarity about the state's compliance with its social and economic obligations.
6. *Setting up procedures for constitutional reform* through rules that establish

the steps needed to make a change of political regimen.

Regardless of whether there is agreement on the measures outlined, the second question that must be answered is the feasibility of achieving the political cooperation needed for an integral review of the Constitution.

THE FEASIBILITY OF THE REFORMS

A reading out of context of the discourse of the main political parties and important actors would surprise observers, since they all argue the need for constitutional reforms. Nevertheless, their proposals differ with regard to the depth of the reform they think is necessary. It can be argued, however, that it is these differences in degree that cripple the reform.

A bad habit left over from the past is a tendency to aspire to totalizing consensus, conditioning the reform to "totally" agreeing on all issues. A consensus of this kind is probably a useless passion.

The pluralism of democratic political processes is, by definition, opposed to this kind of total consensus. Reaching an agreement of this kind would be the equivalent to the end of democratic politics, the negation of the possibility of changing norms through a discussion of the best possible options when society's dynamic demands it.

One alternative to this "totalizing consensus" is seeking a "substantive but limited consensus," a consensus about the basic issues of the reform of the state, about the rules for processing different social interests rather than on every single issue of political life.

Nevertheless, the possibility for this kind of consensus implies the preferences of each of the important actors. Logic indicates that, since current electoral rules make political alternation possible, each of the political actors should have an interest in cooperating to achieve a more appropriate institutional design for decision making. The possibility of being in office and being subjected to the aforementioned paralysis is a reality that should be a positive motivation for reform.

In that context, the absence of a consensus of this kind shows two things: first, that beyond trust in existing electoral mechanisms, there is no shared idea about the bases of good democratic government. The second thing—more serious than the first—is that for some important actors, a reform that jibes with the principle of alternation is not desirable.

These two probabilities would explain why simple, inclusive reform mechanisms have not been considered, for example, like those proposed by the Study Commission for the State Reform: forming a bicameral commission of deputies and senators based on Congress's current powers, to review the Constitution in a reasonable period, carrying out all the relevant consultations and subjecting the results to the plenary of both the deputies and senators, who, after their debate, would process them according to Article 135 and then put them to the vote as a referendum.³

Clearly, there are two options: maintaining the Constitution as it is, or, in the best of cases, camouflaging it; or, on the other hand, an overall review of the Constitution to bring it into line with the requirements of democratic government. I will now briefly analyze

the consequences of each of these options.

THE CONSEQUENCES OF THE OPTIONS

As the neo-institutionalist current of economics and political science has demonstrated, the social results that guarantee the greatest benefits for all depend on the institutions that articulate the interactions of the different actors.

Based on that premise, maintaining the current constitutional framework or making minimal modifications to it would not generate significant changes in the relationships of the actors and

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the social results of the institutions. The mechanism for achieving power through clean, competitive elections would function, but the state would not be transformed in the sense of deepening the democratic forms of decision making. The imbalances among the branches of government would continue, as would the limits on human rights, the deficiencies of federalism, etc. In the best of cases, changes would lead to quicker decision making (following the approach proposed by Sartori), and in the worst of cases, we would find ourselves facing a situation wherein people would attain public office through effective suffrage but the executive, judicial and legislative branches would not cooperate and

government would be paralyzed. The consequence of the first option would be a more effective regimen, though not necessarily a more democratic one. The consequence of the second would be a paralyzed—and therefore weak—government which in the medium term would be de-legitimized.

From the premise of an integral review of the Constitution, the most achievable possibility is deepening democratic government. This would not only guarantee and surpass effective suffrage, but, in seeking an appropriate balance among the different branches, between the state and society and between the state and the economy, it would also create the mechanisms for a democratically effective government.

The options and their possibilities are clear and it is for Mexicans to choose among them. Effective suffrage or effective suffrage with effective democratic government. The first option accepts the inheritance of a great deal of institutional authoritarianism and is satisfied with respect for existing institutions, regardless of the consequences of the paralysis. The second option opens a window to the future. The question is whether Mexico's political elite is up to carrying it out. **MM**

NOTES

¹ In this sense, the possibility of adopting a parliamentary or semi-parliamentary government might be an appropriate way of solving the problem.

² This means establishing prerequisites for this kind of candidacies.

³ Article 135 of Mexico's Constitution refers to the mechanisms for proposing and effecting amendments to the Constitution itself. [Editor's Note.]