

NÚMERO 258

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## Representation and Decision Making in the Mexican Congress

Importante

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## Abstract

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*The paper reviews the evolution of the representation system in the Mexican Congress and the general changes that have occurred in the policy-making process within the Mexican political system with the purpose of contributing to the effectiveness versus representativeness debate.*

*The initial claim is that the debate most often mistakes effectiveness in outcome —adequate policy decisions given certain ends— with effectiveness in process, that is, the procedure whereby decisions are reached.*

*Drawing on congressional data for the last fourteen years, it is argued that the expansion of representativeness in the Mexican congress is not at the root of the supposed lack of reforms; that compromise and agreements within congress are more the rule than the exception; and that paralysis and stalemate are not the inevitable fate of divided government.*

*It concludes that alternative explanations for the lack of action regarding many of the structural reforms that many deem necessary should be put forward. Among them, the presence of de facto powers, the lack of executive powers and the low capacities of the Mexican Congress.*

## Resumen

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*Con el fin de contribuir al debate sobre la efectividad versus la representatividad de los gobiernos, en este documento de trabajo se revisa la evolución del sistema de representación en el Congreso mexicano y los consecuentes cambios en el proceso de toma de decisión política.*

*A partir de un conjunto de datos sobre la integración y patrones de comportamiento en el Congreso —particularmente en la Cámara de Diputados— se argumenta que: a) la pluralidad en el Congreso no es la responsable de la supuesta inacción legislativa; b) los grupos parlamentarios han sido capaces de llegar a acuerdos legislativos de relevancia política y no solo sobre leyes de poca importancia (“intrascendentes”); c) no hay bases para sostener la tesis de que los gobiernos divididos tienen como destino inevitable la parálisis o el mantenimiento del estatus quo.*

*A manera de conclusión se exploran vías alternativas tanto para explicar la falta de acuerdos y la inacción legislativa como para promoverlos.*



## Introduction

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The appearance of a divided government for the first time in 1997 —while the PRI was still ruling— and the recurrence of this phenomenon for the fifth time in a row have caused wide concern regarding the capacity of the Mexican political system to process all sorts of policy decisions and, particularly, those with a potential to foster growth and make possible the delivery of public goods and services demanded by the population. This concern derives from a poor performance of the economy, from the growing perception that the political arena is more of a battleground where no agreements can be reached than one that encourages democratic consensus and from a decline in the approval of democracy and its institutions. All three have a “suspicious” coincidence with the appearance and recurrence of divided governments since 1997.

The argument runs as follows. The poor performance of the economy finds its explanation in the absence of structural reforms and the absence of structural reforms is blamed on a divided government incapable of reaching agreements conducive to growth and development. These include: labor market, energy, telecommunications and fiscal reforms. Much the same happens in other policy areas that most actors —including the Executive— find in need of legislative action like the justice or the health and education systems. Indicators in all these fields are undoubtedly unsatisfactory. Consequently the population is showing mounting disaffection towards both governments and the democratic regime. The conclusion is that since the advent of plurality in Congress, the Mexican political system has fallen into a sort of stalemate that hinders progress.

These views are dominant on the political arena where most parties and the Executive have unmistakably expressed that Mexican presidential system is “worn out” or “depleted” and in need of being refurbished.

Although not dominant, on the academic side there is also an extended perception that Executive-Legislative relations and the decision making process have suffered as a result of pluralism and, in particular, as a result of a lack of a majority for the President’s party. In fact, after five divided governments, the discussion over a needed political reform is being framed in terms of whether representativeness and efficiency are at odds and, if such is the case, which one of these two values should be upheld.<sup>1</sup>

The debate on *representativeness versus efficiency* goes beyond the relation between the Executive and Legislative branches of government. It attempts to assess the influence of the overall —not only the form of government— constitutional arrangement adopted by nations on the

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<sup>1</sup> For an academic discussion of this debate in referente to the different bills of political reforms recently (2009-2010) put forward by the Executive and political parties in the Mexican Congress see Negretto, 2010.

performance of countries in a variety of fields and indicators such as economic growth, income distribution, labor productivity, social wellbeing or political and civil rights.

Political science has been unable to draw robust conclusions on how or the degree to which forms of government influence the performance of countries. Nor has it been able to determine whether representativeness is at odds with efficiency. For example, in their comparative studies both Lijphart (1999) and Powell (2000) show that neither parliamentarism or presidentialism nor plurality or proportional representation systems can be clearly associated with a better performance. The most likely conclusion is that there is no single best constitutional system and that constitutions need to be tailored to fit the culture, traditions needs and possibilities of each particular country (Dahl, 2003: 96-97).

While the form of government may not be a good predictor of performance it must nonetheless be recognized that certain institutional features like the adopted electoral system, the number and extension of veto powers or the internal organization of Congress are variables with important consequences for the policy making process.

In this paper I present the evolution of representativeness in the Mexican Congress—in particular of its Chamber of Deputies—and review the general changes in the policy making process in the Mexican political system.

I then turn to the distribution of power in the Lower House and examine the evidence to support the idea that increased plurality has transformed it into an inefficient institution (when not an ungovernable body) incapable of reaching agreements and fulfilling its constitutional role of lawmaking. In particular, I assess whether there are grounds to endorse the thesis that the outcome of increased representativeness and of divided governments since 1997 has been that of paralysis or of “legislative failure”.

Finally, I discuss the alternatives posed by different actors in the current discussion of political reform in Mexico and their probable consequences.

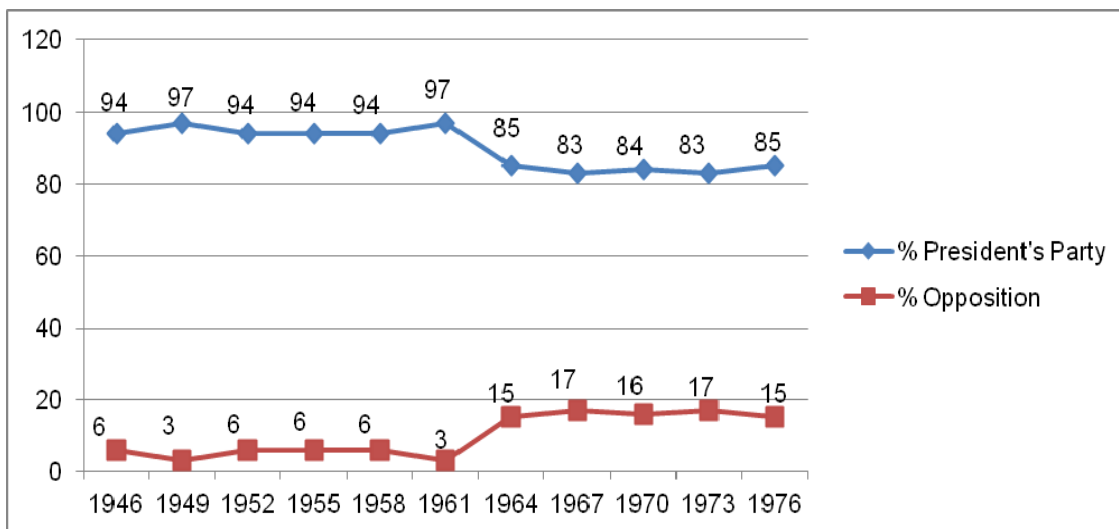
### I. Representativeness and Efficiency

Representativeness and efficiency are both elusive concepts although there is more agreement as to the meaning of the former and the ways to measure it.

Representativeness has to do with the free and fair access of political organizations that articulate and represent different social views and interests to the formal institutions that are popularly elected. Once this precondition is met, representativeness refers to the degree to which Congress reflects and ensures that these different views and interests in society are present and confronted in the debate by legislators with different positions and then translated into the provisions of the law.<sup>2</sup>

There is no argument as to the fact that the Mexican Congress has grown in terms of its degree of representativeness over the last 30 years. From 1946 until 1985 the Partido Revolucionario Institucional (PRI) mustered over 85% of the vote in federal legislative elections and gathered 90% of seats on average in the Chamber of Deputies. The situation was even worse in the Senate where all seats went to the President's party until 1988. In spite of the fact that elections were regularly held and of the presence of at least four opposition parties in each electoral process, it was hardly possible to speak in any meaningful sense of a minimum degree of representativeness in the Mexican political system.

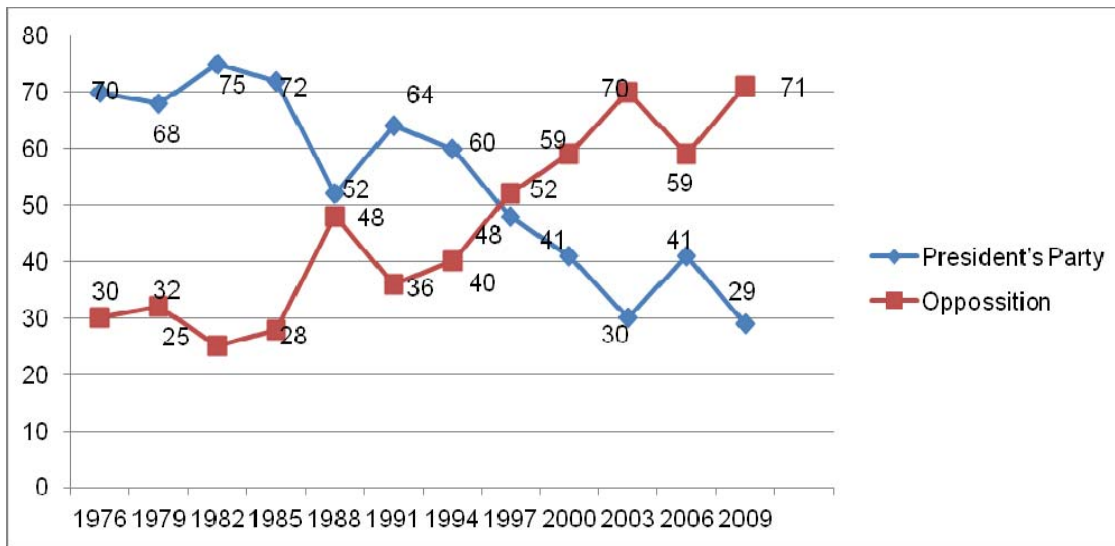
CHAMBER OF DEPUTIES (1946-1976)  
PRESIDENT'S PARTY VERSUS OPPOSITION



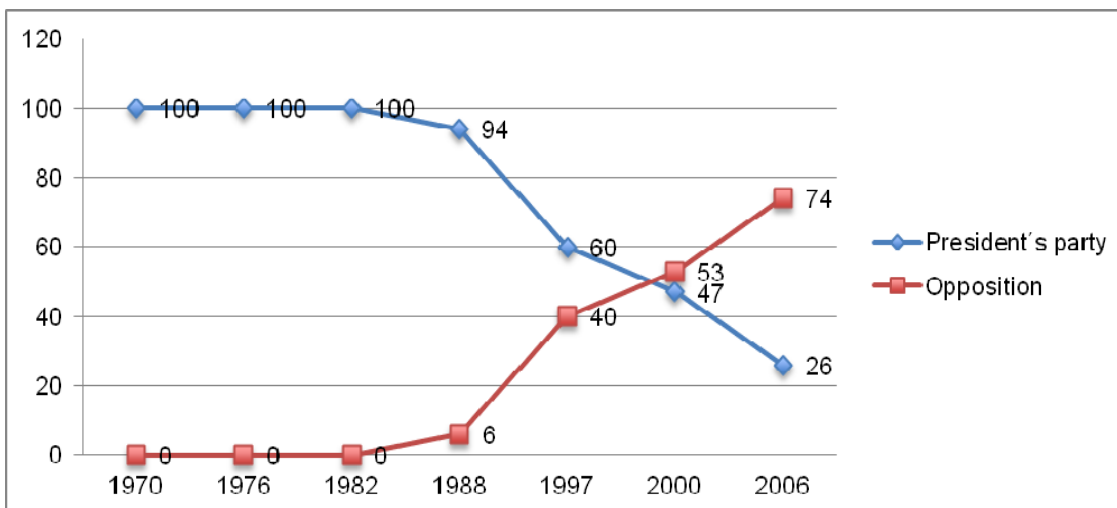
<sup>2</sup> See MacKinnon, 2011 *forthcoming*.

Thereafter the representativeness of Congress began to expand until in 1997 Mexico experienced its first divided government opposition as a result of midterm elections.

**CHAMBER OF DEPUTIES (1976-2009)  
PRESIDENT'S PARTY VERSUS OPPOSITION**



**SENATE 1970-2006  
PRESIDENT'S PARTY VERSUS OPPOSITION**



The expansion of representativeness was the consequence of a series of reforms that gradually leveled the field of electoral competition, guaranteed



fair elections and, most notably, introduced a mixed electoral system that included 60% (300) plurality and 40% (200) proportional representation seats. It is also important to mention that since 1992 no single party is allowed to hold more than 60% of the seats in the Chamber of Deputies. Among other consequences, this rule precludes the possibility of amending the Constitution through the votes of a single parliamentary group for the needed majority is of 2/3 (66%).

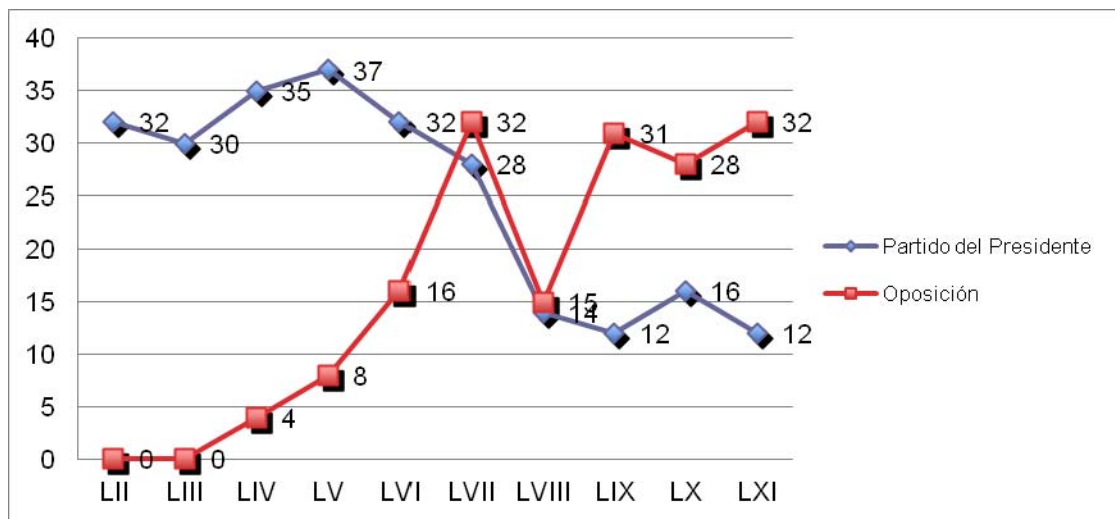
Although there is no consensus around how to measure the degree of representativeness of a system there is ample evidence that at least since the late 80s, the Mexican stands at a more than reasonable level of representativeness<sup>3</sup> with an effective number of 3.2 parties and an overrepresentation limit fixed at a maximum of 8 points in the percentage of seats in relation to the percentage of votes. It is worth mentioning, however, that the representativeness of the system is flawed by the prohibition of consecutive reelection and of independent or non-partisan candidates.

In addition, and as a consequence of its plural composition, the Mexican Congress has also enhanced its internal representativeness for parliamentary groups are represented on a proportional basis both in committees and governing bodies, have fair rules to express themselves in debates and to participate in the decision-making process at both the committee and floor levels and minority rights are established to call hearings and set up special commissions. Likewise, there is no question about the centrality and the publicity of Congressional debates that are not only transmitted by the broadcast television Congress channel but also amply reviewed in newspapers and magazines.

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<sup>3</sup> Theoretically an increase in the number of parties is not equivalent to an increase in representativeness. There may be a two party system which is more representative of the cleavages of a particular nation and a multiparty system that leaves out the representation of important sectors and interests of a determined society. Nonetheless it can be argued that in the case of Mexico, the transition process did give access to Congress to political expressions that until the late seventies were practically barred from access to elective posts.

**DISTRIBUTION OF COMMITTEE CHAIRMAN'S  
ORDINARY COMMISSIONS  
CHAMBER OF DEPUTIES**



Source: Rivera Sánchez, José Abel, *Cambio institucional y democratización: la evolución de las comisiones en la Cámara de Diputados en México*, Política y Gobierno, Vol. XI, Núm. 2, México: 2º semestre de 2004 and Cámara de Diputados.

Finally, if we introduce the multiplicity of origin of bills as a measure of representativeness it is evident that all parties are adequately represented as sponsors of the many initiatives turned to committees. The following figure shows the percentage of bills endorsed by each of the three major parties in the last four legislatures.

**ORIGIN OF BILLS IN THE CHAMBER OF DEPUTIES, 1997-2009**

	LVII (1997-2000)	LVIII (2000-2003)	LIX (2003-2006)	LX (2006-2009)
PRI	80 (17%)	264 (28%)	941 (36%)	634 (26%)
PAN	168 (35%)	253 (27%)	540 (20%)	590 (24%)
PRD	163 (34%)	290 (30%)	474 (18%)	632 (26%)
OTHERS	66 (14%)	142 (15%)	679 (26%)	585 (24%)
TOTAL	477	949	2634	2441

The concept of efficiency is more difficult to define and to pinpoint. Efficiency may be taken to mean parliament's capacity to initiate and pass legislation coupled with the capability of Congressional parties to come to

agreement (MacKinnon, 2011 *forthcoming*) or more generally, the competence of Congress to fulfill its constitutional role regarding lawmaking and oversight (Alemán, 2011 *forthcoming*).

Diverse measures have been suggested to assess the efficiency of Congress: from the number of bills that are processed by committees and reach the floor, to the number of bills passed together with the time to pass them. In the end, as Saiegh (2010a and 2010b) suggests, most measures reveal something meaningful about Executive-Legislative relations but they are of limited value in assessing a legislature's full influence on policy making let alone its efficiency.

In what follows, and bearing in mind the difficulties to determine the effectiveness of congressional work, I simply offer data and put forward arguments to show that the expansion of representativeness in the Mexican Congress is not at the root of the supposed lack of reforms, that compromise and agreements are more the rule than the exception and that paralysis and stalemates are not the inevitable fate of divided governments.

This certainly does not mean that all reforms have been coming through nor that efficiency understood as the robustness of Congress as an active policy making body cannot be improved. It simply puts in perspective the performance of Congress in the last decade and attempts to contribute to the discussion on the representativeness/effectiveness debate.

*The initial claim is that the debate most often mistakes efficiency in outcome –adequate policy decisions given certain ends– with efficiency in process, that is, the procedure whereby decisions are reached. It is to the latter that I will refer to.*

In terms of the policy decision-making process things have certainly changed since the demise of the PRI as the hegemonic (1940-1979) and then dominant party (1982-1997) in Congress.

It is clear that that the long-standing dominant position of the PRI enabled the Executive and its party to centralize and concentrate the policy making power and that this was made possible by a combination of a non-competitive structure of access to power the mechanisms that enabled party unity and its compliance to presidential will and initiatives.

Whether a system that concentrated formal power in the hands of the President was more efficient in terms of policy outcome is debatable. What is not, is that the decision-making process flowed swiftly within Congress and that legislators behaved mostly as rubber stamps.<sup>4</sup>

When as a result of a number of electoral reforms Mexico moved from a single party regime into dominant party and then to a stable three party

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<sup>4</sup> The fact that Congress was not the political arena where lawmaking was decided does not mean that the President could do as he pleased. Protracted negotiations were held outside Congress with both interest groups and political factions within the once called "revolutionary family".

system,<sup>5</sup> the decision making process became far more complex. Parties and its expression in parliamentary groups became real players and as in any other democratic polity the system began to require negotiation and compromise within Congress and between the Executive and Legislative powers.

As stated above, since that time there is a growing sense that required decisions have not been coming through, that parties are unwilling to reach a compromise, that opposition in Congress sees itself as a force that systematically blocks the presidency, that conflict reigns and, ultimately, that the Mexican institutional framework is ill equipped to deal with plurality. I will examine each of these claims.

There is no argument regarding the profound changes brought about by the end of the hegemonic and then dominant party system and that they were not limited to the enhancement of representativeness in Congress. Within the formal political realm, that is disregarding the *de facto* powers, the policy making process became less centralized and concentrated and a number of political actors—that had had practically no saying in the heyday of the PRI—became crucial. These include not only legislators but also party leaders, governors, justices and members of the autonomous institutions that were created during the last decade of the XX century and the first years of this century (*Banco de México, Comisión Nacional de los Derechos Humanos, Instituto Federal de Acceso a la Información, Auditoría Superior de la Federación*).<sup>6</sup> Given these changes it did not come as a surprise that the lawmaking process became not only more cumbersome but also more prone to open conflict.

Setting aside the question that by design any presidential system is intended to make difficult a change in the *status quo*, it is unarguably that veto players have grown in numbers and in assertiveness and that the institutional arrangement of the Mexican political system has not adopted rules either conducive to the creation of legislative coalitions or that could solve intractable disagreements.

To begin, Mexico has a bicameral structure that, in addition, is symmetrical. Consequently almost any initiative—spending budget being the most important exception—has to go through an identical processes in two chambers that usually present a different distribution of power and thus changing numbers of veto points. This forces a two round negotiation for even though discipline is high within Mexican parties, this holds true within each of the houses and not necessarily between parliamentary groups from the same party but in different chambers.

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<sup>5</sup> “Several smaller parties survive thanks to generous public financing and open coalition rules. From 1990 to 2005, between six and eleven parties held official registration ...”. Nonetheless, the three major parties -PRI, PAN and PRD- have systematically won 90% of the vote in federal elections and 95% of the Legislative seats (Langston, 2009)

<sup>6</sup> Ma. Amparo Casar, “Change and Continuity in Institutions of Governance: Executive-Legislative Relations” in Andrew Seele and Jacqueline Peschard, Woodrow, *Mexico’s Democratic Challenges*, Wilson Center & Stanford University Press, 2010

Second, the growth in the number of parties has made negotiations more difficult and shifting coalitions rather than permanent ones are the rule. Seldom has the President's party been able to maintain a permanent coalition with "small" parties let alone with any one major opposition political force.

Third, by design, any constitutional reform requires two thirds of legislators in both cameras and at the same time electoral provisions establish that no party may hold more than 60% of seats. Thus, the concurrence of members of more than one party is needed. It must be added that by law, half (16 in all) of the local legislatures—which are also organized around a mixed electoral system— have to confirm the passage of a constitutional reform. This introduces multiple veto points in the legislative process that vary depending on the distribution of power.

To all these veto players it is necessary to add the judiciary and the array of un-elected bodies which while not strictly speaking veto players do restrain legislative powers and complicate the legislative work.

The relatively newly gained autonomy of the Supreme Court together with the judicial reform of 1994 means that the President may turn to this body in order to claim the unconstitutionality of a certain legislative decision.<sup>7</sup>

Finally, it must not be overlooked that in the new democratic context, public opinion and interest groups play a more active role trying to openly influence policy decisions and changing the nature of what used to be a closed and secretive process. The former is making use of their voice through access of information and the free press, the latter is moving freely to lobby different parties.

The question is whether all these changes have turned Congress into a veto machine with the overarching purpose of blocking most legislation proposed by the President preventing the Executive from advancing its agenda of policy reform or, at least into an inefficient institution incapable of building consensus and reaching policy decisions.

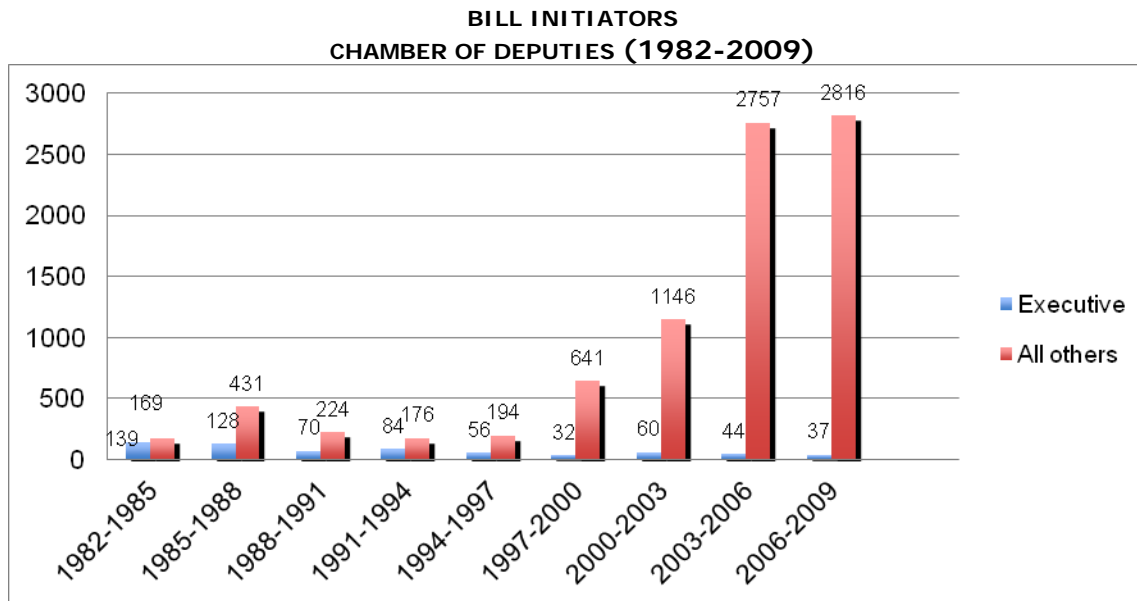
In what follows I offer some data that run counter to this general perception.

Parties have become very active bill initiators. Although the Executive has never been the major bill sponsor, the number of bills presented by actors different from the Executive has certainly soared since plurality came about. There has been a marked change in the number and proportion of bills initiated by parties<sup>8</sup> in Congress rising from 55% in 1982-1985 to a striking 99% in the last legislature. In absolute numbers, the Executive passed from sponsoring 139 (45%) bills in 1982-1985 to just 37 (1%) in 2006-2009.

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<sup>7</sup> A good example of the extent of the new and important role of the Supreme Court is that of the constitutional controversy against the Chamber of Deputies regarding the budget. Back in 2004 the Court ruled that legislators went way beyond their constitutionally granted budgetary powers forcing them to revise the amendments they had made to the spending budget initially sent by the Executive.

<sup>8</sup> The Mexican Constitution allows legislators, the Executive and local legislatures to present bills in Congress.



Source: Casar (2008) and Cámara de Diputados.

The approval rate for all bills has equally diminished. While the approval rate was almost 45% in the LIV legislature when opposition parties secured for the first time almost half of the lower house seats, it plummeted to 17.5% in the LX (2006-2009). Nonetheless, these numbers must be taken with caution for the diminished rate may be explained by the inordinate growth of bills that was, over the same period, of around 800%. Taken in absolute terms, the number of initiatives that reached the floor and were approved rose from 131 to 538.

**APPROVAL RATE  
CHAMBER OF DEPUTIES (1988-2009)**

LEGISLATURE	PRESENTED	APPROVED	%
LIV 1988-1991	294	131	44.56%
LV 1991-1994	260	158	60.77%
LVI 1994-1997	250	108	43.20%
LVII 1997-2000	673	195	28.97%
LVIII 2000-2003	1206	281	23.3%
LIX 2003-2006	2800	478	17.07%
LX 2006-2009	3059	538	17.5%

Source: *Memorias de la LII Legislatura* (1982-1985), Cámara de Diputados; Nacif (1995), *Cuadernos de apoyo* (1994 y 1997), *Diarios de Debates* (1997-1998), *Sumario de Actividades Legislativas* (1997, 1998 y 1999), *Gaceta Parlamentaria* (2000-2010).

The approval of Executive bills has also diminished but it remains high. From 1940 to 1970 no Executive bill was defeated on the floor.<sup>9</sup> In the period 1982-1988 when the PRI was still the dominant party and firmly in control of the legislative agenda, the success rate of Executive bills was of 97%. Thereafter it started to decrease. During the last four legislatures—all of them with no party majority—the success rate of Executive initiatives averaged 73.5%.

**APPROVAL RATES OF EXECUTIVE BILLS**

PRI HEGEMONY SINGLE PARTY SYSTEM	PRI DOMINANCE DOMINANT PARTY SYSTEM	DIVIDED GOVERNMENTS THREE PARTY SYSTEM
100%	97%	73.5%

<sup>9</sup> De la Garza (1972). This does not mean that all Executive Bills were passed or went unamended. Congress did not act on several and it filed others.

**NUMBER OF EXECUTIVE-INITIATED BILLS  
CHAMBER OF DEPUTIES, 1997- 2009**

STATUS	57 <sup>TH</sup> LEGISLATURE (1997-2000)	58 <sup>TH</sup> LEGISLATURE (2000-2003)	59 <sup>TH</sup> LEGISLATURE (2003-2006)	60 <sup>TH</sup> LEGISLATURE (2006-2009)
INTRODUCED	32	60	44	37
APPROVED	25	47	23	32
PENDING	6	12	19	5
REJECTED	1	1	2	0
APPROVAL RATE	78%	78%	52%	86%

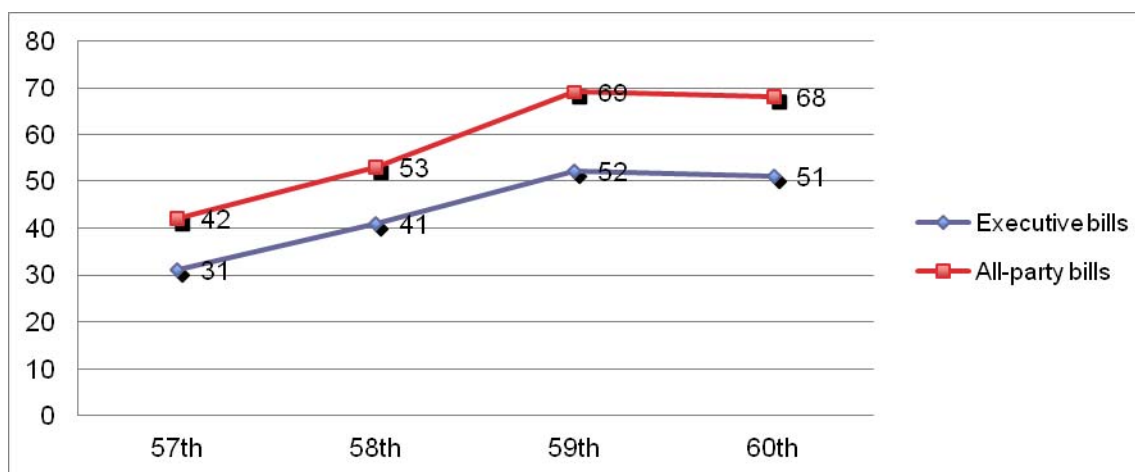
Source: Casar (2008) and Cámara de Diputados.

Thus, although the approval rate of Executive initiated bills has undoubtedly gone down, the idea of a systematic opposition to Executive bills does not find sound empirical basis. In fact, compared to other Latin American countries, Mexico is well above the sample average that is 65% (Saigh 2010).

Moreover, contrary to this view, floor-voting analysis shows that most of them are passed with broad coalitions that include the three largest parties.

On average, 58.5% of all bills were approved through coalitions that included members of all parties represented in Congress. If we compare these with the Executive sponsored bills for the same period the picture that emerges is not altogether different. All party coalitions for Executive initiated bills was of 44%

**ALL-PARTY COALITIONS (FLOOR VOTING)  
CHAMBER OF DEPUTIES (1997-2009)**

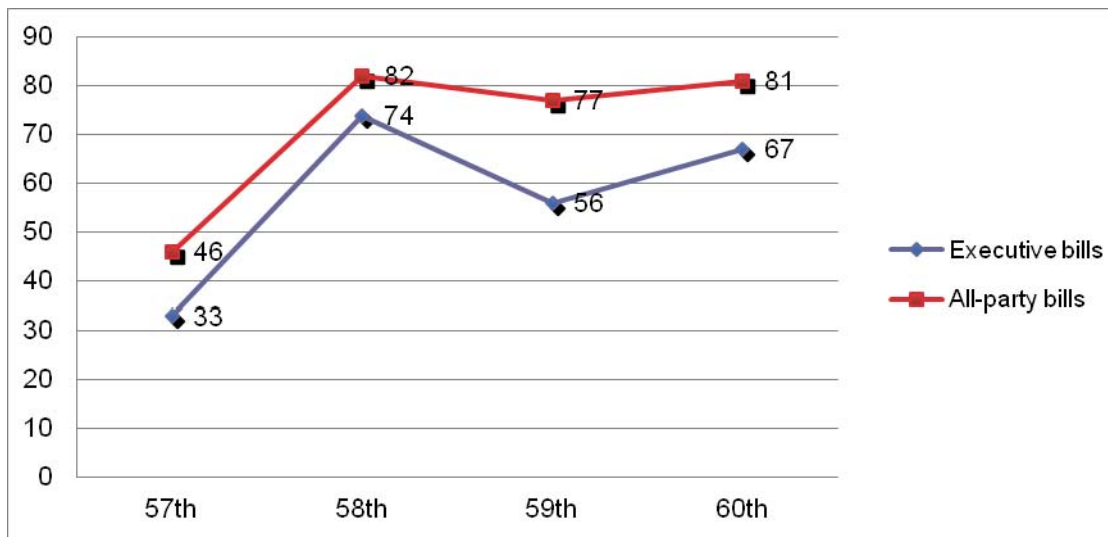


Source: Casar (2008) and Cámara de Diputados.



If we exclude the emergent or small parties from floor voting coalitions (parties that account for only 10% of seats in the Chamber of Deputies) the numbers rise. Floor coalitions of the three major parties were formed, on average, 71.5% of the time for all initiatives and of 55% for Executive bills.

THREE MAYOR PARTIES COALITIONS (FLOOR VOTING) EXECUTIVE VERSUS ALL OTHERS  
CHAMBER OF DEPUTIES (1997-2009)



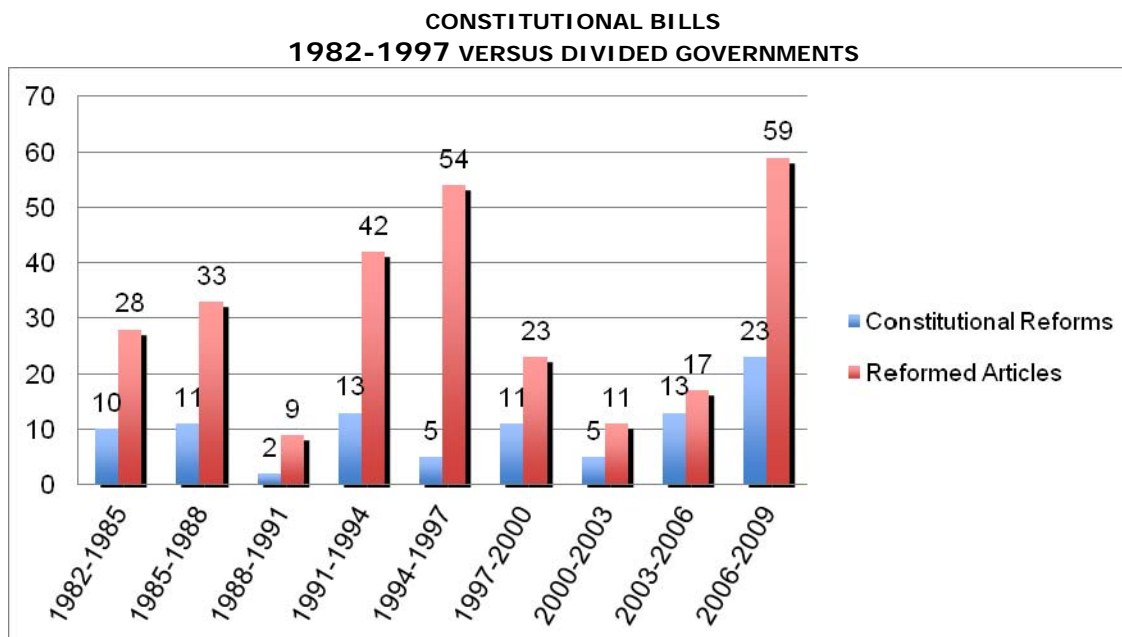
Source: Casar (2008) and Cámara de Diputados.

In fact, the most frequent coalition in Congress for bills that reach the floor—regardless of origin—is that formed by the three largest parties.<sup>10</sup>

Figures do not warrant the claim of a paralysis in quantitative terms neither for constitutional that require 2/3 of legislators nor for ordinary laws that need a simple majority of members present in any one session.

During the last period of PRI dominance Congress (1982-1997, 5 legislatures) passed 41 constitutional reforms involving the transformation of 165 articles. During the last 4 periods of divided governments, Congress passed 52 reforms involving the amendment of 110 constitutional articles.

<sup>10</sup> For a detailed analysis of voting behavior and coalitions formed in the Chamber of Deputies see Ma. Amparo Casar, “Los Gobiernos sin Mayoría en México: 1997-2006”, en *Política y Gobierno*, Vol. XV, Núm. 2, CIDE, México, Segundo Semestre de 2008



Source: Casar and Marván *forthcoming*.

These figures constitute but a rough indicator of legislative activity. Among other things they do not account for the subject and content of bills, the amendments made to Executive sponsored initiatives in committees or for the Executive postponing or withholding altogether controversial legislation out of fear of failure.<sup>11</sup> Nonetheless they also serve the purpose of questioning the idea of a paralyzed Congress. Over the now 14 years period of divided governments in Mexico important pieces of constitutional and secondary legislation have been passed. Among them: the energy, pensions, electoral, banking, human rights, public access information and security and justice reforms.

Others, it is true, have not been able to gather the needed majority to be passed and are still waiting for approval. Most notably the fiscal, labor, education, telecommunications, anti-trust and political reforms.

In spite that the available evidence does not seem to side with the thesis of paralysis or deadlock, there is still a sense that plurality has performed far worse than it could have, that there has been a lack of action or at least a poor performance in many of the fields that all parties agree are in need of reform and that since the advent of divided government there is more political conflict than political action.

<sup>11</sup> There are several examples of the Executive's strategy of not presenting controversial legislation in face of the certainty that it will be defeated. Such was the case of Salinas postponing or withholding the introduction of reforms that were to alter longstanding traditions such as state-church relations, agrarian property rights or labour legislation, of Zedillo's pension reform, of Fox's political reform or Calderón's telecommunications reform.

These perceptions may be explained first and foremost by the poor performance of the economy and of public safety that opposition parties blame on the Executive and its inefficiency and the President blames on opposition parties in Congress who refuse to pass the needed legislation for electoral purposes more than from differences in ideology or program. In fact, the constant public clash between powers—usually magnified by the media—enhances the idea of a fruitless confrontation between the President and opposition parties. Finally, it is also true that unparliamentary behavior such as the closing of congressional sessions when a minority is defeated on the floor or the “time wasted on rowdiness and disorder and theatrics replacing debate”, have contributed greatly to the image of Congress as a dysfunctional institution.<sup>12</sup>

Anyhow, the question remains on how far the pending reforms have not been approved as a consequence of divided governments and, whether the particular arrangement of the Mexican presidential system is responsible for the lack of what is termed an inefficient decision making process.

## ***II. The Institutional Arrangement Argument***

Albeit with different fine points, the dominant view is that Mexico has a faulty institutional arrangement and that the way out of the supposed paralysis or deficient and/or unsatisfactory decision-making process is political reform.

The widely held diagnosis is that the Mexican presidential system is poorly designed because it promotes party fragmentation at the ballot box, does not promote the formation of legislative coalitions and does not foster cooperation between the Executive and Legislative branches of power. In addition it provides no mechanisms to surmount crisis situations or deadlock.

Part of these arguments can and should be questioned.

To begin with, there is not a word about the fact that the presidential system, regardless of the particular form it assumes, was designed to inhibit or at least to slow the pace of change of the *status quo*, that one of the basic tenets of presidentialism is the freedom of voters to decide in the ballot box whether or not to give a majority to one party (to form a unified or divided government) and that in presidential systems majorities cannot be decreed because they are not necessary to form a government but, instead, that most of the time they have to be negotiated on a case to case basis.

Surprisingly enough, it has not even been argued that if policy decisions to change the *status quo* have not been taken it is not because of some system failure but rather because it has not been in the interest of political forces to do so as they think the current situation benefits them, and their transformation might hurt them politically or electorally.

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<sup>12</sup> In this respect see the argument developed for the Indian Parliament by Kapur and Mehta (2006).

As against those who contend that enhancement of representativeness and the lack of a majority for the President's party are to be blamed for the absence of the so called structural reforms it can be argued that during the last two decades in which the PRI was still dominant and not in need of any type of coalition, neither the fiscal, nor the pensions, nor the education, energy or fiscal reforms were passed. All of them were already in the public and academic debates and were deemed essential for the performance of the economy by most parties and yet no action was taken.

It can also be argued that when political parties agree on any one issue, they will negotiate at once, creating the necessary majorities to reshape the Constitution and laws and forgetting that the system hinders the decision-making process. A good example of this is the 2007 electoral reform that received the unanimous support of the three main political forces against the two media conglomerates.

If further evidence was needed, one could point to the fact that in the last legislature (2009-2012) the PRI holds a near majority (47.4%) by itself and a majority formed by its alliance with the Partido Verde Ecologista (PVEM). These two parties account for 51% of the seats in the Lower House. Nonetheless they have been reluctant to pass important reforms like the fiscal, labor, education and national security laws all of which figure in their electoral platforms or political programs.

These facts acknowledge one of two things. Either political discourse is little more than demagogic and parties and Presidents were never serious about those reforms for their electoral consequences or, most likely, apart from parties who are the formal players on the congressional arena, there are other players in the game that are weighty and effective enough to hamper reforms.

The Mexican political system may be flawed but it is not wise to disregard the challenge posed to the decision-making process by the de facto powers, those interest group organizations that overpower elected authorities and impose policies –or obstruct the passage of reforms– although their power comes from grants and privileges<sup>13</sup> bestowed by these same authorities in successive governments in their search for support or personal benefit.

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<sup>13</sup> These include fiscal privileges that drain public finances, monopolies that hinder competition in strategic economic sectors, trade union leaders that check efforts at modernization, competitiveness, efficiency and transparency in state owned enterprises and private industries that capture regulating bodies and administrative units.

### ***III. The proposed alternatives and its political consequences***

As argued above, in addition to the consensus regarding the flaws of the system, parties in agree that there is no other way out but that of a political reform. However they are divided as to what type of reform should be furthered.

The debate –mirrored in the academic community– is whether to alter the “access to power” side of the equation or that of the “structure of powers” that is, the equilibrium of powers system. In particular, there is a clash on whether it is wiser to reform the electoral rules in order to promote the creation of majorities at the ballot box or whether to explore the alternatives for reducing overlapping areas of competence and establishing mechanisms that may punish legislative inaction and help overcome stalemates.

Regarding representativeness, most parties and party fractions argue that the whole point of the Mexican democratic transition was precisely to end the majority rule exercised by the PRI for over 70 years through fair elections and the introduction of a mixed system which included a 40% proportional representation seats in the lower chamber and a mixed system of majority, minority and proportional representation seats in the Senate. They thus advise either maintaining the present electoral formulas or even moving forward into a pure proportional system. There are, however exceptions. The lower house PRI parliamentary group, for example, has argued in favor of reducing the proportion of plurality versus proportional representation seats, of eliminating the 8% over-representation rule presently in force and/or of introducing a governability clause that would automatically grant 51% of seats to the party that gathers a 35% or 40% of electoral votes.<sup>14</sup>

If we move to the balance of powers side, opposition parties counter any serious attempt at strengthening the powers of the Executive or even reducing the overlap of powers so as to avoid or diminish potential conflict between the two branches. Moreover, both the PRI and the PRD argue for further limiting the presidency and rebalancing the equilibrium of powers in favor of Congress and of the sharing of powers now reserved to the Executive.

Such is the case with proposals like cabinet ratification, congressional approval of the development plan (*Plan Nacional de Desarrollo*), establishment of more autonomous organs, referenda power, congressional censure and minister’s dismissal (Casar 2010).

In sharp contrast, the today governing party (Partido Acción Nacional) calls for formulae with the potential of reducing party fragmentation and favoring the creation of a single party majority in Congress (reduction of the

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<sup>14</sup> Needless to say the PRI expects to win the presidency in the coming 2012 general elections.

size of both chambers and altering the ratio of plurality *versus* proportional representation, majority run off for presidential elections and separation in time of Executive and Congressional elections, rise in the barrier entries for parties) and, also, the strengthening of the Executive Legislative powers through the introduction of a relatively light urgency procedure for Executive bills, partial veto power, and making the presidential budget proposal the reversionary outcome if Congress does not reach a decision.

In the end, political forces in Mexico have not been able to agree on the nature of the political reform. On the one hand, there is fear and resistance to altering the electoral system because of the negative consequences it may have for both stability and legitimacy. On the other, after over seven decades of a very strong and unchecked presidency, most political actors refuse to accept the constitutional strengthening of its powers.

Mexico is not the first country to face the representativeness/efficiency dilemma. Many countries –especially those that after prolonged periods of authoritarian rule drafted new constitutions– engaged on the discussion on how far and in what direction to alter each side of the equation.

Following the literature on constitutional change, it must be noted that in terms of electoral rules, most constitutional changes in the last two decades in Latin America have involved a shift from plurality rule for presidential election to a majority run-off (or qualified plurality in some cases) system. This change has been coupled with the restoration or adoption of proportional rules for congressional elections. The combined effect of the electoral rules for electing legislators and Presidents has supported and reinforced multi-partism in the region.<sup>15</sup> To “overcome” this situation, Presidents have been forced and have managed to form government coalitions or rely on legislative coalitions in order to further their agendas.

These electoral system trends have however been often accompanied by the strengthening of legislative powers for the Executive: exclusive introduction of legislation or reserved policy areas, power to issue provisional decrees, capacity to propose binding referenda and right to demand urgency procedures.<sup>16</sup>

Brazil is probably the best example of a multiparty system –even of a highly fragmented system– in which decisions have come through in the last two decades and where Presidents have been able to push through their agendas in spite of their minority position in the successive legislatures.

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<sup>15</sup> As of 2003, for instance, only six out of eighteen countries in Latin America had an effective number of parties in the single or lower chamber of Congress of less than 2.5. In most cases, the President’s party has had a minority status in Congress (Jones 2010).

<sup>16</sup> However it is also true that a tendency to introduce higher limits on the President's power to appoint political offices was observed. Many constitutions have restricted the power of Presidents not only to appoint cabinet ministers but also local or regional Executive authorities and judges of the supreme or constitutional court. (Negretto, 2009).

As Cheibub and Limongi (2000) argue this has been possible by a virtuous combination of strong legislative powers of the President with a legislative organization that is highly centralized, with “a tight control over the agenda by speaker and party leaders” and where institutional arrangements promote party discipline and “conspire against the capacity of members of Congress to pursue their own particularistic interests”. Thus, it is possible to conclude that political reformers have avoided the representativeness *versus* efficiency trap and have resisted the temptation of a reversal of representativeness.<sup>17</sup>

So where then does Mexico fit compared to other Latin American countries and its constitutional trends?

As most nations Mexico has moved toward greater proportionality in its electoral system and it is characterized by a reasonable degree of representativeness with an average of 7 parties participating in Congress and 3 of them accounting for 90% of seats. With a 3.2 *number of effective parties* it does not qualify as a system with excessive party fragmentation.<sup>18</sup> It must be added that parties are highly cohesive and disciplined with a Rice Index for the 3 major parties ranging between 92 and 99 (Casar, 2008). However, the President’s party contingent in Congress since 1997 (last 5 legislatures) has been rather low with an average of 38% of seats in the Lower House and 45% in the Senate making legislative coalitions necessary.<sup>19</sup>

If Mexico stands online with Latin American trends regarding representativeness, the same cannot be said about the strengthening of Executive powers that may be the missing link in Executive-Legislative relation in Mexico. The Mexican transition left practically untouched the structure of powers of the Legislative and Executive powers. If any, the balance of power has been tipped in favor of Congress. In terms of reactive powers, the Mexican Executive has package veto power but no exclusive powers to initiate legislation in any policy area except for the budget. In terms of pro-active powers it is in disadvantage *vis a vis* many of its Latin American peers for its budgetary powers are limited, it cannot enact new legislation by decree and it cannot even declare a legislative proposal as urgent. Moreover, not even the budget bill is subject to a reversionary point.<sup>20</sup>

The other missing link may be the structure of Congress itself. In spite of the fact that recent organizational changes have gradually made Congress a

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<sup>17</sup> These authors have convincingly argued that “explanations of parliamentary behavior and of policy outcomes overemphasize the importance of the separation of powers and the characteristics of electoral and party legislation” and that “they overlook the role of other institutional characteristics, especially the President’s legislative powers and the internal organization of the legislative work”.

<sup>18</sup> In contrast, Brazil has a 7.8. In fact, out of the 11 countries included in Jones’s study, Mexico stands as the third country with a lower NEP. Mark Jones (2005).

<sup>19</sup> According to Jones (2010) Presidential party’s lower (or single) chamber and Senate contingents in Latin America is 39% and 41% respectively.

<sup>20</sup> For a discussion of reactive and pro-active Powers see Mainwaring and Shugart (1997).

more democratic body<sup>21</sup>, the legislative organization and processes are highly centralized and party centered with “a tight control over the agenda by speaker and party leaders” and the internal institutional arrangements (and the electoral system itself) promote party discipline.

Nonetheless, the Mexican Congress remains a body with poor capacities and in want of professionalization, a seniority system in committees, independent professional bodies, internal mechanisms to curb antiparliamentary conducts or purposeful delaying of legislation and of internal mechanisms that could ease the decision making process and overcome stalemates either within each chamber or between the lower house and the Senate.

Lack of capacities derives, at least in part, from the absence of consecutive reelection. Every three years the lower house is integrated with 500 hundred individuals most of whom have never had a prior parliamentary experience. The same is true for the Senate.

**NUMBER OF LEGISLATORS WITH PRIOR LEGISLATIVE EXPERIENCE**

	LVIII		LIX		LX		LXI	
	DEP.	SEN.	DEP.	SEN.	DEP.	SEN.	DEP.	SEN.
PRI	51	3	3	2	26	7	61	2
PAN	12	0	9	0	11	5	12	0
PRD	7	1	16	1	12	2	3	0
PT	3	0	2	0	4	0	7	0
CONV	-	-	2	0	3	0	1	0
PANAL	-	-	-	-	2	1	2	0
PVEM	-	-	1	0	5	0	-	-
PSD	-	-	-	-	1	0		
IND	1	0	2	0	-	-		
<b>TOTAL</b>	<b>74</b>	<b>4</b>	<b>35</b>	<b>3</b>	<b>64</b>	<b>15</b>	<b>86</b>	<b>2</b>

Source: Cámara de Diputados.

Mexico stands as the country with the lowest parliamentary experience rate in Latin America. In the last decade only 12.7% of legislators in the Lower House had had previous experience and only 5% in the Upper Chamber.<sup>22</sup>

<sup>21</sup> For example, in the past, the PRI's majority in Congress allowed that party to control the committee assignment process resulting in the absolute control of all and each of the committees. It was not until 1988 that the PRI was forced to give up the presidency of 4 out of 39 committees, with another 8 following in 1991 and 16 more in 1994. These occurrences were followed by a resolution to divide the presidencies of committees and their composition in proportion to the seats held by each party (Casar 2002 en Morgenstern y Nacif) and later to place the two most important governing bodies of Congress –the presidency of the Directive Board and of the Junta de Coordinación Política- successively on the hands of different parties.

<sup>22</sup> According to Saiegh (2010) Mexican legislators have the least parliamentary years of experience in Latin America: 1.9 years. The average for his sample of countries being 4.3 years.



#### ***IV. Final Remarks***

In this paper it has been argued that Mexico has reached a democratic stage where electoral rules guarantee free and fair competitive elections and a reasonable degree of representativeness in terms that Congress reflects and ensures that the different views and interests in society are present and confronted in the debate by legislators with different positions and then translated into the provisions of the law.

It has been shown that—in spite of perceptions to the contrary—legislative failure has not been the rule in the now 15 years period of divided governments and that inter-party coalitions have been successfully formed for several important pieces of legislation. Finally, alternative explanations to the lack of action regarding many of the structural reforms that many deem necessary were put forward. These include the presence of *de facto* powers, the lack of Executive powers and the low capacities of the Mexican Congress.

These arguments and findings do not mean that rules for democratic governance need not be improved in order to both enhance representativeness and to achieve a more efficient decision-making process.

In both these respects, Mexican democracy faces important challenges.

The degree of representativeness may not be questioned if we make reference to the number of parties and views represented in Congress but it is certainly questionable in relation to the linkage between the membership of Congress and the citizenry.

Public opinion shows an extended dissatisfaction with the workings of democracy and, particularly, with the performance of parties and legislators. According to *Latinobarómetro 2010* only 27% of Mexican citizens are satisfied with the workings of democracy and barely half (49%) of them support the democratic regime.

Furthermore, among all institutions or actors, legislators and parties are the least trusted and appreciated.

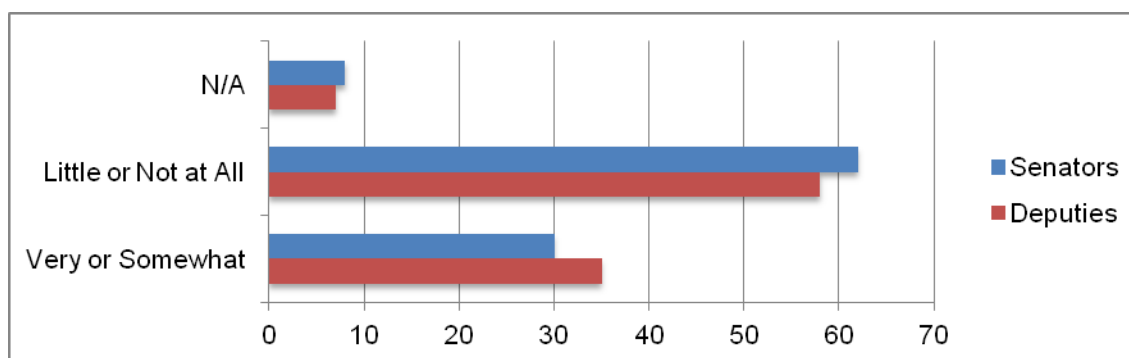
**TRUST IN INSTITUTIONS**

INSTITUTION	GRADE (1-10 SCALE)	CONFIDENCE %
UNIVERSITIES	8.0	37.4
CHURCH	7.8	42.1
ARMY	7.5	32.3
MEDIA	7.4	22.4
ENTREPRENEUR	7.0	17.2
FEDERAL ELECTORAL INSTITUTE	6.7	15.5
SUPREME COURT	6.7	14.9
PRESIDENT	6.5	13.7
SENATORS	5.0	5.8
UNIONS	5.9	6.7
POLICEMEN	5.8	6.5
DEPUTIES	5.8	5.3
POLITICAL PARTIES	5.8	5.2

Source: Consulta Mitofsky, june 2011.

Finally, when asked whether they feel represented by their legislators, a large majority responds that they are little or not at all represented by them.

**PERCEPTIONS REGARDING THE REPRESENTATIVENESS OF LEGISLATORS**



Source: Buendía y Laredo, agosto 2010.

Along with the challenge of representativeness, there is also that of improving the efficiency of the system. Although collaboration within Congress and between Executive and Legislative powers cannot be guaranteed, the Mexican political system could certainly benefit from some reforms in its institutional make-up.

Assuming that divided governments will continue to be a structural feature of Mexican politics and that most probably any President will have to deal with rather small legislative contingents in the coming years, it would seem reasonable to introduce reforms which have proved useful in other countries

In my view, what needs to be avoided is the widely held idea that a political reform should have as its main premise either the restriction of its degree of representativeness or the need to weaken the presidency. Experience has shown that deprived of the majorities imposed by an utmost undemocratic electoral system and by the associated President's partisan powers, the Mexican President is not as powerful as it was thought to be. On the other hand, it is clear that a presidential system demands cooperation in order to push through either the presidential agenda or any other alternative political agenda to start addressing some of the most pressing social and economic problems of the country.

If what is needed is the creation of legislative majorities, putting in place incentives for cooperation and making more efficient the decision making process, a number of alternatives seem at hand.

First, electoral can be reformed not to diminish representativeness but rather to avoid the fragmentation of the party system, to promote the transformation of electoral alliances into parliamentary coalitions and to allow for a stronger link between legislators and their constituencies. These goals could be approached through reelection, increasing the entry barriers of small unrepresentative parties to the political arena and by the introduction of rules that promote electoral coalitions.

Second, it seems advisable to review those constitutional articles that far from averting conflict between the two branches tend to encourage it and that could place the system in situations of crisis (e.g. ambiguity in veto powers, budget proceedings and rules for the replacement of the President should the need arise).

Third, creating incentives for a more collaborative relation and the granting to the Executive of pro-active powers accompanied by greater levels of transparency and more effective means of oversight.

Fourth, making the Legislative process less cumbersome and protracted at the same time as increasing the Congress professional capacities.

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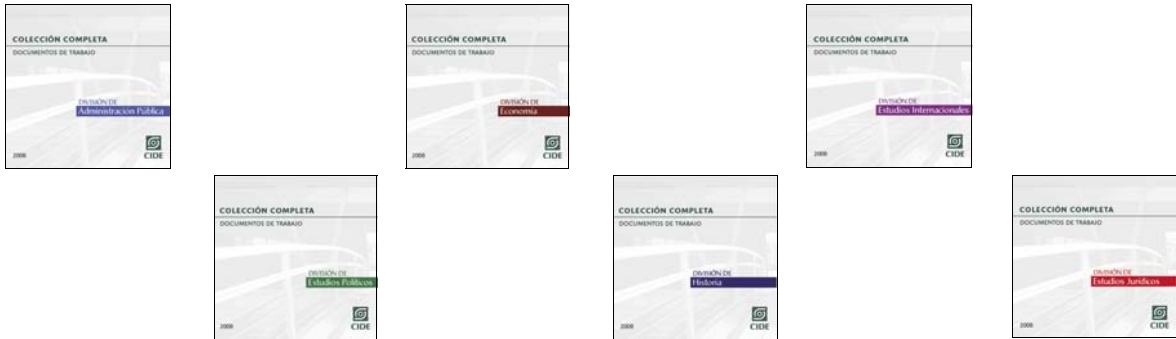
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