

## THE ROLE OF SHOCKS AND SOCIAL PRESSURES IN THE DEVELOPMENT OF CITIZENSHIP RIGHTS: GREAT BRITAIN AND MEXICO'S DIVERGENT PATHS

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*In Memoriam, Peter B. H. Birks, Regius Professor of  
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**ABSTRACT.** *Drawing on T.H. Marshall's classic analysis of how civil, political and social rights evolved in Great Britain, this article follows authors, like Rose and Shin, who used a "social pyramid" to illustrate how the inverted development of such citizenship rights in other nations may weaken liberal democracy. In contrast, I argue that this sequence varies depending on a society's own unique history, and that no one single path can define the development of liberal democracy. In Mexico, the development of citizenship rights (mainly social, political and civil, following T.H. Marshall's categorization) was catalyzed by a series of economic and security-related crises that impacted a broad cross-section of Mexican society. The result of these pressures —both from above (organized elites) and below (organized popular groups)— has been greater enforcement of already existing political rights. This major change eventually led to competitive ballot elections (since the late 1990s) which in turn has forced politicians to focus on reshaping social rights (e.g., making their application universal rather than selective). Since President Felipe Calderón's (2006-2012) "war on drugs," there has also been notable legislation —backed by widespread public support— to strengthen civil rights (e.g., 2008 criminal justice reform; 2011 reforms to the amparo and human rights).*

**KEY WORDS:** *Citizenship rights, changes to, Great Britain and Mexico, Shocks and social pressures, liberal democracy, degrees of.*

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RESUMEN. *Siguiendo el análisis de T.H. Marshall acerca del desarrollo histórico de los derechos ciudadanos en la Gran Bretaña —primero los civiles, después los políticos, y por último los sociales— este artículo sigue a otros autores, como Rose y Shin, que han identificado una secuencia histórica invertida en muchos países de la “tercera ola” democratizadora como causa de la debilidad de la democracia liberal en los mismos. Propongo que las diferentes secuencias de desarrollo de derechos ciudadanos no determinan permanentemente la posibilidad del desarrollo fructífero de la democracia liberal. En México, sucesivos shocks sistémicos, es decir, aquéllos que han afectado a muchos y muy diversos grupos sociales, detonaron la organización de presiones desde arriba (élites) y abajo (movimientos populares) que forzaron cambios al contenido y al grado de efectividad de implementación de los derechos ciudadanos. Las crisis económicas (1976, 1982, 1987-8, 1994-5) crearon presiones para el ejercicio efectivo de los derechos políticos, lo que creó elecciones relativamente competitivas desde fines de los 1990s y éstas, a su vez, presiones para la creación de derechos sociales universales en lugar de selectivos. Igualmente, la explosión de violencia generalizada detonada por la “guerra contra el crimen organizado” declarada por el gobierno de Felipe Calderón (2006-2012), otro shock sistémico produjo similares efectos en la organización de presiones de la sociedad civil que forzaron una revisión de los derechos civiles —parte de la reforma al sistema de justicia criminal en 2008 y cambios al recurso de amparo y al estatus de los derechos humanos en 2011—.*

PALABRAS CLAVE: *Derechos políticos, Gran Bretaña y México, democracia liberal.*

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## I. INTRODUCTION

During the official 96<sup>th</sup> celebration of Mexico's 1917 Constitution on February 5, 2013, President Enrique Peña Nieto acknowledged what "many Mexicans have believed for a long time: that in practice, their constitutional rights are not enforceable."<sup>1</sup> Mexico is not the only country with constitutionally-protected rights that are not enforceable; most of Latin America falls into this category.<sup>2</sup> Given this gap between theory and reality, debate about formal and on-the-ground democracy continues about Latin America and other nations which experienced the "third wave of democratization" between the 70s and 90s have become liberal democracies.<sup>3</sup> Although electoral democracy is characterized by free and fair elections, its existence depends on the effectiveness of governance and accountability.<sup>4</sup> It is not uncommon for governments to hold elections and, at the same time, suppress basic freedoms such as free speech, association, due process and fair trial. This incongruence results in what some scholars describe as "competitive authoritarianism"<sup>5</sup> or "electoral authoritarianism."<sup>6</sup>

What does the unenforceability of basic human and civil rights tell us about the prospects for liberal democracy in Mexico? In this essay, I analyze the arguments of economic historian and sociologist T. H. Marshall in his

<sup>1</sup> PRESIDENCIA DE LA REPÚBLICA, THE CONSTITUTION IS HISTORY BUT ALSO THE PRESENT AND A GUIDE TO THE FUTURE: ENRIQUE PEÑA NIETO (2013), at: <http://en.presidencia.gob.mx/articles-press/the-constitution-is-history-but-also-the-present-and-a-guide-for-the-future-enrique-pena-nieto/> (last visited May 7, 2013).

<sup>2</sup> THE (UN)RULE OF LAW AND THE UNDERPRIVILEGED IN LATIN AMERICA (Juan E. Méndez et al., eds., University of Notre Dame Press, 1999); Philip Oxhorn, *From Human Rights to Citizenship Rights? Recent Trends in the Study of Latin American Social Movements*, 36 LATIN AMERICAN RESEARCH REVIEW, 163, 82 (2001); Matthew M. Taylor, *Beyond Judicial Reform: Courts as Political Actors in Latin America*, 41 LATIN AMERICAN RESEARCH REVIEW, 269-80 (2006).

<sup>3</sup> Richard Rose & Doh Chull Shin, *Democratization Backwards: the Problem of Third Wave Democracies*, 2 BRITISH JOURNAL OF POLITICAL SCIENCE 331-354 (2001).

<sup>4</sup> THE QUALITY OF DEMOCRACY: THEORY AND APPLICATIONS 31 (Guillermo O'Donnell et al., eds., University of Notre Dame Press, 2004).

<sup>5</sup> Steven Levitsky & Lucan Way, *Assessing the Quality of Democracy*, 13 (2) JOURNAL OF DEMOCRACY 51-65 (2002); STEVEN LEVITSKY & LUCAN WAY, *COMPETITIVE AUTHORITARIANISM: HYBRID REGIMES AFTER THE COLD WAR 1* (Cambridge University Press, 2010).

<sup>6</sup> ELECTORAL AUTHORITARIANISM: THE DYNAMICS OF UN-FREE COMPETITION (Andreas Schedler, ed., Lynne Rienner, 2006).

classic account of how the development of citizenship rights influenced the social contract in Great Britain.<sup>7</sup> I then contrast the development of British liberal democracy (as articulated by Marshall) with Mexico's own experience of democratization. This comparison leads to the conclusion that although Mexico's so-called "third wave" led to electoral democracy—it is still not a real liberal democracy.<sup>8</sup>

Citizenship rights in Mexico were catalyzed by a series of economic and security-related crises between 1970 and the late 1990s that impacted a broad cross-section of Mexican society, triggering pressures on government—from social organizations at both the highest and lowest socioeconomic levels—to enforce rights that already existed under law.

Since the late 1990s, politicians have been pressured by voters to reform an incongruent system in which constitutional rights were often granted only to claimants with the resources to bring cases before the courts. In other words, constitutionally-protected rights were not considered universal entitlements. During this time, several major reforms were enacted, including amendments to the criminal justice system, human rights' law and the law of *amparo*. It would not be unfair to say that Mexican society now expects its leaders to exercise power in a less arbitrary manner. They also expect more effective enforcement of their civil rights.

Given Great Britain's struggle with citizenship rights since the seventeenth century, it is generally regarded as the birthplace of liberal democracy—free and fair elections and individual legal protections against the power of the state. This evolution involved many actors and ideas about basic individual rights to life, liberty and property, secured by the impartial action of public authority. Such ideas were developed and then diffused across time and space particularly by British moral philosophers of the seventeenth century like John Locke.<sup>9</sup> Clearly, Great Britain and Mexico differ on many levels, including widely-divergent legal cultures (common vs. Roman law); political systems (parliamentary constitutional monarchy vs. federal presidential republic); and historical roles in the world economy. Between the 19<sup>th</sup> and early 20<sup>th</sup> centuries, Great Britain ruled an enormous empire; and was home to the

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<sup>7</sup> T. H. MARSHALL, *CITIZENSHIP AND SOCIAL CLASS AND OTHER ESSAYS* (Cambridge University Press, 1950).

<sup>8</sup> See Karla Zabłudsky, *Mexico's Election Violence is Said to Be Worst in Years*, N.Y. TIMES, July 6, 2013, available at [http://www.nytimes.com/2013/07/07/world/americas/mexicos-election-violence-is-said-to-be-worst-in-years.html?\\_r=0](http://www.nytimes.com/2013/07/07/world/americas/mexicos-election-violence-is-said-to-be-worst-in-years.html?_r=0); Catherine E. Shoichet, *Political Tensions Flare after Presidential Vote*, CNN, July 3, 2012, available at <http://www.cnn.com/2012/07/02/world/americas/mexico-elections/index.html>; See CARLOS TELLO DÍAZ, 2 DE JULIO: LA CRÓNICA MINUTO A MINUTO (Planeta, 2006); John Ackerman, *Deconsolidating Authoritarianism: Learning from Mexico's Failed Transition*, Keynote Speech at University of New Mexico (Jan. 31, 2013).

<sup>9</sup> See JOHN LOCKE, *TWO TREATISES OF GOVERNMENT* (Cambridge University Press, 1999) (1698).

first Industrial Revolution. In contrast, Mexico—in spite of its expansive territory and resources—has been a developing country for most of its history, at the periphery of the global economy and economically dependent on its northern neighbor.

This paper does not consider Great Britain as an ideal or a perfect model for Mexico to follow. Instead, it compares the development of citizen rights in both nations to highlight their differences—and explain their faults and defects.<sup>10</sup> Although Great Britain is considered a liberal democracy—while Mexico is not—there is more than one path to liberal democracy. Despite the way in which citizenship rights and liberal democracy developed in Great Britain, nations with different historical experiences follow their own unique paths. In Mexico's case, economic and social pressures produced by four successive crises between the 1970s and 1990s—as well as widespread violence incited by President Felipe Calderón's "war on drugs"—catalyzed a series of major legislative, judicial and political reforms. As a result of these changes, Mexicans' individual and citizenship rights are now less arbitrary and more effectively enforced than ever before.

## II. ARGUMENT

The differences highlighted by the comparison of these two countries help to identify civil rights and their long term evolution and general exercise in Great Britain but not in Mexico as a foundational difference. Whereas they were at the base of the pyramid of citizenship rights' historical development in the former, they are still an ineffective work in progress in the latter. This is not to idealize the British case or Marshall's interpretation—as I certainly don't. Marshall has been rightly criticized for excluding a majority of British subjects (including women, foreigners and followers of certain religions) from basic civil and political rights. This exclusion lasted well into the twentieth century.<sup>11</sup>

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<sup>10</sup> See TOM BINGHAM, *THE RULE OF LAW* 3-36 (Penguin, 2011). For example, the sovereign (Queen or King) has immunity from prosecution in Great Britain while in most republican systems presidents can be impeached. Regarding judicial review, British courts cannot strike down primary legislation as American or Australian courts because of the parliament supremacy doctrine. See Daniel Boffey & Mark Townsend, *Scotland Yard's Finest Called to Account Over 'Culture of Collusion'*, THE GUARDIAN, July 16, 2011, available at <http://www.theguardian.com/media/2011/jul/16/scotland-yard-collusion-john-yates-neil-wallis>. On police deficiencies in England and Wales. See MARTIN INNES & NICOLA WESTON, *RETHINKING THE POLICING OF ANTI-SOCIAL BEHAVIOUR* (Cardiff University, 2010), available at <http://www.hmic.gov.uk/media/re-thinking-the-policing-of-anti-social-behaviour-20100923.pdf> (last visited June 10, 2013).

<sup>11</sup> EXCLUSIONARY EMPIRE: ENGLISH LIBERTY OVERSEAS 1600-1900 (Jack P. Greene, ed., Cambridge University Press, 2010); CITIZENSHIP TODAY: THE CONTEMPORARY RELEVANCE OF T. H. MARSHALL 11-23 (Martin Bulmer & Anthony M. Rees, eds., Routledge, 1996).

This said, each country's unique path (see figure 1) helps in part to explain why liberal democracy largely remains an unfulfilled aspiration in Mexico, as civil rights are selectively enforced in favor of those with power, money and influence.

In addition, successive economic crises between 1976 and the 1995 seriously eroded the social contract pyramid in Mexico, which rested on highly-politicized and selective enforcement of the law (figure 1). These successive crises led to organized pressure at both the highest and lowest levels of society for more effective enforcement of political rights—leading to relatively free and fair elections in the late 1990s. Since that time, there has been widespread public support for greater enforcement of citizenship rights. The changes have resulted in a shift of privileges reserved for the rich and powerful to more universal entitlements in social policy.<sup>12</sup>

### EFFECTIVE EXERCISE OF CITIZENSHIP RIGHTS IN TIME



Source: Elabotared by the author.

These pyramids of rights are used to illustrate a time sequence rather than a strict dependence of rights on the lower echelon of the pyramid on those on upper parts. The base of the pyramid represents rights which legitimized each nation's unique political system (*i.e.* "rule of law" in Great Britain; "revolutionary nationalism and social justice" from post-revolutionary Mexico until the 1982 debt crisis, which gave way to the "lost decade" in growth and development). The most notable issue in figure 1 is the particular way in which social rights were enforced in Mexico. Compared to Great Britain, Mexican enforcement was selective rather than universal; and characterized by high discretion and abuse that favored those in power and their close allies.

The new social contract that resulted from the Mexican Revolution (1910-20) was reflected in the 1917 Constitution. In the 1920s and 1940s, Mexican

<sup>12</sup> Examples of this move toward universal entitlements since electoral democracy started operating in Mexico are the public health *Seguro Popular* in 2003 and the call for a universal social security system expected before the end of 2018.

leaders turned the so-called *new order* into a systematic tool to repress social and political opposition. The resulting regime became a “perfect dictatorship,” the longest-lasting one-party rule of the 20<sup>th</sup> century. Using cooptation, paternalism, and hegemonic control, the Mexican authorities manipulated civil rights to secure party loyalty rather than protect universal citizen rights. In effect, civil rights became a means used to acquire and maintain power, wealth and social prestige.<sup>13</sup>

### III. INDIVIDUAL RIGHTS AND EQUALITY BEFORE THE LAW IN LIBERAL DEMOCRACY

Liberal democracy rests upon a foundation of both free and fair elections and equality before the law. Without such protections (which implies effective *enforcement*) basic civil and political rights inherent to liberal democracy (*e.g.*, freedom of expression, association, due process, fair trial, free voting, petitioning, and ballot elections) cannot exist. If this is the case, the empirical expression of this form of government is possible to a lesser rather than a greater extent. However lofty this prescription may sound it is not necessarily a panacea in practice. For example, left-leaning thinkers have traditionally criticized the principle of equality before the law because it promotes socio-economic inequality protecting rich individuals from having to share their wealth through individual property rights. In contrast, many conservatives claim that the principle of equality before the law grants each and every individual one vote to choose his or her political representatives, and therefore different stakes in the present and future evolution of political and economic institutions and policies.

Moreover, equality before the law also allows for wrongs to go unpunished if authorities do not follow prescribed procedures (*i.e.* due process) in their prosecution. Yet, without equality under the law many cherished rights such as security, liberty and property cannot be guaranteed with a reasonable degree of certainty. It is also important to note that a permanent tension exists between the “liberal” and “democratic” components of liberal democracy as a type of political regime and a form of government. While the democratic component emphasizes majority rule (*e.g.*, collective decisions that may harm individual interests, beliefs and values) the liberal component stresses the primacy of individual rights. From this perspective, majority rule changes that

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<sup>13</sup> See ARNALDO CÓRDOVA, *LA IDEOLOGÍA DE LA REVOLUCIÓN MEXICANA: LA FORMACIÓN DEL NUEVO RÉGIMEN* (Era, 1973). See also LUIS JAVIER GARRIDO, *EL PARTIDO DE LA REVOLUCIÓN INSTITUCIONALIZADA* (Siglo XXI, 1982). See also ROGELIO HERNÁNDEZ RODRÍGUEZ, *LA FORMACIÓN DEL POLÍTICO MEXICANO: EL CASO DE CARLOS A. MADRAZO* (El Colegio de México, 1991); ENRIQUE KRAUZE, *LA PRESIDENCIA IMPERIAL* (Tusquets, 1997). *Equality before the law*, also known as *equality under the law*, *equality in the eyes of the law*, or *legal equality*, is the principle under which all people are subject to the same laws of justice.



affect individuals can only be carried out by following pre-established general rules and procedures (i.e. due process) that specify when and how such traits, protected by the rights conferred through the status of citizenship, may be forced to change.

#### IV. T. H. MARSHALL ON THE EXERCISE OF INDIVIDUAL RIGHTS AND THE EVOLUTION OF CITIZENSHIP

##### 1. *Citizenship: Bestowed and Enforceable, not Necessarily the Same*

Individual rights in most modern nation-states are based upon citizenship. According to T.H. Marshall, the concept refers to “a status bestowed on those who are full members of a community [...] all who possess the status are equal with respect to the rights and duties with which the status is endowed.”<sup>14</sup> Citizenship can thus be seen as providing the basis for a social contract which regulates (a) relationships between individuals; and (b) relations between individuals and the State. A basic attribute of citizenship in Marshall’s view is the co-existence of legal equality and socioeconomic inequality. Despite the unequal distribution of talents and resources among individuals, all citizens are entitled to basic civil rights —and redress in case these are infringed.

This is an abstract claim which can remain a mere intent of purpose or an aspiration if it is not backed by the agency that can translate the aspiration of legal equality into fair decisions that change the distribution of liberties and resources on the ground irrespective of the unequal social, political, and economic influence and power of contending parties. Marshall was well aware that the development of individual rights did not necessarily translate into effective citizenship rights. Without fair and consistent enforceability by the state, individual rights could remain either an empty aspiration or a cynical and abusive way for the authorities to maintain their own privileges.<sup>15</sup>

Marshall identified two main barriers between the establishment of rights and the application of remedies. The first arose “from class prejudice and partiality” (i.e. the ability to influence the course of a legal process via networks of power, influence, kinship or the exchange of favors); and the second “from the automatic effects of the unequal distribution of wealth, working through the price system” (i.e. legal defense costs, economic benefits illegally

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<sup>14</sup> T. H. MARSHALL, *supra* note 7, at 28.

<sup>15</sup> Accountability of a justice system is a different problem from the bureaucratic capacity of such a system throughout a given territory. The latter problem is relevant to this discussion given less unevenly distributed, more standardized bureaucratic capacity in the British unitary state compared to the highly uneven, heterogeneous distribution of capacities in Mexico’s federal system. But accountability is a necessary component that helps to lower the likelihood of partial, self-serving allocation of decisions even in systems with strong bureaucratic capacity.



bestowed on the agents responsible for enforcing justice).<sup>16</sup> The implication is that although citizenship may be granted, it means little without effective and impartial enforcement. Since its birth as a modern nation-state in the nineteenth century, Mexico's citizens have generally been unable to enforce their own rights.<sup>17</sup>

## 2. *Types of Citizenship Rights*

Even if certain citizenship rights are established and impartially enforced, a question remains regarding their nature and effects. Marshall divided these into three categories: civil, political and social. Civil rights are necessary for the exercise of individual freedom (*i.e.* freedoms of speech, association, religion, property, right to justice); political rights are those necessary to participate in the exercise of public authority (*i.e.* voting, holding office); and social rights are those necessary to “live the life of a civilized being according to the standards prevailing in society” (*i.e.* health, education, work).<sup>18</sup>

Such rights may not necessarily be deduced from universal principles or inferred from the observation of societies at different times and in different places. Marshall remained aware of the perils of “intuitive” generalization by recognizing that no principle can determine the types and number of rights and duties that should be included. Instead, he favored a pragmatic approach which acknowledged that “the ideal can be glimpsed through examples of countries where citizenship is developing and yielding better life to [all or most] citizens.”<sup>19</sup> Likewise, inasmuch as the concept of citizenship and its attributes have changed in time, Marshall's definition seems to capture basic qualities which have been associated with it since the late twentieth century.<sup>20</sup> Given that the exact nature of “citizenship rights” is subject to continual debate based on first principles or empirical aggregation of diverse human practices, I believe that rudimentary civil, political and social rights are fundamental to liberal democracy.

## 3. *Evolution of Citizenship in a Liberal Democracy: the case of Great Britain*

Marshall claims that the development of citizenship rights in England (Great Britain was formed in 1707) began in the 1642 civil war against Stuart

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<sup>16</sup> T. H. MARSHALL, *supra* note 7, at 35.

<sup>17</sup> See FERNANDO ESCALANTE GONZALBO, *CIUDADANOS IMAGINARIOS* (El Colegio de México, 1992).

<sup>18</sup> T. H. MARSHALL, *supra* note 7, at 10.

<sup>19</sup> *Id.*, at 29.

<sup>20</sup> Guillermo O'Donnell, David Miller & Laurence Whitehead, *Political Regime, the State, and Democratization*, Keynote Address at the Nuffield College (Feb. 18, 2005).

absolutism, and involved widespread battles over civil rights. This formative period lasted between 1642 and 1832; Marshall describes it as an eighteenth century phenomenon whose main aim was to establish the rule of law (“one law for all men” —which today means equality of all individuals before the law given a jurisdiction), and the institutions most closely associated with civil rights are the courts of justice.<sup>21</sup>

Marshall claims that the period between 1832 and 1918 was dominated by the fight over political rights through successive extensions of the franchise (in Great Britain in 1832, 1867, 1884, and 1918). The author defines this as a nineteenth century phenomenon even though, as in the previous period, it does not coincide with exact century dates. The main institutions associated with the effective exercise of political rights are the rules, procedures, and institutions that regulate popular election to public office.<sup>22</sup>

Marshall identifies a last period which corresponds to the development of social rights, starting with the passage of the Factory Acts (1878-1895) and fortified by the National Insurance Act (1911) and Education Act (1944). The author claims that these rights developed mostly during the twentieth century. In his view, the institutions most closely associated with social rights are education and social services.<sup>23</sup>

Whereas the development of citizenship rights can be rightly criticized for its rigidity (i.e. a so-called Whig reading of history emphasizing gradual, uninterrupted progress toward general liberty), this schematic presentation is useful because it highlights how certain rights impinge (and in some cases, depend on) others. The main right highlighted by Marshall is “justice [...] this means asserting all one’s rights on terms of equality with others and by due process of law.”<sup>24</sup> In other words, without justice, all other citizenship rights remain in jeopardy; due process, fair trial and proper redress serve as the foundation on which all other rights depend.

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<sup>21</sup> The enforcement of general civil rights in Britain was a long and protracted process. It should not be assumed that the base of the pyramid of citizenship rights developed in a smooth and constant way. See SIMON SCHAMA, 2 A HISTORY OF BRITAIN: THE BRITISH WARS 1603-1776, 365-368 (BBC, London, 2001) for reminders that local dispensation of justice was carried out by magistrates, who were members of the gentry and acted more often than not on behalf of the aristocracy; the very profitable prison system, administered by wardens who compressed space and living conditions in prisons to maximize profit; and the hypocrisy of magistrates who aided professional criminals in the eighteenth century.

<sup>22</sup> The progress of political rights was also the product of significant conflict among elites, growing pressures from below, and bloody confrontations which took close to eighty years to transform restricted (income-based) into full male suffrage as pointed out above given several reforms —1832, 1867, 1884, 1918— that came after strong pressures from below and mass/police confrontations that in many cases left many dead behind.

<sup>23</sup> T. H. MARSHALL, *supra* note 7, at 11-27, for the discussion of the development of the three types of citizenship rights.

<sup>24</sup> *Id.*, at 11.

Taking reality into account, I realize that Marshall's analysis seems somewhat idealistic. I am also aware of many flaws in the way citizenship rights are implemented in Great Britain. The legal process is often violated, at least in spirit, by an adversarial system characterized by expensive barristers with disproportionate influence; abuse of power; plea bargaining (i.e. reaching a compromise to avoid a trial); and wrongful convictions, some of which have recently received media attention. This said, British officials who violate the law—from policemen to members of parliament—are generally thrown into jail upon conviction. This is a far cry from what happens in Mexico, where officials and wealthy businesspeople (and their friends and acquaintances) often transgress the law with few if any adverse consequences. A culture of impunity (from Latin *impunitas*—no punishment), fueled by a systematic abuse of power, influence and money (i.e. corruption in its broadest sense) has been and remains a defining feature of the Mexican justice system. I argue below that this is partly the outcome of the inverted development of citizenship rights in Mexico, at least in comparison with how they developed in Great Britain.

## V. EVOLUTION OF CITIZENSHIP RIGHTS AND LIBERAL DEMOCRACY IN MEXICO

### 1. *Original Weakness of Civil Rights at the Base of the Pyramid*

The absence of the rule of law is deeply embedded in Mexican history. Spanish colonialism introduced a peculiar (i.e., casuistry-based—a body of laws that grows out of the accumulation of many particular and therefore different cases) legal system based in the sixteenth century, when both civil and religious courts operated simultaneously. Although this did not differ notably from how the Catholic Church operated in other countries; in the American colonies, however, Spain created two distinct jurisdictions, “la república de españoles” and “la república de indios,” each of which were governed by different rights and duties.

In addition to two jurisdictions with distinct rules, the system was also based upon a fundamental principle of Castilian law, “*obedézcase pero no se cumpla*” (roughly translated as “accept but without compliance or enforcement”). According to legal historians, this tradition predated by at least two centuries Spanish colonialism in the Americas.<sup>25</sup> It also reinforced the peculiar development of Mexican legality, in which the populace accepted laws issued by the central authorities with the understanding that they would be superseded by local customs, rules and norms. The result was a complex mosaic of tribu-

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<sup>25</sup> José Antonio Algaba Quijano, *Obedézcase pero no se cumpla*, GARRIGUES, available at <http://www.garrigues.com/es/publicaciones/articulos/Paginas/Obedezcase-pero-no-se-cumpla.aspx> (last visited May 24, 2013).

nals, venues and jurisdictions. Enforcement of the law thus became contingent upon exceptions, including closed-door negotiations and impositions by local and federal authorities. More than anything, it became subject to favors and meddling by those with power and privilege.

## 2. *Persistence of Weak Civil Rights since Mexico's Independence*

The development of civil, political and social rights in post-independence Mexico differed radically from T.H. Marshall's depiction of Great Britain's three-hundred year process. Even though some of these rights were codified in British law, most notably the English Bill of Rights in 1689, the rest are part of the organic process of the British Parliament's law creation, change, and accumulation, which though in existence and enforceable, cannot be found in a single document like a written constitution. This is known as "statutory law," which is created by Parliament, and which can be identified as having a different source from "common law," which is "based upon societal customs and recognized and enforced by the judgments and decrees of the courts."<sup>26</sup> This entire body of accumulating rules, procedures and cases that can be used as precedents to establish the logic and direction in present trials is specific to the English-speaking countries (originating in Great Britain and then spreading to what would become the United States, Canada, Australia, New Zealand and other Commonwealth territories).

In great contrast, Mexico's basic legal skeleton and scaffolding followed the Roman or continental civil law tradition. This legal tradition started in 1791 with the enactment of the first French constitution, which incorporated the Declaration of the Rights of Man (1789) as its preamble, and created a distinctive way of practicing law compared to common law. Although it is important to also highlight points of contact between the two legal Western traditions (common vs. Roman law). For example, the French, who resurrected the Roman tradition, also followed the example of the United States which, despite its common law tradition, included a Bill of Rights in its Constitution (1791).

Similar to how the law developed in Spain and France, not to mention other Latin American countries, Mexico has had five constitutions: 1824 (federalist), 1836 (centralist), 1843 (centralist), 1857 (federalist) and 1917 (federalist).

### A. *The "Amparo" Remedy*

In 1847, the *amparo* (i.e., Mexican civil law remedy for the protection of constitutional rights) was created through an amendment to the 1824 consti-

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<sup>26</sup> Legal Dictionary, Common Law available at <http://legal-dictionary.thefreedictionary.com/Common+law>.

tution. This legal instrument, recognized as Mexico's unique contribution to liberal constitutionalism and adopted by other Latin American countries,<sup>27</sup> tried to emulate the due process (or judicial review) protections granted to individuals under the U.S. constitution. I say "emulate" because of a now well-known misinterpretation of due process made by Mexican senator Mariano Otero, who first proposed its enactment. Mr. Otero stated:

...the scope and respect for the judicial branch [is] the most secure sign of a nation's liberty... In the USA this protection was granted by the Constitution, and it has produced the best effects. American judges must adhere first and foremost to the Constitution, so that when they find conflict with secondary laws, they apply the former rather than the latter. This is done without making itself superior to the law or putting itself in opposition against the legislative power or annulling its dispositions in each particular case in which it could harm [individual rights], it makes it impotent.<sup>28</sup>

First, Otero mistakenly believed that the power of judicial review was not granted explicitly to the judiciary by the US Constitution, but rather implied given the interpretation Justice Marshall made of it in the case of *Marbury vs. Madison* (1803). Second, Otero radically altered the nature of judicial review by implying that laws struck down by courts as unconstitutional only applied to the claimants involved rather than all citizens. In fact, Otero's interpretation was more similar to Great Britain's claimant-only application of judicial review rather than how it is applied in the US. The result is that in Mexico, *amparos* are only granted by courts to individual claimants (*i.e.* laws or executive actions deemed unconstitutional continue to apply to everyone else). This varies significantly from the US, where federal and state judges' decisions regarding constitutionality apply to all citizens. In Mexico only the Supreme Court and federal *tribunales colegiados* can do so).

In sum, the lack of enforcement of individual rights in Mexico has effectively impeded the development of the rule of law. This fact can be highlighted by the following examples: (a) Mexican law deemed unconstitutional still remains in effect for everyone who has not sought legal redress; (b) only individuals with the knowledge and resources to seek legal protection by the Supreme Court and federal *tribunales colegiados* are afforded these rights. Given that every individual affected by a law must file a claim to seek redress, the court system is swamped with cases; as a result, most cases are never even tried. And for those brought before a judge, justice is rare without the influence of power, connections or money. It should be noted that the Mexican

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<sup>27</sup> Axel Tschentscher & Caroline Lehner, *The Latin American Model of Constitutional Jurisdiction: Amparo and Judicial Review* (Social Science Research Network [SSRN]), Working Paper No. 2296004).

<sup>28</sup> José Luis Soberanes Fernández, *Algo sobre nuestros antecedentes de juicio de amparo*, BOLETÍN COMPARADO DE DERECHO MEXICANO 1069 (1988).

Supreme Court has held that “irreparable acts” (government acts whose effects cannot be undone) are not subject to protection under *amparos*.<sup>29</sup>

Popular pressure against the erratic application of the *amparo* forced politicians to enact sweeping reforms in April 2013. These changes came about after the introduction of ballot elections (as explained below). Since the 1990s, political rights have become the driving force for individual rights. These reforms have broadened the scope of the *amparo* and limited the “special regimes” derived from its prior claimant-only application. For example, the *amparo* now permits claimants to file suits for omissions made by the authorities (not merely *acts*); grants human rights protections under international treaties; limits the scope and duration of provisional injunctions; and, most notably, allows the *general* enforceability of legal precedents made by the Supreme Court to all citizens—not just claimants. Individuals now also have the right to file class action suits, which were not allowed before.<sup>30</sup>

Although it is too early to tell how these reforms will affect the enforceability of individual rights, the new provisions will hopefully lower legal costs, a weighty factor in addressing issues of basic fairness for equal quality access to the law in seeking redress (most claimants are low-income and therefore at a big disadvantage); expedites the filing of claims; and applies generally to all citizens, not just to claimants. Although this change is a key element of liberal democracy, enforcement will be a challenge.

### B. *The Truncated Consolidation of Mexican Liberalism: Authoritarianism and Dictatorship*

Looked at from the British perspective the original claimant-only application of *amparo* in Mexico did not have to condemn the country to weak civil liberties. In addition to the original weakness of uniform civil rights, intense conflict among the ruling Mexican elites during the first half century after independence in 1821 hampered efforts to establish the rule of law. Mexico’s leaders were too immersed in establishing and keeping power to put into practice their so-called commitment to liberal constitutionalism.

The 1857 Constitution, created by a generation of classic liberals opposed to conservative colonialist ideas (*e.g.*, weak separation between Church and State; special privileges (*fueros*) for the elite classes), contained an entire chapter dedicated to individual rights. The constitution also established the *amparo* remedy as a legal mechanism to protect individuals’ rights from arbitrary laws and executive action.

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<sup>29</sup> Michael C. Taylor, *Why no Rule of Law in Mexico? Explaining the Weakness of Mexico’s Judicial Branch*, 27 NEW MEXICO LAW REVIEW 154-157 (1997).

<sup>30</sup> Arturo Zaldivar, *Un nuevo paradigma constitucional*, CANAL JUDICIAL, JULY 8, 2013, <http://canaljudicial.wordpress.com/2013/07/08/ofrece-ministro-zaldivar-conferencia-el-juicio-de-amparo-ante-el-nuevo-paradigma-internacional/> (last accessed October 10, 2014).

Aside from the old principle of “*obedézcase pero no se cumpla*,” a telling problem can be highlighted by observing the towering figure of liberalism and one of the creators of the modern nation-state in Mexico, Benito Juárez. An analysis of the effect Juárez’ had on the development of civil rights in Mexico is well beyond the scope of this paper. The main issue I wish to highlight is the attitude of this champion of liberalism toward the law, which is best illustrated by his saying “To our friends, justice and grace; to our enemies, the law.”<sup>31</sup> The tension between Juárez’ liberal aspirations and his authoritarian political practice is a recurrent theme in texts devoted to his role.<sup>32</sup> Thus, since being lullabied in its modern cradle, constitutionally-protected individual rights have been cynically used for political power.

Porfirio Díaz, who ruled between 1876 and 1880 and then 1884 to 1911, thought about himself a direct heir of the liberal tradition. In fact, his regime legitimized its authoritarianism by the 1857 Constitution. The “*obedézcase pero no se cumpla*” principle continued to deepen its roots in Mexico’s political culture as General Díaz allowed regional and local caciques (i.e., strongmen) to preserve their local privileges. At the same time, he sent *jefes políticos* to ensure compliance with Mexico City’s main priorities. In his classic work about the *Porfiriato* and the roots of the Mexican Revolution (1910-1920, the armed phase) Francois-Xavier Guerra highlights the significant gap between principles enshrined in the 1857 constitution and old agrarian traditions (dominated by politico-economic elites) that characterized many parts of the country. As usual, order and stability were imposed in these areas through discretionary social networks which determined how and when the law was enforced. The corollary was the elite’s use of the law and public institutions to punish non-conformity and dissent based precisely on the fair and just mediation, intervention, and application of punishment which such laws and institutions were supposed to carry out on the ground.<sup>33</sup>

3. *The 1917 Constitution and the Construction of Political Hegemony:  
Selective Use of Social Rights to Cement Loyalty, Circumscribe Political  
Rights, and Use Civil Rights to Secure and Maintain Power*

General Díaz was unseated by middle-class and popular uprisings between November 1910 and May 1911.<sup>34</sup> The bloodbaths that ensued, particularly

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<sup>31</sup> HÉCTOR AGUILAR CAMÍN, DESPUÉS DEL MILAGRO: UN ENSAYO SOBRE LA TRANSICIÓN MEXICANA 118 (Cal y Arena, 1988).

<sup>32</sup> See for example José Fuentes Mares and his four volume history of Juárez and his times. The classic study in English is RALPH RAEDER, 2 JUAREZ AND HIS MEXICO: A BIOGRAPHICAL HISTORY (New York, Viking, 1947).

<sup>33</sup> See FRANCOIS-XAVIER GUERRA, MÉXICO: DEL ANTIGUO RÉGIMEN A LA REVOLUCIÓN (Fondo de Cultura Económica, 1988).

<sup>34</sup> HÉCTOR AGUILAR CAMÍN & LORENZO MEYER, A LA SOMBRA DE LA REVOLUCIÓN MEXICANA 28-32 (Cal y Arena, 1990).



between 1913 and 1920, were used to justify the political authoritarianism that evolved between the 1920s and the 1940s. The citizenship rights that resulted from events after the 1917 Constitution differ markedly from what happened Great Britain, as shown in Figure 1.

*A. The 1917 Constitution: Original Intent and “Day-to-day” Enforcement*

The Constituent Assembly called by Venustiano Carranza toward the end of 1916 was pluralistic and represented a mix of urban, rural, upper, middle, and working class interests. Historians have synthesized the dynamics of this assembly by identifying “radical” and “conservative” factions of legislators, the former led by Carranza and the latter by Álvaro Obregón. Among the radicals, a “Jacobin” faction, led by senators Francisco J. Múgica and Heriberto Jara, pushed the Assembly to the left. Basically, Carranza and Obregón wanted a constitution similar in spirit to the 1857 magna carta (*i.e.*, liberal principles, federal structure, separation between Church and State) but which strengthened the federal executive branch to lower the temptation among sitting presidents to become authoritarian given the strong checks and balances enshrined in that text.<sup>35</sup>

The Jacobin faction, emboldened by over fifty thousand armed men in distinct parts of Mexican territory, pushed for the adoption of many reformist elements in the new constitution, including the attributes for public education in article 3; increased control of federal land and natural resources in article 27; and government control and regulation over economic activity, capital accumulation (article 28), and robust workers’ rights (article 123).<sup>36</sup> In effect, this constitution relegated the enforcement of social rights to the federal government, thereby giving power-holders a powerful mix of reformism, paternalism and authoritarianism to enforce their authority and secure the allegiance of the masses. Since Lázaro Cárdenas (1934-1940), this weapon has been used extensively by Mexican presidents.

The Constituent Assembly did not intend to create one-party rule. In fact, power remained fragmented throughout the 1920s; regional and nation-wide conflicts over power, influence and wealth between competing political factions flared up constantly; elections resulted in highly-fragmented legislative representation; and most of the “old” revolutionaries (those who survived the enactment of the 1917 constitution) were soon assassinated between then and 1928.

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<sup>35</sup> *Id.* at 76.

<sup>36</sup> *Id.* at 77.

B. *From Calles to Alemán: Forging Citizenship Rights to Consolidate Peace, Centralize Power, and Impose a New Social Contract*

The continuation of social and political conflict in the 1920s, augmented by the rivalry between the caudillos Álvaro Obregón and Plutarco Elías Calles, meant that politics on the ground during the first decade after enactment of the 1917 Constitution were far from concentrated in a cohesive nation-state. In his last address to the nation —right after the assassination of President-elect Obregón in 1928— Calles expressed his desire to form a national party that brought together the victorious revolutionary factions and, acting through local entities, stemmed the violent struggle over power and booty. As a result, a central platform was established to regulate and manage political conflict.<sup>37</sup> Despite the birth of the *Partido Nacional Revolucionario* (PNR) in 1929, no single party had consolidated political power.

a. *Continued Weakness of Civil Rights*

In spite of a long first chapter devoted to individual rights and the inclusion of the *amparo* in the 1917 Constitution, the tradition of “*obedézcase pero no se cumpla*” continued. For Mexico City politicians, “civil rights” became a negotiation tool, as well as a means of exercising power and cementing loyalties. On the reward side, regional elites were mostly allowed to dispense justice at the municipal and state levels. Subnational police and judicial systems depended on state governors, so they did the state executive’s bidding —as they continue to do today. Crucially, subnational court systems could not hear *amparo* cases, and therefore state judges were excluded from ruling on issues of constitutionality. This not only detracted from the subnational judiciaries prestige and legitimacy, but also inhibited the protection of individual rights, taking away a key element of the “liberal” side (*i.e.* the one concerned with individual guarantees against majority rule) of liberal democracy.<sup>38</sup>

Sanctions for many criminal offenses were reserved for federal courts. The Supreme Court—at least on paper— became the final arbiter of rights violations committed by authorities at any of the three levels of government. Judicial appointments had to be passed by 2/3 of both congressional chambers. Justices were nominated by state legislatures and, once approved, received qualified lifetime tenure (*i.e.*, they could only be removed for bad conduct).

<sup>37</sup> See Alan Knight, Mexico’s Elite Settlement: conjuncture and consequences, in *ELITES AND DEMOCRATIC CONSOLIDATION IN LATIN AMERICA* (John Higley & Richard Gunther, eds., Cambridge University Press, 1992) for an interesting comparison that draws explicitly on the British elite settlement between the Crown, the aristocracy, and the merchant-financial bourgeoisie of the Glorious Revolution.

<sup>38</sup> Michael C. Taylor, *Why no Rule of Law in Mexico? Explaining the Weakness of Mexico’s Judicial Branch*, 27 *NEW MEXICO LAW REVIEW* 154 (1997).

This changed with Presidents Calles and Cárdenas, who weakened the Supreme Court's independence by removing all sitting justices (against constitutional precept) and replacing them with allies. Calles changed the nomination process by assigning it to the executive branch, which required a 2/3 vote *only* by the Senate. The number of justices was expanded, which raised the costs of collective action, and between 1934 and 1944 lifetime tenure was abolished and substituted by six-year terms.<sup>39</sup> Another measure that tilted power in favor of the executive branch was the repeal in 1932 of legislators' right to be reelected.

During this time, the Supreme Court became fairly docile, tending to support the presidency. Between 1917 and 1960, however, around 1/3 of *amparo* rulings went against the government; most (2/3) of these wins were by large domestic and foreign enterprises. In the words of González Casanova, "[...] the Supreme Court [...] can on occasions act as a break on the actions of the president and his collaborators [but only when this involves] major property owners and companies [...] Workers and peasants are in a clear minority [...] the Supreme Court follows in general the direction established by the executive, [thereby giving it] more stability."<sup>40</sup>

#### b. *Political Rights*

The rights to get elected and remain in office were not as suppressed in Mexico as in many totalitarian nations. Pursuant to applicable law—at least on paper—Mexican citizens were granted freedoms of expression, organization and ballot elections. Electoral law, enacted in 1918, led to a decentralized system in which municipalities and citizens' groups were placed in charge of elections management. The 1920s produced pluralistic, fragmented legislatures.

Real consolidation of authority began with the creation of the PNR in 1929 but only gained traction in 1933, when the party moved to dissolve regional parties working under its broad umbrella. Loyalties would then be owed directly to the central party leadership, bypassing regional caciques and leaders, most of whom were killed in the regional insurrections of 1923, 1927 and 1929.<sup>41</sup> During Cárdenas' presidency, centralized authority was consolidated through the creation of diverse organizations by workers, peasants and the military. The resulting umbrella organization, renamed the *Partido de la Revolución Mexicana* (PRM) in 1938, further cemented party loyalty. Even though the military was later excluded from the party in 1940, it was granted notable privileges and resources. A popular sector comprised mainly of public bureaucrats and other middle class associations was created in 1943.

<sup>39</sup> *Id.* at 145-148.

<sup>40</sup> PABLO GONZÁLEZ CASANOVA, *LA DEMOCRACIA EN MÉXICO* 34-37 (Era, 1965).

<sup>41</sup> ARNALDO CÓRDOVA, *supra* note 13, at 50-51.

This move to de-militarize the party was strengthened by a new electoral law passed in 1946, which centralized election management under the Ministry of the Interior (*Secretaría de Gobernación*). Under this law, only political parties registered before the Ministry could get elected. Later that same year, the party changed its name to *Partido Revolucionario Institucional* (PRI) which continues today.<sup>42</sup>

The 1946 electoral law by itself did not suppress citizens' political rights. It channeled them through the increasingly dominant party by strengthening links between it and the government. With PRI officials in charge of the government and the government in charge of the organization, control was consolidated over both election procedures and participants. The stage was set for one-party dominance to become one-party hegemony.

### c. *Social Rights*

The significant leverage given to the executive branch regarding social rights under Articles 3, 27, and 123 of the 1917 Constitution allowed every president since President Cárdenas to forge a new social contract. This transformation was based on considerable economic gains made by PRM-related grass-root organizations—in particular, for their leaders. These laws strengthened the federal government and placed it in a strong bargaining position with domestic and foreign capitalist classes. These in turn more often than not accommodated to a modicum of successive, popularly-backed demands, which in turn incumbents implemented to retain social cohesion, popular support, and a sense of renewed legitimacy. The problem of legitimacy was palpable to the political class inasmuch as intra-PRI conflicts spilt over during presidential elections as non-conformists with the official choice ran independently, produced significant protests and fraud allegations, and left many dead in 1929, 1940, 1952, 1988, and most recently in 2006.

From this author's perspective, the basis for citizenship rights in Mexico was built upon the social rights gained during decades of PRI hegemony. In the words of Córdova:

[...] social reforms created [...] the base over which was built the scaffolding of social collaboration in post-revolutionary years [...] Such reforms were used as instruments of power [against] social conflicts; in favor of thinking about the State as created for the people; [used] as weapons against old and new owners' classes; allowed State leaders to mobilize the masses; and gave the status quo such a solid consensus that not even violent internal quarrels could endanger it.<sup>43</sup>

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<sup>42</sup> JUAN MOLINAR HORCASITAS, *EL TIEMPO DE LA LEGITIMIDAD: ELECCIONES, AUTORITARISMO Y DEMOCRACIA EN MÉXICO* 23-26 (Cal y arena, 1991).

<sup>43</sup> ARNALDO CÓRDOVA, *supra* note 13, at 21-22.

The corporatization of society by President Cárdenas, and the 1946 electoral straightjacket alone could not alone have assured mass allegiance to the political system during the difficult years of the Calles and Alemán administrations. But these presidents had the ability to use social rights to strengthen the party's institutional machinery. The party in turn—at its sole discretion—doled out political rights in order to impose obedience and order.

A key difference between the development of social rights in Great Britain and Mexico is that in the latter, these rights were selectively enforced.<sup>44</sup> They became the carrots and sticks that sustained allegiance to the PRN and its transformations, the PRM and finally the highly effective, hegemonic PRI. Just as many people dream of winning the lottery, Mexicans dreamed of reaping the rewards of the Revolution (*i.e.* improved living conditions and future prospects). The difference, of course, is that winning a lottery is a random event whereas life improvement through revolutionary nationalism (as practiced by the PRI) required concerted effort, both by individuals and organizations. These efforts included loyal party affiliation; upstanding support for government policies; using any means to keep the party in power; and, at the very least, not rocking the boat or supporting opposition groups that represented viable threats. In other words, social rights were not granted to Mexicans in the form of universal entitlements (as they were in Britain) but rather as patronage, doled out by an elaborate political machine whose main function was to keep the PRI in power. This symbiosis continued as long as social rights grew, which was between the 1940s and 1970s.

*C. Successive Shocks; End of One-Party Rule in Mexico; and Changes to the Definition, Implementation, and Effectiveness of Citizenship Rights*

*a. Erosion of Selective Social Rights and Pressure for Universal Entitlements*

Between the 1940s and early 1970s, the PRI's one-party rule was supported by fairly high economic growth, low inflation and progressive social reform—the so-called “Mexican Miracle.” This prosperity came to an end, however, with adverse global conditions and internal mismanagement (in large part due to the party's massive handouts to opposition groups to maintain its so-called democratic legitimacy). Between 1976 and 1982, Mexico experienced a series of severe financial crises which undercut the PRI's economic standing, including its ability to grant privileges, exert influence and

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<sup>44</sup> This statement does not apply to all liberal democracies. See GÖSTA ESPING-ANDERSON, *THE THREE WORLDS OF WELFARE CAPITALISM* (Princeton University Press, 1990) where the early development of social rights in countries like Germany, France and Italy are depicted as tied also to statist, corporatist ideals of political integration and social control rather than as universal citizen entitlements.

bestow favors in return for loyalty, discretion and silence. The years of plenty finally ended in 1982, resulting in a long, painful and politically costly period of internationally-mandated fiscal and monetary contraction.

Since 2000, when the PRI lost power through relatively fair elections, Mexican politicians have been forced to appeal to broad voting constituencies (*e.g.*, teachers, *campesinos*, etc.) as much as smaller elites. For this reason, political parties now commonly advocate universal entitlements rather than the favors and patronage which defined PRI rule. Some examples include *Seguro Popular* passed by President Vicente Fox; universal social security coverage enacted by President Peña Nieto; and the conditional cash transfer program *Oportunidades* (originally *Progresa*), run by the federal government and based on fairly objective criteria. Though by no means a cure for deep-seated marginalization, the latter program has significantly improved health and education of minor children in jurisdictions under control by every political party.

*b. Pressures from Above and Below to Appropriate and Exercise Effective Political Rights*

As a result of the series of economic crises described above, the PRI lost much of its popular appeal, eventually giving rise to increased support for opposition political parties. Many in the business elite and urban middle classes, for example, aligned openly with the PAN (*Partido Acción Nacional*), a conservative party which gained strength in the 1985 mid-term elections and shortly later in Chihuahua. On the other hand, popular organizations such as trade unions, universities and left-wing parties aligned themselves with the National Democratic Front (*Frente Democrático Nacional*), led by notable figures such as Cuauhtémoc Cárdenas and Porfirio Muñoz Ledo, who broke away from the PRI in 1988 to contest the presidency after the PRI changed course and embraced neoliberalism.

Both the erosion of paternalist-based social rights and an ideological shift toward neoliberal market theory in the 1980s provoked widespread discontent and increased demand for fair elections. Why did this occur? Because the political rights enshrined in the Mexican constitution were often cited by the PRI itself to justify its own legitimacy. This differed sharply from military dictatorships such as those in Argentina and Chile, where political rights were legally suppressed; or in Leninist regimes where single-party rule was legitimized in the constitution.

In Mexico, PRI leaders and opposition parties played a game of “cat and mouse,” inasmuch as political rights were at least codified in a pluralist way. In the face of growing opposition, the regime could either try to coopt, appease, or repress dissent. Likewise, the opposition could organize and express varying degrees of dissent consistent with such different outcomes. As long as socioeconomic conditions improved (as they did between the 1940s and

1970s) most political actors preferred cooperation. In spite of its occasional use of brutal tactics to suppress opposition, the PRI mostly relied on appeasement and cooptation, so much so that they became in effect part of the party's DNA such as in 1958 (against rail workers); in 1968 and 1971 (against students); and in 1994 (against the Zapatistas in Chiapas).

After 1976 (and especially after the 1982 economic crisis) both elite and popular organizations began demanding more of their constitutionally-guaranteed political rights. Although the regime continued its refusal to grant these rights (*e.g.*, fair elections, universal suffrage), its economic leverage had weakened considerably. Moreover, its embrace of neoliberalism enabled many opposition candidates —especially those on the left— to galvanize the support of massive constituencies and to begin an aggressive push for fair elections. In addition to the public's long memory of the PRI's brutality, the series of economic crises that broad swiped huge sectors of Mexican society —affecting every class, region, ethnicity, gender and age group for the worse— forced the regime to finally implement change. As one would expect (given the high costs of widespread repression) the regime did so reluctantly in a succession of electoral reforms in exchange for the left and right wing oppositions not to rock the boat in the aftermath of the successive end-of-sexenio financial crises between 1976 and 1994-5. In the end, its ability to coopt the opposition through material handouts dried out. Therefore, the means of bargaining became laws themselves, in particular electoral laws that led to a gradual dismantling of the hegemonic advantage of the PRI until the 1996 created a more or less level playing field.

The implementation of fairly competitive elections did not happen overnight. It took over two decades for genuine reform to take place, during which time the opposition won increased “rights” (usually passive) to express the public's staunch rejection of neoliberal reforms realized by presidents De la Madrid, Salinas and Zedillo (1982 to 2000) of the PRI, and continued under Presidents Fox and Calderón (2000 to 2012) of the PAN, and have resumed impetus since the return of the PRI presidency under Enrique Peña Nieto (2012-2018).

Going back to what forced full electoral democratization in Mexico, it took an indigenous uprising in Chiapas started officially on January 1, 1994; fratricide conflict inside the PRI which claimed the lives of the presidential candidate Luis Donaldo Colosio in March that year and of the PRI general-secretary and soon-to-be leader of the party majority in the Cámara de Diputados (*i.e.* the lower chamber of Congress), general social unrest, and a spectacular financial-economic collapses, dubbed the *tequilazo* that forced incoming President Ernesto Zedillo (1994-2000) to negotiate the 1996 political reform helped to produce a measure of free and fair exercise of political rights. Although much work needs to be done, this law has enabled diverse political parties to win elections at local, state and federal levels in a way unthinkable in prior decades.



c. *Civil Rights: New Shocks, Reforms, but Still a Work in Progress*

Though political rights evolved in the 1990s, civil rights have remained the weak link in Mexico's so-called liberal democracy. Regardless of which party is in power —PRI until 2000, PAN between 2000 and 2012 and, since the end of 2012, the PRI's return— these rights were historically granted solely those with money and political connections. In fact, during Felipe Calderon's presidency (2006-2012), civil rights for many Mexicans eroded significantly.<sup>45</sup> As a result of Calderon's "war on drugs" —re-labeled a "war on organized crime"— over 80,000 people had died by the end of his administration in December 2012.

Similar to the activation of civil society organizations and protests to demand effective political rights during the erosion of paternalist-based social rights given the "lost decade" of socioeconomic development in the 1980s and the painful adoption of neoliberalism in the 1980s, 1990s, and 2000s, social pressures in favor of transparency, the rule of law, and protection of civil rights (increasingly cast in the language of internationally-sanctioned human rights)<sup>46</sup> acquired a sense of urgency and for many of despair during Calderón's government and his war on drugs, which similarly acted like a shock that triggered collective action from above and from below.

Similar to economic crises, the crisis involving organized crime and the government's violent response affected a large cross-section of Mexican society. Rich, poor, whites, mestizos, indigenous, men, women, northerners and inhabitants of central and southern areas were all forced to confront daily atrocities, including kidnapping, extortion, injury and murder. Similar to political rights, civil rights were already codified in Mexican law —if not effectively enforced. Just like in the twilight years of the PRI's one-party rule, the Calderón government— having been fairly elected in free and open elections—was pressured by massive constituencies to implement reform— resulting in amendments to criminal justice,<sup>47</sup> human rights and the law of *amparo* in

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<sup>45</sup> Francisco E. González, *Countries at the Crossroads*, FREEDOM HOUSE (2010), available at [http://freedomhouse.org/report/countries-crossroads/2010/mexico#.U\\_XGI\\_ldUqQ](http://freedomhouse.org/report/countries-crossroads/2010/mexico#.U_XGI_ldUqQ). See also, *Countries at the Crossroads*, FREEDOM HOUSE (2012), available at [http://www.freedomhouse.org/report/countries-crossroads/2012/mexico#.U\\_XGS\\_ldUqQ](http://www.freedomhouse.org/report/countries-crossroads/2012/mexico#.U_XGS_ldUqQ).

<sup>46</sup> In respect of the potential need to create a fourth category of citizenship rights (*i.e.* human rights) that adds to the classic civil, political and social rights, Guillermo O'Donnell held the commonsense view —with which this author agrees— that "human rights are good old civil rights." See FERNANDO ESCALANTE GONZALBO, *CIUDADANOS IMAGINARIOS* (El Colegio de México, 1992). Regarding the significant pressures from below to make civil rights an effective rather than just a written instrument of legality and justice in Mexico See MARIE CLAIRE ACOSTA URQUIDI, *LA IMPUNIDAD CRÓNICA DE MÉXICO: UNA APROXIMACIÓN DESDE LOS DERECHOS HUMANOS* 19-56 (Comisión de Derechos Humanos del Distrito Federal, 2012).

<sup>47</sup> See MATTHEW C. INGRAM, *CRIMINAL PROCEDURE REFORM IN MEXICO: WHERE THINGS STAND NOW* (Woodrow Wilson Center for International Scholars, 2013), [http://www.wilson-center.org/sites/default/files/Ingram\\_CrimProReformMexico\\_Jan\\_2013.pdf](http://www.wilson-center.org/sites/default/files/Ingram_CrimProReformMexico_Jan_2013.pdf).

2008 and 2011, respectively. Once again, the general population used marches, blockades, lobbying abroad and mass media to pressure the government to make notable changes that will profoundly affect how civil rights are enforced in Mexico in the near to long-term future.

## VI. CONCLUSION

T. H. Marshall depicted the development of liberal democracy in Great Britain as the product not of a necessary or logical historical process but rather as the result of the accumulation of contingent historical events, which in the case of that nation-state produced a rough sequence of citizenship rights characterized by first civil rights, then political, and lastly social.<sup>48</sup> More recently, authors such as Rose and Shin have referred to a diametrically opposed sequence of development (social or political rights *before* civil rights —“backwards democratization”) that characterizes many third-wave democracies and explains why relatively free and fair elections are not enough to create liberal democracy.<sup>49</sup> Without the rule of law and one of its corollaries, *accountability*, this type of political regime can barely function much less thrive.

This work has compared the historical paths of Great Britain and Mexico to show that (a) citizenship rights developed in Mexico in a way diametrically opposed to how they developed in Great Britain; (b) that an alternate sequence does not necessarily prevent the development of liberal democracy; and (c) citizenship rights in Mexico were catalyzed by economic and security-related crises that deeply impacted society, triggered widespread opposition to the authorities, and led finally to the enforcement of already existing law.

At the risk of sounding over-optimistic, it is important to note that the general proposition I posited, namely, that the process of defining, changing and exercising of citizenship rights is dynamic rather than static, this should alert the reader that such a dynamic process cuts both ways. This means that although economic and security crises may have helped to trigger collective action for more inclusive enforcement of political, social and civil rights (as they have done, unevenly and not without setbacks but nonetheless effectively in Mexico since the 1980s), it would be naïve to rest on the laurels of achievements such as these to declare victory. Likewise, it would be morbid to wish for more negative shocks in Mexico to force the deepening and consolidations of such achievements by Mexican civil society over state power. Regardless of which party rules at any point in time in Mexico and wherever electoral

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MIGUEL CARBONELL, LA REFORMA CONSTITUCIONAL EN MATERIA DE DERECHOS HUMANOS: PRINCIPALES NOVEDADES, <http://www.miguelcarbonell.com/articulos/novedades.shtml> (last visited September 6, 2012).

<sup>48</sup> T. H. MARSHALL, *supra* note 7.

<sup>49</sup> Richard Rose & Doh Chull Shin, *Democratization Backwards: the Problem of Third Wave Democracies*, 2 BRITISH JOURNAL OF POLITICAL SCIENCE 331-354 (2001).

democracy is more or less effective at circling the elites that play the game of representative democracy, politicians will always try to prolong their stay in and enjoyment of power, money and influence. For this reason, citizenship rights are obstacles to them (when they operate effectively) which civil society has to continue cultivating and practicing. The fact that politicians dislike them give a strong signal that any civil society is doing a good job —organizing, questioning, and forcing change— as it continues sharpening through daily practice its check of power —*i.e.* holding it accountable. Without constant pressure by civil society for inclusive and effective enforcement, the government will always try to pull in the opposite direction.

This article has chronicled and analyzed recurrent the deep, broad and very painful economic and security-based shocks in Mexico (particularly between the 1982 economic crisis and the 2000s security and major violence crisis) that created the conditions that triggered the organization and exercise of pressures from above and below that forced a redefinition and better implementation of basic citizenship rights. A fundamental source of concern for anyone who believes in the limited and accountable rather than the unchecked and expansive exercise of power and authority in any contemporary society is if such pressures from above and below can be sustained in the absence of dramatic negative shocks. How a self-sustaining system where laws and norms are applied continuously and in a relatively equal, non-discretionary manner remains a question that has many empirical answers. In Mexico, organized civil society has shown that it can force the political class to change the definition and implementation of basic citizenship rights. Such an organized civil society has to show that it can do so not only in times of grave socio-economic and/or political crises, but permanently, as part of day-to-day social and political activity.