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Responsive Law considerations for Mexican public officials' Declarations of Assets and of Interests

by

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Responsive Law considerations for

Mexican public officials' Declarations of Assets and of Interests

by

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Any errors are mine alone.

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Abstract

Preventing corruption and, particularly, the one initiated from the Public Sector itself, is a shared concern amongst democracies from the OECD. Comparative studies carried out by that international organization have found persuasive arguments in favor of implementing the public policies commonly referred as Declarations of Assets and of Interests. Mexico introduced them into its legal system since 2002 and passed major legal reforms in the 2015-2016 period. Yet, in my opinion, the results in that jurisdiction are, as of today, questionable.

The public policies' rationale argues that corruption in the Public Sector as a whole can be prevented by coercively requiring public officials to periodically declare to the government detailed personal information concerning their wealth's evolution and potential conflicts of interests. Such information is to be used for two main purposes: (a) enhancing the investigators' capabilities for detecting potential acts of corruption, especially illicit enrichment, and (b) making mandatory disclosures of what officials declare and of what anticorruption institutions perform, so that democratic accountability upon them can be exerted.

Considering intricacies of Mexico's legal framework, trying to look at the public public policies through the eyes of bureaucracy and drawing from a variety of literature that can be connected using the theory of Responsive Law formulated by Berkeley Law Professors Philippe Nonet & Philip Selznick, I argue that the aforementioned Declarations' effectiveness could have important improvements in Mexico by exploring three measures: (1) Balancing the values of privacy and governmental transparency; (2) Standardizing investigators' methods for the verification of what officials declare and the detection of red flags for the initiation of legal cases; (3) Generating public information to evaluate the integrity of officials and the performance of anticorruption institutions.

Based on a purposive reading of current statutes' provisions instead of major legal reforms, I delineate three proposals —one for each measure— aiming to entice speculation and discussion. In this regard, I argue that it is important to bear in mind Mexico's society context of a generalized use of information technologies, particularly those whose functioning require access to internet, and to expand on the idea that the worldwide access to such technologies —as well as their sophistication— are expected to increase as time passes by.

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INTRODUCTION

We can start analyzing most anticorruption policies by acknowledging that there can be multiple definitions of the concept of corruption. Scholars like Heidenheimer & Jhonston (2009)[1] have elucidated that it is possible to build a typology of definitions based on linguistic, philosophical, institutional (*i.e.* centered in public institutions and/or public officials) and economic approaches. For the sake of brevity, we may resort to one definition that has been coined after a series of comparative research carried out by the Organization for Economic Cooperation and Development (OECD), which defines corruption as *the active or passive misuse of the powers of public officials -appointed or elected- for private financial or other benefits*.[2]

But the rationalization of corruption as a social phenomenon is a complex endeavor because of the difficulty of knowing its actual causes. When it comes to developing democracies such as Mexico, researchers like Gray & Kaufmann (1998) propose that "Corruption is widespread in developing and transition countries, not because their people are different from people elsewhere but because conditions are ripe for it".[3] Some of the conditions that they refer are under-developed labor markets, declining salaries of civil servants, discretion of public officials, lack of accountability mechanisms, monopolies, absence of civil service career-paths, low standards for ethics in Government, failures of law enforcement and weak "watchdog institutions".[4]

When it comes to issues of law enforcement, it is frequent to find that prosecutors and investigators have trouble for investigating corruption because the participants actively hide evidence in order to avoid detection and to reduce the severity of punishments. As a consequence of the "occult" nature of corrupt transactions, a common challenge that anticorruption researchers have is the poor availability of data that can lead to the identification of red flags and causal assessments. In this sense, legal specialists like Laurence Giovacchini (2000) add that "corruption has no victims, in the literal sense of the word […] it is rare that an act of corruption will be reported to the competent authorities by a participant in a corruption scheme"[5]. Hence the inherent lack of direct victims and scarcity of whistleblowers are aspects that may reduce the ability of anticorruption institutions for carrying out successful legal investigations.

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[1] Arnold J. Heidenheimer and Michael Johnston (editors), Political Corruption: concepts and contexts, 3rd edition, Transaction Publishers, New Brunswick, New Jersey, 2009. pp 3-14.

[2] See OECD's Glossary of Statistical Terms. Available at https://stats.oecd.org/glossary/detail.asp?ID=4773 (last visited August, 2020).

[3] See Cheryl Gray and Daniel Kaufmann (1998), Finance and Development, International Monetary Fund; March 1, 1998; 35, 1. Available at: https://www.imf.org/external/pubs/ft/fandd/1998/03/pdf/gray.pdf

[4] Gray & Kaufmann define the watchdog institutions as those who provide information on which detection and enforcement can be initiated. Some examples of these type of institutions would be professional guilds (*i.e.* accountants, lawyers, etc.), non-governmental organizations and the press. In this regard, the authors do not make distinctions between public and private watchdog institutions.

[5] Laurence Giovacchini (former official from France's *Service Central de Prevention de la Corruption*), Good Governance: a mere motto or a pragmatic endeavor for a realistic strategy? (the French example of an Anti-corruption Agency), Resource Material Series No.56, United Nations Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders (UNAFEI), December 2000, p. 356. Available at: https://www.unafei.or.jp/english/publications/Resource_Material_56.html (Last visited August, 2020)

In addition to the trouble for knowing the causality of the phenomenon and for building legal cases, studying corruption is said to be a complex endeavor because it can have feedback with criminal impunity if it reaches the institutions in charge of its prevention; this situation is referred amongst scholars as "systemic corruption". In respect to this, Gray & Kaufmann also note that "Even if detection is possible, punishments are apt to be mild when corruption is systemic —it is hard to punish one person severely when so many others (often including the enforcers) are likely to be equally guilty".

Furthermore, when political elites and high officials are agents of corruption themselves, the aforementioned authors suggest that it might be designated as "grand corruption" because it has the capacity to manipulate the law-making processes at the domestic and international levels, consequently facilitating the legalization of corrupt practices. For instance, some democracies like the USA have laws allowing the funding of political parties by private contributors, but such permissiveness in the fundraising without adequate surveillance can enable dubious quid pro quo arrangements that are particularly exacerbated during political campaigns, as Samuel Issacharoff (2010)[6] suggested by stating the following:

> "Putting aside the elusive leveling aspiration of equality of all individuals in privately funded campaigns, the question is how to use campaign finance regulation to enhance a competitive electoral system and to guard against the corrosive distortion of political decision-making toward incumbent entrenchment. This in turn requires rethinking the incentives toward candidate engagement of the electorate as they compete for office, including in the process of fundraising, and a more nuanced understanding of the corrupting influence of incumbent reelection on the outputs of the political process."

Both, systemic and grand corruption, can further enable multiple forms of illicit behavior beyond the typical model of bribery. In this sense, Rose-Ackerman & Palifka (2016)[7] contribute with an international taxonomy that shows how corruption is a term that also accounts for extortion, exchange of favors, nepotism, cronyism, judicial fraud, accounting fraud, electoral fraud, public service fraud, embezzlement, kleptocracy, influence peddling and conflicts of interests. Moreover, there hasn't been found any conclusive data that could support hypotheses on the progressiveness of corruption from petty (*i.e.* the typical mental model of a speeding ticket bribe) to systemic to grand; neither backwards or any other pattern of linear causation. It seems as if the causes of corruption can be relatively easy to imagine by the theory but difficult to confirm their manifestations in the real world and, possibly, this is one reason why the rational analysis of corruption should not rely on parsimonious views of the phenomenon. For instance, it is difficult to say whether poverty conditions, legal gray areas or weak law enforcement could be the cause for corruption at, say, a bureaucratic office in charge of issuing drivers licenses, thus most of the times we will find scholars arguing that all matter equally. Hence, most of the researchers' conclusions often imply ambitious goals such as poverty reduction policies, nationwide legal reforms and mechanisms to improve the Judiciaries.

The hypothesis that Mexico suffers from systemic and grand corruption has correlation with the perception rates that Mexicans have reported in many types of surveys, including the official ones that performed since 2011 by the National Institute of Geography and Statistics

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[6] See Samuel Issacharoff, On Political Corruption, 124 Harv. L. Rev. 118 (2010) .

[7] See Susan Rose-Ackerman and Bonnie J. Palifka (2016). Corruption and government: Causes, consequences, and reform, 2nd edition. Cambridge University Press, New York, pp. 7-11.

(INEGI by its initials in Spanish) for estimating corruption's prevalence in Mexico, known as National Surveys for Governmental Quality and Impact —*Encuestas Nacionales de Calidad e Impacto Gubernamental*—.

The most recent of INEGI's surveys in this regard was carried out in 2019 and the results estimated that 15.73% of Mexico's inhabitants have directly witnessed a corrupt transaction at least one time in their lives.[8] Also, 87% of the people considered that corrupt deals were "frequent" or "very frequent" to watch in their respective communities. The most trusted public institutions were Public Universities, the Army and the Human Rights Commission with 75%, 73.6% and 56.7% of approval respectively; the less trusted institutions were Political Parties, Congress, the Police, Judges and Bureaucrats in general, with 24.6%, 30.2%, 33.5%, 35.1% and 43.3% respectively.

Preventing corrupt behavior in Mexico takes the practical problems of investigating corruption to the next level because, as Buscaglia & González-Ruíz (2005) comment,[9] there is evidence that the economic power and merciless violence of organized crime —such as drug and human-trafficking cartels— have allowed them to "purchase" the will of politicians and public officials within several law enforcement institutions, even the Army. Thus, in some areas of the Mexican government the investigation of corruption becomes a high risk endeavor because of the criminal organizations' lethal retaliations against the inquirers.

However, public officials and private gain are two elements that are always present in corruption schemes, hence it has turned out reasonable to assume that monitoring the public officials' wealth can deter their engagement with illicit businesses because it either dissuades public officials by knowing themselves that they are being surveilled, or facilitates the detection of anomalies through the follow up of their wealth's evolution. Using this rationale, several countries have issued laws requiring public officials to periodically report to the Government information regarding personal finances such as assets, liabilities and sources of income. Also, considering that public officials can use their power not only for increasing their own wealth but also for granting unfair benefits to others, the anticorruption laws may also require public officials to disclose the names of the persons with whom the have potential conflicts of interests while performing their duties. These public policies are usually referred in the anticorruption literature as Asset Declarations and Declarations of Interests, respectively.

In addition to monitoring public officials' wealth and interests, some jurisdictions have established the mandatory public disclosure of the information contained in the aforementioned Declarations. The justification for this measure is connected to theories on Governmental Transparency that assume that the scrutiny of society as a whole can also deter public officials from participating in corrupt practices. In this context it is assumed that the existence of multiple

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[8] See slides 127-130 of the document retrievable from https://www.inegi.org.mx/contenidos/programas/encig/2019/doc/encig2019_principales_resultados.pdf (last visited August, 2020). Available only in Spanish.

[9] Buscaglia, Edgardo and Gonzalez Ruiz, Samuel, The Factor of Trust and the Importance of Inter-Agency Cooperation in the Fight Against Transnational Organised Crime: The US-Mexican Example. The Management of Border Security in NAFTA: Imagery, Nationalism, and the War on Drugs, Vol. 15, No. 1, pp. 5-37, 2005. Abstract available at SSRN: https://ssrn.com/abstract=976454 (Last visited August, 2020).
Article available at: https://www.researchgate.net/profile/Edgardo_Buscaglia/publication/228161299_The_Factor_of_Trust_and_the_Importance_of_Inter-Agency_Cooperation_in_the_Fight_Against_Transnational_Organised_Crime_The_US-Mexican_Example/links/0a85e534cfcfada1af000000/The-Factor-of-Trust-and-the-Importance-of-Inter-Agency-Cooperation-in-the-Fight-Against-Transnational-Organised-Crime-The-US-Mexican-Example.pdf

watchers everywhere facilitates the detection of corrupt transactions and, at the same time, mandatory transparency requirements somehow enable a type of anonymity that protects the people from retaliations.

For instance, at the domestic level, the USA was among the first jurisdictions in adopting these type of anticorruption standards through the Ethics in Government Act (EGA) of 1978 — issued after the Watergate scandal—, which Lois Bernard Jack (1981)[10] described as follows:

> "In general terms, affected officials and their immediate families must disclose the nature and sources of their outside income, property interests, transactions and holdings, gifts, and liabilities. In most cases, dollar amounts are to be reported in 'value ranges' rather than by exact amounts. In addition, the identity of positions held in businesses or organizations (other than social, religious, fraternal or political organizations and positions of purely honorary nature) must be disclosed […].
>
> The interests promoted by the E.G.A. were summarized in the legislative history: (1) to restore public confidence in the integrity of top government officials and the government as a whole; (2) to demonstrate the high level of integrity of most government officials; (3) to deter conflicts of interests; (4) to deter undesirables from entering government service; and (5) to enable the public to evaluate the performance of officials in light of their outside financial interests."

At the international level, the Declarations of Assets and of Interests have been established as anticorruption standards for the Public Sector through instruments like the United Nations Convention Against Corruption which entered into force in December 14 of 2005. Its article 8, paragraph 5, states:

> "Each State Party shall endeavour, where appropriate and in accordance with the fundamental principles of its domestic law, to establish measures and systems requiring public officials to make declarations to appropriate authorities regarding, inter alia, their outside activities, employment, investments, assets and substantial gifts or benefits from which a conflict of interest may result with respect to their functions as public officials."

Despite that many countries have common understandings on the convenience of establishing the Declarations of Assets and of Interests as anticorruption public policies, there are nuances that each jurisdiction has deemed necessary to adjust for the implementation. Some aspects that the domestic laws can regulate differently are the specificity of the officials' data that ought to be reported via their Declarations, the information that is to be disclosed to the public and the type of officials who should file the Declarations. In this sense, a comparative study sponsored by the OECD (2011)[11] remarked that:

> "While there is a global trend towards greater disclosure, striking the right balance between public disclosure and protection of privacy remains a subject of debate. There are strong reasons for disclosing, at least partially, data of political officials […] Concerning the lower-level public officials, the right degree of public disclosure should be determined on the basis of a careful weighing of various considerations, such as domestic traditions, perceptions of corruption in a given country, possible safety concerns, and other dangers."

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[10] Louis Bernard Jack, Constitutional Aspects of Financial Disclosure under the Ethics in Government Act, 30 Cath. U. L. Rev. 583 (1981).

[11] OECD (2011), Asset Declarations for Public Officials: A Tool to Prevent Corruption, OECD Publishing. p. 16. Available at: http://dx.doi.org/10.1787/9789264095281-en (last visited August, 2020).

When it comes to Mexico's developments, the Declarations of Assets and of Interests were introduced in 2002 as a legal obligation for Federal officers only. In 2015 there were a series of anticorruption reforms that ended up in establishing the disclosures as a mandatory requirement for all Mexican officials (*i.e.* Federal, State and Municipal). But the real impact of the Declarations of Assets and of Interests against corruption is difficult to assess because, in one hand, there is no evidence that corruption has been reduced since these public policies were adopted in 2002 —in fact, the available perception indicators suggest a worsening of Mexico's corruption— and, in the one other hand, a closer look to the way in which bureaucratic institutions have implemented the pertaining laws allow us to say that their enforcement is underdeveloped.

In view of the latter, this dissertation offers a subjective assessment on the failures of the Declarations' framework in Mexico and develops proposals designed to entice the discussion of solutions. Chapter One discusses how do the laws of Mexico regulate the Declarations of Assets and of Interests. It begins with a description of who are the subjects that must file them, the institutions that enforce these public policies, the data that ought to be declared to the Government and the information that is to be disclosed to the public. The Chapter ends with the opinion that the Declarations' framework in Mexico is violating the right of privacy of public officials in specific ways —*i.e.* banking secrecy, spousal privilege, presumption of innocence and the prohibition of self incrimination— and remarks that it is important to acknowledge that according to both, privacy scholars and Mexico's Federal Judiciary, it may not even be reasonable to have an *a priori* definition of privacy. For instance, from an academic perspective, scholars like Mulligan, Koopman & Doty (2016) argue that privacy is an "essentially contested concept" that can be comprehended as "a normative notion that connotes should-ness and ought-ness"[12] while, from the perspective of Mexico's legal system, the right of privacy has been interpreted as a safeguard of individual autonomy assuming that it aims to protect human volition from external incursions that may affect the individuals' ability of making decisions freely.

Chapter Two draws from literature of the intersection of Law, Political Science and Sociology to try to explain why do the affectations to public officials' privacy matter and how do they connect with greater issues that overall translate into the complexity of the phenomenon of preventing corruption in Mexico. First, I argue that Mexican officials are generally likely to develop an attitude of skepticism toward the enforcement of the laws, which undermines the effectiveness of public policies in general. Then I present a heuristic account of the implementation of the Declarations of Assets and of Interests, asserting that the privacy affectations are definitely important because they are at the roots of the public officials' willingness to cooperate with these public policies, but that there are also legal, moral, bureaucratic, political and social burdens that all together have contributed to justify a rationality that tolerates the Declarations' ineffectiveness at the individual and institutional levels. Drawing from such heuristics I extract three major failures of the Declarations' implementation in Mexico, *i.e.* (a) the disrespect to public officials' privacy; (b) the lack of adequate verifications of what officials declare, and (c) the absence of material information released to the public regarding the integrity of public officials and the work of anticorruption institutions.

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[12] See Mulligan Deirdre K, Koopman Collin & Doty Nick (2016), Privacy is an essentially contested concept: a multi-dimensional analytic for mapping privacy. *Phil. Trans. R. Soc. A* 374: 20160118. Available at http://dx.doi.org/10.1098/rsta.2016.0118 (Last visited August, 2020).

Chapter Three is speculative rather than conclusive. Using the Responsive Law theory formulated by Berkeley Law Professors Philippe Nonet & Philip Selznick as a common thread, it draws from literature on technology design, computer science, law and ethics to delineate three proposals discussing reasonable ways to fix the aforementioned problems of Mexico's Declarations of Assets and of Interests.

CHAPTER ONE

1.1. The subjects who must file the Declarations of Assets and of Interests

The current regulations for Mexico's Declarations of Assets and of Interests[13] are issued by the National Anticorruption System ("NAS") —a Committee composed by public officials from multiple law-enforcement institutions described in section 1.2—. These regulations define the term "public official" as any person who occupies a position within the Federal, State and Local governments including the independent agencies and government-owned companies.

Considering the hierarchical position of public officials, the regulations divide them into two groups and require different degrees of informational thoroughness for their Declarations.[14] For illustrating purposes, Table 1 below shows an index of this information. The first group is composed by public officials who hold a position above or equal to "Chief of Department" —*Jefe de Departamento*— in the Federal Executive branch or the "analogous positions" within the Judiciary, Legislative, State and Local institutions.

Table 1. Index of the information that officials must declare through the Declarations of Assets and of Interests

A. Declarations of Assets	B. Declarations of Interests
1. Declarant's generals (name, identifications, marriage status, etc.) 2. Address 3. Curricular Information (academic background) 4. Current position's description 5. Professional experience 6. Significant other's information 7. Economic dependent's information 8. Sources of income from the public official, significant other and economic dependents. 9. Real Estate 10. Vehicles 11. Personal property 12. Financial assets (banking accounts, securities and other assets owned by the declarant) 13. Liabilities 14. Non-proprietary assets used and enjoyed	1. Companies, partnerships or associations in which the declarant, significant other or economic dependent has participated. 2. Public subsidies or grants received by the declarant, significant other or economic dependent 3. People who can legally represent the declarant, significant other or economic dependent 4. Main business clients from the declarant, significant other or economic dependent 5. Private benefits (memberships, rewards programs, clubs, etc.) received by the declarant, significant other or economic dependent 6. Trusts or private funds in which the declarant, significant other or economic dependents have participated

According to Rule 11th (*Decimoprimera*) of the NAS's norms the first group is required to provide all the information specified by the regulations. The second group is to be conformed by officials with ranks lower than Chief of Department and they are required to provide information only regarding items 1 to 5 and 8 from the Declarations of Assets listed in column A

[13] See the norms published in the Federation's Official Journal (*Diario Oficial de la Federación*) of September 23rd, 2019 under the name "ACUERDO por el que se modifican los Anexos Primero y Segundo del Acuerdo por el que el Comité Coordinador del Sistema Nacional Anticorrupción emite el formato de declaraciones: de situación patrimonial y de intereses; y expide las normas e instructivo para su llenado y presentación".

[14] See Rules 15th to 19th of the National Anticorruption System's regulations for the Declarations of Assets and Interests.

of Table 1, and they do not have to declare any information regarding the Declarations of Interests listed in column B nor from their significant others or economic dependents.

But Rule 11th's classification of public officials can be seen as defective for two reasons. First, because it ignores that the positions within the Federal Executive are not regulated with homogenous standards and therefore it does not provide certainty on which are the positions that the NAS is seeking to regulate. For example, in the Annex 23.1 of Mexico's Federal Budget —*Presupuesto de Egresos de la Federación*— it is contained a list of positions from the Executive branch and their salaries, while article 14 of the Federal Executive's Organic Act —*Ley Orgánica de la Administración Pública Federal*— contains a list of positions shorter than the one specified in the Budget. Both are pieces of legislation issued by the Federal Congress and therefore it is necessary to make interpretations of the laws in order to elucidate the hierarchical positions of the Executive branch that are lower than Chief of Department and the analogous ones in the other branches of Government.

Table 2 below shows how the hierarchical positions within the Federal Executive vary according to the cited laws:

Table 2. Lists of hierarchical positions within the Federal Executive

According to Mexico's Budget —*Presupuesto de Egresos de la Federación*— for 2020	According to the Federal Executive's Organic Act — *Ley Orgánica de la Administración Pública Federal*—
A. Command positions 1. President 2. Secretary 3. Undersecretary 4. General Director 5. Associate General Director 6. Director 7. Assistant Director 8. Chief of Department 9. Contact staff B. Operational staff C. Diplomats D. Public education workers E. Medical services workers F. Scientific research workers G. Public security workers H. Public governance workers I. Armed forces (i.e. army, navy and air force)	1. President 2. Secretary 3. Undersecretary 4. Head of Unit 5. Director 6. Chief of Department

The second reason why the rules for the Declarations do not provide certainty on the regulated subjects, is that they omitted to establish criteria for defining what does "analogous position" mean. For instance, it can be interpreted that the analogous positions to "Chief of Department" in the Legislative and the Judiciary are those who earn similar salaries, the ones that have similar responsibilities or the ones with the same place in a list of [arbitrary] rankings.

In view of the latter, it is possible to formulate a regulatory recommendation which consists in the suggestion that the NAS's norms should specify a method to determine which are the governmental positions "analogous" to "Chief of Department" across the Federal, State and Local spheres. Unless the NAS regulates this aspect, the interpretation on which positions are analogous, will belong to the internal control units that are described in the next section,

provided that Rule 21st (*Vigesimoprimera*) of the NAS's regulations expressly granted them with such interpretative powers.

1.2. The institutions that enforce the Declarations of Assets and of Interests

The legal framework for public officials' disclosures is contained in two sets of Administrative-Law norms that were issued by Mexico's Congress in 2016: the Administrative-Law Liabilities Act ("ALLA") —*Ley General de Responsabilidades Administrativas*— and the National Anticorruption System Act ("NASA") —*Ley General del Sistema Nacional Anticorrupción*—. Although some aspects throughout this dissertation may require the invoking of provisions from other normative bodies, the ALLA, NASA and the regulations that stem from them are the rules that we will focus for this Chapter because they set forth the substantive and procedural rules for the Declarations of Assets and of Interests.

A look into the legislative process of both the ALLA and the NASA reveals that those laws were the result of merging multiple bills presented by Senators from different political parties since 2013 and a civil-society initiative.[15] The bills usually acknowledged the existence of deep corruption issues all over Mexico's territory, claiming the existence of systemic and grand corruption. Also, most bills pushed for the establishment of a coordinating authority —which eventually was named as the National Anticorruption System— for designing anticorruption policies across the nation, under the assumption that the coordination among public institutions is necessary for detecting and investigating complex corruption schemes that operate at multiple jurisdictional levels.

It is important to mention that none of the bills presented convincing data on corruption but only referred to public scandals and perception indicators that, despite their correspondence with the public opinion, they lacked of proper evidence.

1.2.1. The National Anticorruption System (NAS)

The Organization for Economic Cooperation and Development has conducted comparative studies on the types of anticorruption institutions that several democracies have established —OECD (2013)—. In a Review of Models issued in 2013 it made a classification of international anticorruption institutions based on their legal design and the functions that they carried out.[16] Such comparative work resulted in the identification of the following types of anticorruption institutions: i) Multi-purpose anticorruption agencies; ii) Law enforcement institutions, and iii) Preventive institutions. The preventive institutions were further divided into: (1) Coordinating Councils, (2) Dedicated corruption prevention bodies and (3) Public institutions which contribute to the prevention of corruption and are not explicitly referred to as "anti-corruption institutions".

Drawing from the OECD's comparative study on international models for anticorruption institutions, Mexico's NAS would be considered as an institution established under the form of a *coordinating council*, which consist in "government agencies and ministries, representatives of

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[15] For a summary of the bills presented at Mexico's Senate see https://www.senado.gob.mx/comisiones/justicia/leyes_reglam_corrupcion.php (available in Spanish only). Last visited January, 2020.

[16] OECD (2013), Specialized Anti-Corruption Institutions: Review of Models: Second Edition, OECD Publishing, Paris. Available at: http://dx.doi.org/10.1787/9789264187207-en (last visited August, 2020).

executive, legislative and judicial branches of power and may involve civil society. [They] usually are not permanent institutions, but operate through regular meetings. They may be supported by permanent secretariats". Some jurisdictions that reported to have anticorruption coordinating councils as described by the OECD's typology were Russia, Ukraine, Azerbaijan, Tajikistan and Georgia.

Consistent with the coordinating council model, the NAS is composed by two Committees and one Administrative-Law Tribunal with national jurisdiction. An "Executive Secretariat" is the organ in charge of implementing the NAS's resolutions and directing the staff who provides technical assistance to both of the NAS's committees.[17] The first Committee was designated as the "Coordinating Committee" and it can regulate: (i) the policies regarding the oversight and auditing of public funds, including the prevention, control and deterrence of administrative law infringements and (ii) the mechanisms for the supply, exchange, systematization and update of information about corruption that any public institution may have.[18]

The second committee was named as the "Citizens' Inclusion Committee", it is meant to engage with the public, civil associations and non-governmental organizations in order to issue opinions for the design and evaluation of the Coordinating Committee's policies, and it is integrated by people appointed indirectly by the Senate.[19]

The Administrative-Law Tribunal operates as a Court exclusively for Administrative-Law matters and its judges —also named "magistrates"— are nominated by the Federal Executive and ratified by the Senate;[20] the Tribunal's magistrates make collegial decisions susceptible of review by the Federal Judiciary whenever a constitutionality claim is involved,[21] although when an Administrative investigation could point toward the existence of serious cases that deserve higher penalties, its investigation may be transferred to Criminal prosecutors and trialed before the Judiciary as well.[22]

The NAS cannot directly investigate acts of corruption —this is the duty of the internal control units and the Administrative-Law Tribunal— but it can issue non-binding recommendations to any public institution who fails to comply with its norms. If the NAS's recommendations are not followed, then it may require to the pertaining public institution a formal explanation of the reasons why the rules were not observed.[23] According to the ALLA, the infringement of the rules for the Declarations is a matter that the internal control units must

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[17] The Technical Secretariat is appointed by the Coordinating Committee alongside the President of the Citizens' Inclusion Committee. See articles 22, 25, 28 and 33 to 35 of the NASA.

[18] See Article 113 § III of Mexico's Constitution.

[19] According to article 18 of the NASA, the Senate must choose nine people to form a "Selection Committee". Five from academic/research institutions and four from non-profit organizations specialized in anticorruption and democratic accountability. The Selection Committee is then responsible of defining the selection method for a nationwide recruitment of five members to be part of the NAS's Citizens' Inclusion Committee.

[20] See articles 42 and 43 of the *Ley Orgánica del Tribunal Federal de Justicia Administrativa*.

[21] The review of constitutionality claims is exclusive from the Federal Judiciary according to articles 103 to 105 of Mexico's Constitution.

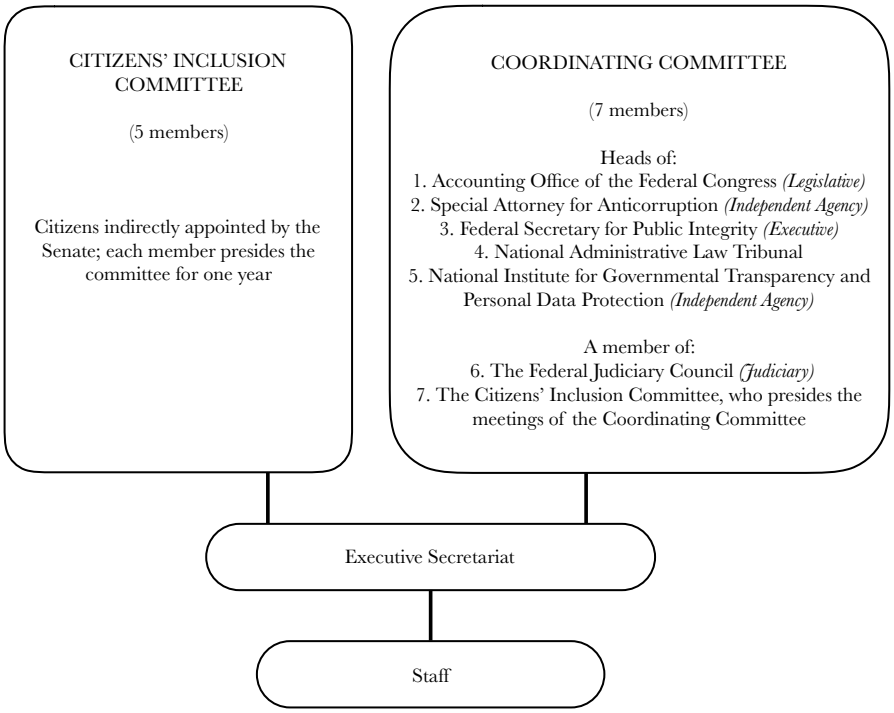
[22] See article 199 of the ALLA.

[23] See articles 18 and 19 of the ALLA; and 57 to 60 of the NASA.

investigate and the violations can be deemed as "serious" (such as the deliberate hiding of assets) or "not serious" (like the failure to file the Declarations in a timely manner). The cases of serious Administrative violations are heard by the Administrative-Law Tribunal and the not serious can be decided by the internal control units themselves.[24]

The NAS's organizational structure is presented in Figure 1 below, and it shows that State and Municipal authorities were left out of the NAS's institutional design. The latter is an aspect that could complicate the effectiveness of its coordinating functions but in practice it could be mitigated through the celebration of agreements between the NAS and other public institutions in order to exchange and supply anticorruption information.

Figure 1. Organizational structure of Mexico's National Anticorruption System



The way in which the NASA seeks to achieve the coordination among the multiple institutions of Mexico's public sector is by the implementation of a technological infrastructure named "National Digital Platform" which is meant to interconnect databases and secure communications among Federal, State and Municipal anticorruption institutions. However, as of today, this platform is a work in progress and the interoperability of databases and communications is something that has not been achieved despite that the ALLA and the NASA assume its existence for the effectiveness of the coordinating functions of the NAS.

[24] See articles 10 and 12 of the ALLA.

1.2.2. The internal control units

Subject to the NAS's regulations, the actual implementation and enforcement of the Declarations is primarily entrusted to each public institution's "internal control unit" —also referred by other laws as "comptrollers"—. In general, the internal control units are responsible of procuring the compliance with the Declarations' normative framework alongside the duties of verifying the data declared by officials, analyzing it and initiating investigations. It is important to bear in mind that the internal control units —even the ones that belong to the Federal and State Judiciaries— are not composed by Judges but by regular public officials, thus their decisions are ruled by Administrative Law standards and are also subject to judicial review.

The term "internal control unit" is an abstract concept defined as the actual offices involved with the functions of promoting, evaluating and strengthening the functioning of public institutions including their compliance with the ALLA; hence the identification of the actual offices depends from each of the public institutions' bylaws and organizational charters.[25] For example, according to Mexico's Central Bank Act and its bylaws, this independent agency has an Audit Unit, a Comptroller and an "Administrative Liabilities Committee", thus the three offices together would be considered as the central bank's internal control unit. But the internal control units can also be specialized institutions, as it happens with the Federal Executive where the internal control unit is one Department named *Secretaría de la Función Pública* or "Secretary of Public Integrity". Table 3 below shows that there can be more than 1,400 internal control units in the Mexican Government as a whole.

1.3. The information that public officials must declare to the internal control units

The regulations for the Declarations of Assets and Interests are drafted as "forms" and a "manual" describing how to fill those forms. In the Appendix it is presented a graphic representation of the information that officials must declare, with the purpose of providing a thorough view of the personal data that the internal control units may get access to. It also highlights which pieces of information must not be disclosed according to the NAS's regulations.

In general, the personal information required by the NAS's regulations consists in addresses, working places, job history, telephone numbers, official identifications —such as Taxpayer's ID and social security numbers—, sources of income, vehicles —specifying whether they are cars, planes, boats, etc.—, financial assets owned —like investment funds, insurances, private and publicly traded stock, bonds, derivatives, etc.—, and real estate properties that are either owned or used by public officials.

One important aspect of the NAS's regulations is that they also require Mexican public officials to declare personal and financial information regarding their spouses, concubines and "similar" relationships, which, for the sake of brevity, I will use the concept of "significant other" to refer to them jointly. Also, the NAS's regulations require to specify personal and financial information about public officials' economic dependents, which is a term defined as "any person whose main source of income is the declarant official's support", regardless if they have a family link or not.

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[25] See the definitions contained in article 3 of the ALLA.

In this sense, it can be remarked that according to the NAS's regulations there is very little difference between the thoroughness of the information that public officials must declare about themselves and the one that they must declare regarding their significant others and economic dependents. Certainly, from the twenty flow diagrams presented in the Appendix it can be noticed that only the curricular information (diagram A.3), professional experience (diagram A.5), financial assets (A.12) and the non-proprietary assets used or enjoyed (A.14), are requirements that do not apply entirely to significant others and economic dependents. A peculiar treatment is given to the information when it comes to the sources of income (diagram A.8) because public officials do not have to provide too much details about their significant others and economic dependents but they must certainly provide the amount of those people's total annual income. Another example of how much do the NAS's regulations require information about significant others and economic dependents is that, as it is showed by diagram A.11, every household possession worth 5,500 US dollars[26] or more —like jewelry, private collections, art pieces, furniture, etc.— must be declared and specified in its commercial value alongside where, how, when, and from whom it was acquired, regardless if the public official or her significant other paid for it.

The fact that the NAS's regulations contain multiple provisions requiring public officials to give plenty information from people that are not the public officials themselves, can be seen as overreaching because the regulations assume that public officials "should know" all of those aspects and ignore the variations on privacy limits that personal relationships may have. Moreover, such overreaching provisions can be coercively enforced, thus the NAS's regulations seem to follow a sort of authoritarian model that cares more about the Government's power to get access to personal information than privacy.

For example, let us suppose that a public official named Stella is single, has one kid and

Table 3. Estimated number of internal control units in Mexico

Area of Government	Branch of Government	Number of internal control units
Federal	Executive	1 (Secretary of Public Integrity)
	Legislative	2 (one per chamber)
	Judiciary	2 (one for the Supreme Court and one for the rest of the Federal Judiciary)
	Independent Agencies	~ 10 (one per agency)
State (32 States)	Executive	32
	Legislative	32
	Judiciary	32
	Independent Agencies	~ 32 (under a conservative estimation of one independent agency per State)
Municipal (2,457 Municipalities)	Municipalities	1346
Total of internal control units (estimated)		1489

during the year 2019 she met two significant others. According to diagram A.6, she is expected to

[26] The actual value set forth by the NAS's regulations is 1200 "Units of Measurement and Update", which in monetary terms represents approximately 104,256 Mexican Pesos as of January 2020.

declare whether she is married, lives in concubinage or has "other" sort of personal arrangement which she would then have to specify their names alongside answering whether she supported them economically. Also, according to diagram A.7, Stella would have to give information on whether she supports her child and whether is a minor who lives with her. From the legal point of view, one can to question the reasonability of allowing the Government to get all that personal information from every official through a procedure that is not authorized by a Judge and does not provide certainty on the matter that is being searched. If Stella would decide not to include the previous information in her Declarations because she felt that her privacy and intimacy are at stake, the pertaining internal control unit could issue subpoenas with warnings, and her failure to comply with them would be considered by article 63 of the ALLA as contempt, thus a serious violation that can be punished with a suspension, fine or banning from the Public Sector according to the subsequent article 78.

These type of overreaching requirements are frequent to find in the NAS's regulations. The focus in the public interest of getting better information for preventing corruption seems to have forgotten to keep the Government within some fundamental legal confines because the ALLA and the NAS's regulations are, to some degree, enabling violations to Constitutional rights that are connected to notions of privacy such as the presumption of innocence and the protection against self incrimination and, arguably, also infringing procedural rights such as spousal privilege[27] and banking secrecy that are applicable to both, Criminal and Administrative Law procedures.

Besides the aforementioned affectations to privacy, the Declarations' normative framework can also collide with the value of fairness because they treat political officials —*i.e.* those who are elected— in the same way as high bureaucracy —*i.e.* those who are appointed by political officials— and lay officials —, which missed OECD (2011)'s recommendation of applying higher levels of scrutiny and publicity to officials who hold greater legal powers, although this specific aspect will be discussed later in Chapter Three.

1.4. The public officials' information that is to be disclosed to the public

Pursuant to the rules on governmental transparency contained in the *Ley General de Transparencia y Acceso a la Información Pública* —hereafter cited as the "Governmental Transparency Act"—, Mexican public institutions must make publicly available through the internet the information regarding names, positions, salaries, public subsidies received and curricular information from the officials who work at them. The Governmental Transparency Act's provisions foresee that a "public version" of the Declarations of Assets can be disclosed to the public. In this sense, a public version is a document that "censors or omits data concerning identifiable subjects".[28]

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[27] Mexico's legal system regulates the spousal privilege similarly to the USA's. According to article 222 of Mexico's Federal Code of Criminal Procedures, the "spousal privilege" would consist in the exemption of a suspect's spouse from the general obligation that people in Mexico have to denounce any crime of their knowledge to the criminal prosecutors and to assist them through testimonies. The latter exemption is in practice identical to the ruling of the US Supreme Court in Trammel v. United States —see 445 U.S. 40, 43-44 (1980)— which stated that "the witness-spouse alone has a privilege to refuse to testify adversely".

[28] See articles 64, 70 and 116 of Mexico's Governmental Transparency Act.

A look at the information from diagrams A.1 and A.5 of the NAS's regulations allow to say that is the same data that the Governmental Transparency Act deems as public by default (with the exemption of the family status and the official identifications from diagram A.1). No piece of legislation nor the regulations are clear about why it is convenient to oblige public officials to declare information that is already publicly available. In this sense, we can then formulate another regulatory recommendation which consists in making the Declarations of Assets and of Interests easier to fill by not requiring the same information that is already publicly available according to the Governmental Transparency Act.

Similarly to the Governmental Transparency Act, article 29 of the ALLA states that the Declarations' content is public by default except for the information that entails "personal data" or "information regarding a person's private life", which can be treated as confidential and therefore may not be susceptible to public disclosure. The same provision states that the NAS's regulations must guarantee that the non-public information will be kept by the "competent authorities" with confidentiality, but nowhere in article 29 or anywhere else the ALLA establishes any standards or criteria for safeguarding the data, therefore the silence of the law is a condition that is granting the NAS with ample discretion for regulating methods to keep public official's privacy and personal data protected.

In this sense, rule 19th of the NAS's regulations orders that the information contained in diagrams A.1 (generals), A.2 (address), the financial information of public officials (such as account numbers, balances, annual income), and the information concerning significant others and minors, are exempt from being publicly disclosed. When it comes to the information regarding officials' assets and liabilities, the only kind of information that is to be publicly disclosed is the variation of their value in percentage ranges; for example, if Stella would declare in year 2018 that she had a banking account with $100 and later she declared in 2019 that her same account had a balance of $80, then the information that would be public is that the Stella's account balance decreased by 20%.

Rule 20th of the NAS's regulations further establishes a "solution" to protect officials' privacy and not disclosing some of their data to the public, which consists in the alternative of using the Governmental Transparency Act's framework for classifying the information contained in the Declarations as "reserved" —meaning confidential— if there are risks to the officials' life, security or health. According to the Governmental Transparency Act, classifying information as reserved and identifying which personal data is sensitive, is part of the functions performed by the Transparency Committees that Mexican public institutions must have within their organizations, and therefore the NAS's regulations partially delegated to them the decision of which information could be classified as "reserved".

Another critique that can be formulated to the NAS's rules is that, actually, everything that is contained in the Declarations concerns identifiable subjects and, given the high crime rates that happen in Mexico, we can reasonably reach the conclusion that disclosing those details represent general risks to their lives, security and health, therefore all parts of the Declarations should be exempt from public disclosure. Thus we can conclude that there are several legal provisions that need to be interpreted uniformly in order to achieve harmony, because the specific legal obligations for disclosing personal data and protecting privacy are not straight-froward for anyone.

Then, how can we identify what concerns to the public and what should remain seen only by the internal control units? The ALLA, NASA and the NAS's regulations again do not provide clear answers on this matter. Thus, in the following section I will discuss a notion of public

officials' privacy as a first step toward the elucidation of answers to the question of "what should be disclosed to the public and why?". But instead of trying to define a positive concept of privacy formulated as "privacy should have X, Y and Z protection mechanisms", I propose to identify the legal affectations that are provoked by the Declarations' framework so we can start building a negative definition formulated as "X, Y and Z obligations are not privacy-protective".

1.5. A legal notion of Mexican public officials' privacy in the context of the Declarations

As it was commented previously, Rule 19th of the NAS's regulations states that the information concerning minors, economic dependents and significant others, is not to be publicly disclosed. But the privacy affectations that we will comment in this section belong to the obligation to declare information to the internal control units, which constitutes one step before public disclosure. As the Appendix shows, there is plenty of personal information that the Government can obtain through the Declarations and the ALLA foresees that such data should be protected, but when delving into the question of which methods are applied for safeguarding privacy, the answer that the ALLA provides is that the NAS has regulatory discretion for establishing such methods, and the latter institution decided to disclose some data that is still sensitive and also transferred a part of that responsibility to the Transparency Committees.

The delegation of the NAS's authority to the Transparency Committees is questionable from the legal point of view because the statutes issued by Congress do not contemplate it; moreover, the NAS should have identified aspects from its own regulations that could affect public officials' privacy instead of transferring part of that responsibility to a myriad of Transparency Committees.

A starting point for the elucidation of a legal notion of privacy is that Mexico's Supreme Court has interpreted privacy as a right that stems from the broader right of human freedom and has conceptualized it as "necessary for the free development of human personality", in a similar fashion to the rights of freedom of thought and freedom of expression.[29] In this sense, the Court adopted a theory in which the freedom to develop one's own personality encompasses two dimensions: the internal and the external. The external dimension of human freedom refers to the ability of taking actions and performing behavior. The internal dimension refers to the internal deliberation of someones' will. According to Mexico's Supreme Court, privacy is a right related to the internal dimension of the free development of human personality and its purpose is to protect any individual from external interferences that may restrict the ability of making decisions, but it also acknowledged that this theoretical framework is in practice difficult to determine because there are "some situations" in which the individuals' autonomy is only affected by restrictions to the internal dimension (*i.e.* volition) and others in which the autonomy is only affected by restrictions to the external dimension (*i.e.* actions).

There is plenty of critique that can be formulated upon Mexico's Supreme Court interpretation. But I believe that the most important considerations for our purposes are that: (1) there is no clarity on what is the difference between privacy for making a decision and for taking an action, and (2) there are no criteria to distinguish which internal or external influences are

[29] See the Mexican Supreme Court's Constitutional binding interpretation (known in Mexican Law as *jurisprudencia*) under the title "*Derecho al libre desarrollo de la personalidad. Su dimensión externe e interna"* or "The right for a free development of individual personality. Its external and internal dimensions", issued in February 2019 with the registry number 2019357. Available only in Spanish at: https://sjf.scjn.gob.mx/SJFSist/Paginas/tesis.aspx (Last visited February, 2020)

worth considering as restrictions to the development of someone's freedom to develop one self's personality. The incompleteness of Mexico's Supreme Court opinion is, however, consistent with academic theories on privacy that propose that the affectations to privacy should not be established a priori but should be contextualized.

In this regard, Philip Brey (2007)[30] makes an account of scholar opinions on privacy such as Samuel Warren and Louis Brandeis's who conceive privacy as "the right to be let alone", and his view seems to concur with the one adopted by Mexico's Supreme Court interpretation on the external interferences over individual freedom by asserting that "Privacy is held to be valuable for several reasons. Most often, it is held to be important because it is believed to protect individuals from all kinds of external threats, such as defamation, ridicule, harassment, manipulation, blackmail, theft, subordination and exclusion". Philip Brey also comments that "The right to privacy is not normally held to be absolute: it must be balanced against other rights and interests, such as the maintenance of public order and national security" and as for the personal autonomy he states that "An important principle used in privacy protection in Western nations is that of informed consent […] people can then voluntarily give up their privacy if they choose".

Scholars like Mulligan, Koopman & Doty (2016)[31], suggest that the elucidation of the scope of privacy can be troublesome because the concept of privacy itself is contingent to the circumstances and can be contested, as they comment: "While dilemmas between privacy and publicity, or privacy and surveillance, or privacy and security persist, the question we more often face today concerns the plurality available to us amidst contests over privacy: Which privacy? For what purpose? With what reason? As exemplified by what?". The cited authors then propose that "[...] privacy is a normative notion, which means that it connotes should-ness and ought-ness", and remark that the context matters for the assessments of privacy, invoking a theory developed by Helen Nissenbaum[32] of informational privacy as contextual integrity, which "aims to provide a justification for personal information privacy grounded in two norms—'appropriateness' and 'distribution' (or 'flow')".

An interesting line of thinking that derives from contextual analyses on the right of privacy is that the *ought-ness* or *appropriateness* assessments would be connected to complex relationships among types of morality, legal provisions and political preferences, for how can we predicate the righteous character of any behavior without assuming a moral, legal and political standing on what is "good", "lawful" and "legitimate"? Consequently, discovering what does privacy mean for each context calls for discovering which are the moral values, legal rights and political institutions that a community is considering to protect and why are those values, rights and institutions worth being protected.

Given that the Declarations of Assets and of Interests constitute the disclosure of a series of information about people's identity, addresses, wealth, liabilities, marital relationships, job history and personal affinities, it is not difficult to see that, as a whole, they facilitate the exposure to external threats like the ones commented by Brey. Such incursion into privacy is assumed to be

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[30] See Phillip Brey (2007), "Ethical aspects of information security and privacy" in M. Petković & W. Jonker (eds.), Security, privacy, and trust in modern data management (pp. 21-36). New York: Springer.

[31] See Deirdre K. Mulligan, Colin Koopman, Nick Doty (2016), Privacy is an essentially contested concept: a multi-dimensional analytic for mapping privacy. Floridi L, Taddeo M (editors). The ethical impact of data science. Phil. Trans. R. Soc. A; 2016 374 (issue 2083).

[32] See Helen Nissenbaum (2009). Privacy in context: technology, policy, and the integrity of social life. Stanford, CA: Stanford University Press.

reasonable in light of the public interest of fighting corruption, nonetheless, the fact that there is one compelling public interest behind those public policies does not mean that privacy should become inexistent.

Drawing from Mulligan, Koopman & Doty we can consider the formulation of a legal notion of privacy in the context of the Declarations by identifying those positive rights that the Government *should* take into account for having appropriate access to public officials' personal information, for distributing such data among anticorruption institutions as well as disclosing it to the public. For these purposes, the following lines will delve into the ought-ness and should-ness of Mexico's framework for the Declarations alongside legal theories that have officially been acknowledged by Mexico's Judiciary.

1.6. Affectations to public officials' privacy enabled by the Declarations' framework

We may start a legal analysis of the affectations to privacy by bearing in mind that, according to Mexican Law, the Declarations of Assets and of Interests are mechanisms ruled by Administrative-Law principles meant to provide information to the Government for the investigation and punishment of the unlawful enrichment of public officials. Thus we can say that these public policies have a punitive dimension; consequently, the Declarations imply an external force upon public officials' freedom to choose which information of their private lives should remain private. In this sense, for an assessment on the ought-ness and should-ness we can resort to legal principles that have been established to protect people from external threats that may affect their ability for making decisions freely. Some of the legal principles that we may use for comparison belong to the area of the Law commonly designated as Criminal Law and their applicability into Administrative Law rules is not only convenient from an academic perspective but is also allowed by the interpretations that Mexico's Judiciary has issued on this particular matter.

According to binding criteria that Mexico's Supreme Court issued since 2006, both Criminal and Administrative Law punitive rules "are expressions of the State's punitive power".[33] As a result, whenever there are doubts on which standards to apply for the punitive dimension of Administrative laws, it is allowed to follow, as guidelines, the principles contained in Criminal laws. The Mexican Court has also pointed out that turning to Criminal Law principles must be done with caution because not all of the penal rules can be easily accommodated into Administrative Law institutions. In 2018 the Court added to the previous interpretation that, in order to know whether an Administrative Law rule is an expression of the punitive powers of the State, it has to meet two conditions: (a) that the infringement of such Administrative rule can legally derive in a sanction coercively applied, and (b) that there is a legal procedure for

[33] See the binding interpretation under the title "*Derecho Administrativo Sancionador. Para la construcción de sus principios Constitucionales es válido acudir de manera prudente a las técnicas garantizas del Derecho Penal, en tanto ambos son manifestaciones de la potestad punitiva del Estado*", or "Sanctions in Administrative Law. For the building up of its own Constitutional principles it is valid to prudently resort to the protective techniques of Criminal Law, insofar both are manifestations of the punitive powers of the State", issued in August 2006 with the registry number 174488. Available only in Spanish at: https://sjf.scjn.gob.mx/SJFSist/Paginas/tesis.aspx (Last visited February, 2020).

determining whether the penalty is to be imposed, acknowledging that these conditions are present in the Administrative Law Liabilities' regime.[34]

Considering that the rules for the Declarations of Assets and of Interests can be coercively applied to either force the compliance with the Declarations' framework or to punish unlawful enrichment, they are susceptible of comparison with Criminal Law principles. Taking into account that Mexico is a jurisdiction under the Civil Law Tradition, such principles are most often contained in the Constitution and the laws enacted by Congress —such as the Federal Code of Criminal Procedures—, and secondarily in judicial interpretations that have been issued as holdings or dicta. Mexican Courts' holdings that become generally binding receive the denomination of *jurisprudencia* i.e. "jurisprudence", while the dicta receive the name of *tesis* i.e. "thesis".

1.6.1. Presumption of innocence

This principle is contained in Article 21 §A,I of Mexico's Constitution and consists in the right that accused people have to be treated as innocent until the culpability is declared by a Judge. When it comes to the punitive dimension of Administrative laws, the Mexican Supreme Court has interpreted that this principle is applicable to any procedure that can end in a sanction, although with some "nuances" that the Court itself did not clarify.[35] Nonetheless, the Court held that one practical consequence of the presumption of innocence is that the burden of proving someone's culpability belongs to the party that accuses another from having committed an illicit behavior.

The fact that Mexican public officials must disclose to the internal control units a series of details regarding their wealth just because they are public officials, is a matter that seems a gray area when it comes to the presumption of innocence. No other class of subjects in Mexico are required to periodically file such exhaustive assessments of their own wealth and personal backgrounds for surveillance and sanctioning procedures and with the end of disclosing it to the public. In this sense, the information contained in the Declarations should not prejudge on the public official's culpability but only to seek to obtain information that may allow the internal control units to evaluate the convenience of initiating an actual investigation. As it was commented in section 1.3, the internal control units can issue subpoenas and accuse of contempt if a public official fails to provide the information required by Declarations' regulatory framework (which is predominantly set forth by the NAS's regulations), thus the punitive nature of the Declarations' framework cannot be questioned.

The latter threat of punishment can be considered as an external restriction to the officials' ability of making own decisions because they cannot choose to comply with the Declarations' norms or to remain silent. The Declarations are mandatory standards in the Public Sector that collide with the presumption of innocence and the thoroughness of the information

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[34] See the jurisprudence under the title "*Normas de Derecho Administrativo. Para que les resulten aplicables los principios que rigen al Derecho Penal, es necesario que tengan la cualidad de pertenecer al Derecho Administrativo Sancionador*", or "Administrative Law norms. For the applicability of those principles that rule in Criminal Law, it is necessary that they qualify as punitive norms", issued in November 2018 with the registry number 2018501. Ibidem.

[35] See the binging interpretation under the title "*Presunción de inocencia. Este principio es aplicable al procedimiento administrativo sancionador, con matices y modulaciones*" or "Presumption of innocence. This principle is applicable to Administrative Law punitive procedures, with nuances and modulations", issued in June 2014 with the registry number 2006590. Ibidem.

that officials must declare is considerable to the point that it can legally be used as part of a criminal prosecutors' indictments.[36]

The public interest of preserving integrity within the Public Sector seems to justify the public officials' burden of having to file the Declarations, but this obligation can be overwhelming when the required information is so vast that even trained officials with the background of attorneys cannot understand well what does the NAS want to know about public officials or the reasons why such information is being so exhaustively required. By asking so much personal aspects, the informational requirements seem to assume that every public official must have an irrefutable proof of the legality of their wealth and of their interests, therefore making a gentle circumvention to the presumption of innocence. Public officials that are not familiarized with the language and scope of the ALLA, the NAS's regulations and the Governmental Transparency Act, can make several mistakes while trying to answer to all of the Declarations' requirements, therefore increasing the chances for reporting things wrongly and of being subject to discretionary subpoenas and shaming sanctions such as public warnings and the banning for working at public institutions.[37]

In this context, the affectation to public officials' privacy could be mitigated by simplifying the informational requirements but without disallowing the internal control units' ability to have knowledge of relevant information.

For example, most of the information that is required about the "Real Estate owned by public officials" (specified in diagram A.9 of the Appendix) is normally contained in the property deeds that, according to the States' Civil Codes, the local officials known as Public Notaries must produce and inscribe at the pertaining State's Public Registry. Even the taxing identification numbers (referred in Spanish as *registro federal de contribuyentes*) of the sellers and the buyers are part of the information that Public Notaries are obliged to incorporate in the property deeds because the Federal Taxing Laws of Mexico deem Notaries as tax collectors and they themselves are personally liable if they fail to collect the Federal income-tax owed from real estate transactions.[38] Consequently, declaring the data described in diagram A.9 would be unnecessary; what should be appropriate to declare is only the monetary value of the real estate transaction, the number of the pertaining property deed —referred by Mexican laws as *escritura pública* or "public scripture"— and the name of the Public Notary who had issued such scripture. This way, if an internal control unit wished to verify the data declared by a public official regarding any real estate transaction, it would have all the necessary elements to track official documentation issued by both, Federal-taxing and State-registration authorities.

It turns also unnecessary to make public officials to answer things such as the "Industry Area" in which she or her significant other work (this aspect is required in multiple parts of the Declarations), the Personal Property (see diagram A.11) where it is unclear why does the "kind of relationship with the owner" needs to be specified, or the "Assets used and enjoyed that are not part of the property" (diagram A.14) because such requirements use a language with too much vagueness that do not provide certainty on which things ought to be reported in those categories. Such vagueness in the rules' language is worrying as we take into consideration that there are more than 1,400 internal control units who can interpret the requirements in their own way.

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[36] See articles 34 and 42 of the ALLA.

[37] See articles 75, 78, 123 and 124 of the ALLA.

[38] See article 126 of Mexico's *Ley del Impuesto sobre la renta* or "Income Tax's Act".

Hence, rather than seeking for precise information that could help to detect illicit enrichment, the Declarations' rules seem to be throwing darts in the dark and hoping that officials make a reporting mistake in order to investigate them.

Considering that privacy can be understood as the right to be let alone and that the presumption of innocence transfers the burden of proof to the party who accuses, the unnecessary thoroughness of the information requirements that can derive in mistakes and punishments represent an affectation to our legal notion of privacy. Reducing the informational requirements turns out to be a reasonable measure as we remember that most of the information in which the NAS's regulations is interested can be deduced and verified through other means, although this consideration will be expanded in Chapter Three as part of the proposals to improve the Declarations' framework.

1.6.2. Prohibition of self-incrimination

Mexico's Constitution establishes the right for not incriminating one self in article 21 §A,II. This principle is intimately related with the presumption of innocence, thus it is often difficult to say with accuracy whether a violation of the prohibition of self-incrimination is also a violation to the presumption of innocence. In the context of Mexican Criminal-Law procedures it has been interpreted by the Supreme Court that it is lawful to resort to the Declarations' content for indictments, and that the fact that public officials must provide information regarding their wealth and answer questions about the legality of their assets, does not violate the prohibition of self-incrimination because in the pertaining investigative stage of the procedure they can remain silent and defend themselves, provided that finding the evidence of someone's culpability is the duty of the investigators.[39] But we should bear in mind that this interpretation only applies to those cases where the criminal prosecutors use the Declarations' content for criminal investigations; it does not make any assessment on the Administrative Law procedures that do not reach criminal prosecution. The latter interpretation also implies that the public interest of fighting corruption and the prosecution of unlawful enrichment justifies the officials' duty to comply with the Declarations' framework. However, once again, the reasonability of the informational requirements was not assessed in the Court's reasoning.

In this sense, the thoroughness and intrusiveness of the questions that officials are obliged to answer along with the vagueness of the language used in the NAS's regulations —like the one that is evinced in the section "Interests that derive from private benefits" shown in diagram B.5— can certainly increase the chances for making mistakes therefore facilitating situations in which the internal control units may want to investigate with more detail, issue subpoenas or even accusing of contempt. It is clear that the content of the Declarations can be used against any public official for punitive purposes and that such is the aim of these public policies, but public officials as individuals may not have a favorable opinion when it comes to the appropriateness of the informational requirements.

Also, it can be somehow worrying that if an investigation is initiated against an official, it will be a matter of the internal control units' discretion to determine how much information and

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[39] See the binding interpretation under the title "*Enriquecimiento ilícito. El artículo 224 del Código Penal Federal no viola el principio de no autoincriminación establecido en el artículo 20, apartado A, fracción II, Constitutional*" or "Unlawful enrichment. Article 224 of the Federal Penal Code does not violate the principle of not incriminating one self that is established in article 20 §A,II of the Constitution", issued in August 2002 with the registry number 186272. Ibidem.

documentation is enough to show in order to let that official alone. In this sense, the prohibition of self-incrimination could be observed if the NAS's regulations would offer guidelines in regard to which portions of the Declarations' requirements can be verified with which type of documentation. For example, when it comes to the information about the vehicles owned (diagram A.10 of the Appendix), if an internal control unit had doubts about a car's ownership, value or date of acquisition, it should be clear in the NAS's regulations that the respective invoice is a lawful way to prove an official's saying. Otherwise officials could be harassed because the internal control units have discretion to issue subpoenas and warnings. In other words, there should be some regulatory "safe harbors" to allow officials to have certainty on how to prove what they declare and be let alone, specially if we remember Mexico's Supreme Court ruling that proving culpability is the duty of investigators.

A similar treatment could be given to the information concerning the "Interests that stem from proxies or legal mandates" (showed in diagram B.3). According to the Civil Codes of most of Mexico's States, the proxies that involve the representation of legal entities such as corporations and associations or the proxies whose transactions exceed a certain monetary threshold,[40] both need to be formalized before Public Notaries and filed in a publicly available Registry. In this sense, it should be enough for an official to simply declare the proxies' names and whether they have been formalized before a Public Notary. If an internal control unit would like to investigate the veracity of those proxies, it should look at the pertaining public registry whereby the legal representation had to be formalized instead of asking to the officials. Only in the case of proxies that legally do not require to be formalized before a Public Notary nor inscribed in a public Registry the internal control units should ask for the respective documentation directly to the officials.

1.6.3. Spousal privilege

This principle is understood as the right that people have to choose whether to cooperate with the prosecutor or to abstain from declaring against her spouse or concubine in any stage of a criminal procedure. It is regulated by articles 222 and 361 of Mexico's Federal Code of Criminal Procedures and it establishes that the spouse or concubine must be informed about this right under the penalty of the annulment of the evidence obtained if they were not informed about the legal consequences of their testimony. The Federal Circuit Tribunals have interpreted favorably, as dicta,[41] on how this right is regulated in the criminal sphere although currently there are no interpretations about its applicability for Administrative Law procedures. Nonetheless, we can say that it is reasonable to extend this right to the Declarations' framework based on the Supreme Court's opinion commented in the previous section 1.6.

The Federal Circuit Tribunals' dicta does not provide reasons why the spousal privilege is related to the right of privacy, hence we can resort to academic work on the subject. In this sense, scholars like Milton C. Regan (1995) suggest that "[…] assessing the privilege is a more complex

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[40] For instance, according to article 2555 of Mexico City's Civil Code, any proxy whose actions involve transactions that exceed 1,000 "Units of Measurement and Update" must be formalized before a Notary. As of March of 2020, such amount represents 86,880 Mexican Pesos (approximately 4,400 US Dollars).

[41] See thesis with the registry numbers 2008145 and 187895, ibidem.

undertaking than the conventional debate suggests"[42]. Regan also identifies some moral narratives on marriage that seem to justify the adverse testimony privilege such as the couples' loyalty and trust that can be affected by the prosecutors' incursions. The cited author asserts that "[…] by reducing the risks involved with intimate self-revelation, the privilege may provide something of a *safety net* that prompts the kind of openness that can generate spontaneous loyalty and trust within marriage".

As it has been commented in multiple times throughout this Chapter, public officials are required to declare detailed aspects on the wealth, job history and interests of their significant others. Thus, the Declarations' framework enable the possibility of having one spouse declaring things that may go against the other without giving the option of remaining silent and therefore depriving the couple from an intimate decision, therefore conflicting with their moral views on the couple's loyalty and trust.

As Mexican laws foresee, the spousal privilege is optional to the spouse or concubine that is being required to declare and imposes to prosecutors the burden of informing about the legal consequences of what the spouse/concubine may declare, however, nowhere in the ALLA or the NAS's regulations exists a provision that considers the spousal privilege. One can to argue that the privacy of public officials and their significant others are legally affected first, because the spouses or concubines are not asked to give their consent for being monitored by the internal control units and, second, because public officials themselves are not informed about the option that they should have to refrain from answering any question that may be used against their significant others.

1.6.4. Banking secrecy

Although it is frequently referred as "banking" secrecy, in Mexico this right has a broader scope than just banks because it is applicable to financial intermediaries in general. Financial secrecy is simultaneously regulated by articles 142 of the Banking Institutions' Act (*Ley de Institutiones de Crédito*), 192 of the Securities' Exchange Act (*Ley del Mercado de Valores*), 34 of the Popular Credit and Savings Act (*Ley de Ahorro y Crédito Popular*), 44 of the Credit Unions' Act (*Ley de Uniones de Crédito*), 73 of the Financial Technologies' Act (*Ley para regular instituciones de tecnología financiera*), 55 of the Investment Funds' Act (*Ley de Fondos de Inversión*), 69 of the Savings and Lending Companies' Act and articles 118 & 139 of the Insurance Companies' Act (*Ley de Instituciones de Seguros y Fianzas*).

It consists in the prohibition that financial intermediaries have for sharing details about their customers' personal and financial information —*i.e.* deposits, transactions, services, balances, etc.— with other people than the ones authorized by the customers themselves. An exception to banking secrecy is allowed when such information is formally required by the Banking and Securities Exchange Commission (*Comisión Nacional Bancaria y de Valores*), criminal prosecutors, the Federal Ministry of Finance (*Secretaría de Hacienda y Crédito Público*), the Federal Superior Auditor and the Federal Ministry of Public Integrity. When it comes to criminal trials the access to customers' information must be ordered by a Judge, and in the case of punitive Administrative Law procedures the access can be granted only for the investigative stage of punitive procedures that have been already initiated. In this regard, Mexico's Supreme Court has

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[42] Regan, Milton C. "Spousal Privilege and the Meanings of Marriage." *Virginia Law Review* 81, no. 8 (1995): 2045-156.

interpreted that banking secrecy is meant to protect the privacy of customers and that the unauthorized access to details of their personal and financial information "constitutes an affectation to the free development of customers' personality and individual autonomy".[43]

According to the Declarations' framework the financial information concerning public officials is accessed by the internal control units without mediating any type of consent. It can be argued that banking secrecy has been circumvented in this context because it is not the internal control units who ask the financial institutions to grant access to such information, but the public officials themselves who are obliged to provide it under the penalty of being accused of contempt. Moreover, even when the Declarations' assessment by the internal control units can lead to the initiation of a punitive procedure, making assumptions based on what is contained in the Declarations does not constitute an actual investigation. Therefore, the privacy safeguard established in financial laws and validated by the Supreme Court which consists in allowing the Government to have access to personal financial information only "for the investigative stage of punitive procedures that have been already initiated" is in fact circumvented through the Declarations' framework, in what seems as an authoritarian method because officials' consent is not even required.

The Declarations' affectation to banking secrecy worsens when it comes to the financial information of significant others and economic dependents because they are not even asked but it an obligation of the pertaining public official to give that information in. This situation evinces two unreasonable situations. First, the laws assume that public officials actually have access to financial information from their relatives and significant others. Second, it is unclear why the internal control units should get financial information from people that are not public officials but are only related to them through emotional or family links.

1.7. On the weighing of individual autonomy and the public interest of fighting corruption

Absent the access to detailed personal and financial information, the internal control units' ability to detect potential cases of corruption that ought to be investigated is undermined. In the context of the Declarations of Assets and of Interests, the legal values of presumption of innocence, prohibition of self incrimination, spousal privilege and banking secrecy are somehow circumvented but this seems as a necessary measure for the enhancement of the detection capabilities of anticorruption institutions. The Declarations' framework represent a real-life case in which the public interests of governmental transparency and preventing corruption should outweigh privacy, as it has been affirmed by Mexico's Federal Judiciary.

When it comes to significant others and economic dependents' information, it does not seem reasonable to impose the same disclosure standards as if they were public officials. I personally believe that having the informed consent from significant others and economic dependents should be mandatory for the internal control units in order to have access to their data. The revocability of such consent should also be part of the nuances for protecting what Mexico's Supreme Court held as the internal and external dimensions of individual autonomy.

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[43] See the jurisprudence under the title "*Secreto Bancario. El artículo 117, fracción II, de la Ley de Instituciones de Crédito, en su texto anterior a la reforma publicada en el Diario Oficial de la Federación el 10 de enero de 2014, viola el derecho a la vida privada*" or "Banking secrecy. Article 117, section II, of the Banking Institutions Act in its text before the reform of January 10 of 2014, violates the right to privacy", issued in June 2018 with the registry number 2017190. Ibidem.

It is precisely on the matter of standardizing informational requirements and methods for the verification of the data declared by officials where we can see that there is a greater need for normative homogeneity. As we commented in sections 1.1. and 1.2.2, there are more than 1,400 internal control units that, according to the current language of Rule 21st of the NAS's regulations, can interpret differently the scope of the norms. The potential coexistence of multiple interpretations of the same rules goes against the production of integrity standards within Mexico's Public Sector as a whole.

Consequently, besides the dilemmas between balancing public disclosure and protecting privacy, one practical challenge of the Declarations' framework is that it implies a public policy choice between trusting the legal discretion of more than 1,400 internal control units and Transparency Committees or centralizing that power in the NAS which can issue rules for that matter. This dissertation argues in favor of centralization — *i.e.* preferring the NAS's regulatory powers— because the existence of systemic corruption and the population's high distrust on Mexico's public institutions as a whole, are persuasive arguments for having homogenous standards in Mexico's Public Sector as a whole and is also a way to prevent the unfair naming and shaming of officials.

CHAPTER TWO

It is a peculiarity of the human being that it has a deep need to justify his behavior…
Hans Kelsen[44]

This Chapter is dedicated to the way in which the laws for Mexico's Declarations (*i.e.* the Administrative Law Liabilities Act [ALLA], the National Anticorruption System Act [NASA], the Governmental Transparency Act and the NAS's regulations) can be experienced by public officials and by public institutions, in order to elucidate hypotheses on what is wrong with the implementation of these public policies. The Chapter draws from literature of the intersections among Law, Political Science & Sociology, and relies on actual experiences that I had with the Declarations' framework during the time that I worked as public official at Mexico's central bank. It seeks to introduce the reader to pertaining portions of the ecosystem of Mexico's bureaucracy. In this sense, the Chapter argues that there are many variables that can simultaneously intervene for provoking the public officials' reluctance to commit with the Declarations' framework, although the violation to privacy may be the most relevant variable because it legally affects all public officials equally. This approach would assume that the study of corruption cannot rely on parsimonious views of the phenomenon because the causality of corruption is complex, that is to say that the causes are multiple, dynamically changing and not so evident.

First, sections 2.1 to 2.4 present the hypothesis that Mexico's legal system is enabling that the costs of being a honest/committed public official can surpass the benefits of being compliant with the Declarations' framework, so it would be a "normal" reaction of Mexican officials to develop an attitude of skepticism toward the rule of law of these policies, undermining their overall effectiveness.

Second, in order to delve into the question of whether the aforementioned hypothesis is reasonable, section 2.5 describes how the privacy affectations and the so called legal skepticism can come into play for the compliance with the Declarations' framework. In this sense, it is added the hypothesis that the affectations to privacy discussed in Chapter One are relevant costs that public officials could suffer individually and that they have not been passive about them. At the individual level, Mexico's public officials have relatively simple ways to resist the full implementation of these policies and, simultaneously, at the institutional level they also have developed *autonomous-law* interpretations that are helping to justify departures from the Declarations' original purposes.

But before continuing some legal aspects must be clarified. My experiences filing Declarations go back to the year 2012 and have continued until nowadays. The legal framework for most of the Declarations that I have filed (fiscal years 2012-2017) was set forth by another Act of Mexico's Congress named *Ley Federal de Responsabilidades Administrativas de los Servidores Públicos* or "Federal Act for Administrative Liabilities of Public Officials" (FAALPO) that was in vigor from 2002 until 2016. In essence, the disclosure obligations and the thoroughness of the informational requirements that I had to declare under the FAALPO were the same as the ones from the current ALLA and NASA, although the financial information from significant others and economic dependents became a little more detailed recently with the ALLA. Arguably, the main

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[44] Former Professor of Political Science at UC Berkeley. Bernard Moses Memorial Lecture. May 27, 1952 — UC Berkeley Campus. Available at http://gradlectures.berkeley.edu/lecture/what-is-justice/ (Minute 25:02)

differences between the previous (FAALPO) and the current (ALLA & NASA) regimes are related to the institutions that enforce those laws and the powers granted to them, as the next three paragraphs summarize.

When it comes to the institutional dimension, during the period 2005-2017 it did not exist a national coordinating council such as the NAS that could regulate the disclosures of all of Mexico's public officials, thus the central bank was able to determine in a relatively free way how much details were to be included as part of the informational requirements for the Declarations. In this sense, the central bank decided to adopt a mixture of standards between those designed by the bank itself and those issued by the Secretary of Public Integrity (applicable to the whole Federal Executive branch). Hence the Secretary of Public Integrity's rules were seen as a sort of *soft law*[45] by the central bank's internal control unit. This leads us to observe that the ALLA removed some regulatory discretion from multiple internal control units and concentrated such portion of discretion in the NAS. As of today, defining the specific pieces of information to be declared by officials and disclosed to the public is a regulatory power of the NAS.

Second, in the previous FAALPO regime the internal control units could punish serious offenses although the Administrative-Law Tribunal could hear cases as an appellate court. The current situation is that all serious offenses must be tried before the Tribunal, thus it can be said that the internal control units had more "threatening power" under the FAALPO regime due to the ability to impose higher penalties.

Third, under the FAALPO there was no clear obligation to exchange anticorruption data among Mexican public institutions for the purpose of analyzing corruption nationwide. The current regime allows it and centralizes in the NAS the decision of which data ought to be exchanged and how to do it, however, as we commented in section 1.2.1, the NASA and ALLA assume the existence of a technological tool referred as the "National Digital Platform" for having interoperability among databases and enabling the flow of information among Mexico's anticorruption institutions but it has not been implemented yet. Consequently, questions like "Which public institutions should upload what data to the platform?", "Which personal data should be shared among the more than 1,400 internal control units?" or "To what degree can the officials' personal data help to detect corruption?", as of today remain incapable of being answered.

2.1. The public officials' motives that may cause detriment to the Declarations' enforcement

Similarly to most central banks from western democracies, the Mexican one is a public institution with legal autonomy, which translates into the ability to determine how to perform its legal functions and designing its own budget. Pursuant to articles 2 and 3 of Mexico's Central Bank Act or *Ley del Banco de México,* its main functions are to preserve the stability of prices in the

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[45] The concept of *soft law* is used in the context of International Law to refer to norms that are not legally binding to the person or entity who seeks to apply them but they can be deemed as part of the legal framework nonetheless; in other words, soft law norms are not meant to be applied coercively. In such context, the main reason why those norms are not binding is because they would need an international authority to enforce international norms, which hasn't existed so far in the documented human history (and will remain unlikely to ever exist unless new political and philosophical standings on National States' sovereignty can be developed). Arguably, international conventions, memorandums of understanding and sometimes even treaties can function as soft law instruments, although this matter is so rich that it escapes from the scope of this dissertation.
For a better account on the concept of soft law, see: Tadeusz Gruchalla-Wesierski, A Framework for Understanding Soft Law, 30 McGill L. J. 37 (1984).

economy, issuing domestic currency, regulating foreign currencies' exchange as well as the soundness of the financial system (*i.e.* prudential finances' management oriented to keep liquidity and solvency of banks, as well as concerns of financial consumers' protection) and of payment systems (*i.e.* clearing houses, electronic transfers and securities' deposit institutions).

Thus, it can be noticed that despite having an internal control unit that is meant to enforce anticorruption laws as part of its institutional design, the central bank's legal priorities are unrelated to the prevention of corruption; we can also assume that dedicating too much time and resources to the compliance with the Declarations' framework somehow "distracts" the central bank from the aforementioned main functions. In general, the budgets of Mexican public institutions are limited compared to the needs that they seek to assist, therefore there is a tendency to design efficiency models in order to achieve public policy goals, as a result, the distribution of resources for governmental budgets is usually an outcome of trading off public policy preferences.

The Public Sector's condition of having multiple laws to comply but limited resources to enforce those laws can translate into an attitude of *budget maximization,* as suggested by William Niskanen (1971)[46] and the critique after his theorizations. Niskanen's view of public institutions assumes that bureaucrats (*i.e.* appointed or hired officials) and politicians (*i.e.* elected officials) are competitors for budgetary resources. In my opinion, the competition does not mean rivalry thus such tension may occur but not always result in divisive disputes. Indeed, politicians and bureaucrats could also agree and therefore cooperate on the ways to collect and spend fiscal funds but this piece is not meant to delve into the issues of what makes politicians and bureaucrats to cooperate for the Budget.

Nonetheless, through my experiences at Mexico's central bank I realized that it was difficult for that financial authority to justify too much staff, money and time to the implementation of the Declarations' framework considering that the bank was established to accomplish other legal functions that are set forth in the Constitution and in its own Act, giving shape to the institution's "core functions" that are therefore deemed as priorities.

Arguably, most Mexican public institutions can also have a preference for dedicating budgetary resources to the duties directly assigned to them by positive laws rather than to corruption's prevention in general or to the Declarations in specific; perhaps the only institutions that could be exempt from having that preference would be those whose legal priorities are precisely the enforcement of the Declarations' regime, such as the ones who are part of the NAS's structure that we already commented in section 1.2.1.

Hence, the enactment of legal priorities in positive laws and the budgetary constraints together may constitute motives for Mexican public institutions to opt for putting less effort to the Declarations' enforcement and dedicate more resources to their legal priorities.

2.2. The normal costs of being a public official in Mexico

In democracies, the States should only do what democratic laws allow to them. Seen as a whole, public officials materialize the State's decisions thus their official actions must always correspond to what the laws foresee. For public officials, the compliance with the Law is optional only when the laws expressly admit so, consequently, any violation to the laws can be translated into a type of punishment to be applied coercively and this is easier to realize for them as they

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[46] William A. Niskanen, Bureaucracy and Representative Government. Chicago: Aldine Atherton, 1971.

spend more time working in the Public Sector. Regardless of their backgrounds, Mexican officials eventually become aware of the existence of legal costs of their actions as a "normal" condition of their jobs, and perhaps the easiest costs to perceive are the ones that can be valued in monetary terms. In this sense, article 109 of Mexico's Constitution foresees two general ways in which public officials can be held economically accountable for their actions.

The first way is adversarial and consists in the litigation that any person can initiate against every governmental agency that may have caused damages or injuries to such person; it is regulated by the Federation's Civil Liabilities Act —*Ley Federal de Responsabilidad Patrimonial del Estado*— and is indirect because officials are not accountable themselves but the institutions to whom they serve. The second way is inquisitorial and consists in the prosecution that the State can make against public officials who provoked economic losses to the Government; it is primarily regulated by the ALLA but, depending on the seriousness of the economic losses or of the offense, the cases could be criminally prosecuted and tried before Federal or State Judiciaries.

The economic consequences of the adversarial and inquisitorial accountability mechanisms are analogous to those with torts and punitive damages in the USA because they can serve two purposes. In one hand, there is the purpose of repairing the people's economic interests that have been broken by the unlawful actions of the Government, and in the one other hand we have the purpose of imposing exemplar sanctions to the officials who performed such illegal actions in order to dissuade others from doing the same. The adversarial accountability is monetarily limited to the actual amount of the damages caused by the unlawful actions of the State[47] but the inquisitorial can be twice that value if it is proved that a public official obtained a personal gain from the illicit behavior in question.[48]

The costs that Mexican officials may be condemned to pay as part of the economic accountability mechanisms are contingent to more aspects than just the information extracted from laws and judicial precedents; litigation skills of lawyers, availability of proper evidence, judges' expertise, political climates that may sway the Judiciary's interpretations, as well as the corruption at law enforcement institutions and/or at Federal and State judiciaries, can play decisive roles in real-life litigation. Therefore, public officials have to deal with uncertainty before and after taking official decisions because they usually need to figure out ways to comply with many preexisting rules, which opens the room for judgement errors and many types of mistakes that can further be subject to the uncertainties of litigation.

But not all of the costs that public officials experience can be valued in money. Public officials can also have reputational harms and, depending on the severity and the publicity of their mistakes, they might also experience some types of shaming despite that they could be found not liable after the pertaining investigations may conclude. Thus, the "normal" exposure of public officials to public policy mistakes can give them the impression that, legally, an involuntary violation of the laws and regulations could be provoked by them anytime and that the costs would be difficult to estimate beforehand. Additionally, if we consider that corruption in Mexico is systemic, public officials have reasons for being fearful whenever an administrative or criminal investigation is initiated against them because they are likely to experience the lack of a due process. Similarly, if we consider that Mexico also suffers of grand corruption, public officials

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[47] See articles 11 to 15 of the *Ley Federal de Responsabilidad Patrimonial del Estado.*

[48] See article 79 of the ALLA.

have more reasons to fear because no matter what the laws say, the trials' outcome could be favorable to the persons with more influence over the law makers.

I acknowledge that the latter description of the "normal" costs of being a public official in Mexico looks somewhat catastrophic, but it should not be entirely seen as so. In real life it is not necessary to be a public official in order to realize that sometimes we cannot determine freely our choices and that our choices can provoke involuntary costs to ourselves and lead to anxieties or frustrations. The inevitability of unexpected costs is a source of anxiety for every human being and we might seek for ways to deal with them everyday, thus it is reasonable to assume that Mexican public officials have also sought ways to sort out the anxieties from their constant exposure to errors of judgement and public policy mistakes. In the following section it will be presented a theory about one way in which Mexico's public officials might have been able to deal with the perceived inevitability of the costs of their legally-required decisions.

2.3. The legal skepticism of Mexican officials

William K. Muir (1973)[49] drew from Psychology's theory of cognitive dissonance that studies how is possible to "deal with the individual's reactions to the costs of exercising choice, after his mind is made up", for describing scenarios under which people can develop attitudes to manage the "post-mortem" anxiety that is usually felt after realizing that a decision already made is too costly or no longer convenient.

The first scenario of Muir's theory is when a person can choose freely how to deal with the "mistakes" of her choices, predicting that whoever feels unpleased or "dissonant" with a decision can react by: (1) admitting a wrong and changing her mind, which can translate into seeking ways to revoke the decision, (2) by dissociating herself from the costs of the decision, which can motivate to transfer the costs to someone else —as an example Muir described a person who buys a car and later sells it to a second-hand dealer to ride the bus—, (3) by denying the existence of better choices, which can lead to resignation and eventually to the reluctance for choosing again in the future, and (4) by depreciating the other choices available and/or ascribing flaws for making them to look alike so "no real choice is involved".

Muir's second scenario refers to people under legal compulsion to choose —*i.e.* some sort of coercion or urgency— and I believe that it can be applied to the every day life of public officials because the latter are always required to make decisions within the confines of the laws. The second scenario's reactions are explained by Muir as: (5) the *nulist hypothesis* which consists in the people's denial that they ever had a choice, thus can react by reducing the importance of human volition and potentially disregarding ethical standards or moral responsibility, (6) the *backlash hypothesis* by which people become defiant and their reaction will consist in efforts to derogate or change the dissonant law because "the greater the penalties, the greater the risk taken by the defier; and the greater the risk the more dissonance, and the greater the accentuating of the defiant attitude", (7) the *conversion hypothesis* under which people seek for reasons to commit and comply with the dissonant law through to the development of likings, ideologies or the association with feelings and emotions that nuance it as something worthy or acceptable, leading to a compliant attitude with the norm, and (8) the *liberating hypothesis* in which people "reduce the anxieties of indecision and equivocation" by reducing the importance of the law itself, therefore leading to a "zone of indifference".

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[49] William K. Muir, Jr., Law and Attitude Change. University of Chicago Press, 1973. pp. 4-6.

We can then notice that reactions 5 and 6, respectively, represent non-compliant and defiant attitudes that can undermine the rule of law. Reaction 8 is a kind of gray area between compliance and non-compliance to the law because, paraphrasing Muir, public officials "may comply to the law, yet remain unconvinced of its virtue". Then, the nulist, backlash and liberating hypotheses together is what I propose to designate as "legal skepticism" of public officials because it is not clear for them why it is a virtue to comply to the laws as they are drafted.

In this sense, legally-skeptical officials do not need to make distinctions among the laws' hierarchies, their content or context; should they encounter a cognitive dissonance, skeptical officials would rather become indifferent to it, seek for changes or abolishments, and/or denying that they have any responsibility. Also, those who arrive to the "zone of indifference" can display a spectrum of behavior that goes from "innocent" forbearance to a deliberate abandoning of the enforcement of the laws.

For example, when it comes to the zone of indifference, a skeptical official who works at an internal control unit could apply the same amount of effort to the enforcement of deadlines for filing the Declarations as to the initiation of an audit, despite that one of them could be more relevant than the other depending on the subjects involved, the missing money or the political climate during elections. When it comes to the defiant attitude, any official who is skeptical about the Declarations and does not want to file them or to disclose financial information from significant others, could present a constitutionality claim before Mexico's Federal Judiciary based on the holdings and dicta regarding privacy rights that were commented in section 1.6., seeking to get the annulment or the attenuation of the disclosure obligations.

Only the conversion hypothesis (*i.e.* reaction 7) helps for an attitude of commitment with the rule of law that could lead to the effectiveness of public policies such as the Declarations. Only an attitude of commitment would explain us why a public official would believe in the Law and want its enforcement despite being aware of some dissonances. However, the concept of the "Law" has been difficult to define even for the most eminent legal scholars and, moreover, elaborating conceptualizations of the Law is not exclusive of legal experts but can also be subject to the perspectives of other Sciences like History, Sociology, Philosophy, Political Science, Languages, Computer Science and so forth.

This way it can be argued that public officials are prone to develop personal conceptualizations of the Law in order to acquire certainty about the norms that should be enforced, the methods utilized for the enforcement and the role that public officials themselves play for the legal system. In other words, the conversion to personal conceptualizations of the Law provides a much wanted sense of coherence that helps public officials to reduce anxieties of indecision and equivocation. The following section proposes that there are three basic conceptualizations of the Law to which public officials may convert in order to escape from the trouble of legal skepticism.

2.4. The conversion to Repressive, Autonomous or Responsive conceptualizations of the Law

Philippe Nonet & Philip Selznick (1978)[50] developed a theory describing three types of legal systems that societies can develop. The authors suggest that there is a set of law-related variables that "differ significantly as the context is changed" but nonetheless they all come into

[50] Philippe Nonet and Philip Selznick (1978), "Law and Society in Transition: Toward Responsive Law" (2nd printing), Transaction Publishers 2001.

play for defining the functioning of the Law in societies. Those variables are: "the role of coercion in the law; the interplay of law and politics; the relation of law to the state and to the moral order; the place of rules, discretion and purpose in legal decisions; civic participation; legitimacy and the conditions of obedience".

Nonet & Selznick propose that the interplay of the aforementioned variables lead to the conceptualization of repressive, autonomous or responsive legal systems which, in my opinion, can be explained through the analogy that the conceptualizations of the law are to societies what a community' morality is for an individual; the way in which people may look at the Law can determine their preferences for settling real-life disputes just as one's morality can determine a preference before concrete ethical dilemmas. The cited authors summarized their theory as it is shown in Table 4 below, which is a transcription of page number 16 of their cited piece:

Table 4. Nonet & Selznick's (1978) variables of Repressive, Autonomous and Responsive Law

	REPRESSIVE LAW	AUTONOMOUS LAW	RESPONSIVE LAW
ENDS OF LAW	order	legitimation	competence
LEGITIMACY	social defense and *raison d'état*	procedural fairness	substantive justice
RULES	crude and detailed but only weakly binding on the rule makers	elaborate; held to bind rulers as well as ruled	subordinated to principle and policy
REASONING	ad hoc; expedient and particularistic	strict obedience to legal authority; vulnerable to formalism and legalism	purposive; enlargement of cognitive competence
DISCRETION	pervasive; opportunistic	confined by rules; narrow delegation	expanded, but accountable to purpose
COERTION	extensive; weakly restrained	controlled by legal restraints	positive search for alternatives *e.g.* incentives, self-sustained systems of obligations
MORALITY	communal morality; legal moralism; "morality of constraint"	institutional morality, *i.e.* preoccupied with the integrity of legal process	civil morality; "morality of cooperation"
POLITICS	law subordinated to the power of politics	law "independent" of politics; separation of powers	legal and political aspirations integrated; blending of powers
EXPECTATIONS OF OBEDIENCE	unconditional; disobedience *per se* punished as defiance	legally justified rule departures, *e.g.* to test validity of statutes or orders	disobedience assessed in light of substantive harms; perceived as raising issues of legitimacy
PARTICIPATION	submissive compliance; criticism as disloyalty	access limited by established procedures; emergence of legal criticism	access enlarged by integration of legal and social advocacy

In summary, the authors claim that a legal system "[…] is repressive when it gives short shrift to the interests of the governed, that is, when it is disposed to disregard those interests or deny their legitimacy. As a result the position of the subject is precarious and vulnerable". As for autonomous-law, "The chief characteristic of this system is the formation of specialized, relatively autonomous legal institutions that claim a qualified supremacy within defined spheres of competence". And when it comes to responsive-law, it "perceives social pressures as sources of

knowledge and opportunities for self-correction. To assume that posture, an institution requires the guidance of purpose. Purposes set standards for criticizing established practice, thereby opening ways to change".

Nonetheless, Nonet & Selznick acknowledged that "no complex legal order, or sector of it, ever forms a fully coherent system; any given legal order or legal institution is likely to have a 'mixed' character, incorporating aspects of all three types of law. But the elements of one type may be more or less salient, strongly institutionalized or only incipient, in the foreground of awareness or only dimly perceived". Thus we can say that the repressive, autonomous and responsive views of the law are archetypes whose law-related variables could be more or less salient depending on the context.

When it comes to Mexico's public officials, we have mentioned throughout sections 2.1 to 2.3 that the cognitive dissonances at their jobs are likely to provoke an attitude of legal skepticism or, less likely, the conversion to believe in the laws' values. Nonet & Selznick's theory allow us to speculate that there can be three archetypes to which public officials could end up believing, hence adjusting their behavior accordingly. For example, an official who believes in a repressive law system would deem as virtuous to have order, expedient governmental action, unconditional obedience and total compliance; an autonomous view of the law would deem as virtuous to have legitimation, respect to formalities and procedures, as well as justified exceptions to legal obligations; and the responsive law paradigm would see the virtue in having knowledgeable laws, purposive procedures and a focus in preventing actual harms rather than just formal compliance. But, as the authors warned, in real-life situations the repressive, autonomous or responsive conceptualizations of the Law do not exist in a pure state but represent paradigms of legal systems with different configurations regarding what are the "virtues" of each system, therefore it is theoretically possible to have views of the Law where the legitimacy is repressive, the morality autonomous and the politics responsive.

Considering the latter, starting from section 2.5 it is presented a heuristic account with the purpose of showing that the current state of affairs of the Declarations of Assets and of Interests in Mexico seems to be permeated by legal skepticism and that public officials have had a tendency to "convert" to autonomous-law conceptualizations. Arguably, such mixture of attitudes and beliefs along with the privacy affectations commented in section 1.6, are relevant pieces of information that Mexican public officials internalize for making a personal decision on whether to display commitment or despise before the public policies in question.

2.5. A heuristic account of Mexico's Declarations of Assets and of Interests

The way in which the central banks' bureaucrats made our Declarations of Assets and of Interests was by manually typing the required information through a software named *Deptel* (acronym for *Declaración Patrimonial Electrónica* or "Electronic Declaration of Wealth") which was developed by the central bank itself and worked like an automated questionnaire. The process of filing the Declarations was very similar to the experience that any user may have while filing any other Governmental form online, although the information that we submitted through the software was sensitive because it contained multiple details of our finances such as sources of income, household expenses, financial debts, etcetera. Moreover, the information's sensitivity was augmented when we were required to disclose personal information from significant others and economic dependents.

The *Deptel* system could automatically store the data of what we typed in, then it would compare it with previous years' Declarations and automatically report to the internal control unit whenever discrepancies were found. For example, if in the Declaration for the fiscal year 2019 I reported to have one car that was bought at $10,000 the *Deptel* system would keep that information so the next year's Declaration would automatically consider that I owned such vehicle and the price that I paid for it. This way, for 2020's Declarations I would have to either confirm that I still owned that car or report its destiny (*i.e.* stating whether it was sold, donated, stolen, etc.) and so forth with any type of asset or liability that I had declared.

When it came to other Federal public institutions, a software known as *Declaranet* [51] was developed by initiative of the Federal Secretary of Public Integrity (*Secretaría de la Función Pública*) and is being used nowadays (with some periodical updates) for electronically filing the Declarations and making them publicly available through the internet, similar to the central bank's *Deptel*.

2.5.1. Language issues

Filling up the assets' and conflicts of interests' questionnaires was not a straightforward thing; many times I had doubts on the meaning of the instructions or the nomenclature that I should type in for avoiding misinterpretations and/or mistakes that could trigger an investigation upon the personal information that I declared. As it was commented in sections 1.6.1 and 1.6.2, there are several informational requirements that are drafted with vague or ambiguous language, hence I sometimes ended asking for the advise of officials from the internal control unit.

For example, when it came to the information about real estate ownership (see diagram A.9 of the Appendix), the *Deptel* system required us to submit the data as it appeared in the pertaining property deed; the real estate deeds could not be prompted nor verified automatically by the *Deptel* system because such information is administered by State authorities. In this sense, the real estate property deeds are usually drafted by a type of licensed public official known as Notary Public or *Notario Público* who has to be an attorney, hence those documents are normally drafted with multiple legal terminologies as regulated by that Civil Code of the State in which the real estate is located. Usually, the actual meaning of the language and statutory references contained in the real estate deeds could be properly understood by Notaries, attorneys or by people who had already spent some time working with the deeds' legal terminologies —such as the Public Registries' bureaucrats—; a person without legal training or lacking of experience working with State Public Registries would have some difficulties in deciphering the persons, amounts, terms, assets and obligations legally covered by such deeds.

Therefore, the internal control unit's staff needed to have some legal training so as to be able to interpret the actual meaning of heterogeneous legal references contained in the multiple property deeds that officials could use for completing informational requirements. But if the internal control unit would want to verify whether the data reported by an official matched with the one contained in the pertaining real estate property deed, the internal control unit's staff had no choice but to do it manually on a case by case basis.

Another example of the issues that language provoked was the information regarding financial statements. For example, while reporting financial assets (such as a checking account) or financial liabilities (like a credit card) the *Deptel system* required us to type in the numeric values as

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[51] See *Declaranet's* official website at: https://declaranet.gob.mx/ (Available only in Spanish, last visited August 2020).

they appeared in the financial statement available for the 31st of December of the reporting fiscal year. But, specifically when it came to my credit cards' statements, the date of issuance of my statements did not match exactly with the last the day of the month and therefore they contained combined transactions of different months; so I literally could use two statements for answering the same requirement: the one that I had available by the 31st of December (which had the transactions occurred during the last third of November and two thirds of December) and the one that I had available by January of the next year (which contained transactions of the last third of December along with two thirds of next year's January). Both options were possible given that the Declarations were due in May and I had both statements with me by then, although they reflected different balances.

One negative aspect of being able to choose between two "supporting documents" is that it opened a chance for the hiding of increases or decreases of wealth. For instance, if I was required to exhibit proof of my balances, I could show as "evidence" that statement that was more convenient to me in order to present a better financial situation (*i.e.* more financial assets and less debt).

Because of the multiple opportunities for mistakes that could derive from language interpretations, the internal control unit's staff saw useful to issue interpretative guidelines that helped to achieve some uniformity for complying with our reporting obligations. These were sometimes formalized in written documents and sometimes were orally informed to us. The more uniformity we had with those guidelines, the easier it was for the internal control unit to analyze the data contained in our Declarations and, interestingly, it was also convenient for the reporting officials to follow the internal control unit's guidelines because that way we avoided personal liabilities that could derive from our own reporting mistakes. As long as we continued to follow the internal control unit's guidelines we were certain that the mistakes would not be imputable to us but to the internal control unit itself. The latter attitude from declarant officials was consistent with Muir's dissonant reaction number 2 commented in section 2.4 (dissociating from the costs of the decision, which may motivate a person for seeking how to transfer the costs to someone else).

2.5.2. Verification issues

The process of filing the Declarations and revising discrepancies with previous years' information was automated but the actual verification of the data reported by officials could not be so. When it came to the Assets, one useful feature that the *Deptel* system allowed was the automatic prompting of the data from the central bank's payroll, making that such source of income from all of the bank's officials —*i.e.* our salaries— could be verified by the internal control unit immediately. But there were little chances for us to be investigated regarding the destiny that we gave to our income because it was difficult for the internal control unit to verify what we declared on that specific regard. As long as we continued to report the ownership of assets whose total value corresponded to the amounts of our annual salaries the system would not be able to detect anomalies.

For instance, let us imagine that an official who had an annual salary of $10,000 a year wanted to misguide the internal control unit regarding the fact that she owned stock of a construction company worth $15,000 (which would clearly exceed her official annual salary). That person could lie and declare that she bought the stock at a price of $7,000 and report the update of such stock's value in subsequent year's Declarations. This way, after four or five years of reporting increases on the stock's value, she would be able to simulate a story in which the

stock that she once bought at $7,000 had eventually reached the worth of $15,000 or more, until it matched with the stock's actual value in the market. The authenticity of the data contained in her Declarations would be impossible to verify by the *Deptel* system or by the internal control unit's staff; only people with expertise on capital markets and the prices of that particular stock could be able to "be suspicious" and detect some red flags in a timely manner. Moreover, only the financial institution who held her securities account (in the case of publicly traded stock) or the local Legal Entities' registry in which the stock's issuance was authorized (for the case of both, publicly and privately traded stock), could have documentation that could help to uncover lies regarding the stock's ownership and value and that could be used for initiating formal investigations.

In theory, the central bank's internal control unit could conduct the verification of the information declared by officials in four possible ways: (1) believing the officials, which means no verification; (2) verifying what the officials declared by analyzing documentation provided by the officials themselves, such as copies of contracts; (3) verifying what the officials declared by analyzing documentation provided by third parties, such as asking to the banks where they reported to have accounts, and (4) to verify through running options 2 and 3 simultaneously. From the latter choices, only options 3 and 4 reduce the chances of having the information "tricked" or manipulated by officials and therefore would help to detect lies, consequently more suitable for making credible verifications. However, option 1 was the standard most frequently used and, in those cases when there was some suspicion or the system prompted discrepancies, they would use option 2.

But the low credibility of the verifications performed by the bank's internal control unit was understandable from the legal point of view. Indeed, at least when it came to verifying financial information, the internal control unit would need to ask private financial institutions for documentation, but considering that such verification was not part of a formal investigation, any private financial institution could validly deny access to such information based on the laws for banking secrecy.

In hindsight, from those affectations to privacy that we commented in section 1.6, banking secrecy was an effective legal burden to the internal control units' ability for verifying the financial data declared by officials. Again, the only scenario in which a financial institution would be legitimized to make an exception to banking secrecy and deliver such documentation to an internal control unit was if a formal investigation had already been initiated. But if the internal control unit itself had no knowledge of compelling signs or evidence regarding an officials' lying, it would hardly take the decision of initiating a formal investigation because, after all, the internal control unit's staff were also bounded by the ALLA's provisions that prohibit abuse of power[52] and, if they initiated an investigation without evidence or probable cause, their own decision could backfire to them.

2.5.3. Investigative discretion issues

The condition of having too much information to review with relatively scarce evidence for confirming what public officials declared was a problem considered by the legislators of the ALLA who expressly drafted a provision for allowing the internal control units to review the

[52] See article 57 of the ALLA.

Declarations randomly.[53] Such randomness means that the ALLA actually tolerates that only a portion of the public officials' Declarations will be reviewed thoroughly and also implies a big deal of discretion for the internal control units because the ALLA does not establish a method for such random verification. As we mentioned in section 1.1., Rule 21st of the NAS's regulations authorizes every internal control unit to interpret the NAS's regulations, thus the meaning of "random verification" is to be determined by the discretion of said units.

The use of discretion at bureaucratic institutions is something that happens with frequency and the literature available usually sees discretion as a facilitator of corruption, however, as Rachel Stern (2013)[54] points out, legal discretion can also facilitate legal innovation. The cited author conducted a research on forty two disputes of pollution compensations in China's one political party system and found that in 21% of the cases, the environmental judges came up with solutions that were not expressly foreseen by the legal statutes but were innovative interpretations to settle disputes because they recognized the effects of pollution on individuals' health, leisure and property —such as the award of compensations for the emotional distress caused by noise—. Stern also pointed out that "The deeper source of discretion is the silence of the law surrounding evidence. To start, evidence is often scarce and difficult to collect". She also pointed out that "One problem is that soliciting evidence frequently requires wheedling reports out of bureaucrats with little incentives to cooperate […] In addition, judges lack guidance about how to use the evidence that does exist".

A comparison between Chinese and Mexican bureaucratic atmospheres seems possible to some degree because both jurisdictions have experienced the steady dominance of one political party in their societies,[55] hence I believe that some of Stern's observations regarding environmental judges in China could be transplanted, with caution, to the case of Mexico's anticorruption internal control units.

If we consider that the ALLA grants to Mexico's internal control units the power to conduct random verifications without regulating how to do it, turns out that they have ample discretion for deciding how to verify the Declarations' content and therefore they could also innovate to design methods for such random verifications. As it was described in section 1.2.2, part of the complexity of Mexico's anticorruption framework is caused by the existence of too many internal control units; each could innovate differently while using legal discretion, thus Federal, State and Municipal internal control units could legally apply different standards for verifying the information contained in the same set of rules —*i.e.* ALLA, NASA, Governmental Transparency Act and the NAS's regulations for the Declarations— and detecting red flags for initiating legal cases.

The verification capabilities of the internal control units' staff varies across Federal, State and Municipal institutions and are also dependent from the expertise of the people who work at them, allowing a setting where each public institution can contribute with diverse legal

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[53] Article 30 of the ALLA states that the internal control units shall verify the declarations of assets and of conflicts of interests randomly. In case that any anomaly is detected, the internal control units must initiate an investigation.

[54] Rachel E. Stern, Environmental Litigation in China: A Study in Political Ambivalence. Cambridge Univ. Press (2013), pp. 123-149

[55] In Mexico, the Institutional Revolutionary Party (PRI by its initials in Spanish) ruled with dominance from 1929 to 2000 centralizing great powers in the Presidential Office, deriving in a sort of elective Dictatorship that could use either democratic or authoritarian styles of governing at the convenience of the President and political elites.

innovations. For example, considering that the central bank is a financial authority with supervision powers over the financial system, it performs the analysis of large volumes of financial data on a regular basis. In this sense, the central bank's internal control unit had an immediate access to the opinions of experts on domestic and international financial markets thus it had more chances to innovate for analyzing financial information than the internal control unit from a Municipality. In turn, considering that the States from Mexico have constitutional powers to collect taxes associated to the land within their territories, the officials who work at the State of Oaxaca's Cadaster have an easier access to detailed real estate information than the central bank —such as the size in square footage of estates and buildings, identities of owners, usages as commercial lots, farming or industrial land, etcetera—, therefore it is reasonable to expect that the States' Cadasters have better chances to innovate at the verification of real estate proprietary rights than the central bank.

Continuing to draw from Rachel Stern's findings, an institutional aspect that seemed to keep Chinese environmental judges' innovations within the margins of legal rules was the surveillance carried out by the judges' evaluators. Those evaluators had the power to grade the judges' decisions as "wrong" and the consequences of such grading were related to the loss of career development opportunities and other labor perks like the access to the courts' cars and better housing. The gain or loss of such benefits was thus conditioned by the supervisors' opinions and this was an effective source of power for higher rank officials.

Similarly to what Stern commented on the Chinese judges' supervisors, the bureaucratic structure of Mexico's central bank operated as a *de facto* check on the internal control unit staff's discretion. For example, Stern commented how, whenever there were complaints about the Chinese judges' legal innovations, it triggered the intervention of the Judiciary 's supervisors who made the judges to experience their "biggest headaches" because they had to justify the decisions that they had already issued and ordered to enforce. Likewise, the staff from the central bank's internal control unit would experience headaches if any of the bank's officials would file a complaint before the bank's Administrative Liabilities Committee —which is integrated by one member of the Board, the General Counsel and the Comptroller—.[56] This way, enjoying of legal discretion was not something that the internal control unit's staff felt always comfortable with. Sometimes they preferred to be less proactive at seeking for innovative ways to comply with the NAS's regulations and waited until officials from higher bureaucratic status pushed them because, similarly to what happened with Chinese judges, the supervisors' opinions had an actual impact on their career development opportunities and labor perks.[57]

In view of the latter, we can summarize the issues of discretion with the Declarations' framework through the following narrative: (i) the ALLA grants discretionary powers to the internal control units for carrying out random verifications of the Declarations (ii) the Declarations contain a significant amount of personal data that could not be verified easily by the officials who work at the internal control units, (iii) in order to conduct thorough verifications, the internal control units' staff usually needed more information and documentation than the one contained in the Declarations' forms, therefore they would need to solicit additional reports to the declarant officials themselves or to private and public institutions, (iv) soliciting reports to

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[56] The integration of the Administrative Liabilities Committee is set forth by article 61 of the *Ley del Banco de México*.

[57] This would answer one question formulated in section 1.2.2 regarding how much power could an internal control unit exert.

private financial institutions was unlikely to be supported by the internal control units' supervisors due to the legal burdens of banking secrecy, unless the had other kind of evidence that seemed compelling, (v) soliciting reports to other public institutions was also troublesome because of the few incentives that those officials had to cooperate with the central bank's internal control unit as we remember that all public officials have affectations to their privacy —that is to say that public officials from other institutions can also show the attitude of legal skepticism toward the Declarations' framework— and that public institutions may have diverse legal priorities, budgetary preferences and political goals, (vi) given the trouble for conducting verifications and the attitude of legal skepticism, the bureaucratic staff who were in charge of the central bank's Declarations had more incentives to abide by the instructions issued by their supervisors than for finding innovative methods for using discretion and deciding how to implement the random verifications of the Declarations.[58]

The results of the previous narrative would be consistent with Muir's theory as dissonant reactions 2 (transferring the costs to someone else) because abiding by the superior's instructions is a way that the inferiors have to excuse themselves from personal liabilities, and 3 (being reluctant for deciding again in the future) because the inferiors' potential legal innovations were not as rewarded as the obedience to the superiors' decisions and also because their legal innovations could backfire as lawsuits against abuses of power. The dissonant reaction number 5 (denying to ever have had a choice) was also possible in a context where the supervisors exerted authoritarian controls over the internal control units' staff, although it seemed less likely because more things had to concur in order to provoke the disregard of ethical standards and moral responsibility, as it will be exemplified in section 2.5.5.

2.5.4. Weapons of the weak

Thanks to the automation for the filing stage of the Declarations, if I ever failed to file my Declarations according to the deadlines it would be easily detected by the *Deptel* system and therefore I could be sanctioned by the internal control unit. Practically the day after the filing deadline the system would prompt reports regarding which officials were missing their Declarations or whether they were inconsistent with the information contained in previous years' Declarations. Nonetheless, the real challenges for the system were the assessment of how serious could those inconsistencies/non-compliances be, as well as analyzing which potential violations should be deemed as priorities so as to initiate formal investigations.

Precisely because there were large amounts of personal data submitted through the Declarations' software, there were multiple chances for making mistakes. Therefore, if I wished to disregard the laws and misguide the internal control unit, I could just pretend one of those typing mistakes and report "erroneous" data to the *Deptel* system.

For instance, when it comes to the information regarding real estate, the system would ask me to submit data that allowed to identify the property that I owned such as the Public Registry who had issued the pertaining deed or the name of the Notary Public who had inscribed the property in the Real Estate Registry. In this sense, if I "mistyped" the deed's identification number and instead of "NW070833" I submitted "NW080733", it would be impossible for an analyst from the internal control unit to notice such discrepancy unless she decided to

[58] The whole narrative would be the answer to a question formulated in section 1.1 regarding problems and virtues of the internal control unit's discretionary interpretative powers.

corroborate that particular field of the data using the information contained in the actual property deed or by consulting with the local Real Estate Registry who allegedly had issued such documentation.

Hence there was some room for me to boycott the *Deptel* system and this made me feel like finding solace because it represented an easy way for resisting the mandatory incursions into my privacy. Moreover, if I was able to opt for sending misguiding data to the system then other officials could do the same too and, if we all would organize a coordinated action we could definitely sabotage the Declarations' effectiveness because the internal control unit would then have to investigate a massive amount of erroneous data that may not even be related to actual cases of illicit enrichment.

When it comes to the ways in which "normal people" defend themselves from the threats of the "powerful", James C. Scott (1985) pointed out that "normal oppression leads to normal resistance."[59] The author referred mostly to peasantry cases and argued that relatively powerless groups could use ordinary weapons to resist such as "foot dragging, dissimulation, false compliance, pilfering, feigned ignorance, slander, arson, sabotage, and so forth" and he also asserted that these struggles "require little or no coordination or planning; they often represent a form of individual self-help; and they typically avoid any direct symbolic confrontation with authority or with elite norms". But Scott himself was aware that "It would be a grave mistake, as it is with peasant rebellions, to overly romanticize the 'weapons of the weak'. They are unlikely to do more than marginally affect the various forms of exploitation that peasants confront".

Despite that Scott (1985) did not seek to describe Mexican bureaucracy's struggles, his observations on how do weaker individuals resist the oppression from stronger agents can be transplanted to Mexico's bureaucratic environment because there is a rigid pyramidal structure that facilitates the concentration of legal powers and the control over labor perks at the top.

The intentional typing mistakes were a sort of weapon of the weak that every official could use anytime to circumvent the Declarations' regulations, as a silent way of protesting against high rank officials or as a reaction to the privacy incursions that the Declarations' framework imply. Emulating Scott's theory, the intentional mistakes of Mexican public officials do not remove the various forms of privacy affectations that they confront but only constitute a symbolic defiance to the ALLA's provisions. After all, we could always use the excuse of being just human beings who made foolish/involuntary mistakes once a while and it would be hard for an internal control unit to prove otherwise. These protesting methods could be used by any Mexican bureaucrat to misguide any internal control unit, which evinces how easy it was to "trick" the data regarding banking accounts, vehicles, trusts, memberships, business associates and significant others.

One comparative case that can help to defend the hypothesis that the privacy affectations of the Declarations of Assets and of Interests may provoke demonstrations of "weapons of the weak", is something that was documented in an institution that has a fame of high discipline standards: the American Army. In section C.5. from a report concerning the compliance with the Ethics in Government Act of 1978, Lieutenant Colonel Gideon (1980)[60] noticed the appearance of "gratuitous comments" while reviewing financial disclosure reports. In a statement

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[59] James C. Scott, Weapons of the Weak: Everyday Forms of Peasant Resistance. Yale University Press. (1985), pp. 28-49

[60] Wendell R. Gideon, Financial Disclosure Reporting and Review Requirements of the Ethics in Government Act of 1978: Problems Encountered, 1980 Army Law. 1 (1980)

that is transcribed in the following lines, he captures the entangled relationships among privacy affectations, institutional interests, notions of morality, arguably an autonomous-law conceptualization of these public policies and the subsequent surge of "normal resistance" methods:

> "In some instances, reporting individuals made gratuitous comments on their reports objecting to the release of the reported information to the public or stating that the reporting requirements violated their privacy rights. Although such comments may reflect the individual's true feelings, it must be recognized that the reporting requirement is imposed by law and that the forms, to include any comments contained therein, are subject to public disclosure. Further, such release could be a source of embarrassment to the individual as well to the Army." [emphasis added]

However, as it was noted by James Scott himself, "it would be a mistake to overly romanticize the weapons of the weak". In this regard and, specifically for the context of Mexican officials' Declarations, in the following section it will be explored one way in which these normal resistance methods can be curbed.

2.5.5. Notions of morality and ethics

Let us remember that the Declarations of Assets and of Interests are public policies applicable to all Mexican officials and that I myself had often assumed the role of a citizen demanding honesty and transparency from governmental institutions. This citizenry aspect made it difficult to justify a boycott attitude before myself and the society that I live in, therefore, I could hardly adopt an ethic neglecting the compliance with the anticorruption laws in question.

Consequently I experienced a strange mix of Muir's dissonance reactions 7 (the *conversion hypothesis*) and 8 (the *liberating hypothesis*). In order to make sense out of the legal and ethical dilemmas in which I seemed to be trapped, I had to choose between being compliant or defiant. The way in which I settled this internal dispute of mine was by pondering how unsatisfied would I feel with myself and with the consequences of my decision.

The winning preference —by a slight difference— was the public interest behind the Declarations. I assumed that "if I had nothing to hide then I had nothing to fear" although this assumption of mine was the product of a group of factors such as the example of other officials (at the central bank I never knew of an official who failed to file the Declarations), the perceived confidentiality of my information (I never heard of leaks of someone's personal data), my own shame (I did not wish to be perceived as a person who gets into trouble nor to have a negative impact on my career), the credibility of the threat of punishment (even if the data that I declared was not easy to verify, the *Deptel* system could tell to the internal control unit whether I had filed my Declarations on time and the discrepancies with what I had reported in previous years) and my own lying skills (in order to keep my lies coherent through time I would have to bear them in mind for the subsequent years' Declarations, which seemed as too much complications for myself).

2.5.6. How the privacy concerns and the stigmatization of Mexico's public officials facilitate the endorsement of autonomous-law views

Since corruption is perceived to be widespread in Mexico and because corruption cannot happen without public officials, there seems to be no flaw in the popular logic of Mexicans who generally blame and distrust public officials, which has resulted in a sort of stigmatization. In the introduction of this dissertation it was commented how even the official surveys conducted by Mexico's National Institute of Geography and Statistics (INEGI) have shown that the people's perception of corruption and distrust in Mexican public institutions is high. We also have international surveys from non-governmental organizations with similar indications, like Transparency International's corruption perception index which, since it was first published in 1997 until the latest version of 2019, it has reported high levels of corruption's perception in this jurisdiction.[61]

The central bank's high rank officials were aware of the social stigmatization of Mexican public institutions as corrupt/inefficient and therefore had an interest in pushing policies that could help the institution to keep a good reputation but, at the same time, there was a reluctancy to implement the public disclosure of the Declarations' content because of the dangers associated to personal notions of privacy and security. Certainly, due to the high criminal and impunity rates that sadly happen in Mexico, most of the central bank's officials had reasons to believe that the public availability of such information was an open invitation to harassers, blackmailers, kidnappers or extortionists.

Having fearful thoughts seemed a fairly human reaction if we also consider the widespread perception of Mexico as a jurisdiction with an overall inefficacy of law enforcement institutions. In this sense, the available data produced by Mexico's National System of Public Security —a public institution that periodically publishes criminality rates based on Federal and State prosecutors' official reports — shows that the crimes against personal freedom and personal property accounted for more than the half of the whole crimes that were prosecuted in Mexico during the years 2015 to 2019 and that the number of such crimes has had a progressive tendency over the past five years in which the Public Security System has been collecting data.[62]

Consequently, even if public officials would want to be compliant with the Declarations' laws, it was doubted the virtue of enforcing the transparency component of these public policies for it implied the disclosure of plentiful personal information that could be used to commit crimes against officials themselves. Thus, most of the central bank's employees were exposed to dissonances such as the ones commented in the preceding section and a common way to deal with them was through Muir's conversion hypothesis.

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[61] For an historical account of Transparency International's corruption perception index see: https://www.transparency.org/research/cpi/cpi_early/0 (Last visited August, 2020)

[62] For example, according to official records, in the year 2019 there where 2'038,951 crimes prosecuted by Mexican authorities at the State level, from which 1'043,997 (51.2%) where related to personal property (robbery, extortion, fraud, sabotage, etc.) and 21,853 (1.07%) were related to personal freedom (kidnapping); at the Federal level there were only 37 kidnaps prosecuted in the year 2019. Very similar criminality proportions were reported for the years 2015 to 2018. As for the increasing tendency of crimes, Mexico's National System of Public Security registered 1'536,483 crimes prosecuted in 2015; 1'658,550 in 2016; 1'939,497 in 2017 and 1'989,930 in 2018. See the data available at https://www.gob.mx/sesnsp/acciones-y-programas/incidencia-delictiva-del-fuero-comun-nueva-metodologia?state=published (last visited in August, 2020). Available only in Spanish.

Arguably, several Heads of public institutions in Mexico could also have converted to autonomous-law views of the ALLA, the Governmental Transparency Act and the NAS's regulations in order to deal with the cognitive dissonances caused by the tension of wishing to be compliant with the framework and the actual violations to their privacy, which could be amplified by the fear of becoming victims of the most frequent crimes. Indeed, from Nonet & Selznicks' ten variables describing what constitutes an autonomous-law system, the state of affairs of Mexico's Declarations is arguably aligned to eight of them, while two variables (*ends of law* and *discretion*) seem aligned to repressive-law views.

First, the *ends of law* variable in the Declarations seems to be connected to strict order and therefore a repressive-law view because it is through the aspiration of total compliance with informational and disclosure requirements that the purging of Mexico's Public Sector from undesirable officials is being sought, neglecting critical thinking toward such requirements (*i.e.* whether they are poor, sufficient or overreaching for the purpose of analyzing corruption) and the righteous ways to implement them (*i.e.* informing society on meaningful aspects of the officials' honesty rather than massively disclosing personal data). In this sense, the lack of privacy protection mechanisms, the silence of the law regarding normative standards for conducting random verifications and the forbearance of the duty to disclose meaningful information to the public are signs that the Declarations' framework relied more in a paradigm of order where things should happen just because the legal authority says so, losing sight of the privacy affectations and the enormous discretion that those laws enabled by the means of vagueness and ambiguity caused by the wording "random verifications" and "public by default".

An autonomous law system would consider procedural fairness as the main source of *legitimacy.* In this regard, the Mexican Declarations' framework incorporated the same disclosure requirements for all of Mexico's public officials —as seen in section 1.1—, thus there seems to be an effort to get procedural fairness because no matter the hierarchical position or the legal powers of public institutions, every official must file the same information under the same set of rules and all of it should be subject to public disclosure. Also, the establishment of the National Anticorruption System (NAS) tried to enable civil society's participation by giving it one seat in its governing Committee. However, this legitimacy based on notions of procedural fairness and social participation missed the "substantive justice" concern of how to inform society about the honesty of public officials (this argument will be expanded in the following section 2.5.7.) and the asymmetries of power that exist within the Public Sector (not all officials have the same decision-making powers). At a street level, it is disappointing to know that the same exhaustive disclosure obligations legally apply to every official while in reality there is no information that could give Mexico's society objective elements to evaluate the honesty of, at least, highest-ranked officials and politicians.

Next, the variable of *rules* in an autonomous-law system refers to "elaborate" norms "held to bind rulers as well as ruled". For the Declarations' framework this has been announced since Chapter One with the description of how exhaustive are the disclosure requirements (described in the Appendix) for elected, appointed and hired officials. Here Nonet & Selznick's critique is that autonomous-law systems tend to focus on rules and that this "limits both the creativity of legal institutions and the risk of their intrusion into the political domain", as a consequence, "*Fidelity to law* is understood as strict obedience to the rules of positive law" and "Criticism of existing laws must be channeled through the political process". After a careful reading of the Declarations' framework it can be noted that the NAS's regulations did not consider the public officials' privacy concerns, did not innovate with any methods for conducting the random

verifications and omitted measures to provide society with material information for facilitating officials' and institutions' democratic accountability. Consequently, it cannot be deduced any rationality that could justify the existence of rules with such exhaustive requirements other than the formal authority of the NAS that stems from the Constitution's text.

When it comes to the variable of *reasoning*, Nonet & Selznick considered that in autonomous-law systems there is strict obedience to legal authority but that those systems are also vulnerable to formalism and legalism. In this regard, we can argue that the fact that the NAS and the Declarations were incorporated into the text of Mexico's Constitution, proves that the legislators sought to improve these policies and enforce them nationwide by the authority of the Constitution, but in reality there was no legal necessity of enacting a Constitutional reform because most of the legal obligations of the Declarations' framework were already into force with the previous FAALPO and the NAS's coordinating functions could have been established by the means of inter-institutional agreements or through ordinary acts from Federal and State Legislatives. We have also pointed out how the filing stage of the Declarations seems to have been effective thanks to the automation of the filing stage by software, hence it is possible to say that in the records of public institutions almost every public official may appear as compliant because there is a strict automated control for completing the filing of the Declarations. But a legalistic way of interpreting the silence of the law regarding how to conduct "random verifications" and how to disclose information to the public has enabled too much discretion for the internal control units for the subsequent stage, which is the verification of the data reported by officials. The following section 2.5.6.1 will expand on this argument.

Discretion in the Declarations' framework seems aligned to repressive-law views for it is pervasive and opportunistic due to the legally-allowed delegation of the definitions of what constitutes "random verification", "private life" and "personal data". As described in sections 1.4 and 2.5.3, the lack of those definitions has been used as a justification for minimum levels of compliance, disabling public disclosures and omitting democratic accountability, which are unwanted results.

Coertion is a variable controlled by legal restraints in autonomous-law systems. In the Declarations' framework there can be spotted at least two ways for controlling it legally. The first legal control to coercion is represented by the Federal Judiciaries' jurisprudence about the lawfulness of the privacy affectations that were commented in sections 1.6 to 1.6.4. (*i.e.* presumption of innocence, prohibition of self-incrimination, spousal privilege and banking secrecy) and the second is constituted by the bureaucratic structures that, within each public institution, are meant to supervise the internal control units' work.

According to Nonet & Selznick, autonomous-law's *morality* is "institutional" and "preoccupied with the integrity of legal process". This feature seems present in the Declarations' framework because every Mexican public institution can elaborate institutional justifications based on the text of the laws that may rationalize the decision of disregarding those policies or to obstruct the disclosures' effectiveness by making difficult for lay citizens to get access to the personal information of officials. The current morality of Mexican anticorruption institutions is protecting officials' privacy but at the expense of effectively disabling democratic disclosures by the means of obfuscation; that is to say that, formally, public institutions comply with the procedural rules because some information is publicly available in the internet but the institutional webpages' design impose several unnecessary steps for a human who wants to get access to it, like showing officials' data fragmented/unintelligible like a puzzle that would require some time for the user to unravel.

Regarding the variable of *politics*, autonomous-law systems see themselves as independent from the influence of political power but, at the same time, they aspire to be effective checks and balances to generate information for the people regarding the honesty and financial integrity of officials as well as the performance of anticorruption institutions. This has been present in the Declarations' framework due to the aspiration of having a constitutionally-independent agency such as the NAS, designed as a professional coordinating council of Mexican anticorruption institutions with limited but important regulatory powers (especially when it comes to the Declarations' framework), instead of, for instance, a super powerful Administrative Law regulator/investigator nationwide.[63]

The *expectations of obedience* in Mexico's Declarations seem closer to an autonomous-law system because they have been admitting "legally justified rule departures" by "testing the validity of statutes" when it comes to the public disclosure of the Declarations although this has been used in a pervasive way, as it will be discussed with more specificity in section 2.5.7.

Finally, as for the variable of *participation*, Mexico's Declarations seem permeated by an autonomous-law conceptualization because there has certainly been an emergence of legal criticism on the Declarations' tension between privacy and public disclosure, although it is incipient. Mexico's Federal Judiciary is perhaps the most relevant actor for this variable because, consistent with the sister variable of *reasoning,* Mexican judges have already issued pieces of jurisprudence that could be used as the grounds for rearranging the Declarations' framework. Such jurisprudence can help to the development of the Declarations by two types of "established legal procedures" that, in general terms, have the purpose of interpreting whether a law or an "act of an authority" is in violation of Mexico's Constitution.

The first kind of Constitutional procedure can be initiated by any of both, public officials or lay citizens. It is known as "Aegis Trial" (*Juicio de Amparo*) and can produce the same effects as in Common Law's writs of certiorari, injunction, mandamus and habeas corpus. The second kind of procedures can only be initiated by public institutions and have to ways for settling disputes:[64] (a) by the means of a "Constitutional Controversy" which is meant to define legal boundaries among the powers of Federal, State and Municipal authorities,[65] or (b) through an "Unconstitutionality Action" (*Acción de Inconstitucionalidad*) which is also similar to Common Law's certiorari because it has the purpose of testing the Constitutional validity of norms that have general applicability —*i.e.* Acts of Federal and State Congresses as well as regulations issued by Federal or State Executives or by independent agencies such as the NAS—.

In this sense, one example that give us elements to believe that the established legal procedures can help for the improvement of the Declarations' framework is the outcome of the

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[63] See *supra* section 1.2.1.

[64] The Constitutional Controversies and the Unconstitutionality Actions are procedures primarily regulated in articles 103, 105 and 107 of Mexico's Constitution.

[65] One example of the legal utility of having a Constitutional procedure for "defining legal boundaries" can be found in the context of Commerce Law, where both the Federation and the States can regulate aspects that may overlap depending on whether a commercial transaction is deemed as interstate or not. Similarly, when it comes to the Declarations' laws, the behavior of public officials is a matter where Federal and State authorities may concur frequently: in one hand we have the NAS —which is a Federal institution— with regulatory powers and in the one other hand we have the internal control units —which are either Federal, State or Municipal— who are the ones that are expected to enforce the NAS's regulations.

Unconstitutionality Action 70/2016 [66] that was initiated by two hundred *Diputados* —*i.e.* 40% of the members of Mexico's House of Representatives— from three different political parties in August 16, 2016. The sentence that was issued in June of the year after by Mexico's Supreme Court affirmed the validity of ALLA's article 29 [67] among other provisions related to that same article. In essence, the *Diputados* argued that the legal constraints to the "public by default" character of the Declarations were ambiguous in the text of ALLA's article 29 and therefore did not guarantee that the public officials' personal information could be protected.

The Mexican Court's holding consisted in a mix of autonomous and responsive law considerations because it paid attention the purpose of a number of anticorruption reforms in Mexico as well as binding criteria issued by the Inter-American Court of Human Rights, but the legal result was produced by a procedural technicality that we can say is similar to Common Law's questions of ripeness.[68] Overall, the Mexican Court held the validity of the "public by default" character of the Declarations and deferred to the NAS's legal powers for determining through regulations which portions of the Declarations ought to be exempt from disclosure. Nonetheless, the case had ripeness issues because, by the time when the Court heard it, there were no regulations issued by the NAS yet (it was legally still within a transitory term for issuing the regulations). In this sense, the Court's reasoning ought to be considered as dicta because it only had six votes out of the eight that are necessary to deem it as *jurisprudencia*.[69] Also, given that the Court's sentence was issued without being able to analyze the NAS's regulations (which were issued until September of 2018 and majorly amended in September of 2019), the substantive question of whether the Declarations' laws protect the public officials' personal information remains unanswered because, as of September of 2020, the NAS's regulations order the disclosure of plenty personal information without any analyses on its necessity/adequacy, which evinces a deliberate omission of the duty to regulate that matter and loses sight of the purposes that were pursued by bestowing Constitutional authority upon the NAS.[70]

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[66] See https://sjf.scjn.gob.mx/sjfsist/Paginas/DetalleGeneralScroll.aspx?id=27319&Clase=DetalleTesisEjecutorias (Last visited June, 2020) Available in Spanish only.

[67] Succinctly put, ALLA's article 29 makes that the Declarations' content is public by default (therefore susceptible of divulgation through the internet), except for the information that entails "personal data" or "information regarding a person's private life", as commented in section 1.4.

[68] The Inter-American Court of Human Rights (IACHR) stems from the International Treaty designated as American Convention of Human Rights, also known as "Pact of San Jose, Costa Rica" which entered into force for several nations of Latin America and the Caribbean in 1978. In the Unconstitutionality Action 70/2016, Mexico's Supreme Court acknowledged that the publicity of the Declarations are part of the democratic right of access to governmental information. And the access to governmental information has been declared by the IACHR as a human right assuming that it would be through the knowledge about what public officials do, that societies could democratically control their Governments.

[69] According to article 94 of Mexico's Constitution, the Supreme Court is integrated by eleven Justices.

[70] The NAS's deliberate omission of studying which of the officials' personal data should remain protected and which could be publicly disclosed is thus unlawful; that legal institution simply did not deliver the regulations as mandated by the ALLA. This constitutes the forbearance of a substantive duty and any delegation of this duty, no matter if is only partial, can be deemed as an unlawful delegation. Drawing from Muir's cognitive dissonance theory, it can be stated that unlawful delegations are examples of the dissonant reactions 2 (transferring the costs to someone else) and 3 (being reluctant for deciding again in the future).

2.5.6.1. Legalism and formalism can foster "formal compliance" in detriment of actual compliance

When Nonet & Selznick claimed that autonomous-law is "vulnerable to formalism and legalism" they intended to present formalism and legalism in a pejorative sense. Formalism and legalism are not necessarily bad things to the rule of law but the problems arise when they are manifested excessively and become color-blind to real-life nuances. The exaggeration of the obedience to the law can derive in narrow views of social phenomena. Legalism could be understood as a way of reasoning in which the things that are not regulated by positive laws or ordered in judicial decisions would be deemed as "irrelevant". In this sense, the cited authors wrote that:

> "Legality, understood as close accountability to rules, is the promise of autonomous law; legalism is its affliction. A focus in rules tends to narrow the range of legally relevant facts, thereby detaching legal thought from social reality. The result is legalism, a disposition to rely on legal authority to the detriment of problem solving."

We can think of formalism as a sibling of legalism. Formalism consists in a preference of the Public Sector to abide repeatedly and strictly by the methods prescribed by the laws and not considering other ways for displaying human behavior, as the cited authors seemed to describe while stating that "In bureaucracy a pervasive formalism attenuates the sense of purpose. The focus is not on results but on the regular observance of prescribed administrative routines".

Formalism and legalism can paradoxically go against the actual purposes of the laws through the concept of "formal compliance", which I propose to define as a behavior of public officials that consists in seeking the compliance of the laws but to the minimum level allowed by their text, not considering broader legal purposes that may also belong to the legal system in question.

For example, when it comes to the enforcement of the OECD's Anti-Bribery Convention of 1997,[71] Rachel Brewster (2014)[72] remarked that "The treaty places an obligation on each state to enforce its own national legislation governing private corrupt payments to foreign officials, but does not demand any particular enforcement measures or discuss how enforcement should be evaluated". In this sense, she realized that compliance with the agreement could be deemed as "very high" if judged by that obligation because all of the OECD Convention members certainly passed domestic legislation. However, Brewster found that "[…] governments can formally comply with the letter of the treaty that requires a minimum-standard for national legislation and yet dedicate little to no resources towards enforcement. Over half of OECD governments have failed to engage in any serious enforcement efforts". Similarly, if we were to judge Mexico's compliance with the disclosures' framework just by the number of public officials who have filed the respective Declarations, it could also be deemed as very high.

In colloquial terms, formal compliance is like sweeping things under the carpet and pretending that the room has been cleaned. It gives the appearance of normality and justifies the narrow reading of the laws through the endorsement of autonomous-law ideologies that have an

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[71] As of 2013 when Rachel Brewster wrote her piece, 40 states had ratified the OECD Convention: the 34 members of the OECD and 6 non-OECD members (Argentina, Brazil, Bulgaria, Columbia, Russia and South Africa).

[72] Rachel Brewster, The Domestic and International Enforcement of the OECD anti-Bribery Convention, 15 Chi. J. Int'l L. 84 (2014)

inherent inclination toward formalism and legalism. However, autonomous-law ideologies should not be considered as the only places hosting formalism and legalism, but as the environment where they are most likely to thrive because, as Nonet & Selznick pointed out, "no complex legal order, or sector of it, ever forms a fully coherent system; any given legal order or legal institution is likely to have a 'mixed' character, incorporating aspects of all three types of law" —*i.e.* repressive, autonomous and responsive—.

Preferring a minimal level of compliance over a broader reading of the laws' purposes is thus a risk for most autonomous-law systems. If there is strict obedience to legal authority and such authority establishes minimum or no standards for compliance, then the legally-required compliance levels could also go from minimum to none. This way, the reading of the text of the laws without knowledge of the laws' purposes can narrow the responsibility of the enforcers and eventually reduce the importance of the laws (which may be a first step toward ineffectiveness). This last aspect would be in accordance with Muir's *liberating hypothesis*; hence why, at the individual level, it seems reasonable to assume that the autonomous-law conceptualizations "go with" the attitude of legal skepticism.

Thus, an hypothesis that can be formulated drawing from Nonet & Selznick's variables of autonomous-law, Muir's theory of law & cognitive dissonances and Brewster's findings on the enforcement of the OECD's Anti-Bribery Convention, is that formal compliance is likely to be displayed in autonomous-law systems because formalism and legalism constitute inherent elements of autonomous-law reasoning and are likely to be embraced with exaggeration by public officials if their legal skepticism is stimulated. As a result, public officials would have a predisposition for complying to the text of the law and nothing more. In the context of Mexican Declarations' laws, the issues of formal compliance (*i.e.* enforcing the laws in the most minimalist way that the text of the laws would allow) have caused detriment by not paying attention to the greater social purposes of these public policies.

2.5.7. The autonomous-law conceptualization of the Declarations' framework facilitated governmental opaqueness and obfuscation

As it was commented in section 1.4, the silence of ALLA's article 29 regarding what is to be considered as "personal data" and "private life" in practice has granted discretion to the NAS for regulating which parts of the Declarations are related to the "personal data" and "private life" of public officials, thus it has discretion for determining which information is exempt from public disclosure. Also, as it can be noticed from the Appendix, the NAS's regulations foresee the disclosure of personal data that seems too sensitive,[73] delegating to the Transparency Committees from each public institution the power to determine what divulgation of which data contained in the officials' Declarations could represent risks to their lives, security and health. And pursuant to articles 116 and 120 of Mexico's Governmental Transparency Act, the Transparency Committees cannot disclose personal information to the public unless they have the consent of those individuals whose data is at stake.

Through the realization of discretionary powers, we can spot four different ways in which the NAS or the Transparency Committees can justify the hiding of the Declarations' information from the people: (a) by arguing that the information cannot be disclosed because it represents

[73] In the Appendix, the boxes highlighted with purple color represent the officials' information that is subject to public disclosure according to the NAS's regulations for the Declarations.

risks to the life, security and health of officials; (b) by legitimizing each official for individually denying access to their personal information; (c) by disclosing information to the public but making it difficult to understand or to find, and (d) by using discretion for disclosing incomplete information.

The previous methods could have been used at the convenience of the central bank or of any other Mexican public institution, because that way the public institutions could get rid of the trouble of having to deal with defiant attitudes from public officials (*i.e.* displaying weapons of the weak, suing or organizing social mobilizations) who believed to have affectations to their privacy.

When it comes to the first two methods, they were certainly applied from 2002 (when the FAALPO was issued) until May of 2020 (the end of the transitory term for issuing the NAS's regulations), because public officials from Mexico could individually decide whether to publicly disclose their Declarations through the internet but very few of us gave our consent for it.

As for the last two methods, it is difficult to say beforehand what constitutes the hiding of information or what could be considered as a burden for accessing and understanding the meaning of disclosures' information. For example, a governmental website could require too much "clicks" to grant access to the data or the revising of too many options within a menu in order to cause obfuscation on which option to choose.

2.5.7.1. State of affairs from 2002 until May of 2020

Not surprisingly, the few number of officials from the central bank who authorized their own disclosures also decided to omit several pieces of information so that the publicly available contents would be aggregated data, particularly when it comes to financial information.

For example, when it comes to the Declarations of Assets, while taking a look at the data from the central bank's Board, as of March 2020 the respective website showed that only one out of five members of the Board authorized the disclosure although it was released partially. In this sense we ought to remember that the information contained in the Declarations is highly detailed (as it is shown in the diagrams of the Appendix); specifically when it comes to real estate property the data submitted by public officials should include details about the assets' location, the type of property —*i.e.* apartment, house, ranch, commercial lot, etc.—, size in square meters, monetary value and date of acquisition. But the referred member of the Board did not authorize the public disclosure of all the data that he had to report according to the NAS's regulations. Instead, the webpage only showed that the public official in question owned real estate and the total estimated value of all his properties (without disclosing how did he obtain such value, how many properties were included in that amount or their location).

When it comes to other Mexican public institutions than the central bank, as of March 2020 the information that was publicly available through *Declaranet's* website (which keeps the data of officials from the Federal Executive and some Independent Agencies too), confirmed that the vast majority of public officials from Federal offices did not authorize the public disclosure of their Declarations of Assets and of Interests.

This way we can argue that, in general, Mexico's public officials could have complied with the timely filing of their Declarations but resisted the so called transparency of their personal information, thus, the public policy as a whole was not compliant with the goal of informing society about the integrity of public officials and democratic accountability did fail to be enforced purposively.

In December 24 of 2019, the NAS issued an Order announcing that, starting from January 1st of the year 2020, the National Digital Platform would be operational at the Federal level for the purpose of administering the automated questionnaires and receiving the data of the public officials' Declarations of Assets and of Interests.

Consequently, from that date the disclosure system was removed from Federal public institutions' sphere of competence but the enforcement of the Declarations' filing along with the verification of the Declarations' data and the investigation of suspicious cases, remained within the internal control unit's powers.

Thus the NAS is responsible of regulating the Declarations, administering the public officials' disclosures and of informing to the people about these anticorruption policies; but it depends entirely from the internal control units' informational inputs.

In another tenor of ideas, due to the fact that most of Federal institutions had previously implemented automated disclosure systems (as we remember that the automation and use of internet began with the FAALPO), most public institutions could make disclosures the day after the legal term for filing the Declarations —which is the 31st of May of every year pursuant to ALLA's article 33—. Nonetheless, the internal control units had discretion for deciding the content exempt from disclosure and therefore there was an excessive heterogeneity of disclosure standards across Federal, State and Municipal institutions.

2.5.7.2. State of affairs after May of 2020

According to ALLA's article 32 as well the NAS's regulations, after May of 2020 (which is the deadline for filing the Declarations) the public officials' data concerning their curricular backgrounds, income, real estate, vehicles, valuable personal property, financial assets, monetary liabilities and potential conflicts of interests is to be disclosed to the public. The implementation of the aforementioned deadline is automated and requires the coordination between the NAS and every Mexican internal control unit; each public officials' data is "collected" by the internal control units by using the NAS's software that submits a copy automatically to the NAS's databases (i.e. the National Digital Platform) for further processing, analyses and disclosure. Allegedly, one positive aspect of having the NAS as unique administrator of the National Digital Platform —and therefore of the disclosures— is to have homogenous informational standards, or, in other words, to reduce the existing discretionary levels regarding what information is worth putting available through the internet and how.

This way, instead of having Mexican public institutions disclosing the officials' data in their own websites with their own standards, after May 2020 they comply with the law if they have a link that redirects the user to the NAS's National Digital Platform. But, as of August of 2020, the Digital Platform is not granting public access to the data yet and only works with the disclosures as a "beta mode" that shows, as example, the information of a hypothetical public official with hypothetical name, income, assets, financial liabilities, etc. The information presented by such beta mode suggests that the NAS's intention is to disclose the officials' information as detailed in the Appendix.

However, the reality confirms that there are delays in the functionality of the aforementioned Digital Platform. The practical effect of this omission has been that no information about the public officials' Declarations has been made available for anyone. As of the date of this piece's writing (September of 2020), the NAS has not provided any explanation

for such delays and Mexico's society is still lacking of meaningful information about the integrity of public officials.

In view of the latter, Mexico is a jurisdiction that seems to have been overall favoring the opaqueness of the Declarations, which contradicts the essence of these public policies because they rely heavily on transparency principles. In line with the proposed theory on the existence of legalism and formal compliance, Mexicans have laws and public policies to prevent officials' corrupt enrichment and conflicts of interests, nonetheless, in the facts, they are being denied access to material information about the integrity of public officials and how it is being procured.

One example of the information that Mexico's society is lacking and that we have commented throughout this dissertation is the whole realm of the internal control units' performance and investigations; as of September of 2020 it is imposible for a lay citizen to make a judgement about an internal control unit's role for corruption's prevention and on the legal discretion that they can use for conducting investigations. In other words, the Declarations of Assets and of Interests in Mexico are public policies that do not strengthen democratic accountability because the people is not being provided with sufficient information to make reasonable judgements on the work of anticorruption institutions, the officials that can be trusted and the respective casting of votes.

But the drama with such governmental opaqueness is that it seems to be justified at the individual level because the privacy affectations that we commented in Chapter One are relevant motives for resisting the disclosures, either by using "weapons of the weak" to undermine the veracity of the data submitted to the Declaration's software, through legal interpretations developed by public officials themselves to protect against the divulgation of their personal information or by the means of litigation.

Mexico's public officials are generally stigmatized as corrupt and ineffective but despite that they might wish not to be perceived as such, having a total compliance with the Declarations framework implies too much costs for their privacy. Hence, even when governmental opaqueness can be publicly condemned by politicians and the heads of public institutions, it is being embraced at the individual level of the Public Sector.

Instead of enforcing the Declarations' framework, Mexican public officials may prefer to gain the public's trust through other means like the realization of those legal priorities that are tailored in positive laws for each public institution (as commented in section 2.1.), through campaigns for the public's outreach[74] or by providing services/granting benefits directly to the people. Hence why, in the context of the implementation of Mexico's Declarations of Assets and of Interests, some degrees of forbearance and ineffectiveness have somehow become rational choices for public institutions. And one negative consequence of embracing such rationality is that it inevitably leads to the ineffectiveness of the Declarations, which simultaneously contributes to keep distrusting Mexico's public institutions. Indeed, if a public policy that theoretically consists in simple actions such as reporting, verifying, analyzing and disclosing information cannot be implemented properly, what can a citizen expect for more complex cases and criminal investigations where finding proper evidence is seriously challenging?

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[74] According to the OECD's 2013 Review of Models, the public's outreach is one relevant function that exemplar international anticorruption institutions have found useful to perform, such as the Hong Kong Independent Commission against Corruption and the Singapore Corrupt Practices Investigation Bureau. See OECD (2013), p. 40

The latter state of affairs from the Declarations' implementation is compatible with general observations on the apathy shown by anticorruption institutions in Mexico formulated by scholars like Morris & Klesner (2010)[75], who pointed out that:

> "If distrust in political institutions nurtures corruption and yet perceptions of corruption somewhat independently of the actual levels of corruption feed distrust, then fighting corruption and gauging the effectiveness of that fight become even more formidable tasks. If few trust the politicians to do the right thing and expect corruption, then effective anticorruption efforts must be designed to disrupt that equilibrium. In Mexico, as shown, most tend to blame the politicians for widespread corruption and many see no way out. This view helps justify their own participation in corruption and spawns apathy toward doing anything about it".

2.5.7. There was no portability of the Declarations' data

Like most workers, Mexican public officials can also change jobs. But the data that they have submitted for their Declarations stays inside each public institution's databases, which usually remain unconnected to the databases of the rest of Mexican public institutions and do not "speak" to each other. For example, an official who has worked for a State institution could have filed her Declarations to the pertaining internal control unit but if she switched to a job at a Federal institution she would then be required to file another "initial" Declaration before the Federal institution's internal control unit. Hence the follow up of that public officials' wealth evolution is potentially interrupted every time that she would change the public institution were she works for. Therefore she would have opportunities to either make unintentional reporting mistakes or deliberately hiding assets every time she changed jobs and filed new "initial" Declarations. The latter situation enables a kind of circumvention of the Declarations' framework because any person can change personal and financial data several times and there will be few chances to find any discrepancies because the jobs' history is compartmentalized. It seems as if the only way in which the Declarations' follow up could have continuity is by having some sort of portability of the pertaining personal data among Mexican public institutions at the Federal, State and Municipal levels, analogous to the portability of personal information for medical insurance purposes that the USA has sought through the Health Insurance Portability and Accountability Act (HIPAA).

Let us recall the description of Mexico's legal framework —especially the one commented in section 1.2.1—, where it is stated that the NAS can regulate mechanisms for the supply, exchange, systematization and update of anticorruption information that any Mexican public institution may have. The ALLA assumes that such exchange of information can happen through the National Digital Platform, which allegedly is a technological tool for having interoperability of databases and secure communications among public institutions. However, such platform is still a work in progress thus the Declarations' data is not portable yet and, therefore, if the central bank's internal control unit would want to make the follow up of a newly enrolled person who has previously worked as public official as well, it would need to "manually" solicit the previous Declarations' data to the internal control unit from the officials' previous governmental employer —and soliciting this information to bureaucrats from other institutions is a troublesome

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[75] Morris, S. D., & Klesner, J.L. (2010). Corruption and Trust: Theoretical Considerations and Evidence From Mexico. Comparative Political Studies, 43 (10), 1258–1285.

mechanism for obtaining evidence as it was summarized in the narrative that was commented by the end of section 2.5.3—.

2.6. A theoretical summary of the Declarations' failures

The condition of having multiple laws and regulations to comply for every task that they perform and therefore becoming prone to involuntary mistakes (which also posits them as subjects for litigation), makes public officials to seek for ways to deal with the corresponding anxieties and fears of errors and equivocations. In this sense, the cognitive dissonance theory allow us to speculate that an attitude of legal skepticism is making it more likely to have officials opting for disregarding the laws than complying to them.

In the context of the Declarations it seems that the attitude of legal skepticism can easily be exacerbated because the laws that public officials are required to comply are also violating their privacy in two clear ways. The first way is by requiring so much personal information from officials and their relatives, which does not "leave them alone" and is in conflict with positive rights such as presumption of innocence, the prohibition of self-incrimination and spousal privilege; the second way is by making mandatory the public disclosure of what officials may report in their Declarations, which is a circumvention of banking secrecy principles. Mexican public officials have additional motives for resisting the full implementation of the Declarations because there is a generalized distrust in public institutions and also a social stigmatization of Mexico's officials as corrupt and/or inept, which create insecurity perceptions and provide a sense of apathy toward getting involved in anticorruption policies. Arguably, such distrust is relevant to the point that it motivated the Unconstitutionality Action 70/2016 initiated by 40% of the members of Mexico's House of Representatives in August of 2016 (just one month after the entering into force of the ALLA and NASA) which was decided by Mexico's Supreme Court one year after. The outcome of that legal dispute was the overall constitutional validity of the Declarations' framework being affirmed, although the legal reasoning of Mexico's Supreme Court should be seen as dicta.

Public officials could modify their attitude and reduce legal skepticism by converting to an autonomous-law view of the Declarations, because it would be through the endearment of those values that they could develop an imagery of justice compatible with the way in which they prefer to deal with the Declarations' incursions into privacy. In this sense, for many public officials the affectations to privacy do not disappear just by adopting legal values and this can be witnessed through the appearance of weapons of the weak —but the latter can be harmless depending on the individuals' notions of ethics and morality—. In this context, legalism and formalism emerge as the "methods" that help to justify a behavior of formal compliance that finds solace in reading the laws in a minimalist fashion and this has resulted in three types of failures: (a) the disrespect of officials' privacy; (b) the lack of adequate verifications of what officials declare, and (c) the absence of material information released to the public regarding the honesty of officials. Verifying the data declared to the Government is particularly relevant because, if we consider that public officials can make unintentional mistakes and/or deliberate misrepresentations with relative ease, the lack of verification standards implies a low reliability of the data that is nowadays being stored in Federal, State and Municipal databases. Thus, the whole monitoring system remains unreliable.

The institutional design of Mexico's legal framework also contributes to get uneven degrees of compliance of the Declarations because every Federal, State and Municipal public

institution has its own internal control unit and, considering an environment with the perception of widespread corruption and insecurity, these bureaucratic organs do not have adequate elements of conviction for sharing data with each other nor with the law enforcement institutions, therefore it is not easy to make the follow up of a public officials' wealth. The Declarations' legal framework is providing to the internal control units with too much discretion for deciding which types of discrepancies from which groups of officials should be investigated, therefore this facilitates abuses of power. Nonetheless, the existence of bureaucratic structures for controlling the internal control unit's discretion can attenuate the proclivity to have multiple legal interpretations of the same statutes, and the National Anticorruption System is a lawful supervisor of Mexico's internal control units thanks to its Constitutional authority and that it has the Administrative-Law Tribunal inside its structure —which can be seen as an evaluator of anticorruption policies because of its powers to hear, review and decide cases—.

However, the efforts for strengthening Mexico's NAS are likely to repeat mistakes from the past unless a responsive law approach is considered for "enlarging its cognitive competence", making it "accountable to purpose", foster a "morality of cooperation" and "assessing disobedience in light of substantive harms".

CHAPTER THREE

Using a language more in tune with the Responsive Law theory, the three big problems in the public policies known as Declarations of Assets and Declarations of Interests can be described as: (1) there has not yet been found a way to balance public officials' privacy with duties of governmental transparency, and the lack of such balance has contributed to a climate of bureaucratic resistance that undermines the effectiveness of these public policies; (2) the more than 1,400 internal control units have investigative discretion for verifying the Declarations' content but this has enabled the proliferation of autonomous-law justifications for bureaucracies' poor performance regarding this anticorruption control rather than legal innovation for corruption's prevention, and (3) the overall poor performance of Mexican internal control units affects the reliability and completeness of the information that they provide to the NAS's Digital Platform, consequently Mexico's society is not being provided of material information about the integrity of public officials and the performance of anticorruption institutions.

Those big problems represent reasons that the Heads of legal institutions[76] incorporate at the institutional decision making processes and the respective outcomes can be predicted using Muir's cognitive dissonance theory.[77] According to such theory, if public officials —including the Heads of public institutions— are under compulsion to enforce the Declarations' laws but simultaneously they are not convinced of those laws' virtues, there are four possible types of reactions that they can display: annulling human volition and enforcing the laws repressively, backlashing to the Declarations' laws —*i.e.* bureaucratic resistance—,[78] converting somehow to the laws' values or liberating themselves from the dissonant laws by reducing the importance of the laws themselves.

The latter scenarios are not optimistic for the public policies in question because three out of four alternatives imply the so called attitude of legal skepticism, which can only continue to foster bureaucratic resistance against the monitoring system. In my opinion, Muir's cognitive dissonance theory allow to predict that, as long as those problems continue to happen, it will be more likely to have officials undermining the Declarations and obstructing disclosures than having officials committed to the public policies' success. Both the policy makers and society could then start to doubt the worth of the Declarations as a whole.

Those doubts can be exacerbated and derive in more pervasive legal skepticism if we consider Niskanen's budget maximization theory that predicts that politicians and bureaucrats will compete for fiscal funds. Such competition alongside the continuous lack of meaningful results of the Declarations' framework are powerful arguments against the anticorruption policies of our interest because there would be room for questioning whether it is more efficient to use scarce governmental capacities for keeping a mediocre monitoring system of public officials, or to use those resources for trying to improve other areas with similar resonance in the public opinion

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[76] By using the expression "Heads of legal institutions" I mean those persons who legally govern the decision making processes of public institutions. Some Heads might be individual, like the Secretaries of State, and some might be collegiate bodies, like the Legislatives.

[77] See *supra* note 49.

[78] According to Chapter Two's arguments, Mexican bureaucracy's resistance against the enforcement of the Declarations' framework can manifest in the following methods: (1) displaying *weapons of the weak*, (2) judicializing controversies, and (3) elaborating twisted autonomous-law arguments to justify the internal control units' poor or null compliance.

such as public security, agricultural development, public education, reduction of poverty, public health systems, access to justice and so forth.

In this Chapter I propose that the public policies known as Declarations of Assets and of Interests could be improved through a responsive law critique which, using William K. Muir's terminology, is also a search for conditions/reasons that may help to convert legally skeptical officials to believers in the Declarations' framework. For this, the current context is relevant because nowadays society is in frequent use of information technologies and nomad computing devices that are enabling more users to get easily informed of everything that circulates in the internet than 18 years ago, when these policies where introduced into Mexico's legal system.

Using the responsive law theory as a common thread, the present Chapter draws from literature on technology design, computer science, law and ethics to delineate three proposals that could help to fix the aforementioned big problems with Mexico's Declarations: (a) balancing public officials' privacy with governmental transparency; (b) standardizing methods for verifications and red flags for initiating legal cases, and (c) generating public information to evaluate the integrity of officials and the performance of anticorruption institutions.

3.1. Finding a responsive law solution to the Declarations' three big failures

Nonet & Selznick's theory of responsive law is rich in terms of philosophical considerations among Law, Sociology and Political Science. The ten variables that come into play for having repressive, autonomous or responsive legal systems could be analyzed individually and still we would have enough material for discussing ideas on how do the law, politics, power, social participation, freedom or justice are manifested in a particular legal order. Despite that the cited authors claim an evolutionary relationship among those three types of Law, their theory refrains from prescribing a method that can tell us a way to make an evolution-wise transition of legal systems from repressive to autonomous to responsive. However, Nonet & Selznick did formulate a warning for avoiding that responsive systems degenerate into repressive ones.[79]

Just as autonomous law's reasoning is vulnerable to formalism and legalism, a responsive law reasoning is vulnerable to the arbitrary use of enlarged powers that can turn it repressive.

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[79] In the Epilogue to their cited piece, Nonet & Selznick acknowledged that "responsive law is a precarious ideal whose achievement and desirability are historically contingent and depend especially on the urgencies to be met and the resources that can be tapped". Arguably, one theoretical cause of the precarious condition of responsive law is that it is quite similar to repressive law and this may provoke doubts and concerns, as the authors claim:

> "In both its repressive and responsive modes, the legal order loses the protection of firm institutional boundaries and becomes an integral part of government and politics […]. In both repressive and responsive law the authority of rules is weakened; discretion is enlarged; an instrumental perspective undermines the formalism of 'artificial reason'; legal argument is less easily distinguishable from policy analysis; and legal institutions become at once more accessible and more vulnerable. <u>These conditions create a risk of regression from responsiveness to repression</u>". [Emphasis added]

Hence the metaphor that they used while stating that there were "two ways in which the Law can die" *i.e.* repressively and responsively.

Through the elusive concept of "high politics"[80] the authors suggest that responsive law is superior to repressive and autonomous law systems because it has "legal and political aspirations integrated", which, in my opinion, implies greater legal and political powers conferred to specific groups of people and/or institutions for achieving higher-valued public interests. Hence the notion of responsive law is inherently connected to debates of what constitutes a public or a private interest that should be protected and the ways for pondering values among societies; arguably, this is a reason why the authors foresaw responsive law systems as essentially linked to politics.

In responsive law there is a merger of political and legal aspirations, thus it bears the risk of having legal institutions exerting legal discretion and political power for limiting individual rights but, unlike repressive law, such power is supposed to be "accountable to purpose" and to be guided by a "morality of cooperation". The latter aspects might be what Professor Robert A. Kagan referred in the Introduction that he wrote to Nonet & Selznick's piece as the "taming of politics" which, in his opinion, would represent "the more ambitious aspect of responsive law".

On the bright side, Professor Kagan's thoughts regarding the ambitious nature of responsive law can be considered as a friendly amendment to Nonet & Selznick's theory because he also provided some guidance for finding responsive law solutions to complex socio-legal issues such as the major failures of the public policies known as Declarations of Assets and of Interests. Kagan's guidelines are: (1) "the power of the law does not stem from tradition or its formal pedigree alone, but also from its persuasiveness as good public policy"; (2) "legal institutions —courts, regulatory agencies, alternative dispute resolution bodies, police departments— are periodically studied and redesigned to improve their ability to fulfill public expectations"; and (3) "a wide range of institutions —schools, business corporations, governmental bureaucracies— are more fully pervaded by legal values".

3.1.1. On the persuasiveness of the Declarations of Assets and of Interests as good public polices

The rationale —*i.e.* public policy theory— behind the Declarations is persuasive. Specially in a context like Mexico's, where systemic and grand corruption are assumed to exist, it seems important for society to have a tool that can help to keep track of the enrichment of the people who have had access to governmental offices via elections, hirings or appointments. What does not convince at all is the way in which the Declarations are being implemented.

In this sense, a first group of people who can find them unconvincing are public officials themselves. In general, Mexican officials do not seem to have a legitimate reason to oppose to governmental surveillance in order to monitor their wealth's evolution, but they do have a legal claim when it comes to the public disclosure of personal information such as finances, significant others, economic dependents, personal property and contact information. Thus, I claim that

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[80] According to the words contained in the same Epilogue, the main difference between repressive and responsive law conceptualizations would be that there is a "moral gulf" separating them, as the following cite illustrates:

> "In repression, the integration of law and politics abridges the civilizing values of the rule of law, that is, legality conceived as fairness and restraint in the use of power. In a responsive legal order, the reintegration of law and government is a way of enlarging the meaning and reach of legal values […]. In ministering to legal values, responsive law leans upon and preserves a political community that is inclusive, not the property of a few, and a social organization that is rich in mechanisms for recalling government to its basic purposes. […]
>
> Put another way, the fundamental difference between repressive and responsive law is what separates 'power politics', the raw conflict and accommodation of special interests, from 'high politics', the reasoned effort to realize an ideal of polity." [Emphasis added]

bureaucratic resistance against the Declarations' framework is unlikely to cease unless the issues with public officials' privacy can be tempered.

Within the large number of people who are part of the social group designated as Mexican public officials, we have a subcategory that have additional reasons to doubt the Declarations' framework given their legal responsibility for delivering ambitious results —*i.e.* corruption's prevention— in an adverse social setting —*i.e.* society's perception of widespread issues of grand, systemic and petty corruption— : the bureaucrats who work at the internal control units. The lack of human and budgetary resources for conducting thorough verifications on what multiple officials declare and the lack of effective mechanisms for whistleblowers' protection,[81] are burdens that automatically place the internal control units in handicapped conditions. Moreover, even if the need for budgetary resources could be satisfied, the internal control units would still lack of clear guidelines to determine which cases should be investigated —*i.e.* the issues of legal discretion derived from ALLA's text allowing to conduct "random verifications"—. Finally, the internal control units have to deal with power asymmetries because they are part of bureaucratic structures under strict chains of command that concentrate legal powers at the top; the laws' ambiguities and generalities force internal control units' bureaucrats to adopt standards of their own for dealing with them, but the formulation of those standards can be biased according to the Heads of public institutions' interests because the latter have real power to influence on the careers of this subcategory of Mexico's bureaucracy.

For example, if a bureaucrat from an internal control unit finds that the Attorney General, a Secretary of State, a Governor or a prominent Judge have reported accruals of wealth that seem suspicious, there are no anti retaliation procedures that can guarantee that such bureaucrat will be able to investigate freely nor mechanisms for ensuring that "high-profile" and "normal" cases will be treated with the same legal rigor and impartiality —*i.e.* avoiding influence peddling, nepotism, conflicts of interests, judicial fraud, exchange of favors or technical circumventions to the laws' purposes—.

Considering the poor results delivered so far in Mexico, a second group of people who may not be convinced about the Declarations' convenience is conformed by Mexico's society itself, for it is lacking of the information that the Declarations' framework was supposed to generate since 2002 for enabling social scrutiny of officials' enrichment. The value of governmental transparency is thus a condition for enabling social scrutiny, however, the collection, processing and disclosure of public officials' personal information is the basis that

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[81] Articles 22, 64 and 91 of the ALLA order that Mexican legal institutions "must have" mechanisms for whistleblower protection and forbids the revelation of a whistleblowers's identity (*denunciante anónimo* in Spanish). This legal design is flawed because it leaves the whistleblower's protection to the discretion of high rank officials from each public institution and vulnerable to the contingencies of yearly struggles for the Budget. For instance, it was until September 6th of 2020, that the Federal Secretary of Public Integrity (*Secretaría de la Función Pública*) launched a website for contacting whistleblowers, which was named "alerting citizens" or *ciudadanos alertadores*, despite that the ALLA was promulgated in July of 2016. I believe that it is too soon for making an assessment on the the impact of this online platform, although its success is unlikely due to the fact that the Secretary of Public Integrity intends to operate whistleblower protection mechanisms on its own and, according to Mexico's legal framework, it should have contemplated a coordinated work alongside many other competent authorities like the Attorney General's Office for everything related to criminal prosecutions, the Secretary of Public Security for everything related to physical protection of humans, the Secretary of the Treasury and Public Finance for everything related to financial information and fiscal resources to fund protection mechanisms, the Federations' Superior Audit for everything related to the review of accounting records and, of course, the National Anticorruption System for everything related to the exchange of information with the Municipal and State authorities.

enables such social scrutiny.

3.1.2. On Robert Kagan's concern of periodically assessing legal institutions and the fulfillment of public expectations

The lack of reliable information about the internal control units' and the NAS's performance translates into the people's inability for making fair assessments on the role that legal institutions and public officials themselves are playing in Mexico's fight against illicit enrichment in specific and against corruption in general. In this context, the only tools that nowadays researchers have for gauging whether the anticorruption expectations of Mexican society are being fulfilled are the perception indicators and surveys that were commented briefly in the Introduction to this dissertation.

Important questions that can help Mexico's society to engage with governmental transparency and that could be addressed by social computing remain unanswered, *i.e.* How many cases of potential illicit enrichment are detected per year per institution? How big are the cases of illicit enrichment in monetary terms? Which type of corruption scheme is more often used for illicit enrichment —*i.e.* bribery, influence peddling, kleptocracy, judicial fraud, procurement fraud, etc.—? How many officials report to have conflicts of interests and how is that being assessed by the internal control units? How many of those cases end up in actual investigations? How many investigations derive in sanctions? How many sanctions are affirmed or repealed by the Administrative Law Tribunal and/or the Federal Judiciary? Which type of governmental institutions are the most vulnerable to host cases of illicit enrichment and why? What type of cases of illicit enrichment or of conflicts of interests in the Administrative Law sphere are prone to become so serious that it is highly probable that they be transferred to Criminal Law prosecutors?

From my point of view, the lack of meaningful information is helping to preserve the distrust in Mexican public institutions and the apathy toward fighting corruption because, instead of forming opinions based on data generated from identifiable sources or corroborated facts, the people are given subjective elements such as perception indicators and surveys that, despite that they are based on experts an businesses executives globally with fair information on the phenomenon, they are disconnected from public officials' concerns, the reasons of bureaucratic resistance within public institutions and the urgencies of people whose voice is not heard by the system, like the lower rank officials. The search for knowledge on the actual obstacles for the compliance with these public policies necessarily leads to the questioning of the way in which Mexican public institutions are implementing the Declarations' framework today.

Having Mexico's citizens making judgements of their governments based on press articles or surveys has contributed to gain social consciousness and to enlarge awareness of the existence of petty, systemic and grand corruption. But it has not contributed to the production of scientific analyses of Mexico's anticorruption institutions nor to the gathering of evidence for legal cases. Given that the NAS's authority stems from both, the Constitutions' text and the interpretations of Mexico's Supreme Court of Justice,[82] it is an institution with a "formal pedigree" that legitimizes it for analyzing anticorruption institutions nationwide and for informing Mexico's society about the developments in the fight against corruption, particularly when it comes to nationwide public policies such as the Declarations.

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[82] See the comments on the Unconstitutionality Action 70/2016 by the end of section 2.5.6.

In this sense, we ought to bear in mind that one of the NAS's legal functions is to regulate the mechanisms for the supply, exchange, systematization and update of information about corruption that any Mexican public institution may have.[83] Thus, the NAS has legal authority to make periodical assessments of anticorruption institutions and gauging the fulfillment of public expectations when it comes to corruption's prevention in general and compliance with the Declarations' framework in specific.

3.1.3. On the legal values that should pervade in the institutions in charge of the Declarations' framework

Hans Kelsen's[84] thoughts on the concept of justice and social values claim that the judgement of values is a subjective endeavor, despite that the members of a society can agree on their judgements. His words are worth citing in full:

> "… The answer to the question concerning the value of life and freedom, of the nation and of the individual; to the question concerning the order of rank of the different values such as freedom, equality, security, truth, lawfulness, etc., is different according to whether the question is answered by a believing christian who holds his salvation —the fate of his soul in the hereafter— more important that earthly goods, or by a materialist who does not believe in an after life. And it would be justice different according to whether the decision is made by one who considers individual freedom as the highest good, that is by liberalism, or by one for whom social security and the equal treatment of all men is rated higher than freedom, by socialism. And the answer has always the character of a subjective and therefore only relative judgement of values.
>
> The fact that value judgements are subjective and hence very different value judgments are possible, this fact does not mean that every individual has his own system of values. In fact, very many individuals agree in their judgment of values. A positive system of values is not an arbitrary creation of the isolated individual, but always the result of the mutual influence the individuals exercise upon one another within a given group —be it family, tribe, clan, cast, profession—, and on a certain political and economic circumstance.
>
> Every system of values, especially a system of morals and its central idea of justice, is a social phenomenon, the product of society and hence different according to the nature of the society within which it arises. The fact that there are certain values generally accepted in a certain society in no way contradicts this subjective and relative character of this judgment of values. That many individuals agree in their judgment of values is no proof that these judgements are correct, that is to say, that they are valid in an objective sense." [Emphasis added]

Seconding the previous cite, it is possible to say the present search for legal values that should pervade in the institutions in charge of Mexico's Declarations of Assets and of Interests, will result in a subjective judgement of values — *i.e.* my own—. Developing a subjective judgement of values of the Declarations' framework can contribute to further academic discussion since it will represent a point of reference for scholars who find appeal in using interdisciplinary approaches and theories like responsive law, cognitive dissonance, weapons of the weak and social computing (the latter to be discussed in the next section).

Unfortunately, the responsive law theory lacks of methods for identifying legal values that should pervade in societies and for delineating social contexts; however, through the description

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[83] See Chapter One's section 1.2.1.

[84] Listen to Professor Hans Kelsen's participation in the Bernard Moses Memorial Lecture of May 27, 1952 — UC Berkeley Campus. Available at http://gradlectures.berkeley.edu/lecture/what-is-justice/ (Minutes 20:02 to 25:00)

of the variables *ends of law*, *legitimacy, rules* and *reasoning*, it can be argued that the Responsive Law theory put its hopes in scientific progress for enlarging the "cognitive competence" of legal institutions and for the investigation of generally accepted legal values, which may ultimately facilitate focusing in substantive justice (as opposed to merely formal) as well as subordinating rules to "higher" principles and policies. Thus, a responsive law assessment for the public policies of our interest would require the identification and investigation of values that should inform its design or, in other words, the elucidation of values to what the legal framework ought to be responsive.

3.1.4. On the NAS's social computing and the study of values that should inform its design

Nowadays society is in frequent use of computing devices and information technologies for every day transactions. Internet browsers, emails, search engines, storage "clouds", social media, smartphones, digital payments, video conferences, data mining and geolocation are examples of telecommunication/information technologies and automations that have both improved and pervaded in social interactions over the past two decades globally, to the point that we can deem them as of general use among OECD countries.

The enforcement of the Declarations' legal framework is intended with the use of technology that, despite its incipient stage of development, is key to the success of these public policies. One essential purpose of using technology for the Declarations' framework has been to divulge information through the internet so anticorruption institutions and public officials become more accountable to society. The impact of such strategy could be high in a positive sense because, according to official statistics of Mexico's INEGI for 2019, approximately 70.1% of Mexican household members with at least six years old have access to the internet and these numbers show a tendency to increase.[85]

As it was commented in the preceding Chapter, several legal institutions are using software to carry out the filing stage of the Declarations, which work like automated questionnaires (*i.e.* "Deptel" & "Declaranet"). The management of plenty of personal data from Mexico's public officials —including the mandatory public disclosures— is supposed to be executed by a system of databases, algorithms and telecommunications connecting multiple internal control units with the NAS for automatically exchanging information and publicly disclosing parts of it through the internet, known as the NAS's National Digital Platform.

According to the NASA's text, the cited Platform and the information thereby processed must be used for two main purposes:[86] (a) contributing to the NAS's power to design anticorruption public policies as well as measurement methodologies and indicators for evaluating them, and (b) guaranteeing that Mexican anticorruption institutions will have access to

[85] These INEGI's estimations are available in English at: http://en.www.inegi.org.mx/temas/ticshogares/

[86] See article 9 §§ XII, XIII, of the NASA.

specific "systems of information"[87] for detecting potential acts of corruption. Thus, according to the legal framework, the use of information technologies for internet-based communications as well as data management & analyses would have to be pervasive among Mexican anticorruption institutions.

The NAS's legal powers to implement public officials' social scrutiny by technological means, theoretically corresponds to what technology design scholars like Wang, Carley, Zeng & Mao (2007)[88] have designated as "social computing". The cited authors traced this concept back to the 1940's, discussing how it has evolved in time, and, in view of some recent developments in the field, they proposed to define it as "Computational facilitation of social studies and human social dynamics as well as the design and use of information and communication technologies (ICT) that consider social context". In this sense, the so called "e-government" is one name by which the application of social computing in the Public Sector is known in multiple jurisdictions. Wang, Carley, Zeng & Mao also remarked that social computing faces important challenges when it comes to its research. In their words, "[T]o facilitate the development of social software, one fundamental issue is the representation of social information and social knowledge. Other important issues are the modeling of social behavior at both the individual and collective levels and analysis, and prediction techniques for social systems and software".

Wang, Carley, Zeng & Mao asserted that "social computing represents a new computing paradigm and an interdisciplinary research and application field" and made the prediction that "[…] social computing's scope will continue to expand and its applications to multiply. From both theoretical and technological perspectives, social computing technologies will move beyond social information processing toward emphasizing social intelligence". In said authors' view, social intelligence "can be achieved by modeling and analyzing social behavior, by capturing human social dynamics, and by creating artificial social agents and generating and managing actionable social knowledge". Considering the latter, the aforementioned National Digital Platform's two main purposes are, in my opinion, an attempt to institutionalize social computing in Mexico's Public Sector for ultimately achieving social intelligence when it comes to corruption's prevention. Interestingly, the concept of social intelligence is compatible with the responsive law variable of *reasoning*, which is supposed to be "purposive" and characterized by the "enlargement of cognitive competence".

In line with the concern of developing social computing research, scholars like Shilton, Koepfler & Fleischmann (2014)[89] remark the importance of studying human values since "Values

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[87] Pursuant to articles 48 to 56 of the NASA, such "informational systems" are digital databases that should contain national data regarding:

I. Declarations of Assets and of Interests
II. Public officials who participate in procurement transactions
III. Public officials who have been sanctioned or banned from the Public Sector
IV. Results of Public Sector's audits
V. Whistleblowers
VI. Procurement transactions

[88] See F. Wang, K. M. Carley, D. Zeng and W. Mao, "Social Computing: From Social Informatics to Social Intelligence," in IEEE Intelligent Systems, vol. 22, no. 2, pp. 79-83, March-April 2007, doi: 10.1109/MIS.2007.41.

[89] Katie Shilton, Jes A. Koepfler, and Kenneth R. Fleischmann. 2014. How to see values in social computing: methods for studying values dimensions. In Proceedings of the 17th ACM conference on Computer supported cooperative work & social computing (CSCW '14). Association for Computing Machinery, New York, NY, USA, 426–435. DOI:https://doi-org.libproxy.berkeley.edu/10.1145/2531602.2531625 (Last visited September 2020).

are understood to contribute to technology design, to shape affordances that mediate technology use, and to pervade the social contexts mediated by technology". They also acknowledge that "Research on values in social computing is challenged by disagreement about indicators and objects of study as researchers distribute their focus across contexts of technology design, adoption, and use", which is a situation compatible with Kelsen's observations on the relativity of judgements of values.

This way it is possible to say that the study of human values is a common denominator for the research in two distinct theoretical fields such as responsive law and social computing. As for the responsive law theory, researching values can help to implement Robert Kagan's guidelines regarding the subordination of rules to higher principles and policies, which arguably have a virtuous cycle with the fulfillment of public expectations and the persuasiveness of public policies. When it comes to social computing's research, Shilton, Koepfler & Fleischmann (2014) claim that, "human values play an important role in shaping the design and use of information technologies" (like in the use of internet-based technologies for divulging information that could help to corruption's prevention), arguing that there can be, in fact, human values incorporated into technology since the moment that the design of the technology is being carried out to the moment that such technology is posited before the final users, which has been studied by scholars under two different "theoretical umbrellas" known as "values in design" and "value-sensitive design".

Shilton, Koepfler & Fleischmann contribute with a methodology for investigating values in specific technology systems, but they also considered that "[…] values can be observed among a complex collection of designers, artifacts, infrastructures, social contexts, and use practices. Values researchers must therefore distribute their focus across contexts of design, adoption, and use". It is in this spirit that I propose to use the cited authors' methodology for finding values that ought to inform the NAS's social computing and the responsive law solutions to the failures of the Declarations' framework, despite that the technological system known as National Digital Platform is still a work in progress.

In the following sections I consider how the values identified from formal law in Chapter One and the values identified through my reflection as a subject of the current system in Chapter Two, can inform the design of the National Digital Platform and, in doing so, assist it in meeting its purposive application in a value-sensitive way and reducing resistance from the subject population.

Bearing in mind Hans Kelsen's insights about the relativity of human values, we can anticipate that my attempt to apply Shilton, Koepfler and Fleischmann's methodology for the identification of values will inevitably be the product of a subjective assessment of values. The relativity of my judgement of values, however, can produce any of two positive results: (*i*) academic critique and discussion for the sake of the effectiveness of the Declarations' framework, or (*ii*) agreement on some values, with the consequence of enabling discussion on generally accepted values for these public policies. Either way would, in my opinion, be consistent with a responsive law approach, specially with the variable of "ends of law" which focuses in *competence* instead of autonomous law's focus in *legitimation* or repressive law's focus in *order*.

3.1.4.1. On the Source dimensions

Succinctly put, Shilton, Koepfler & Fleischmann suggest that there are six dimensions that can help to identify values for social computing. The first three dimensions refer to the *Sources*

of values, that is to say "the setting, environment, or context from which values are elicited" and these are Unit, Assemblage and Agency. The remaining dimensions help to identify *Attributes* of values and they are Salience, Intention and Enactment.

The Unit dimension described by Shilton, Koepfler & Fleischmann refers to "where are the values being elicited from" and the authors propose two subcategories of study: individual and collective. The values of an *individual* source "are held by a person and are a core component of his or her identity" while the values of *collective* sources "are the goals embedded in a given sociotechnical context".

The Assemblage dimension refers to similarities among actors and technologies, it is divided into *homogenous* and *hybrid*. An homogenous source of assemblage would be "a group of people belonging to a single demographic, for example, or technologies of similar types". A hybrid assemblage would be constituted by "sources ranging from an all-machine group or a homogenous group of humans to diverse humans of various types to groups of human actors interacting with multiple sociotechnical systems".

The Agency dimension "takes into account the degree of autonomy and self-determination sources have in possessing and expressing values", and it "moves from object to subject". In the authors' words: "*objects* have values ascribed to them while *subjects* have the ability to determine and express their own values. For example, humans are often treated as *subjects* who may express their own values, and machines are often *objects* to which humans ascribe values".

3.1.4.2. On the Source of values for Mexico's Declarations of Assets and of Interests

In the legislative history[90] of the NASA & ALLA it was documented that the bills were the result of merging other anticorruption-related bills that had been proposed by multiple legislators since the year 2013, as well as the comments of 32 Heads of public institutions whose

[90] See the official opinion (*dictamen*) of the pertaining Legislative Commissions of Mexico's Senate that was issued prior to the bill's submission for voting (*Dictamen de las Comisiones unidas de Anticorrupción y Participación Ciudadana, Justicia y Segunda de Estudios Legislativos*), available at: https://infosen.senado.gob.mx/sgsp/gaceta/63/1/2016-06-14-1/assets/documentos/Dictamen_Leyes_Anticorrupcion.pdf (Available in Spanish only).

functions were related to the enforcement of Federal and State anticorruption laws,[91] four elite[92] civil society organizations[93] and one elite public university.[94]

The Unit that was responsible of such merging and, therefore, responsible of enacting legal values into these public policies, was a group of 31 Senators (out of 128) or, in other words, a collective of elite[95] politicians legally entitled for issuing an opinion on the lawfulness and convenience of the proposed bills —in Mexican Parliamentary Law such opinions on legislative bills are named as *Dictamen de Comisión Legislativa* or "Legislative Commission's Opinion"—.

In this sense, in the legislative history there is no evidence of the methods and criteria that those 31 Senators used for merging bills and viewpoints into the proposals that were submitted for voting in the Chamber of Senators and subsequently sent to the Chamber of *Diputados*; the only reference to public officials' privacy was a list of the Declarations' contents that, from those 31 Senators' viewpoint, should be disclosed to the public through a so called "public version" of the Declarations that officials must file. However, as we have already discussed in Chapter One, the promulgated legal statutes did not include any list of contents for the Declarations' "public versions" and the actual definition of the data that must be publicly disclosed was transferred to the NAS as one of its regulatory powers.

In view of the latter, we can say that the ALLA and NASA had a collective source but it was quite homogenous: a few elite politicians, a few elite bureaucrats and a few elite civil organizations. Lay officials of the Federal, State and Municipal spheres were never consulted as part of the legislative process, which evinces that, willingly or not, but the Unit forgot about their privacy concerns. Hence it can be argued that the Legislative viewed public officials as an objectified collective from which personal data could be extracted and/or disclosed, instead of individual subjects whose concerns should have been heard.

Based on official statistics reported by Mexico's National Institute of Geography and Statistics —INEGI by its initials in Spanish—, as of 2017 Mexico had approximately 120 million

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[91] The public institutions which were represented by their Heads were: (1) The Federation's Superior Audit that formally belongs to the House of Representatives of Mexico's Congress; (2) The Administrative Law Tribunal, which is part of the NAS; (3) The National Institute of Governmental Transparency and Personal Data Protection which is formally an independent agency; (4) The Federal Secretary of Public Integrity, which is the Federal Executive's internal control unit, and (5) Multiple State institutions related to either governmental transparency, budgetary supervision, law enforcement or internal control units.

[92] The adjective *elite* is my own addition. I did not find an academic piece to support the attribution of this adjective. I attributed it only based on my subjective judgment of values after my observations and experiences in Mexico. The only justification that I have is based in a linguistic consideration. According to Merriam Webster's Dictionary available in the internet, there are five acceptions of the word *elite* and I perceive that those civil society organizations deserve one, which is: "a group of persons who by virtue of position or education exercise much power or influence". See https://www.merriam-webster.com/dictionary/elite

[93] These elite civil society organizations were: "Transparencia Mexicana", "Instituto Mexicano de la Competitividad", "México Evalúa", the "Barra Mexicana Colegio de Abogados" and "Fundar".

[94] This public university was the *Centro de Investigación y Docencia Económicas, A.C.* or "CIDE" by its initials in Spanish. I added the adjective *elite* with the same linguistic acception ascribed to elite civil society organizations.

[95] Again, here the adjective *elite* is attributed through another linguistic justification. I consider that another acception of Merriam Webster's Dictionary is applicable: "the choice part **:** CREAM".

inhabitants from which 5 million were employed by the Government[96] and therefore can be considered as bureaucrats under legal compulsion to file Declarations of Assets and of Interests. Thus, the privacy concerns of at least 5 million subjects were ignored by the Unit of 31 Senators who enacted values into the legal framework.

If we apply Muir's cognitive dissonance theory which predicts that only one out four human reactions would come to amicable terms with dissonant laws —*i.e.* the conversion hypothesis—, Scotts' insights on normal resistance against normal oppression, and considering that I found no specific data on the performance of Mexican institutions in charge of the Declarations' framework (*i.e.* internal control units, the Judiciary and the NAS), I dare to make the preliminary estimation that, under the current conditions, there is a 25% chance that lay bureaucrats declare with truth and faithfully to the NAS all what the regulations ask about assets, interests, economic dependents and significant others, while there would be 75% chances of having them developing some sort of resistance like Scott's weapons of the weak or autonomous-law formalistic excuses for non-compliance.

Considering the latter, it seems reasonable to assume that the Unit's neglecting of privacy and the treatment of officials as objects instead of subjects, translates into bureaucratic resistance methods that overall represent 75% chances of having erroneous and/or incomplete data reported to the NAS's databases. Therefore NAS's social computing is not promising in this context.

Nonet & Selznick's responsive law variable of *participation* is described as the "access enlarged by integration of legal and social advocacy". In this sense, legal advocacy on the right of privacy already tells us that it is necessary to adjust the legally-mandated disclosures toward less divulgation of public officials' personal information. But before delving into the substantive question of how to balance privacy and governmental transparency, it is necessary to complete the investigation according to Shilton, Koepfler & Fleischmann's methodology and elucidate wether there can be additional values worth deeming as generally accepted for the public policies of our interest. In this sense, I ask the reader to bear in mind a peculiarity of Mexico's context

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96 The numbers of INEGI's statistics do not breakdown for analyzing whether they considered the armed forces (Army, Navy and Air Force) and public education workers. With this disclaimer, the estimated 5 million public officials would be integrated as follows:

- 1.6 million people reported to work as Federal officials (see slide 12 of the document available at http://www.beta.inegi.org.mx/contenidos/proyectos/censosgobierno/federal/cngf/2017/doc/cngf_2017_Resultados.pdf);
- 2.4 million were tagged as State-level officials (see slide 8 of the document available at http://www.beta.inegi.org.mx/contenidos/proyectos/censosgobierno/estatal/cngspspe/2017/doc/cngspspe_2017_resultados.pdf);
- 1 million people working for Municipalities (see slide 11 of the document available at http://internet.contenidos.inegi.org.mx/contenidos/productos/prod_serv/contenidos/espanol/bvinegi/productos/nueva_estruc/promo/CNGMD_2017_Resultados.pdf)

All links are available in Spanish only (last visited September, 2020)

which is that of a jurisdiction with generally[97] perceived issues of systemic, political, grand and petty corruption.[98]

3.1.4.3. On the Attribute dimensions

The first attribute dimension discussed by Shilton, Koepfler & Fleischmann is Salience, which they describe as "a continuum from peripheral to central values" where "the qualifier 'salient' implies that some values will be more important in one context, while other values have more importance in another context".

The second attribute dimension is Intention, which "describes the degree to which a designer or system intends to materialize a value on a continuum from accidental to purposive values". The authors claim that purposive values are "those intentionally built into a technology's affordances and policies by its designers" while the accidental values are "unintentional features or biases embedded in a technological system".

Finally, the Enactment dimension "highlights a continuum between potential and performed values". Potential values "are present but inert" while performed values are "those that an actor or system materializes in the world".

3.1.4.3.1. Salience of the Declarations' values

The analysis of the Source dimensions concludes that (**1**) *privacy* and (**2**) *governmental transparency*, are the most relevant values of the Declarations of Assets and of Interests, therefore they can be considered as central values at the Salience dimension as well. The issue with these two values is that they are in an inherent tension according to the original design of the Declarations, meaning that, theoretically, favoring one implies neglecting the other. Such tension is experienced by officials as ethical dilemmas because they essentially have to choose between preserving their own privacy or enforcing governmental transparency duties, and both things may be simultaneously desired.

Thus, solving the tension seems as a matter of finding an adequate degree of both values rather than the dominance of any of them or, in other words, the privacy-transparency tension behind the Declarations is theoretically never going to be solved but that does not prevent jurisdictions from conducting efforts for lowering such tension. In my opinion, those efforts are worthy because they can have a chilling effect on the cognitive dissonances that bureaucrats experience while choosing between their privacy and their duty, therefore improving chances for their active engagement with the Declarations' framework and for improving the reliability of the information that may be used for the NAS's social computing.

As for peripheral values, I believe that the Intention and Enactment dimensions to be discussed in the following two sections allow us to identify some.

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[97] By adding the adjective *generally* I mean to invoke the argument that according to both domestic and international perception indicators cited since the Introduction to this Dissertation, the phenomenon of corruption in Mexico has been reported as widespread from 1995 up to date.

[98] Corruption is said to be *systemic* if "the system allows it", that is to say that it happens with the deliberate collaboration of law enforcement institutions (including the Judiciary). When corruption is employed for altering the law making processes it is said to be *political* because it implies the collaboration of politicians. When corruption involves high-ranked bureaucrats it is said to be *grand* because it is usually associated with large sums of illicit profit. Finally, when corruption is not systemic, grand nor political, it can be deemed as *petty*.

3.1.4.3.2. Intention of the Declarations' values

Purposive values of the Declarations' framework would be: (**3**) *honesty of public officials*, because the monitoring system wants all officials to declare with truth everything what the NAS's regulations ask from them, ideally by virtue of their commitment to the public policies or pessimistically by the means of coercion to comply with the Declarations' framework; (**4**) *fairness nuanced by power asymmetries*, because the monitoring system is applicable to Federal, State or Municipal officials in Mexico, no matter if they have been hired, appointed or elected but, according to the OECD's (2011) comparative study,[99] the policymakers should also consider that high rank officials should be subject to a higher scrutiny by society because they hold greater legal powers to be accountable for; (**5**) *investigative discretion*, because the ALLA grants to the internal control units discretion for conducting random verifications of public officials' Declarations and for considering which red flags should trigger investigations; (**6**) *risk-based moderation of disclosures*, because ALLA's article 29 granted to the NAS the power to determine which personal data should be exempt from disclosure if it affects officials' private life and personal data; (**7**) *social computing for expanding anticorruption institutions' cognitive competence*, because the large scale management of personal information through the National Digital Platform was habilitated in NAS's favor for the sake of the two main legal purposes discussed in the preceding section 3.1.4, and (**8**) *expansionism of the obliged subjects* because the NAS's Regulations require personal information from spouses, significant others and economic dependents and this is a measure that OECD's (2011) comparative study considers as reasonable in view of corrupt officials' tendency to hide assets through their closest people, although the OECD did not make pronouncements on whether significant others and economic dependents should declare exactly the same information as public officials, nor whether they should file declarations with the same periodicity.

Accidental values would be those that are not mentioned expressly in the legal framework yet they contribute to the active engagement of political officials and bureaucrats with the public policies in question: (**9**) *legal statutes' certainty*, because the language of norms was not always straightforward and because there are more than 1,400 internal control units who can apply the same framework, lay officials' and internal control units often had doubts and, using their legal discretion, they have developed their own standards of compliance —referred in Chapter Two as

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[99] Ibidem at p. 56.

The OECD's justification for the higher scrutiny of higher rank officials is summarized in the following cite:

> "There are several reasons why a declaration system should be confined to political/senior public officials, or should require more information and impose a higher level of public disclosure from this category of officials:
>
> *Higher risk of conflict of interest* – Influential private parties are more interested in engaging political/senior rather than mid-/lower-level officials in their activities, hence there is a higher probability of a conflict of interest.
>
> *Higher risk of corruption* – Related to the above, political/senior offices usually open greater opportunities for illicit gains, hence greater risk of corruption.
>
> *Evaluation of political decisions and candidates* – The character of political decisions differs from that of administrative decisions and actions, in that the former have usually a much broader scope of potential beneficiaries (or those whose interests suffer) and discretion. Hence their proper evaluation can be performed if all the important interests of a political decision maker are known. Moreover, for offices subject to popular election, it is important that voters have the broadest possible information about candidates.
>
> *Less relative weight of the requirement to protect privacy* – It is often recognised that the public interest weighs more than the right to privacy of political/senior office holders compared to mid-/lower-level officials.
>
> *Economy of resources* – The confinement of the circle of persons covered to political officials reduces the administrative burden of running the system due to the smaller number of such officials."

"interpretative guidelines"— which imply ascribing a multiplicity of subjective meanings and scopes to the same legal provisions; (**10**) *regularity in the investigative function*, because the internal control units have to deal with lawsuits against their use of power, thus they feel more comfortable operating with certainty of their duties or legal "safe harbors" defined by officials with the highest rank as possible, although the problem is that such regularity is only relative to the public institution who issued the safe harbors in question; (**11**) *bureaucratic opaqueness concerning personal data*, which is exemplified with the variety of methods that can be used by Mexican bureaucrats to circumvent the revelation and public disclosure of personal information or to cause people's obfuscation by turning the "publicly available" data unintelligible or too hard to obtain, has arguably some virtue because it is being used as a way to preserve the central value of privacy, which would be otherwise vanished from the public polices in question, and (**12**) *portability of officials' personal data*, because making Municipal, State and Federal officials' personal data movable from one internal control unit without major bureaucratic impediments is the only possible way for allowing all Mexican internal control units to keep track of any officials' wealth evolution and deterring illicit enrichment nationwide, considering that officials can work for multiple institutions from different jurisdictions during their careers —*i.e.* Federal, State or Municipal—, thus their Declarations' history can turn like a puzzle for the newest employer that may only be put together by examining the information reported to each public institution to whom they have worked for.

3.1.4.3.3. Enactment of the Declarations' values

One important aspect of the Enactment dimension is that it does not refer to the formal enactment of norms into contracts, regulations, statutes or judicial decisions, but to the facts that are observable in the real world. Thus, under Shilton, Koepfler & Fleischmann's methodology it is possible to have values identified as potential despite that they can be expressly mentioned by the text of a law.

From the twelve values that we have identified, seven are not clear whether they qualify as potential or performed, seeming to rather be in an intermediate position because they are performed in the socio-technical setting of the Declarations of Assets and of Interests although its performance can be judged as poor/deficient: privacy, governmental transparency, investigative discretion, expansionism of obliged subjects, legal statutes' certainty, regularity in the investigative function and bureaucratic opaqueness concerning personal data.

The remaining five values would be potential, despite that some of them have been officially enacted into the Declarations' framework or have been mentioned by the generally accepted rationale of these public policies, namely: honesty of public officials, fairness nuanced by power asymmetries, legal moderation of disclosures, cognitive competence through social computing, and portability of officials' personal data.

3.2. Outlining responsive law solutions

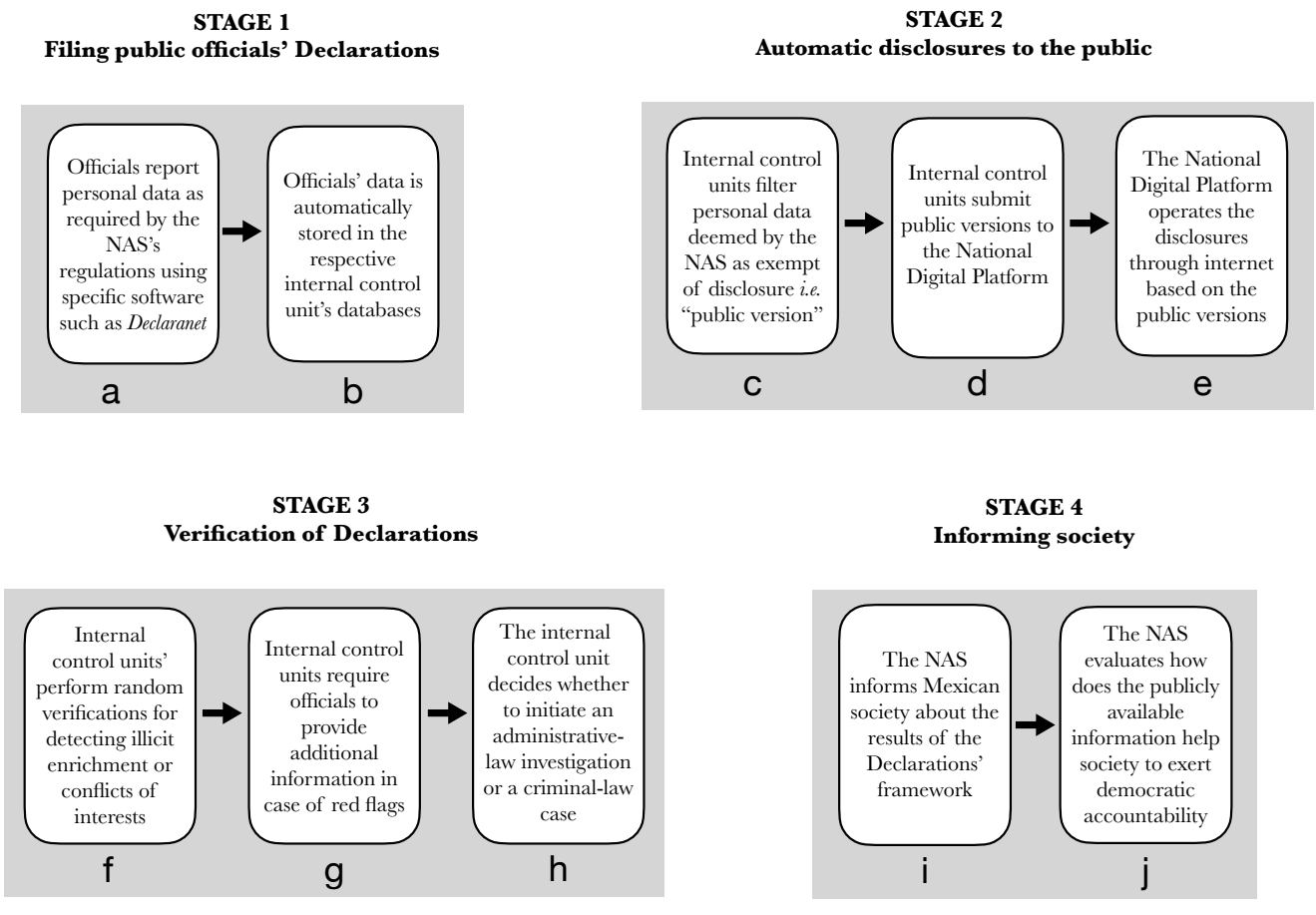
The identification and investigation of values in the Declarations' framework is, theoretically, one way to connect the responsive law theory with technology design and social computing research. In my opinion, focusing in values rather than norms enables a more organized discussion of potential solutions from the perspective of both areas of study simultaneously, thus making more feasible the elaboration of interdisciplinary research that could

be consistent with the reasoning at responsive law systems and with social computing's aspiration of achieving social intelligence.

The following sections will expand on three proposals that altogether seek to pay attention to the twelve values that I identified within the Declarations' framework and imply my relative judgement of all of them. No matter that each proposal will be commented separately, they should be seen as simultaneous measures because it would be through the combined effects of the three of them that most of the twelve values could be procured.

Also, seeking to avoid as much bureaucratic resistance as possible against them, the proposals aim to encourage the current legal framework's purposive implementation —*i.e.* ALLA, NASA & NAS's regulations— instead of major legal reforms. In order to facilitate the mapping and delineating the scope of each proposal, Figure 2 below shows a minimalist representation of the Declarations' framework as a procedure with 4 stages that are numbered following the timing ordered by Mexican laws. Thus, stage 1 must legally be executed before stages 2 and 3; likewise, stage 3 cannot be carried out after stage 4. Each stage is subdivided in subprocesses or "steps" and we would have 10 steps in total —*a* to *j*.

Figure 2. Stages and steps* of the Declarations' framework



* The stages' steps are indicated as letters *a* to *j*.

One caveat to consider is that identifying the specific technological tools that could be used for implementing the proposals is not yet possible and, moreover, they are expected to continue undefined for some time because the National Digital Platform is still a work in progress. As of September of 2020, there is no publicly available information with details about the status of the National Digital Platform's project or the interconnectivity among Federal, State and Municipal anticorruption institutions.

In an attempt to elucidate some of the technical challenges that would have to be addressed for my proposals, I assumed that one way to approach the kind of technology that is being used for building the National Digital Platform and for knowing who is developing it, could be through a Transparency Request —which is a procedure analogous to the USA's Freedom of Information Act—. Consequently, the 25th of September of 2020, via an official internet portal named as "National Transparency Platform" I asked to the NAS, the Administrative Law Tribunal, the Federations' Superior Audit and the Federal Executive's Secretary of Public Integrity the same questions: "Which contractors where hired for developing the National Digital Platform? Which procurement method was used for adjudicating contracts? Which audits have been performed to the National Digital Platform's contractors? Has the adjudication of those contracts been judicially challenged?".

The NAS's answer was issued in October 13th of 2020 and it was the most relevant of all because it stated that "The National Digital Platform is being developed at the interior of the NAS's Executive Secretariat (SESNA) using open source tools and an scalable model, also, currently there have been no contractors hired to develop software nor licenses have been paid. Therefore we do not have a list of contractors nor copies of procurement contracts signed". Consistent with the previous answer, the rest of authorities informed that they did not have any information regarding contractors for the National Digital Platform.

Considering the latter, the proposals will assume that the technology of today's world is evolving rapidly and that the technicalities that today could make it difficult to manage and exchange personal data with reasonable security among Mexican public institutions, may soon be possible to overcome.

Thus, the proposals are inherently speculative and have in common that they assume a world where humans are increasingly using information technologies for their interactions. Hence the proposals will focus on the legality and purpose of doing automated managing and exchanging of data and will omit the discussion of important technological challenges/questions that could, nonetheless, be the object of future research, such as: Which Mexican internal control units are, as of today, using software instead of paper files for complying with the Declarations' framework? How is the NAS's National Digital Platform seeking to secure the storage and flow of sensitive personal information among the databases of all of Mexico's anticorruption institutions? Are open source tools suitable for the exchange of information and communications that involve sensitive personal data? Do the databases of those Mexican public institutions involved in the proposals allow the automated computing of their data or must a human interpret them first?

3.3. Balancing privacy with governmental transparency

The first proposal speculates on how to reduce the tension between privacy and governmental transparency, understanding that both values are of central importance but that

privacy needs a higher boost. In this line of thinking, scholars like Celeste R. Arrington (2019)[100] argue that the participation of stigmatized or marginalized social groups —like Mexican public officials, though this stigmatization's seriousness must be relativized according to individual cases — can be obtained through privacy-protective mechanisms. In her words, "[The] fears of losing one's privacy or other reprisals—whether from the state or from non-state actors such as employers—have risen in the digital age, as media market competition and open government policies improved information accessibility […] However, the dynamics of named and anonymous participation, and especially their interaction, are undertheorized".

Considering the stages and steps of Figure 2, we can see that the privacy of public officials is at stake in steps *a, c* and *e*, therefore they are exposed in two different stages (1 & 2) to cognitive dissonances that may deter their honest engagement.

The first moment *i.e.* step *a*, generates a privacy contest because the mere act of asking too much details to a person just because she is a public official feels like a burden that goes against the spirit of the rights of presumption of innocence, spousal privilege and the prohibition of self-incrimination. One can to wonder, how much information and with which degree of specificity would an official be willing to answer? For instance, if I am surveyed outside of a drugstore regarding how much money I spent purchasing products, I might be willing to tell the number; but if I am asked whether I bought products for sexual hygiene and their individual value I might be reluctant to even continue answering questions regardless if the survey's purpose was noble. Similarly, public officials can react with hostility against the information requirements of the NAS's regulations and the intrusiveness into their private lives because of the obligation to report financial and personal information of their own and fro significant others and economic dependents too.

Thus, in order to lower the privacy-public disclosure tension in step *a*, I propose to eliminate the mandatory nature of declaring information regarding significant others and economic dependents, and to adjust the Declarations' systems such as *Deptel* or *Declaranet* for enabling their voluntary participation. This way, the public officials' closest ones would have the power of their consent and therefore the internal control units would need to develop a responsive-law morality of cooperation if they want to get their participation with these public policies. For those officials who work at the internal control units, such consent would represent a regulatory safe harbor because then they would be legitimized to use their discretion to verify what significant others and economic dependents declared instead of arbitrarily using discretion and intrusiveness. In this sense, the OECD's (2011) comparative study mentions that some jurisdictions only require the identification of significant others and economic dependents, whom may be investigated upon reasonable suspicion of their involvement in corruption and/or unlawful enrichment schemes.[101] I believe that the same standard can be applied in Mexico, so public officials would only have to report to the system the identities of their significant others/ economic dependents, who, as we have already proposed, should give their consent in order to use their personal data for the analyses that internal control units must make regarding officials' wealth evolution.

The second moment *i.e.* step *c*, provokes, in my opinion, more accentuated dissonant reactions from officials because despite that the NAS's regulations excepted some pieces of

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[100] See Arrington, Celeste L., (2019). Hiding in plain sight: Pseudonymity and participation in legal mobilization. *Comparative Political Studies*, *52*(2), 310-341.

[101] Idem at 65.

information from disclosure, it is still mandatory the public revelation of detailed personal information like: job history, academic background, sources of income, salaries, real estate owned and their characteristics (kind of real estate, size, way of acquisition and value), vehicles owned, liabilities and their value, the names of persons with whom officials might have conflicts of interests, as well as the cause for such potential conflicts.

In order to reduce the privacy-public disclosure tension here, I propose a model of variable disclosures that takes into account the value of *fairness nuanced by power asymmetries* and that would disclose more information from allegedly the most powerful officials, *i.e.* high rank bureaucrats and elected politicians. The criterion for identifying who would be the "powerful officials" who would have to disclose more personal data is the same that nowadays is being used in Mexico's anti money-laundering framework. In essence, the Federal *Secretaría de Hacienda y Crédito Público* —which is analogous to USA's Secretary of the Treasury— has an administrative division named *Financial Intelligence Unit* which is legally in charge of issuing and enforcing the anti money-laundering framework among all Mexican financial intermediaries.

Mexico's anti money-laundering framework deems as *politically exposed persons*[102] or "PEP" all the Heads of Federal, State or Municipal legal institutions from any of the branches of government —*i.e.* Legislative, Judiciary, Executive and independent agencies—, public officials of the three immediate hierarchical positions below those Heads, as well as Political Parties and candidates running for elections.[103] The practical consequence of being deemed a PEP is that due diligence processes should be implemented by the financial intermediaries who hold a PEP's account for collecting more contextual information, and applying risk-based scrutinies of financial transactions for detecting suspicious patterns of flows of money. Intermediaries must report to the Financial Intelligence Unit if any suspicious patterns of a PEP are detected, then governmental surveillance is expected to increase for the investigation of illicit enrichment or money-laundering.

Table 5 below shows that our model of variable disclosures begins at the basic level of "regular" officials, then augments the degree of scrutiny for high rank officials and politicians (*i.e.* PEPs) and finalizes with an option that any official would be entitled to apply voluntarily, which consists in disclosing all the information contained in their Declarations.

Unlike the current text of the NAS's regulations, the model of variable disclosures would make mandatory the disclosure of a minimum amount of information that lay citizens could use to judge the financial integrity of public officials' wealth but without disclosing details that are protected by privacy in general and by the right of banking secrecy in specific. Another aspect that the variable disclosures would like to pay attention to, is the provision of 13 examples for making the disclosures compatible with contextual information, so lay citizens can evaluate both

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[102] The term "*Politically Exposed Persons"* or "PEP" was coined at the interior of an inter-governmental body of financial authorities established in 1989 designated as the "Financial Action Task Force" —FATF or "GAFI" by its initials in French— from which Mexico's Financial Intelligence Unit is a member. The FATF's recommendations are in practice considered as soft law; they define as PEP those individuals who "are or have been entrusted with prominent public functions, for example Heads of State or of Government, senior politicians, senior government, judicial or military officials, senior executives of state owned corporations, important political party officials". See page 123 of the document retrievable from: http://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF%20Recommendations%202012.pdf. Last visited November, 2020.

[103] See Mexico's *Secretaría de Hacienda*'s list of politically exposed persons available at: https://www.gob.mx/shcp/documentos/uif-marco-juridico-personas-politicamente-expuestas-nacionales. Last visited November, 2020. (Available in Spanish only).

the integrity of officials and the performance of anticorruption institutions. For instance, in the row regarding "Salary and sources of income", the context is procured by Examples 1, 2 & 8 which is intended to divulge the proportion of public officials' salaries compared to the total amount of income that they may have without prejudging on the lawfulness of its origin. Similarly, in the row "Assessment on officials' integrity", Examples 6, 7, 12 & 13 delineate the disclosure of information that imply telling the people some general results of anticorruption institutions' work; if the information on whether an officials' Declarations have been verified by the respective internal control unit is not publicly available, that would mean that, for whatever reason, such internal control unit is failing to provide data to the NAS and this would be something worthy of both, being subject to legal investigations and informed to the public, although it will be until proposal 3 that we will discuss specific issues for better democratic accountability.

Table 5. Variable disclosures of Mexican public officials' personal information

	Regular officials' mandatory disclosures	Politically exposed persons' mandatory disclosures	Voluntary enhanced disclosures
Personal background	Job history	+ academic credentials	+ full disclosure of the Declarations' content except for the information concerning significant others and economic dependents, whose consent should also be required in order to disclose any of their data
Salary and sources of income	*Example 1*: Official "X" is paid "Y" as official salary. *Example 2*: Official "X" reported [not] to have sources of income additional to the public sector's salary.	+ whether officials have sources of income that exceed their official salary *Example 8*: Official X's public sector salary represents "Y percentage" of his/her total income reported.	
Financial Assets	Overall value of financial assets *Example 3*: Official "X" reported to have assets with an overall value of "Y".	+ indication of whether the official declared to have assets abroad *Example 9*: Official "X" reported financial assets located abroad with an overall value of "Y".	
Financial Liabilities	Overall value of financial liabilities *Example 4*: Official "X" reported to have liabilities with an overall value of "Y"	+ indication of whether the official declared to have liabilities abroad *Example 10*: Official "X" reported financial liabilities located abroad.	
Potential conflicts of interests	Whether the official declared to have potential conflicts of interests *Example 5*: Official "X" reported to [not] have potential conflicts of interests.	+ Names of the persons with whom the official reported to have potential conflicts of interests *Example 11*: Official "X" declared to have potential conflicts of interests with the following persons: [List]".	

Information about significant others and economic dependents	No information to be disclosed here	No information to be disclosed here
Assessment on officials' integrity	To be discussed as part of proposal 3	To be discussed as part of proposal 3

One important aspect that would have to be evaluated for the implementation of such model of variable disclosures is: To what degree of detail should officials' financial data be disclosed to the public? It is clear that the internal control units and criminal law prosecutors need as much specific details as possible because such elements are the basis of legal procedures and investigations. However, I believe that disclosing to the public the exact numbers of officials' financial data should be avoided because there is no real public utility in knowing that, in fact, it creates the risk that anyone could infer an officials' purchasing power or economic necessity for other purposes than governmental transparency, thus an alternative can be to present such information to the public similarly to what is ordered by USA's Ethics in Government Act, which is through "value margins" instead of exact figures. For example, instead of disclosing a Mexican officials' salary of $85,472.03 a year, the system could disclose a salary "ranging from $60,000 to $90,000".

Arguably, the model of variable disclosures observes seven values simultaneously. First, to privacy because it reduces the overall amount of personal data to be publicly disclosed compared to the current text of the NAS's regulations. Second, to governmental transparency because it would provide information to the public regarding the anti money-laundering framework, which has remained unattended by social scrutiny so far. Third, to fairness nuanced by power asymmetries because it would disclose more personal data from more powerful officials, but ultimately would respect the dignity of official's by respecting their decision of whether to disclose everything contained in their Declarations. Fourth, to risk-based moderation of disclosures, because the criteria for choosing who are the "powerful officials" would consider the risk assessments already carried out by Mexico's Financial Intelligence Unit resulting in the aforementioned list of public officials deemed as PEPs. Fifth, to expansionism of the obliged subjects, because it would enable the consented participation of significant others and economic dependents. Sixth, to the value of legal statues' certainty because it would be clear that the positive rights of banking secrecy, spousal privilege, presumption of innocence and the prohibition of self-incrimination, are going to be observed. Seventh, to bureaucratic opaqueness concerning personal data because the model assumes that the internal control units will continue to have access to all the personal information that the current text of the NAS's regulations is requiring from officials, but there would be less personal data publicly available through the internet.

3.4. Standardizing methods for verifications and red flags for initiating legal cases

The second proposal consists in uniform methods for conducting verifications and the identification of red flags, that the NAS could issue as mandatory for Mexican internal control units. ALLA's article 30 grants internal control units with discretion to choose verification methods for reviewing the Declarations, it also sets forth that the verifications ought to be "random" and orders that they should initiate investigations in case that "anomalies" are detected but, simultaneously, articles 15, 18, 19, 22 & 89 bind the internal control units'

discretion to the rules that the NAS may issue for coordinating corruption's prevention nationwide and for informing society about the results of anticorruption policies.

The expression "random verification" affords the formulation of different standards. Allegedly, having each internal control unit defining its own methods and estimations can make it more difficult to the NAS to assess their individual performance and contributions to the NAS itself. Standardizing procedures for the so called random verifications and anomalies —*i.e.* red flags— that should trigger investigations, are reasonable conditions that ought to be procured for having parameters of fairness to evaluate the performance of more than 1,400 internal control units nationwide. I believe that a purposive reading of the ALLA & NASA afford the interpretation that the NAS has the power to regulate such standards.

Specifically when it comes to the standards for the so called random verifications, I propose that the NAS should order internal control units to use official third parties. The reason for narrowing the internal control units' verification options to just the data that is in possession of the Public Sector are several but related to the value of *statutes' legal certainty*. In this sense, the ALLA's provisions do not determine which methods can be used by internal control units for collecting evidence, detecting anomalies and assessing their seriousness for initiating investigations. When it comes to the legal weighing of evidence, article 118 of the ALLA refers to another Federal law named as Administrative-Law Contentious Procedures' Act or "ALCP" —*Ley Federal del Procedimiento Contencioso Administrativo*—.

According to the cited ALCP, particularly its article 46, for the assessment of evidence in Administrative Law punitive procedures it must respected the following order of preference: (1st) confessions with the express recognition of the legal violation in question; (2nd) legal presumptions that do not admit contests;[104] (3rd) facts stated by authorities in official documents even if these are in digital means; (4th) witnesses, experts' opinions and private documents. Whistleblowers and written private contracts would be, for instance, fourth in legal evidence's preference while a State Public Notary's scripture would be third.

Another aspect to consider is that any public institution who could qualify as verifying third party, may enjoy of legal presumptions that their records are legally valid. Specially when it comes to records that are legally deemed as "publicly available" —like the multiple Real Estate registries regulated by the States' Civil Codes—, there is a legal presumption in favor of those records that comes from the text of article 121 of Mexico's Constitution —which was borrowed

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[104] "Legal presumptions" are common in Mexico's legal system; they are a way to perform the value of statutes' legal certainty —*seguridad jurídica* in Spanish—. Several Spanish-speaking legal scholars agree that there are two basic theoretical kinds of legal presumptions, known as *iuris tantum* and *iuris et de iure*. A "iuris tantum" legal presumption means has the laws command that, unless somebody can prove that the facts did not occur as stated by the laws, a presumption enabled by the law is valid. For example, when it comes to investigations of paternity in Family law cases, some Mexican Civil Codes establish a *iuris tantum* presumption by ordering that a man's reluctancy to cooperate with paternity tests based on DNA analysis, generates the presumption that he is the father of the child in question, which can be overturned if the paternity test is performed and proves that he is not the biological father. In turn, a "iuris et de iure" presumption is that which the laws themselves do not admit contests or evidence in contrary and must be legally enforced. For example, when it comes to speeding tickets imposed by Mexico City's Police, nowadays' legal framework has enabled the *uiris et de iure* presumption that photographs of cars' plates taken by machines that are sensitive to vehicle's movement, are the proof that a car exceeded the speed limits, thus a ticket can be issued by the police to whoever is officially registered as that cars' owner.
See Diego Dei Vecchi, *El carácter presuntivo de las presunciones absolutas*, (The presumptiveness of conclusive presumptions), Revus [Online], 38 | 2019, Online since 12 December 2019, connection on 30 December 2019. URL : http:// journals.openedition.org/revus/5333 ; DOI : 10.4000/revus.5333 (Available in Spanish only).

from Article IV of USA's Constitution— that orders that entire faith and credit shall be given to each State's public Acts, records and judicial proceedings.

Hence the verification of public officials' Declarations with the appropriate official records from any institution of the Public Sector contributes to legal statutes' certainty because that would correspond to orders in preference 2 & 3 for evidence that Administrative-Law procedural rules currently mandate, and therefore all of Mexico's internal control units could legally and reasonably rely on such data for evaluating whether to initiate formal investigations.

The following Table 6 contains a description of official third parties which whom, in my opinion, should be considered by internal control units to verify the data contained in public officials' Declarations, also with my own estimation of the legal evidence's order of preference that the ALCP could assign to the records of each third party.

Table 6. Third parties to verify Declarations with legal evidence potential

Third party	Why is this third party suitable for verifying data contained in the Declarations?	Legal evidence's potential order of preference
Federal and State Legal Entities' Registries	These registries are stablished by Civil laws that in Spanish receive the name of *Registros Públicos de Personas Morales*. The representation of legal entities is deemed as public information that must be formalized before a Notary Public, who is obliged to issue official documents known as "public scriptures".	2 & 3
Public Institutions' Human Resources departments	Each public institution's Human Resources department usually requires documents that prove academic credentials, addresses, phones and family statuses as part of the public officials' hiring and institutional affiliation processes.	3 & 4
Mexican financial institutions —*i.e.* banks, brokerage houses, non-bank lenders, stock exchanges, popular savings institutions—	Financial institutions are vastly regulated and supervised by financial authorities. Legally, they must keep robust accounting records of all their transactions with clients and comply with the anti money-laundering framework. If a Mexican financial institution has a client who is deemed as a *politically exposed person*, such institution must produce anti money-laundering assessments and deliver them to the STPF-FIU.	4
National Institute for Governmental Transparency and Personal Data Protection	Known as INAI because of its initials in Spanish, this institute is in charge of administering a so called National Transparency Platform that puts available in the internet different types of information that the Transparency laws of Mexico deem as public. It also regulates the management of personal data in possession of both the private and public sectors.	2 & 3
SIA (Federal Secretary of Interior Affairs)	Mexico's Federal Secretary of Interior Affairs —*Secretaría de Gobernación*—, which is analogous to USA's Department of State, administers a National Registry of Inhabitants that issues a *unique identification key* to every person who has Mexican nationality. The unique identification key —*clave única del registro de población*— can help to validate the identity and some generals of public officials and is information publicly available through the internet.	2 & 3

States' Civil Registries	According to State Civil laws there are Civil Registries who issue official certificates of birth, marriage, divorce, death and adoption, among other types of civil statuses. The information contained in Civil Registries is deemed as publicly available although it is not divulged though the internet and the data concerning identified subjects must be consulted on a case by case basis	2 & 3
States' Real Estate Registries	According to State Civil laws, there are Real Estate Registries who issue official certificates of proprietary rights and encumbrances. The information contained in Real Estate Registries is deemed as publicly available although it is not divulged though the internet and the data concerning proprietary rights must be consulted on a case by case basis	2 & 3
STPF-IRS (Federal Internal Revenue Service, which depends from the Secretary of the Treasury and Public Finance)	According to Federal taxing laws, Mexico's Internal Revenue Service manages taxing declarations and also administers a system for validating any merchant's invoices for taxing purposes According to article 95 of the ALLA, the information in possession of the STPF-IRS can be shared with internal control units if they ask for it as part of the investigation of serious acts of corruption and under the terms of confidentiality agreements signed with the STPF-IRS itself	2 & 3
STPF-FIU (Federal Financial Intelligence Unit, which depends from the Secretary of the Treasury and Public Finance)	According to Federal financial laws, Mexico's Financial Intelligence Unit manages all the anti money-laundering reports that are mandatory for Mexican financial institutions. According to article 95 of the ALLA, the information in possession of the STPF-FIU can be shared with internal control units if they ask for it as part of the investigation of serious acts of corruption and under the terms of confidentiality agreements signed with the STPF-FIU itself	2 & 3
Type 1 software	This type of third party is conceptual and refers to software and web applications that can be developed for automatically verifying a phone number provided by a person. Nothing prevents the NAS from developing a system of its own for verifying phones and emails declared by officials	4
Type 2 software	This type of third party is conceptual and refers to software and web applications developed for automatically verifying the email account provided by a person. Nothing prevents the NAS from developing a system of its own for verifying phones and emails declared by officials	4

Now that we have identified third parties whose records can reasonably be used as legal evidence for evaluating the initiation of investigations, the following Table 7 shows each section of the NAS's regulations (as illustrated in the Appendix), alongside the third party that could help to verify that data and my subjective estimation of how much of the data required by the NAS's regulations could be verified by internal control units.

Table 7. Specific third parties for the verification of data required by the NAS's regulations

# of section	Diagram of the Appendix	Officials' data that could be verified with the cooperation of third parties	Third parties' name	Estimation / Comments
1	A.1 (Generals)	Name	States' Civil Registries & SIA	100% of this diagram's data could be verified with the cooperation of 5 third parties, from which 3 are public institutions and 2 could be software tools
		Inhabitant Key	SIA	
		Tax ID Number	STPF- IRS	
		Family Status	States' Civil Registries	
		Phone	Type 1 software	
		Email	Type 2 software	
2	A.2 (Adresses)	At least one of the addresses provided by the official	Public Institutions' Human Resources departments	100% of this diagram's data could be verified with information that each public institution's Human Resources department requires documents that prove at least one address as part of the hiring or affiliation processes
3	A.3 (Curricular information)	Academic background	Public Institutions' Human Resources departments	The percentage of the data that could be verified with Human Resources records is variable.
4	A.4 (Current job's position)	Professional background	Public Institutions' Human Resources departments	100% of this diagram's data could be verified with the cooperation of each public institution's Human Resources department since they control the information concerning the institutions' jobs
5	A.5 (Last 5 jobs)	Professional experience	Public Institutions' Human Resources departments	The percentage of the data that could be verified with Human Resources records is variable.
6	A.6 (Significant others' generals)	Same as diagram A.1	Same as for diagram A.1	100% (same as diagram A.1) could be verified, although this requirement may be unconstitutional based on Chapter One's advocacy on the right of privacy, therefore asking for their consent would be a rightful measure.

7	A.7 (Economic dependents' generals)	Same as diagram A.1	Same as for diagram A.1	100% (same as diagram A.1) could be verified, although this requirement may be unconstitutional based on Chapter One's advocacy on the right of privacy, therefore asking for their consent would be a rightful measure.
8	A.8 (Sources of income)	Domestic sources of income	STPF-IRS	100% of the data required by the NAS here could be verified with the cooperation of one public institution. The regulations also require to report the sources of income of significant others and economic dependents, but this can be unconstitutional based on Chapter One's advocacy on the right of privacy. The data of any official could be cross-referenced if the respective internal control unit asks for it in a minimalist way (see section 3.4.1).
		Foreign and domestic sources of income	STPF- FIU	This information can be verified partially with the cooperation of one public institution according to the anti money-laundering framework. International cooperation among financial regulators is recognized by Mexican financial laws and deemed as an exception to banking secrecy. The data of high rank officials could be cross-referenced if the respective internal control unit asks for it in a minimalist way (see section 3.4.1).
9	A.9 (Real Estate owned)	Every real estate property and the details of ownership transactions	States' Real Estate Registries	100% of the data required by the NAS could be verified with the cooperation of 32 public institutions since there are 32 Real Estate Registries in Mexico.
10	A.10 (Vehicles owned)	All the data required by the NAS's regulations	States' Vehicular Registries	100% of the data required by the NAS could be verified with the cooperation of 32 public institutions since there are 32 Vehicular Registries in Mexico. The regulations require to report the vehicles of significant others and economic dependents, but this can be unconstitutional based on Chapter One's advocacy on the right of privacy, therefore asking for their consent would be a rightful measure.

11	A.11 (Personal property of value)	Names of vendors, description of items and their monetary value	STPF-FIU & STPF-IRS	This information can be partially verified with the cooperation of 1 public institution (Federal Secretary of the Treasury and Public Finance) according to the taxing and anti money-laundering frameworks, because only the purchases of items beyond certain monetary thresholds must be reported to the FIU and backed with a digital invoice that is validated with IRS-Mx's software. (See Mexico's *Ley Federal para la prevención e identificación de operaciones con recursos de procedencia ilícita* or Identification and prevention of money-laundering Act).
12	A.12 (Financial assets)	Financial assets of high rank officials	Mexican financial institutions	100% of the data regarding high-rank officials' financial assets acquired through authorized financial institutions can be verified according to the anti money-laundering framework
13	A.13 (Liabilities)	Financial liabilities of high rank officials	Mexican financial institutions	100% of the data regarding high-rank officials' financial liabilities that have been acquired through authorized financial institutions can be verified according to the anti money-laundering framework
14	A.14 (Other assets used or enjoyed)	This diagram's data cannot be verified with a specific third party but discrepancies could be detected via contingencies like whistleblowers		
15	B.1 (Interests in private companies or associations)	Names of Mexican or international companies in which the officials report to have interests	Federal and State's Legal Entities' Registries STPF-IRS STPF-FIU	The names of Mexican companies in which officials may have interests could be verified via cross-referencing with data regarding sources of income. The names of foreign companies in which high rank officials may have interests could be verified according to the anti money-laundering framework
16	B.2 (Interests in public subsidies)	Names of public institutions who grant subsidies in which officials report to have interests	National Institute for Governmental Transparency and Data Protection	The destiny of most subsidies is legally deemed as public information, therefore it is administered by the NIGTDP. The specific names of subsidy beneficiaries might not be always publicly available when it comes to natural persons.

17	B.3 (Interests stemming from proxies)	Names of companies or associations in which officials report to have an interest as well as the names of such companies' proxies	Federal & State Legal Entities' Registries	Mexican Civil laws require that the proxies of companies or associations must be registered before the pertaining registry of Legal Entities, depending on whether the company was chartered according to Federal or State laws. The penalty for nor registering a proxy is the potential annulment of transactions executed on behalf of the company or association and the respective payment of damages.
18	B.4 (Interests stemming from business clients)	This diagram's data cannot be verified with a specific third party but discrepancies could be detected via contingencies like whistleblowers		
19	B.5 (Interests in private benefits)	This diagram's data cannot be verified with a specific third party but discrepancies could be detected via contingencies like whistleblowers		

In summary, what Table 7 would allow us to estimate is that there are 19 sections of the NAS's Regulations containing different informational requirements, from which 3 are not possible to be verified by one third party for all internal control units because there are no known third parties (14, 18 & 19). Consequently, instead of just verifying data, I propose a whole change of the approach for these sections of the NAS's regulations, but this aspect will be part of the discussion of proposal 3.

The rest sections' requirements could be verified by all of Mexico's internal control units with the same third parties, who keep records that, in average, correspond to the 2nd & 3rd orders of preference for legal evidence in Mexican Administrative-Law punitive procedures, potentially applying equal standards of verification for all public officials' Declarations.

Theoretically, any discrepancy between the information declared by officials and the one that is kept in third parties' records can be an anomaly to consider for initiating an investigation or, in colloquial terms, a red flag that internal control units could consider. But data discrepancies could derive from a myriad of causes different from corruption (like unintentional mistakes, technological incompatibilities, some institutions' reluctancy to provide data to the monitoring system and so forth), hence why after the verifications it would be constantly needed the legal innovation of internal control units for developing methods that can help to the discovery of actual patterns of corruption or illicit enrichment.

In another tenor of ideas, Table 7 also tells us that there are three sections of the NAS's regulations —*i.e.* 8, 11 & 14— that cannot be verified with publicly available information but only with data that is in possession of Federal taxing and anti money-laundering authorities, who are legally obliged to keep confidentiality of that information. Accessing that data is something succinctly regulated by the ALLA and will be discussed in the next section.

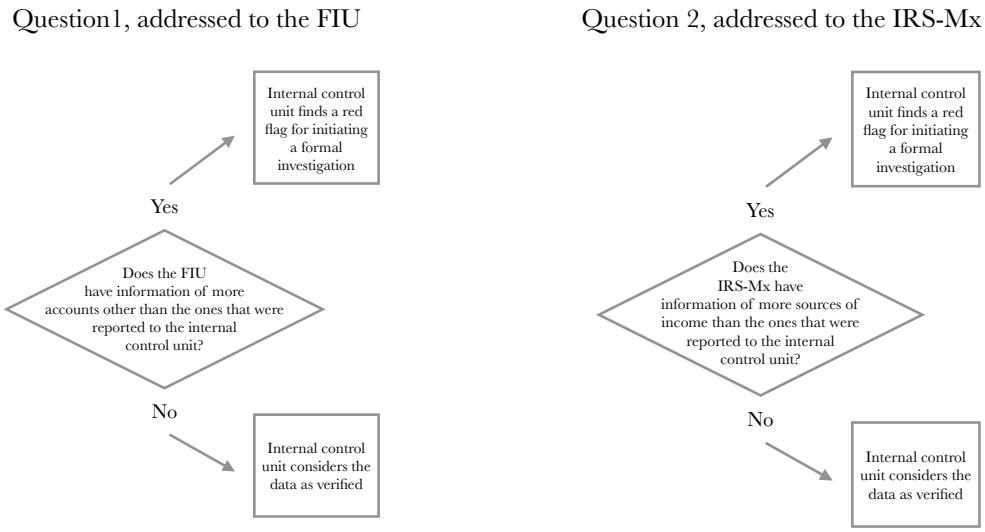
3.4.1. On the scope of using data from the taxing and anti money-laundering frameworks

Those Mexican public officials that the anti money-laundering framework deems as PEP are legally subject to a heightened scrutiny over their personal finances that is conducted by financial intermediaries first and by the Financial Intelligence Unit (FIU) later. Thus, according to two "independent"[105] frameworks, a heightened incursion into PEPs' privacy is justified.

According to article 95 of the ALLA, personal banking data and the information in possession of taxing authorities can be accessed by internal control units only for investigating serious cases,[106] that is, after step *h*. But that implies that the respective internal control unit already performed steps *f* and *g*, which correspond precisely the verification of the information contained in the Declarations. Thus, it seems that not a single internal control unit could legally get access to detailed information that financial intermediaries exchange with the FIU just for verifying the Declarations data. However, nothing prevents the NAS to order the internal control units, the FIU and the IRS-Mx to exchange small pieces of information in step *f* when it comes to PEPs because, as we have discussed, their privacy expectations are reduced.

Figure 3 offers an example of how two simple "yes" or "no" questions that any internal control unit could address to the FIU and the IRS-Mx could in fact become small pieces of information to be exchanged without violating procedural rules regarding banking & taxing secrecy duties, and which could also represent red flags for initiating formal investigations:

Figure 3. Minimalist cross-verifications of the internal control units with the FIU and IRS-Mx regarding PEPs



[105] I add the adjective "independent" to emphasize that the anti money-laundering framework and the Declarations' framework have been created under different public policy designs but the similar goal of detecting public officials' illicit enrichment in its multiple manifestations. Also, from my perspective both frameworks have been implemented by very different types of authorities *i.e.* elite Federal financial institutions and a mix of Federal, State & Municipal "lay" bureaucracies.

[106] According to articles 51 to 63-bis of the ALLA, "serious cases" are those involving bribery, embezzlement, misuse or appropriation of public funds, abuse of power including violence, acting under conflicts of interest, misusing privileged or confidential information, illicit enrichment, influence peddling, forgery, obstruction of investigations, contempt and nepotism. Also, in its article 95, the ALLA foresees that the internal control units' access to detailed banking and taxing data is conditioned to collaboration agreements with confidentiality clauses, signed with the pertaining financial or taxing authority.

In view of the latter, this proposal would contribute to six values. First, to legal statutes' certainty because it would standardize verification methods for most of the Declarations' requirements in accordance to the ALCP's order of preference for legal evidence, lowering the likelihood of being legally dismissed by Judges of the Administrative Law Tribunal. Second, to investigative discretion because each of the more than 1,400 internal control units would be able to use discretion to assess which types of red flags would deserve to be investigated and this is consistent with the "random" character of the verifications referred by the ALLA; the number, frequency and relevance of the data mismatches could allow internal control units to evaluate which officials might be making honest mistakes, just displaying weapons of the weak or hiding relevant information. Third, to the value of regularity in the investigative function because the red flags would not be generated arbitrarily, but as a consequence of identified mismatches of data. Fourth, to honesty of public officials because if Mexican officials know that what they report will be verified with third parties, they will be aware that there are more chances to detect their lies, therefore they might prefer to not hide information. Fifth, to bureaucratic opaqueness concerning personal data because, through the examples of disclosures, it minimizes the amount of public officials' personal data that would have to be publicly disclosed; it also minimizes the data that could be exchanged between the internal control units and the Secretary of the Treasury and Public Finance when it comes to the verification of PEP's Declarations. Sixth, to fairness nuanced by power asymmetries, because the financial data from powerful officials who are legally deemed by anti money-laundering rules as politically exposed persons —*i.e.* Heads of legal institutions and officials of the next three hierarchical positions below them—, though minimalist, could be subject to a heightened verification by internal control units.

Lastly, when it comes to the exchange of information between internal control units and the Secretary of the Treasury and Public Finance, this proposal shows how useful it would be to develop the portability of public officials' personal data for that matter.

3.5. Generating public information to evaluate the integrity of officials and the performance of anticorruption institutions

Proposal 3 consists in a guide to implement steps *i* and *j* with a responsive law approach, seeking to address the elusive value of *social computing for expanding anticorruption institutions' cognitive competence*, alongside the values of privacy, governmental transparency and fairness nuanced by power asymmetries.

The so called value of *social computing for expanding anticorruption institutions' cognitive competence* is, in theory, related to the variable of *reasoning* in responsive law systems which is supposed to be purposive as well as enlarged in its cognitive competence. As commented in section 3.1.4, the term "social computing" refers to a rapidly evolving field of study rather than to a human value. But, considering that corruption is difficult to detect and to prove in legal cases, social computing turns out to be something of value because it can augment Mexican anticorruption institutions' cognitive competence regarding corrupt phenomena nationwide and also can facilitate the scrutiny of public officials by society.

Another aspect to consider for this third proposal is that, according to the current legal framework, divulging democratic accountability information is something that can be done by simply putting the Declarations' information available for public consultation in the internet.

In general terms, this proposal's concern is to generate information that can be publicly available regarding the honesty and financial integrity of officials, as well as the performance of

anticorruption institutions. It relies heavily on the power of information as a trigger for changes in society.

In this regard, scholars like Kagan & Skolnick (1993)[107] have made remarks on the "authority of science" that can push changes in social behavior without coercion. The referred authors conducted a study focused in the USA's banning of smoking in public spaces and found that the initial reluctance of smokers to comply with banning regulations began to change because of a report issued by the U.S. Surgeon General in 1964 that asserted the unquestionability of the dangers to health caused by smoking. When a second report was issued in 1986 on involuntary smoking and the risks of secondary smoke for non-smokers, the report itself made it difficult for smokers "to take refuge in a libertarian ethic, claiming that cigarette smoking affected only themselves".[108]

Another example of the power of information and, perhaps, more in line to the way in which the Declarations' framework seek to prevent corruption in Mexico, is represented by the mandatory financial disclosures to investors in the securities/capital markets. In broad terms, public disclosures in securities markets are meant to provide information to investors concerning companies' actual functioning and financial statements, assuming that such information allow to take better informed decisions and exerting corporate voting rights. A non-evident problem of such mandatory disclosures is, however, that not all pieces of information can be helpful for investors nor tell the truth of a company's financial condition. For instance, under USA's jurisdiction, this last aspect has caused a number of regulations issued by the Securities Exchange Commission (SEC) and judicial cases concerning the *materiality* of disclosures or, in other words, legal innovations for answering the question of "which facts are worth disclosing to the public and which facts not?".

Likewise, the Declarations' framework seeks to divulge material information to the people so they can evaluate the integrity of public officials, anticorruption institutions and exert their democratic voting rights but the question of "which information can be material for the people's opinion?" is far from being answered in a univocal way. It seems that materiality of disclosures in both, capital markets and corruption's prevention, is something contingent to social contexts and to the problems that arise within.

Nonetheless, based on the personal information required by NAS's regulations as of today, we can outline the disclosure of certain pieces of that information that could be used for divulging discrete indicators of Mexican public officials' honesty and financial integrity before society. The following measures assume that proposals 1 & 2 are being performed.

a. Information regarding public officials' honesty. The National Digital Platform would only be able to inform whether the information that public officials declared matched with the information of third parties. This way we could get a proxy of honesty, where the more matches, the more likelihood of honesty. The Platform could also divulge aggregated information regarding types of officials (*i.e.* procurement, police, health workers, teachers and so forth) and of institutions (Federal, State, Municipal) allowing the users to filter data for knowing the overall discrepancies found (*i.e.* assets, liabilities, real estate, etc.), the type of third parties' information that is most often subject to mismatches (for example, it could happen that the most frequent mismatches occur with State Legal Entities' Registries), etcetera. The possibilities to divulge

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[107] Robert A. Kagan & Jerome Skolnick, "Banning Smoking: Compliance without Coercion," in Robert Rabin & Stephen Sugarman, eds. *Smoking Policy: Law, Policy and Politics*. (Oxford University Press 1993), pp. 69-94.

[108] See Allen Brandt (1990) as cited by Kagan & Skolnick (1993), p. 83.

mismatches of data and their correlation with corruption's prevention in Mexico are many, as long as no personal naming and shaming is enabled and if the Platform conspicuously would warn users about the existence of other causes for mismatches between databases other than officials' lying and straight froward corruption.

b. Information regarding public officials' financial integrity. This aspect of the proposal would only be applicable to politically exposed persons and consists in informing to the public the general outcomes of verifying the Declarations' according to the anti money-laundering framework. Here the subjects would necessarily have to be a little more identifiable because they hold more power, thus the only aspects that the National Digital Platform should inform are: an officials' name, office title and whether her/his financial assets and liabilities have been verified with anti money-laundering protocols. If so, it should publicly be informed whether the FIU or the pertaining control unit have initiated an investigation. For the sake of governmental transparency, the overall result of such investigations should also be reported to the National Digital Platform and informed to the public through a short statement indicating the final decisions of internal control units regarding mismatches of PEPs' data like "investigation dismissed", "public official was sanctioned/found innocent", or "investigation was transferred to criminal-law prosecutors".

c. Information regarding public officials' interests. Table 7 of preceding section 3.4 showed that the information concerning potential conflicts of interests cannot be verified with an identified third party. Aside from the names of the persons with whom officials might have interests and the surveillance of politically exposed persons' accounts, there is no possible way in which the Declarations' data could help to detect potential conflicts of interests. Moreover, neither the ALLA, NASA or the NAS's regulations, provide clear answers to, again, the question of " what constitutes a potential conflict of interests worth of being reported?". Like the issues of materiality of disclosures in the securities markets, the materiality of disclosures regarding public officials' conflicts of interests should be assessed by the main regulator and the enforcers, *i.e.* the NAS and the internal control units. Like the SEC in the USA who has issued regulatory safe harbors and instructions concerning which information should be deemed as "material" and thus reported by companies to investors, the NAS should issue clear guidelines to officials regarding which types of conflicts of interests are deemed as material and would have to be declared.

d. Information regarding internal control units' performance. The Declarations' framework and the National Digital Platform could reasonably afford generating information like: (1) how many officials are subject to an internal control units' surveillance, (2) how may Declarations are verified with third parties, (3) how many investigations are initiated, (4) how many cases end up in low, mild or serious sanctions, as well as (5) how often are the internal control units' or the Administrative Law Tribunal's sanctions repealed by the Judiciary.

e. Information about the NAS's performance. Pursuant to the NASA's text, what the National Digital Platform should conspicuously disclose here, is information concerning which measurements, indicators and evaluations have been designed by the NAS for assessing the Declarations framework. For example, one measurement that could be used for assessing the NAS's performance is whether all the third parties are collaborating for the internal control units' verifications or if there are some reluctant (with the pertaining disclosure of the reasons for such reluctancy). Consistent with a responsive law approach and the values-in-design literature, the NAS should procure to get the stakeholders' views for social computing tasks, *i.e.* the creation of measurements, indicators and evaluations. Specifically for the Declarations' framework, the NAS should make efforts to get the participation of politically exposed persons, lay officials, internal

control units, lay citizens, civil society organizations, universities, and, why not, officials' close relatives. This way the NAS could investigate on the values of each group of subjects' concern and to design accordingly all future social computing methods to be performed by the National Digital Platform.

3.6. Speculating on the Declaration's future in Mexico

Addressing the three big failures that we presented at the beginning of this Chapter would require a constant use of information technologies for the communication and exchange of data among anticorruption institutions as well as for divulging information through the internet. Hence, having an operational National Digital Platform is crucial for the future of the Declarations' of Assets and of Interests.

In addition to the contingencies connected to the development of the aforementioned technological tool, the proposals have theoretical weak points. Proposal 1's vulnerability was commented in section 3.1.4.3.1 and consists in the consideration that the tension between the values of governmental transparency and public officials' privacy is never going to be solved.

Proposals 1 & 3 discuss a model of variable disclosures but there will always be the theoretical impediment for achieving perfect information's materiality, *i.e.* finding right answers to the question "which facts are worth disclosing to the public and which facts not?". Though assessing materiality issues is possible, we should bear in mind that society can change in its values' preferences according to changes in its context, therefore, despite that they can be momentarily put into some order, the discussions and contests regarding which public officials' personal information should remain private and which should be disclosed to the public, are here to stay.

Considering that the proposals' theoretical weak points do not have an expiration date, is possible to predict that social contests and bureaucratic resistance will continue to manifest at the Declarations' framework. These issues can make us wonder whether the National Anticorruption System's Digital Platform is an artifact that will undergo what Bryan Pfaffenberger (1992)[109] designated as "technological dramas".

Pfaffenberger claims that technological dramas begin with the process of *technological regularization*, by which a "design constituency" like the group of 31 Senators who officially drafted ALLA's and NASA's bills "… creates, appropriates or modifies a technological production process, artifact, user activity, or system in such a way that some of its technical features embody a political aim, that is, an intention to alter the allocation of power, prestige, or wealth in a social formation", like what happened with the legal reforms that created the NAS and its National Digital Platform. The second process of technological dramas is *technological adjustment*, where "impact constituencies", like all of Mexico's public officials, "… engage in strategies that try to compensate for the loss of self-esteem, social prestige, and social power that the technology has caused", like bureaucracy' resistance methods[110] that are exacerbated by social stigmatization.[111] Thirdly we have the process of *technological reconstitution*, in which the referred impact constituencies "try to reverse the implications of a technology" and can also "lead to the

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[109] See Pfaffenberger, Bryan (1992), Technological dramas, *Science, Technology, & Human Values* 17.3 : 282-312

[110] See *supra* note 78.

[111] See Chapter Two's section 2.5.6.1.

fabrication of *counterartifacts*, which embody features believed to negate or reverse the political implications of the dominant system".

Drawing from Pfaffenberger's technological dramas, Mexico can be a jurisdiction where the processes of regularization and adjustment have already been put in motion. Consequently, we could predict that the NAS and its National Digital Platform will have to undergo the process of technological reconstitution. The latter is a process with psychological motives that, interestingly, coincide with the dissonant reactions predicted by Muir's theory, especially with the backlash hypothesis.

CONCLUSION

The contribution of the public policies known as Declarations of Assets and of Interests to corruption's prevention is not easy to quantify, yet the rationale behind them seems persuasive enough, so as to having several of the OECD countries implementing them. In the case of Mexico, the Declarations seem a reasonable measure for fighting the occult nature of corruption and providing the people with information to exert democratic accountability over public officials and anticorruption institutions.

However, one thing is the text of the law and another is its application in real-world cases. In Mexico, the Declarations of Assets and of Interests have not delivered the results intended, but Nonet & Selznick's theory of responsive-law can help to understand why have those policies failed and to speculate on whether those problems can be corrected.

This dissertation has argued that there are three big failures at Declarations' framework in Mexico which would have to be addressed by multiple legal institutions for promoting the laws' effectiveness and for being responsive to claims of privacy, public sector's compliance and publicly available information. I presented three proposals trying to follow the responsive-law theory by privileging discussion and investigation on legal values over legal norms, but the proposals have necessarily implied my own and very subjective judgement of values. Nonetheless, the investigation of values represents a connecting point for legal theory and technology theory, which can boost future interdisciplinary research on social computing and corruption's prevention.

From twelve values that I identified, there was one that I was not able to address through the proposals but seems important for the future success of these public policies: portability of officials' personal data. Developing that value is a plausible way to allow all Mexican internal control units to keep track of officials' wealth evolution and deterring illicit enrichment nationwide, thus could be considered as a topic for future research and possibly become a goal for future agendas of Mexico's National Anticorruption System.

Another aspect that the proposals did not cover but could be explored by future research is the administration of labor perks and career development options in Mexico's bureaucracy, particularly at the internal control units. In other words, should the career incentives of internal control units' bureaucrats be administered by each public institution's Heads or do they need an homologous treatment nationwide?

In an optimistic scenario in which the National Anticorruption System and its National Digital Platform could be responsive to the values and reduce bureaucracy's resistance, there would be an opening to the discussion on whether a technological tool could displace humans who currently work at internal control units and at the National Anticorruption System itself.

Hence, the values' identification and proposals presented here are just a few out of multiple responsive law considerations that could be elaborated to improve the framework for Mexican public officials' Declarations of Assets and of Interests.

BIBLIOGRAPHY

- Arrington, Celeste L., (2019). Hiding in plain sight: Pseudonymity and participation in legal mobilization. Comparative Political Studies, 52(2), 310-341.

- Bernard, Jack Louis (1981), Constitutional Aspects of Financial Disclosure under the Ethics in Government Act, 30 Cath. U. L. Rev. 583.

- Brewster, Rachel (2014), The Domestic and International Enforcement of the OECD anti-Bribery Convention, 15 Chi. J. Int'l L. 84.

- Brey, Philip (2007), Ethical Aspects of Information Security and Privacy. In: Petković M., Jonker W. (eds) Security, Privacy, and Trust in Modern Data Management. Data-Centric Systems and Applications. Springer, Berlin, Heidelberg.

- Buscaglia, Edgardo & Gonzalez Ruiz, Samuel (2005), The Factor of Trust and the Importance of Inter-Agency Cooperation in the Fight Against Transnational Organised Crime: The US-Mexican Example. The Management of Border Security in NAFTA: Imagery, Nationalism, and the War on Drugs, Vol. 15, No. 1.

- Dei Vecchi, Diego, *El carácter presuntivo de las presunciones absolutas*, (The presumptiveness of conclusive presumptions), Revus [Online], 38 | 2019, http:// journals.openedition.org/revus/5333 ; DOI : 10.4000/revus.5333.

- Gideon, Wendell R. (1980), Financial Disclosure Reporting and Review Requirements of the Ethics in Government Act of 1978: Problems Encountered, Army Law 1.

- Gray, Cheryl & Kaufmann, Daniel (1998), Finance and Development, International Monetary Fund; March, 1998; 35, 1.

- Gruchalla-Wesierski, Tadeusz (1984), A Framework for Understanding Soft Law, 30 McGill L. J. 37.

- Heidenheimer, Arnold J. & Johnston, Michael (eds), Political Corruption: concepts and contexts, 3rd edition, Transaction Publishers, New Brunswick, New Jersey, 2009.

- Issacharoff, Samuel (2010), On Political Corruption, 124 Harv. L. Rev. 118.

- Kagan, Robert A. & Skolnick, Jerome (1993), "Banning Smoking: Compliance without Coercion," in Robert Rabin & Stephen Sugarman, eds. *Smoking Policy: Law, Policy and Politics*. Oxford University Press, 1993.

- Morris, S.D. & Klesner J.L. (2010). Corruption and Trust: Theoretical Considerations and Evidence From Mexico. Comparative Political Studies, 43 (10).

- Muir, William K. Jr. (1973), Law and Attitude Change. University of Chicago Press.

- Mulligan, Deirdre K, Koopman, Collin & Doty, Nick (2016). Privacy is an essentially contested concept: a multi-dimensional analytic for mapping privacy. *Phil. Trans. R. Soc. A*, 374: 20160118.

- Niskanen, William A. (1971), Bureaucracy and Representative Government. Chicago: Aldine Atherton.

- Nissenbaum, Helen (2009), Privacy in context: technology, policy, and the integrity of social life. Stanford, CA: Stanford University Press.

- Nonet, Philippe & Selznick, Philip (1978), Law and Society in Transition: Toward Responsive Law (2nd printing), Transaction Publishers 2001.

- OECD (2011), Asset Declarations for Public Officials: A Tool to Prevent Corruption, OECD Publishing, Paris.

- OECD (2013), Specialized Anti-Corruption Institutions: Review of Models: Second Edition, OECD Publishing, Paris.

- Pfaffenberger, Bryan (1992), Technological dramas. Science, Technology, & Human Values 17.3 : 282-312.

- Regan, Milton C. (1995), Spousal Privilege and the Meanings of Marriage, Virginia Law Review 81, no. 8: 2045-156.

- Rose-Ackerman, Susan & Palifka, Bonnie J. (2006), Corruption and government: Causes, consequences, and reform, 2nd edition. Cambridge University Press, New York.

- Scott, James C. (1985), Weapons of the Weak: Everyday Forms of Peasant Resistance. Yale University Press.

- Shilton, Katie, Koepfler Jes A., and Fleischmann, Kenneth R. (2014). How to see values in social computing: methods for studying values dimensions. In Proceedings of the 17th ACM conference on Computer supported cooperative work & social computing (CSCW '14). Association for Computing Machinery, New York, NY, USA, 426–435. DOI:https://doi-org.libproxy.berkeley.edu/10.1145/2531602.2531625

- Stern Rachel E. (2013), Environmental Litigation in China: A Study in Political Ambivalence. Cambridge Univ. Press.

- United Nations Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders -UNAFEI- (2000), Good Governance: a mere motto or a pragmatic endeavor for a realistic strategy? (the French example of an Anti-corruption Agency), Resource Material Series No.56.

- Wang Fei-Yue, Carley Kathleen M., Zeng Daniel & Mao Wenji, "Social Computing: From Social Informatics to Social Intelligence," in IEEE Intelligent Systems, vol. 22, no. 2, pp. 79-83, March-April 2007, doi: 10.1109/MIS.2007.41.

INTERNET REFERENCES

Declaranet (Mexico's website for divulging information about public officials' Declarations of Assets and of Interests)

- https://declaranet.gob.mx/

Financial Action Task Force - FATF (also known as GAFI by its initials in French)

- 2012's Recommendations. International standards on combating money laundering and the financing of terrorism & proliferation, available at http://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF%20Recommendations%202012.pdf

Instituto Nacional de Estadística y Geografía (INEGI, Mexico) - *National Institute of Statistics and Geography*

- Results of the National Survey for Governmental Quality and Impact 2019 (*Encuesta Nacional de Calidad e Impacto Gubernamental 2019*), available at https://www.inegi.org.mx/contenidos/programas/encig/2019/doc/encig2019_principales_resultados.pdf

- Results of the National Census on Local Administrations 2015 (*Censo Nacional de Gobiernos Municipales y Delegacionales 2015*), available at: http://internet.contenidos.inegi.org.mx/contenidos/Productos/prod_serv/contenidos/espanol/bvinegi/productos/nueva_estruc/702825085759.pdf
- Information on the availability status of Information and Communication Technologies in Mexican households and their use by individuals, available at: http://en.www.inegi.org.mx/temas/ticshogares/

Organisation for Economic Cooperation and Development (OECD)

- Glossary of Statistical Terms. Available at https://stats.oecd.org/glossary/detail.asp?ID=4773

Secretaría de Hacienda y Crédito Público, Mexico (Secretary of the Treasury and Public Finance)

- List of politically exposed persons. Available at: https://www.gob.mx/shcp/documentos/uif-marco-juridico-personas-politicamente-expuestas-nacionales

Secretaría de la Función Pública, Mexico (Secretary of Public Integrity)

- first webpage for online whistleblowing: https://www.gob.mx/tramites/ficha/queja-o-denuncia-contra-servidores-publicos-federales/SFP54

- webpage with the contact information of Mexican internal control units: https://www.gob.mx/sfp/documentos/directorio-de-organos-internos-de-control

- second webpage for whistleblowing: https://alertadores.funcionpublica.gob.mx/

Secretariado Ejecutivo del Sistema Nacional de Seguridad Pública (website for divulging official information about Mexico's crime rates)

- https://www.gob.mx/sesnsp/acciones-y-programas/incidencia-delictiva-del-fuero-comun-nueva-metodologia?state=published

Senado de la República Mexicana (Mexico's Senate)

- Summary of anticorruption bills proposed before Mexico's Federal Congress for the reforms of 2015. Available at https://www.senado.gob.mx/comisiones/justicia/leyes_reglam_corrupcion.php

- Official opinion (*dictamen*) of the pertaining Legislative Commissions of Mexico's Senate that was issued prior to the ALLA bill's submission for voting (*Dictamen de las Comisiones unidas de Anticorrupción y Participación Ciudadana, Justicia y Segunda de Estudios Legislativos*), available at: https://infosen.senado.gob.mx/sgsp/gaceta/63/1/2016-06-14-1/assets/documentos/Dictamen_Leyes_Anticorrupcion.pdf

Suprema Corte de Justicia de la Nación (Mexico's Supreme Court of Justice)

- Official jurisprudence issued by Mexico's Federal Judiciary. Available at https://sjf.scjn.gob.mx/sjfsist/paginas/tesis.aspx

Transparency International

- Corruption perception index, available at https://www.transparency.org/research/cpi/cpi_early/0

University of California, Berkeley, Graduate Council & Graduate Division Lectures

- Prof. Hans Kelsen's Bernard Moses Memorial Lecture. May 27, 1952 — UC Berkeley Campus. Available at http://gradlectures.berkeley.edu/lecture/what-is-justice/

LAWS CONSULTED

International instruments

- American Convention on Human Rights (Pact of San José)

- United Nations Convention Against Corruption

Mexico

- Constitution, promulgated in 1917 - *Constitución Política de los Estados Unidos Mexicanos*

- Administrative-Law Contentious Procedures' Act (ALCP), promulgated in 2005 - *Ley Federal del Procedimiento Contencioso Administrativo*

- Administrative Law Liabilities Act (ALLA), promulgated in 2016 - *Ley General de Responsabilidades Administrativas*

- Administrative Law Tribunal's Organic Act, promulgated in 2016 - *Ley Orgánica del Tribunal Federal de Justicia Administrativa*

- Central Bank's Act, promulgated in 1993 - *Ley del Banco de México*

- Federal Income Tax Act, promulgated in 2013 - *Ley del Impuesto Sobre la Renta*

- Governmental Transparency Act, promulgated in 2015 - *Ley General de Transparencia y Acceso a la Información Pública*

- Governmental Personal Data Protection Act (GPDPA), promulgated in 2017- *Ley General de protección de datos personales en posesión de sujetos obligados*

- Federal Executive's Organic Act, promulgated in 1976 - *Ley Orgánica de la Administración Pública Federal*

- Federation's Annual Budget for the fiscal year 2020 - *Presupuesto de Egresos de la Federación para el ejercicio fiscal 2020*

- Federation's Civil Liabilities Act, promulgated in 2004 - *Ley Federal de Responsabilidad Patrimonial del Estado*

- Identification and prevention of money-laundering Act, promulgated in 2012- *Ley Federal para la prevención e identificación de operaciones con recursos de procedencia ilícita*

- National Anticorruption System Act (NASA), promulgated in 2016 - *Ley General del Sistema Nacional Anticorrupción*

- National Anticorruption System's Regulations for the Declarations of Assets and of Interests, published the 23rd of September of 2019 (NAS's regulations) - *ACUERDO por el que se modifican los Anexos Primero y Segundo del Acuerdo por el que el Comité Coordinador del Sistema Nacional Anticorrupción emite el formato de declaraciones: de situación patrimonial y de intereses; y expide las normas e instructivo para su llenado y presentación.*

- Federal Secretary of Public Integrity's rules for operating the online whistleblowing system designated as "Alerting Citizens" (*Ciudadanos Alertadores*), published the 6th of September of 2019 - *ACUERDO por el que se establecen los Lineamientos para la Promoción y Operación del Sistema de Ciudadanos Alertadores Internos y Externos de la Corrupción*.

- Federal Secretary of Public Integrity's rules for whistleblowers' protection within the aforementioned system designated as "Alerting Citizens" (*Ciudadanos Alertadores*), published the 19th of October of 2020 - *ACUERDO por el que se emite el Protocolo de Protección para Personas Alertadoras de la Corrupción*.

United States of America

- Ethics in Government Act of 1978

APPENDIX - Mexican public officials' persona data and its disclosure to the public

The NAS's regulations for the Declarations of Assets and of Conflicts of Interests are drafted as "forms" an a "manual" on how to fill those forms. This Appendix uses flow diagrams to map the information that officials must declare according to the NAS's questionnaire-like regulations. The diagrams are presented as faithfully as possible to the NAS's regulations, following the same order in which they are drafted. Section A contains diagrams of the information required as part of the assets and section B to the potential conflicts of interests. The diagrams use the symbology described in the following bullet points:

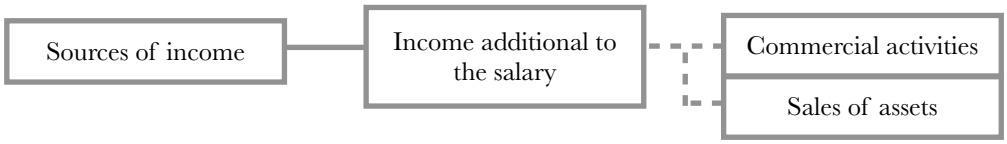
- Each box represents a piece of information that the NAS's regulations require to be declared by public officials. If an official had nothing to declare, then the value that she could provide for the box's content would equal to the value of zero. If an official has something to declare, then the box's value would be composed of numeric symbols, text characters or a combination of both.

- The boxes' content can be read from left to right. The closer to the left the more likely that a piece of information can be deemed as *metadata*, and the closer to the right as *data*.

- The boxes can be connected through either dotted or bold lines. The dotted lines indicate that the following box(es) exclude each other (logical connector *or*). The bold lines indicate that the following boxes include each other (logical connector *and*).

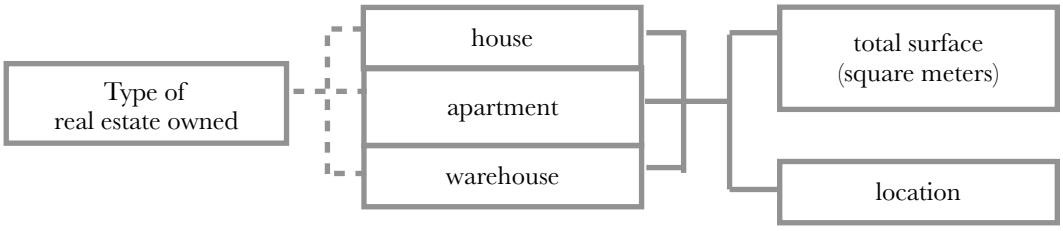
  ✓ EXAMPLE 1: If a regulatory requirement states: "The official must declare any other source of income in addition of her salary. She must also specify whether the additional income is generated by commercial activities OR sales of assets".

  Then, the diagram would represent the regulatory requirement as follows:



  ✓ EXAMPLE 2: If a regulatory requirement is formulated as: "The official must declare which kind of real estate she owns, by specifying whether it is a house OR an apartment OR a box suite OR a warehouse. For any of the previous choices, the official has to specify the total surface in square meters AND it's location."

Then, the diagram's representation would be:

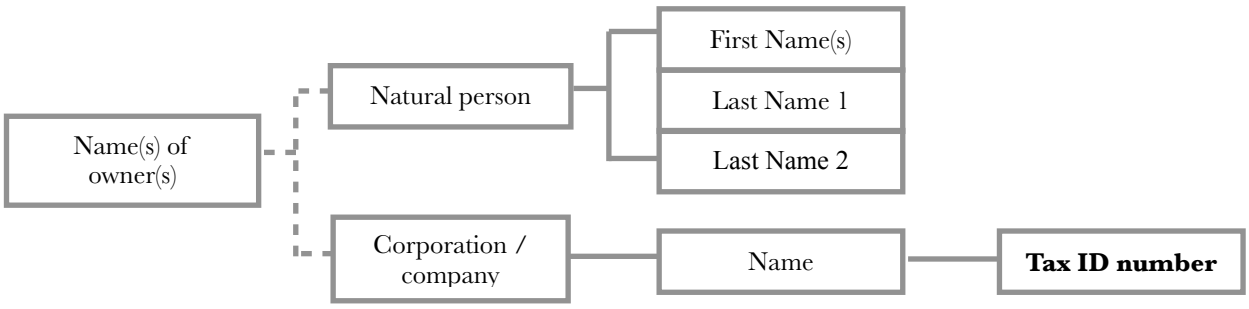


- The words in most boxes refer to their common meanings as understood in natural language. But some other boxes' wording may refer to specific legal connotations that may or may not be defined by the NAS's regulations but that other Mexican laws regulate with specificity. The latter kind of wording are "legal concepts". To distinguish between this two language alternatives, the text of the boxes referring to regulatory concepts will use bold letters.

  ✓ EXAMPLE 3: If the regulatory requirement states: "The official must declare the names of the owners of the assets by specifying whether they are natural persons OR Corporations/companies. In case they are natural persons, the official must provide the First Names AND the two Last Names. In case the owners are Corporations/companies, then the official must provide their names AND the *Tax ID number*."

  In this example, the *tax ID number* is the method of identification for taxing purposes that is issued by the Ministry of the Treasury and Public Finance which, according to Mexican Taxing laws is known as "Registro Federal de Contribuyentes" —"RFC" by its initials in Spanish— and has its own legal framework.

  Then, the diagram would show the following flow:



- The meanings of the boxes that imply legal concepts are described in the following table (in alphabetical order):

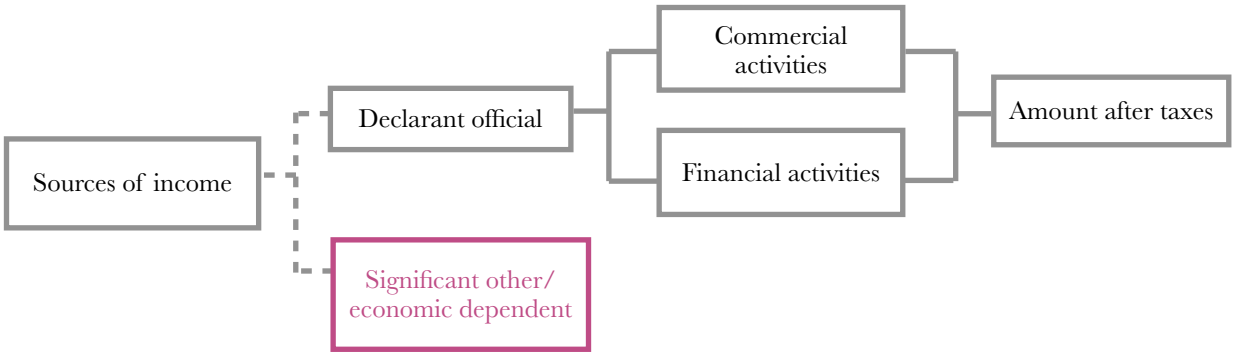
Diagram's Concept	Meaning
Administrative Unit	This term refers to any public institution's office that is identifiable within the organizational chart and which has specific functions to perform. For example, the human resources departments can be deemed as Administrative Units within their organizations.
Asset agreement	The asset agreement is similar to a contractual clause that the spouses must specify while getting married. The purpose is to establish how the spouses will distribute the assets that they may acquire thereafter. The possible distributions are co-ownership (*conjugal union*), each one their own (*separated assets*) or a combination where some assets may be co-owned and others may not (*hybrid*). The States' Civil Codes regulate these agreements.
Concubine/concubinage	It refers to the emotional relationship between two people who are not married. According to Mexican laws, a concubinage relationship is legally protected when the concubines live together for at least two years with the intentionality of being a couple regardless of their gender. The two year requirement does not apply if the concubines procreate, hence if they have a child anytime they would legally be deemed as concubines but they still ought to live together.
Conjugal union	It is a kind of Asset agreement where the spouses are co-owners, in equal parts, of all the assets that they both acquired from the date that they got married onwards.
Contractor	A person who is hired to perform a specific work for a public institution but is not part of its formal structure therefore contractors are not public officials.
Economic dependent	This concept is applied in the context of Family Law that is regulated by the States' Civil Codes and refers to any person that is legally entitled to receive an allowance from the declarant. However, the NAS's regulations define this term as "any person whose main source of income is the declarant official's support".
Foreign ID number	Any means of personal identification issued by a foreign authority.
Independent Agency	A public institution that the Federal or a State's Constitution grants with independence from the Executive, Legislative and Judiciary branches. The heads of independent agencies are usually nominated by one branch and ratified by another.
Industry Area	An industry of the national economy such as agriculture, mining, electric energy, construction, manufacturing, wholesale commerce, retail commerce, transportation, massive media, financial services, real estate, professional services, health services, etc.
Inhabitant Key	A group of eighteen alphanumeric symbols which is used as identifier for Mexico's inhabitants (regardless of their nationality) issued by the Mexican Ministry of Interior Governance —*Secretaría de Gobernación*—. The way that the Inhabitant Key is arranged can tell the gender, place and date of birth from anyone. It is known as CURP, which stands for *Clave Única del Registro de Población*, or "Population Registrar's Unique Key".

Diagram's Concept	Meaning
Proxy	The power to act on behalf of someone else. Mexican Civil and Commerce laws deem proxies as voluntary mandates derived from contractual obligations that may need to be formalized before a Notary Public depending on the kind of transaction involved and its monetary value.
Public scripture	A public scriptures is a document issued by a Notary Public and with gives legal form to multiple kinds of transactions regulated by Civil Codes (State) and Commerce laws (Federal). Public Notaries are required to register the scriptures in Federal or State Public Registries.
Separated assets	It is a kind of Asset agreement where the spouses do not have to share the assets that they both acquired from the date that they got married onwards.
Significant other	A concubine, spouse or girlfriend/boyfriend.
Tax ID number	The Tax Payer Identification Number (*Registro Federal de Contribuyentes*) issued by Mexico's Internal Revenue Service, which depends from the Federal *Secretaría de Hacienda* (equivalent to the U.S. Treasury Department).

- The data that must be publicly disclosed is highlighted using purple color.

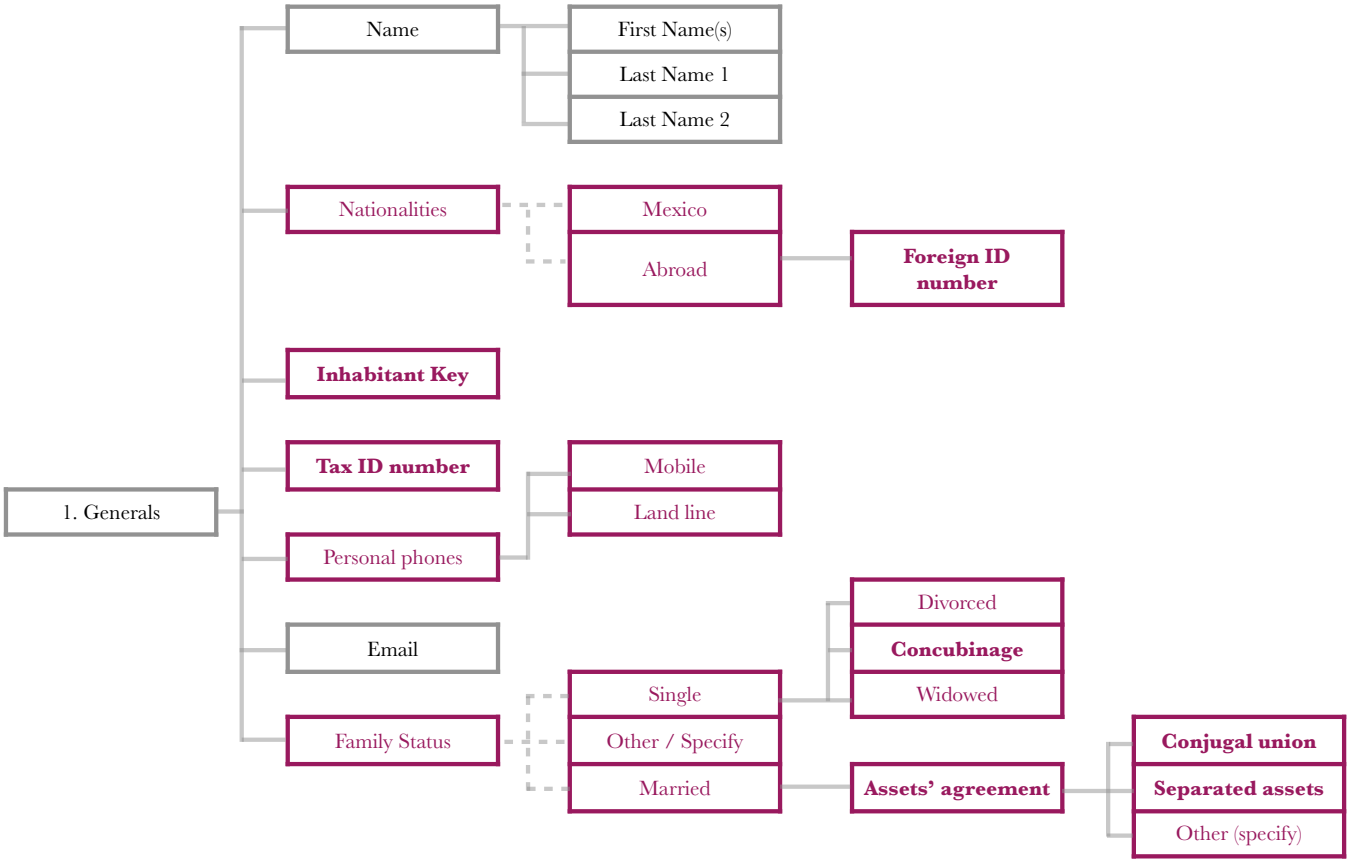
  For example, the informational requirements for "sources of income" state that an official must declare all sources of income from herself, significant others and economic dependents. It must be further specified whether the sources of income correspond to salaries, commercial activities, financial activities or sales of assets, with the pertaining monetary amounts. Also, the NAS's regulations foresee that the information regarding significant others and economic dependents is not to be publicly disclosed.

  This way, the graphic representation in the diagrams would keep in black/white colors the boxes regarding the public official's data but would highlight with purple the boxes regarding significant others and economic dependents, like follows:

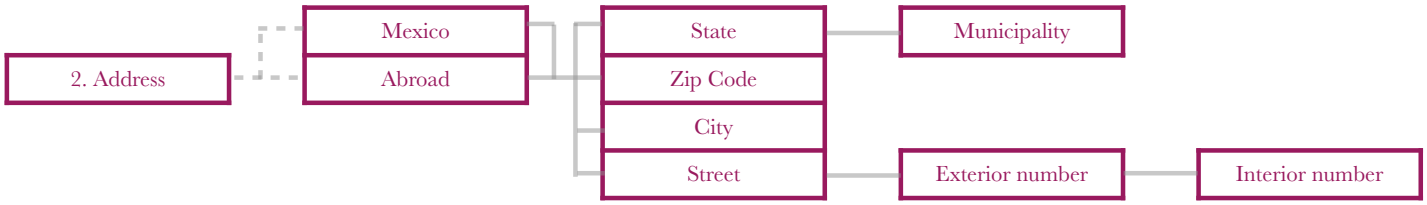


A. Information to be included in the Declarations of Assets

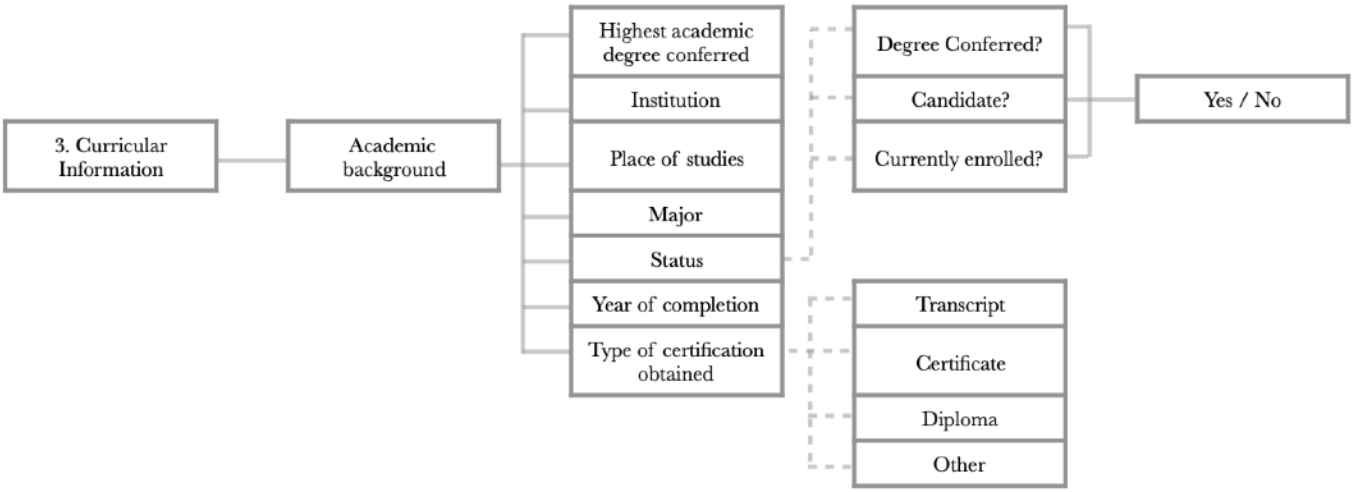
A.1. Generals



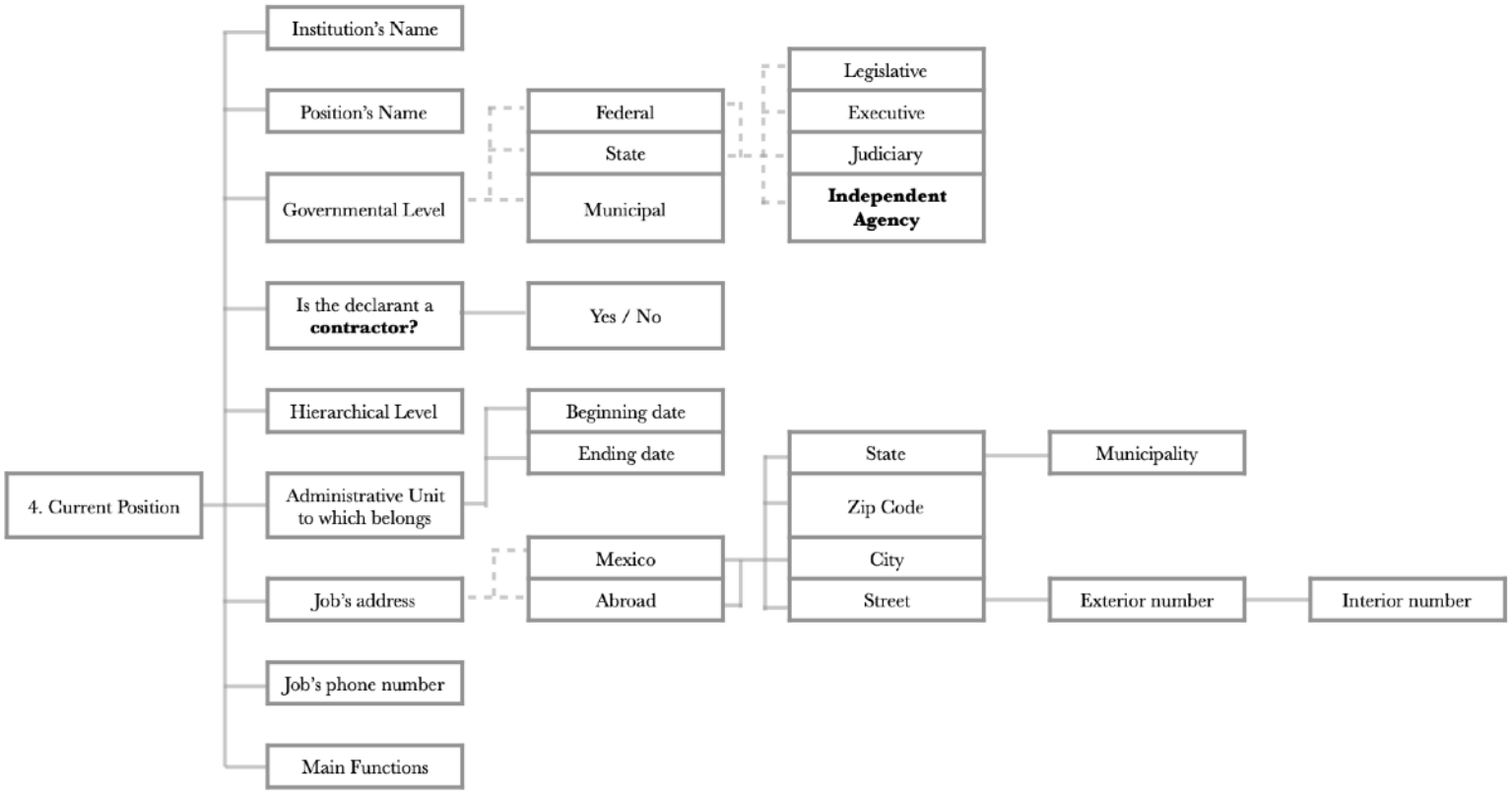
A.2. Address



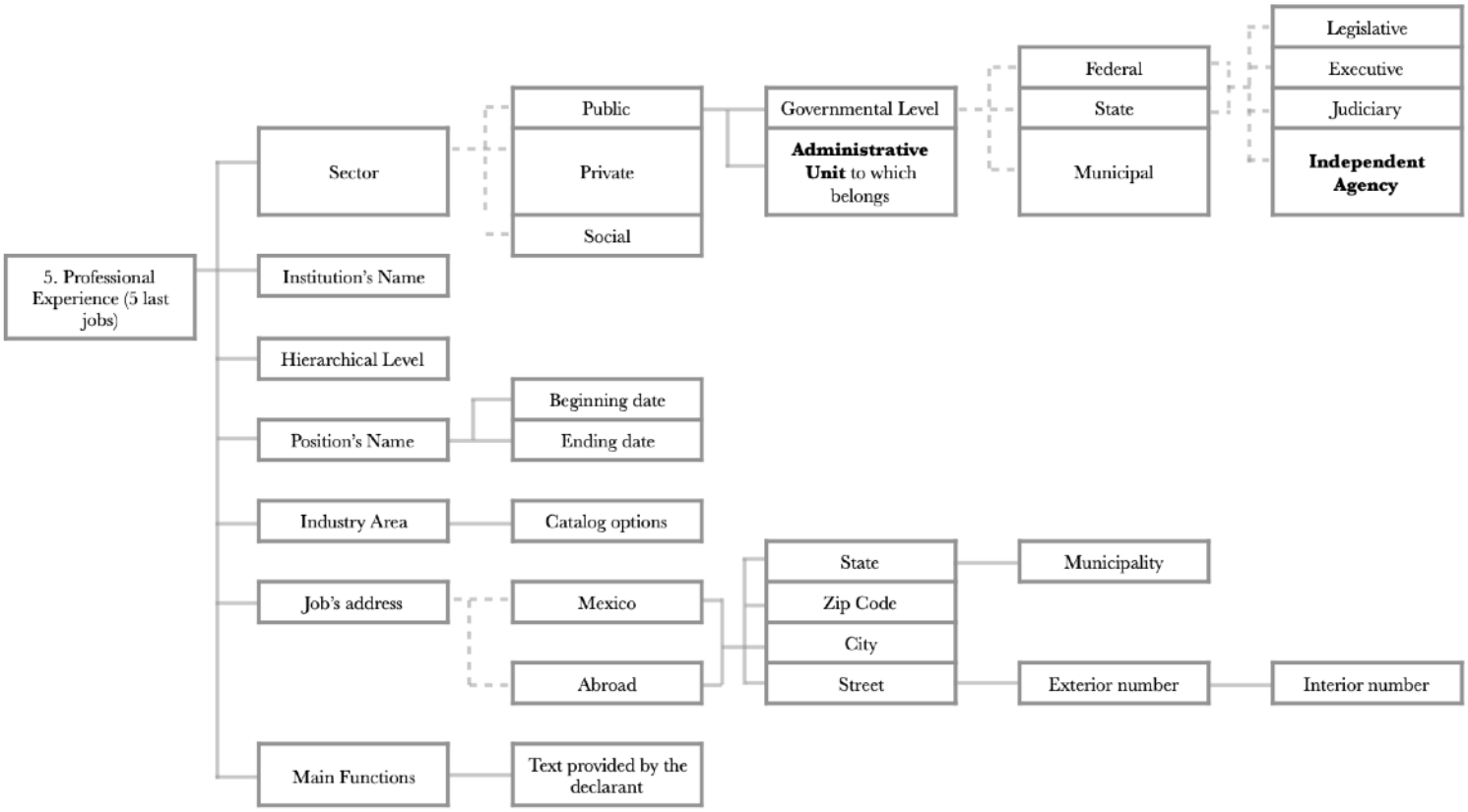
A.3. Curricular information



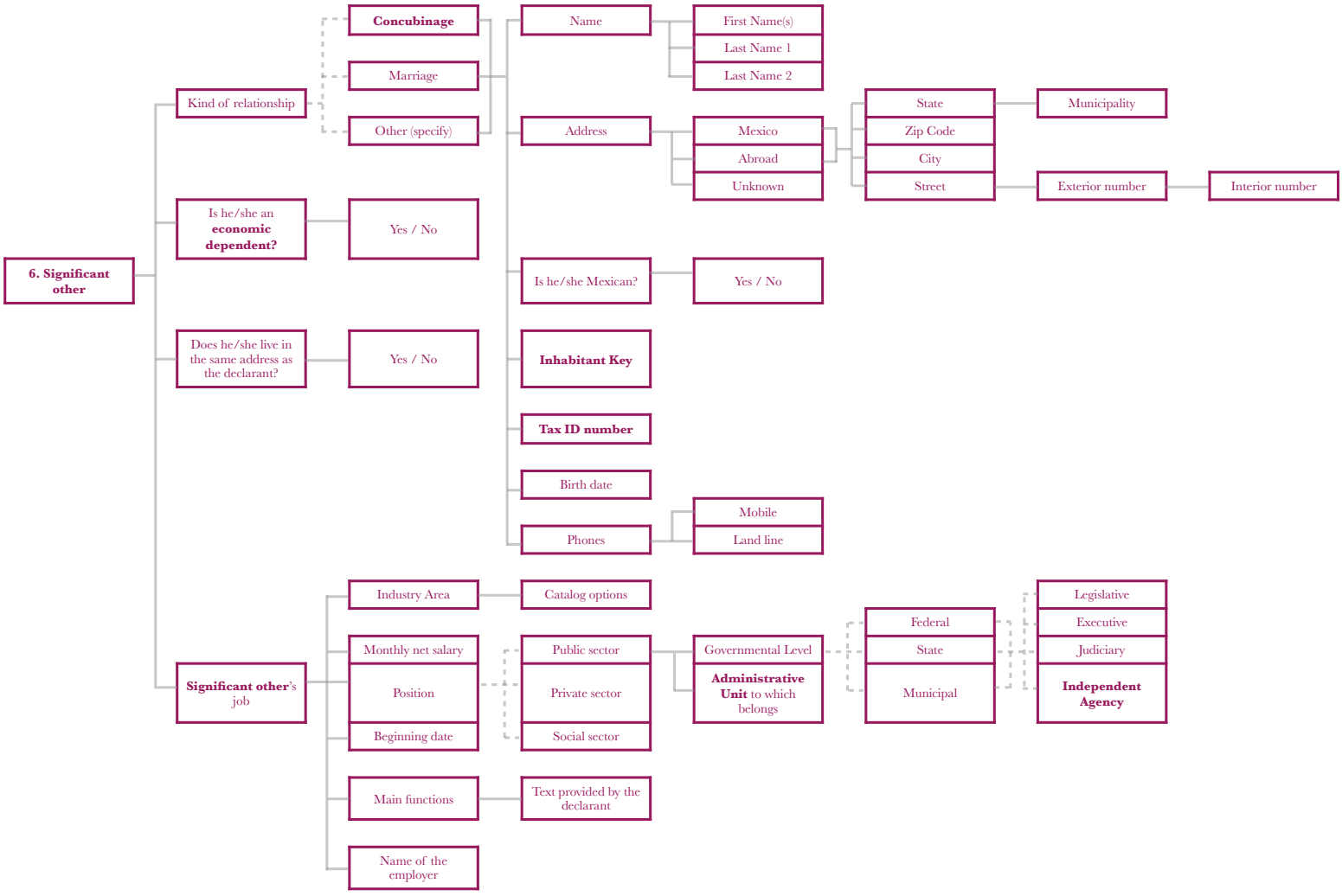
A.4. Current job's position



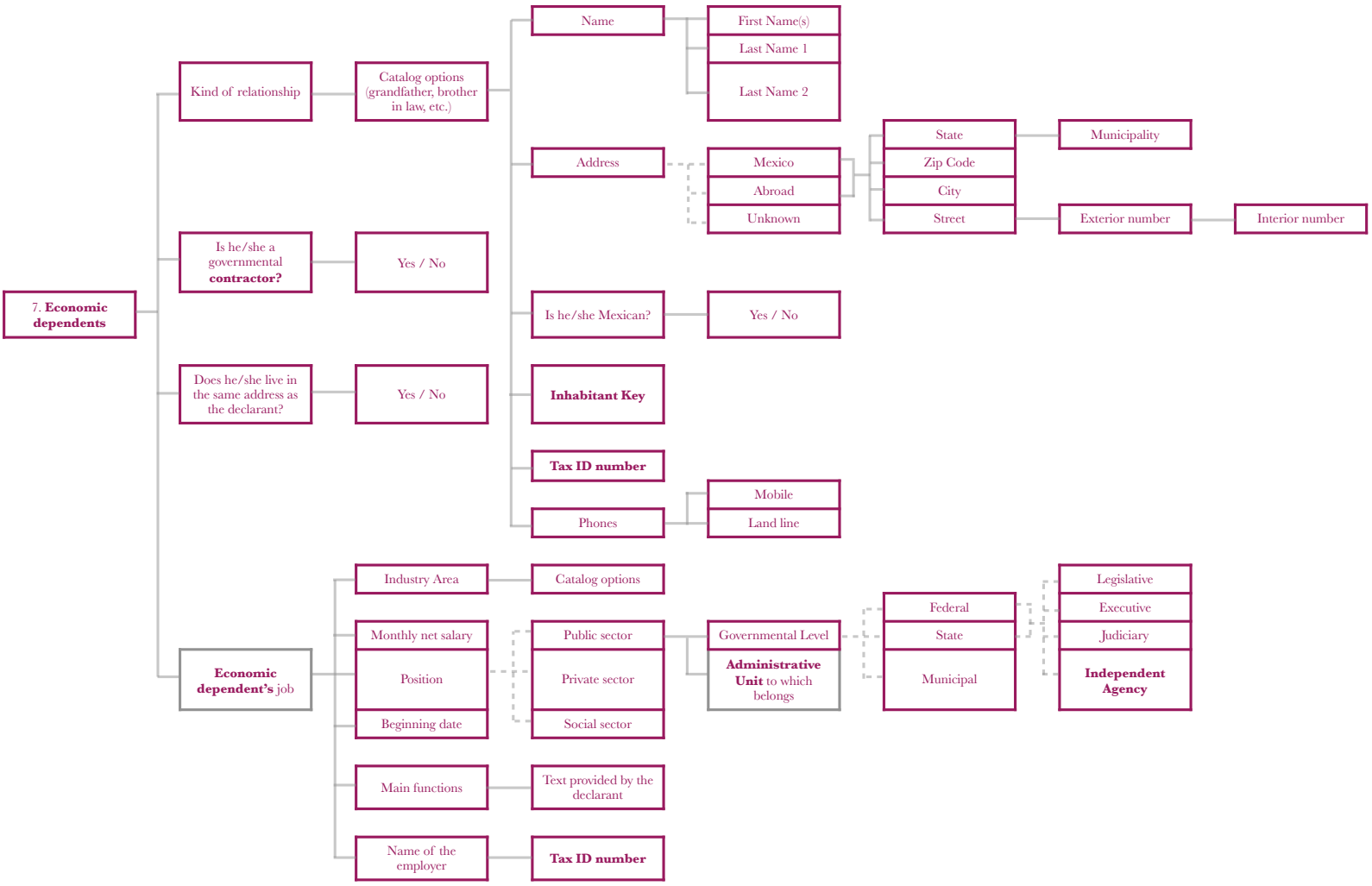
A.5. Professional experience (last 5 jobs)



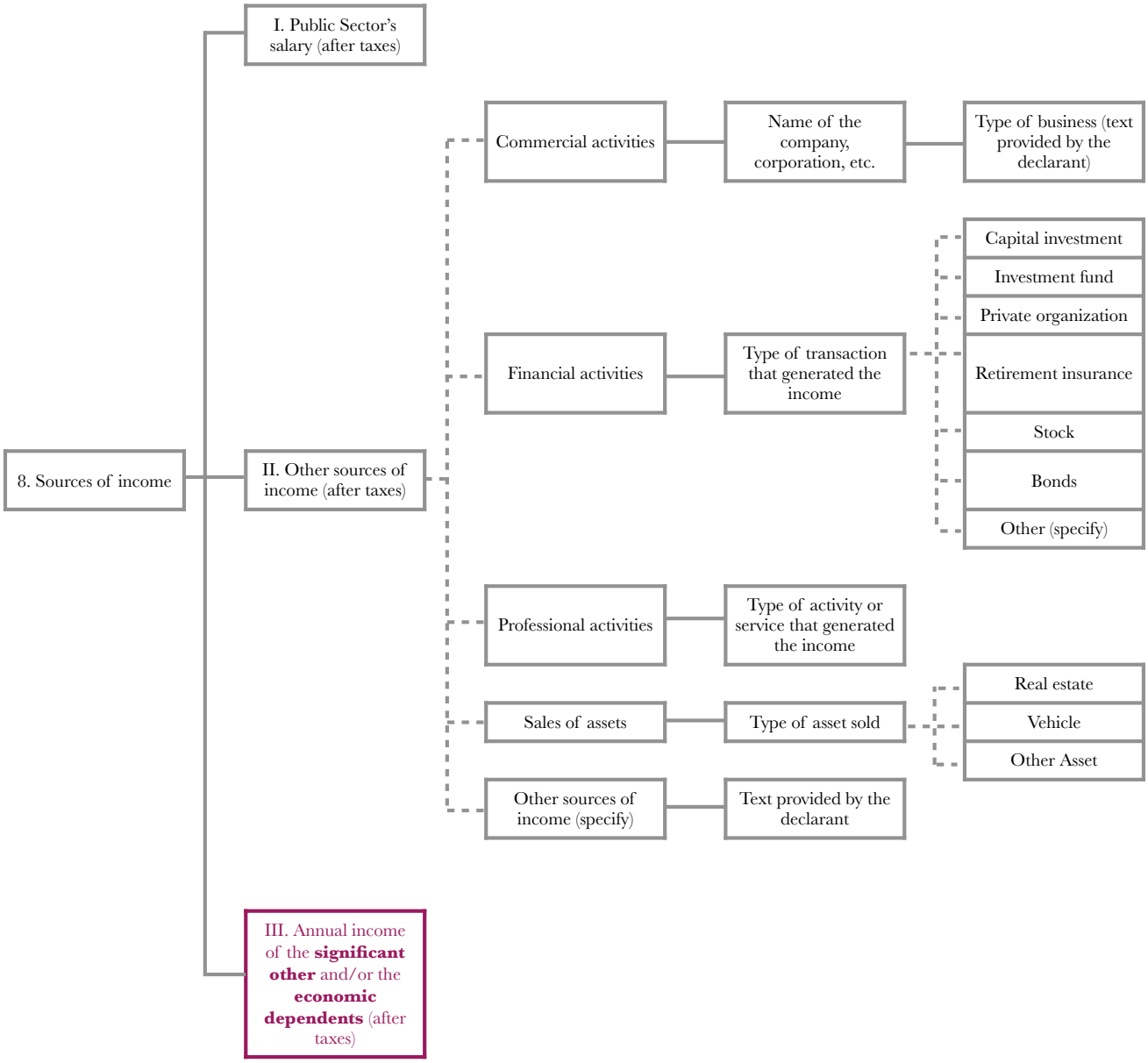
A.6. Significant other's generals



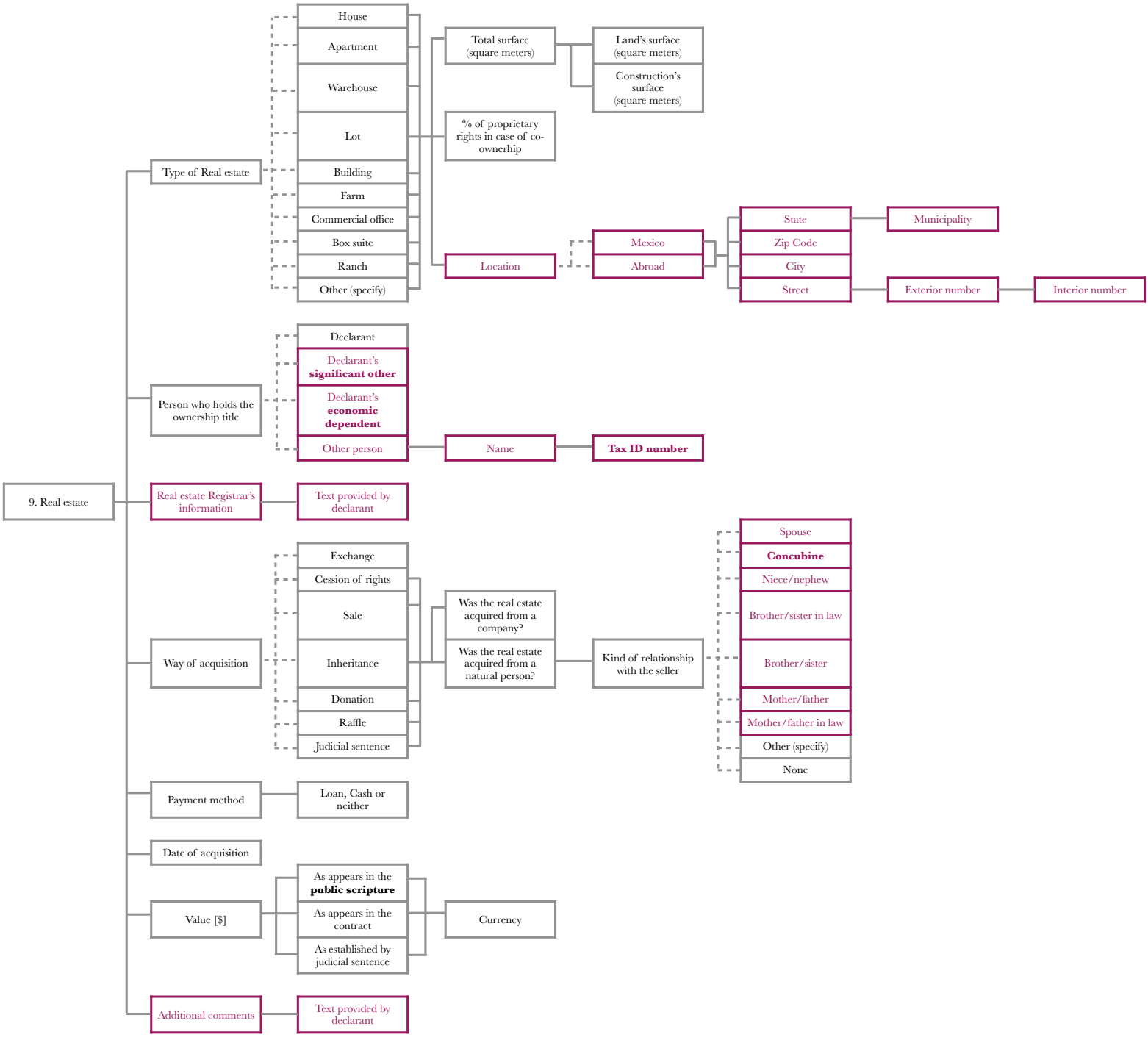
A.7. Economic dependents' generals



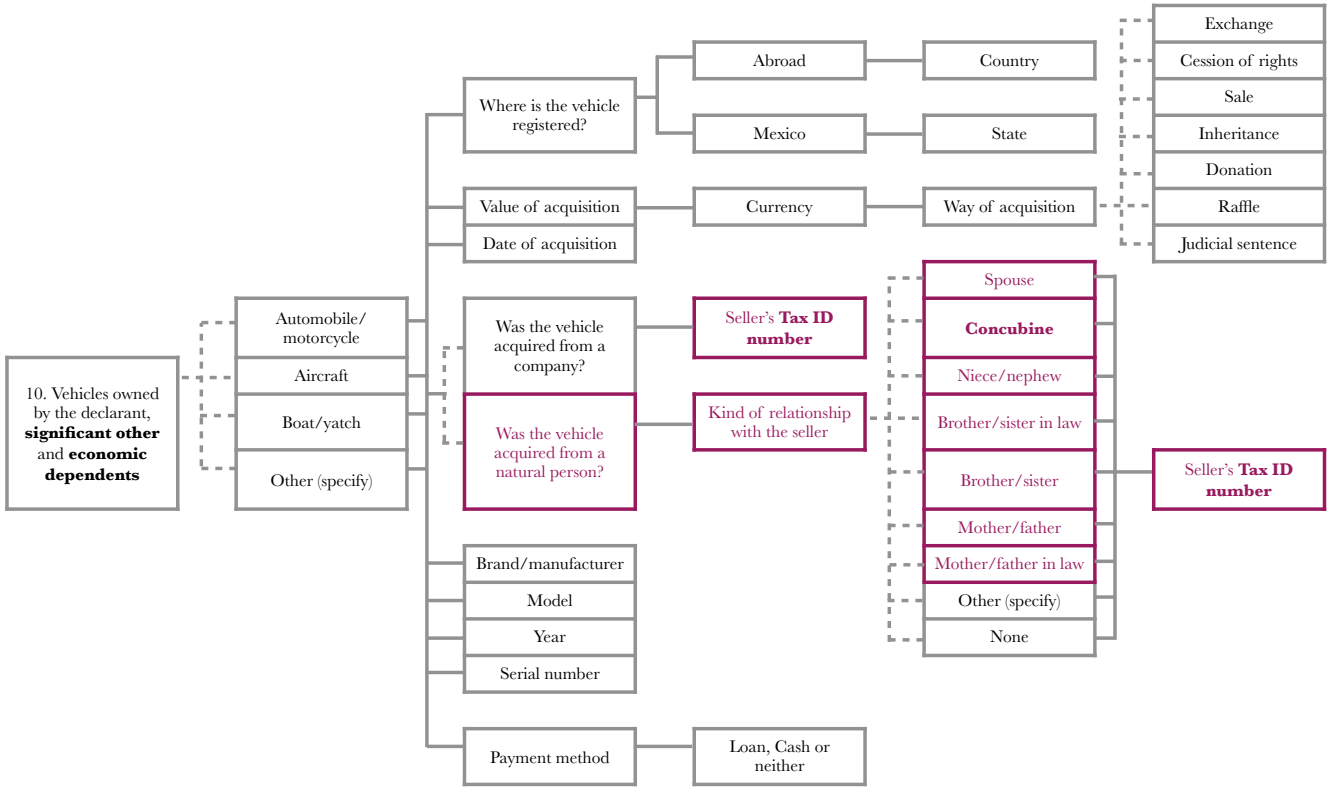
A.8. Sources of income



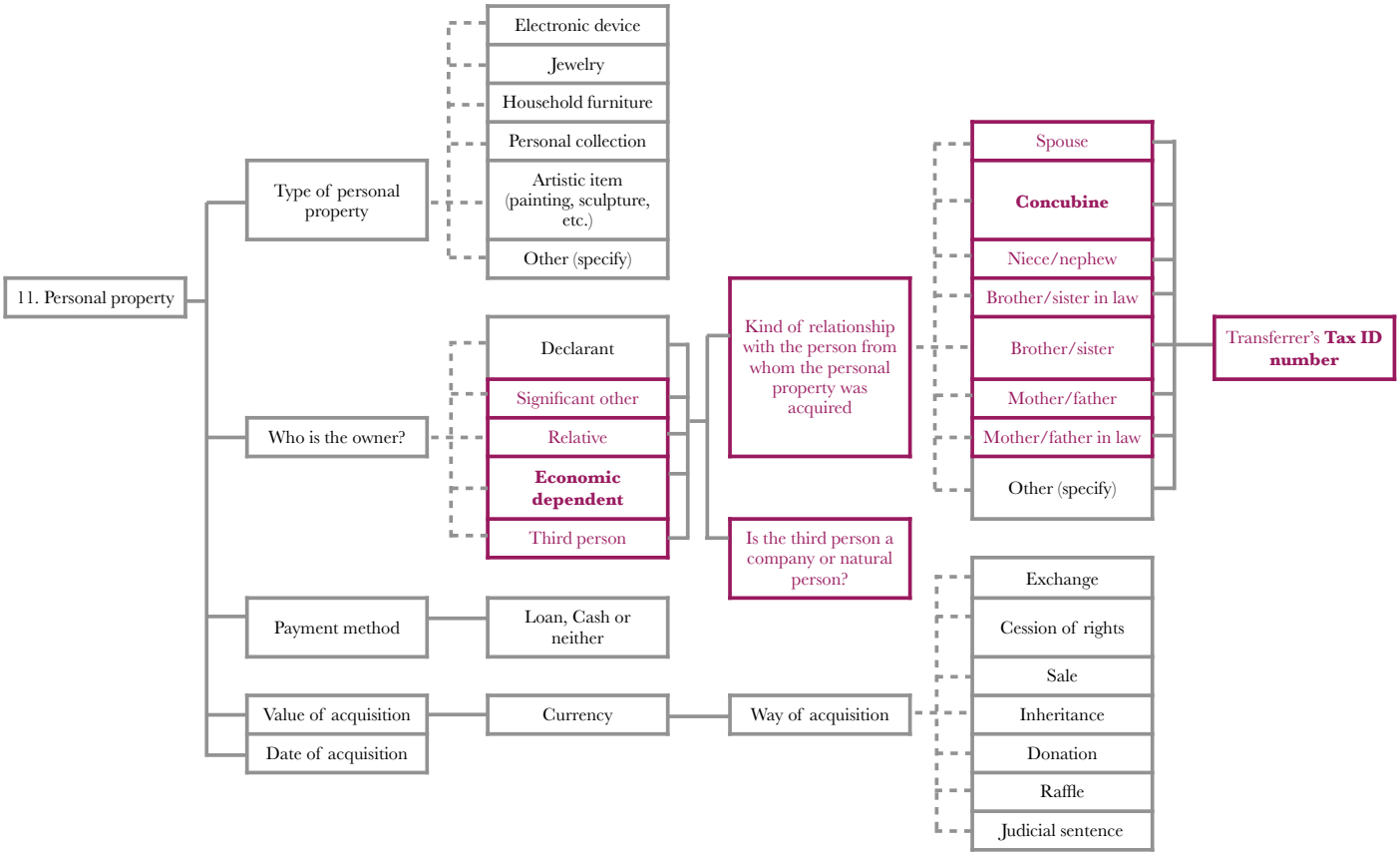
A.9. Real Estate



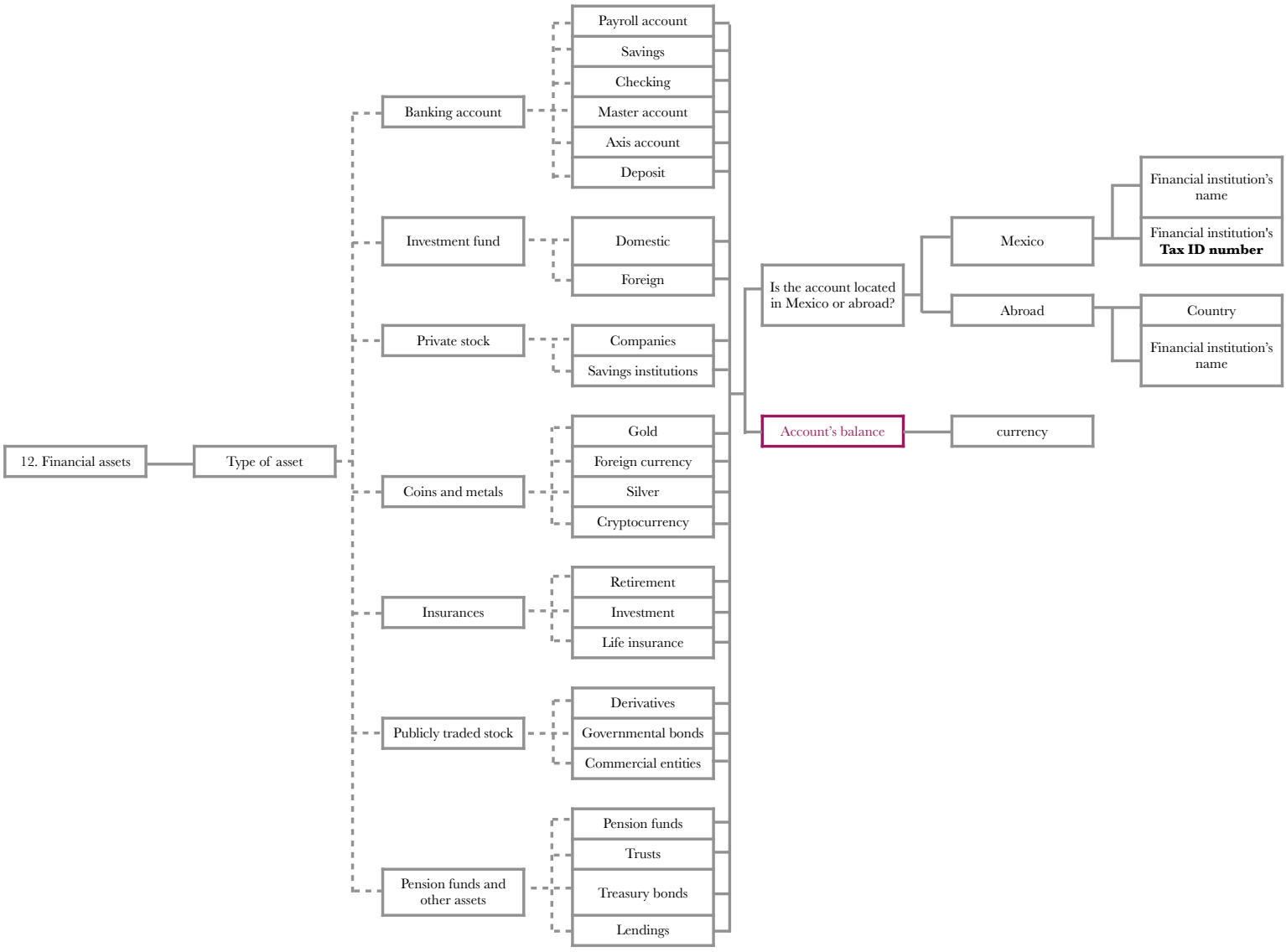
A.10. Vehicles owned



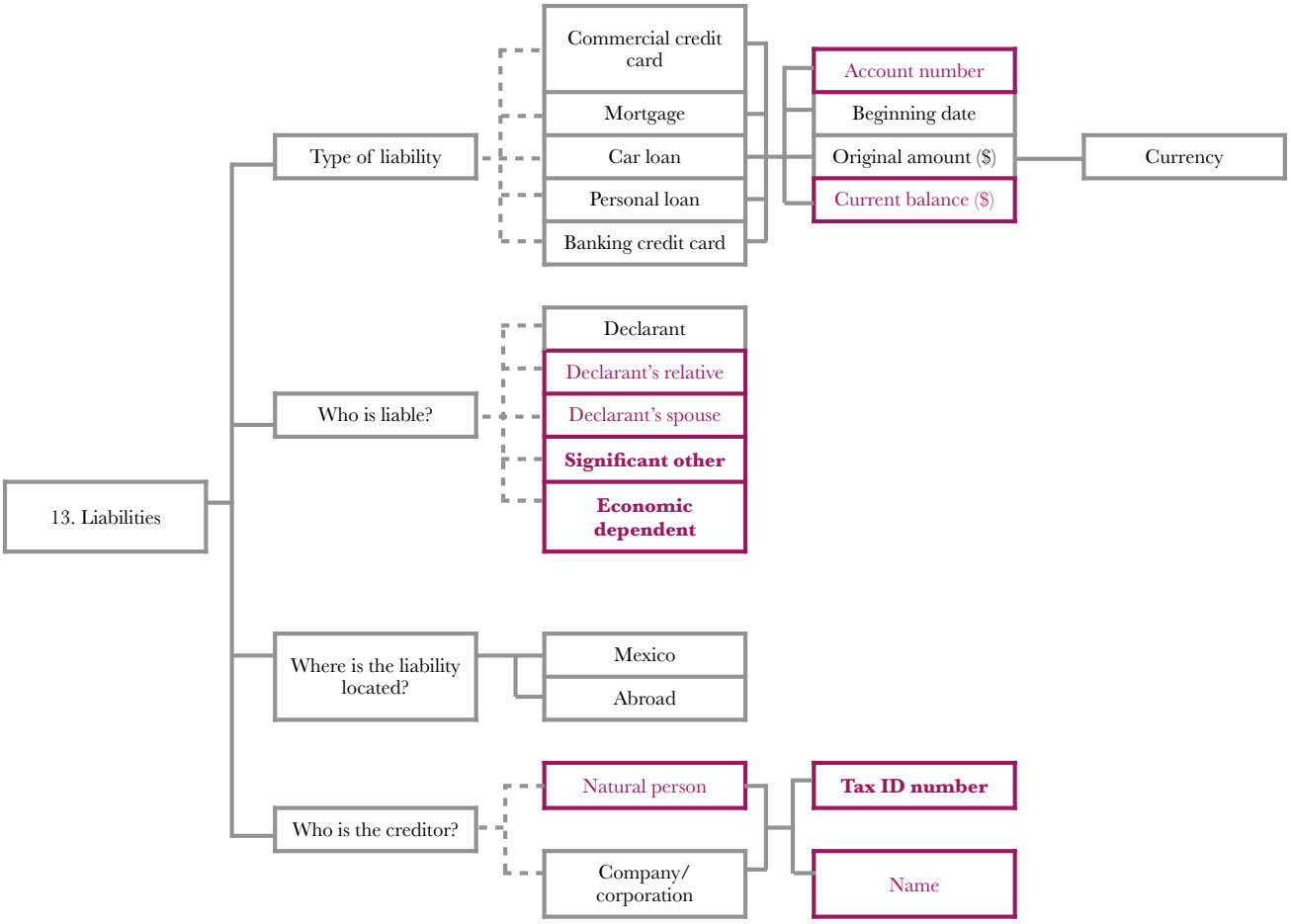
A.11. Personal property (movable assets)



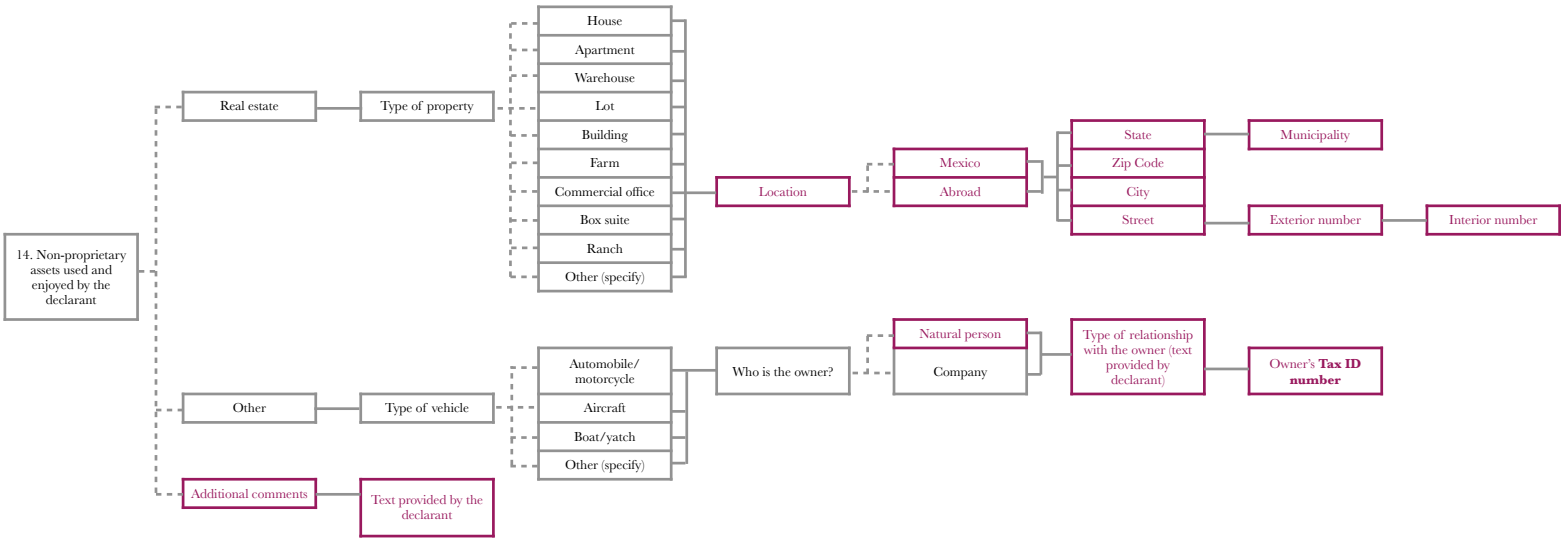
A.12. Financial assets



A.13. Liabilities

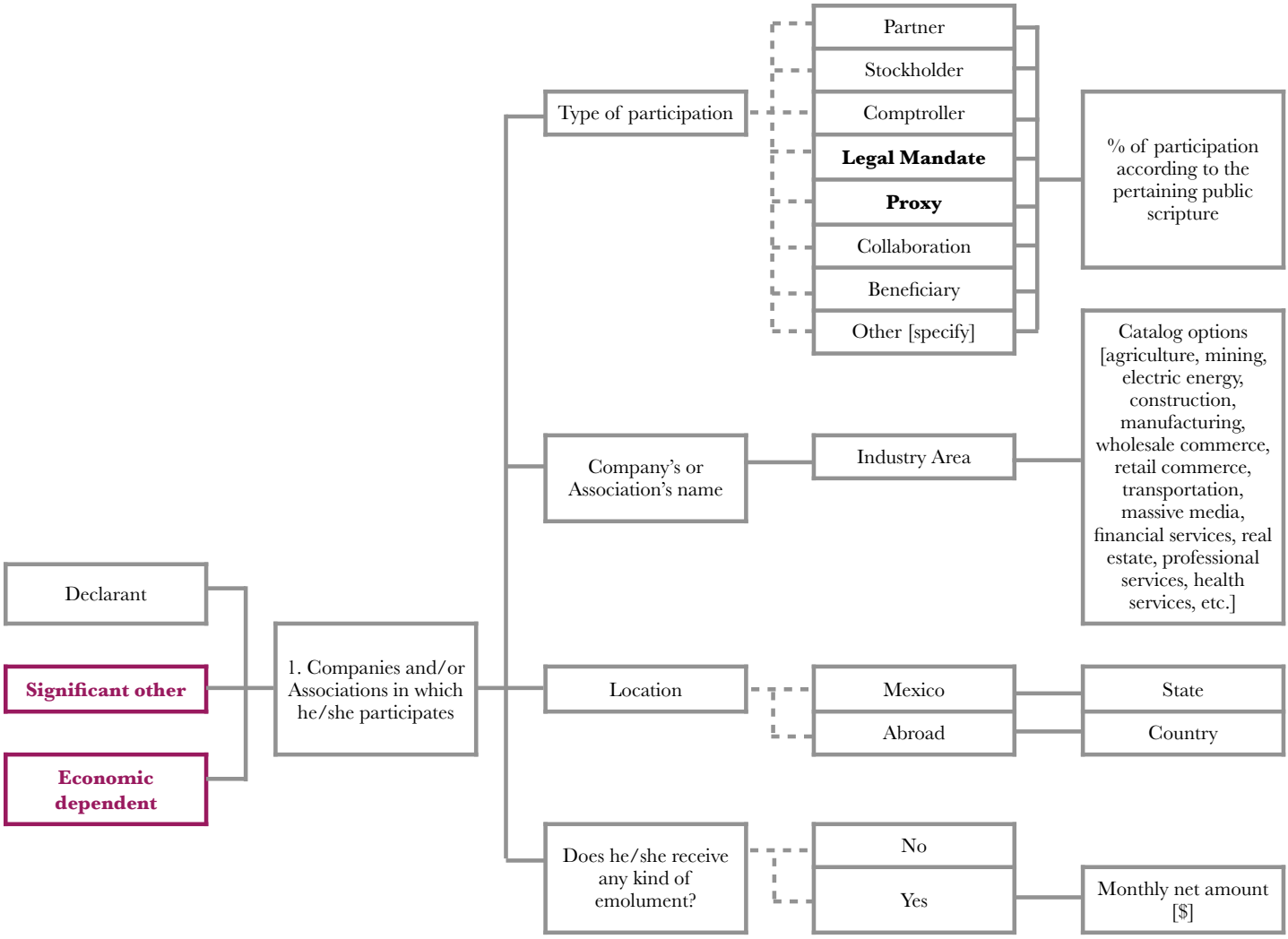


A.14. Assets used or enjoyed by the public official that are not part of her/his property

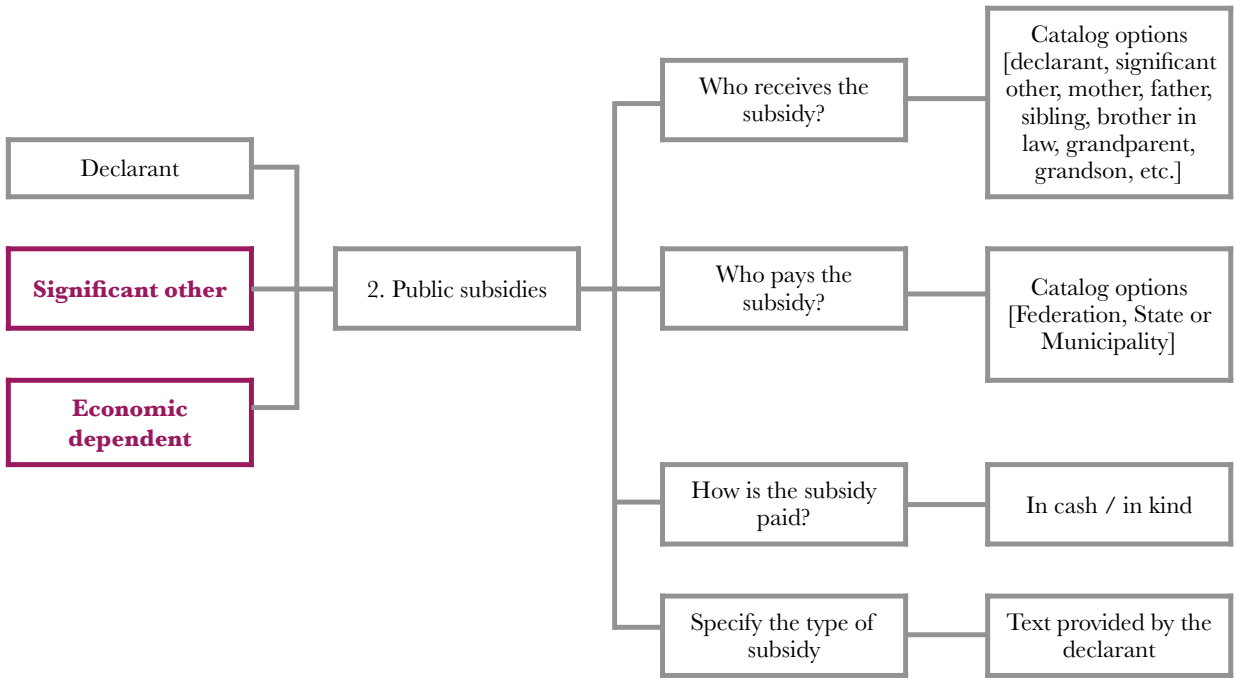


B. Information regarding the Declarations of Conflicts of Interests

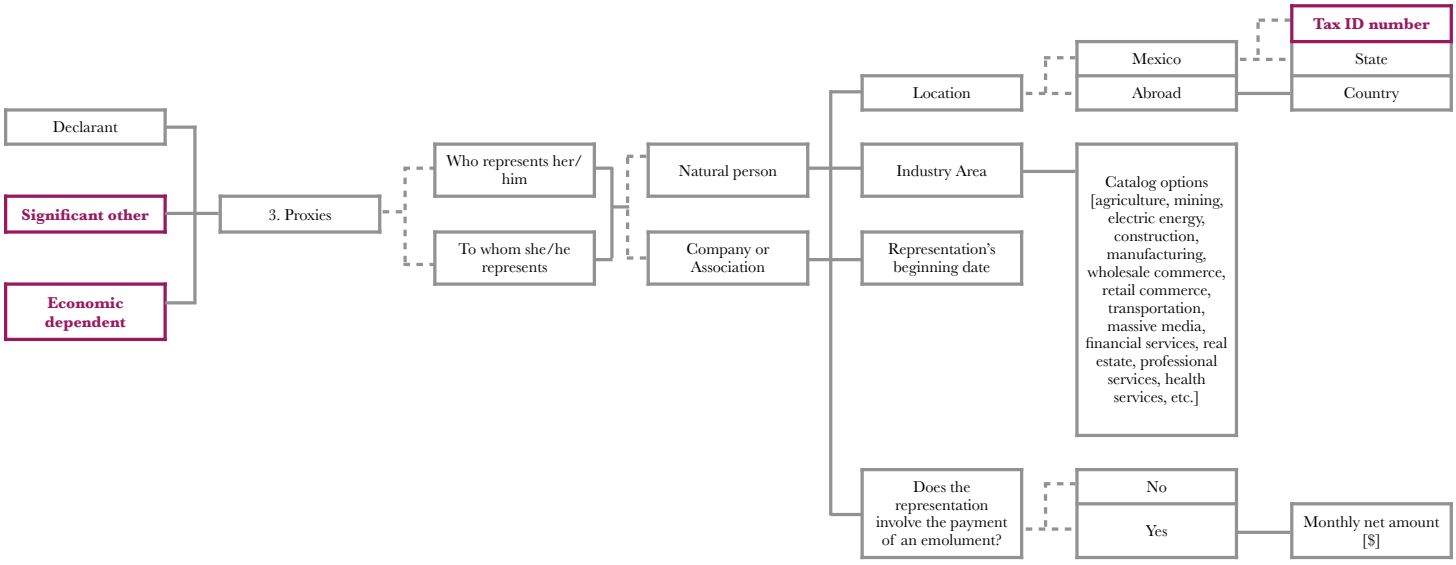
B.1. Interests in vehiclesCompanies or Associations



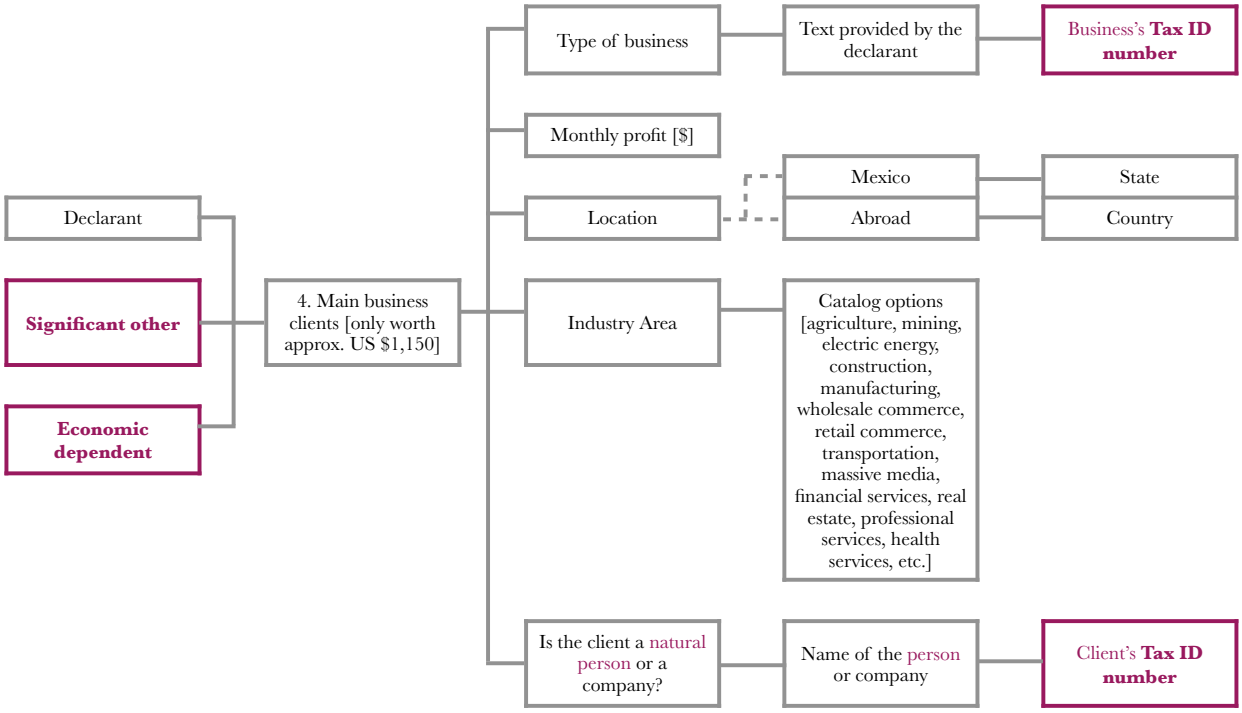
B.2. Interests in public subsidies



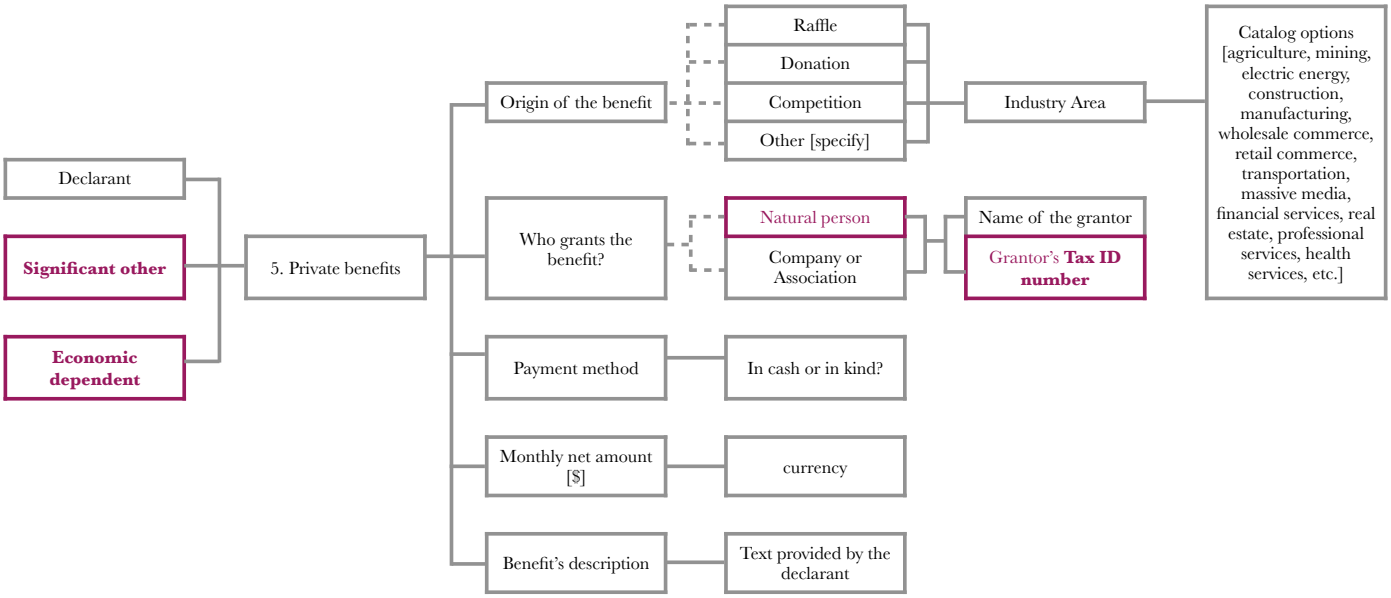
B.3. Interests that stem from proxies or legal mandates



B.4. Interests that stem from business's clients



B.5. Interests that derive from "private benefits"[112]



[112] The NAS's regulations define "private benefit" as any contribution -in kind or in money- made by a private entity to public officials, their significant others and/or economic dependents. This definition omitted to specify what constitutes a "contribution" thus it is not clear what the NAS wanted to regulate with such definition because we cannot tell the differences among sources of income, contributions, gifts, donations or investments that must also be declared in other diagrams. Thus, there are chances to have duplicated or erroneous data with diagram B.5.

B.6. Interests that stem from the participation in trusts and private funds