

## The Grand Narrative of the Current Transition of Mexican Constitutionalism

By *Roberto Niembro Ortega\**

### A. Introduction

In his interesting article Roux presents us with two grand narratives that describe the constitutionalism of India and South Africa since their constitutions of 1950 and 1996 respectively, which he calls the liberal progressive and culturalist grand narratives.<sup>1</sup> By grand narratives, Roux means, following Lyotard, “comprehensive explanations of the causality of long-term historical processes and which endow them with legitimacy”.<sup>2</sup> According to the first, the progressive liberal one, the transition from a colonized country to a post-colonial one was due to a good institutional design and the values of freedom, equality and democracy of liberal constitutionalism adapted to the Global South. According to this narrative, these transitions demonstrated the universality of liberal constitutionalism beyond the West and its adaptability to different circumstances.

On the other hand, according to the second, culturalist narrative, the progressive liberal design is a new form of colonialist imposition that does not allow non-Western and indigenous traditions of governance to flourish. What was done was to assimilate liberal forms and perpetuate colonialism by endowing it with democratic legitimacy. The constitutions of India and South Africa are only a sample of the hegemonic permanence of the West, which did not allow the incorporation of the national values of the majorities.

My participation in this symposium aims to reflect on the transition we are experiencing in Mexican constitutionalism in the light of the narratives that Roux offers us to think about Indian and South African constitutionalism. From my point of view, there are certain characteristics of the current Mexican constitutional development that can be better understood with the help of the theoretical apparatus presented by Roux and, above all, can help us to understand the performative and instrumental character of the great narratives for the exercise of power.

Now, before reflecting on the transition that Mexican constitutionalism is currently undergoing, initiated with the presidential election of Andrés Manuel López Obrador in 2008—a charismatic and popular leader like very few others—it is necessary to recall some antecedents of Mexican constitutionalism developed since the 1917 Constitution.

\* PhD Universidad Complutense de Madrid, LL.M in legal theory NYU School of Law (Hauser Global Scholar). Email: nroberto84@hotmail.com.

1 *Theunis Roux*, Grand Narratives of Transition and the Quest for Democratic Constitutionalism in India and South Africa, *World Comparative Law* 57 (2024), pp. 5-71.

2 *Ibid.*, p. 10.

As is well known, the 1917 Constitution emanated from a popular and peasant struggle and was one of the pioneers in establishing social rights such as education, agrarian distribution and labor rights. However, for a good part of the 20th Century, it was a Constitution subordinated to a revolutionary ideology, of which the Constitution was its maximum expression. However, being a Constitution subordinated to that ideology, shaped by patriotic dates, national heroes and managed by the Institutional Revolutionary Party (PRI), the Constitution could not completely impose itself to the designs of the caudillos and the dominant political party. Let us say that the Constitution was a binding political document to the extent that it served the revolutionary ideology, interpreted and expressed by the President of the Republic.

This political conception of the Constitution, subordinated to the revolutionary ideology, began to change with the democratic transition (from 1977) and the decline of the PRI (Institutional Revolutionary Party). Likewise, the strengthening of the judiciary as a guarantor of the rule of law and legal security, which was part of the neoliberal agenda initiated in the six-year term of Miguel de la Madrid in 1982, was also highly relevant. Indeed, the guarantee of property rights and freedom of enterprise required independent courts. For this reason, at the end of 1994, one of the most important constitutional reforms to the judiciary was carried out in order to strengthen it and safeguard its autonomy. Thus, the role that the federal judiciary began to play in 1995 made it possible, in a few years, to conceive of the Constitution as a binding legal norm.

Likewise, from 1994 to 2008, through multiple constitutional reforms, the neoliberal conception of the State was introduced into the Constitution, privatizing companies and industries previously controlled by the State, entering into free trade agreements and, finally, developing the protection of human rights, particularly civil and political rights and, belatedly and briefly, social rights.

However, since 2008, with the election of President López Obrador, a new grand narrative has emerged to explain the constitutional reforms made in recent years. This narrative is that of the “Fourth Transformation” of national public life. For López Obrador and his followers, his government initiated a transformation similar to those carried out in the 19th and early 20th centuries by presidents Juárez, Madero and Cárdenas. These three presidents marked milestones in national history, separating the Church from the State, recovering democracy and prohibiting reelection, as well as reinforcing the social and nationalist character of the government.

Since 2008, with the “Fourth Transformation” what we are experiencing in Mexico is the confrontation and not the dialogue between two grand narratives of contemporary Mexican constitutionalism, which to some extent resemble the grand narratives identified by Roux.

On the one hand, the liberal grand narrative that understands the separation of powers as a conflict between opposing interests, the need for an independent judiciary that guarantees the rule of law and human rights, and autonomous bodies made up of experts. A vision of constitutionalism that bet strongly on the judicial protection of rights, designed in the

light of the constitutional systems of the United States and Europe and incorporating the best of the doctrine of those countries. A development that, moreover, was based in part on international treaties and the jurisprudence of the Inter-American Court of Human Rights, the reports of international committees, etc. that could be tied to Roux's progressive liberal narrative.

On the other hand, the grand narrative of the "Fourth Transformation" that pretends to recover the social, popular-majoritarian and nationalist character of the 1917 Constitution. A grand narrative that understands that the separation of powers also requires collaboration, that adopts new social rights and institutional designs, particularly, through the total renovation and popular election of all judicial power holders, both federal and in all federal entities, as well as the disappearance of autonomous constitutional bodies. Moreover, a narrative that not only affects the institutional design, but even has ethical and moral pretensions based on what has been called "Mexican humanism" and that seeks to be more autochthonous than the liberal constitutionalism implemented with the 1994 reform.

In this way, Mexico is abandoning the pretension of emulating progressive liberal constitutionalism in order to present recent constitutional reforms as something unprecedented in the world, guided by our own needs and interests. In fact, the grand narrative of the "Fourth Transformation" is little concerned with the adaptability of progressive liberal values, rather it is interested in highlighting the distinctive notes of Mexican constitutionalism such as social rights. On multiple occasions these reforms are publicly presented as something autochthonous and popular that recovers the spirit of the 1917 Constitution, as opposed to the progressive liberal constitutionalism imposed by a neoliberal ruling elite that incorporated North American and European visions to our system.

Unfortunately, in this confrontation of grand narratives, what is actually happening is the concentration of power in a few hands, in a way that we have not seen for a long time. On the one hand, with the total renewal of the federal and local judicial powers, one of the last mechanisms of control of power is co-opted. On the other hand, the disappearance of the autonomous bodies implies the return of all their competencies to the State Secretariats subordinated to the Executive Branch. Thus, wrapped up in the grand narrative of the recovery of the autochthonous and popular character of the Mexican constitutionalism of 1917, the current transition of Mexican constitutionalism is heading towards a less liberal, more nationalistic and hyper-presidential port.

Mexican current affairs clearly show us the usefulness and performative character of grand narratives, because beyond the reason or not they have in the description of past events, they have a fundamental role in guiding and legitimizing the present and the future. In other words, they not only serve to describe the past, but also and above all to exercise power.

