

Oversight And Accountability. New Legitimizing Paradigms In Government Action In Mexico

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Abstract

Objective: To expose the meaning and channel of the Mexican higher body of control within the powers of the Union. Method and means: The treatment of the object-subject of study is based on documentary research since this technique allows the collection of information and document on a certain topic in order to know the state of the art of this. Discussion: Highlight the high value of a higher oversight body and its relevance to the work of the government. Result and conclusion: It is not enough to have a higher supervisory body, but for it to have complete legal, administrative, financial and political independence in the exercise of its functions.

Keywords: oversight, accountability, control, surveillance and audit.

Introduction

Soon after the post-revolutionary Mexico, government, political institutes and civil society – each one forG one on its own and in some cases making synergy – began to build a national project based on the dictates of the Mexican Revolution to order and structure the Mexican State, since the revolutionary stage caused the collapse of the regime imposed by the Constitution of 1857. Thus, once the Constitution of 1917 was approved and put in place, the social, political and institutional actors were guided by this legal framework to gain validity in the institutional framework and, in this way, to be an intervener in the construction of the country (Córdova, 1972).

Thus, from this Magna Carta, the constitutional architecture conceived a governmental-institutional structure and a party system where both and within the framework of their own powers gave validity, permanence and channel the entire political regime; this last component being

the one that promoted a task of government based on the foundational dictates of the State and the paradigms emanating from the Mexican Revolution.

This scenario was the course of action that the Mexican nation experienced for seven decades with the Institutional Revolutionary Party -PRI- as a government party since its origin in 1929, tending for itself the Executive Power, the Legislative Power and the Judicial Power (Domínguez and Poiré, 1999).

This situation led the party to have and maintain the entire institutional structure and, consequently, to define the national work alone. With this precedent, the three powers of the Union even with the existence of a competency base defined in the Supreme Charter and with sufficient mechanisms to operate and function as a system of checks and balances in the political scene, only one of them, that is, the Executive Power, remained in force in the decision-making process, leaving the other

two laggards and, at some point, marginalized to fulfill the institutional mandate (Altamirano, 2004).

This is so since the PRI since it became a government party managed during that time to have the parliamentary majority and, therefore, the institutional structure. Thus, the constitutional and formal dictates became a dead letter to give way to a political reality marked by the interests of the governing party.

The system of checks and balances that seemed more a utopia than a reality, began to be conceived in the Mexican political context with the elections of 1997 and, even more so with the result of the electoral process of 2000, date in which the PRI ceased to be a government to constitute itself in opposition and the National Action Party -PAN- that sought since its origin in 1939, it stands as a government party in the country (Altamirano, 2004).

This is so, because with the political alternation of 2000 and what became after this conjuncture, new forms and funds were introduced into the governmental-institutional work, not only by the imposition of a new exercise in the action of government by the existence of a divided government (Lujambio, 1996), but by the concern to establish new legitimizing mechanisms in the public exercise, thanks to the increasingly articulated demand of citizens to know in detail the governmental channel, the public policies implemented, the allocation of the public budget, the use of resources, programs and public goods, among others.

Under this dynamic, the institutional scaffolding was built, which was substantially supported by the impulse of citizenship.

1. Method

Analyzing the channel and scope of oversight and accountability in Mexico is necessary to take advantage of a documentary investigation since it is a

technique where the basic premise is the collection of information and document on a certain topic or object in order to know the state of the art of this and its treatment in the various disciplines to, thus, to formulate, axioms that will greatly help to understand about this phenomenon as an object-subject of study (Hurtado, 2008).

In fact, if we bear in mind what hernández, Fernández and Baptista (2014) have pointed out, who affirm that research "consists of detecting, consulting and obtaining bibliography and other useful materials for the purposes of the study, from which relevant and necessary information for the research problem is extracted and collected" (p. 61).

Bahena (2014) refers that documentary research rests on the fact that it responds to the object-subject of study from the "inquiry into documents", which this same author defines as a document "books; periodicals: newspapers, magazines; printed: brochures, posters, flyers, leaflets, fold-outs; archival documents; movies and videos; television programs (...) maps; martens; statistics (...)" (p. 12).

This process that imposes this type of research leads the researcher to identify the inputs related to the topics or objects to be treated, as well as to limit the object-subject of study and generate conclusions and premises, which consequently means building knowledge and theoretical constructs.

Hence, the use of documentary research is legitimate for the analysis of this object of study by facilitating that the researcher has sufficient elements from observation, comparison, exploration and / or diagnosis, which lead to formulate proposals on oversight and accountability.

2. Discussion

2.1. The supreme audit body.

Legitim�er of institutional scaffolding

The establishment of a higher body in charge of supervising the exercise of public resources and safeguarding good administrative practices has always represented a component that adds legality, legitimacy and credibility to the governmental work in the face of society, even stands as a relevant addition in the foundations of Western democracies (O'Donnell, 2001). Indeed, this is so, since this body makes clear in the context of public institutions, the establishment of a public policy and a set of rules that obliges all public authorities to be accountable and explain one by one their economic-administrative acts in the exercise of the institutional mandate.

Until now, the existing literature shows that no State that is valued or circumscribed in a democratic, plural and open framework, does not preclude, nor does it postpone *de jure* or *de facto* the configuration of an entity that exercises the mechanisms of control, supervision, surveillance or, where appropriate, sanction in the institutional framework. Also, this same literature points out that in non-democratic regimes (totalitarian or authoritarian) even with their particular conditions of not having as a basic priority the accountability, nor the audit and even less to account for the political-economic-administrative channel, configures in their system of government a sum of instances with these purposes, but always keeping the dictates of the political regime -Court of Auditors, Auditor General of the Nation, Office of the Comptroller General of the Republic— (Monnier, 1992; O'Donnell, 2001; Schedler, 2004).

Based on historical and current experiences in Western democracies, it has been proven that the permanence of a superior oversight entity has given verve to the regimes in front of their peers and in the face of their social base. Mexico is no exception because there is a long historical tradition of this audit exercise that dates back to 1824, having its foundational antecedent in the configuration

of the Court of Auditors in America in 1605 where "three courts of accounts were established in America (Santa Fe, Lima and Mexico)" (History of Accounting, s / f).

The supreme oversight body established in the Constitution of 1917 has been subject to and subject to various changes in relation to its powers, legal framework, organizational structure, field of competence, among others, so that the action of the public powers is attached to the law in order to consolidate democratic and civic values in the governmental-institutional spectrum.

This is so, since the good practice exercised by the supreme audit body has led the public authorities to adhere to the dictates of good governance and, particularly, to have as a rule-basis the theory of public expenditure in the performance of their functions and in their institutional entrustment, since it states that the exercise of resources, State programmes and assets are conditioned by a legal framework and an administrative procedure (Harvey, 2003).

For the fulfillment of this theory of public expenditure and the mandate of the law on control, as well as other legal systems that govern the life of the Federal Public Administration, the supreme oversight body is instituted as an entity of control of the public financial economy, with strict compliance with article 3 of the Law of Superior Supervision of the Federation, which indicates that this body will have "(...) technical and managerial autonomy to decide on its internal organization, operation and resolutions, in accordance with the provisions (...)".

In this way, this mechanism of government control exercised by this audit entity constitutes the basis of its manifestation and action that regulates and timely points out the regulatory deviations and infractions of the principles of legality, profitability, utility and rationality of the economic-financial operations of the public authorities.

This control exercised is in itself legal, but not effective because it necessarily requires

following a rational order and elements oriented towards specific objectives for its proper functioning. Hence, the Audit Law itself in its chapter I, title II, grants in its articles support to the audit entity to make effective and orderly its work in the institutional framework.

In the field of public authorities, this control is an accounting or technical act carried out by the body that has been assigned by law functions to examine the adequacy to the legality of an act, action or entrustment, as well as the obligation to rule on them.

In Mexico, as indicated by Faya (1996), the *ex post* control expressed by the auditing entity is located in the budgetary field in two senses: the first, when it is verified that the Executive Power is complying with the decision of the lower house in relation to the Budget, Accounting and Public Expenditure Law, in addition to other provisions. And the second, by monitoring and preventing the budget exercise from being wasteful, disorderly, corruption or, where appropriate, moving away from the purposes for which it was approved.

All this practice developed by the supervisory body would not have been possible without the modifications to its legal framework that occurred between 1936 and 1999, when in the first moment, it specialized in the review and gloss of the public account and, in the second moment, with the configuration of the Superior Audit of the Federation in the institutional structure, it was spoken for the first time in the national reality of an autonomous instance and independent to exercise the control and evaluation mechanisms and, consequently, to improve the control components.

The 1999 amendment made it possible for the two levels of government to articulate a sum of changes in federal and state legislation to give effect to the oversight bodies in both areas and, thus, to be in a position to establish themselves as guarantors that the exercise of public

spending is in accordance with efficiency, efficiency and effectiveness, including that within the framework of its powers it represents the administrative values of the New Public Management (Kotter, 1982).

Since then, the work of the supreme oversight body with the reform of July 30, 1999 (DOF, 1999) represents a significant change for itself since it goes beyond the review and evaluation of economic-administrative resources, to cover what is known as performance audits, which allows it to measure the form and degree of compliance with the institutional mandate among the components of the Federal Public Administration.

It goes without saying that there is a control body that acquires several names. An example of this is that in Mexico it is called the Superior Audit of the Federation, the Court of Auditors in France, the General Accounting Office in the United States of America, the General Audit Office of the Nation in Argentina, the Office of the Comptroller General of the Republic, in Colombia and Chile. Regardless of the meanings that are identified and its particularities, this supervisory body has a common feature in relation to the institutional mandate that gives it validity: to evaluate *a posteriori* from an economic approach the work of the public authorities with adherence to legality (Monnier, 1992; Eveno, 1984; and the national laws of the above-mentioned countries).

2.3. Accountability. Guarantor of good governance

Accountability has spread and formalized in democratic systems as a benchmark of great value for the permanence and strengthening of the values and principles of political regimes (Dunn, 1999; Schedler, 2004). So far no one has judged badly that this component is in force in government action, or even weaken it in its format or in its powers; on the contrary, it has been sought that its channel and scope cover the entire spectrum of public powers.

In Europe and the United States of America, accountability has been in force since the construction of the national states of the former and since the integration of the Confederate States of America, having as its foundational premise the exposition of Rousseau on popular sovereignty, the writings of Locke and Montesquieu referring to representative democracy and the system of checks and balances, as well as in the texts generated in *The Federalist*. In fact, this is the case, because after the independence revolution of the thirteen colonies of the English crown and with the intention of concretizing the Constitution of the United States of America in 1787, *The Federalist* reflected among its lines a premise linked to accountability (VV. AA., 2014).

In Latin America, its conception in the practical political reality was late, since the revolts, the social demands and the dictatorships that dominated this geography for a long time and the purposes of the government at that time, were guided in another direction. Having already overcome these stages of political upheaval and consolidated the constitutional regime on the basis of a representative democracy, it brought new impetus to Latin American countries.

In fact, it was the late nineteenth century when nation states assumed the obligation by mandate of law to respond to the political demands of the social base on public affairs and, in particular, those acts in economic-financial matters. In this regard, Mexico was not excluded because the constant revolts and the dictatorship lived in the last century, as well as the existence of a hegemonic or predominant party in the words of Sartori (1987), further postponed accountability to most of its Latin American counterparts, since the political system at that time did not have control mechanisms, monitoring and evaluation of the use of public resources by state authorities (Peschard, 1993; Carpizo, 1991).

During that stage, the institutional structure operated under the dictates of the ruling party (PRI) and the tools of control and evaluation only became effective in political practice when it would be necessary to legitimize and preserve the status quo or privilege related power groups or, where appropriate, sanction the detractors of the regime (González, 1983 and 1988). This political dynamic lasted until 1997 when for the first time a divided government was configured in the political regime and already with the government of 2000 the scheme of yesteryear imposed by the hegemonic (or pre-dying) system was reconsidered.

Indeed, with the 2000 election, nothing was the same. From the events that occurred in that year, the Mexican reality experienced a new way of doing politics as the divided government, a plural and competitive party system, as well as a government party different from that of yesteryear – PAN, in this case – remains in force. With these facts, public work took a turn and, consequently, new references were built to legitimize the action of the public powers, highlighting among them, accountability, oversight, transparency and the fight against corruption. Thus, the government made its strategy these good practices to build its government willing to establish feedback channels with citizens, which led to governance being an exercise in government (Zurbriggen, 2011).

While it is true that in our democratic context, the responsibility for generating the optimal scenarios for good governance lies with all State institutions, it is society as a whole that operates as a reference for them to fully comply with the ethical-legal duty to account for their actions in public exercise (Ibid.).

The laudable exercise that implies accountability — and other practices attached to public ethics — for all components of the political system is enriching and complex, since it contains an

endless number of related terms, be it surveillance, audit, control or sanction, which together close the design of a public policy of greater scope in political practice (Schedler, 2004). And not only that, but also because in its construction there are horizontal and vertical dimensions that make the knowledge of the institutional march more complete (O'Donnell, 2007; Schedler, 2004).

In effect, this is so, since the horizontal dimension is given by the existence of an instance among its peers or the components of the State invested with legal authority to undertake actions and sanctions against iniquitous acts or omissions of public entities. This horizontal format rests on the fact that a State authority in the institutional structure is endowed with legal powers to exercise oversight functions within the powers of the State. In contrast, the vertical dimension—also known as upward accountability—focuses on a higher organ in the administrative structure delegating obligations or commitments to a subordinate and, consequently, asking him to account for the state of affairs (O'Donnell, 2001), which is also revealed (i.e., the vertical dimension) between rulers—governed.

On these two dimensions that accountability takes according to Deutsh (quoted by Crespo, s / f), *expersa* that "(...) an individual or group that holds power is accountable to some person or group, and that this means several things at once. Firstly, it means that there is a communication channel through which signals about the behavior of the responsible actor are transmitted to its controllers, that is, to those to whom it is responsible, secondly it means that its controllers are receiving and interpreting those signals, comparing them with their own memories relating to their actions or omissions that they will reward and punish within certain limits. Thirdly, it means that their controllers have a channel through which they can effectively apply these rewards or punishments, so they will be

motivated to act in a certain way" (p. 7). Thus, it should be said that the reinforcement of these two dimensions are placed under the observance of citizenship, who finally represents popular sovereignty according to Rousseau.

In addition to the above and in order to rethink the state dynamics in the 2000-2006 government, it is added to the sixth constitutional article "(...) The right to information will be guaranteed by the State" and taken up in the Federal Law on Transparency and Access to Public Government Information in force since 2002. Thus, the addition to the law on the right to information is not absolutely or completely open, since it is subject to limitations or exceptions that are based mainly on reasons of national security to give rise to the condition of reservation of information or bureaucratic secrecy that restricts the meaning of accountability in the national political context and in other democracies. are consolidated or emerging. Thus accountability in Mexico, even though it is a practice of good governance, becomes the political practice a wicked game because of the legal narrowness that is conducted and, in most cases, becomes an impasse.

The course that carries accountability is not only the knowledge of the public exercise or the opening of government institutions, but has served as an element to citizens to be an active entity in the consolidation of democratic values and public ethics in government action.

2.4. Oversight and accountability: technical needs and political requirements to increase the quality of democratic life

The lack of information, knowledge and scientific rigor on these two legitimizing paradigms, which has led to such meanings being used as synonyms by the social base although technically and formally they are not. However, both terms have an affinity and a close link in the formation of

democratic regimes by safeguarding the good progress of the State and its components.

None of them in Western democracies walk alone, nor are they exclusive; nor are they irreducible, but on the contrary, both complement each other by closing the design of public policy on good governance in order to improve the performance of the public decision-making system, at the same time, also to improve the relations of citizens with government affairs.

Oversight and accountability encourage a double path: on the one hand, the institutional framework where they are developed and, on the other, the scope of public action, its modalities, its representations and its quality. At the same time, they cover two dimensions: one, technical and, another, political.

Auditing is strongly associated with the public economy and becomes synonymous with control, audit and/or evaluation (Schedler, 2004). Meanwhile, accountability is more about the principle of making government decisions and actions public. Oversight is seen as internal control/external control and accountability is seen as outward control and that in stricto sensu can be constituted as external control with its caveats (Dahl, 1998).

What is undeniable for society is that both concepts converge effectively and efficiently on a democratic level, thanks to the transition from an authoritarian (or totalitarian) model to a Rule of Law that establishes as a primordial rule the attachment to the legal-formal framework. Thus, a series of components that the first one contained is modified, starting with the subjects (government and society) and the relationships that were generated between them (public rights, freedoms, access to information, among others).

The audit applies to the control function that has an instance vested with legal authority to monitor, evaluate, verify or verify the acts of government bodies in the exercise of

institutional entrustment. Accountability creates the conditions conducive to ending government impunity by allowing the actions or acts of government rulers and public servants to come under public scrutiny. Thus, added together in a single aspect (control and accountability) they associate three types of determining actors: those who decide, who executes and the recipients (Monnier, 1992).

However, when identifying the status of the two terms, it can be affirmed taking as a reference what O'Donnell (2007) said, that The accountability stands as the umbrella of auditing, auditing, control and evaluation, which means that together they all constitute essential mechanisms or activities within the complex system of accountability in a single direction.

The maintenance of oversight and accountability in the Mexican institutional scaffolding and the observance of both in the exercise of public powers run several factors, since they are not only due to the establishment of a legal framework, which in truth represents per se a significant achievement for the political system, but to the margin that they charge in political practice, which, by the way, is negligible, but that in the hegemonic or predominant party regime did not even exist.

This narrowness in the margin is so, since it is known that the activity carried out by the superior control body and the right to information originates by its own accord and the governmental instances that are required in this feed-back are only subject to the requests or requirements of the authority invested for such purposes.

In the same way, it greatly affects the maintenance of these two democratic bases, other elements also of great value, such as: the budgetary and organizational structure, the accounting items, the nature of federal transfers and, especially, the form of State (federal, regional or unitary).

Regardless of the implications and complexities that exist in the execution of

these two good practices in the public sphere, because in addition to being technical needs and political requirements to increase the quality of democratic life, they contribute to raising the effectiveness and efficiency of the State in the face of social requirements and, in this way, increase trust, credibility, legitimacy and legality in government action.

3. Result and Conclusions

The role played by the supreme oversight body is by no means marginal or deficient; however, a constitutional reform is needed to give the institution, inter alia: (i) complete legal, administrative, financial and political independence in the exercise of its functions; (ii) efficiency, effectiveness in fulfilling the institutional mandate; (iii) absolute access to information (database) on procurement operations and use of public resources; (iv) availability of human, financial, material and computer resources to meet work needs; and (v) objectivity and impartiality in the integration of its organizational structure.

The political demand to increase the quality of democratic life today requires that the supreme oversight body be endowed with a high technical rigor to promote a culture of accountability and oversight through strategies based on public responsibility, ethical values and democratic principles.

The technical and accounting limitations that the supreme audit body has had in the performance of its functions imply that all levels of government standardize criteria of accounting, budget, public account and federal transfers so that all public resources are audited and, in this way, constitute honest, transparent, quality governments committed to the dictates of good governance.

The supreme oversight body must have among its powers to evaluate, control, supervise and audit all levels of government, all public entities, all political delegations, all trusts, all foundations, among others, in

an integral manner, if, and only if, all these instances exercise public resources.

The permanence of oversight and accountability as legitimized paradigms in Mexican democracy must be far from a political environment and meet the requirements of the norm and good governance.

The construction of a superior oversight body in this sense legitimizes the institutional scaffolding, as well as the action of the government, by establishing itself as an instance of control, audit, evaluation and sanction of the public powers and, thus, subject the financial-administrative activity of the public sector to the principles of legality, effectiveness and efficiency. This role as legitimizer of the system is given not only by its legal framework, but also by its competence base and, to a lesser extent, by the framework that implies its integration and the profile of its components.

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