

Contemporary Politics In Mexico and the U.S. Shifting Balances of Authority

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Larry Downing/Reuters

The U.S. Supreme Court Justices.

Side by side, Mexico and the United States are X-raying the heart of their political systems, the former through presidential elections, and the latter through renewal of the Supreme Court. They are redefining political authority in each case. The health of each affects the other.

It is easy to make the mistake of drawing parallels between the presidencies of the two countries. Indeed, Mexico and the U.S. have the same skeletal structure—executive, legislature, judiciary—less by chance, or even shared cause,

than as a now historic curiosity: the anti-monarchic political elite in nineteenth-century Mexico was inspired by the liberal democratic republic, as a sort of “American” (writ-large) initiative. Naturally, the Mexican model was more presidentialist, or French (even when emerging from French domination) while the U.S. model— for all the francophilia of the founders— was cut on an English pattern: a traditional but independent justice system being the best prophylactic for kingly overreach.

Jumping to 2006, the U.S. Supreme Court and the Mexican presidency are the institutions in which political authority arguably centers. Normally, the importance of the courts in U.S.

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politics goes unnoticed because of the attention paid to the country's electoral contests. But the comparison is uniquely perceptible, though as fleeting as a comet, because of the present convergence of the Mexican political scene, revved up around the July presidential election, and the U.S. political debate focused on the watershed shift in the Supreme Court due to two new appointments.

The X-ray of authority has to see through power. Power, in either of its forms—a whip or a gift—is basically material and works by way of a mechanical kind of cause and effect. Political authority, like gravity, is as hard to see as it is easy to feel. Authority is the political force which convinces others based on principles, their just application and their interpretation via leadership. Authority and power finally rely on each other, and the whole endeavor of politics is to combine the two—authoritative power/powerful authority—like fizzy-water in danger of going flat.

Authority necessarily comes with a pedigree, always referring back to its origins, which are mythical to some degree. All societies depend on origin-myths and the two countries at hand share very dissimilar *revolutions* as authoritative beginnings of the respective Mexican and U.S. republics. The spirit of the U.S. revolution—more distant—is alive in the Constitution of 1791. In U.S. culture, it is only slightly less sacred than the Ten Commandments and more than a little related.

The U.S. Constitution, of course, establishes the Supreme Court as the final arbiter of legality, sufficiently grand for at least one president, William Howard Taft, to have left the White House at the foot of Capitol Hill and climbed to a place on the bench of the

Supreme Court, located on the top of the Hill. The synecdochic terminology in U.S. parlance speaks for itself: those who belong to the highest court no longer receive the title of “judge”, but “justice” itself. Supreme Court justices come closest to wearing the mantle of the founders, and their charge is to interpret the Constitution, even in situations now unimaginable to those founding fathers. (The complexions and genders seen among the justices today help maintain the authority of the Court far more than if they had continued to resemble the now-interred Northern European founding fathers.)

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Had this vision of the institution been formed in Mexico, the justices might have worn lively masks in the manner of the British's flamboyant wigs rather than pastoral black. Indeed, the justices' mandate is more rabbinical—exegetic—than priestly (exhortatory). But in the popular mind, the function of exculpation and punishment can only be prophetic.

MEXICO

Mexico's 1917 Constitution shines, of course, with a very different mythical light, cast by the more recent Mexican Revolution, with its inspired linking

of social to political justice. But even though the Zapata-Villa popular forces walked away from the seat of power, thus forever constituting a certain extra-institutional authority, the Constitution was a moment of conceptual inspiration and consensual foundation, with the most affirming view of social-economic rights to this day.

The Mexican Constitution, amended hundreds of times by a weak legislature, has lost much of its authoritative power; far from improving the vision of the document, the modifications feel more like hundreds of cuts and hundreds of bandages. The Constitution's authority became secondary to the government's managing power, first to cement the peace after 1920, and then to establish institutions; it was the presidentialist Institutional Revolutionary Party (PRI) which held sway. Authority oscillated within this dyad of president and party in a diminishing shuffle, to the point that Vicente Fox and the National Action Party (PAN) could triumph in 2000.

In contrast to the U.S., the Mexican Supreme Court has never been either roof or platform for Mexico's visionary leaders. The Mexican judiciary suffers from low prestige. The political class was more likely to train as engineers, more recently as economists or financiers, than as lawyers.

The Mexican soft—very soft—revolution of 2000 overcame the PRI's authority-less authoritarianism by inaugurating a non-party man as president whom even the United States could not feel threatened by. Now that Washington and, not less importantly, Mexico's political class have shed their respective instinctive jitters, in 2006 the Mexican people seem disposed to opt for insisting on the creation of a social, in

addition to liberal, democracy as the urgent change needed. Can the electoral process in today's political context achieve this end?

The most important, if least considered, query is: On what authority?

1. The Federal Electoral Institute (IFE) was the jewel in the crown of Mexico's late twentieth-century democratization process; but it is already losing some of its gleam. The political parties, who name IFE members, face their own severe crisis of authority. Now not even all the parties deign to participate, naming their representatives.
2. Catholic Church pronouncements, almost quaintly, are the stuff of the political sections of even the leftist press, signifying more anti-clericalism's demise than religious authority;
3. The human rights ombudsmen's bark belies the fact that their recommendations have no teeth;
4. The non-governmental sectors (unions, civil society, private enterprise) have the authority of the weak.
5. The current president seems to have experimented with the alchemy of making authority out of popularity; he lost both.

In this set of circumstances, "populism" is the only source of authority to which we can resort. "We the people" is the ultimate source of all authority. Either a populist leader will embody authority or the call eventually will be heeded for a new Constitution.

THE U.S.

As it is the least powerful, so the Supreme Court is the most authoritative

institution in the U.S. political system. Its grandeur of mission is joined to its workaday hegemony in —as everyone knows— the "most litigious society in the world."

The Supreme Court —unlike the other branches of the federal government— is not elected by the people. The post, for life, of a Supreme Court justice, nominated by the president and approved by the Senate, is based on distilled popular wisdom. But democratic deliberation is again brought into play: the Supreme Court is a synod of nine, and the odd-numbered body, far

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from claiming to define or discover absolute truth or justice, recognizes the importance of dissenting positions, which are made public and form part of the accumulating body of law under continual precedent-sensitive review. The public debate seeking justice, as ordered by the Constitution, is intended to go on and on. While veiled and recondite —as the Masonic-inspired designers wished— the interpretation of the law is part of the *political* process.

Today, the interpretation of the law is the most effective means of influencing the political process. With its own authority now greatly flagging, even the U.S. electoral system has had to resort to the judiciary's muscular

authority for validation in the last elections. Of course expediency always dictates a certain collective inattention to the fine points of electoral democracy; that is when it enjoys sufficient authority. For example, whether John Kennedy won the presidential race of 1960 because of bigger spending, vote-rigging in Chicago, or Democratic acumen, in the American consciousness, he won! By contrast, in 2000, George W. Bush's victory in the Electoral College ballot occurred *in* the Supreme Court.

Naturally, there are long-term consequences for the system. The boost in authority that the Supreme Court lent the presidency results, simultaneously, in the diminishing of authority of the Supreme Court. The result is entropy of authority, and this deconstruction of authority is greatly hastened by an unprovoked war, and domestic defense priorities turning civil liberties upside down. There is a tidal change under way in U.S. affairs around the effort to re-authorize politics. The institutions are unlikely to fall prey to a coup; U.S. society has shifted direction various times without that need. Indeed, Franklin Delano Roosevelt accomplished a soft revolution around economic rights by merely packing the Supreme Court.

What would a Supreme Court-authorized soft revolution look like today? The project is, if anything, extremist, reinforcing *both* extremes: concentrate power in the president/ concentrate power in the localities (states and municipalities). As in Mexico, the tenor is, naturally, populist. Congress —the net loser here— is critiqued, or "de-authorized," for being rife with para-institutionalized privilege, and for having lost touch with the people, and their political culture —religious, enter-

prising. The political project, especially with the country on a long-term war footing, is best pursued through strong leadership, not in a debating society. That encapsulates the first extreme, of centralized power.

The other extreme is “anti-federalist” neo-regionalism. (The sentiment, mirrored in Mexico, curiously, is called “*federalismo*.”) This movement channels sempiternal U.S. distrust and resentment of big government into a renewed confidence in not “small”, but *local* government. The U.S. Civil War is the starting place. That war defined the primacy of the national project over a contradictory sub-regional one, based on the state’s transformation of the status of male African-descendents from being property to being citizens. (Later African-descendent and other women were enfranchised.) But the political project of racial integration only gained clout in the second half of the twentieth century when the principle of the autonomy of the states failed to prevail over that of non-discrimination, when the Supreme Court used its supreme authority to set the tone for a new national culture, sparking “affirmative action” to compensate for historic discrimination and guarantee living above levels of misery. (This, in the U.S. lexicon is the “liberal” agenda, which today internationally is called “human rights”.)

There was a secret, hardly discernible below the din of a loudly churning national economy. The national government had been an audacious proposal from the view point of framers whose identities were far more defined in terms of their local states only recently—and not entirely harmoniously—united. The constitutional basis for the increasingly Herculean project

of the twentieth-century liberal social-economic construction balances in good measure on the fulcrum of the Constitution according the federal government the power to regulate “inter-state *commerce*.”

Even for a nation whose consolidation has been built largely on its economic project, the inter-state commerce clause is confessedly an unsteady foundation on which to rest much of the federal government’s authority. Conservative iconoclasts say as much.

A Supreme Court justice of this bent faces a dilemma. She represents

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the culmination of the Anglo-Saxon common law system, which is traditionalist, confident of carrying out justice by respecting the accumulation of wisdom through time. Justice is the product of a deliberative process; the system which requires that horizontal deliberation (among judges at the same time) be cross-referenced with vertical deliberation (between courts now and in the past) is more *authoritative*...if slower to change. But that same justice is simultaneously charged above all with strictly and dispassionately sticking to the text of the Constitution.

That is the reason why U.S. liberals are conservative and U.S. conservatives are radicals these days. Demo-

cratic senators critically queried George Bush’s Supreme Court nominees regarding their respect for precedent, while Republican senators hoped to hear free and daring thinking from John Roberts and Samuel Alito as exponents of “originalism.” This doctrine is consonant with the times, being fundamentalist in nature. Beyond Reformation-like claims that justice-seekers should read the text far more than the commentaries, judicial “originalism” in the U.S. debate argues that the Supreme Court’s mission is to voice the framers’ “original intent.” The bestowal of founder-like responsibilities, described above, leads to the faith that those bestowed be able to *reveal* the information on intent that is simply not assured by any recourse to reason.

The “Conservative Revolution” was the term favored by those passionate about cutting government economic redistribution commitments. Since its launch a quarter of a century ago, it has revealed itself to be nihilistic, based on the generic hope that busting the present system will bring about something better. A favorite conservative strategy has been to pressure social programs into bankruptcy, requiring their down-sizing or closure, for example.

But suddenly the great issues before the U.S. public today are more political than economic, as the nation is in war mode against a particularly elusive, foreign terrorism. Questions like how long the indigent should receive welfare have been replaced by whether non- and U.S. citizens imprisoned on a U.S. military base in Guantanamo, Cuba, are protected by the Constitution. For the federal government to assume its lean, militarist nature, it is argued that policies and

programs promoting economic and social rights must be decentralized, their determination left to the realm of once again newly autonomous states and localities. Particularly with its recently changed political composition, the Supreme Court is quite certain to relegate its duty to precedent to second place, raising in its stead a direct interpretation of the original text.

CONCLUSION

Coincidentally, Mexico and the United States are opening up new eras, recasting their political cultures. Crises of authority are the common denominator. In Mexico the authority of governmental institutions is severely depleted; the presidential candidates hope that they can reconstruct a state by virtue of their own election, read as direct authorization “by the people.” In the U.S., the crisis will be acted out *within* the authoritative structure of the Supreme Court.

In both cases, governmental power has been reduced. Whether renewed from “below,” popularly, or from “above,” judicially, both national projects are marked by the search for a new injection of authority into governmental structures.

Mexico and the U.S. share another characteristic: each is extraordinarily inward looking, one out of over-confidence, the other out of a lack of confidence. Notwithstanding its asymmetry in terms of power, the bilateral relationship is essential in terms of each country’s struggle to imbue new authority into the state, including reordering the relations of relative authority among state institutions. The discourse used in the bilateral relationship centers on

economics at the negotiating table and on sovereignty and internationally-defined rights from the balconies; it should focus attention on differing state reform in each country.

Instead, one take from Washington is that Mexico need only enjoy its trade libera(liza)tion, reinforced by a more efficient judiciary, and ensuing prosperity. That is the hold-over of an over-confident vision shared between the two political-economic elites in the 1990s. But by now, most Mexicans figure that whatever miracle the free trade agreement promised has occurred,

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and has left Mexico economically wanting. The political now has more sway than the economic in Mexico, too. The political fact —only made more obvious by the U.S. proposal to fence out Mexico— is that Mexico is essentially part of Latin America. That fact suggests that Mexico will ride the wave of Latin American neo-socialism.

This neo-socialism has little to do with the Latin American version of socialism from the era of the capitalist-communist Cold War, which excelled as an expression of anti-(Northern)-imperialism. Today, even Hugo Chavez’ Bolivarian socialism, if “anti-American” in a show of sympathy for the militarist nationalism of Castro’s Cuba,

is far more defined by its savvy and audacious investment of oil power across the continent in solidarity with a Latin American economy. Not a military general among them, the other Latin American socialist leaders authorized by elections in Brazil, Argentina, Uruguay, Bolivia and Chile, are decidedly social democratic in their political economy. They are defining a reasoned nationalism/Latin American regionalism, a renewal or reauthorization of previously authoritarian governmental institutions, and they understand that the first order of economic policy today must be to close the gap between rich and poor.

But in the case of Mexico, the bilateral relationship with the U.S. is a particularly important variable regarding the country’s participation in neo-socialist political renewal. And the nature of that bilateral relationship will be defined by how the radical conservative agenda plays out in the United States. If these U.S. radicals achieve the new balance of authority between the extremes of a defense-mandated, lean federal government and local governments empowered with social and development policy, the complex re-authorizing of the U.S. state could favor Mexico’s own experimentation with neo-socialist re-authorization of its state. That assumes that the focus of U.S. politics is on the domestic, with an appreciation for international plurality. Should, on the other hand, the powers of a warring Washington, freed of draining debates on social and development policy, eclipse U.S. neo-regionalism, Mexico, recast as a possible beachhead for terrorists, even perceived as clad in neo-socialist guise, is unlikely to enjoy a field of action wide enough to re-authorize its state. **MM**