

V. UNIPERSONAL NATURE OF GOVERNMENT

1. *The Presidential Model*

The health crisis exposed the vulnerability of a system in which all government decisions are the will of a single person.

The Constitution, from its origin, pushes towards intense concentration of power. The American formula of a single person vested with full executive power found countervailing factors in the design of Philadelphia. The most important thing for the American constituents was to rectify the failed structure of the confederation, which generated a strong centrifugal drive that, as Alexander Hamilton and James Madison predicted, led to the atomization of power. Their observations were understood and shared by George Washington. It was necessary to counteract this tendency by transforming the confederation into a federation. With this in mind, they devised a presidency as vigorous as circumstances permitted. Thus, it was established, in the second article of the Constitution, that the power would be vested in the President of the United States of America. In this way, the tendency towards entropy that the initial Confederation had unleashed would be offset and the emerging nation could be consolidated without the risks of dispersion and potential confrontation between the small nascent states.

In Mexico, the tendency was the reverse: centralization of power had been the sign of colonial government, so that the adoption of a cacique federalism accompanied by a centralizing presidency produced the inevitable effect of turning the caciques into tributary forces subject to the president. The new interior

colonization was a consequence of adopting the American formula, designed to compensate for a dispersive situation, as opposed to the highly concentrating one prevailing in Mexico. Federalism was applied there to avoid the risk of atomization and in Mexico to facilitate, in a new guise, concentration. When Article 74 of the Constitution of 1824 established: “The Supreme Executive Power of the federation is deposited in a single individual, who will be called President of the United Mexican States”, it set a path that has remained unchanged for almost two centuries, with the consequences of such a construction of power.

In Mexico, a kind of presidential absolutism was created from the very moment the constitutional republic was founded.²⁶ None of what has happened can be considered surprising, nor, of course, does it imply that the country is unable to function according to the standards of an advanced democracy. What is happening is that there is a structural obstacle that for centuries has hindered the progress of democracy. There has been neither the insight nor the determination to remove it, so its effects have been what they were meant to be.

In the context of the pandemic, an additional phenomenon occurred: the emergency strengthened the structure that concentrated constitutional power in the presence of a charismatic leader. The assembly of the structure, of a leader with strong social support who in addition has a personal party, and the unexpected appearance of a pandemic with unprecedented characteristics in planetary history for its simultaneous spread in almost the entire globe, produced a maladjustment for which an aging system was not prepared.

The concentration of presidential power was one of Venustiano Carranza’s major objectives. The draft Constitution he submitted to the Querétaro Constituent Assembly on December 1, 1916, was guided by the need to strengthen the presidency. He made his own, although without attributing them, the arguments

²⁶ A detailed overview of this period appears in Valadés, José C., *Orígenes de la República mexicana. La aurora constitucional*, Mexico, UNAM, 1994.

sustained by Emilio Rabasa.²⁷ The jurist and the politician understood that the Constitution of 1857 had collapsed because since independence the wind had swollen the sails of personalism. If the Ayutla Revolution had been made to put an end to the country of one man, it was natural that the design of the Constitution should be directed against the dominant wind. The heroic effort to dismantle military caudillismo did not work because at that time little was known about institutional designs and the one adopted in 1857 was flawed. Furthermore, there was still a belief in the thaumaturgical force of the Constitution, without knowing that constitutions are an expression of culture and that effective changes are those that are accompanied by political actions that give them a context of viability.

In Article 75, the liberal Constitution reiterated the text of Article 74 of the Federal Constitution of 1824, which the current one is 80. Therefore, the personal presidency was maintained, without accompanying it with a cabinet. By building two strong powers, because the Congress and the Presidency were strong, without introducing bridges of relationship that would allow control and that would encourage cooperation, confrontation was assured. Rabasa misread the problems of the Constitution; he attributed its failure to the excessive power of the unicameral Congress, which in turn led presidents to stifle it to govern. His argument, no doubt clever, was a way of explaining and even justifying the dictatorship. Carranza copied several of his arguments in his speech to the Constituent Assembly of Querétaro.

The draft Constitution presented by Venustiano Carranza was modified only regarding the inclusion of social rights, in relation to which he himself had already legislated, during the exercise of extraordinary powers in the period of the armed struggle. If Carranza omitted those rights in his project, it was because the model Constitution in force at the time did not contemplate them. How-

²⁷ Rabasa, Emilio, *La Constitución y la dictadura*, Mexico, Revista de Revistas, 1912.

ever, the constituents adopted Carranza's arguments against the power of Congress and exalted the presidential powers. The model that emerged in 1917 had a dual approach: traditional in terms of political power and innovative in terms of social power. Experience showed that the dynamics of this type of state meant that political power, well-structured and more concentrated, used social power to its advantage. The foundation in 1929 of a party that would become hegemonic, capitalized on the opportunity that the Queretaro constituents inadvertently opened, and that the reformers of the Constitution deepened, in this case without the excuse of ignoring the consequences of their decisions.

2. *Expansion of Presidentialism*

Since 1917, presidentialism began an upward path that has remained unchanged for more than a century. The one we have now, in the 21st century, is even more robust than the one designed by Carranza. For the revolutionary leader, a "personal presidential system" should be established. When voting on Article 80, with that perspective in mind, only two constituents voted against it.²⁸ According to Carranza's design, the Constitution made the president the first national authority in agrarian, fiscal, hydraulic, mining, sanitary and telecommunications matters then existing: post and telegraphs. This, in addition to those concerned with the leadership of the armed forces. He was also the holder of the right to appoint all administrative positions, from secretaries of state to clerks. Progressively the Constitution was added conferring on the president powers in the following areas: education (1921), labor (1928, amended in 2017), government of the capital of the Republic (1928, repealed in 1996), railways (1937, repealed in 1996), hydrocarbons (1940), electoral (1946, repealed in 1996), economic and commercial (1951), electricity

²⁸ Congressmen Luis Fernández Martínez and Froylán C. Manjarrez. Session of January 18, 1917.

(1960), social housing (1972), planning (1983). It was also the first banking authority in 1982-1983.

In the process of expanding presidential power, a fundamental reform took place by extending the presidential term from 4 to 6 years. On January 22, 1927, the third reform to the Constitution was published (Article 83) to allow the reelection of the president in a discontinuous manner and only once. The same precept was modified a year later (January 24, 1928), extending the presidential term. The first six-year term was 1928-34, although due to the assassination of Álvaro Obregón and the resignation of Pascual Ortiz Rubio, it included three presidents: Emilio Portes Gil, Pascual Ortiz Rubio and Abelardo Rodríguez. Lázaro Cárdenas was the first to be elected for a six-year term and to exercise it, after Porfirio Díaz.

The Constitution of 1857 had been modified in May 1904, so Porfirio Díaz's last full term was 1904-1910. He was reelected to serve from 1910-16, but due to the Madero Revolution, he resigned on May 25, 1911. Later, at the initiative of President Francisco I. Madero, in April 1912, the direct election of the president was established. The constituents of Querétaro maintained the direct election but returned to the traditional presidential four-year term, without the possibility of reelection. Another reform, in 1933, repealed that of 1927 and established the absolute prohibition of reelection, although it preserved the six-year term introduced in 1928.

The argument for such a long duration in the presidency referred to two factors: one circumstantial and the other structural. The first concerned the violence that usually accompanied electoral processes; the second the convenience of presidents having enough time for "their" government program to come to fruition. Almost a century has passed since the 1928 reform, and circumstances have changed, but the constitutional design has not. After the 1952 election, political violence ceased to be a recurring ingredient, in large part because the presence of women at the polls introduced a factor of civility in the electoral process. Today

elections are held in peace; making them more frequent would not necessarily alter coexistence, although perhaps it would alter the convenience of some protagonists.

As for the space necessary for the execution of the “president’s program”, in 1928 Mexico lacked consolidated parties, so politics followed the pattern of caudillismo. This reality began to change with the founding of the National Revolutionary Party in 1929. To date, the country has a system of parties that, as in any functional democracy, would be responsible for giving continuity to the programs. One cause of the crisis of the parties in Mexico derives from the civilian caudillismo, which keeps them as appendages of power.

The direct election, the length of the term and the widespread conviction that presidents should have the broadest opportunity to fulfill “their” government program, enhanced plebiscitary presidentialism in Mexico, which in turn explains the sequence of constitutional reforms, mentioned above, giving them increasingly broad powers, and the resistance to change that keeps the system of government in conditions of democratic deficit.

In this context, the set of powers that Jorge Carpizo²⁹ called *meta-constitutional* emerged because it was placed next to the constitutional powers: the tacit leadership of the political party that became hegemonic, plus the series of implicit consequences that included the designation of candidates to most of the popularly elected positions, including the successor to the presidency of the Republic. At that time, President Adolfo Ruiz Cortines was credited with having said that “governors and senators belong to the president; federal deputies belong to the sectors; local deputies belong to the governors and municipal presidents belong to the people”.³⁰ This hypothetical formula

²⁹ Carpizo, Jorge, *El presidencialismo mexicano*, Mexico, Siglo XXI, 1978.

³⁰ Rodríguez Prats, Juan José, *El poder presidencial. Adolfo Ruiz Cortines*, Mexico, Miguel Ángel Porrúa, 1990, p. 97.

strengthened the cacique notes of the governors and the personalistic presidentialism. It went to the extreme, well documented, that the presidents sent their decisions to the party headquarters in a “sealed envelope” containing the name of the person who in each case should be anointed as candidate.

Rodríguez Prats’ valuable biographical study documents many aspects of Ruiz Cortines, a ruler of exceptional instinct and exemplary prudence, shrewd and honorable. He understood and practiced the essence of absolute presidentialism when he said: “the only principles that limit presidential power are the six-year term and his sense of responsibility.”³¹ This is the most direct expression possible to allude to the temporary monarchy into which the presidency in Mexico has been transformed.³² The “sense of responsibility” refers to the motivations of each occupant of the presidency, to the way he sees himself and to the discretionary limits he adopts for the exercise of his government. The expanded powers are the paradoxical result of the constitutionally regulated powers assigned to him. There may be cases of overlapping pathologies, but the basic ailment is a flawed system from the beginning. The Mexican constitutional system encourages decisions to be personal and therefore associated to the psychology of the one who dictates them, while the democratic constitutional systems have moved towards the deliberation of reasons and the free and responsible agreement among a plurality of actors representing the collective interests. The dynamization and enrichment of political representation are the essence of constitutional democracy, in contrast to the personalist theses dominant in the 19th century, still taken up by the Mexican Constituent of 1917.

The *metaconstitutional* powers, which run parallel to the norm, became *paraconstitutional* because they operated against the Cons-

³¹ *Ibidem*, p. 27.

³² According to this formula, the Mexican presidents claim for themselves the ancient rule of Ulpian: *princeps legibus solutus est* (“the prince is not subject to the laws”). *Digest*, I,3,31.

titution by perverting elections and multiplying corruption. A system of complicities and overlaps was established, prone to the circumvention of public liberties and the appropriation of state resources. Inertia narrowed the options for civilized procedures and pockets of political violence appeared. No other result could be expected from the moment when, by legal disposition, the president became the highest electoral authority in the country in a context of a hegemonic party.

3. *Reform and Resistance*

To avoid an escalation of forceful actions, from 1977 onwards a different system and style in electoral matters began to be channeled. Over the years, the growing thrust of the parties, with the support of an electorate aware of its new status and freedoms, caused the presidency to lose some of its *metaconstitutional* and *paraconstitutional* powers. However, the strength of a flawed tradition and the subsistence of an archaic constitutional structure maintain many practices from that anti-democratic past.

Some of the progress achieved by the parties between 1977 and 2012 was neutralized by the persistence of patrimonialism and the consequent acceleration of corruption. To counteract these phenomena, society promoted initiatives to moderate patrimonialism and corruption with various constitutional reforms that multiplied the number of autonomous bodies. It was thought that this would make it possible to have sensitive segments of the administration that were politically independent and operationally professional. This strategy was seen as mitigating presidential power. A lucid analysis by Pedro Salazar considers this to be the case.³³

The autonomous constitutional bodies were poorly constructed, because in the eagerness to ensure their independence, one of

³³ Salazar, Pedro, *El Poder Ejecutivo en la Constitución mexicana. Del metaconstitucionalismo a la constelación de autonomías*, Mexico, Fondo de Cultura Económica, 2017.

the constructs of the constitutional system was overlooked: that of sovereignty and its exercise through the constituted powers. The organs were designed to be outside the scope of those powers, which meant that they lacked the theoretical underpinning of sovereignty and became prey to the organs of power themselves. One of the most effective forms of harassment is the reduction of human and financial resources; by reducing remuneration and benefits, professional staff seek better options in the private labor market.

Thus, what had been conceived to reduce meta and paraconstitutional excesses became yet another expression of Mexican hyper-presidentialism. Another vulnerable point of these bodies is that, although they are autonomous from the federal powers, their composition is the result of positional political negotiations between the parties and the government and, as experience shows, the members of these bodies who are uncomfortable for the power holders can be subject to overt or cryptic pressure.

The presence of specialized agencies of a high professional level is very appropriate for a quality public service, free from electoral ups and downs and from the interests of political accommodation. But these agencies should not be left out of congressional control because, in that case, rather than being autonomous bodies, they act as sovereign bodies. It is understandable that a model of congressional control has not been accepted in an environment adverse to political parties and the representative system, in which the discourse of the goodness of civil society dominates, but that is where the structural weakness of these bodies lies. If there is no representative system capable of balancing the exercise of power and purging patrimonialist practices, presidentialism will continue to find channels to invade them. There is a risk of turning this hypothetical solution to presidentialism into yet another simulation.

Plebiscitary presidentialism is so deeply rooted that it would be naïve to propose its abolition. Moreover, in a democratic constitutional system, the key lies not in the weakness of the organs

of power or their holders, but in a dynamic balance that distributes powers as symmetrically as possible and includes reasonable and functional controls.³⁴ One of the ways of designing a new democratic presidential model consists in the presence of a cabinet, as a collegiate body with specific governmental powers, accountable to the president and to Congress.³⁵

The dysfunctionality of traditional presidentialism is evident even in its country of origin. A character with the pathologies of Donald Trump showed how vulnerable a personal presidential system is. The drawbacks of American presidentialism were clearly warned by Wilson since the 19th century, and in a more recent stage by professors Lowi and Ackerman.³⁶

To palliate presidentialism, without achieving it, a mechanism for the selection of high-ranking officials was also adopted and generalized, based on plural presidential proposals and spontaneous registration for the selection processes. For example, to become a minister of the Supreme Court of Justice of the Nation, the president sends a list of three candidates to the Senate, instead of a singular nomination as it was done until 1994. This procedure apparently limits the power of nomination, but it has given rise to a distortion that is worse than simple imposition: imposition in disguise. The technique of nominations encourages lobbying on the part of those proposed, which undermines their position, and also does not exclude that slogans are processed, or understandings are forged on the basis of one of its rules: *do ut des*.

³⁴ See Valadés, Diego, *El control del poder*, Mexico, Porrúa-UNAM, 1998.

³⁵ I develop this model extensively in my works *El gobierno de gabinete*, Mexico, UNAM, 2003, and *La parlamentarización de los sistemas presidenciales*, Mexico, UNAM, 2007.

³⁶ See Wilson, Woodrow, *Cabinet Government (1879)*, Stamford, Overbrook Press, 1947; Lowi, Theodore J., *The personal president*, N. York, Cornell University, 1985, Spanish translation available, Mexico, Fondo de Cultura Económica, 1993; Ackerman, Bruce, "The New Separation of Powers", *Harvard Law Review*, vol. 113, January 2000, Spanish translation available, Mexico, Fondo de Cultura Económica, 2007.

The other extreme, where to exclude presidential participation, positions are allocated among those who voluntarily register, has led to the alienation of numerous people who could be high quality officials, but who do not expose themselves to the experience of having their names used only to have the appointee turn out to be someone of inferior merit.

None of the above mechanisms fulfilled the objective of limiting presidential powers, but instead led to a decline in the quality of civil servants. The paradox is that not enough emphasis has been placed on the high professionalization of public administration. Well-known experts such as Alejandro Carrillo,³⁷ José Castelazo,³⁸ Guillermo Haro Bélchez,³⁹ Mauricio Merino⁴⁰ and Ricardo Uvalle Berrones,⁴¹ for example, have offered abundant arguments for reforming the administration. In essence, it is known, as Max Weber demonstrated, that there is a direct relationship between the quality of administration and politics.

³⁷ *La reforma administrativa en México*, Mexico, Porrúa, 1980.

³⁸ *Administración pública: una visión de Estado*, Mexico, INAP, 2007.

³⁹ *Servicio público de carrera: tradición y perspectivas*, Mexico, INAP-Miguel Ángel Porrúa, 2000.

⁴⁰ *Hacia una política de rendición de cuentas en México*, Mexico, CIDE, 2012.

⁴¹ *El gobierno en acción. La formación del régimen presidencial de la administración pública*, Mexico, Fondo de Cultura Económica, 1984; *Institucionalidad y profesionalización del servicio público en México*, Mexico, UNAM-Plaza y Valdés, 2000.