

# **The Challenges of the Mexican Rule of Law Throughout the Federal Electoral Process of 2021**

Dr. Felipe Carlos Betancourt Higareda<sup>1</sup>  
fcbetancourth@uaemex.mx

**Summary:** I. What a constitutional state implies. a. The rule of law: The distinction between a democracy and demagoguery. b. The presence of checks and balances within a constitutional state. c. Fundamental rights and constitutional guarantees. d. The respect of political rights. e. The distribution of political power. II. Constitutional state, rule of law and deliberative democracy. a. The constitutional state and deliberative democracy in the law-making process. b. Deliberative democracy and the enactment of the law within the constitutional state. c. Practical ‘right’ reason vs. rule of tyrant. d. A republican perspective of the constitutional state. III. The current reality of the Mexican constitutional state. a. The presidential system of government. b. Federalism and other factors that could strengthen an authoritarian regime in Mexico. c. The anti constitutional attitude of the Mexican President. d. Organized crime and the constitutional state of Mexico. e. The autonomy of the federal congress and the supreme court of justice from the Mexican president. f. The current challenges of democratic governance in Mexico. Conclusions.

**Keywords: Mexico, Democratic Governance, Pandemics, Constitutional State**

## **Abstract**

The following paper intends to contribute to the understanding of the challenges to the quality of the rule of law and of the democratic governance of Mexico throughout the federal electoral process of 2021. It highlights the importance of the strength of the rule of law, and of the system of ‘checks and balances’ between constitutional authorities, to improve the standing of this kind of governance, as well as the prominence of the law-decision making process within this Constitutional State. Moreover, this paper performs an assessment of the solidity of the rule of law and of the system of ‘checks and balances’ between constitutional authorities in Mexico, and argues that the deterioration of these dimensions of the Mexican Constitutional State, impacts severely on the character of its democratic governance and electoral processes. Finally, this paper looks upon organized crime as the major threat to the very existence of the Mexican Constitutional State and the sustainability of its democratic governance and electoral processes, thus it finishes proposing some policies that could help in confronting effectively this leading threat.

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<sup>1</sup> Associate Professor of the School of Law of the ‘Universidad Autónoma del Estado de México’, Toluca, México.

## I. What a Constitutional State Implies.

### a. The Rule of Law: The Distinction Between Democracy and Demagoguery.

More than two thousand years ago the great Greek philosopher Aristotle stated that the core distinction between an authentic democracy and its corrupted form of government (demagoguery) consisted on the respect of the *rule of law* by both, authorities and citizenship (Aristóteles, 2016). For our post-modern societies this statement implies that, for an authentic democratic decision-making process within a constitutional state, it is necessary that the law maker follows the constitutional rules regarding the decision-making process of the law, which means that the law maker respects the constitutional principles regarding the enactment of laws, which basically guarantee that these laws respect, defend and protect human, social, economic and political rights.

Indeed, Aristotle regarded the law as a result of the exercise of the ‘upright’ practical reason of the law maker, which should aim at achieving the happiness of the entire political community through securing the necessary social, cultural and economic conditions that could facilitate citizens the development of their full potential as human persons (Aristóteles, 2016). On the other hand, the attainment of these conditions contributes to the prosperity and growth of the society at large, which was regarded by this Greek philosopher as the ultimate purpose of the law (Aristóteles, 2016).

Furthermore, based on this classic school of thought, the fulfilment of the human person is realised through the practice of ‘good’ habits (virtues), since through this practice a person can make her/his ‘upright’ practical reason rule over her/his passions, behaving in this way reasonably, as authentic human persons (in a rational way).

On the other hand, and based on Aristotle’s insight, the virtue of justice can be defined as the disposition of the will of giving any person what is owed to him or her, based on the needs of her or his human nature, and on her or his merits derived from their effort or work (Hervada, 1988). Consequently, people have a ‘right’ to whatever contributes to their personal growth, to whatever social, economic or cultural condition that advances their

practice of ‘good’ habits, since every social, economic, cultural, material or health good should be oriented so that the human person behaves wisely at interacting with other people, based on an upright practical reason.

For this purpose, constitutional law should explicitly respect, defend, protect and promote human rights, since this respect, defence, protection and promotion becomes crucial in order to improve human development within the borders of the respective constitutional state, which implies that every social, economic, cultural, material or healthy benefit, within these borders, is properly disposed to the personal growth of all the inhabitants of this state.

Therefore, based on this classic philosophical thought, whatever ‘good’ or condition that does not contribute to the growth of the human person, strictly speaking could not be regarded as an authentic ‘right’ of this person, thus it could not be considered as constituent element of the virtue of justice, even if that ‘right’ could be defended on the grounds of the legitimate ‘autonomy’ of the person. At the most, it only could be regarded as a ‘tolerable’ by-product of personal freedom, which should be respected by other people, but not endorsed or promoted as a righteous or worthwhile behaviour within society (Hervada, 1988).

On the other hand, and based on this classic school of thought, the corrupted version of ‘democracy’ (demagoguery) is boosted by the irrational appetites of power of a tyrant, instead of being fostered by the ‘upright’ practical reason of a democratic law maker, especially when this tyrant openly promotes the practice of a self-destructive living style, which could lead citizens to be dominated by their ‘whims’ in their electoral choices (Aristóteles, 2016).

According to Aristotle, the demagogue exploits the disordered appetites of pleasure of people, and flatters their caprices, in order to manipulate their electoral choices and encourage them to behave unfairly against other people who have righteously earned their patrimony, through requesting the deprivation of their patrimony, and/or the complete distribution of their wealth among the whole population (Aristóteles, 2016). This might be an accurate picture of contemporary politics in some developing countries.

**b. The Presence of Checks and Balances within the Constitutional State.**

One of the core distinctive features of the modern constitutional state is its formal establishment of ‘checks and balances’ for the exercise of power, in order to contain this exercise within the limits of ‘upright’ practical reason, and orient it to the attainment of the prosperity and human security of the whole political community (Hamilton, et. al.,1996).

Perhaps the most representative precedent of the modern constitutional state could be the Roman Republic, which was originally conceived as a combination of the three legitimate systems of government (Monarchy, Aristocracy and Democracy) in order to balance political power and establish reciprocal ‘checks’ between government institutions (Hamilton, et. al., 1996).

This system of ‘checks and balances’ established within the Roman Republic were aimed at orienting political decision-making processes to the ‘greatness’ of the Roman Empire and to the expansion of the practice of civic virtue among the population. Furthermore, it was designed to improve the epistemic quality of these political decision-making processes, in terms of their adequacy for the prosperity of this Empire (Pettit, 1997).

For example, the ‘veto power’ as a constitutional device for appropriate ‘checks and balances’ between constitutional authorities, had its origin in the ancient Roman Empire, and was conceived as an appropriate mechanism in order to set sensible limits to the capricious or arbitrary decisions of the Roman Emperor, which could be counterproductive to the prosperity of this Empire (Pettit, 1997).

On the other hand, this constitutional institution also discouraged the enactment of laws or policies that could be inspired in a disordered desire of the Roman Emperor for unchecked power, or based on the fancy of the Roman establishment of damaging legitimate rights of some citizens, which could have encouraged civil wars and could have fastened the collapse of the Roman Empire (Lyon, 1883).

### **c. Human Rights and Constitutional Guarantees.**

Another sensible limit imposed to the exercise of political power, within the modern constitutional state, is the formal acknowledgement of human rights, and of constitutional proceedings (individual guarantees) to defend, protect and promote them effectively before all kinds of constitutional authorities (Burgoa, 1994a).

On the other hand, this defence and promotion of human rights inside the constitutional state, provides us with substantial criteria to judge the constitutionality of a law decision-making process, and encourages the exercise of an ‘upright’ practical reason in this process, in order to guarantee the fulfilment of basic and necessary social, economic, cultural and political conditions, which could ease the attainment of human security (the goal of the constitutional state) on the interior of this state (Buscaglia, 2013).

Furthermore, the functioning and the performance of the post-modern constitutional state should be oriented, not only to respect, protect and promote these human rights, but also to enhance, guarantee and secure their proper exercise, through consistent and appropriate public policies, so that its whole population may attain easier, faster and better their own human security (Buscaglia, 2013).

Consequently, the respect of human, social, economic, cultural and political rights should be regarded as a reasonable limit to the power of constitutional governments, since this restriction can foster the common good orientation of political decision-making processes. On the other hand, the constitutional law-maker should enact the principles that guarantee that a constitutional government ensures effectively the necessary economic, political, social and cultural environment that fruitfully promotes human growth (Alexy, et. al, 2007).

#### **d. The Respect of Political Rights.**

One of the most fundamental political rights that a constitutional state should respect, protect, defend and promote, is the citizens’ right to take part in political decision-making processes, from which their living conditions depend, as well as the means that contribute to their human growth (Rawls, 1971).

On the other hand, the democratic right of choosing representatives for constitutional deliberative bodies, where the ‘law’ is created or reformed, derives from the aforementioned fundamental right, and this democratic right is crucial for the outcome of the respective decision-making processes of these bodies. For this reason, representative democracy features the modern Republic, when we reflect about its true nature (Hamilton, et. al, 1996).

Nevertheless, it is challenging for any constitutional state to make its citizens choose their representatives based on upright motives, since without a proper education for a democratic form of government, political criteria based on license or social welfare is usually decisive for these citizens in order to choose their representatives, and this kind of choice might not always work for their common good and prosperity (Langston, 2017).

On the other hand, and based on a classic political perspective, the general practice of civic virtue improves the freedom and equality of citizens inside the constitutional state, since this kind of practice facilitates the political community to effectively render its authorities accountable and demand their due transparency in political decision-making processes (Pettit, 1997).

#### **e. The Distribution of Political Power.**

Due to their present geographical and demographic dimensions, many constitutional states have become federal systems of government, through which political power is balanced by means of its provincial decentralization. Consequently, this type of decentralization forms part of the system of ‘checks and balances’ of the modern constitutional state. This is especially true regarding the authority of establishing, charging and managing taxes and other income sources that form part of the public budget (Betancourt e Ishiyama, 2015).

Hence, appropriate decentralization criteria for the distribution of authorities to manage the public budget, is crucial to support a democratic form of government in the context of a federal state, because if these powers are adequately allocated between the different levels of government, a democratic regime is better advanced (Betancourt e Ishiyama, 2015). But if they are not shared appropriately, the constitutional state could more

easily become an autocratic regime, since it could provide sufficient leeway to federal authorities to practice clientelism, patronage and even repression against subnational governments, which would seriously compromise the political freedom of both, local governments and common citizens.

In other words, the concentration of authorities in handling the public budget can distort a balanced distribution of political power within a federal state. Furthermore, the more decentralized the allocation of authorities inside this type of state, the more inclusive democratic and economic practices can spread out within it (Acemoglu & Robinson, 2012).

In fact, the main purpose of the democratic engineering of a constitutional state should be to achieve a balanced distribution of powers inside of it, with an appropriate system of ‘checks and balances’ between constitutional authorities (Sartori, 2003). On the other hand, the formal practice of the principles of solidarity and subsidiarity, between different levels of government, in the exercise of their constitutional powers, can enhance the epistemic quality of their policies and laws (Carpizo, 1973).

## **I. Constitutional State, Rule of Law and Deliberative Democracy.**

### **a. The Constitutional State and Deliberative Democracy in the Law-Making Process.**

The different procedures, inspired by the ‘upright’ practical reason of the constituent power (veto power, bicameralism, absolute majority to approve legal reforms, qualified majority for constitutional reforms, judicial review, constitutional processes to challenge unconstitutional laws, the constitutional rules for the appointment of the supreme authorities of the judicial branch of government, the federal system of government, the acknowledgement of human rights, individual guarantees and political rights; the rules for the registration of political parties, etc.), improve the system of ‘checks and balances’ within any constitutional state, and guarantee the fairer and more sensible use of these powers, so that legal and political decisions may respect, protect and promote the human, social, economic, cultural and political rights of all the members of the respective constitutional state (Burgoa, 1994a).

Furthermore, these constitutional procedures, which intend to effectively control and render accountable constitutional authorities, should be regarded as means, inspired by a sense of *justice and prudence (jurisprudence)* of the constituent authority, that guarantee that an ‘upright’ practical reason prevails in legal and political decision-making processes, so that the respective constitutional state may accomplish, efficiently and smoothly, its prosperity, welfare and human security (Burgoa, 1994b).

On the other hand, this constitutional system of ‘checks and balances’ encourage more public reflection in these decision-making processes, so that they might effectively and substantively respect, protect and promote human, social, economic, cultural and political rights, in order to boost, with the greatest of ease, the prosperity of the respective constitutional state. In addition, more and better public reflection within political decision-making processes, implies the better epistemic quality of the law and public policies, as well as the better democratic quality of the respective constitutional state (Habermas, 1996).

From a classical insight, the practice of the virtues of justice and prudence (*jurisprudence*) enhances the moral dispositions and the intellectual skills of the law maker to enact appropriate laws that better guarantee the prosperity of the constitutional state, as well as the epistemic quality of the discursive processes that create the law, since the main task of the law maker is to ‘select’ the right rules that could promote the personal growth, the human security and the prosperity of the people that live inside the respective constitutional state (Aristóteles, 2016).

Consequently, the constitutional system of ‘checks and balances’ within any kind of government system, whether presidential, parliamentary, semi-presidential or semi-parliamentary, implicitly aim at improving the ethical dispositions of the respective constitutional authorities, of the different levels of government, so that they may be willing of enacting, enforcing or even interpreting the law according to a *pro personae* principle. Furthermore, this system of ‘checks and balances’ should promote a sensible equilibrium of powers between constitutional authorities (Sartori, 2003), and, as much as possible, political – decision making processes based on thorough and careful public reflections and revisions of the fulfilment of constitutional principles that promote the human dignity, growth, development and security inside the respective constitutional state.

**b. Deliberative Democracy and the Enactment of the Law within the Constitutional State.**

Ideally, the constitutional law maker should enact the law through an open, representative, inclusive, public and thorough reflection (deliberation) about its content, and their decision should be based on the force of the better argument in terms of the best way of achieving the common prosperity and happiness of the respective constitutional state (Cohen, 2008). Hence, the constitutional law-maker should be morally disposed to practice some essential deliberative principles for a fair, wise and democratic enactment of the law, such as ‘discourse ethics’, ‘civic dialogue’ and an ‘ideal speech situation’ (Habermas, 1996).

Despite of the fact that the law should ideally be enacted through a deliberative process, based on the force of the better argument in relationship with the best way to achieve the prosperity of the constitutional state, in *real politics*, however, *negotiation*, *compromise*, or at the best, *majority rule*, constitute the ordinary methods through which a ‘democratic’ decision about the content of the law is usually obtained (Mansbridge, 2007).

On the other hand, whenever it becomes impossible to achieve a rational agreement of citizens’ representatives, at deliberative bodies, about the content of the law, *majority rule* may constitute a fair, wise and democratic criterion to decide this content (Mansbridge, 2007). Nevertheless, the legitimacy of this *majority rule* depends on the practice of some discursive principles, such as ‘civic dialogue’, ‘ideal speech situation’ or ‘discourse ethics’, by the respective constitutional law makers (Betancourt, 2010).

The practice of these principles, within the discursive course of the respective constitutional decision- making process of the law, improves the likelihood that the law enacted effectively respects, defends and protects human rights, as well as the social, economic, cultural and political rights of the whole population (Bohman, 1997).

Nevertheless, in order to improve the democratic legitimacy of the corresponding law or public policy, the electoral, party and government systems, of the respective constitutional state, should also facilitate the attainment of a *rational consensus* in this decision-making

process, or at least the accomplishment of a clear *majority rule*, so that such constitutional state may guarantee without difficulty its political stability and democratic governance (Sartori, 2003).

### **c. Upright Practical Reason vs. The Rule of a Tyrant.**

The different constitutional mechanisms to improve the system of ‘checks and balances’ between constitutional authorities, can enhance their symmetry in their exercise of political powers, as well as promote the practice of *upright* practical reason for the enactment, execution or interpretation of the law, and prevent that *arbitrariness* might be decisive in the respective discursive processes of creation, application or understanding of the law (Burgoa, 1994a).

On the other hand, if a constitutional state does not defend, protect and promote inclusive economic and political policies within its boundaries, through which the whole community may take part of the prosperity and the decision-making processes that will impact their human, social, economic, political and cultural rights, a democratic regime can become less sustainable (Acemoglu & Robinson, 2012).

In consequence, any authentic democratic and constitutional state should also respect, protect and promote the economic right to free entrepreneurship, as well as the political right to free and fair elections; since altogether both rights constitute the foundations to build more freedom, equality and prosperity in such state (Acemoglu & Robinson, 2012).

In contrast, an autocratic regime intends to impair the social, economic and political rights of its population, since these rights could smooth the way for people to effectively challenge this kind regime, since both, the economic independence of citizens and the formal acknowledgement of their political rights, constitute the cornerstones to establish a democratic regime (Acemoglu & Robinson, 2012).

### **d. A Republican Perspective of the Constitutional State.**

As was stated before, the modern constitutional state was inspired on the ancient Roman Republic, which had been conceived as a system of government in which ‘checks and balances’ of power secured the general interest of this Republic. Furthermore, this system of ‘checks and balances’ between the Emperor, the Senate and common people was aimed at promoting the epistemic quality of political decisions, in order to accomplish more competently the ‘greatness’, the prosperity and the common good of the Roman Republic (Pettit, 1999).

Since these ancient times, public reflection, dialogue and reasoning, as well as negotiation and compromise among political actors, have been considered central values of democratic decision-making processes. Although not formally enacted as in present times, the Roman Republic possessed a political constitution based mainly on customary law, which used to guarantee basic political ‘rights’ to the Roman people, the Senate and other constitutional authorities, and established sensible limits to the ‘constitutional’ powers of the emperor regarding the government and administration of the Roman Empire (Walbank, 1943).

However, in modern times, the system of ‘checks and balances’ between constitutional authorities strengthens the implementation of discursive and reflective practices for the enactment, enforcement and interpretation of the law, in order to prevent a dictatorial will in these processes (Burgoa, 1994a).

Consequently, constitutional procedures such as ‘bicameralism’, ‘veto power’, ‘absolute majority’ for the approval of a legal reform, ‘qualified majority’ for the approval of constitutional reforms, the federal system of government, judicial review, constitutional proceedings to challenge unconstitutional laws, the constitutional rules for the appointment of the judiciary, the electoral system of proportional representation, the principles of electoral law (certainty, legality, objectivity, impartiality, independence, autonomy, fairness), among many other institutions, aim at ensuring the fair, equitable, objective and impartial, enactment, enforcement and interpretation of the law, so that it might effectively safeguard the human, social, economic, political and cultural rights of all the members of the respective constitutional state (Arteaga, 2008).

Without this system of checks and balances between constitutional authorities, there will always be some freedom for an extractive approach to the enactment, enforcement and interpretation of the law, which could impair the human, social, economic, cultural and political rights of the respective people (Acemoglu & Robinson, 2012).

That is why before extending participative democracy, any constitutional state should first nurture a ‘functional’ liberal democracy, in which constitutional powers efficiently and effectively ‘check and balance’ each other in the exercise of their respective authority, so that they may better guarantee the respect, protection, defence and promotion of all these rights (Steiner, 2018).

## **II. Democratic Governance of the Mexican Constitutional State Throughout 2018 - 2021.**

### **a. The Presidential System of Government.**

Some scholars have argued that Mexico possesses, more than a presidential system of government, a ‘presidentialist’ one, because, in real terms, the Mexican President has become the prominent figure of the Mexican system of government, without an appropriate system of ‘checks and balances’ from the other branches and levels of government (Sartori, 2003). If this statement could be regarded as an accurate description of the Mexican political system for previous *sexenios*, it might be truer in the current *one* (2018-2024).

Indeed, President Andrés Manuel López Obrador has debilitated even more the already feeble symmetry, among constitutional authorities, of the Mexican presidential system of government, through the following measures:

- a. The construction of an artificial overrepresentation of the electoral coalition ‘Juntos Haremos Historia’ in the Mexican Congress, during the period of 2018-2021, through the co optation of some opposition members of this Congress (Murayama, 2019).
- b. The debilitation of the integrity of the Supreme Court of Justice of Mexico (SCJN), through compromising its independence in reviewing constitutional challenges

against legal and constitutional reform initiatives presented by the federal executive (Jiménez y López, 2021).

- c. The discredit, the harassment or the debilitation of the autonomy constitutional organizations, such as the *Comisión Nacional de Derechos Humanos* (National Commission of Human Rights) (CNDH), the *Instituto Nacional de Acceso a la Información Pública* (National Institute of Access to Public Information) (INAI), the *Instituto Nacional Electoral* (National Electoral Institute) (INE), among others, which counterbalance the power of the Federal Executive and render it accountable before Mexican people (Quintana, 2021).
- d. The nullification, in practical terms, of the constitutional rules regarding the appointment of the Heads of the Supreme Court of Justice of Mexico (SCJN) and of the Electoral Tribunal of the Judicial Power of the Federation (TEPJF) (Maneto, 2021).
- e. The attempt of consolidating strategic industries in the public sector, which had been opened to private investment in previous *sexenios*, especially the oil and the electricity industries (Haldevang y Stillman, 2021).
- f. The molestation of the free market economy, through tighter tax rules, competition regulations in strategic industries, and specific policies that discouraged private investment in key economic areas, such as in the areas of communications and transportations (Usla, 2021).
- g. The discriminatory criminal accusations against some government critics and opposition leaders by prosecutorial agencies, especially the *Unidad de Inteligencia Financiera* (Financial Intelligence Unit) (UIF) of the Mexican Treasury Ministry (Pineley, 2021).
- h. The unsatisfactory allocation of public budget to states and municipalities governed by the opposition parties (Jaime, 2021).
- i. The contraction of the public budget for meaningful social subsidies of the opposition state and local governments (Jaime, 2021).

All these measures, among many others more, have consolidated even more political and economic powers in the Mexican President, have subverted the constitutional system of ‘checks and balances’ between the different branches and

levels of government, and have brought Mexico closer to an authoritarian type of regime than to a symmetrical presidential system of government, such as the USA.

**b. Factors That Could Erode Democratic Governance in Mexico.**

On the other hand, the first factor that could debilitate democratic governance in Mexico even more in present pandemic times, is the opacity of the federal government in managing the budget. Indeed, the Mexican federal government has been recently and seriously accused of exercising, for electoral goals and without proper accountability, the budget already reserved for different needs of subnational governments, especially the budget of those states where the opposition parties are electorally strong, such as Nuevo León and Guanajuato (Jaime, 2021).

Nonetheless, perhaps the most serious threat to the democratic governance of Mexico might be the ruthless activity of organized crime. Indeed, criminal organizations behaved cruelly throughout the country during the last federal electoral process of 2020-2021, especially in those regions governed by opposition political parties, such as in the states of Jalisco, Chihuahua, Guanajuato and Nuevo León, through repressing violently and even murdering nominees who do not favour their interests and were likely to win gubernatorial or municipal electoral races (Etellect, 2021).

All the same, another uphill battle to improve democratic governance in Mexico is contained in the current social communications policy of the Mexican Presidency. Indeed, since his first day in office President Andrés Manuel López Obrador has persisted with his daily morning press conferences, without ever formally stopping them, even during the campaign phase of the federal electoral process of 2020-2021, in spite of being forbidden by the Mexican electoral law throughout this phase.<sup>2</sup>

This behaviour has been constitutionally interpreted, in various occasions, by the *Instituto Nacional Electoral* (INE) and the *Tribunal Electoral del Poder Judicial*

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<sup>2</sup> Only when President López Obrador got sick of Covid-19, from January 25<sup>th</sup> to February 5<sup>th</sup>, the Minister of the Interior, Olga Sánchez Cordero, substituted him in delivering these daily press conferences.

*de la Federación* (TEPJF) as partial, unfair and in favour of the electoral coalition ‘Juntos Hacemos Historia’, since these press conferences often display propaganda endorsing this coalition, whereas the opposition parties are often discredited in them, and do not enjoy an equitable opportunity of replying, with the same coverage, his insinuations (Vela, 2021).

Finally, other factors that have seriously debilitated democratic governance in Mexico throughout the present pandemic times, are the different strategies of clientelism and patronage carried out by incumbent parties, in order to be victorious at electoral competitions of the federal, state and local levels of government (García, 2021).

Although these strategies have always been present in Mexico throughout electoral processes, perhaps never before as in the last elections of 2021, Mexican poor people had experienced such a great pressure to vote in favour of incumbent parties or electoral coalitions, by making social subsidies conditional on this kind of vote (García, 2021).

### **c. The Anti Constitutional Attitude of the Mexican President.**

On the other hand, perhaps what is most worrying about President López Obrador, is his attitude of slandering the different constitutional appeal hearings - ‘as relics of corruption of the ‘Neoliberal’ era of Mexico’-, which were established to ameliorate the constitutional system of ‘checks and balances’ of the Mexican presidential system of government. For example, the appeal on the grounds of unconstitutionality that the Mexican Congress, state governments, constitutional autonomous organizations and common citizens can sue in order to dispute the legal and constitutional reforms approved by the majority rule of the ‘Juntos Haremos Historia’ coalition at the Mexican Congress (Forbes Staff, 2020).

Indeed, apart from the *amparo* proceedings (writ of protection), Mexico holds, at the federal level of government, other six types of constitutional appeal hearings that can be used, by concrete political actors, whenever they perceive contradiction

between the Mexican Constitutional law and any federal, state or even municipal law. These kinds of appeal hearings defend the supremacy of the Mexican Constitution, even over a qualified majority rule of the Mexican Congress that could enact a *popular* law or legal reform that may contradict the principles of this Constitution (Arteaga, 2008).

Nevertheless, whenever President López Obrador falls short of the qualified majority rule to procure a constitutional reform, or whenever a legal reform approved by his electoral coalition at the Mexican Congress, is disputed through a constitutional appeal hearing, the corresponding appeal hearing is publicly attacked by him, as well as the individual authorities or members of Congress who challenge the particular legal reform before the federal judicial branch of government (Villa y Caña, y Morales, 2021).

The fact is that the present text of the Mexican Constitution does not underpin, as smoothly as possible, the ‘Fourth Transformation’ of Mexico that President López Obrador and his government coalition pretend to advance, and this circumstance has motivated the submission of three major constitutional reform initiatives, by the federal executive, which could ease this kind of transformation (Redacción, 2021).

#### **d. Organized Crime and Democratic Governance in Mexico.**

Organized crime is the most serious issue that is currently threatening the political stability and the democratic governance of Mexico, since criminal organizations have become increasingly ruthless and have gradually subjected more state and local governments across the country, by means of extortion, murders, repression, threats, executions, etc., throughout the last two decades, including the first half of the period of President López Obrador (2018-2021) (Rivapalacio, 2021).

To make matters worse, all through the federal electoral process of 2020-2021, criminal organizations openly supported some local incumbent ‘nominees’ over

‘inconvenient’ ones, and killed dozens of these last ones across the country to secure the *status quo* and their criminal interests in many municipalities (Rivapalacio, 2021).

On the other hand, open crimes against the Mexican State, especially at the state and local levels of government, increased sharply during the first half of the period of President López Obrador (2018-2024), while security and criminal laws remained obsolete and inefficient to neutralize, persecute and sanction effectively this type of crimes (Morera, 2021).

Furthermore, Mexico experiences a structural logistical vulnerability in contrast with the level of sophistication and intelligence of criminal organizations, which prevents the Mexican police and army to confront effectively their terrorism, insurgence, as well as their brutal strikes to security forces and judicial authorities (Bailey, 2014).

In addition, the constitutional principles (legality, impartiality, objectivity, certainty, independence, fairness, autonomy) that rule the Mexican federal electoral processes were perverted in 2021, or at least compromised, by criminal organizations, which debilitated substantially the democratic quality of this process (Integralia, 2021).

The consequences of this hostile context have become manifest: several ‘inconvenient’ nominees were either killed or forced by criminal organizations to step down and leave the vacancy for more favourable nominees to these organizations, especially in those regions of Mexico where state institutions are gravely failing (Rivapalacio, 2021).

Furthermore, criminal organizations have nullified the efficacy of the rule of law in multiple municipalities throughout the country, as well as the efficiency of local security forces, prosecutors and even the army, thus making such territories ungovernable (Integralia, 2021).

On the other hand, the lack of complete awareness of the state of affairs which several regions of Mexico actually experience, has prevented competent security and

police authorities to craft an appropriate response to the ruthless activities of organized crime (Betancourt & Uribe, 2020).

Furthermore, it could be argued and proved that Mexico is experiencing more a fact-based state of emergency than a true constitutional normality, and without a formal acknowledgement of this *status quo*, the Mexican Constitutional State will remain permanently fragile in order to effectively confront criminal organizations and enforce the rule of law efficiently (Betancourt & Uribe, 2020).

Even more, this lack of formal acknowledgement is only beneficial to criminal organizations, since human rights can only be respected, defended, protected, guaranteed and enforced within a context of true constitutional normality, not in an environment of emergency in which competent governments are subjected to this kind of organizations, as it is now taking place in several regions of Mexico (Betancourt & Uribe, 2020).

Certainly, this kind of subservience of constitutional governments endangers substantially the quality of democratic governance of several municipalities and states across Mexico, since criminal organizations usually have the last word with respect to the outcome of local elections and regarding the ‘right’ person who will be in charge of the security forces in the corresponding municipality or state (Rivapalacio, 2021).

What is more, common citizens are also subdued to this arbitrary and ruthless will of criminal organizations, whenever they intend to exercise their political and civil rights in order to legitimately influence the outcome of local elections (Integralia, 2021).

Furthermore, there is an expanding criminal collusion between local authorities and organized crime, which reinforces the oppressive character of economic policies in several regions of Mexico (Buscaglia, 2013).

Certainly, this collusion has damaged even more democratic governance in Mexico, to such an extent, that many executive, legislative and judicial branches of

government at the state level, across the country, as well as autonomous constitutional organizations, have been nullified by these organizations (Grayson, 2010).

All these phenomena imply that the constitutional system of ‘checks and balances’ in Mexico is not able of working properly, especially regarding the objectivity, impartiality, legality and fairness of the judicial branch of government. Not surprisingly, this seize of the Mexican State by criminal organizations has affected the effectiveness of the judicial branch of government when sentencing suspected criminals (Grayson & Logan, 2012).

**e. The Autonomy of the Mexican Congress and the Supreme Court of Justice of Mexico from the Mexican President.**

During the first half of the present *sexenio* (2018-2021) the autonomy of the Mexican Congress from the Mexican President was seriously compromised through crafty mechanisms, by which the MORENA party guaranteed both ‘absolute’ and ‘qualified’ majorities, at this Congress, in order to approve legal and constitutional reform initiatives (Murayama, 2019).

Indeed, the electoral coalition ‘Juntos Haremos Historia’, formed mainly by the MORENA (*Movimiento de Regeneración Nacional*), the PVEM (*Partido Verde Ecologista de México*), the PT (*Partido del Trabajo*) and the PES (*Partido Encuentro Social*), turned into a legislative coalition after the federal electoral process of 2018, whose absolute and qualified majorities guaranteed to President López Obrador the advancement of his ‘Fourth Transformation of Mexico’.

Nevertheless, the strategy of the MORENA party to obtain these kinds of majorities at the Mexican Congress, compromised the legitimacy of the election of some opposition deputies and senators, who joint this legislative coalition, since they put in question their authentic party representativity (Murayama, 2019).

On the other hand, the independence of the Supreme Court of Justice of Mexico (SCJN) was also compromised in this first half of the period of President

López Obrador (2018-2021), since some of its prominent members behaved as if they owed their post more to the favouritism of the Mexican President, than to their own merits and the consensus of the political parties represented at the Mexican Senate (Repper, 2021).

Furthermore, some relevant investigating offices, such as the *Unidad de Inteligencia Financiera* (UIF) (Financial Intelligence Unit) of the Mexican Treasury Ministry, or the Federal Attorney, have also behaved with partiality in their inquiries, since their due respect and defence of the *pro personae* principle in their fact-findings have been put into question, especially if these enquiries concern political opponents of the MORENA party (Pineley, 2021).

On the other hand, the deficient independence of the Mexican Congress and of the Mexican Supreme Court of Justice, from the Mexican President, suggests that the ‘Fourth Transformation of Mexico’ points to a democratic backsliding of this country, since its main results have so far been the decay of the constitutional system of ‘checks and balances’ of the Mexican presidential system of government, as well as the concentration of economic powers in the federal executive (García Magos, 2021).

#### **f. The Current Challenges for Democratic Governance in Mexico.**

Some constitutional autonomous bodies (*Organismos Constitucionales Autónomos*) in Mexico, such as the *Instituto Nacional de Acceso a la Información Pública* (INAI), the *Comisión Federal de Competencia Económica* (COFECE), the *Instituto Federal de Telecomunicaciones* (IFT) etc., have formally challenged the constitutionality of several policies of the Mexican Federal Executive before the Supreme Court of Justice of Mexico (Ortega, 2021).

As it was previously stated, the deficient transparency and accountability of the federal executive, in the management of the budget, nurtures adverse political phenomena in Mexico, such as clientelism and patronage, as well as authoritarian

methods of government. This is because undemocratic courses of action are fostered through budget tampering, bringing about, as consequence, the erosion of the political freedom of many poor citizens (Betancourt e Ishiyama, 2015).

Unfortunately, many people in Mexico lack employment opportunities as well as the necessary business skills to become economically independent, so they heavily depend on federal social subsidies to support their families. This reality subverts their political freedom even more and triggers their vote manipulation through short term gratifications, discouraging their long-term perspective at exercising their voting rights. Thus, the low professional development of many people constitutes a major obstacle to improve the political freedom of many people in Mexico (Buscaglia, 2013).

On the other hand, the promotion of the due transparency and accountability of constitutional governments ensures that the interests of the whole political community might be better pursued; that inclusive policies may expand and that the budget may be disposed to the service of human development, rather than to the service of clientele or patronising strategies of incumbent governments.

In contrast, meagre transparency and accountability fosters oppressive policies, since this kind of insufficiency prompts the concentration of economic and political powers within a ruling elite, as well as the discretionary and strategic management of spending plans in order to pursue self-interested goals of this power structure (Jaime, 2021).

Furthermore, this ruling class can progressively distort the legality, objectivity, impartiality, certainty, independence and fairness of electoral competitions in Mexico, turning them more into races of patronizing strategies, rather than races in which political parties convince citizens of the adequacy of their strategic plans to assure the development and the common good of the whole country (Díaz Jiménez y León Ganatios, 2019).

On the other hand, the present and valid Mexican electoral law dispirits the responsiveness of nominees to their respective electorates and encourages their

answerability to party elites; this happens because, once in office, representatives attribute their positions to party leaders more than to their qualified electors (Sartori, 2003).

This phenomenon reinforces the need to redesign the Mexican electoral systems so that representatives, at the Mexican Congress and state congresses, may be able of responding better to citizens demands than to the interests of party elites (Buscaglia, 2013).

On top of this, the quality of democratic elections deteriorates when immature and irresponsible criteria (short term gratifications rather than long-term perspectives of the common good), are more decisive for electoral outcomes than the thorough, careful and deep public reflection on the consequences of specific electoral choices. Unfortunately, this is the case in Mexico where many qualified electors remain with a childlike attitude at exercising their voting rights (Green, 2007).

Even more, authoritarian political phenomena (such as patronage and clientelism) derived from deep social and economic inequalities, foster obsequiousness and vote restraint, since this kind of phenomena make people vulnerable to the arbitrary will of those officials who discretionally grant them job opportunities or social benefits (Lawson, 2002).

Not surprisingly, based on Aristotle's insightful experience, a demagogue usually eulogises the masses to arrive to power, especially when these masses are extremely poor and do not possess the necessary professional skills and opportunities to overcome their economic situation: these masses could easily be persuaded to unfairly deprive other people their patrimony in order to 'achieve social justice' (Aristóteles, 2016).

On the contrary, a democratic regime is more stable in a prosperous country, basically because, in this kind of country, common citizens usually depend more on their own knowledge, competence, education, skills, experience or work, than on a financial aid from their respective government, in order to earn their living, and this

economic condition makes them feel freer to vote in whatever sense they thoroughly and responsibly choose to do so (Tocqueville, 2015).

In contrast, within the bounds of an under developed or poor country, many people depend heavily on government funding in order to earn their living, and this economic situation restraints effectively their real freedom to vote in the best sense they would sincerely believe to be the case for their long-term benefit.

Despite of the fact that extreme social and economic inequalities should prompt a Constitutional State to boost the principles of subsidiarity and solidarity in order to help the disadvantaged people inside its territory, the best strategy to overcome these inequalities should be through State (long-term) policies rather than by means of short term and electorally oriented methods (Juan Pablo II, 1991).

Incidentally, the supreme purpose of any constitutional state should be to generate responsible people and owners of their own future, through the righteous exercise of their social, economic and political rights, and as a consequence of the construction of a social and an economic environment that enable this people to procure by themselves a dignifying income. This is why social subsidies should become just transitory and extraordinary means of support for the destitute, not their ordinary or permanent source of income for their living (Juan Pablo II, 1991).

Conversely, other major obstacles that Mexico is experiencing in order to improve its democratic governance, are the prostration of its rule of law, as well as the deficient autonomy of the judicial branch of government, mainly from the respective executive branch at the state and federal levels of government. This kind of limitation incites the discretionary administration of justice, exacerbates the impunity of authorities at all levels of government, and fosters party interests in the prosecution of crimes (Davis, 2006).

Furthermore, in many regions of Mexico there is an escalating collusion between criminal organizations and subnational authorities to keep the outcome of local elections under control, through the repression of local opposition nominees and

the practice of terrorist tactics to dispirit common citizens to vote for ‘inconvenient’ nominees to these organizations (Rivapalacio, 2021).

Not so long ago, opposition nominees used to be paralyzed through bribery or co optation, however, in the present *sexenio*, electoral violence has become the most effective tool to derail this kind of nominees at the state and local levels of government in Mexico (Integralia, 2021). Both, criminal organizations and local incumbents in Mexico, profit from an environment of impunity and debilitation of the rule of law, which triggers the structural impotence of the Mexican Constitutional State to confront effectively this kind of violence (Bailey, 2014).

Paradoxically, an excessive guaranteeing human rights discourse in favour of suspected criminals, has compromised the vigour of the rule of law of the Mexican Constitutional State. Because of a legitimate concern of defending criminals’ human rights before abusive detentions of prosecuting authorities, human rights’ organizations unintendedly have spread the perspective that, in the fight against criminal organizations, it is from security forces and the army that civil society should be mainly protected, not from the calamitous activities of these organizations, which ruthlessly murder, extort and repress ordinary people in order to exploit them brutally and become the undisputed rulers of those geographical regions where they operate (Flores Pérez, 2009).

On the other hand, criminal organizations trigger oppressive economic and political practices wherever they command, and this fact threatens even more the stability of democratic governance in Mexico at all levels of government. Furthermore, criminal organizations in Mexico detonate the formation of local ‘cacicazgos’ since they favour the concentration of economic, political and legal powers within a ‘friendly’ ruling elite, which further obstructs democratic governance at the state and local levels in Mexico, and likewise subverts democratic quality of political decision-making processes (Casas-Zamora, 2013).

Since an authoritarian regime is nurtured by oppressive policies of a ruling class, the activity of criminal organizations works in favour of this kind of regime, since this activity ensures that these policies function in favour of an open collusion

between these organizations and the aforementioned elite (Acemoglu & Robinson, 2012).

For this reason, ruthlessly violent and predatory criminal organizations have become the major threat to democratic governance in Mexico, since they also prevent the complete exercise of civil liberties and political rights of individual citizens, organized civil society, and the opposition parties throughout electoral processes (Bergman & Whitehead, 2009). Even more, these organizations have become likewise the major molesters of human rights in Mexico, since they permanently commit horrendous and brutal murders, extortions, kidnappings and ruthless crimes in several municipalities across this country (Flores Pérez, 2009).

On the other hand, another crucial task in the agenda to improve democratic governance in Mexico, consists on transforming the oligopolistic configuration of its mass media ownership, which promotes a ‘propaganda’ perspective of the Mexican public sphere rather than a ‘forum’ approach to the opinion-making process (Lawson, 2002).

Due to this kind of configuration, it has become difficult to consolidate a more plural, critical and inclusive broadcast and print media in Mexico, which could question more competently the official discourse and prompt deeper reflection, more responsibility and much more maturity of citizens at exercising their civil liberties and political rights (Lawson, 2002).

### **Conclusions**

Democratic governance in Mexico is experiencing serious challenges during present pandemic times; as time goes by, arbitrariness and top-down decision-making processes increase, which effectively provide a semi-authoritarian style to the contemporary Mexican political regime. Furthermore, the constitutional system of ‘checks and balances’ between powers, levels of government, constitutional autonomous organizations and citizens, has reduced its efficacy in terms of

respecting, defending and protecting human, social, economic, cultural and political rights in this country.

Similarly, the attempt of the federal government of returning to a sort of mixed economic model, through which it effectively forbids economic competition in strategic industries of Mexico, such as the energy sector, could turn these industries into public monopolies. This possible regression could further the excessive concentration of economic powers within the present-day political establishment, which could jeopardize, in the long term, freedom, equality and democratic governance in Mexico.

Conversely, the present paper highlights expanding criminal organizations as the major threat to democratic governance and human, social, economic, political and cultural rights, as well as to the prosperity and peace of Mexico. Furthermore, the rule of law of the Mexican Constitutional State has been substantially debilitated in order to effectively protect and defend the human, social, economic, cultural and political rights of Mexicans against this kind of organizations. In other words, it experiences a structural frailty to apply the law, which is profited by these organizations and some officials in order to promote the *status quo* in this country.

Because of all this context, it seems that the best solution to overcome, not only organized crime, but all the trials that Mexico currently experiences for its democratic governance and political stability, is to improve the civic virtue of Mexican people, so that they might become more responsible, demanding and rigorous in their electoral and economic choices, and more strategic in their struggle against criminal organizations.

Indeed, Mexico requires more intelligence and strategy rather than more brutal force in order to defeat these organizations. It also needs the collaboration of the international community, of civil society, of state and local governments, of the banking sector, and of the national and international human rights organizations, so that their strategic unification can guarantee the triumph of the Mexican rule of law when neutralizing the activity of organized crime.

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