

## VI. DYSFUNCTIONAL STATE

### 1. *Legitimacy and Governance*

The vicissitudes of the State are associated with what is known as governability, that is, the capacity of the organs of power to carry out their assigned functions, in accordance with the regulations of a constitutional State. The purposes and functions of the State vary in intensity, emphasis, and nuance according to time and place. Each State may privilege certain objectives over others, but there is one aspect that defines every type of State, in every place and time: the monopoly of coercion.

The Weberian concept of the State associates three elements to characterize the State: to carry out a continuous activity, to have a cast of professional administrators and to successfully exercise the claim of the legitimate monopoly of coercion.<sup>42</sup> If an attempt is made to exercise coercion without success, or if it is omitted when it should be exercised, we are faced with a case of dysfunctionality of the state which, if not corrected, can imply what Hobbes pointed out with great sagacity: the irregular transfer of state power.

Regardless of how advanced or backward the system is from a comparative point of view, the constitutional State is functional where the political process is subject to the normative framework and maintains the freedoms, the guarantee of rights, welfare, protection, and cohesion of society. This assumes that the elaboration and application of the legal system are in accordance with the standards of legitimacy and formality of the system adopted.

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<sup>42</sup> Weber, Max, *Economía y sociedad*, Mexico, Fondo de Cultura Económica, 1964, t. I, p. 43.

The referent to determine whether the system's presuppositions are observed is the Constitution, so that a first analysis consists of identifying the relationship between the norm and normality. The degree of proximity between the two variables determines how functional a state is.

The interaction between norm and normality is one of the elements that make it possible to identify the level of governance and is also one of the sources of trust in institutions. To the extent that normative statements are far removed from the outward signs of everyday life in a State, attention must be paid to their causes to identify remedial options.

In the case of the Mexican State, a critical stage began in the sixties of the last century, the maximum expression of which was reached when the student movement of 1968 occurred. At that time, it became clear that the organs of the State had reached the lowest possible level to fulfill their tasks of political mediation, so they had to resort to the last available resource: total force. The first remedial actions consisted of the inclusive tone of the 1970 election campaign and some adjustments in political behavior and institutional responses. As part of the former, the composition of Congress was expanded and a congressional dialogue was established with the members of the presidential cabinet, and among the latter, a workers' housing system was institutionalized by creating the National Workers' Housing Fund Institute, and an aid scheme for the development of universities was set up by establishing the National Council for Science and Technology.

While the actions undertaken were not enough to lead the country to a political, cultural, and social reunion, in 1977 a broad political-electoral reform was undertaken that gave access to power to the leftist forces, marginalized for decades. However, the hegemonic and concentrating presidentialism remained in force. In the following decades, the scope of the electoral reform was deepened, the integration of the Congress was modified and the structure and functioning of the federal judiciary was transformed, but once again the intangibility of the presidency of

the republic and its correlative local bodies —the state governments— was maintained.

The democratic organization of ancient Greece is valued as paradigmatic. This is understandable because of the dazzling period of Pericles and the contributions about the exercise of power in the voices of the philosophers and the tragic magnates Aeschylus, Euripides, Sophocles. Although Greek democracy was very ephemeral, it established the model to be followed by the builders of the foundational constitutional systems of the modern and contemporary ages. The Greek experience is so convincing that it even overshadows the best example of a well-structured power as it was during the Roman Republic. In this case, however, its elaboration was a juridical and even historical work, like that of Polybius, rather than a philosophical one, so it lacked theoretical elaborations like those of Plato or Aristotle. In Rome the concern focused on balances. The most ostensible example was the diarchy of the consuls and the brevity of their mandates, which did not prevent them from extending their military, political and commercial domination over territories that today make up parts of Europe, Asia, and Africa. The Roman experience showed that power does not have to be concentrated to be effective if it obeys a rational design of dynamic balances and has an effective legal system.

The systematic procrastination of state reform in Mexico has confirmed the predictions made at least since the last decade of the last century, in the sense of a progressive institutional atrophy. The distance between norm and normality has been increasing, accentuating the tensions between the reformed area and the archaizing zone of the apparatus of power. The result is a disconnection of the behaviors and objectives of the segments that make up the Mexican State. To identify a shared code that would allow a minimum of interaction, corrupt practices multiplied as a substitute for the lack of political agreements and compromises. This modality of exchanges based on collusion and underhandedness eroded confidence in the organs of the state and relaxed their ability to deliver results.

The electoral system, an instrument of democratic legitimacy par excellence, became a means of access to privileges and impunity. This situation allowed to confirm the thesis on the effects on legitimacy raised by Guglielmo Ferrero.<sup>43</sup> The historian examined various experiences that allowed him to distinguish between legitimacy, pre-legitimacy, and quasi-legitimacy.

The four principles of legitimacy that Ferrero considered were: elective, democratic, aristocratic-monarchic, and hereditary. According to this author, legitimacy, understood as the rational justification for rulers to access and exercise power and for the ruled to accept them, generates inequality because it places some in a position to command and others to obey. Pre-legitimacy occurs when the rulers accede to power through the established procedure and yet a significant part of the population resists accepting them,<sup>44</sup> with which there is the paradox that the violation of the order comes from the governed and not from the ruler. In quasi-legitimacy, the opposite phenomenon occurs: the ruler does not hold power in accordance with the rules of legitimacy, but the governed accept him as if he complied with them.<sup>45</sup>

Ferrer's characterization admits nuances and even a more detailed unfolding, but for the purposes of this study it offers the necessary elements. As for the formal inequality between the governed and the ruler, it is possible to find answers in the way constitutional systems are constructed, as will be seen below. The direct effects of this inequality have been seen globally during the COVID-19 health crisis since the political authorities have de-

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<sup>43</sup> The work appeared simultaneously in English and French. *The Principles of Power. The Great Political Crises of History*, N. York, Putnam, 1942; *Pouvoir. Les génies invisibles de la cité*, N. York, Brentano's, 1942. A year later it was translated into Spanish: *El poder. Los genios invisibles de la ciudad*, translated by Federico López Cruz, Buenos Aires, Inter-Americana, 1943. There is a more recent translation, by Eloy García, Madrid, Tecnos, 1991. Both translations are based on the French version, published in New York.

<sup>44</sup> *El poder. Los genios invisibles de la ciudad*, Tecnos, pp. 142 et seq.

<sup>45</sup> *Ibidem*, pp. 216 et seq.

cided, with varying levels of discretion, on measures concerning the health and life of the inhabitants of each country.

This discretion is accentuated where the points of contact between government and congress have a lower rank, and where there is a lack of a highly professionalized and politically neutral civil service. In cases such as these, where the government acts without being subject to parliamentary controls and where the professional bodies respond to the free selection of the political heads of the organs of power, decisions are processed according to the criteria of those who occupy the apex of power. In better-structured systems, where institutional balances and political controls prevail, the quality of the civil service is usually higher and, therefore, decisions obey more objective and accurate criteria, based on scientific evidence, and are implemented by experienced administrative teams, well prepared to face contingencies that require a proven response capacity.

## 2. *The State on Trial*

The State is being put to the test at the same time and by the same phenomenon. The COVID-19 pandemic offered a unique opportunity to contrast procedures and results. The adequacy of each State's response corresponded to its functionality. Some states were able to cope better with the health crisis, such as China, albeit with greater sacrifice of freedoms; in others, such as Sweden, a high level of freedoms was maintained, but with greater health complications. A full retrospective review will only be possible when it is possible to assess the health, economic and social effects, and how responses were processed in each case.

The containment of the pandemic involved, in all cases, the imposition of measures restricting rights. In systems where freedoms are conditional, the process was facilitated, but this is neither a relief nor does it support hypothetical advantages of such systems. In constitutional systems it was also possible to process

and absorb such limitations on rights and freedoms if the procedures foreseen for emergency cases were followed.

The functionality of the State is not attested by the achievement of a few objectives. As mentioned above, a State is functional when it satisfies a multiplicity of objectives at the same time. A State is functional when it coincidentally ensures the enjoyment of freedoms and the exercise of rights by the entire population, provides it with security and the elements necessary for its cohesion, well-being, and protection, and successfully applies coercive measures when they are indispensable to those ends. To attend in isolation to one or even several of these elements, even to the detriment of only one, makes it a dysfunctional State, regardless of whether it is also categorized as authoritarian, top-down or totalitarian.

This is where the concept of legitimacy is relevant. The “legitimate monopoly of coercion” presupposes the legitimate validity of an order and the legitimate ownership of those who have the power to impose conduct on others. Where the holders of power are not questioned as to their legitimacy, but some of their legal and administrative measures are because they lack a constitutional basis or are unsuccessful in their application, the situation that Ferrero identifies as pre-legitimacy arises. At this stage, remedial actions are necessary which, if not adopted, accentuate the dysfunctionality of the State.

The governance deficit is due to endogenous causes, associated with defects in the constitutional design that generate negative institutional interactions. External factors of tension and resistance to compliance with power are common; they are part of what a well-structured and functional State can successfully face. The constitutional state has the means to deal with challenges of all kinds; this is one of its functions. However, there is an additional element to the institutional one: personnel. Even an adequate institutional design can be dysfunctional if the administrative and political cadres that operate it fail.

The operational and managerial apparatus is crucial, and in the case of Mexico there are very marked deficiencies that weaken institutional life and thus contribute to the dysfunctionality of the State. The professional cadres of the State show considerable heterogeneity. There are some with world-class professionalism, such as the medical staff of public institutions, while in other sectors of the administration, the allocation of positions based on sympathies and interests dominates. The range from medical excellence to inadequacy in other areas comprises very contrasting degrees of quality. This makes the overall functioning of institutions uneven and, in addition, highly vulnerable to corruption.

Mexican political discourse shows that leaders lack a rough idea about the impact that such a heterogeneous bureaucratic mass produces in the general functioning of institutions. In 2018 there were 4.2 million public servants,<sup>46</sup> of which 1.6 were federal and 2.6 state and municipal. Of the overall total, 80% worked in the areas of education, justice, health, and security. Only 20%, a little more than eight hundred thousand people, oversaw the remaining administrative tasks, including those related to the support of government functions at all three levels. Except for some central areas such as finance and foreign affairs, and of some specialized bodies of the federal and local administrations, and it is there where the highest positions are located, the greatest number of places subject to the temporary distribution and the lowest level of administrative professionalization.

Unlike countries with a well-recognized bureaucratic tradition, in Mexico the bureaucracy does not enjoy prestige. This is compounded by corruption and inefficiency, which proliferated among senior officials during the last few administrations, and which have discredited the holding of functions once coveted as a status symbol. The combination of these factors has meant that public service is no longer an attractive destination for new pro-

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<sup>46</sup> Data from the National Institute of Geography and Statistics: [https://www.inegi.org.mx/contenidos/saladeprensa/aproposito/2018/publica2018\\_Nal.pdf](https://www.inegi.org.mx/contenidos/saladeprensa/aproposito/2018/publica2018_Nal.pdf)

professionals or for those who have achieved prestige in their fields of work. In other public spheres, people with a vocation for service are running for election, but in this field, too, there have been desertions or withdrawals on the part of personalities who were usually interested in political action.

The deterioration observed in Mexico is more or less generalized. That is why Bovero,<sup>47</sup> recovering the lessons of Polybius, alludes to a contemporary phenomenon that he calls *kakistocracy*,<sup>48</sup> *the government of the worst*, in reference to the decay of systems that are not renewed. Routine, especially in systems that have not reached democratic plenitude, promotes institutional regressions that hinder governability. This explains why corruption, violence and systemic poverty have become established in Mexico because the responses are disjointed and weak due to the precariousness of institutional support.

This horizon of dysfunctionality contributes to the fact that rulers are affected by *pre-legitimacy*, which leads them to either of two extremes: concessions that prevent coherent action or intransigence, which hardens their attitude towards the governed and tries to maintain the adhesion of their voters by making their discourse more pugnacious.

The dysfunctional State is dysfunctional in its entirety, not in parts or segments. The remedy requires major adjustments, an authentic institutional transformation whose main risk is not to do it with the necessary expertise. Many reforms fail because either what needs to be changed is not changed, or it is changed but not in the right direction or with the right emphasis, or when the problem is solved, other disruptive elements are introduced that limit or nullify the effects of the change.

Although there are no infallible recipes, in general terms the best changes are those that are made at a stage that allows for reflection and experience the gradualness of the measures. How-

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<sup>47</sup> Bovero, Michelangelo, *Contro il governo dei peggiori. Una grammatica della democrazia*, Rome, Latterza, 2000, pp. 127 *et seq.*

<sup>48</sup> From the Greek *kakós*, “bad, vile”.



ever, very few leaders are willing to modify what, apparently, still works. On the other hand, when the consequences of dysfunctionality impose urgent solutions, their terms are usually wrong and therefore give counterproductive results, which leads to a spiral of frustration. Paradoxical as it may seem, the best times to change are those that are least taken advantage of: those of stability. When the storm comes, change is inevitable, but not always the one that gives the best results is chosen because the short-term constraints are considered without considering the long horizon of institutional life.

In Mexico, the dysfunctionality of the state will be corrected if several requirements are met: mitigate the unipersonal power of the presidency and increase its institutional power by building a government cabinet with constitutional powers, under the leadership of the president and composed of ministers of state accountable for their actions before Congress; invigorate the representative system by giving Congress new powers, especially that of holding periodic sessions for political control of the government; revamp the party system, giving new rights to minority parties, in particular the right to investigate governmental acts or omissions; seriously professionalize the public administration, thus reducing political patrimonialism, and revive the dormant Constitution, where such relevant institutes as the parliamentary question and interpellation, the coalition government and the plenary approval of the public account in the Chamber of Deputies remain dormant. The same measures must be adopted at the local level to replace cacique practices with democratic styles.

This would allow for a better structured and more functional political power, which would also be more democratic.