ELECTORAL SYSTEM AND RULE OF LAW*

I. Initial Remarks

Although the concept is much more complex, in general terms we understand the rule of law as the subject of the activity of the organs of power, legitimately established, to the norms approved in accordance with the provisions of the constitution. The sole consideration that the organs of power satisfied the conditions of a rule of law if they acted in accordance with the norm, is insufficient. This understanding led any authority to configure its own regulations and, when applying them, claimed to be complying with the principles of the rule of law. That is why Elías Díaz[1] affirmed that not every state is the rule of law.

It has been shown that formal compliance with any type of rule is not enough to establish the validity of the rule of law.[2] Hence, it has become necessary to introduce two additional ideas: the legitimacy of the organs of power, and the presence of an order constitutional. The concept of legitimacy, of course, exceeds the purposes of this work; we have addressed it at some length in another study;[3] for its part, the concept of constitution has occupied numerous writers, and although it would also require a very extensive development, in general terms it is understood as

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1 Estado de derecho y sociedad democrática, Madrid, Taurus, 1966

2 For example, León Cortiñas-Peláez, *De la fórmula trinitaria como fundamento del Estado democrático y social de derecho*, in press.

3 Valadés, Diego, *El control del poder*, Mexico, UNAM, 1998

a normative order that guarantees freedom, legal security, equality and equity, and that establishes the procedures for the access, exercise and control of power.

In accordance with the above, the doctrine and different constitutional systems have developed the principle of the social and democratic state of law, to avoid the possible distortions of a more restricted and formalistic statement. Today we can only speak of the rule of law in democratic systems; any other form of creation and application of law by a state organization cannot be considered as corresponding to the rule of law. In other words, there is no totalitarian or dictatorial rule of law, for example, no matter how much under conditions of totalitarianism or dictatorship there is a state apparatus and a rigorously applied normative corpus.

According to this understanding, the different aspects related to electoral systems acquire an important significance to establish the validity of the rule of law. This brief study will address some of those aspects that are still pending resolution in the Mexican constitutional system, and that are closely related to electoral issues.

II. Evolution of the Electoral System

In 1917 we began to travel a difficult and delayed path to build electoral democracy in Mexico. The ninth transitory article of the Constitution empowered "the citizen First Chief of the Constitutionalist Army" to issue the electoral law according to which the first federal elections of constitutional life were held. On February 6, even before the Constitution came into force, the electoral law was promulgated.

Article 26 of that law was key: the ballot containing the vote had to be delivered to the president of the polling station, with the voter's signature; if he did not know how to sign, then he would cast his vote verbally. It should be borne in mind that at

that time the illiteracy rate was close to eighty percent of the population. There began a series of practices that for decades distorted the electoral processes, and that also for a long time led to electoral struggles turning into armed contests.

The evolution of our electoral life is well known, and in a general way it can be said that the most significant sections of change began to occur with the 1977 reform, without this statement underestimating the profound importance that the reforms had at the time. 1953, which gave the vote to women, and 1963, which established party deputies.

The almost twenty-year period from 1977 to 1996 frames the gradual transformation of the Mexican electoral system and, therefore, the democratization of the country. However, some challenges remain. Democracy is pending consolidation, and this largely depends on the adoption of new decisions that are directly linked to the electoral system.

III. Democracy in parties

To make a democracy work, which is by nature a highly competitive political system, the convergent action of public institutions, political parties and citizens is required. Without it being possible to say that the chapter on institutions is resolved, because precisely we are heading towards an indispensable democratic reform of the state, what can be seen is that among the weakest points for the consolidation of Mexican democracy are the lack of culture politics, which affects citizens, and the vulnerability of political parties, which go through unequal processes of internal democratization.

The experience that Mexico lives has few differences with that accumulated by other countries. Some were able to resolve their conflicts and consolidated their democratic systems; others were shipwrecked in rhetoric and returned to authoritarianism. A relevant aspect to avoid regression has consisted in offering, in the constitutional sphere, space and guarantees to political par-

ties. Let us take five cases: Italy and Germany did it at the end of World War II, Portugal and Spain at the end of the dictatorship, and Greece when replacing the Monarchy.

The constitutionalization of political parties is a typical phenomenon of postwar constitutionalism. In Mexico, since the political reform of 1977, political parties have also been welcomed by the Constitution. But various constitutions are not satisfied with recognizing the right of citizens to join parties, and theirs to participate in the struggle for power. There are supreme norms that also establish guarantees for parties such as freedom of action and the rights to financing, publicity, and information. At the same time, constitutional norms have established responsibilities for political organizations, such as practicing democracy in the internal sphere.

Although talking about internal democracy in the parties should be redundant, it turns out that it is not. Sometimes there is the paradox that democracy is claimed with the participation of the parties while it is eluded in the functioning of the parties. To avoid the contrast between internal verticalism and external pluralism, which confuses citizens, various systems have incorporated the only possible solution: democracy within and outside the parties; democracy with and in the parties.

In 1947, Germany adopted a fundamental law, which is formally a constitution, which for the first time establishes the obligation of political parties to practice internal democracy. Literally, the supreme German norm says, in relation to political parties: "Their internal order must respond to the principles of democracy" (article 21, 1). It was understandable that the Germans adopted this formula; They came from suffering from a totalitarian system that had been made possible, among other causes, by a party characterized by despising freedom.

To support this precept of the German Constitution, the party law establishes that every two years, at least, party congresses must be held; that its leaders will be elected by secret ballot, and that the appointment of electoral candidates will also be made by

secret ballot. The results of the German legislation are in sight, with solid and democratic parties.

The German example has been making its way into contemporary constitutionalism, particularly in countries where it has been necessary to strengthen democracy. Opinions were divided in Italy. When the Constitution addressed the labor issue, it established that unions should be governed by "an internal regime founded on democratic principles" (article 39); But when he alluded to the parties, he settled for saying that they should act according to "democratic procedures." Since then (1947) it has been debated whether these procedures correspond only to the external sphere or also include the internal sphere of the parties. The results are in sight: the fascist party has re-emerged and characters like Silvio Berlusconi have been able to take over a party structure. The ambiguity is paid. Italy is a democracy, yes, but it is restless.

In Spain the criterion was more precise: the "internal structure and operation (of the parties) must be democratic" (article 6), and in Greece it is established that the organization and activity of the parties must correspond to the "operation of the regime democratic" (article 29, 1). These examples are multiplied in contemporary constitutionalism and denote the effort to prevent parties, indispensable instruments of democracy, from acting as spokesmen for the autocracy.

Regarding the democratic commitment of the parties, in Portugal it has gone even further. The Constitution provides that the parties must be informed "regularly and directly by the government about the progress of the main matters of public interest" (article 117, 3), and the Statute of the Right to Opposition also specifies that the parties have the right to "inform the President of the Republic and the government of their views on such matters". In the matter of information, the parties have the right to participate in the superintendency and control of the communication organs belonging to the state.

It is certainly debatable whether or not the legislator should regulate the internal life of the parties. It is a question of magnitude comparable to the problem of financing. This, of course, presents edges that make it especially sensitive, especially because through financial resources the parties can fall into networks of dominance or influence that distort their objectives.

One may wonder if financial transparency alone ensures fitness in the conduct of a party. One hundred years of experience in dozens of countries offer the same answer: no. And it is that the same process cannot be measured with different rods. Preaching democracy and practicing autocracy constitutes a contradiction that inhibits the citizen, that hinders the political culture and that distorts the functioning of the institutions.

There is no democracy possible without the presence of political parties. At the beginning of the 1970s, in Mexico there was intense pressure, mainly from the academic sphere, for the statute of political parties to be determined by the Constitution. The "constitutionalization" of the parties was finally adopted on the political reform of 1977.

By introducing the concept that "political parties are entities of public interest" (article 41), and establishing their rights, prerogatives and responsibilities, an indispensable step towards democracy was advanced in Mexico. For this reason, the ban that had weighed on the communist party was lifted, for example, which excluded from political life a current that at that time had a significant social force.

For a long time, the overriding concern was with party financing. After trying various modalities, this issue has been resolved in a more or less satisfactory way for the parties. Today the problems under discussion consist of the proper application of the precepts in force. Regardless of what happens in practice in terms of the way in which the parties' income is generated and in what way they spend it, this is an aspect that has been partially resolved by the electoral regulations in force.

However, it remains to address the problem of pre-campaigns. The Federal Code of Electoral Institutions and Procedures establishes limits for campaign expenses, but this in turn can only begin when the registration procedures have been carried out (article 190) which, in the case of presidential candidates, occurs between the 1st and January 15 of the year of the elections (article 177, e). What is spent before registration is legally out of control. This is a delicate lagoon. The political reality has exceeded the normative forecasts. The pre-campaigns that preceded the federal elections of July 2, 2000 were developed *de facto*, with no legal basis to regulate them and to allow monitoring of the origin of the resources and their application.

Mexican democracy has a weak flank, precisely because the Constitution has not provided that the internal life of the parties must be subject to democratic procedures. We have a vulnerable constitutional democracy, because the internal sphere of the life of the parties is subtracted from the principles of democracy. That is why it can be said that today we need a democracy without exceptions: democracy in society and democracy in the parties that citizens freely integrate. Democracy cannot be left to the discretion of the parties, so that they adhere or not to it, according to their exclusive decision at each moment.

Internal democracy in parties concerns the selection of their candidates and the appointment of their leaders. The parties, the centerpiece of democratic systems, are exposed to the effects of the concentration of power in a few hands. This oligarchic phenomenon, which from the beginning of the century was identified as the "iron law" of the parties by Robert Michels,[4] has produced an adverse distortion of constitutional democracy. The concentration of power within the parties is incompatible with the political pluralism that those same parties seek to promote within society. The phenomenon supposes a contradiction that affects public confidence in the parties and negatively influences

[4] *Los partidos políticos*, Buenos Aires, Amorrortu, 1983.

the election of national leaders. There are no oligarchic democracies.

The risks posed by democratic limitations within the parties must be overcome through various measures, including adequate constitutional regulation. This is not the only option; another very important one is the reelection of legislators, which in systems where there is a majority election allows partially offsetting the excesses of power of party leaders. In any case, it is possible to underline the importance of internal democracy in the parties as a condition for consolidating democracy in society.

In the same way that the German constituents did first and then the Spanish, they have proceeded in various countries of our hemisphere. The 1994 Argentine Constitution "guarantees the democratic organization and functioning" of the parties and "the competence for the nomination of candidates" (article 38); the Costa Rican, reformed in 1989, provides that "the internal structure and functioning" of the parties "must be democratic" (article 98); the Chilean one of 1980 establishes that the statutes of the parties "must contemplate the norms that ensure an effective internal democracy" (article 19, 15); the Salvadoran, reformed in 1996, is even more emphatic and determines that "the norms, organization and functioning" of the parties "shall be subject to the principles of representative democracy" (article 85); the 1992 Paraguayan law provides that "the law will regulate the constitution and functioning of political parties and movements, in order to ensure their democratic character" article 125); the Uruguayan, reformed in 1996, establishes: "The State shall ensure that the parties have the widest freedom. Notwithstanding this, the parties must effectively exercise internal democracy in the election of their authorities" (article 78), and that of Venezuela requires that the candidacies and leadership positions of the parties be decided in internal elections (article 67).

The life of the institutions does not imply the cancellation of leadership; but it does claim that its operation is not at the ex-

pense of strictly personal decisions. Balance is an indispensable condition for an adequate organization and functioning of the political instruments that society has. It is necessary to allow the expression of social leaders to flow freely, but it is also important that their activity is not carried out at the expense of the democratic order. Democracy is compatible with the presence of leaders capable of influencing citizen activity; what is not reasonable is that in the same society there are two levels of social organization: one democratic and the other non-democratic. In other words, democracy does not admit zones of exception.

The political parties have the responsibility of generating the conditions that allow their consolidation. Failure to do so runs enormous risks. They risk losing public trust, thereby weakening the very basis of democracy, but also losing control of their own destiny. If the Mexican constitutional order does not guarantee that the parties will adopt democratic procedures in their internal organization and activity, the various political organizations will remain exposed to playing an instrumental role in decisions made outside of them, or within them but by power groups that administer your own ambitions. While this occurs, democracy will not be able to consolidate itself, to the detriment of the rule of law, because exclusive political phenomena cannot coexist in the same society: some of a democratic nature and others alien to it.

IV. Rights of the Opposition

As of 1977, the rights of political parties have a constitutional nature in Mexico. Thus culminated a slow process initiated by Francisco I. Madero with the electoral law of 1911. Progressively, the rights —and to some extent the obligations— of the parties have been expanded. However, we are far from having consolidated the party system that a democracy that faces risks and challenges requires.

The problems posed by the parties are very numerous. From 1738 Bolingbroke pointed out[5] the risks of political fracture that the parties represented. In 1911 Robert Michels[6] identified the oligarchic nature of any organization ("the organization is what gives rise to the domination of the elected over the electors, of the leaders over the constituents, of the delegates over the delegates. Who says organization says oligarchy") and formulated his well-known "iron law" of the parties.[7] The conviction that this oligarchy would end up destroying the possibilities of democracy led Michels, over time, to abandon his socialist and democratic theses and justify Mussolini. On his part, Max Weber[8] warned, from 1918, that the financing of political parties presented problems that had to be addressed.

On the other hand, it has been argued regarding the relevance of parties to democracy. Hans Kelsen, in 1920, categorically stated that "modern democracy rests on political parties".[9] In the third decade of the 20th century, the concept of "Party State" arose in Germany, which in 1930 Gustav Radbruch justified by pointing out that it is the form of the democratic state of our time. Radbruch's militancy in the socialist party from 1919 and his participation in Parliament,[10] explain his affirmation in the sense that "without the organizational mediation of the parties between individuals and the totality, the formation of an

5 Bolingbroke, vizconde de, "The Idea of a Patriot King", *The Works of Lord Bolingbroke*, Filadelfia, Carey and Hart, 1841.

6 *Los partidos políticos*, *cit*., note 4.

7 *Ibidem*, p. 55.

8 "Parlamento y gobierno en una Alemania reorganizada. Una crítica política de la burocracia y de los partidos", *Escritos políticos*, Madrid, Alianza, 1991.

9 Kelsen, Hans, *Esencia y valor de la democracia*, México, Editora Nacional, 1974, p. 35.

10 Martínez Bretones, Ma. Virginia, *Gustav Radbruch. Vida y obra*, Mexico, UNAM, Institute of Legal Research, 1989, pp. 54 et seq.

opinion and collective will would be impossible". Following this thesis, years later García-Pelayo assured,[11] in turn, that

> ...the democratic state must be configured as a state of parties, because only these can provide the state system with the inputs capable of configuring it democratically, such as the electoral mobilization of the population, the ascent to the state of the parties. Political orientations and social demands duly systematized to provide both the corresponding programs of political action, as well as the people destined to be holders or bearers of state political bodies.

Numerous studies have shown the serious problems posed by political parties for the development of public institutions. Since the second postwar period, the expression "partycracy" was coined to denote the distortion of the role of the parties and the corruption phenomena in public life, generated by the parties, which have negative effects on institutional functioning.[12] However, this relationship between parties and the representative system is beyond doubt, and when instruments are adopted that attenuate the weight of the parties in institutional life, such as the popular initiative, the legislative referendum, the plebiscite, the revocation and the independent candidacies, the effects adverse to the parties are projected equally on the congresses. That is why it is important to identify the new mechanisms that make it possible to reduce the concentration of power by the majority or coalition parties, that do not affect the representative system and that even strengthen it.

In this sense, the constitutional provisions that guarantee the opposition's own rights represent a way of consolidating democracy and avoiding the "monopoly" of political information by a single party or a coalition. Hoarding information is an exclusive

[11] García-Pelayo, Manuel, *El Estado de partidos*, Madrid, Alianza, 1986, p. 85.

[12] Vergottini, Giuseppe de, *Diritto costituzionale*, Milán, CEDAM, 2001, p. 310.

and discriminatory attitude that encourages political intolerance. The conditions of political competition between the parties are unequal if the lack of political information is added to the disproportion of financial resources and access to the media, which results from their electoral position.

The first constitutional system that introduced corrections in this matter was the Portuguese one. The 1977 Constitution provides (article 117) that minorities have the right "to democratic opposition in accordance with the Constitution", and especially that parties represented in the Assembly of the Republic that are not part of the government, enjoy the right to be informed directly and on a regular basis by the government about "the progress of the main matters of public interest." This provision, which establishes specific rights for the opposition, also found acceptance in the Constitutions of Colombia (1991) and Ecuador (1998). Ecuador's law establishes (article 117) that political parties and movements that do not participate in the government enjoy "full guarantees to exercise, within the Constitution and the law, a critical opposition". For its part, that of Colombia (article 112) contains a broad opposition statute: in addition to the parties, political movements that do not participate in the government are also recognized the right to "freely exercise a critical function vis-à-vis the government and raise and develop political alternatives". For these purposes, access to official information and documentation is guaranteed; the use of the state media, and the right of reply in those same media "in the face of serious and obvious misrepresentations or public attacks by high official officials." Finally, these parties and movements have the right to participate in the electoral bodies and in the boards of directors of the collegiate bodies of which they form part.

Without going into the analysis of these precepts, some of which present serious problems of interpretation, as in the case of the "serious and obvious misrepresentations" referred to in the Colombian Constitution, what is interesting to underline is the incipient process of explicitly recognizing rights specific to

the opposition in the constitutional sphere, as a way of extending the guarantees for the fundamental rights of liberty and equality. The most important problem that the Colombian Constitution presents is that it refers to access to information by the opposition, but it does not indicate the government's obligation to offer that information in a periodic and systematic way. This is a considerable difference in relation to the Portuguese Constitution, because in its terms the government must report regularly and on all aspects of its activity, while the Colombian law leaves open the possibility that the government only inform the opposition when required by it, and in relation to the matter on which information is requested. In these terms, it would not be going beyond what anyone could demand, in accordance with the right of access to information.

A democratic constitutional system cannot favor the concentration of political information. Restricting, limiting, or hoarding political information is a way of affecting the exercise of public freedoms and, therefore, can be considered as a form of intolerance. Using information as an instrument of domination damages one of the bases of pluralism and damages the functioning of democratic constitutional institutions. As parties are public interest entities, no differences can be established between them other than those resulting from citizen decisions. If the dangers of parties manipulating voters through multiple propaganda strategies have been warned, this risk increases to the extent that some parties have information that others do not know.

V. Pluralism and the Presidential System

With the registration of new political parties before the 2000 elections, eleven participated in the electoral process of that year. It was a test of the political vitality of the country, but it will be necessary to ask if the current organization and operation of the institutions will allow to channel that energy.

When Venustiano Carranza inaugurated the sessions of the Constituent Congress of Querétaro, on December 1st 1916, he recognized that Mexico lacked political parties and that, as a consequence, a "strong Executive" should be chosen. The work of Congress, which culminated in the approval of our current Constitution, ratified that criterion of the first chief. Thus, the legal bases of our presidential system were consolidated.

Every constitution is, at the same time, a normative expression, and a cultural product.[13] In the case of ours, both the norm and the environment have contributed to developing a very powerful presidential system. Beyond what is prescribed by the Querétaro text, what Jorge Carpizo rightly calls the "meta-constitutional powers" of the presidents have been developed.[14] This means that, in addition to what the norm establishes, the presidential institution has extended its powers. This breadth is what the social and cultural environment allows and even supports. Formed in a paternalistic tradition, and with centuries of living in submission, it was not alien to our behavior patterns to accept a vigorous and uncontested authority. In addition, other factors contributed, from our first years of independent life, to forge what would be the essence of Mexican presidentialism. The first heads of government, with few exceptions, were formed on the battlefields; first in the war of independence and then in the successive riots that fill the pages of our nineteenth-century history.

Civil power in Mexico also had to consolidate itself against that exercised by the Catholic Church, and national power had to do so in the face of threats, several times carried out, of foreign invasions. Finally, another element appeared: voluntarism. Everything could be solved, it was thought, by acts of individual will. It was enough to elaborate norms that translated the determination to be free and fair, to achieve it.

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13 Cf. Häberle, Peter, *Retos actuales del Estado constitucional*, Oñate, IVAP, 1996.

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

With that baggage we arrive at 1917, and to 2000. Today, expressions of political voluntarism continue to be very frequent. They are surprising not so much for their anachronism, as for their naivety. It is still assumed that the key to social, moral, and even political changes is only in the modification of laws or in the adoption of new ones. It is not realized that the real changes must be accompanied by modifications in individual and social behaviors.

Changes in the norm that do not translate into social behavior produce disenchantment and skepticism; changes in behavior that do not have normative support create the impression of disorder and even anarchy. Hence, the reconstruction of our institutions, so battered today, requires changes in norms and behaviors at the same time.

In the case of the new party system and the old presidential system, we find two opposing realities. On the one hand, a strong pull towards democratic consolidation based on the plurality of political agents acting freely; on the other, a tendency towards the concentration of power, which does not depend on the intentions of whoever holds the presidency but on the structure of that power itself. The panorama posed by Carranza, which compensated for the lack of political formations with the robustness of the presidential institution, is no longer present. However, the precepts that resulted from that Carranza perspective remain. The Constitution provides that "the Legislative Power of the United Mexican States is deposited in a Congress...", and that "the exercise of the Judicial Power of the Federation is deposited in a Supreme Court of Justice, in an Electoral Court, in Tribunals Collegiate and Unitary Circuit, in District Courts, and in a Council of the Judiciary ", while on the other hand it determines: *"the Supreme Executive Power of the Union is deposited in a single individual..."*.

It cannot be seen as inconsequential that the Constitution refers to the executive as "supreme power." Words are made to mean what they say, and "supreme" is "that which has no supe-

rior." Note that within the Judicial, the Court is "Supreme" in its relationship with the other constituent organs of that power; but among the three powers, the executive is the only one qualified as supreme, in this case in relation to the other two powers.

Semantic disquisitions aside, there is a central fact: there is a power of the state that resides, completely, in a single person. If no president has said it, he could well do it, and with constitutional grounds: "I am the power." This concept of the power deposited in a single individual comes from the North American Constitution of 1787. But there is a great difference: although in practice the president of the United States is chosen by most citizens, in the constitutional order he is still elected according to indirect way. It is not, therefore, a plebiscite system like the Mexican one.

The archaic Mexican system of plebiscitary president and sole depositary of power is only followed, in Latin America, at present, by the Constitutions of Nicaragua, Paraguay and the Dominican Republic. In Argentina and Peru, the constitutional norm that makes the president the sole depositary of the executive power also subsists, but in the constitutions of both countries the presence of a cabinet with constitutional powers and headed by a chief minister is established.

An intermediate position, of transition, is the one that characterizes Colombia, Chile, Ecuador and Honduras, where despite the fact that the executive power is deposited in the president, specific functions are assigned to the cabinet and the responsibility of the ministers before the Congress is recognized.

The mainstream is represented by Bolivia, Brazil, Costa Rica, El Salvador, Guatemala, Panama, Uruguay, and Venezuela (although in this case they have been adapted to the Mexican formula, more akin to the authoritarian manifestations of President Hugo Chávez). In the constitutional systems of these countries the executive power is deposited in the president and the cabinet; it therefore has a collective nature consistent with the plural order of a democracy.

In this context, the idea, latent in Mexico, that the president of the republic is elected through an electoral procedure that admits a second round, when in the first no one has obtained a certain majority, must be analyzed. It is known that second-round systems favor the fragmentation of the electorate, give rise to false majorities, and generate imbalances between the apparent majority that supports the election of a president and the composition of congress. But, in addition to these aspects, there is another that should not be overlooked: in presidential systems, the second round strengthens the figure of the president and accentuates his plebiscite traits.

The plebiscitary presidential system did not emerge in the United States but in France, in 1851, with Luis Bonaparte. In the United States, good care was taken not to build a figure that would add a significant number of constitutional powers to a high degree of political power. That is why a different way of electing the president (indirect election) and the members of Congress (direct election) was established. The arguments put forward[15] were oriented precisely in the sense of preventing presidential excesses, electoral corruption, and violence on the occasion of the election of the president. Such was the accumulation of powers attributed to it that it was not considered prudent to invest it, in addition, with the popular power that would result from a direct popular election.

Louis Napoleon would follow another course. To reach the presidency he used the plebiscite route and introduced a new meaning to the presidential system. His statement "I have abandoned legality to return to law",[16] is an expression that reveals the extent to which plebiscitary presidentialism constitutes a risk to the rule of law.

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[15] For example, James Wilson, Philadelphia, October 6 and December 11, 1787; Noah Webster, October 17, 1787, in *The Debate on the Constitution*, Washington, The Library of America, 1993.

[16] Bluche, Fréderic, *Le prince, le peuple et le Droit,* Paris, PUF, 2000.

VI. Interregnum

Some years ago, the expression "interregnum" was widely used in Mexico to mean the period between the election of a president and the protest of the office. The locution is strictly conventional and is taken in the institutions of Roman law at the time of the Monarchy.

The first Roman monarchs were appointed, for life, by the Senate. When the lack of king occurred, and until the election of the new monarch was made, the Senate appointed a magistrate called inter rex, whose functions lasted five days; there were as many as necessary, while the vacancy was permanently filled. The inter rex was, therefore, a precarious manager of power.

In modern European monarchies "interregnum" was called the period in which the "sovereign" was missing, and the term was even extrapolated to speak of "parliamentary interregnum", alluding to the recess of Parliament.

Among us, this idea became effective in the time between the nationalization of the bank, on September 1st, 1982, and the 1st the following December, when a new president took office. During that period there was the circumstance of a president who ended his term and that, due to the way the Mexican political system worked, no longer had full power, and of another who, because he was just an elected president, still did not have any power. The devastating effects on the economy are accurately remembered.

Plato (the politician) saw the linking of the cycles that end with those that begin with clarity, and to explain it, he used it, as he used to make a phenomenon more understandable, the myth of the inversion of the cycles. According to this myth, the universe rotates alternately in opposite directions, and the most difficult moment occurs precisely when one cycle is exhausted and the next is about to begin, in the opposite direction. According to this perspective, there would be a moment of paralysis, just

when the direction of the movement is going to reverse. What he calls "the collision of the contrary impulses of movement" takes place, with a wide series of consequences. The most spectacular that Plato identifies is the appearance of the "sons of the earth": times are reversed, the elderly become young, the young children, the children disappear, and the dead are reborn.

Although numerous theses have been grounded in this myth on a theory of historical cycles that lacks scientific basis, what Plato intended was simply to show that movement does not stop; that it changes direction and that not everything new is necessarily unpublished. Change is necessary and inevitable, according to this approach. The problem is that the change, read as this reversal of the cycles, generates disorders. The fantastic example is fully applicable to the period known as "interregnum" in Mexican politics.

The stages of transit between one government and another have caused, to varying degrees, a lack of certainty regarding economic and domestic policy decisions. Until now, the most critical moment has been the one produced in 1982. That is why the idea of "shortening the interregnum" arose then, and the president presented an initiative of constitutional reforms that were adopted in 1986. The most important of these reforms consisted in the fact that federal elections would be held in August, instead of July, and the regular session of Congress would begin on the 1st of November.

Thus, between the election of the president and his inauguration, only a little more than three months would elapse, instead of almost five when the elections were held in July. It was not possible to further reduce that period, because the self-qualification system for the deputies' elections subsisted, and the Chamber of Deputies continued to be the electoral college that qualified the presidential election.

The election qualification system progressed until reaching the current situation, of heteroqualification, in charge of specialized organizations (Federal Electoral Institute and Federal Elec-

toral Tribunal), with which, in addition to having better guarantees of impartiality, procedures are available faster to know the final results of the elections. However, through an inconvenient constitutional reform of 1993, the elections returned to July and the installation of Congress to the first day of September.

In the future, this situation will have to be corrected, which periodically generates an adverse tension to legal security that, in accordance with the principles of the rule of law, must characterize all acts of public power. The possibility of foreseeing the decisions of power, insofar as they are based on normative provisions, is affected to the extent that factors of indeterminacy are introduced that last longer than is usual in democratic systems.

Due to changes in government, all systems undergo adjustments. The prospect that some of the "rules of the game" are subject to modification due to the adoption of new political plans and programs generates situations of relative uncertainty. This is a common phenomenon in all democracies, but the important thing is that the effects can be absorbed by an institutional complex that allows doubts to be channeled without causing tension.

The problem is accentuated when the institutions themselves have a limited response capacity. It is true that there is no univocal concept of the term "institution". For some it is an organization that has an indefinite duration; for others it is a set of procedures practiced in a general and lasting way; some more understand it as forms of conduct adopted by a community that endure independently of the will of each of its members. But regardless of the content attributed to the institutions, they include the different organs of power.

Democratic changes always involve changes in the way of exercising power; but on some occasions they also include the transformation of the very organs of power. As for the first case, the exercise of power is subject to the known and current rules; in the second, what is proposed is precisely the adoption of new rules. Excessively prolonging the uncertainty about the direction that these definitions will take alters the behavior of social agents

and makes the behavior of power unpredictable for some time. This does not strengthen the rule of law. Hence, the problem that arises in Mexico of a very long "interregnum" must be solved by adjusting the federal electoral periods.

VII. Final Remarks

Even though the bases of the electoral system have undergone a Copernican turn from those that were elaborated as a result of the Constitution of 1917, and despite the fact that there are already reliable electoral processes in Mexico that ensure the democratic legitimacy of the heads of the organs of the power, there are still aspects that must be addressed as a condition for the social and democratic state of law to prevail.

Internal democracy in political parties, the recognition of the rights of the opposition, the limitation of plebiscitary presidentialism and the reduction of the period of uncertainty that elapses between the presidential election and the inauguration of the president, are some aspects that should be considered. The study of comparative law allows us to notice the tendencies that have been registered in this sense, and that are gradually acquiring a diffusion.

The rule of law requires permanent adjustments in the functioning of the institutions. Of course, what has been proposed here is only one part of the many changes that the Mexican constitutional system requires. Like any normative order, it will always need adjustments that make it permanently functional. Keeping it unchanged is transforming previous successes into future problems.