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FOREWORD: SEARCHING FOR THE MEXICAN MODEL OF GOVERNMENT

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> . . . [T]he history of Mexico is that of a people seeking a form that will express them . . . .*Octavio Paz*[1]

Mexican history, from Spanish colony to modern nation, reveals a broad cyclical pattern. Long periods of political stability lead to stagnation, which remains intact until the status quo is upset by political and economic upheavals. Eventually, a new basis of stability replaces the old. This pattern has been repeated several times over the past five centuries. Three hundred years of stable, if oppressive, Spanish colonial rule gave way to wars of independence and the political upheavals of a nation that was fifty years old before it finally achieved a stable government under the presidency of Porfirio Diaz. That period of stability lasted thirty-four years, but degenerated into the stifling inequities and rigid politics of the *Porfiriato* dictatorship (1876-1910). The Mexican revolution of 1910-1917 shattered the safe, comfortable world of Porfirio Diaz and his followers. During the two decades following the fall of Porfirio Diaz, a succession of political and military figures attempted to consolidate power. Their uniform lack of success was easily measured: by the time of the assassination of Álvaro Obregón in 1928, virtually every contender for the political leadership of Mexico had met violent death.

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1. OCTAVIO PAZ, THE LABYRINTH OF SOLITUDE [AND OTHER ESSAYS] 134 (1961, *reprinted* 1985).

The political and economic turmoil brought on by revolution finally subsided under the leadership of Plutarco Elias Calles (President from 1924-1928), the early architect of modern Mexico. A consummate political boss, he was able to construct a foundation of support that included organized groups of labor, *campesinos*, and government bureaucrats, with the willing, if less ardent, backing of a business/landowner class exhausted by revolution. This coalition was so successful that, with the *Partido Revolucionario Institucional* (PRI) operating as the key mediating institution, Mexico was able to achieve a level of political and economic stability that lasted more than half a century.

In a book published in the aftermath of the Mexican debt crisis of 1982, Roberto Newell and Luis Rubio describe with clarity and detail how the political consensus of modern Mexico was achieved through the creation of institutions that were able to link all important sectors of society to a system of economic and political controls maintained from the center.[2] As shown by Newell and Rubio, institutionalized stability led eventually to political and economic stagnation—the same pattern that occurred in previous centuries. On the political front, the government was able to co-opt dissidents and disparate political groups through a wide network of favors: government jobs, government contracts for businesses, access to political offices, etc. On the economic side, the desire for economic self-sufficiency was thought to necessitate a model of centralized control of large areas of the economy. This model led eventually to the creation of an economy that was insulated from outside competition; the inevitable result was the creation of a non-competitive manufacturing sector.

Over the five decades from 1928 to 1978, these models of political and economic development became progressively calcified. The effective, though non-violent, suppression of meaningful political opposition, and an increasingly pervasive governmental control of the economy,[3] kept the PRI in power, but they also led to political rigidity and a lack of economic competitiveness. As a result, the stability assured by successive presidents, each one adjusting and exercising an elaborate network of political and economic controls, was purchased at the expense of a more diversified economy and polity.

As long as the Mexican economy expanded—and it did expand at a healthy annual rate until the early 1980's—the model of a relatively

2. R. NEWELL G. AND L. RUBIO F., MEXICO'S DILEMMA: THE POLITICAL ORIGINS OF ECONOMIC CRISIS (1984).

3. For an excellent discussion of Mexican government control of private business activity, *see* J. Purcell and S. Kaufman Purcell, "Mexican Business and Public Policy," in AUTHORITARIANISM AND CORPORATISM IN LATIN AMERICA 191-226 (J. Malloy, ed., 1977).

closed economy and a closed political system worked fairly well, and led to the stability that made Mexico the envy of other developing nations. By the mid-1980s, however, political and economic shocks[4] had contributed to a "rapidly polarizing political spectrum."[5] The obeisance traditionally given to the government by labor, *campesinos*, bureaucrats and businessmen gradually weakened as each of these groups suffered the effects of economic crisis, a crisis popularly attributed to the self-serving policies of the political leadership. At the same time, opponents of the system, both from the right and the left, were able to exploit this dissatisfaction by raising more serious political challenges to the PRI, capitalizing in part on electoral reforms initiated during the López Portillo administration.[6]

While the PRI continues to maintain its position of control, these cracks in the governmental foundation may be of more than transitory importance: they may indicate that Mexican history may be at the end of yet another cycle of stability and stagnation, and that a new period of instability may be at hand. If past patterns hold, this instability will only subside when an entirely new regime, one that represents a rejection of the current regime, becomes established. As Carlos Fuentes has

4. The first shocks occurred in 1968, the year in which a widely publicized student revolt, which was brutally suppressed, demonstrated to the world the inability of the state to satisfy the aspirations of large segments of society. A further series of shocks occurred at the end of the Echeverria regime, in 1976, when the government proved itself unable to finance the ambitious program of public investment and social welfare that President Echeverria had prescribed for it. As a result, Mexico suffered the first devaluation of the peso in 25 years, and was forced to seek IMF financing, a significant embarrassment. President Echeverria, in his last days in office, also attempted to break up large landholdings in the north of the country, further upsetting the general support that the government had received from the private sector.

The most serious shocks to the system came at the end of the presidency of Jóse López Portillo (1976-1982), who had gambled the oil reserves of the country on an ambitious program of industrialization, and lost. Reliance on external financing of economic development resulted in economic disaster when oil prices and interest rates on debt began to slide in opposite directions. The ensuing debt crisis brought economic deprivation to the country as a whole, and led in turn to increasing dissatisfaction with the political system that produced such a result. Rumors of the levels of corruption and waste that occurred during the López Portillo regime contributed to a growing cynicism even among supporters of the system.

5. S. NEWELL & RUBIO, *supra* note 2, at 272.

6. In 1978, President López Portillo approved a reform to the election laws that allowed greater representation for opposition parties, which had been unable to challenge the PRI in a system of single congressional districts in which the PRI always claimed a majority. *See* NEWELL & RUBIO, *supra* note 2 at 204-209. The reforms themselves did not lead immediately to widespread election of opposition congressmen (*diputados*), but they did give an incentive to opposition parties to work within the system. By the elections of 1988, opposition parties were able to wrest 240 of the total 500 congressional seats away from the PRI, and were able to give PRI-candidate Carlos Salinas de Gortari — who garnered slightly more than 50% of the popular vote — a run for his money.

For a discussion of the political tug-of-war leading up to the 1988 elections, *see* Adolfo Aguilar Zinser, *Mexico: The Presidential Problem*, 69 FOREIGN POLICY 40 (Winter 1987-1988).

written, in the past each major reform in Mexico has rejected categorically the previous regime, and has attempted to construct a new regime based on entirely new principles (even if this involves an element of self-delusion):

> . . . Mexican history develops through ruptures. Each new historical project not only replaces the foregoing, it annihilates, rejects, and obliges it to start again from the beginning. The Conquest tries to wholly deny the existence of the indigenous world, the Independence denies the Colonial world, and the Revolution rejects nineteenth century positivism. While yet claiming to be orphaned, each of Mexico's historical projects is open, *nolens volens*, to the secret contamination of the traditions thus denied. [7]

Luis Rubio points out in this symposium that the task facing the government of President Carlos Salinas de Gortari is to engineer drastic economic reforms that will revitalize the economy of Mexico, thereby releasing political pressures for radical change. President Salinas must bring about expected reforms in an orderly manner that will leave in place at least part of the political and economic structure that had become stagnant. He must somehow engineer a transition from the authoritarian, corporatist, control-oriented model of government he inherited, to a new, open and more realistically competitive political and economic regime. At the same time, he must try to avoid the political upheavals and absolute rejections that have attended the replacement of prior regimes caught in the cycle of stability, stagnation and upheaval. While revolution is unlikely, so is a trouble-free transition from the previous model of government based on centralized control.

This search for an acceptable form of government may seem strange to many people in the United States, where most people, even those who complain about particular governmental policies, take inordinate pride in the presumed superiority of our political and economic systems. While it may be fictional, in the United States we are taught to believe that this country has followed an unbroken line of free, representative democracy nurtured by an economy based on competitive, free-market capitalism. The only serious challenge to this model—the American Civil War—merely served to reinforce the sanctity with which the basic model is endowed. We smugly view the events taking place in Eastern Europe as evidence that the world is finally beginning to accept our societal models. Who would be willing to predict that, one hundred years from now, the United States would not still be following the same, basic

7. CARLOS FUENTES, EL MUNDO DE JÓSE LUIS CUEVAS 8 (Consuelo de Aerenlund, trans. 1969).

political model of representative democracy, and the same basic economic model of capitalism and free enterprise, that we have followed for centuries?

This constancy of support for the basic political and economic system is not evident in the Mexican experience. Far from pledging undying support, Mexicans have periodically called into question their basic institutions and policies. The prevailing models of political and economic organization are still at issue in Mexico. The statement of Octavio Paz that "the history of Mexico is that of a people seeking a form that will express them"[8] is as valid today as it was in 1961, when the statement was first made.

Not even the Mexican Revolution, that most hallowed of Mexican "institutions," could satisfy the Mexican search for acceptable institutions. Mexican novelist Carlos Fuentes expresses this dissatisfaction as well as anyone. In *The Death of Artemio Cruz*, Fuentes draws a cynical portrait of post-revolutionary Mexico, focusing on a revolutionary soldier who later becomes wealthy and corrupt. Near the end of the novel, Fuentes' character expresses the cynicism of many Mexicans towards post-revolutionary institutions, summing up the revolutionary legacy:

> You will bequeath them their crooked labor leaders and captive unions, their new landlords, their American investments, their jailed workers, their monopolies and their great press, their wet-backs, hoods, secret agents, their foreign deposits, their bullied agitators, servile deputies, fawning ministers, elegant tract homes, their anniversaries and commemorations, their fleas and wormy tortillas, their illiterate Indians, unemployed laborers, rapacious pawnshops, fat men armed with aqualungs and stock portfolios, thin men armed with their fingernails: they have their Mexico, they have their inheritance;[9]

While the revolution of 1910-1917 gave Mexicans a new sense of their national identity, and a pride in their special *mestizo* character and their indigenous traditions, it did not end up satisfying the Mexican need for a set of institutions in which the majority of Mexicans could, once and for all, place their confidence. The governmental system created by Plutarco Elias Calles and Lázaro Cárdenas, while it held the country together during six decades of growth and modernization, has not proved to satisfy the desire to find the particular form of government that might be embraced by all Mexicans.

Current political uncertainties merely underscore this realization. Many Mexicans question the centralized authority that has prevailed

8. *See* note 1, *supra*.
9. CARLOS FUENTES, THE DEATH OF ARTEMIO CRUZ 269 (S. Hileman, trans. 1964).

throughout much of this century, and would prefer a model of government that insures greater economic and political freedom; an equal number of Mexicans would prefer a radically different model, with vigorous governmental controls operating to remove the pronounced economic and social inequities that exist in the country. Both sides reject the current way of government. In either case, a prevailing sense of unique cultural identity limits Mexicans from freely embracing institutions and societal models developed elsewhere. Octavio Paz has expressed the distrust of Mexicans for non-Mexican models: "[T]he models of development that the West and East offer us today are compendiums of horrors. Can we devise more humane models that correspond to what we are?"[10] While unavoidably being influenced by Europe and the United States—President Salinas, like many government leaders, holds a graduate degree from a university in the United States—Mexicans have a strong sense that imported concepts should be "mexicanized." Mexico's models must be peculiarly Mexican, if not in origin, then at least in adaptation.

What is the reason for this continuing search for the form of government that will be a true expression of Mexican character? Why has Mexico not settled into a comfortable form of political and economic organization after almost two centuries of national existence? A partial answer to these questions lies in two overriding characteristics of Mexican society: the existence of dichotomies that resist compromise, and the tendency to adopt authoritarian models.

The pronounced dichotomies that characterize Mexican society militate against a general acceptance of a single model equally embraced by the entire population. A highly Catholic country, Mexico is a bastion of liberal anti-clericalism. On a daily basis, ostentatious wealth confronts immense poverty. Polyglot Mexicans who are familiar with the restaurants and boutiques of New York and Paris share the streets of Mexican capitals with Mexicans who may only speak Zapoteca or Náhuatl. European music and art is greatly admired along with Mexican folk art and folk beliefs. Indigenous art, language and beliefs give Mexico its unique cultural flavor, but they do not provide a clear path for political and economic development.[11] In such a diverse setting of beliefs and experiences, a single, neat model of political and economic development has been elusive.

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10. OCTAVIO PAZ, *The Other Mexico*, in THE LABYRINTH OF SOLITUDE, *supra* note 1, at 213, 217-218.

11. The one indigenous economic model adopted by the Mexican government — the *ejido* system of communal agriculture, a legacy of pre-Hispanic Mexico — has shown mixed economic benefits at best, and may be more of a social welfare program for employing marginal labor than an efficient form of economic development.

Another reason for the ongoing search for a viable governmental model lies in the Mexican predilection for authoritarian government, both *de jure* and *de facto*. Throughout Mexican history, every period of political stability has been accompanied by a high degree of authoritarianism.[12] Eventually, the authority figure, whether it be a person or a political party, must answer for the accumulated shortcomings of the system. Rejection of the person or the party means rejection of both policies and institutions, and the quest for an entirely new system to replace it.

This symposium brings together a collection of articles describing the new environment for trade and investment in Mexico. This new environment is the governing party's response to increasingly adamant demands within Mexico for improvement of both the economic and political performance of the key institutions that bind together Mexican society. The articles deal with important changes in the laws governing foreign investment, international trade, taxation, and litigation. In publishing this collection, the *Houston Journal of International Law* wishes to focus the attention of persons outside of Mexico on the important changes in economic regulation that are taking place in that country.

The reader will note that all the articles published in this symposium have been written by Mexican experts. The impressions that we form concerning Mexican society are often filtered through the viewpoints of our own expert observers, rather than acquired from Mexicans themselves. The books about Mexico that are most widely read in the United States are often written by Americans.[13] It is possible that more people in the United States have read Alan Riding's *Distant Neighbors* than Octavio Paz's *The Labyrinth of Solitude*, even though the latter is the most important work about Mexican character and culture published in this century. The same predilection occurs in legal commentary.[14] I do not mean to depreciate the observations of foreign commentators about

12. On Latin American authoritarianism in general, *see* Douglas Chalmers, "The Political State in Latin America," in AUTHORITARIANISM AND CORPORATISM IN LATIN AMERICA, *supra* note 3, at 23, 35-41.

13. The most popular books on Mexico published in the United States in recent years have been written by observers from the United States. *See, e.g.*, J. KANDELL, LA CAPITAL: THE BIOGRAPHY OF MEXICO CITY (1988); A. RIDING, DISTANT NEIGHBORS: A PORTRAIT OF THE MEXICANS (1985).

An exception to this statement is the book by Robert Pastor, an American, and Jorge Castañeda, a Mexican, LIMITS TO FRIENDSHIP: THE UNITED STATES AND MEXICO (1988), in which the authors alternate chapters of individual commentary on the culture and society of both countries, thus allowing interesting comparisons of U. S. and Mexican attitudes.

14. *See, e.g.*, Maviglia, *Mexico's Guidelines for Foreign Investment: The Selective Promotion of Necessary Industries*, 80 AM. J. INT'L L. 281 (1986); Murphy, *The Echeverrian Wall: Two Perspectives on Foreign Investment and Licensing in Mexico*, 17 TEX. INT'L L. J. 135 (1982); Zamora, *Peso-Dollar Economics and the Imposition of Foreign Exchange Controls in Mexico*, 32 AM. J. COMP. L. 99 (1984).

Mexico; the alternative—ignoring Mexico—would be much worse. I simply wish to point out that these views should be balanced by commentary formulated by Mexicans themselves. Since most of us do not read Spanish, this means that we must wait for someone to decide that a work written by a Mexican author is worthy of translation and publication in the United States. The editors of the *Houston Journal of International Law* are therefore to be especially commended for publishing a collection of articles by Mexican experts on Mexican law, with the difficulties of cite-checking and editing that this implies.

With one exception, the articles comprising this symposium are about Mexico itself, rather than about U.S.-Mexican relations. Along with our cultural bias in favor of our own commentators, there is an additional bias towards viewing Mexico in relation to the United States. We are constantly comparing Mexican experiences with U.S. experiences. Not surprisingly, we usually find the latter preferable. This bias, however—this tendency to measure Mexican experience by constant reference to U.S. experience—is even more pronounced among Mexican commentators than it is among Americans. Many Mexican intellectuals—Octavio Paz, Carlos Fuentes, Jorge Castañeda, and Lorenzo Meyer, to name a few—are preoccupied almost as much with Mexico *as it relates to or compares with* the United States as they are with the Mexican experience standing alone. The United States looms as an unavoidable reference point for Mexican introspection, not just because of its geographical proximity, but because of the broad array of cultural and economic signals with which we constantly bombard the world. Octavio Paz has openly voiced the preoccupation that Mexican intellectuals have with the United States:

> I repeat that we are nothing except a relationship: something that can be defined only as a part of a history. The question of Mexico is inseparable from the question of Latin America's future, and this, in turn, is included in another: that of the future relations between Latin America and the United States. The question of ourselves always turns out to be a question of others. For more than a century that country has appeared to our eyes as a gigantic but scarcely human reality. The United States, smiling or angry, its hand open or clenched, neither sees nor hears us but keeps striding on, and as it does so, enters our land and crushes us.[15]

In reviewing legal developments in Mexico, it is advisable to avoid

15. OCTAVIO PAZ, *The Other Mexico*, in LABYRINTH OF SOLITUDE [AND OTHER ESSAYS], *supra* note 1 at 213, 218-219.

facile comparisons with U.S. Law. While the "Mexican Model" of development is still a subject of debate, one thing appears clear: the model that Mexico will choose will not be a duplicate of one produced north of the Rio Bravo.