

Legality, Governability and Democracy

The Challenges Facing Vicente Fox

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One of Fox's main challenges will be promoting a culture of respect for the law.

The recent alternation in the Mexican presidency has created profound expectations both domestically and abroad. Certainly, the undeniable historical novelty of what happened July 2, 2000, has opened up the possibility for major changes in terms of the relationship between the state and society and, with that, in the traditional way that the serious problems Mexico is now facing are dealt with.

Nevertheless, the political, econom-

ic, social and cultural difficulties littering the road toward a successful democracy, toward the consolidation of a new political regimen capable of harmoniously bringing together the institutionally effective democratic exercise of power and an improvement in people's living conditions, cannot be underestimated.

As everyone knows, the so-called "super-sale" commitments typical of electoral campaigns that always tend to promise spectacular transformations in a short time, may in the medium term be very costly for those who proposed them when they cannot deliver.

This seems to be the case of the both necessary and urgent adjustments to ensure the complete rule of law, historically one of the great unsettled issues from the point of view of building truly democratic ways of living together in Mexico. Certainly, several months after Vicente Fox took office, it begins to be clear that the problems linked to illegality in its most diverse manifestations fundamentally persist and will not be easily overcome.

This is a matter for great concern if we take into account that the weaknesses and deficiencies in this area gravely affect the population and also erode the

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The July 2, 2000 elections opened up the possibility for a new relationship between the state and society.

bases for the country's democratic legitimacy and governability. Today, just as in the past, issues such as public insecurity—which involves the primordial function of any state, that of protecting the life and property of its citizens—have a negative effect on the nation's public health. The same is true for the majority of crimes, which go unpunished; the corruption of public institutions, as has been shown by the recent paradigmatic cases of siphoning off of public funds from the Mexico City Treasury Department or the case of the Matamoros Customs Office, which admitted an “undocumented” elephant into the country; the inability to quash the power of the different branches of organized crime, illustrated by the spectacular escapes of drug kingpins from “high security” prisons; the persistence of large informal sectors of the economy that systematically evade taxes; and the impossibility of clearly defining the legal circumstances of organizations like the Zapatista National Liberation Army (EZLN), among others. We find ourselves facing a highly problematic

situation which, if not changed for the better, will continue to threaten national security and dash the hopes of reaching a consolidated, solid democracy in a reasonable time.

It is not at all difficult to understand the insoluble link between democracy and the rule of law if we consider that the latter, as the more general term, implies the exercise of a set of norms capable of guaranteeing the freedoms and obligations upon which peaceful, tolerant and civilized human concert is based.

In view of recent Mexican experience, we can categorically affirm that without the rule of law it is not possible to enforce the rules that define the coordinates of living together and competing in an order of things that in addition to being plural, creates certainty among its citizens, social organizations and political and economic actors. As a direct result, legality is an essential prerequisite of governability because the latter cannot exist outside an effective pact capable of stably regulating social interaction, political com-

petition and institutional effectiveness. It is worthwhile looking further into each of these dimensions.

Social Interaction. In the current phase of our political development, we must remember that decades of relaxation of legality on all levels produced a culture in which people are reluctant to submit to clear norms and procedures, and in which they frequently opt for informal arrangements and interpret the law according to their own interests.¹

The consequences of this are many and varied and reach into the most hidden spheres of day-to-day relations, such as the way people privately appropriate public space to establish street sales or pay bribes to avoid getting a traffic ticket. But they also touch sensitive, strategic spaces, such as when the National Autonomous University of Mexico was closed for several months during a student strike or the case of the mass production of illegal copies of all kinds of goods.²

Political Competition. We recently saw the negative effects of some political actors' lack of complete acceptance of the electoral rules of the game. The open clashes in Tabasco and Yucatan after the Federal Electoral Tribunal's decisions tell us that obeying the law continues to be subordinate to political interests and calculations.³ At this point in our democratic evolution, we cannot be sure that perverting processes and legal decisions with negotiations and political criteria is a thing of the past. Mutual pressures and blackmail among political forces continue to engender agreements outside the framework of the law, agreements that tend to be justified in terms of the system's “stability.”

Institutional and Procedural Effectiveness of the Mexican Political System.

First of all, we should remember that democracy is capable of bringing its own set of norms and institutional structure up to date following the guidelines of the rule of law. This expresses very well what German jurist Hermann Heller calls the essential element of politics: the transformation of social trends and needs into legal norms.

When examined closely, the process that ranges from social flows, needs and demands to its institutional-legal expression is extremely important if analyzed from the perspective not only of the relationship between democracy and law, but also of the link that they both have to consensus and legitimacy, that is, the link to the central variables of political life.

The new administration would be making a serious mistake if it forgot that the legal framework of a democracy is more solid the greater the credibility and trust the public has in its norms and institutions. And that is the case because, to a great extent, it is on this that the harmonious relationship between society and the world of legal-political institutions depends.

The side of legitimacy that involves credibility is founded on one of the basic consensuses that upholds democratic states. In restructuring his administration's apparatus, President Fox bet very heavily on proposing an unprecedented form of organization. He has included coordinating committees, commissions, "unities" and ministries that as yet have no clear hierarchy, chain of administrative command or ways of processing obvious overlaps in such fields as national security, border and indigenous issues, public participation and attention to vulnerable groups. Obviously, this could have grave consequences in terms of the coherence

of public policies, their legitimacy and therefore the country's overall governability. So, the overlap of legality and legitimacy seems to be something that determines the reproduction and peaceful and orderly transformation of community life.

Finally, we can say that to guard against the pluralism and diversity inherent in Mexican society culminating in anarchy and ungovernability, our line of defence must be the binding force of fundamental agreements built upon the legitimacy of the rule of law. The reconstitution of the rule of law in Mex-

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ico will be very difficult if the principles of representation and democratic governability are not harmoniously articulated. In this sense, clearly, dialogue and negotiations within the law are fundamental instruments for consensus since the legitimacy of Mexican democracy will be unintelligible without the development of legally consecrated political pacts.

It is through these pacts that the principles of living together in a democracy must be reaffirmed: equality before the law and legal certainty; the respect for human rights and basic liberties; representative government based on the ballot; respect among different political currents; the elimination of impunity; and the abolition of violence as a political tool.

The primacy of legality in community life is a decisive challenge since it

is the only thing that makes it possible to involve rationality in both political relations and social and economic relations as a whole.

Championing the value of legality for the democracy we are trying to consolidate in our country means, then, emphasizing just how indispensable civility, stability and certainty are for the socio-political health of the community, to the exclusion of those two elements that distort any democratic effort: arbitrariness and impunity.

Looking to the future, the consolidation of the rule of law as an instru-

ment of rationalization will be key to demonstrating that democracy is not—as some of its critics claim—an ungovernable, ineffective social and political system. In spite of any discrepancies that could be stated regarding the central programs of the Fox administration, it would be useful to foster concerted efforts aimed at demonstrating that the existence of a full democracy—that is, a democracy based in law—does make a fundamental, positive difference compared to any other form of government.

Obviously, as I have already implied, without a culture of legality based on society's knowledge and trust in its laws, any institutional initiatives—regardless of how just and appropriate they may seem—can be nipped in the bud if they do not receive the social backing needed for their implementa-

tion. Therefore, it is indispensable that we foster a form of participation that will turn basic freedoms like the freedom of thought, expression and association into levers for progress and modernization. Obviously, this is not an undertaking for the administration alone: its magnitude requires initiatives and contributions from different actors, organizations and public and private institutions. In brief, given the magnitude of these tasks along the road to the consolidation of a democratic rule of law, it would be important that they be made priorities in the country's new political situation, conceived of as duties of state that transcend private interests and short-term political calculations.

It would be very costly for the new Fox administration to postpone these

tasks and focus on immediate discussions that are not particularly relevant for the country's future. ■■■

NOTES

¹ In his most recent book, *México: la ceniza y la semilla* (Mexico, the Ash and the Seed) (Mexico City: Ediciones Cal y Arena, 2000), Héctor Aguilar Camín puts forward the idea that Mexican society is not modern enough to build a stable democracy because that would demand a citizens' culture which in some cases is barely forming and in others has not even been born. Naturally, people's attitude toward the law plays a fundamental part in this.

² The faulty "acknowledgment" of legality in the public's political identity is illustrated by the fact that only a little more than 35 percent

of Mexicans think they should obey the law completely; almost 30 percent think the law must be changed; and another 30 percent think it is all right to disobey it when they "believe" it is unjust. Ulises Beltrán et al., *Los mexicanos de los 90* (Mexico City: UNAM, 1997). Of course, these figures do nothing but confirm what is clear in both day-to-day living and not a few political events. From a comparative point of view, according to the last annual report of International Transparency, Mexico has rated very low on the scale of corruption control, lower even than less developed countries like Peru, El Salvador or Senegal.

³ In the state of Tabasco, the tribunal's decision canceled the gubernatorial election results that gave the win to the Institutional Revolutionary Party, ruling that the competition had been irregular and unequal. The decision was followed by a series of legal and political clashes in which the validity of the tribunal's action was questioned. In the state of Yucatan, a similar problem arose over the election of the citizen councilors under whose auspices the next elections were to be organized.