IX. STRUCTURAL INEQUALITY

1. *Equality as Discourse and as Reality*

The French Revolution had as its motto: "Liberty, equality, fraternity".[67] Among the sources from which the revolutionaries drew their inspiration was the *Encyclopédie*,[68] whose term *natural equality* was developed by Louis de Jaucourt, a physician and humanist, and one of the most prolific contributors to the work. Jaucourt defined it as "that which exists among all men, [as] the principle and foundation of liberty".[69] He admitted that absolute equality is a chimera, proper to an ideal republic, for even in a free and equal society, distinctions and recognitions are acceptable, as well as relations of supremacy and subordination within governments. However, he was emphatically against slavery and servitude.

Compared to freedom, equality has had a less fortunate history. From ancient to modern societies there have been forms of inequality whose most acute expressions are based on cultural, economic, national, racial, religious, health, sexual, political, and social factors. In the long formation of constitutionalism, the invocation of equality is a constant, but in the reality

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67 Article 1 of the Declaration of the Rights of Man and of the Citizen of 1789 states: "Men are born and remain free and equal in rights".

68 The volume in which the voice appears was published in 1755, and begins with a eulogy to Montesquieu, who died in February of that year. It is an extensive essay in which Diderot offers a summary of the main theses of *The Spirit of Law (*1748). In it he stresses that the principle of democracy "is love for the Republic, that is to say, for equality". *Encyclopédie*, Paris, Braisson, 1755, t. V, p. ix.

69 *Ibidem*, p. 415.

of the States it is still a goal to be achieved. Many of the goals have been achieved, but there are cases of inequality that have hardly been attenuated. In reviewing the situation of the most developed systems, it is possible to identify the persistence of phenomena related to inequality. The outlawing of discriminatory practices is underway as one of the fundamental aspirations regarding fundamental rights, although its reiteration denotes that the appropriate means have not yet been found to achieve the objectives pursued for centuries.

The COVID-19 pandemic highlighted the weaknesses of systems in terms of equality. Regardless of the records that can be made about the multiple forms of inequality, there are indications that in Mexico and in many other countries there are still structural elements that encourage or do not effectively prevent discrimination.

The historical struggle for equality is epic in its intensity, but it is accompanied by the discourse of opportunism that appears to reject inequality as a kind of compromise with third parties or a generous concession that lends prestige, and the potentially discriminated-against are given some instruments to exercise their defense. These instruments, however, are hardly used on the periphery of power. Many demands are accepted because of the vigor shown by those who make them, and sometimes demands are accepted because of their political profitability. However, there are cases in which there is no compromise even though perpetuating inequality means prolonging the suffering of many people and undermining one of the principles of constitutionalism. This happens, for example, with the situation in which women are kept from fully exercising their sexual and reproductive rights, and with various categories of sick people, who are denied the right to dispose of their lives in reasonable conditions.

The health crisis showed that obstacles to equality remain. In the case of Mexico, the inequality suffered by families in overcrowded conditions, often without income; women exposed to domestic violence; workers without income options in the face

of unemployment; students without adequate technological resources; the sick without sufficient care; the general population without guidance or accurate and reliable information in the face of uncertainty, was accentuated. This shows that there is a lack of institutional means to enforce equality in the face of power.

Structural inequality is that which results from the predictable functioning of institutions with design errors, from constitutional antinomies, or from insufficient procedures to make norm and normality converge.

2. *Economic Power*

One of the axes of power lies in the way public resources are disposed of. The concentration of powers translates into a monopoly of those resources, and this generates structural inequality.

Constitutionalism implied transforming the tributary into a mandatary. In the ancient state the holders of political power were owners of land and the product of labor. For as long as there has been a record of organized coercive power, the primary means of sustaining the rulers and their fighting forces has been taxation, the various forms of which gradually expanded. In the Middle Ages the revenues of the crown included the proceeds of its estates, which were increased by expropriation or by inheritance without a will or without right; by land rent; by rights, including the right of access to justice; by fines, often arbitrary; by forced contributions; and by various sources of taxation applied in a discretionary manner. Without taxation nothing would have been possible for the State, and for centuries the decision of how much, how and whom to make pay was exclusive to the rulers.

Although there are other precedents, the emblematic moment of change in England in 1215, when King John was forced to agree with his barons on the Magna Carta, is considered to be the emblematic moment. The century had begun with economic

prosperity and growth of the urban population,[70] and the nonconformity grew before the outrages to the patrimony. The Charter had the peculiarity of being an agreed instrument in which it was established that there would no longer be unjust fines, and those that were applied would be proportional to the imputed damage, without depriving the sanctioned of their means of production.[71] In taxation a germinal measure of the representative system was adopted. Clause 14 provided: "To obtain the general consent of the realm for the establishment of a tax [«relief», «aid»][72] we [the monarch] shall summon in writing the archbishops, bishops, abbots, nobles, and great barons to attend [the relevant meeting]". This was the beginning of a new tributary legitimacy based on the consent of the causers that, after a few centuries, would be transferred exclusively to the commons.

The tax authorization was progressively extended to other European areas, but the custom of the monarchs to determine at their discretion the destination of the funds collected remained in force, generating waste, sumptuary excesses, and corruption. England was once again the scene of the next step. The monarchs had ignored the spending allotments attempted by Parliament[73] and it was not until 1689, on the Glorious Revolution, when the *Bill of Rights* established that the use of the proceeds should be strictly subject to what Parliament approved. Since the Accord of the People (1647) it had been established that representatives were only inferior to the people who elected them.

There remained one outstanding issue: the corroboration that the government complied with what the representatives had or-

70 *Cf.* Poole, A. L., *Doomsday Book to Magna Carta, 1087-1216*, Oxford, Clarendon Press, 1987, p. 419.

71 Clauses 20 and 21. "Fines" were a source of arbitrarily obtained revenue. They were usually enforced "to preserve the king's love" or to "appease the king's wrath", as the case may be. *Cf.* Poole, *op. cit.* p. 420 *et seq*.

72 The word used was *auxilia*, "help". The word *tax* came into use a century later.

73 Hallam, William, *The Constitutional History of England*, N. York, Widdleton, 1972, t. III, pp. 86 *et seq*. and 116 *et seq*.

dered. This problem found an answer in Article 15 of the French Declaration of 1789, which stated that "society has the right to demand an account of every public agent and his administration", followed by the first revolutionary Constitution (1791), which gave the legislature a third function in relation to public resources: to make the government publicly accountable for what it had spent.[74] After six centuries, the cycle of public money was complete: the power to define revenue and authorize expenditure was transferred from monarchs to national representatives, who also audited it.

When Mexico began its constitutional journey, the rules for the collection, application and control of public money were already well explored. Nevertheless, almost two hundred years after the Constitution of 1824, the first of independence, the management of resources has more similarities with the uses of absolute monarchies than with the standards of constitutional democracies. With an aggravating factor: we already had better times, because during the first decades of the Constitution of 1917, governments requested the Chamber of Deputies the adjustments they required in the budget of expenditures, and presented to both chambers, with punctuality, the results of the public account. This was changed by a regressive constitutional reform, secondary laws, and derogatory practices of the supreme norm. Some years ago, a restrictive interpretation of Article 74-VI led to the Public Account only being "reviewed" by a Commission of the House, to determine if the budgetary "criteria" were observed and the "objectives contained in the programs" were fulfilled. When the House stopped debating the public account in plenary, the impunity of the administrators of public resources increased and corruption multiplied. The fate of the nation's treasury assets was subtracted from public debate and became a confidential issue.

The Federal Budget and Fiscal Responsibility Law (1976) empowered the President of the Republic to make adjustments

74 Ch. III, sect. 1, art. 1.

to the budget of up to 5% of its amount.[75] It also provides that the budget only establishes "general guidelines" and that spending is carried out by the government according to "criteria" such as efficiency, effectiveness, economy, rationality and austerity.[76] In other words, far from consolidating the powers of the nation's representatives, vague language was adopted that strengthened the government's discretion as to the destination of the funds contributed by the taxpayers.

Since, according to the Constitution, the budget of expenditures is an administrative act of the Chamber of Deputies, and not an act of Congress, governments have tended to understand it as a simple spending authorization and, according to a law adopted at the zenith of party hegemony,[77] the effects of the concentration of power are still present to the detriment of the representative system. The effect of this situation translates into political inequality. Unlike mature representative systems, the Mexican system continues to adhere to outdated constitutional forms.

The institutions that emerged from the Glorious and French revolutions took time to consolidate. This is understandable, because of the resistance to such changes. Even England failed to understand the magnitude of its own contribution and did not apply an equal criterion in relation to its colonists on the American continent. This was one of the factors that triggered the independence of its thirteen American colonies, which refused to pay taxes because they lacked representatives to approve them.[78] These and other lessons were learned and today it is normal for parliaments and congresses to approve budgets and ensure that governments comply with them in a timely manner.

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75 Articles 19, 20, 21, 57 and 58.

76 Articles 1 and 42.

77 In the federal elections of 1976, the year in which the Budget Law was passed, there was only one candidate for the presidency of the Republic.

78 The expression "no taxation without representation" was one of the slogans used by the "independentistas".

Mexico has followed an oscillating line in this matter. An 1881 amendment to the Constitution assigned only to the Chamber of Deputies the power to "examine the account to be submitted annually by the Executive". In 1917, on the other hand, this attribution fell to both chambers of Congress. Section XXX of article 73 was emphatic. The powers were given: "To examine the account to be submitted annually by the Executive Branch, and such examination should include not only the conformity of the items spent by the Budget of Expenditures, but also the accuracy and justification of such items". As it can be seen, it insisted on the *conformity*, *accuracy*, and *justification* of what was spent. This was modified in 1977, in the context of the political reform, to adopt a less precise formula than the one in force until then. Once again it was left as the exclusive power of the deputies, in the manner promoted by Porfirio Díaz in the 19th century. Today, it is still in force among us a scheme typical of monarchical absolutism.

By limiting the powers of the nation's representatives in the use of public money, a situation of structural inequality is perpetuated. The regressive reform of 1977 and the unconstitutional practices adopted by the Chamber of Deputies regarding the public account must be rectified, and the unconstitutional powers granted to the President of the Republic by the Budget Law must be repealed. In addition, it is necessary to transform the budget from an administrative spending authorization into a law, so that any modification requires the participation of Congress. When this point is reached, the goals of democratic constitutionalism regarding the management of public finances will have been achieved.

In a direction opposite to that objective, in the midst of the health crisis, a presidential initiative proposed extending its budget modification powers to cases of a so-called "economic emergency".[79] The proposed additions to the Budget Law refer

[79] Initiative with draft decree adding various provisions of the Federal Budget and Fiscal Responsibility Law, *Gaceta Parlamentaria*, April 23, 2020.

to health emergencies, which have a constitutional basis in Article 73-XVI; but the concept of *economic emergency* that was included contravenes the provisions of Article 29 of the Constitution, which regulates the hypothesis of states of exception, the declaration of which is exclusive to Congress.

The presidential initiative did not clarify what would be the causes for decreeing the economic emergency, nor its duration; nor even who would declare it and how, although according to the misleading wording of the proposal it could be the Secretary of Finance, which would not be subject to any control. In addition, the proposed addition of Article 21 Ter indicates that the Secretary "may redirect resources allocated in the budget to maintain the execution of priority projects and actions of the Federal Public Administration and promote the country's economic activity, attend to health emergencies and programs for the benefit of society". This wording is so open that adopting it would mean the possibility of modifying the entire budget, annulling the provisions adopted by the Chamber of Deputies and accentuating the conditions of political inequality in the country.

The measures were proposed during the health crisis with the apparent purpose of having legal instruments to deal with other similar contingencies. However, they are drafted in terms that exceed those of an emergency and, as mentioned above, directly contravene the provisions of the Constitution for this type of circumstance.

3. *Federalism and Inequality*

The Mexican federal system is another cause of political and legal inequality. In this case, the inequality that affects people occurs in two ways: individual inequality and collective inequality. Both were exacerbated by the COVID-19 pandemic.

Individual inequality affects specific human rights. For example, women residing in Mexico City have better sexual and

reproductive rights than women in the rest of the country. In Mexico City, they are entitled to terminate a pregnancy without penalty during the first twelve weeks of pregnancy, while in the states the penalty varies, with a minimum of 3 years in prison and a maximum of 30 years since according to some local laws, abortion can be equated to aggravated homicide.

Such a federal system implies an antinomy within the Constitution itself. By allowing the same conduct to be permitted in one part of the national territory and sanctioned in very different ways in others, the assumptions of equality established by article 1 of the Constitution are contradicted. Even though the final paragraph of this precept is categorical and would seem to exhaust the prohibition of all possible discriminatory conduct, it leaves in force discrimination on territorial grounds, since in criminal matters there are thirty-two different regimes.

The domestic confinement required to cushion the effects of the pandemic produced effects in terms of the multiplication of domestic violence, to the detriment of women and minors. This phenomenon, whose seriousness was minimized by the political discourse, is one more of the consequences of a heterodox national policy and penal norms as unequal as those in force in the states of the Federation.

The limitations on local authorities resulting from the constitutional design have an impact on all citizens in each state. Living conditions, and in a very sensitive way health conditions, suffer from this scheme of limitations. In general terms, the structural inequality of Mexican federalism has repercussions in the following aspects:

Weakness of the local representative system. Some concentration of legislative powers is understandable to give coherence to a multiplicity of issues on which the legal equality of individuals and national cohesion depend. Any concentration should be done with the utmost caution because if it is excessive, it affects the suitability of local political representation bodies, and favors the hegemony of governmental power to the detriment of the governed.

In other words, the equality that is sought on the one hand is lost on the other.

Article 124 of the Constitution determines that what is not expressly attributed to the Federation is reserved to the federative entities. In this regard, in 1917, Article 73 had 31 sections. Over the years, 27 more have been added, almost as many as the original number. Even accepting that all these additions are justified for environmental, cultural, economic, legal, political, and social reasons, it is clear that they have reduced the scope of action possible for local legislators. In exchange for restricting their legislative sphere, they have not been endowed with instruments of orientation or political control over the state apparatus of government, so that in the states the asymmetry of power is extreme, to the benefit of caciquism and to the detriment of the freedoms, security, and equality of the governed.

In the states, governors embody, at scale, an exacerbated presidentialism that fosters corruption and arbitrariness because they lack effective democratic counterweights. When phenomena as devastating as an epidemic occur, the lack of effective representative bodies leaves the interests of the governed defenseless, at the mercy of the decisions, right or wrong, of their rulers.

Weakness of the local judicial system. Regardless of the progressive preparation and the prevailing honesty of most of the local judges, the constitutional design that subjects their decisions to the federal judiciary weighs on them. The amparo, known as direct appeal, arose to prevent the caciques from stifling the judges to the detriment of those who would be subject to justice. While, far from democratizing local political power, its concentration in the hands of governors has been reinforced, the intrinsic weakness of local justice continues to be a source of institutional asymmetry that also affects citizen equality since few have the resources to meet the professional costs of litigating in local and federal courts.

This lack of access to justice was accentuated by the pandemic. Citizens lacked the jurisdictional instruments to assert their

rights in the face of the denial of clinical tests, incapacity to work and even hospital admission.

Local fiscal weakness. The taxing powers of the states were very broad from 1917 onwards. With a reverse orientation, a constitutional reform of 1942 introduced the text of the current section XXI of Article 73, so that the federal tax capacity was strengthened. The reasons were understandable in terms of making the tax system available to boost the country's economic development. Since then, Congress is the only body empowered to establish taxes on foreign trade; use and exploitation of natural resources included in paragraphs 4 and 5 of Article 27; credit institutions and insurance companies; public services granted or exploited by the Federation, as well as special taxes on electric energy; production and consumption of manufactured tobacco; gasoline and other petroleum products; matches and matches; mead and fermentation products; forestry exploitation and production and consumption of beer.

The same reform introduced a paragraph at the end of the fraction according to which the federal entities participate in the yield of special contributions, "in the proportion that the federal secondary law determines", and the local congresses in turn set the percentage that corresponds to the municipalities for the tax on electric energy. The Fiscal Coordination Law of 1978 establishes that the participation fund is made up of 20% "of the federal participatory revenue. The need for a change in the amount of the participations has been discussed for years. The most moderate proposals call for raising it to 22.5%, while others propose that the federation keep only 50%, so that 30% corresponds to the states and 20% to the municipalities.

Granting greater taxing powers to the states and improving the level of their participations would strengthen Mexican federalism but, in the precarious democratic conditions in which the states live, it would also foster authoritarianism and corruption. To take this step, it is imperative that the representative and judicial systems be invigorated beforehand. If this is not done, the

structural conditions that foster inequality will be maintained, with the consequent social vulnerability to crises such as the coronavirus pandemic.

Weakness of the local constitutional state. The aforementioned deficiencies are accompanied by another series of shortcomings. All of them are mutually reinforcing and cause the prostration of the constitutional State in the local sphere. The federal entities are banned from active international life since the Constitution of the Union prevents them from entering any type of treaty, including those whose only purpose is cooperation acts that do not compromise public finances. In federal systems such as the Argentine, Austrian or Canadian systems, for example, the territorial entities are entitled to conclude international agreements, under the conditions deemed appropriate by each system. It is also possible for them to create regions with other federative entities, which contributes to the exchange of development efforts and experiences, with the consequent advantages for their respective inhabitants. Forms of collaboration of this nature are very functional for facing common problems of an environmental and sanitary nature, as well as those caused by natural disasters.

There are also other issues that result from the self-absorption in which the federation's entities find themselves. One of them, which disrupts the essence of the secular state, is the subjection of local authorities to clerical influence. There are frequent commitments made by local officials and political leaders with the clergy, who subordinate the secularity of the State to electoral or governmental strategies. This, added to the democratic deficit, has the added effect of making the constitutional state fragile. Beyond the systemic impact, this phenomenon accentuates the conditions of inequality of the people.

4. *Institutional Asymmetry and Inequality*

The size and relationship of the organs of power do not obey constitutional criteria of proportion and balance. Since the Con-

stitution of 1824, a distinction was made between the executive power, which was described as "supreme", and the other two, which did not receive any adjective. This differentiating criterion subsists, almost two centuries later. The norms indicate a duty to be, so attributing supremacy to one organ of power implies establishing an asymmetrical relationship with the other organs, which is projected towards the governed.

To channel the life of the State in accordance with democratic principles, constitutionalism has sought to give a strict sense to the enforceability of one of its organs. This has been best achieved in judicial matters since once the judge issues his sentence, the person who executes it adheres to the decision issued. Compliance is an inescapable fact in the relationship between the judicial and executive organs.

The situation of the legislator is different. The laws are evaluated by the judges, who can invalidate them if they consider them contrary to the Constitution and interpret them to adjust them to the specific cases submitted to their resolution. In addition, those who execute them can veto them, regulate them, apply them with variations and even, in extreme cases, omit them and even disregard them. In such cases, one remedy is to close the circuit and take the matter to the judge, so that he can compel the executor to comply with the prescribed terms.

This scheme makes sense. However, the inertia of power means that things do not always happen in such a simple way, as there is a risk of incurring in what is known as the politicization of justice, which consists of subjecting the integration and economic resources for the operation of the judiciary to the criteria of those who dominate the political scene. In these cases, the jurisdictional apparatus tends to revolve as a secondary body around another of greater density. But there is also allusion to an inverse phenomenon, called the judicialization of politics, according to which power conflicts are settled outside the political space and are brought to the decision of the judges. Both extremes denote a failure in the constitutional configuration.

Every system requires and adopts safeguards to maintain a reasonable course of operation. If the constitutional design itself introduces biases that lead to excessive use of corrective mechanisms, it denotes that there are substantial flaws in the structure. Distortions in the exercise of power are mitigated by the much-explored formulas of *checks and balances*, but when the inertial forces get out of hand and there is a tendency towards the concentration of powers, including metaconstitutional and paraconstitutional powers, present in every system, the basic concept of rational controls is abandoned and replaced by one of *checks and inhibitions*; thus entering a path that can lead to unmanageable situations.

This is what has happened with the Mexican system. Instead of going to the origin of the distortions, it has opted to abandon the proven democratic solutions and has wanted to maintain a system that is essentially alien to democracy through hypothetical remedies that, in addition to not solving the underlying problems, aggravate them, generating at the same time a growing distrust in the institutions and their owners. The crux of the democratic issue does not lie in making the relationship between the organs of power more difficult, but in making it more dynamic in accordance with a system of reasonable balances and effective controls.

What is meant by effective governments is not solved by obstacles to the necessary action of governing, but by balancing the powers of the organs of political power through intelligent and functional controls. This means that instead of the extremes to which it leads to attribute superior powers to the government, which lead to presidential verticalism, or to the congress, which expose to authoritarian assemblyism, what should be sought is that the controls that limit as much as possible the reciprocal excesses are accompanied by stimuli to cooperation.

This can only be achieved if the relations between the organs of power are as symmetrical as their characteristics allow. That is why I have proposed changing the system of govern-

ment to parliamentarize it. This is achieved by maintaining the president as head of state and government but modifying the presidential term and creating a cabinet with constitutional powers that exercise in a context of internal controls, that is, within the government itself. At the same time, it is necessary to empower Congress with a set of reasonable controls over the government that give political representation an effective role in the conduct, evaluation, and eventual remediation of the decisions of the government.[80]

The hybridization of government systems is a fact that is becoming generalized. Presidential systems have the advantages of certainty of investiture and strict term limits, including a limit on the re-election of presidents, where permitted. The lack of such features affects parliamentary systems, where the investiture of heads of government often runs into problems and the tenure of office is indeterminate; sometimes it is excessively prolonged, until the leadership of the head of government is exhausted. This means that, in their declining phase, their diminished capacity to lead the government affects the governed. The recurrence of untimely elections also hinders governability. On the other hand, the disadvantage of the presidential system compared to the parliamentary system lies, fundamentally, in the lack of political controls over the performance of the members of the government.

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[80] I have developed these themes in my works *El control del poder* (Mexico, UNAM, Instituto de Investigaciones Jurídicas-Porrúa, 2006), where I present a theory of political controls; *El gobierno de gabinete* (Mexico, UNAM, Instituto de Investigaciones Jurídicas, 2003), where I show that this solution has become widespread in constitutional states; *La parlamentarización de los sistemas presidenciales* (Mexico, UNAM, Instituto de Investigaciones Jurídicas, 2007), in which I provide evidence about this trend; *El gobierno de gabinete y los gobiernos de coalición* (Mexico, UNAM, Instituto de Investigaciones Jurídicas, 2019), to stress the importance of pluralism and cooperation in governing, and "The presidential system in Latin America", in Bogdandy, Armin von *et al.*, *Transformative Constitutionalism in Latin America* (Oxford, Oxford University Press, 2017), in which I examine the effects of the plebiscitary election of the president.

Although the certainty of the presidential term is favorable, its excessive duration can be an inconvenient to establish and maintain the necessary balance with the Congress, besides implying a limitation for the voters. It is pretended that calling a recall referendum in the middle of the term means a democratic way of revalidating the incumbency of the presidency of the Republic. It is a specious argument because the recall does not allow to opt for another person and exposes the country where it is approved to political instability. In addition to the fact that in this case the presidents are not exposed to the contrast with any opponent and go to the referendum process with single contenders, they submit to the vote from the influential platform of their office. This explains why, at the national level, this possibility is only available in very few countries.[81]

On the other hand, the duration of the presidential term is a way of concentrating powers and restricting citizen intervention in political life. In Mexico's constitutional history, the presidential term has always been four years, except between 1904 and 1917. The reform to extend it to six years was promoted by Porfirio Díaz in 1904. In 1917 it returned to a four-year term until, in 1928, at the behest of Álvaro Obregón and before his reelection, it was extended again;[82] thus subsists to date. In the case of local governments, the possibility of a six-year term was introduced in 1943.[83]

One way of promoting symmetry between the organs of power is to keep the duration of the more concentrated one shorter than that of the more deconcentrated one. Executive power is vested in a single individual and contrasts with the plurality of the legislature, which is divided into two chambers that control each other and which together comprise 628 people. Of these,

81 In Mexico, it was adopted through the reform of Article 35 of the Constitution on December 20, 2019.

82 Amendment to Article 83 of the Constitution, January 24, 1928.

83 Amendment to Article 115 of the Constitution, January 8, 1943.

500 serve three-year terms and 128 serve six-year terms, equal to the presidential term.

In contemporary constitutionalism, presidential systems are increasingly characterized by the provision of governing bodies, headed by the president but composed of a collective whose members have powers fixed by law and who are jointly responsible for the decisions taken by the government. Single-member government is, at present, an anomalous situation.

Added to this extreme concentration is the lengthy duration in office. In Latin America, presidential terms are as follows: four-year terms in nine countries (Argentina, Brazil, Colombia, Chile, Costa Rica, Dominican Republic, Ecuador, Guatemala, Honduras, and Ecuador); five-year terms in eight countries (Bolivia, Cuba, El Salvador, Nicaragua, Panama, Paraguay, Peru, and Uruguay); and six-year terms in only two countries (Mexico and Venezuela). In the case of Chile, the 1980 Constitution of Augusto Pinochet established a presidential term of 8 years, the longest in the continent; Article 25 was reformed in 1994 to reduce it to 6, and in 2005 it was reduced to 4 years. In Venezuela, before the 1999 Constitution, the presidential term was 5 years.

Of the nineteen countries, Mexico is the only one in which the constitutional figure of the council of ministers or government does not exist, making it the system with the highest concentration of power in the area. This situation accentuates the asymmetrical relationship with Congress, which in turn translates into a secondary position of the governed, whose quality of constituents is devalued.

The desirable shortening of the presidential term would in no way imply admitting his reelection. When there is a possibility of presidential reelection, the asymmetry is produced during the campaigns, where whoever runs as head of state and government has ostensible advantages that nullify the principle of electoral equity.

5. *Structural Equality*

In the 1930s, during the economic depression that affected the world's major economies, *affirmative action* began to be used to ensure that employers did not discriminate against minority groups in hiring.[84] Later, particularly in the context of racial integration efforts in U. S. schools, *positive discrimination was* also referred to as "making distinctions in favor of disadvantaged groups, particularly in the allocation of resources and opportunities".[85]

The basis for these policies, now widespread, was laid by Aristotle when he concluded that it is just to treat equally those who are equal and unequally those who are unequal.[86] Inspired by this principle was coined the principle adopted by the Soviet Constitution of 1936, "From each according to his ability; to each according to his work" (Article 12). In the same direction Quevedo had already expressed "to each what is due to them and from each what they can".[87]

The need for institutional equality must be satisfied through reforms that, in the light of national and comparative experiences, allow for coherent and functional designs. In a constitutional State, the supreme norm should not be the bearer of inequality.

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84 *National Labor Relations Act*, known as the Wagner Act, July 1935. Section 10(c).

85 The Central Advisory Council for Education published the report on children and primary schools in 1967, using this expression. *Cf. Oxford English Dictionary*, meaning 15 of the word "positive".

86 Nicomachean Ethics, V, 3.

87 Quevedo, Francisco de, *Migajas sentenciosas*, written in 1638 and unpublished until 1932, in *Obras completas*, Madrid, Aguilar, 1966, t. I., p. 1093.