



# THE RULE OF LAW AND MEXICO'S ENERGY REFORM

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**Introduction — State-building, the Modernization of the Legal System,  
and Institutional Effectiveness in Mexico: Notes on the 2013–2014  
Energy Reform**

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## About the Study: The Rule of Law and Mexico's Energy Reform/ Estado de Derecho y Reforma Energética en México

The 2013 changes to the constitutional framework and the summer 2014 enabling legislation in Mexico's energy industry represent a thorough break with the prevailing national narrative as well as the political and legal traditions of twentieth century Mexico. Mexico is about to embark on an unprecedented opening of its energy sector in the midst of important unknown factors, as well as a fiercely competitive and expanding international energy market. Mexico is one of the last developing countries to open its energy sector to foreign investment, and although there are important lessons that can be learned from other countries' experiences, this does not imply that the opening will be necessarily as successful as the government promises or that the implementation of the new laws will go smoothly. Almost certainly, after the enabling legislation goes into effect, important questions of law will emerge during the implementation, and unavoidably, refinements to the legislation will have to take place.

The book "Estado de Derecho y Reforma Energética en México," published in México by Tirant lo Blanch and written in Spanish, is the culmination of a major research effort to examine rule of law issues arising under the energy reform in Mexico by drawing on scholars and experts from American and Mexican institutions in order to bring attention to the different component parts of the new Mexican energy sector from a legal standpoint.

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## Introduction\*

This compilation comprises a diverse set of papers regarding the primary issues raised by the Mexican energy reform of 2013–2014. Some of the chapters address technical topics; others refer to more general problems related to social, political, economic, and legal issues—such as public safety and the deterioration of the environment—which represent equal challenges to the success of the reform. Nevertheless, all of them allude, explicitly or otherwise, to the capacity of the Mexican state with its authority and its organizations to oversee the complex operation of the energy reform in order to ensure its positive contribution to the country’s economic growth and sustainable development over the coming decades. The challenge that the energy reform poses for Mexico is, above all, a challenge for its institutions—not only for those directly in charge of regulating the energy sector, but also those who maintain the political and legal fabric of the country. The rule of law is necessary to provide certainty to domestic and foreign economic players, as well as guarantee the conditions of sustainability that are required for the country’s development.

Without addressing the topics of the different chapters in more detail, this introduction aims to examine—in light of Mexico’s historical trajectory as an independent nation—the idea of the “challenge to the institutions,” since this may be considered a common and transversal thread that provides meaning and coherence to the set of papers making up this volume. The thesis is that the construction of the Mexican state is still incomplete, and the prospects for its success depend not only upon the decisions currently taking place on the horizon of world society, but also upon the path that process has taken in the past. Therefore, it is essential to pose the question of institutional effectiveness within Mexico’s historical and evolutionary context.

There is ample literature that addresses the capacities and effectiveness of institutions. This is a subject that concerns international financial organizations, such as the World Bank or the International Monetary Fund, when granting loans and assistance to developing countries, since they trust that the beneficiaries will have the capacity both to carry out the agreed-upon projects and to minimize the risk of losing money due to inefficiency and corruption. However, the leaders of these countries—whether or not they have a genuine interest in the successful development of their nations—are also concerned with knowing whether they will have the necessary materials and human resources, as well as institutional capabilities, at their disposal to face the challenges of a world society. These challenges frequently arise unexpectedly from external sources, which can include natural disasters, economic crises, and epidemics. In other cases, the challenges are associated with changes and reforms that governments choose to adopt voluntarily as part of their internal political program, although these also frequently occur during situations of crisis and under strong internal and external pressures.

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Mexico's situation after 1982 is a good example. Stricken by a deep financial crisis, the government of President Miguel de la Madrid (1982–1988) determined that a “change of course”<sup>1</sup> to set a new basis for the development of the country could no longer be postponed. In economic matters, the new course involved the promotion of growth by incorporating the Mexican economy into the global market through exports and private investments that were mainly of foreign origin. One central piece of this strategy was the North American Free Trade Agreement (NAFTA) that was agreed upon by Mexico, the United States, and Canada and went into effect on January 1, 1994. In political matters, a gradual democratic opening took place, characterized by the increase of pluralism and alternation between the political parties in power at different levels of government. At the intersection of these two processes lay the need to establish a true rule of law based on respect for legality and human rights.

The “change of course” that started in 1982 and the energy reform of 2013–2014 are a part of this process, which has yet to be completed. Indeed, some goals appear to be further out of reach now than at the start. There is a widespread impression that the gap between the challenges in establishing social harmony by means of civil society rules and the institutional capabilities to resolve such challenges is not only permanent, but will actually increase. Why is this? A part of the answer is offered by the concept of “world society,” which has been elaborated upon by authors such as John W. Meyer and Niklas Luhmann using different theoretical perspectives. According to these scholars, it is not nation-states and their relations with each other that build today's globalized world beyond their borders; rather, it is the structure and institutionalized culture of world society that define the main requirements and the parameters within which national policies operate, independent of whether the state in question has the capacity to carry out such policies.

In the case of the energy reform of 2013–2014, there is no doubt that to a large degree, its success depends on meeting a global standard of managing and regulating the country's energy resources in order to attract the capital and investments needed for their efficient exploitation. Mexico certainly does not control the global market, which—like the international prices for oil and gas—may change in a capricious manner. However, what *does* lie within its power is taking measures that will increase the probability of the reform's success. The country is not facing the same dramatic situation as in 1982, but although many of the changes implemented since then have resulted in conditions that are advantageous compared with those of other nations, its institutions are fragile—due in part to their relative novelty, and also to the growing complexity of the political and legal environment in which they are developing.

This paper is divided into four sections. First, we will briefly address some relevant theoretical ideas on the topics of the state's institutional capacity and the effectiveness of the legal system. For this purpose, we will employ a schematic reference of the concept of “world society” as explained by John W. Meyer and others, keeping in mind that a global society is a factor in the functioning of the nation-state, and not just an external or contextual space in which a nation-state is embedded.

The second section provides a summary of the main stages of state-building that have occurred since Mexico's independence. This construction has been linked with what we may call "modernizing cycles" of the legal system. In order to elucidate the context that surrounded the energy reform of 2013–2014, in this section we will offer a description of the most recent of these cycles, which began in 1982. This cycle is characterized by the creation of new institutions and changes to existing ones, as well as by the growth and increasing complexity of the normative apparatus at both the legislative and judicial levels.

The third section proposes a consideration of some institutional challenges that are posed by the energy reform. Specifically, we first examine the role of the executive branch vis-a-vis other institutions and its unique relationship with the regulatory organizations in the energy sector. Second—taking into account both the legal complexity of the energy reform as well as of the judicial apparatus itself—we examine the unique role that the courts will need to play in the resolution of all kinds of difficult issues that arise during the process of implementing the reform.

The fourth section contains some brief final thoughts. There, we conclude that although the formation of the state, of a culture of legality, and of democratic accountability occurs simultaneously and has yet to be completely achieved—which does generate considerable uncertainty regarding future success—there are also signs that the past transformations have been profound and, to a large extent, irreversible. This conclusion leads us to the moderately optimistic assessment that, although there is a steep learning curve, Mexico has most of the institutional pieces in place that are required to overcome this difficulty. In particular, there are undoubtedly signs that the Mexican ruling class responds not only to its own interests but also to the scrutiny and pressures coming from civil, national, and international society. This fact makes it likely that over the long term, the reform will take an efficient and proper course.

## **World Society as the Horizon for the Development of the State and the Law**

In the 1970s, John W. Meyer and his collaborators began developing a neo-institutionalist framework that conceptualizes world society (which they initially called *world polity*) as a *global culture* (see, for example, Meyer et al. 1997). This framework identifies a visible convergence in the development of nation-states, which is explained by the global institutionalization of a transnational culture that was essentially formed with the secularization of Christianity. The *world society* represents the central criterion of the legitimacy of these states and has effects in fields that are very different from politics: education, health, science and technology, gender equality, and constitutional framework and legal order (Greve and Heintz 2005).

This transnational culture—which promotes rationality, justice, progress, and individualism as central values—is codified in international treaties and agreements and is rendered operational through action plans that are implemented in different countries via

a dense network of governmental and nongovernmental organizations. This focus does not ignore the fact that the structural similarities between states and their policies exist on a formal plane while the factual inequalities occur at the level of social reality—inequalities that may remain the same or even increase. However, the fact that the gap exists does not prove an obstacle to the dissemination and adoption of transnational culture on the local level (Greve and Heintz 2005).

The theories regarding world society<sup>2</sup> have interesting consequences for the conceptualization of the state, the law, and institutions in general, as well as for their mutual relations under the current conditions of globalization. The first implication is that the *institution of the state itself has become globalized over the entire planet* in such a manner that, currently, there is practically no territory that does not belong to the sovereign realm of a state. Meyer and his colleagues assume that world society submits states to strong pressures to achieve their conformity with certain *minimum standards of governability* of their territories. The states adopt the institutions and policies that are a part of the worldwide culture of modernity (“isomorphism”), because their political legitimacy depends on them. This adoption occurs despite the fact that for the majority, a gap emerges between the demands and expectations of the world society and the internal capabilities of each state to respond to these expectations (Meyer et al. 1997).

Regarding the *law*, these authors start with the premise that *a legal culture exists on a global level*. In an extensive essay co-written with Elizabeth Heger Boyle, Meyer develops the legal implications of his vision of world society. Modern law, they write, is formed through the secularization of principles and values of an essentially religious type, which arose in Western civilizations and which have been globalized through the nation-state: “Thus, legal systems are a constitutive element of that form of society known as the nation-state. The two arose concomitantly, each lending legitimacy to the other. National legal systems emerged more through the global system than through local organization” (Boyle and Meyer 2002, 68).

Boyle and Meyer also point out that the vision of the nation-states as secular players that make legal decisions in an autonomous manner is erroneous, because it ignores the supranational character of the law:

The rise of the state indeed essentially destroyed the organizational authority of the church, but it did so, in our view, by absorbing, and thus becoming dependent on, a secularized version of the wider culture carried by the church. The processes are dialectical and continue throughout modern history. In claiming autonomy and sovereignty under various secularized principles of rationality and universality, both the nation-state and the law that is partially its creation intensify their dependence on these secularized principles. (Boyle and Meyer 2002, 69)

World society offers particular conditions that promote the quick diffusion of legal ideas and institutions. Meyer and Boyle emphasize the fact that states generate legitimacy to the extent that they respond to universal principles, and the law becomes an important symbol of the



acceptance of these principles. Legal science and legal professionals—primarily attorneys and judges—actively participate in the circulation of ideas and legal institutions such as human rights, due to the universal scenarios on which they are based and despite the diversity of conditions and practices to which they apply (Boyle and Meyer 2002, 74 et seq.).

What degree of effectiveness should be expected from the legal system on the horizon of world society? First and foremost, it is difficult to achieve the “Western ideal” of the rule of law—which we understand as a system of government and social relations guided primarily by legal standards and values—particularly in those societies whose regulations have essentially formed through “transplants” and “imports,” as in the case of Mexico. For Boyle and Meyer, the role of the law in world society is not functional or repressive, but rather depends on the links it creates with principles of universal culture and as a source of the identity and legitimacy of individuals and nations; as a result, one should not expect a high level of correspondence between the law and action, but rather an “extreme decoupling” with regard to social life (Boyle and Meyer 2002, 66-67 and 81 et seq.). The disconnect is neither an accident nor strictly a “deficiency” of legal culture, but a central element of the national project and a characteristic of any rationalized organization, to the extent that the rules that govern it—as is the case with legal standards—respond to external ideals.

The decoupled character of legal systems is sometimes (and rather reasonably) taken to be an indicator of their ineffectiveness and functional unimportance. This may be realistic in dealing with some traditional legal systems, but misses important points in approaching the modern one. The modern system is decoupled precisely because it is so linked to universal models and standards, despite the limited and variable character of local social life. (Boyle and Meyer 2002, 82-83)

In summary, although these ideas regarding world society are situated at a high level of abstraction and generality, they offer an initial and relevant perspective from which to identify the institutional challenges of the 2013–2014 energy reform in Mexico. Based on these ideas, it can be asserted that some of the deficiencies and weaknesses that are observed in the legal system and institutions in Mexico have their origin in world society. They are a result of the demands that world society continually imposes on the Mexican state as an integral part of the global order, as well the institutional proposals that exist to respond to these demands.

As we will see in the following section, the construction of the Mexican state has been carried out over different stages and through different modernizing cycles of the legal system. These stages and cycles precipitated a gradual opening toward the outside world, which has permitted the incorporation of new institutions intended to respond to the expectations of the global culture at any given time. When they are first incorporated, such institutions may be revealed to be ineffective and dysfunctional, expanding the gap between the ideal standard and social reality. This is because any institutional innovation, regardless of its origin, is incorporated within a political and legal apparatus already in operation, into which it must be integrated and adapted gradually. A long period of acculturation and learning is required so that the new institutions can function in a

reasonably efficient manner; however, by then, it is very likely that the demands facing the institutional apparatus have changed once again.

## **The Construction of the Mexican State and the Modernizing Cycles of the Legal System**

The energy reform of 2013–2014 faces international challenges that cannot be fully understood without reference to history. In this section, we will provide a summary of the major stages of Mexican state-building, as well as the major cycles of legal modernization that accompanied them.

### *The 19th Century*

For almost 50 years after achieving independence in 1821, Mexico's political scene was characterized by extreme instability as a result of the ongoing struggle to define political and constitutional rules. Indeed, the initial consensus in 1824 in favor of a presidential and federal republic—which was modeled to a large extent on the Constitution of the United States—was promptly followed by disenchantment and the division of the political realm into factions that became increasingly irreconcilable. As a result of near-constant military revolts and episodes of dictatorial rule, power shifted between centralists and federalists from 1824 to 1867. These shifts were marked by profound antagonism that was generated between these factions with regard to the relationship between the state and the Roman Catholic Church. While conservatives considered religion a central factor of identity and did not wish to substantially change the colonial arrangement that had sustained it to that point, liberals attempted to emancipate society, education, and the economy from the ecclesiastical domain. However, both factions were promoting the implementation of a republican regime that was, all things considered, quite far removed from the “uses and customs” of the colonial society they were intending to overcome.<sup>3</sup>

In 1857, as a result of another revolution, a moderate, liberal constitution was promulgated. Like the majority of its predecessors, this constitution promptly caused a rebellion that led to a brutal civil war (the War of the Reform, 1857–1860) and later to a failed attempt to establish an empire (1864–1867) with the support of France. Out of these struggles, the Liberal Party ultimately emerged as the victor. During the War of Reform and the following years, laws were enacted that began the process of expropriating rural property, in addition to establishing full separation between church and state. As a result, the Mexican state not only affirmed its independence and sovereignty over its territory, but also its power over the actual land as the principal source of national wealth.

The destiny of the Constitution of 1857 was paradoxical. On one hand, it had a long and eventful life until the rupture of the constitutional order by General Victoriano Huerta in 1913, triggering the second armed phase of the Mexican Revolution. However, the victorious faction of this struggle—that of Venustiano Carranza—did not propose replacing the Constitution of 1857 but rather adopted it as its banner and the basis for the Constitution of 1917. On the other hand, the presidents had great difficulties governing

under it and therefore believed themselves obliged to openly ignore it, attempt to reform it, or cease to apply it, all the while publicly pledging allegiance to it, as during the long rule of General Porfirio Díaz (1876–1880 and 1884–1911).

The first stage of nation-state building and the first modernizing cycle of the Mexican legal order culminated with Porfirio Díaz (Roeder 2013; Garner 2010; Margadant 1971, chapter VIII; Fix-Fierro 2015). The disorder and instability of the political and constitutional rule during the first seven decades of the 19th century hindered the construction of a centralized national power that could effectively promote institutional consolidation and economic development. Political life had been dominated by elites and *caciques*—local political bosses—in states that were primarily defending their local interests, not those of the newly formed nation.

General Díaz succeeded in subjecting all these interests and sources of local power under his absolute authority through a policy that combined a firm hand and the strong bonds of personal loyalty. His success in centralizing power catalyzed a period of order and stability that favored economic development—through the construction of infrastructure for communications such as railways and telephone and telegraph lines—and industrialization, mainly supported by foreign capital. One of the industries that started to be developed during his government was the oil industry (Álvarez de la Borda 2005).

The administration of General Díaz proposed several amendments to the 1857 Constitution in order to transfer matters previously within the states' jurisdiction to federal authority. This included sectors that were important for economic development, such as commerce and mining. Based on these new powers, the Mexican Congress enacted several laws that made it possible to formulate and apply a national policy in such matters for the first time. The new legislation not only covered the sectors of economic and commercial activity, but also finally completed the process of the codification and replacement of the colonial laws (Vera Estañol 1994). The issuance of codes and laws in matters of justice was also particularly significant, although critiques of their function intensified at the end of the period (Cossío Díaz 2014).

The regime of General Díaz ended not only because he was unable to institutionalize his personal power and thus resolve the issue of the peaceful and orderly succession to the presidency, but also because he closed the space for independent political participation and excluded the masses from the benefits of economic development. Nonetheless, the tasks of Mexican state-building and the modernization of the legal system continued vigorously as soon as the armed phase of the Mexican Revolution (1910–1920) ended. The new regime turned out to be as authoritarian as the former, although it at least managed to resolve the problem of the peaceful transfer of power. It also succeeded, to some extent, in involving some social groups that had been excluded during the dictatorship of Díaz, such as farmers and the incipient working class, in the development process. Over time, the new regime would face its own crisis of legitimacy and the need to submit to the pressure of world society—a period of reform and transition that still has not concluded.

### *The 20th Century*

The Constitution of 1917 has been the longest lasting in Mexican constitutional history. It set the institutional basis for contemporary Mexico and has been adapted to respond to the profound transformations of the country over the past century.

In the draft of the Constitution that he presented for deliberation and approval by the Constitutional Congress of Querétaro, President Venustiano Carranza conducted an assessment of the errors of the Constitution of 1857 and the evils of dictatorship. Among other remedies, he proposed strengthening presidential power. In Carranza's eyes, only a strong president—though not a despotic one—would be able to maintain order and guarantee freedom at the same time. However, the basis for the creation of the hegemonic presidency—which lasted almost the entirety of the 20th century and, by providing stability, allowed for the economic, social, and legal modernization of Mexico—was not solely the powers granted by the Constitutional Congress, but also included two additional factors.

The first is related to the functioning of the state models that were reflected by the Constitution of 1917. There, *three state models* came together: the “liberal state,” inherited from the Constitution of 1857; the “central state,” which had begun to be built during the government of General Díaz; and the “social state,” which started to emerge when Congress enshrined the rights of workers and farmers in the constitutional text (González and Caballero 2002). However, the central government during the Revolution would not have been able to become the dominant factor of national development over the following decades without Article 27 of the Constitution. This article states that all land and water within the nation's territory—as well as the natural resources in the subsoil—belong to the state, which would have the right to approve or reject their exploitation, and also to impose limits on and determine the rules associated with different modalities of private ownership. The importance of this article is evident when we remember that during the regime of Porfirio Díaz, the opposing principle was established: the natural resources of the subsoil—mainly oil, but not other minerals such as gold and silver—were owned by whoever had ownership of the surface. Article 27 reversed this principle and “nationalized” these resources, creating an extended conflict between the Mexican state and foreign oil companies—and the governments of their respective countries—that argued against any retroactive application of the new Constitution. On this basis, the United States refused to recognize the first governments after the Mexican Revolution; acknowledgement was finally achieved through the Bucareli Treaty of 1923.<sup>4</sup>

The second factor was the creation of a political party whose purpose was not to compete for power but rather to preserve and monopolize it by involving and disciplining the revolutionary forces, which were still prone to settling conflicts through armed violence. Therefore, in 1929, the National Revolutionary Party (the predecessor of the Institutional Revolutionary Party [abbreviated PRI in Spanish]), was created through the initiative of General Plutarco Elías Calles, who had been president of the republic from 1924 to 1928.

The institutionalization of the hegemonic presidency beginning with the government of General Lázaro Cárdenas (1934–1940) was supported by the combination of the central state and social state models, the “deactivation” of the liberal model,<sup>5</sup> and the creation of corporatist organizations—mainly composed of workers and farmers—closely linked with the so-called “official party.” In this environment of intense worker-based nationalism, the expropriation of the oil industry from the hands of foreign companies was decreed on March 18, 1938, following a labor conflict.<sup>6</sup>

As during General Díaz’s dictatorship, the president of the republic succeeded in once again elevating himself above the other federal powers and the state governments. To do so, he employed the tool of constitutional amendment, which increased the concentration of power in the hands of the federal government—in matters such as labor, education, and agriculture—as well as mechanisms for political control. This control reinforced the role that the president was actually performing: that of the primary legislator. Until 1938, following an irregular practice that had originated in the 19th century and whose use had been amplified by General Díaz, it was customary for Congress to delegate extraordinary powers to the executive branch to enact laws that were perfectly ordinary, such as the Civil Code for the Federal District in 1928.

With time, the president also became the center of economic regulation, particularly after the implementation of the model of “import substitution.” His economic power was strengthened even further through the creation of economic monopolies for state companies, such as *Petróleos Mexicanos* (PEMEX) and the Federal Electricity Commission (CFE). Even more so through “fiscal coordination,” the federal government was also gradually concentrating the main taxation powers out of the hands of local and state governments, although it was required to share some federal income with them.

During the first decades of the 20th century, an important modernization cycle of Mexican law took place, largely related to the implementation of new political and social directives resulting from the Constitution of 1917. This cycle spanned approximately 20 years, from 1925 through 1945. It did not start immediately after the promulgation of the Constitution in 1917, since political instability lasted several years more. Even though it is not possible here to summarize all the legal and institutional changes that occurred during this period, it should be briefly pointed out that at the same time that the common, civil, and criminal legislation was renewed, a broad set of new laws were enacted—particularly labor, commercial, and financial laws—some of which, although heavily amended, continue to be in force and effect up to the present day. Likewise during this stage, some highly important institutions were created, such as the Bank of Mexico (1925) and the Mexican Social Security Institute (1943).

### *Reform and Transition on the Threshold of the 21st Century*

At the end of the 1960s, some signs of the decay of the import-substitution economic model became apparent, along with the first signs of political crisis. Various social movements, such as those spearheaded by the railway workers at the end of the 1950s and by doctors and students in the 1960s, indicated that traditional corporatism was no longer

able to respond to the new demands of the working and middle classes primarily located in the nation's cities. The crisis, both economic and political, deepened during the 1970s and inevitably exploded at the start of the 1980s. A "change of course" was necessary.

Economically, this change consisted of the liberalization and full incorporation of the Mexican economy into the global market, triggering the third cycle of legal modernization that has lasted until today. Mexico not only joined the General Agreement on Trade and Tariffs in 1986 but also rather audaciously decided to negotiate NAFTA with the United States and Canada. This treaty became the cornerstone of the modernization of Mexico's economic, commercial, and financial legislation from 1991 to 1997 (López Ayllón 1997), as well as a guarantor of the stability and continuity of the new economic policy.

Even though the regime intended to maintain its political control while making some concessions to democratic liberalization, the controversial presidential elections in 1988 forced President Salinas de Gortari (1988–1994) to negotiate and accept changes to the electoral system, which would eventually lead to the presidency being won by a party other than the PRI in 2000. Another contributing factor to changes in Mexico's political system was the end of the Cold War, which resulted in stricter foreign scrutiny of the Mexican government's internal policy. Within the framework of the negotiations and approval of NAFTA, severe criticism was raised—particularly in the United States—of Mexico's political system and institutions due to the absence of democracy and the true rule of law. These pressures drove new changes, among them the judicial reform carried out by President Ernesto Zedillo (1994–2000) (Fix-Fierro 2003).

The moderation of presidential power is mainly the result of the strengthening of the legislative and judicial branches and a certain deconcentration in favor of state-level entities ("new federalism"), as well as the creation of organizations with constitutional autonomy (known as "autonomous constitutional organizations"). These organizations have been formed in large part through the delegation of the administrative powers of the federal executive branch. This development was based on the assumption that effective control and balance between the branches of power required the establishment of new autonomous, impartial, and professional public organizations.

Most of the changes promoted during this third period of legal modernization were reflected in the constitutional text. Two-thirds of all constitutional changes—and more than half of the decrees of reform—have come after 1982. The presidential terms of Felipe Calderón (2006–2012) and Enrique Peña Nieto (2012–present) had the largest number of reforms (Soberanes Díez 2015; also see Table 1 in the appendix).

The dynamics of constitutional reform are also characterized by the incorporation of increasingly extensive rules. The Constitution is now three times longer than the original 1917 text (see Table 1 in the appendix), which appears to be indicative of a new political dynamic. Aside from the occasions when constitutional reform was the result of the more or less unilateral decisions made by the president, current constitutional changes are based on agreements between the national political parties. These parties have strong incentives to

include the specific details of such agreements in the constitutional text to protect them—given the rules of ordinary legislative majorities—and avoid having their constitutionality challenged in the courts. Nonetheless, these agreements are not always permanent, as is shown in a paradigmatic manner by the frequent changes to electoral rules.

The dynamics of constitutional reform have not only been quantitative but also qualitative, since practically all matters included in the constitutional text have been modified; the number of national bodies, along with their organization and system incorporated into the political constitution, has been expanded in a particularly significant manner (see Table 2 in the appendix).

The passage of new federal laws has also been extensive (see Table 3 in the appendix). Among the laws in force as of August 31, 2015, three-quarters were enacted after 1982, more than two-thirds came after 1988, and nearly half were enacted after 2000. Over a quarter of all laws in force were enacted from 2009 to 2015. As of November 30, 2000, there were 218 federal laws in force and effect; over the next 15 years, Congress passed 69 entirely new laws (i.e., laws that do not reform or repeal any prior regulations of the same name), yielding an average of 4.8 new laws per year.

The reform of existing laws, as well as the enactment of new ones, has been extensive. Of 287 federal laws in force as of August 2015, nearly three-quarters have been subject to some modification since their passage, and two-thirds have been modified after 2010. One in six new laws passed during the period 2013–2015 was modified during those same years. There are no signs that the legislative activity is going to decrease in terms of rate and intensity over the coming years, which means that this phenomenon has become a part of the normal democratic reality of the country.

To complete this overview of the legal modernization over the past decades, it is essential to note that this has been accompanied by an equally significant change in the field of justice. This change can be described as the migration of the judiciary branch—headed by Supreme Court of Justice—from *the periphery to the center of the institutional space*. This judicial transition occurred on four axes, which we may call “judicialization,” “specialization,” “professionalization,” and “social opening.” Of these four axes, the most important one undoubtedly is judicialization, since it significantly expanded the judiciary branch’s sphere of action and influence. Starting in 1995, the Supreme Court of Justice and other federal courts have become increasingly involved in issues that had previously been formally excluded from their jurisdiction—such as electoral issues—or that were not covered by court rulings for political reasons, such as conflicts between federal or local branches or between the different levels of government (known as “constitutional controversies”). The participation of the judiciary in the definition and expansion of the basic rights of citizens (Súarez Ávila 2014) has also been growing, frequently on polemical social issues such as abortion, same-sex marriage, and personal consumption of illegal drugs, among others. What is more, the dynamics of the political and legal changes have increasingly compelled the federal judiciary to address complex issues of public policy,

such as economic competition and telecommunications. Specialized courts have been established to address these matters in a technical and professional manner.

The expansion of the field of action and influence of all the country's courts—not only of those at the federal level—has consequences that are still not entirely visible or predictable, although they will significantly affect the outcome of the recent reforms, an issue that we will analyze in more detail in the following section.

## **The Energy Reform of 2013–2014 and the Challenges of Institutional Effectiveness**

In this section, we will examine some of the institutional challenges that the energy reform of 2013–2014 faces. From this point of view, it is quite evident that the reform's success now lies in the hands of the executive and judicial branches, since the legislative branch has already carried out the substantial task of passing the constitutional reform and implementing the laws. Two facts of great significance must be pointed out: First, democratic normalcy was plainly demonstrated during the legislative process. This is to say political forces no longer attempted to block the discussion of some changes, as had happened with previous labor and energy reforms.<sup>7</sup> Instead, after deliberation and negotiations, Congress voted on and adopted the decision that was legitimately agreed upon by the majority. Second, when the restrictions on private investment in the energy sector were removed from the Constitution, the legal framework in force and effect was better aligned with the main orientation of the economic policy after 1982. Still, even though a clear contradiction between the Constitution and the new economic laws did not exist, there were still sufficient elements in the constitutional rules in favor of a statist, interventionist, and developmental interpretation by the courts. Furthermore, the existence of explicit constitutional restrictions, mainly in energy matters, provided very narrow margins for the modification of regulatory laws, as demonstrated by the oil reform in 2008. Even though the concept of the “economic stewardship of the state” has not disappeared from the constitutional text, there are now fewer elements to support a classic interventionist state policy. At the same time, other concepts are being strengthened, such as the economic function of public power based on impartial regulation and the creation of fair conditions in an open market.

### *The Role of the Executive Branch and the Dilemmas of Economic Regulation*

The recent institutional development, as described above, has not yet provided the desired results. Some of the new institutions have not yet proven their effectiveness, which creates mistrust among the general public and therefore generates considerable pressure in favor of new changes and adjustments. While it is true that most of these institutions have not had sufficient time to develop and be consolidated, their instability and ineffectiveness is also due to a circumstance that is rarely mentioned: the recognition of the crushing and nearly absolute power enjoyed by the president has led to the rather simplistic idea that to achieve a full democratic transition and establish a legitimate and efficient institutional apparatus, depriving him of power and transferring it to other, presumably impartial,



bodies would be sufficient. However, the reforms that weakened the power of the president also unraveled the threads of political and administrative control that he had previously held; this unraveling has been a significant contributor to the crisis experienced in some institutional quarters, such as in public safety. The new institutions have not managed to recover comparable control and are not subject to effective scrutiny or democratic accountability.

These circumstances indicate that while the presidency was strong, the state was not. This has turned the process of building new institutions into a complex affair. Similarly, it is difficult to redefine the new political role that ought to be played by the presidency in terms of effectiveness and legitimacy. A failure to understand the role of the presidency has led to an attempt to delegate the design and operation of new institutions solely to the other two branches—with the support of civil society at the national and international levels—without acknowledging the still central role occupied by the presidency in the political system. It was thought that excluding the president (even from the appointment of members of various public authorities) would guarantee impartiality and efficiency; but in doing so, is the executive branch not thereby relieved of some of its *legitimate* tasks and responsibilities in the field of public policy?

The multiplication in the number of autonomous bodies had the express intention of generating trust and legitimacy in the performance of some state functions, while at the same time preventing and limiting the authoritarian excesses of the executive branch. This intention is connected to an international trend that promotes the diversity and autonomy of administrative authorities, particularly those in charge of economic regulation, while it discourages direct political intervention by the government for the sake of the stability, continuity, and credibility of public policy. Within this context, it is considered that the prevalent technical and professional criteria for evaluating the function of such authorities are sufficient to ensure their independence and efficiency (Comisión Federal de Mejora Regulatoria 2011).

If this is the case, what are the terms under which the executive branch can and should be involved in the process of public policy? If the president cannot subject the administrative apparatus or economic and social regulation to the directives of political opportunity, how can the rationality and effectiveness of political leadership in the executive branch be guaranteed? Is there a way to combine effectiveness with legitimacy in the administrative implementation of public policies, particularly those related to sustainable economic development?

In the case of Mexico—and in spite of the democratic reforms of the past decades—the nucleus of presidential power has been neither reformed nor democratized. Perhaps the reality of the political environment may no longer favor or even permit excess insofar as the exercise of presidential power is concerned; however, it is certain that the central elements of authoritarian presidentialism essentially remain intact. Based on this, as has been emphasized by some authors (Valadés 2008), it is necessary to balance presidential power through the incorporation of some parliamentary elements. This

“parliamentarization” of the presidential system does not imply decreasing the power of the president, but rather strengthening his legitimacy and efficiency in a democratic environment, since it promotes legislative support for his government program. Since the efficacy of a political system increasingly depends on cooperation and coordination between the branches of power, the main role of the executive branch will not be to merely make unilateral political decisions but rather to negotiate and promote a government program that can receive support from the other two branches and from society.

This task is visibly unfinished in Mexico, although steps in this direction have been taken through the constitutional reforms of 2014, which introduced congressional approval of the appointment of some federal cabinet members, as well as the possibility of a coalition government. However, this possibility has not yet been put to the test and is limited with respect to what a truly renewed institutional scheme would require.

These preliminary reflections define the perspective by which we will proceed to analyze the relationships between the executive branch, the regulatory agencies, and the new “productive state companies” (*empresas productivas del estado* [EPEs] in Spanish). Based on this analysis, we can conclude that even though there is a tendency toward increasing the autonomy of both regulatory bodies and public companies, the energy reform has this virtue: it has not deprived the executive branch of the mechanisms of coordination and influence that will ensure functionality and accountability with regard to decisions on energy matters.

The energy reform incorporated a reference in the constitutional text to the “coordinated regulatory bodies in energy matters” (*organismos reguladores coordinados en material energética* [ORCMEs] in Spanish), which are the National Hydrocarbons Commission (created in 2008) and the Regulatory Commission for Energy (first established in 1993). The law regulating both organizations<sup>8</sup> no longer defines them as “decentralized bodies” of the Ministry of Energy, although it makes it clear that they continue to be a part of the executive branch and serve for the exercise of “its powers of technical and economic regulation in matters of electricity and hydrocarbons... for the purpose of promoting the efficient development of the energy sector” (Article 4 of the Law on the Coordinated Regulatory Bodies in Energy Matters). The law modified the composition of the ORCMEs by increasing the number of commissioners from five to seven and reforming the requirements of professional knowledge and independence to which they must comply; it also modified the procedure for their appointment, which no longer rests only with the president but now also with the Senate. The law also increased the authorities and responsibilities of the ORCMEs and detailed all matters related to their operation—including issues of growing public relevance, such as transparency and the fight against corruption.

However, the most important element of this law is that it creates the Coordinating Council of the Energy Sector, which is composed of the heads of the ORCMEs along with those in charge of the relevant agencies in the central administration. According to Article 21 of the law, the council has the responsibility to:

- Inform the ORCMEs of the energy policy established by the Ministry of Energy

- Issue recommendations regarding aspects of the energy policy and programs from the executive branch to be included in the annual programs of the ORCMEs
- Analyze recommendations and proposals by the ORCMEs regarding the energy policy and programs of the executive branch
- Establish rules for their own operation
- Implement systems of shared information and institutional cooperation
- Analyze specific cases that may affect the development of the public policies of the executive branch in energy matters and propose mechanisms for coordination, among others

Although the ORCMEs enjoy broad autonomy, their participation in the Coordinating Council ensures an indirect, although strong, influence of the executive branch on these regulatory organizations.<sup>9</sup>

The cases of PEMEX and the Federal Electricity Commission (CFE) are similar. They are no longer organizations directly controlled by the executive branch; rather, they have become EPEs, which means that they have autonomy to conduct business in accordance with corporate policies and criteria. These policies are reflected, for example, by the criteria, requirements, and procedures for the appointment of the members of their respective boards of directors.

The energy reform has also established other organizations such as the National Center for Hydrocarbon Information, the National Agency of Industrial Safety and Environmental Protection in the Hydrocarbon Sector, the National Natural Gas Control Center, and the National Energy Control Center—all of which are still important in energy matters, though they have a lesser degree of autonomy.

In summary, it can be concluded that the energy reform defined the main functions and responsibilities of the executive branch quite clearly—among them the exploration and extraction of hydrocarbons—without depriving it of the regulatory instruments that are indispensable for fulfilling these tasks. In addition, indirect control over the regulatory bodies and the EPEs—as well as a more complex legal environment of a contractual, competitive, and nonhierarchical nature—will contribute to strengthening the role of the executive branch in defining and negotiating of public policies more so than direct economic administration.

### *Regulatory Density and Judicial Function*

Mexico's judiciary will play a central role in resolving the complex economic and legal issues raised by the energy reform of 2013–2014. The first item relevant to this analysis is the density and complexity of the new legislative framework for the energy sector. Five of the new laws that were approved based on the reform contain almost three times the number of articles and nearly four times the number of words than the laws they replaced (see Table 4 in the appendix). This may seem quite paradoxical, since the constitutional

reforms were concerned with the deregulation of the energy sector. Restrictions regarding private investment in the sector were removed; however, on the legislative level, this required a very thorough and detailed “regulation,” considering the legal and economic complexity of the new system of organization for the industry.

From the perspective of the administration of justice, it could be assumed that due to the increased level of detail in the legislative system, many court disputes would be avoided. However, this will not necessarily be the case, for two reasons: First, the energy reform represents a change with profound implications, one that redefines the structure and operation of an entire economic sector and its relationship to the state. Without a doubt, there will be novel and complex legal issues that will frequently require court rulings. The second reason is that the incorporation of a new cast of private actors who will not only attach themselves to public organizations, but also to other private players, may also become the source of numerous and difficult court disputes.

The plurality of legal matters involved in the energy reform means that there may be some intervention by the federal courts as well as by state-level entities—both those belonging to the judiciary branch as well as those outside it, such as the administrative and agricultural courts. The complexity in terms of the jurisdiction and organization of the judiciary branch in Mexico will necessitate a learning process to resolve the legal issues raised by the reform, and achieving guidelines that are more or less uniform in terms of court policy will not be simple. In this respect, it will be up to the judiciary branch—and the Supreme Court of Justice in particular—to establish decision-making criteria that will effectively guide the actions of lower courts in order to guarantee legal security for the political and economic players involved. It will take some time and will test the new system’s ability to resolve contradictory interpretations by different courts (known as *contradicciones de tesis* in Spanish). This system came into effect in 2013 and is only now beginning to operate.

Finally, there are the advantages and limitations of writs of *amparo*, which can contribute to the solution of legal issues in energy matters. A writ of *amparo* is an instrument whose purpose is to invalidate rules and actions by the state that are contrary to the state’s constitution and laws. A writ of *amparo* is a last-resort means of objection, used when the ordinary administrative and court recourses have been exhausted. It is frequently used by defendants to put a hold on government actions and drag out court procedures.

In the case of issues related to economic competition, telecommunications, and now energy, orders and acts by the regulatory bodies are not submitted to the ordinary administrative courts but can only be challenged through *amparo* proceedings, without the possibility of provisionally suspending the effects of the challenged law or action. This has the evident purpose of preventing regulators’ policies and decisions from being blocked; it also means that despite the existence of specialized courts, orders and acts performed by the regulators may be subjected to judicial review criteria that are not purely technical or economic in nature. For example, the constitutional amendments of June 2011 reinforced the centrality of human rights, as guaranteed both in the constitution and international treaties, as a guiding principle for all public authorities—especially for the Supreme Court,

as the highest judicial authority in the country. Therefore, if the courts decide, for reasons that are perfectly legitimate, that the protection of the players' human rights—for example, in terms of the environment—justifies the imposition of restrictions and limits on economic action in the energy sector, there may well be unforeseeable and perhaps undesirable economic consequences. However, there is no need for particular concern in this respect, since court intervention in the definition and redefinition of public policy is normal and must be accepted in any democratic society.

## Conclusion

In his book, Francis Fukuyama (2014) conducts an analysis of the performance of institutions within modern political orders. According to Fukuyama, the political order in contemporary societies is established by three sets of institutions: the *state*, understood as a hierarchical organization that monopolizes the legitimate use of force within a specific territory; the *rule of law*, defined as a set of rules of conduct that reflects a broad consensus in society and that is obligatory for even the most powerful political players; and *democratic accountability*, understood as the existence of mechanisms that serve to evaluate the behavior of public authorities.

These three sets of institutions are complementary, although tension does exist among them—which we will not examine at this time. What is relevant for our argument is the idea that the historical sequence in which they appear has consequences for a given institution's development and effectiveness. According to Fukuyama, the first institution that emerged in Western, primarily European, societies was the rule of law, a developed legal order that preceded state-building itself and served to limit the power of even the most absolute of monarchs. A second phase, the construction of a centralized state with a professional and impartial bureaucracy, set the basis for the current stage, which has consisted of the democratization of power.<sup>10</sup>

According to this outline, Mexico appears to have historically followed the trajectory of advanced European nations. First, a legal system emerged and was delineated. Its roots are found in the colonial era, since the conquest by the Spanish was accompanied and justified by legal forms. Some of the traits of colonial law continue until today, such as formality, centrality, corporatism, and a pretense of complying with rules. We may say that in this way, a “modern legal proto-culture” was established.

When independence was achieved, there was neither a fully centralized state nor any constitutional rules, at least not in the modern sense. The struggles that occurred between the liberal and conservative factions do not conceal the fact that both parties desired something similar: the establishment of a modern constitution with a declaration of rights and the separation of powers. This task was substantively concluded with the 1857 Constitution; as we have seen, the construction of a centralized state capable of administering economic development was not initiated properly until the administration of General Díaz. This construction was interrupted by the Mexican Revolution, although it was resumed in full force during the 1930s. Democratization, however, took much longer

to arrive. It started timidly during the 1970s (with the so-called Political Reform of 1977), becoming more powerful in the 1990s and continuing until the present day. Today, electoral democracy is a part of the country's status quo, and other elements such as transparency and accountability are in the process of being incorporated.

If this interpretation is correct, then why are we currently seeing public insecurity, violence, and corruption—undeniably signs of “political decay,” as termed by Fukuyama—in Mexico? This is due to the fact that events in this country have not completely followed the sequence that we have sketched out. Recall that state-building in Mexico during the 20th century actually translated into the formation of a strong presidency, which prevented the development of other strong state institutions. Therefore, the construction of other institutions was not completed in a manner that would result in the subsequent stage—as in the Fukuyama model—but instead, *three sets of institutions*, the “state,” the “rule of law,” and “democratic accountability,” *are under construction at the same time*. In other words, it is the unfinished *process* of construction of a modern and democratic political order that creates great complexity and uncertainty; therefore, it is not possible to make any predictions regarding its ultimate outcome.

However, there are clear signs that the process of economic, political, and legal transitions that Mexico is currently undergoing has indeed led to a qualitative social transformation. Mexican sociologist René Millán (2008) maintains that this transition has not only consisted of economic liberalization and political democratization of the country, but also of a *transformation in the manner in which society itself is integrated*. We have moved from a *system highly integrated by the state*—and dominated by the presidency—to a *differentiated system*, without a functional primacy or central character of the state. There is no longer a single party or a single organization that can exercise absolute control over the institutional apparatus. Increasing institutional complexity causes a lack of visible coordination and disorderly, chaotic phenomena that are structurally irreversible. Following this line, we may affirm that the transition has caused greater differentiation and reciprocal autonomy between the political and legal systems; this is shown in the new role of an independent judiciary and the insistent discourse surrounding the need to strengthen the rule of law and legal culture (Fix-Fierro and López Ayllón 2001).

The nondisruptive character of this transformation process has had positive consequences—for example, a degree of continuity and stability in the midst of institutional change—although there have also been negative effects. Among the latter, we may cite the unfinished and uncertain nature of the process of change, as well as a certain lack of understanding regarding its nature and depth. Some political and social players continue to believe that nothing has essentially changed since 1982; that is, they maintain that the true transition has not even started yet. Others cannot determine when it began, whether it is still going on, or whether it has already been completed.

In a democratic society, the ultimate guarantor of *democratic accountability* lies with civil society. As numerous authors have underscored, under a minimally democratic system, the political players and institutions will end up carrying out the wishes and the will of society

over the long term (Aguilar Camín and Castañeda 2011). In Mexico, the past few years have shown that the political class is sensitive to both national and international public opinion and responds to it—at least on some level. It can then be assumed that the nationalistic social conscience and the prevailing corporatist inheritance—which are still present in Mexico, fed by the revolutionary mythology—could end up slowing down the effects of the energy reform. However, the fact that the reforms have been quickly approved by Congress is a signal that Mexican society has essentially passed this stage of nationalistic social conscience and prevailing corporatist view. While unanimity certainly is not present, political disagreements are increasingly handled in a normal and civilized manner.

Nobody can ensure that the economic gamble underlying the 2013–2014 energy reform will achieve the desired or expected success. The international environment is too volatile to make predictions with a high degree of certainty. However, there are elements that demonstrate that Mexico has gradually been building the institutions that will be able to perform governmental operations with reasonable effectiveness.

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## Appendix

**Table 1.** Constitutional Reforms by Government Period (1982 to July 10, 2015)

President	Period	Number of Reforms	Percentage of Total (%)	Presidential Decrees	Length of Const. Articles (number of words)	Difference (number of words)
	1921–1982	213	35.1	98	29,938	
Miguel de la Madrid	1982–1988	66	10.3	19	34,916	+ 4,978
Carlos Salinas de Gortari	1988–1994	55	8.6	15	36,856	+ 1,940
Ernesto Zedillo	1994–2000	77	12.0	18	42,802	+ 5,946
Vicente Fox	2000–2006	31	4.8	17	45,365	+ 2,653
Felipe Calderón	2006–2012	110	17.2	38	54,815	+ 9,450
Enrique Peña Nieto	2012–2015	90	14.0	20	66,073	+ 11,258
<b>Total</b>		<b>642</b>	<b>100.0</b>	<b>225</b>		

Source: Author's own work using data of the Chamber of Deputies of the Congress of the Union, <http://www.diputados.gob.mx>.

Notes: The presidential term begins on December 1 of the first year and ends on November 30 of the final year. The column labeled "Extension" refers to the approximate extension of the constitutional text measured in words at the end of the respective period and does not include the preamble or any transitional articles. The original text of the 1917 Constitution was approximately 21,000 words in length. The column "Reforms" was quantified in the following manner: *one* reform is considered as the change of *one* article in *one* amending decree, which could include multiple modifications to the same article.

**Table 2.** National Bodies, Organizations, and Systems Incorporated into the Political Constitution of the United Mexican States since December 1, 1982

Name	Year of Establishment/ Constitutional Reform	Nature	Constitutional Article(s)
National Anticorruption System	2015	National system	113
National System of Democratic Planning	1983, 2013, 2015	National system	26, A, Paragraph 3
*Federal Court of Administrative Justice	1967, 2015	Administrative court with full autonomy in handing down its rulings	73, Section XXIX-H
Office of the Superior Auditor of the Federation	1999, 2008, 2015	Supervisory body of the Chamber of Deputies of the Congress of the Union	79
National Archives System	2014	National system	73, Section XXIX-T
*National Institute of Transparency, Access to Information, and Protection of Personal Data	2014	Autonomous Constitutional Organization (OCA)	6, A, Section VIII
Federal/National Electoral Institute	1990, 1993, 1994, 1996, 2007, 2014	OCA	41, Section V
Electoral Court of the Federal Judiciary	1990, 1993, 1996, 2007, 2014	Specialized jurisdictional body with maximum authority in this matter	94 and 99
Office of the Attorney-General of the Republic	1994, 2014	Autonomous public body	102, A
National Institute for the Evaluation of Education	2013	OCA	3, Section IX
*National Council for the Evaluation of the Social Development Policy	2013	OCA	26, C

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National System of Educational Evaluation	2013	National system	3, Section IX
Public Radio Broadcasting System of the Mexican State	2013	Decentralized public body	6, B, Section V
*National Hydrocarbons Commission	2013	Coordinated regulatory body in energy matters	28, Paragraph 8
*Regulatory Commission for Energy	2013	Coordinated regulatory body in energy matters	28, Paragraph 8
*Federal Commission of Economic Competition	2013	OCA	28, Paragraph 14
*Federal Institute of Telecommunications	2013	OCA	28, Paragraph 15
*National Human Rights Commission	1992, 1999, 2011	OCA	102, B
National Public Safety System	1994, 2008	National system	21, Paragraph 10
National System of Statistical and Geographic Information	2006	National system	26, B
*National Institute of Statistics and Geography	2006	OCA	26, B
Council of the Federal Judiciary	1994, 1999	Administrative, supervisory, and disciplinary body of the federal judiciary	94 and 100
Office of the Legal Counselor of the Federal Government	1994	Agency of the federal executive branch	20, Paragraph 3
*Banco de México	1993	OCA	28, Paragraph 6
Agrarian courts	1992	Autonomous administrative courts with full jurisdiction	27, Section XIX, Paragraph 2

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*Procurator for Agrarian Matters	1992	Body in charge of administering justice in agrarian matters	27, Section XIX, Paragraph 3
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Source: Author's own work based on the Political Constitution of the United Mexican States, according to the text in force and effect as of July 10, 2015.

Notes: The bodies or organizations marked with an asterisk (\*) had already been created by law or decree prior to their incorporation in the constitutional text. OCA stands for "autonomous constitutional organization" (even though this denomination is of common use, it does not imply that these organizations all have the same degree of constitutional autonomy).

**Table 3.** Number of federal laws in force and/or amended as of August 31, 2015

Period of Publication	New Laws (A)	%	Amended (B)	Amended since 2010 (C)	% (B/A)	% (C/A)
Until 1970	40	13.9	33	24	82.5	60.0
1971–1976	15	5.2	11	8	73.3	53.3
1977–1982	11	3.8	7	7	63.6	63.6
1983–1988	21	7.3	19	17	90.5	80.9
1989–1994	28	9.8	25	22	89.3	78.6
1995–2000	33	11.5	32	32	97.0	97.0
2001–2006	59	20.6	48	40	81.3	67.8
2007–2012	50	17.4	32	30	64.0	60.0
2013–August 2015	30	10.5	5	5	16.7	16.7
<b>Total</b>	<b>287</b>	<b>100</b>	<b>212</b>	<b>185</b>	<b>73.9</b>	<b>64.4</b>

Source: Author's own work using data from the Chamber of Deputies of the Congress of the Mexican Union, <http://www.diputados.gob.mx>.

Notes: This table does not reflect the Income Tax Act, the Budget of Expenditures of the Federation, the Regulations of the Congress of the Union and its chambers, the Bylaws of the Government of the Federal District, and the Basic Law of the Office of the Attorney General of Justice of the Federal District.

**Table 4.** Comparison of Laws in Energy Matters

Repealed Laws	Articles	Number (words)	Number (words)	Articles (number)	Current Laws
Law of the National Hydrocarbons Commission (2008)	15	2,600	7,000	42	Law of the Coordinated Regulatory Bodies in Energy Matters (2014)
Law of the Regulatory Commission for Energy (2008)	13	2,300			
Law of the Public Electric Energy Service (1992)	47	6,900	21,700	121	Law of the Federal Electricity Commission (2014)
			28,000	169	Electrical Industry Law (2014)
Law of Petróleos Mexicanos (2008)	73	14,700	20,500	118	Law of Petróleos Mexicanos (2014)
Law regulating Article 27 in the Oil Sector (1958)	16	4,300			
<b>Totals</b>	<b>164</b>	<b>30,800</b>	<b>77,200</b>	<b>581</b>	

Source: Author's own work using data from the Chamber of Deputies of the Congress of the Mexican Union, <http://www.diputados.gob.mx>.

Notes: Years refer to the original date of publication of the laws. The data regarding the number of articles and the approximate word counts include subsequent reforms. The comparison did not include the new Hydrocarbons Income Act or the Law of the National Agency of Industrial Safety and Environmental Protection in the Hydrocarbon Sector (2014).

## Endnotes

<sup>1</sup> Thus the title of the memoir on his presidency that De la Madrid published a few years later (De la Madrid 2004).

<sup>2</sup> There are at least two other significant sociological approaches to “world society”: one developed during the 1970s and early 1980s by the Swiss sociologist Peter Heintz, and that taken by German sociologist Niklas Luhmann and his disciples, especially Rudolf Stichweh. See Heintz and Greve (2005), Luhmann (1982, 1997) and Stichweh (2000).

<sup>3</sup> In his examination of the administration of General Bustamante (1830–1832) in light of the Constitution of 1824, Lucas Alamán—one of the ideological leaders of the conservative party—emphasized the contradictions between the model that was followed (the Constitution of the United States), the spirit that was supposed to be infused into it (that of the Cádiz Constitution of 1812), and the colonial laws that still prevailed (Alamán 2012, 172-73).

<sup>4</sup> By 1921, Mexico was already one of the main global producers of oil and was responsible for a quarter of worldwide production (Álvarez de la Borda 2005, 72-73). Another polemical issue between the Mexican government and petroleum companies was related to taxes, which the latter had to pay for the production and sale of hydrocarbons.

<sup>5</sup> There is no doubt that even though it would receive the constitutional legacy of liberalism of the 19th century, the 1917 Constitution was illiberal in spirit. This spirit manifests itself through the incorporation of some elements that Martín Díaz y Díaz (1997, 1999) has characterized as “ambivalent” and belonging to a “heterodox constitutionalism” (such as all land, water, and subsoil resources belonging to the state). These elements, acknowledging “certain premodern and authoritarian peculiarities” of the country, provided the 1917 Constitution with a stability and political viability that the preceding constitutions did not enjoy. See Díaz y Díaz (1997, 1999) and Aguilar Rivera (2010, 71 et seq.). It should nonetheless be added that although the “liberal core” of the Constitution was shut down during a good part of the 20th century, the transition over the past decades has resulted in a return to that core. This is one of the reasons that it has not been necessary to write an entirely new constitution.

<sup>6</sup> Nationalization of the electrical industry was completed in 1960—not by expropriation but through the purchase of private companies’ shares, in most cases of foreign companies or subsidiaries that were providing the service. Regarding both nationalization processes, see Ovalle Favela (2007).

<sup>7</sup> The energy reform of 2013–2014 has many antecedents, considering that limited attempts were made during the 1990s to open up the electrical and oil industries to the market and to private investment. However, until 2013, political forces blocked any wide-ranging change, refusing to discuss even the possibility of modifying the constitutional text.



<sup>8</sup> See the Law of the Coordinated Regulatory Bodies in Energy Matters published in the *Official Gazette of the Federation*, dated August 11, 2014.

<sup>9</sup> A regulatory organization that will also be very important for the energy reform is the new Federal Competition Commission, which was granted constitutional autonomy in 2013.

<sup>10</sup> However, Fukuyama underscores that there are some modern societies, such as the United States, where democratization occurred before the building of a strong state. During the 19th century, one consequence thereof was the emergence of a clientelistic and quite corrupt political system that has proved difficult to eradicate through an independent and efficient public administration, both in the United States and other societies where democratization occurred before the construction of a strong central government.