

class with citizens. The political class is the product of Mexican society, and its behavior cannot be alien to it. The problem of the parties and the elite in Mexico is intimately linked to Mexican society, its mentality, its perception of life, of the other, and of politics. The critique of the parties and the elites seems to be saying that they have no relation to the society they spring from or in which they operate, as though it were possible for political parties and elites from a culture different from that of their own country to exist; as if politicians were not Mexican citizens and did not share with them their virtues and defects; as though the virtues were concentrated in the citizenry and the defects in the politicians.

RECAPITULATING

At the beginning of this essay, we asked ourselves why the regulation of access to information about political parties was still far from a normative ideal. We can conclude that what seems clear at first glance, that is, the normative ideal, is not so clear when transferred to the examination of feasibility.

It turns out that decision-makers are subject to multiple restrictions and must take into account different points of view to get reforms passed. In the negotiation process, the technically correct or normatively accepted proposal is de-configured, and the proposal that can be passed is pieced together. In addition, we must consider that the ideal we aspire to regarding the right to access to information about the political parties depends not only on legal norms, but also on the legal and political culture of both the political elites and the citizens. ■■■

NOTES

¹ We would like to thank Antonio Márquez Aguilar for his support in developing this essay.

² See http://www.ife.org.mx/portal/site/ifev2/Fiscalizacion_y_rendicion_de_cuentas/.

³ Dieter Nohlen, *El contexto hace la diferencia: reformas institucionales y el enfoque histórico empírico* (Mexico City: IJ-UNAM, 2005).

⁴ Efraín González Morfín, *Temas de filosofía del derecho* (Mexico City: Universidad Iberoamericana/Oxford University Press, 1999), p. 85.

The Right to Information in Mexico *Quo vadis?*

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requently, structural reforms of states originate in transcendent social movements: revolutions, civil wars, and even coups d'état often conclude with a legal and political restructuring centered on fundamental rights. In the case of the right to information in Mexico, a struggle—unarmed, of course—has arisen, spearheaded by civil society organizations and also by different public officials working for change in their country.

In this same vein, we can say that in the last 15 years, discussion about certain fundamental rights has steadily increased in Mexico's national legal system. The most recent constitutional reform changed the name of Title One, previously called "De las garantías individuales" (On Individual Guarantees), to "De los derechos humanos y sus garantías" (On Human Rights and Their Guarantees).¹ The much celebrated reform on indigenous rights was also affected, seeking to broaden constitutional protection for Mexico's first peoples whose rights were highly vulnerable because of marginali-

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A memorial to the massacre in Aguas Blancas. After this case, the Supreme Court recognized the right to information in the Constitution.

zation and poverty. Criminal procedures were also modified: from being predominantly written, trials became fundamentally oral, making for greater certainty, and above all greater transparency, in the difficult task of administering criminal justice. There were also advances in the right of protection of personal data, and, of course, in the area that is the topic of this brief essay: the right to information and the important amendment of constitutional Article 6 that gave it both principles and bases.

Despite the fact that the Constitution had already established the right of information in 1977, today, the debate takes on another dimension. This is due to the vagueness with which the Constitution had recognized and interpreted the right; some court decisions in the interim even affirmed that this was not a fundamental right giving persons the ability to access public archives; it was even thought that the right to information was part of the duties of press offices and was limited to control of the content of what the mass media presented to the public. It was not until 1996, when the Supreme Court handed down a decision on the case that came to be known as “Aguas Blancas,” involving a genocide perpetrated by paramilitary personnel in the state of Guerrero, when two main issues were identified: the first is that the right to information, in effect, involves the possibility that private parties can access

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public archives. But, it is also related to the fact that in our country there is a culture of deceit, scheming, and cover ups; that is, like any other practice entrenched in a society’s culture, non-transparency and lies are systematic and recurrent. This widespread behavior affects public policies, and the entire daily operation of the Mexican state as a whole.²

A growing awareness about the scope of the right to information began to germinate in Mexican environmental legislation with the creation of a rudimentary system for accessing environmental information. On the basis of this, the idea emerged that environmental information was public and its access was conditioned only on the need to establish a legal interest, a prerequisite now defined as unconstitutional.³

However, the real qualitative leap, considered a profound structural reform, was the passage of laws on access to information, both federally and locally, as well as the forging of

agreements, regulations, and guidelines for non-executive branch public entities like the federal judiciary, autonomous constitutionally-created bodies (the National Human Rights Commission, the Federal Electoral Institute), and public universities.

However, this whole broad legislative deployment was insufficient and inoperative because each public entity created its own distinct set-up. This meant that access to information was restricted by improper fees, by the supposed lack of proof of legal interest, or by overregulation through many local statutes. For this reason, in 2007, an important amendment was made to Article 6 of the Constitution, establishing a new structure for the right to information throughout Mexico. This change stipulated the current dimensions of the right to access to public information, recognizing it as a fundamental right by clearly stipulating that all information is public and access to it will only be denied for reasons in the public interest or to protect personal data.

Another principle for interpreting the Constitution was also included, the one establishing the principle of maximum publicity. The amendment stipulated that access to information must be free of charge and did not require proof of any kind of interest beyond the simple request for it. Also, the bases were established for operating the bodies that would be the guarantors of access to information, and it was stipulated that review procedures had to be swift. The changes also set certain guidelines for archives, for absolute transparency in the use of public resources, and a framework of sanctions if the laws were not complied with.

Without a doubt, it was during the administration of Vicente Fox (2000-2006) that this fundamental right was institutionalized. The Federal Law on Transparency and Access to Public Governmental Information (LFTAIPG) was passed, and the Federal Institute for Access to Information (IFAI) was created. That is, generally speaking, this right was more or less consolidated, although the task is not concluded. On the other hand, corruption and the excesses of the federal government itself began to be documented,⁴ from the wasteful management of towels and bathroom products in the President's Office, to cases of fraud and siphoning off monies to favored organizations like Provida.⁵

In addition to this, many high-level government officials began to resist the process—something that continues today—reluctant to hand over the archives of their particular institution, arguing that that specific information came under the heading of the federal legislation's exceptions, or simply pre-

tending that the information requested did not exist. One example of this was the issue of files in criminal investigations: at the start there was no great resistance to opening them up to the public. However, after officials realized that they were evidence of the generally mediocre job federal investigators were doing, the Criminal Procedural Code was amended to put a stop to prosecutors' offices being accountable for their work by opening up these archives, which, by nature, should be public.

Felipe Calderón's administration has not focused a big spotlight on the right to information,⁶ but rather used its time trying to bring down the big organized crime cartels using a strategy often called ill-advised. One of the negative effects of this war is that the public is afraid of being caught in the cross-fire between federal forces and the criminals.⁷ Despite this, there have been advances, since the IFAI was given new faculties to be able to control personal data bases in private hands; this is a big challenge for IFAI officials.

I think the challenges of the right to information in Mexico are huge, particularly given that the federal and local governments continue to maintain a position implying that they own the information they have and that it is theirs to use as they see fit. This is why public policies are developed unilaterally—almost personally—without any projection and in many cases in an authoritarian way. It is important to point out that access to public information is the platform of good government; that is, the basis for the art of governing, or governance, is carrying out actions that involve society in decision making. As long as access to information is marginalized, a great many risks will be run in the exercise of public administration, from the lack of trust and the discrediting of public management, to a series of factors that could even lead to social violence.⁸ An example of good governance is the construction of the Itaipú Dam on the Paraná River in South America, a project which Argentina participated in, despite its being built in territory shared by Paraguay and Brazil, because it was situated on the tributaries of the La Plata River. The late

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Argentine internationalist Julio Barberis, who was a fundamental part of the negotiations on building the dam, underlined the important participation of the communities that were going to be displaced by the reservoir it would create. Not only should they be compensated for the land expropriated from them, but they also had to be informed and had to be participants in the undertaking.⁹ The conclusion to be drawn from this is that when the government provides information, this institutionally strengthens public administration and translates into a systematic betterment of power relations between government agents and the population.¹⁰

It is important to point out that the 2007 constitutional reform, which attempted to harmonize the right to information, was insufficient to ensure uniform agility and institutional development nationwide. Today, in Mexico City and in the states and municipalities, conditions for implementing this fundamental right continue to be uneven. Despite the fact that the states and the capital all have laws and institutions charged with ensuring the exercise of the right to information, there are notable differences among local legislatures, among the institutions charged with guaranteeing this right, among the norms stipulating the kind of information that must be provided on line for transparency, and in operational, functional capabilities. It has taken years for the states to simply adopt the Infomex informational system; some of them have not installed it at all.¹¹ These profound differences can give rise to dividing the country between transparent and non-transparent states according to their actions, since this right continues to operate differently nationwide.¹²

One way out of this situation is to repeal all the country's laws on access to information and pass a single general law. This would mean we would have identical local institutions and procedures and no one would be able to allege the supposed "state's right to sovereignty" to justify blocking the exercise of this right. It is a matter, on the one hand, of fighting corruption with laws, institutions, and a strategy that would involve the entire country, and, on the other hand, of arriving at what I call a "generalized state of accountability."

A general law on access to information would distribute competencies among all government bodies. If we have these kinds of laws for the environment, health, and public accounts, why should we not establish one for access to information? The struggle continues, and the road toward ideal accountability and governance is still very long. We know we are moving; the question is: where are we headed? **MM**

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¹ Decree published in the *Diario oficial de la federación* (Federal Official Gazette), June 10, 2011, http://dof.gob.mx/nota_detalle.php?codigo=5194486&fecha=10/06/2011.

² *Semanario judicial de la federación* and its *Gaceta*, 9th period, vol. 3, June 1996, <http://www.mexicolegal.com.mx/links2.php?id=406>.

³ I am referring here to the 1996 General Law on Ecological Equilibrium and Environmental Protection.

⁴ María Vallarta Vázquez and María Concepción Martínez Medina, "Citizens Claim for Transparency and Accountability: Experience in Public Resources Deviation Monitoring," *Right of Access to Information in Mexico: A Diagnosis by Society*, IFAI, 2005, <http://www.ifai.gob.mx/Publicaciones/publicaciones>.

⁵ In Mexico, Provida (or Pro-Life) is a polemical, ultra-rightwing organization that presents itself as the defender of the right to life and dignity. During the Fox administration, it was also discovered to be involved in diverting public monies, <http://www.cimacnoticias.com.mx/noticias/04ago/s04080201.html>. [Editor's Note.]

⁶ In other branches of government, like the judiciary, however, this fundamental right has been seriously fostered.

⁷ "Segunda encuesta nacional de cultura constitucional: legalidad, legitimidad de las instituciones y rediseño del Estado," (Mexico City: IFE/IIJ-UNAM, 2011), <http://info.juridicas.unam.mx/invest/areas/opinion/Encuesta-Constitucion/>.

⁸ One example of this is what is happening in the port of Veracruz, where the mayor has ordered public works be carried out on Díaz Mirón Avenue and in Zamora Park, located in the city's historic downtown area, despite opposition of local inhabitants and without even attempting to duly inform the public or involve it or to obtain the necessary permits from the National Institute of Anthropology and History (INAH).

⁹ Julio A. Barberis, *Los recursos naturales compartidos entre Estados y el derecho internacional*, Ciencias Sociales Collection (Madrid: Tecnos, 1979).

¹⁰ This experience should be compared to the Mexican government's attempt to build an airport in San Salvador Atenco, Texcoco, where a lack of foresight and involvement of society sparked outbreaks of insurrection just a few kilometers from Mexico City; the government then responded with a cruel, despicable police action perpetrated by the State of Mexico police, in which, among other reprehensible acts, several women were subjected to sexual assault. <http://www.amnestyusa.org/our-work/cases/mexico-women-of-atenco>.

¹¹ See <https://www.infomex.org.mx/gobiernofederal/home.action>. [Editor's Note.]

¹² For more information about the right to information in the different states nationwide, see *Métrica de la transparencia 2010*, written by the Center for Economic Research and Teaching (CIDE) and the Mexican Conference for Access to Public Information (Comaip), http://www.metricade.transparencia.cide.edu/Metrica2010_ENGLISH.pdf.