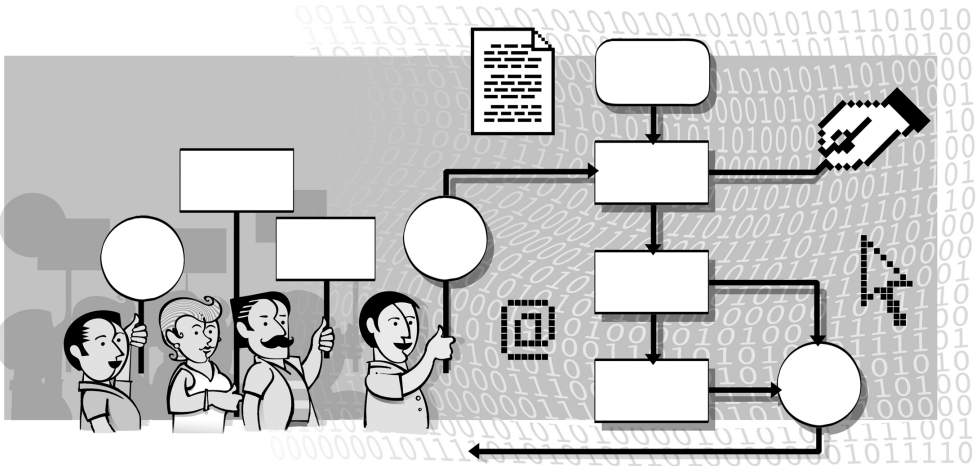
ESSAYS

MODERNIZATION AND PUBLIC MANAGEMENT



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One of the most common complaints by citizens that governments face stems from the procedures, regulations and bureaucracy they are required to face to receive public services. This, however, is also a source of frustration and annoyance in governments.

One of the most frequent complaints of the Secretaries – Ministers – and the President of the Republic himself during the 2006-2012 government was precisely the excessive number of useless rules they had to meet to perform their functions; that meant a huge delay and high costs in the government's operation.

Regulation in Mexico began to grow following the 1990s crisis as a way to curb public spending by the tax authorities, alongside the issuance of regulations in an attempt to control discretion and corruption.

This, however, was rapidly introduced into the DNA of public officials, who found a way to gain control, power and a misguided source of importance in their functions. We then went from a government in which nearly everything could be done on a discretionary basis to one in which nothing could be done.

The first processes of deregulation we attempted to implement were based on the traditional methods that were based on international experiences, i.e., management improvement models. The experience quickly showed us that the formula would be a failure, so we designed our own route.

The first step, then, was to devise an inventory of rules and procedures. To this end, we reviewed the "*normatecas*", a micro website where dependencies are required to make the applicable rules available to the public, as well as the registration of procedures at the Commission in charge of improving regulation, which depended on the Ministry of Economy. The findings could not be more shocking.

We found 480 rules of general application, 20% issued by the Ministry of Public Administration in nine administrative subjects, 40% budgetary regulations by the Ministry of Finance and other rules issued by Congress, environmental rules, etc.

The rules issued by the ministries themselves totaled 18,000. Therefore, 70% of the audit observations made on the dependencies concerned the fact that they did not meet the rules they had imposed on themselves. It is important to note that, in Mexico, the Ministry of Public Administration is also responsible for the work of comptrollership.

In the case of procedures, since the creation of the Commission for Regulatory Improvement, five years before, these had increased by nearly 300%.

Here, we describe the route of deregulation carried out in Mexico in the period from 2007 to 2012.

THE FIRST ATTEMPT

We decided to begin with a management improvement program based on the methods generally used in international experiences, with the additional goal of reducing 3,000 rules. We quickly noticed a number of problems in the model. The implementation of the program, led, paradoxically, to the issuance of new rules by managers and, to meet goals and being a process in which users should decide what rules to eliminate, officials eliminated obsolete rules, with no impact real in the government's operation.

Months after taking stock of the results, we found that the rules had been reduced to just over 14,000, meaning the goal was met. The numbers, however, did not add up. Our inventory of eliminated rules was approximately 5,000 and the reason was that while we eliminated existing rules, officials issued new ones in parallel. "Gatopardism" at its best: everything should change for business to remain as usual. We had underestimated bureaucracy's capacity for simulation.

SECOND ATTEMPT: BACKGROUND TRANSFORMATION

It was clear that we had to implement radical measures to tackle the problem and, in a conversation with Ms. Elena Salgado, then Minister of Public Administration of Spain, she referred to regulation as a jungle of rules – a rather graphic description of the problem: while you progresses through the undergrowth with of rules a machetes, the jungle closes in behind you.

That was exactly what had happened to us, so we took an unorthodox decision: to put it on fire, metaphorically speaking.

As a result of the first attempt, we detected a fundamental error in the method: it is counterproductive to undertake an improvement program without defining an overview from senior management of which procedures are useful and which are not. Middle managers, who make these rules, consider virtually none of these useless and instead are the first to defend them, and in most cases such fierce resistance to elimination is based on the sense of importance and power they have in their positions; bureaucracy tends to measure the importance of its work based on the number of employees under its command and permits and stamps it must impose to allow administrative processes to continue their progress, not by the results it produces. Therefore, the new strategy could not be based solely on their opinion. Streamlining useless processes can only worsen the problem – they should be eliminated, not improved.

On the other hand, it was clear that we could make a change in the entire public administration without changing the Ministry of Public Administration itself with the new deregulatory vision. And we made two basic questions: What are we doing that we should not do? And what we are doing that we should do?

With the answer to the first question, we found that nearly half of the areas of the ministry had functions that were useless or contrary to the new objective. We could eliminate half of the areas of the ministry and thus improve it.

On the other hand, there was a need to create new areas or redesign existing ones. Those who issued the regulations on public works or government purchasing had no experience in purchasing and public works only had attorneys.

The "pontificating" model, in which officials with no practical experience in the subjects issue rules to build and buy the rest of the public administration, must follow these rules and if they do not adapt to the reality, too bad for reality, then.

As a consequence, in public works, infrastructure and purchasing, the important thing did not mean building or buying with efficiency, quality, good prices or appropriate deadlines, but instead meeting a series of contradictory, impractical rules to avoid notes and liability for breach of these by the comptroller.

Following the redesign of the Ministry, we had changed more than 60% of the job profiles and requested a 20% reduction in the budget allocated to us by the Congress.

It not possible to carry out a fundamental transformation in the public service without changing the laws so we proposed at Congress an extensive proposal of changes in the legislation on public works, acquisitions, leasing, services, accounting and administrative responsibilities, as well as the Penal Code.

The aim was to have better and new forms of contracting, such as framework agreements, consolidated purchasing, reverse auctions and, on the other hand, recognition of error in officials' decisions when they were not serious and without

damages; in short, giving them room for decision to allow processes to flow more efficiently and with new options, without losing control, which could lead to an increase in corruption.

If new rules are issued to prevent a reoccurrence every time officials commit mistakes or abuses, the eventual result is a regulatory entanglement that is focused on the exceptions and overrides the regulatory frameworks for the government's normal operation. Sanctions should be imposed, but exception rules should not be imposed on the entire public administration.

ZERO-BASED REGULATION

We decided, then, to devise a strategy to eliminate rules, launched by President Felipe Calderón himself, with precise instructions for asking people their opinion about government procedures and putting ourselves in their shoes.

Despite presidential support, the reform faced much resistance, especially within the government, and was of little interest to the public; it was not on the political agenda and those who might benefit from it did not see it as an important issue. One of the advantages that crises can have is the fact that they are an impetus for change. We did not have a political crisis with this subject and thus decided to provoke it, with all the risks entailed.

El trámite más inútil

President Calderón announced at a public event the notice, with a 15-day deadline, for the *El trámite más inútil* ("The Most Useless Procedure") contest. It awarded $50,000 prizes for citizens using the procedures that told us the worst experience in procedures and their point of view of the process. This provoked a reaction from the press, academics, scholars and citizens of course. We had nearly 20,000 participants.

We integrated a jury composed of renowned analysts on the subjects of competitiveness and public and financial policies, coordinated by the President of Transparency of Mexico, all outside the government.

The jury decided that the winning proposal came from a housewife with a child who suffered from a chronic illness and was under expensive treatment for life, for which she was required to go to the Mexican Institute of Social Security (the Mexican government's social security institute) each month to receive the medication and go through 17 clearance procedures to get it.

The award was received from President Calderón to the dismay of the director of the institution, and in her speech, the winner spoke of the kindness and professionalism of the doctors who provided care for her child, as well as the warmth and humanely treatment of the nurses. The problem is the bureaucratic tangle that prevents them from efficiently receiving medical services.

Certainly, a contest to identify the worst aspects of a government was a novel approach to bureaucracies solely accustomed to recognition events, stimuli and tenure. It was also a clear signal to the bureaucracy of presidential support for a much more aggressive and radical approach.

El trámite más inútil became the best-known public administration tool internationally and has been used by several countries. It is essentially an act of provocation to many who fail to see its usefulness; a counterpart Minister told me, "I do not understand why they wish to pay somebody to tell them what is wrong or not working in their government. They tell me that every day for free."

The lessons of this contest are many. Most citizens ask especially not to be referred from one agency to the next and to be treated with courtesy. However, the in-depth analysis of the unnecessary procedures made it very clear that the real problem concerning the procedures lies in the rules. If they are eliminated, the procedures also disappear automatically. The trunk is the rules – the procedures are branches of the same tree.

The zero-based regulation

The implementation of the first measures coincided with the global financial crisis and the strategy was part of the measures taken by the Mexican government to face it, as the countercyclical measures ordered by President Calderón faced a major hurdle amid the excessive regulation. The outlook was bleak: to start the internal engine of the economy, institutions moved slowly and presidential decisions to build the infrastructure or return taxes to taxpayers did not seem to prosper. The first weeks went by and the projects progressed only in offices where they were signed, authorized and sealed without any real progress in the construction. Companies did not receive the much needed fiscal resources and jobs that had been lost were being not created.

At a cabinet meeting, President Calderón provided the Ministers with a clear basic idea amid the tense discussion of the public policies to be implemented to address the crisis: "This economic crisis will pass. The important thing is to think that measures we take to address it must create a better country and a better government."

Thus, in the Ministry of Public Administration, we designed a strategy based on deregulation and removal of procedures impacting on three priorities: economy, social aspects, and administration.

Taking into account the previous experience, we designed tactics to prevent bureaucracy from circumventing the reforms via simulations. We were certain that the 14,000 rules registered at the "*normatecas*" were in actuality many more, stored in the desk drawers of the bureaucracy and used discretionally in cases that seemed convenient to officials. In fact, the opposite also happened, in which rules whose existence was widely believed in were used and decisions were made based on them when, in reality, they did not exist or had not been in force for many years.

President Calderón sent a statement to the government: all dependencies had a

short time to record the internal regulations they used and those to be eliminated from the list of published rules.

It was a clear incentive for officials to really publish all rules they had. If some of the rules were eliminated from the published list, they could meet the quota without actually altering anything in the way they operated, as they could remove those that really had no importance. It was an invitation to eradicate "gatopardism". Nevertheless, we were actually thinking of a different strategy.

The administrative manuals

There are a number of areas in which the government operated differently, but it did it for no reason. We identified nine of these items, in which the Ministry of Public Administration had the following powers: acquisitions, public works, material resources, human resources, financial resources, information technology, transparency, internal control, and audit.

Nevertheless, there were more than 9,000 rules on these issues, so that, for example, a small entrepreneur wishing to sell their products to the government was required to face a real tangle of procedures at the dependency to which they intended to make the offer, and if they chose to sell it to another dependency, regulations contained different elements. As a result, those who benefited were intermediary experts in regulation, as producers specialize in manufacturing goods but cannot afford experts in the rules of each dependency, so the benefits of government purchases went mainly to intermediaries.

Nine administrative manuals of general and mandatory application were prepared – one for each subject. However, the development was done very differently from the traditional approach.

We sought, for example, the most efficient agents in the construction of public works and asked them what improvements should be made in the processes. We then held roundtables for each subject, with best performers – whom we ought in all areas of the government –, usually facing those who prepared the rules, with the instruction that the rule should conform to the reality, not otherwise. Each roundtable had a chief of staff, of the Ministry itself, and the warning that if they did come to a consensus in a short time, the Minister would decide on these issues. This credible warning was accomplished fortunately on only one or two cases.

I recall hundreds of anecdotes regarding the process. This is one of them: the construction of the Baluarte Bridge – a major engineering project located in the north of the country – began presenting delays, and versions of conflicting arguments between builders and policymakers came to my office. I decided to visit the site in the middle of the Sierra Madre Occidental and noted that the construction was stopped because the builder was not authorized to change the work program, which specified that one of the columns that supported the bridge should be built first, on the bottom of the canyon, followed by the one at the top on the mountain. I asked the builders how they were going to make the foundations of the upper column and the answer was explosive. I immediately talked to the bureaucrat that prevented the change in the program and explained that his rule harshly violated a higher law that could not be ignored – the law of gravity. No matter what the procedure said, when exploiting the top of the mountain, the rocks would fall and destroy the column that had been built below. Mr. Newton does not give room to discussion, so what are we to do?

Having only nine manuals for public administration, processes are approved and made more efficient and clear. Officials are certain in decision making, significantly reducing the government's cost of operation and avoiding opportunities for corruption.

Paradoxically, rules are one of the tools used for corruption and, contrary to popular belief, excessive rules can breed corruption as it is always easier for a citizen to offer bribes to avoid the cumbersome permit process. Also, major corruption in government procurement generally hides behind the rules – the issuance of rules that can only be met by one of the bidders is a common way to allocate agreements intended to benefit entrepreneurs.

In the areas of economic and social impact, we chose 12 measures to encourage competition, as they made it easier for entrepreneurs to set up production units and eliminate regulations and formalities for companies regarding customs, social security, payment and calculation of taxes, and others. In addition, the deadlines for tax refunds were reduced.

We created the tuempresa.gob.mx website, which could provide users with transparency in the registration of new companies and reduced time in the opening process, which previously took more than 50 days and 17 different procedures, requiring the same basic documents from entrepreneurs, plus those delivered in the previous procedure.

That is what the procedures are about – the government asks citizens to provide the documents issued and stored in another drawer by same government.

In the area of social impact, we eliminated or simplified those relating to obtaining licenses and passports, medical services, immigration procedures, etc.

The presidential agreement

After the deadline given by President Calderón for publication of all rules that were in use in the public service, the inventory had increased from 14.000 to 35.000. It was evident that bureaucracy had opened its drawers to show all the rules, possibly with the idea that it was going to be required only to eliminate a number of them. To its great surprise, the story would be different.

Finally, in a formal ceremony, the President announced the deregulation agreement, with the following characteristics:

- All the rules governing the rules of the nine subjects contained in the manuals were eliminated.
- The issuance of new rules in these nine subjects was prohibited.
- The few exceptions in which new rules could be issued, only by consent of the Ministry of Public Administration, were listed.

In addition, and very importantly, the act allowed public officials to learn that the strategy would be different. In all the published rules on the matters of the manuals, they would not be asked which they intended eliminate. Instead, they would be eliminated automatically and only those published in the Official Gazette would take effect. For that, they would have only a 15-day deadline, and the Ministry would have another 30 days to assess whether they were useful or not.

That was the heart of the Zero-Based Regulation – a clean slate from that moment on and only those whose importance is proven would be published.

The concern and disbelief of the high bureaucracy gathered on the occasion could be clearly noticed.

President Calderón defined the strategy as an evacuation. In his speech, he said that they should make decisions on what rules to save as if a fire was happening in their homes and they could only carry the most important things with them.

At the event, the small mountain of eliminated rules – more than 9,000 at the time – was made and we were very close of literally setting them on fire.

In addition, the Ministry had created new areas: Government Procurement, with the aim of using the purchasing power of the government – the country's biggest buyer – and assessing the markets for the best purchasing conditions. Promotion policies were also created, with the acquisitions of small and medium enterprises hit by the crisis.

At the same time, an area of public audit work was created, which despite its menacing name, aims primarily to review the construction of infrastructure and assist in the decision-making process in order to avoid delays caused by regulations and uncertainties created presented in the work.

These areas were also of great help to allow for a more efficient operation of the countercyclical measures ordered by the President to address the crisis.

Learning

If we wish to transform, modernize or improve, the first question to ask is if what we wish to improve is helpful. Much of what we intend to improve is actually useless and what should be done is to eliminate it. In general, the operator of the procedure, process or rule will be willing to transform or improve it, but is very unlikely to acknowledge that it is useless and should show much resistance to the elimination.

The biggest obstacle to a program of this type is that it goes against the nature of bureaucracy, so it will do whatever it can to derail it.

The most difficult thing to change is the culture of bureaucracy; however, once the transformations start working, we begin to see the adaptation, especially in innovation and new ways of thinking about public affairs among officials. Also, very importantly, the vast majority of bureaucrats are honest people who are willing to fulfill their role – they simply do not know any other way of doing it and most are overwhelmed by the amount of rules, forms and reports to be made.

Once they understand that the importance of their work lies not in the permits given or the power they have to authorize a procedure or process, but rather in the results, daily work, then, can become more rewarding and satisfying. However, this will not happen without much resistance, in which many choose to resign before embracing what they consider crazy, for the simple fact that "that's the way it's always been done".

It is important to make a quick wins plan for the project to start having political feasibility and tangible results – urgent matters should come first while we progress with important ones.

Changes should be made in a very short time or resistance groups can be formed, presenting a more difficult front to overcome within the government itself.

Such strategies have few allies. We must care for them and draw attention to the cost of things remaining as they are. It is important to use the crisis as an impetus for change. If there is none, we must cause it to happen so that it we do not move backwards.

We should always ask the opinion of citizens, as they are the best source of information. Strategies defined only based on measurements and analysis by consultants result, at best, result in improved procedures without considering the relevance of the process, and at worst, in a number of processes or procedures that are useless, but now certified, and this certification is used as a shield, when we wish to eliminate them.

We need to have strong support from the upper echelons to implement the reform and, in the case of legislative changes, we must assess whether making major announcements of the modifications submitted to Congress will have enough support for approval. If we have a petty opposition, it is better to make no announcements that may give reason to derailing the reform, with the aim of obstructing the government. In our case, we did it discreetly.

Results

We managed to eliminate more than 16,000 government rules and more than one out of three rules; however, this is an unfinished process and should be a permanent one. There will still be resistance and those intent on regression will complain when the current government changes.

We documented and published, on a case-by-case basis, the savings resulting from the strategy, which, in two years, totaled $6 billion, much needed for the construction of the country's infrastructure.

The Doing Business study, by the World Bank, acknowledged that the deregulation strategy gave Mexico a 2.5% increase in job creation and a 5% increase in new companies, even during the global crisis. In addition, the country was among the ones that advanced the most in the world ranking of competitiveness.

The United Nations acknowledged Mexico with multiple awards to the public administration for projects resulting from deregulation strategy and redesign of the Ministry.

The OECD, in turn, after carrying out a thorough study, has described the process undertaken in Mexico as the one with the largest dimension and effectiveness among its member countries.

Meanwhile, the Latin American Center for Development Administration (CLAD) has acknowledged these practices in the Consensus of Mexico in 2011, in which it recommended that other Latin American governments replicate strategies like this.

Countries like Peru and Colombia have adopted measures such as the El trámite más inútil contest to identify areas for improvement and elimination.

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