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## A Tangle of Laws

The legal structure of Guatemala, and of most countries, is a complex web of inconsistent provisions. Even those constitutions referred to as “developed” have lost their key original intent, which was to **safeguard the fundamental rights of individuals from the abuse of power by governments**, whether a democracy, monarchy or otherwise. People sought the protection of rights not just by enumerating them, but also through the organizational structure of government, separation of state powers, and other provisions. Today, constitutions seem like a catalog of illusory aspirations and a list of conferred privileges.

A peaceful and prosperous future under the law cannot be based on an uncertain, arbitrary and contradictory system of laws that grows exponentially every time lawmakers pass a law because they believe some people are doing something they shouldn't, even though in doing it they respect the rights of others. The result is that, **far from creating order, legalized disorder grows and grows.**

I hope the day is not too far off when despair over this legal anarchy prompts people to ask: How do we get out of this trap we've gotten ourselves into? The important thing is that we find the political will to do this soon. Once we make the decision to unravel the system, we will find that there are several ways to go about it.

One problem we confront when we want to change something is that those who already have a vested interest in each component of the system will have to assume the cost of change, and consequently they will be reluctant. These special interests will insist that other things should change first, that everything should change all at once (the equivalent of saying don't change anything), that the change should be very gradual, or that the familiarity of the old is worth more than the uncertainty of the new.

Also, we will have to overcome the popular but false belief that “all systems are good. It's men that are evil.” Consequently, the optimal first move should be trying to perfect man. The question then becomes, how do we govern ourselves while we're trying to perfect man? Perhaps we need to go back and give Jesus Christ another opportunity to accomplish this. In reality, **some systems work, and some do not. Some attract good men to power, while others attract rogues and are rejected by good men.**

**A practical and constructive method, inspired by the writings of Hayek**, suggests that first we define the difference between law, legislation, and regulation, and then arrange them in a hierarchy. Today, whatever our legislature decides, is “law.” **Because our constitutions refer everything back to laws, legislative authority exceeds constitutional authority. If we understand “law” to be only those “core standards of conduct, abstract, established in**

**advance . . . ” that underpin a true regime based on law (although cases of imprecise inclusion exist), and we establish that legislation—such as regulations and legal provisos—cannot contradict the constitution or the “law,” we will have the rule of law rather than mere legality.** We will be on the path to a system with clear rules, conducive to long-term planning as to how we can serve one another without trying to take “legal” advantage of each other.

We can see in our current constitutions a latent intention to place individual rights above all other “rights.” The trouble is that, in an effort to anticipate everything and try to predetermine results, these rights—based entirely on utilitarian incentives—become inoperative. Principle is violated by the pragmatic.

**When anything can be “legalized” through executive decree, it is impossible to fix the system via the legislative chambers, which should respond to constituents’ short-term interests without executive branch restrictions placed on what they can and cannot do.** As always, there are reasons to avoid or defer the cost of change, to leave it for when there is nothing urgent on the plate. As Hayek said, the urgent always takes precedence over the important. Furthermore, there will never be a shortage of lobbyists pushing legislators to impede change.

No legal thicket is more entangled and contradictory than labor laws. They are filled with good intentions to benefit workers. However the end result is a counterproductive violation of rights. The following anecdote of a frustrated manufacturer of hammocks in Guatemala is an eloquent example.

Don Pancho had a rich uncle who died abroad, something that can happen to even the best of rich uncles. As a result, Don Pancho inherited a large sum of money, which he wanted to invest in his beloved and long-suffering Guatemala in order to create jobs. His own mother had struggled greatly because it hadn’t been easy for women to find work. **So he decided to create an industry that would employ more women than men.**

Not knowing anything about how to invest, he met with a lawyer and explained what he wanted. “First,” he said, “I don’t want to lose what I inherited and be left with nothing. I would like to earn money to be able to live comfortably, but not in luxury because the priest told me that’s a sin. I also want to earn money that I can reinvest over and over to create more and more jobs, because that’s what our poor women need.”

Don Pancho continued, “I want to open a factory to manufacture hammocks for export, because with the money I have available this will create the most jobs, use our own cotton, and provide work fit for our women who so badly need jobs.”

Don Pancho added, “First I would like to take out an employment ad.” (The lawyer frowns.) “In the ad,” Don Pancho went on, “I’m going to explain that we will be open only three or four days a week, and **that I will only pay my workers for these days**, because the rest of the week I have to be in Huehuetenango, taking care of my family and garden.” (The lawyer frowns.) “Third, I’m going to explain in the ad that I will only employ women who sew at least three hammocks a

day, **anyone else I will fire**. Otherwise, I won't be able to pay the bills." (The lawyer frowns.) "To avoid problems, **I don't want any men to work for me**." (The lawyer frowns.) "And very importantly, hammocks interest me because they earn **dollars**, which I want to send to my cousin in Los Angeles who is in dire straits." (The lawyer frowns.)

The lawyer then explained, "My dear Don Panchito, **I admire your good intentions, but I have to tell you that your ideas are out of date; nothing you want to do is allowed under the law**." First of all, it's illegal to announce that you only want workers of one gender. This is prohibited by Employment Law Article 151." (Don Pancho frowns.) "Second, it doesn't matter how many days you want them to work, you must also pay them for not working on Sundays, as the Labor Code states." (Don Pancho frowns.) "Third, you can't fire anyone without paying them severance, even if they don't produce the number of hammocks necessary for the industry to survive, or they're busy creating a union instead of producing hammocks. All employment is guaranteed for one year according to Article 223. Fourth, if you're not giving them five to six days of work a week, you're exploiting them. That constitutes a violation of human rights, and the gringos will take away your visa or imprison you." (Don Pancho goes cross-eyed.) "Fifth, on top of that, the gringos are going to put import quotas on your hammocks, and you won't be able to sell very many in their country." (Don Pancho's jaw drops.) "Sixth, according to Decree 203, all the dollars you earn must be deposited in the Bank of Guatemala; then you have to buy them back at a higher rate, that is if they still have them." (Don Pancho pleads for water.)

"Furthermore," the lawyer continued, "sometimes women get pregnant. You need to know that when this happens you will have to pay them the equivalent of 100 hammocks after they have the baby, which normally happens every ten months. Also, you'll have to pay them up to 90 hammocks before they have the baby, even though they may have hidden it very well." (Don Pancho faints.)

"Think about it," the lawyer explained to the stunned Don Pancho. "If it wasn't like this, imagine the mess we would live in. The exploitation of women would be rampant, and capital flight would bankrupt the country, leaving it impoverished." (Don Pancho raises his eyebrows.)

"Let's have another drink, Don Pancho. Instead of manufacturing, just buy yourself a nice hammock and go back to Huehuetenango where you won't be bothered by any phone calls, because there are no phones. Don't go getting yourself into trouble. Leave the money in New Orleans to earn interest. By the way, my fee for this session is \$100. No doubt a bargain in light of all the inconvenience, distress, and money I saved you." (Don Pancho smiles.) (So does the lawyer.)

**If we established in the constitution the principles that define what "law" qua law should be, and left the pragmatic and administrative as legislation, then we would be able to repeal gradually all legislation that violates the law.**

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**Translated from the original Spanish**

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