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Confronting Pluralism: Constitutional Reform
in Mexico After Fox

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Abstract

Since 2000 Mexico is experiencing two novel political conditions: the defeat of the PRI in a competitive presidential election and a new presidency without majority in either chamber of a bicameral congress. In what is likely to be a new era of divided government, several constitutional reforms have been proposed to promote good governance under a separation-of-powers system. While some reforms attempt to decrease the likelihood of minority presidents, others aim strengthening the constitutional powers of the president. I will argue that a viable and desirable strategy of constitutional change should avoid these two extremes and aim, instead, at creating incentives for inter-branch cooperation when the presidency and the congress fall under the control of different parties. Along these lines, I discuss the benefits of a partial reform consisting of electoral rules that promote correspondence between the preferences of citizens and those of policy makers and of constitutional powers that encourage coordination between the president and the congress in the process of policy making and cabinet formation.

Resumen

Desde el año 2000, México enfrenta dos nuevas condiciones políticas: la derrota del PRI en una elección presidencial competitiva y un nuevo presidente sin mayoría en ambas cámaras del congreso. En esta situación con el gobierno dividido, se han propuesto varias reformas constitucionales para promover la gobernabilidad en un sistema de separación de poderes. Mientras algunas reformas pretenden disminuir la probabilidad de que exista un presidente minoritario, otras intentan fortalecer los poderes constitucionales del presidente. Argumentaré que una estrategia de reforma constitucional viable y deseable, debe evitar estos extremos, y tratar, en cambio, de crear incentivos que favorezcan la cooperación entre poderes en situaciones en las que el congreso y la presidencia están bajo el control de partidos distintos. En este trabajo discuto los beneficios de una reforma parcial consistente en la elección de reglas electorales que fomenten una correspondencia de intereses entre los ciudadanos y sus representantes, y que promuevan la coordinación entre el presidente y el congreso en el proceso de toma de decisiones y de formación del gabinete.

Introduction

Since 2000 Mexico's political situation has undergone two significant changes; the defeat of the long-time ruling PRI in a competitive presidential election, and a new presidency without a majority in either chamber of a bicameral congress. At the same time as the former was celebrated in Mexico and abroad, the latter was generating growing concern. In spite of his initial popularity as the "president of change," Fox soon became embroiled in several conflicts with congress and failed to obtain legislative support to pass important economic reforms. In this context, several changes to the 1917 constitution have been proposed to promote good governance under a separation-of-powers system.

A comparative analysis of constitutional change in Latin America shows that a goal of most institutional designers is to enhance legislative effectiveness either by decreasing the likelihood of minority presidents or by strengthening the constitutional powers of the president. I will argue that a viable and desirable strategy of constitutional change in Mexico should avoid both these alternatives and aim, rather, at creating incentives for inter-branch cooperation when the presidency and the congress fall under the control of different parties. I further discuss the benefits of a partial reform consisting of electoral rules that promote correspondence between voter preferences and those of policy makers, and of constitutional powers that encourage coordination between the president and the congress in the policy making and cabinet formation process.

This chapter is organized as follows. In the first section, the two models of constitutional design that predominate in contemporary Latin America are presented. The next section discusses some of the disadvantages of the presidential system in Mexico and the convenience of adopting a design that avoids the dilemma of restricting representation for the sake of effectiveness in policy making. The third section discusses the main elements of a strategy for constitutional change and reviews reforms to the Mexican constitution proposed since 2001. A brief conclusion follows.

The two models of constitutional design in Latin America

The rich experience with constitutional change in Latin America is a useful starting point from which to analyze constitutional reform in Mexico from a comparative perspective. An average of 10.1 new constitutions per country were created in the region since independence, and an average of 5.4 from 1900 to 2000. In terms of design, one common feature of these changes has been a gradual departure from the American constitution, the model that supposedly inspired Latin American constitution makers during the nineteenth century.

The American constitution created a separation-of-powers system whose central characteristics are indirect election of the president by plurality rule, a mixed electoral cycle and staggered elections, a chamber of deputies elected by plurality rule in single-member districts, and a second chamber made up of two senators per state elected by plurality. It is also characterized by the relative autonomy of the president to appoint and dismiss cabinet ministers, and his influence on legislation by means of a powerful veto. Few Latin American countries retained this model by the end of the twentieth century.

In the electoral dimension, the Electoral College system and the plurality formula for electing presidents was gradually replaced by direct elections and more-than-plurality formulas, such as qualified plurality (plurality with a minimum threshold) and majority runoff.¹ As a result of these changes, only Honduras, Mexico, Panama, Paraguay, and Venezuela today retain plurality rule for electing presidents. Beginning with Costa Rica in 1913, existing plurality formulas to elect legislators were replaced by proportional representation (PR) formulas to allocate legislative seats.² Second chambers have been eliminated or transformed. While 14 countries had a second chamber by the end of the nineteenth century, by 2000 only nine retained bicameralism. Of the remaining second chambers, most have incorporated some form of minority representation (Negretto 2003).

In the distribution of powers dimension, several constitutions in Latin America restricted their president's autonomy in cabinet formation by introducing quasi-parliamentary rules, such as the binding motion of congressional censure. Countries that adopted this rule during the twentieth century were Ecuador from 1906 to 1998, Peru since 1933, Uruguay since 1934, Guatemala since 1945, Costa Rica since 1949, Venezuela since 1961, Colombia since 1991, and Argentina since 1994. A symmetric institutional innovation during this period was the power of presidents to dissolve congress as a response to censure, included in the 1979 and 1993 constitutions of Peru, the 1934, 1942, 1967, and 1997 constitutions of Uruguay, and the 1999 constitution of Venezuela.

Perhaps more significant and far-reaching are the changes introduced in the distribution of legislative powers between presidents and assemblies. Along with the traditional veto, presidents received a wide array of instruments to promote legislative change. The 1917 Uruguayan constitution introduced the concept of reserved areas of exclusive executive initiative on important financial and economic matters. Some constitutions, such as the 1925 Chilean constitution or the 1946 Ecuadorian constitution, increased the

¹ The 1933 Peruvian constitution created the first qualified plurality system in Latin America. Majority formulas in direct elections, in contrast, had been in place since the early twentieth century, although with a second round of election in congress.

² All current electoral systems in Latin America apply some proportional formula for allocation of legislative seats, either alone or in combination with another formula. The only exception is Ecuador, which introduced a plurality formula in multimember districts in 1998.

influence of executives on drafting budget bills by making the presidential proposal the reversionary outcome if congress did not reach a decision within a constitutionally defined time limit. Presidents also received the power to force a congressional vote on a government bill within a certain time limit, as was the case of the 1925 Chilean constitution, the 1945 constitutional reform in Colombia, and the 1967 Uruguayan constitution. The constitutional reform of 1968 in Colombia invested the president with the explicit power to enact decrees of legislative content in cases of economic emergency.

Constitutional changes since 1978 have reinforced this trend. Several constitutions have strengthened their presidents' agenda-setting powers over the budget by placing limits on legislators' ability to increase the total level of spending authorized by the executive. The 1979 constitutions of Ecuador and Peru, the 1988 Brazilian constitution and the 1992 Paraguayan constitution provided presidents with the capacity to introduce urgency bills that must be voted on within a time limit. The 1988 Brazilian constitution, the 1991 Colombian constitution, the 1933 Peruvian constitution, and the 1994 Argentinean constitution explicitly invested the executive with the power to enact decrees of legislative content with the immediate force of law.

In spite of the variety of designs among presidential regimes in Latin America, two clear alternatives stand out. One is based on relatively restrictive rules of election, such as the plurality or qualified plurality formula for electing presidents, concurrent electoral cycles, unicameralism, and presidents with relatively weak agenda powers. Particular constitutions identified with this model satisfy all its requirements, of course, to a greater or lesser degree. Some presidential regimes in Central America, such as those of Costa Rica, Honduras, Nicaragua, and Panama, approximate this model fairly closely. The other model is based on permissive electoral rules, such as majority rule for the election of presidents and/or non-concurrent electoral cycles, bicameralism, and presidents with relatively strong proactive powers. The presidential regimes of Argentina, Brazil, Chile, Colombia and Uruguay fit this model quite well.

Students of presidential regimes in Latin America tend to praise the restrictive electoral rules-weak presidents model (Mainwaring 1990, 1993; Shugart and Carey 1992; Jones 1995; Mainwaring and Shugart 1997a, 1997b). The reason is that it usually limits the number of parties able to win a large share of votes in elections, making more likely that the party winning the presidency obtain majority or near-majority support in congress. According to this view, the majority or near-majority status of the president's party in congress reduces the likelihood of executive-legislative conflicts, and makes cabinets more stable and democracy more likely to last through political and economic crises.

As a general model, however, this design has serious flaws. A small country with relatively few social, cultural and political cleavages can indeed find equilibrium between representation and effectiveness with restrictive

electoral rules, two parties, and unified government. But the situation is different in a large country with a complex, plural society, where inclusive electoral rules, more than two parties, and multiparty coalition government are usually necessary to channel competing social and political interests. In this context, the restriction of representation for the sake of legislative effectiveness may come at a price, such as widespread dissatisfaction with policy outcomes among the citizenry (Colomer and Negretto 2005).

Adopting a constitution based on restrictive electoral rules may also be unwise, considering the political past of some recently democratizing countries. Unified government may be an attractive option for constitutional change when past experience with consensual democracy and multipartism in a country has led to persistent inter-branch conflict and government or regime instability.³ The situation is different, however, in countries where the traditional political regime has been characterized by effective but exclusionary government. In this case, unified government would only increase the representative deficit of the political regime.⁴

The second model compensates for the permissiveness of electoral rules with powers that grant the executive the capacity to influence policy outcomes in the absence of majority support in congress. This model allows different partisan interests to gain legislative representation only to thwart or limit the impact of those interests on legislation. When presidents are invested with strong unilateral legislative powers, such as decrees, binding referendums or legislative initiatives subject to closed rule, they have a first-mover advantage (Negretto 2004a). Presidents set the issues, the alternatives, and the timing of legislative bargaining; legislators are forced to play a reactive role. There are evident risks in delegating these powers to the executive. Legislative change could proceed with little deliberation, thus weakening mechanisms of horizontal accountability. It could also lead to periodic shifts in legislation, affecting the stability of legislation and the rule of law.

In the end, both models attempt to make the presidential regime more effective by concentrating policy-making power in the executive. When electoral rules are restrictive, presidents have greater partisan powers that allow them to implement their legislative agendas in spite of having relatively weak legislative powers. When presidents have strong agenda powers, they are able to influence policy outcomes even if permissive electoral rules decrease their ability to command partisan support in congress. Both alternatives, in spite of their apparent differences, were designed to achieve a similar objective.

Since other countries' experiences with constitutional change often has an influence on institutional choice, constitution makers in Mexico should keep in

³ The adoption of a more restrictive rule for electing presidents and the elimination of midterm elections in the 1998 reform in Ecuador is probably a good illustration of this case.

⁴ This probably reflects the current situation in Mexico, where the political regime in place since the 1930s is generally perceived as decisive but highly arbitrary and exclusionary.

mind the risks implied in the systems which predominate in Latin America. As we will see, the presidential regime in Mexico has several weaknesses that may affect the performance of its recently acquired democracy. The remedy, however, lies not merely in strengthening the partisan or constitutional powers of the executive but in creating a closer correspondence between the preferences of citizens and policy makers, and in providing incentives for inter-branch cooperation when the presidency and the congress fall under the control of different parties.

Separation of powers and party pluralism in Mexico

The current presidential regime in Mexico does not fit exactly in either of the two models outlined above.⁵ In the electoral dimension, Mexico has a mix of restrictive and inclusive rules that impose limits on the number of parties that are able to compete and win office in elections but make it unlikely that the party winning the presidency would also win a majority in the two chambers of congress. In the distribution of powers dimension, the Mexican president has strong powers to form a cabinet but relatively weak powers to influence policy outcomes.

The president of Mexico is elected by simple plurality for a term of six years and cannot be reelected. Electoral cycles are mixed. The chamber of deputies is completely renewed every three years and the senate every six so that there is one concurrent and one midterm election per presidential term. Neither deputies nor senators may be reelected. The formula for electing deputies is a "mixed-member majoritarian" system in which 300 seats are allocated to parties in single-member districts by plurality rule, and 200 seats to parties in multi-member districts by PR in closed lists.⁶ Three senators per state are elected by limited vote, with two seats allocated to the party winning a plurality of votes and a third seat to the second most voted party. PR in a single national district is used to elect 32 additional senators.

In terms of government powers, the Mexican president has the capacity to appoint and dismiss cabinet ministers and other high government officials at will. He also appoints the Attorney General and Supreme Court justices with the approval of the senate. But while the president can freely remove the Attorney General, Supreme Court justices have a fixed term in office of 15 years.

In the legislative arena, the president is basically invested with a veto that is subject to an override rule of two-thirds of the members in attendance in each chamber. As we will see, it has been a matter of interpretation whether

⁵ The 1917 constitution was amended several times during the PRI era, introducing important changes, particularly in the electoral dimension. I will later refer to some of these changes.

⁶ Mixed electoral systems are those in which seats are allocated to individual candidates in single-member districts and to party lists in multimember districts. See Shugart and Wattenberg (2001). They are proportional when constituency seats are subtracted from the total number of seats allocated to parties according to a proportional formula and majoritarian when both types of seats are simply added.

this veto applies to approval of the annual budget. The Mexican constitution does not provide the president with any form of proactive power. He has the capacity to initiate bills but no instrument to force legislators to vote on them. The executive has exclusive initiative to present the budget but deputies can freely amend his proposal. Even the unilateral capacity to convene congress to extraordinary sessions to deliberate on the issues proposed by the president, a common “soft” agenda power included in most Latin American constitutions, is absent in Mexico.⁷

With fair elections and a competitive party system, the Mexican presidential regime is now working as intended by the 1917 constitution, that is, as a consensual form of government. The one-party dominance that characterized the Mexican regime for at least five decades essentially collapsed in 1997. In the midterm elections that year, the party of the president lost, for the first time, its majority in the chamber of deputies. In the 2000 presidential and legislative election, neither the president’s nor any other party obtained a majority in either chamber of congress. Between 1997 and 2003, the average effective number of legislative parties has been 2.86 in the chamber of deputies and 2.5 in the senate. During the same period, the two largest parties obtained an average 78 percent of the seats in the chamber of deputies and 84 percent of senate seats. In both the 1994 and the 2000 presidential elections, the effective number of candidates was 2.8, with the two main competitors sharing 75 and 79 percent of the vote respectively.

These levels of party competition indicate that Mexico may be on the road to consolidating either a two party and-a-half or a moderate multiparty system.⁸ Under this pattern of party competition, having two elected chambers along with the mid term elections for deputies would make it increasingly unlikely that the party winning the presidency would be able to win and/or maintain majority support in both chambers of the legislature. Minority presidencies and divided government may be thus one prominent feature of Mexican democracy in the years to come.

Party pluralism should be welcomed in Mexico because it signals a break with the hierarchic, centralized form of government that characterized the PRI’s hegemony for so many decades. It also creates new challenges. The most obvious, of course, is the president’s capacity to command legislative support for his policy agenda. Even after 1997, Mexican presidents maintained an important role as policy makers. Between 1997 and 2000 and between 2000 and 2003, the success rate of the legislative initiatives of the executive was

⁷ The president can only convene extraordinary sessions of congress with the previous approval of the Permanent Committee. The Mexican president had the unilateral capacity to convene extraordinary sessions of congress from 1917 to 1923. I thank Ignacio Marván for pointing this out.

⁸ A party system can be characterized as two party and-a-half when the two main parties share between 80 and 95 percent of the votes (or seats), and multiparty when they share less than 80 percent of the votes (or seats). See Siaroff (2003).

still quite high; 87.5 and 82 percent respectively.⁹ These figures, however, do not account for any legislation that presidents did not introduce, expecting defeat, nor do they consider the relative importance and nature of the bills approved *vis-à-vis* bills that failed to pass.

Without a partisan majority in congress, the Mexican president has faced obstacles to approval of legislative changes that do not provide clear electoral benefits to opposition parties. This seems to be the case with second-generation economic reforms whose collective benefits are uncertain and remote but whose immediate effects are unpopular or affect major organized interests. In 2001, for instance, President Fox was unable to pass a fiscal reform establishing a flat increase of 15 percent in the value added tax. A similar proposal also failed to pass in 2003. Some important proposals for legislative change, such as the electric and energy reform, were submitted by the executive but never voted on in congress. Others, like the labor reform, were not even introduced, given the likely resistance they would face in the legislature.

If legislative effectiveness were the only goal to be achieved in a democratic regime, constitutional reform in Mexico could aim at either strengthening the partisan powers of the president or strengthening his legislative powers. For the reasons indicated above, however, neither route would be desirable. Democratic performance is also affected by the way in which the electoral system channels voters' preferences into the policy making process and by the way in which the allocation of constitutional powers makes inter-branch cooperation and coordination possible under conditions of party pluralism. The Mexican constitution shows significant weaknesses in both these dimensions.

In the electoral dimension, the Mexican constitution has several rules that neither promote correspondence between the preferences of citizens and those of policy makers nor make the regime flexible enough to adapt to changing circumstances. While the formula for choosing presidents allows the election of weakly supported candidates, a relatively long presidential term might increase the rigidity of the regime in the event of a political crisis. The latter is also aggravated by the lack of a clear and efficient mechanism for choosing a substitute for the president in the event of the president's death or resignation. The system for electing deputies and senators distorts the representative role of each chamber and the proscription of legislative reelection creates a legislature of amateurs and deprives voters of the power to hold legislators accountable. In the distribution of powers dimension, the main potential problems of the Mexican presidential regime are the participation of presidents in policy making through merely reactive powers

⁹ This success rate, however, corresponds to a much lower number of initiatives proposed by the president. In the last two legislatures in which the PRI had a majority (1991-1994/1994-1997), the president initiated more than 70 percent of the volume of legislation. Executive-initiated legislation, however, amounted to only 20.4 percent of the total number of bills passed by the Chamber of Deputies between 1997 and 2000. See Lehoucq, Negretto, Aparicio, Nacif, and Benton (2005).

and the lack of congressional control in the formation and maintenance of cabinets. Both these aspects make inter-branch cooperation unlikely when the president's party falls short of a legislative majority in the bicameral congress.

Some of the proposals for constitutional reform advanced so far by members of the Fox administration, PAN and opposition parties in Mexico address these problems and provide suitable remedies. Others, however, either do not address the main weaknesses of the constitution or they provide solutions that are likely to aggravate them. But there is no coherent set of proposals officially backed by parties. All we have seen is a series of isolated initiatives presented by the incumbent president, members of his party, and legislators from opposition parties. In the following section, I discuss constitutional reforms that could improve the performance and quality of Mexican democracy, and review the reforms proposed to the Mexican constitution since 2001.

Debating the reform

President Fox himself initiated the debate on reforming the Mexican constitution on February 5, 2001. In a speech celebrating the anniversary of the 1917 constitution, the newly inaugurated president announced his desire to reform the constitution to adjust it to the needs of the new democracy. Rather than outlining a full project, he simply put forth a series of proposals, including the ratification of cabinet ministers by congress, a process for impeachment of the president, immediate legislative reelection, and mechanisms of "direct" democracy, such as referendums and plebiscites.

Since then, several forums of academics and politicians have been convened to discuss and present constitutional reform proposals. Legislators from the president's party and opposition parties also introduced various reform initiatives in congress. Given the variety and heterogeneity of the initiatives, I will discuss only those proposals coming from the executive branch or from legislators of the main parties.¹⁰ The discussion is organized around two dimensions of reform in executive-legislative relations; the electoral system and the distribution of powers between the president and the assembly.

The electoral system

Presidential elections

The plurality formula for electing presidents has been generally praised because it encourages the building of two large party blocs, one behind the

¹⁰ Unless otherwise indicated, constitutional reform initiatives have been identified using data provided by Secretaría de Gobernación and initiatives listed in Galaviz (2003).

candidate of the incumbent party and another behind the main challenger (Shugart and Carey 1992: 209; Jones 1995). And when two large parties or coalitions are formed, sharing, say, 85 percent of the vote, the great benefit of plurality rule is that it allows voters to identify future governments and produce winners with large popular support, usually above 45%. In addition, if the presidential election is concurrent with the legislative election, the party winning the presidency is likely to obtain majority support in the legislature.

The main problem with plurality rule, however, is that while it *tends* to reduce the number of viable presidential candidates to two, it does not guarantee it.¹¹ A purely two-candidate competition for the presidency under plurality rule usually requires two conditions. The first is that one candidate is expected to lead the field with a sizeable margin. The second is the opposition parties' ability to coordinate to nominate a single candidate to challenge the likely winner. In this situation, either a potential third candidate would withdraw before the election or, if he or she still entered the race, voters would desert the candidate on the day of the election in order not to waste their vote.¹²

In the real world, however, it may not be clear *ex-ante* who would be the front-runner. Parties could also fail to cooperate on a single challenger due to ideological differences or factional disputes. In either of these cases, a multi-candidate competition is likely in spite of plurality rule. The problem is that with more than two viable alternatives, elections by simple plurality may produce winners with not only a low level of popular support but also a very narrow margin over the runner-up. Worse yet, in a multi-candidate competition for the presidency, the plurality winner may be the last preference of a majority of voters who voted for the candidates of other parties.¹³

In the 2000 presidential election, Fox won with 42.5 percent of the electoral vote, followed by Labastida of the PRI with 36.1 percent, and Cárdenas of the PRD with 16.6 percent of the vote. The difference between the first and the second runner-up indicates that plurality rule did promote some degree of strategic voting among those voters who did not want to throw away their vote on the PRD candidate. However, with three main candidates in the race, it is not difficult to imagine a presidential election in the future in which the front-runner receives less than 40 percent of the vote and wins with a very narrow margin of difference over the runner-up. This could lead to a sense of frustration among many voters and to partisan disputes over the

¹¹ Using a sample of 30 plurality presidential elections in Latin American countries, Shugart and Taagepera (1994, 323-48) found that in 16.7 percent of cases plurality rule led to a fragmented field of competition. Cox (1997) provides an analytic explanation for those cases in which plurality rule in single-member districts may not limit the number of parties competing and winning votes in elections to two.

¹² In principle, an instrumentally rational politician would not enter the race if he or she anticipated defeat. Nevertheless, the politician may decide to run if he or she aims to build a long-term reputation. See Cox (1997).

¹³ In other words, plurality rule makes the election of a "Condorcet loser" possible; that is, a candidate who could lose against any other competitor in a pairwise vote. See Colomer and Negretto (2005), and Negretto (2004b).

electoral outcome, a very dangerous situation for a country like Mexico, where the practice of clean, trustworthy elections has only recently started to take hold.

Neither the president nor legislators from any of the main parties have presented proposals for changing the formula to elect presidents. It is likely that under the present conditions of political competition, all parties see plurality rule as providing them a fair chance to win the presidency. But this perception may change if the candidate competition field becomes more fragmented or if future electoral outcomes frustrate voters and party leaders. Moreover, even if parties decide to maintain plurality, the discussion of alternatives has been so frequent in numerous forums that any future reform would at least consider the merits and defects of plurality *vis-à-vis* other options such as majority rule and qualified plurality.¹⁴

Majority rule (whether with a second round in elections or in congress) sets a threshold that is often too high for any party to achieve. For this reason, majority rule discourages parties with different ideological positions or potentially attractive candidates from forming electoral coalitions in the first round. The main advantage of the formula is that it avoids minority winners and election of candidates rejected by a majority of voters. Its main defect is that it provides minor parties with an incentive to field presidential candidates, even if they have no chance of winning the presidency. They may do so either to obtain some share of the popular vote and have some influence on the final selection of the executive in the second round or, if legislative elections are held concurrently, to increase the party's vote share for congressional candidates. In this manner, majority rule tends to lead to multiparty competitions and, regardless of the electoral cycle, to multiparty systems and minority presidents.¹⁵

Qualified plurality falls in between plurality and majority rule, and some versions of this formula may be able to keep the benefits of both without their drawbacks. One example is the formula establishing two complementary thresholds for winning in the first round; a minimum threshold of 40 percent and a minimum margin of difference of 10 percent between the popular votes obtained by the front-runner over the next runner-up.¹⁶ This system, currently in force in Argentina and Ecuador, prevents both a winner with a low percentage of popular votes and a winner without a clear advantage over the second most voted candidate.¹⁷ In addition, if the fragmentation of political competition prevents a clear winner in the first round for any reason, a second

¹⁴ There are, of course, other formulas for electing a president, such as alternative vote. I am considering, however, the most popular formulas whose effects are likely to be best known by constitutional designers.

¹⁵ See Shugart and Taagepera (1994), and Mainwaring and Shugart (1997:446).

¹⁶ In practical terms, this formula would work like Shugart and Taagepera's "Double Complement Rule" proposal (1994).

¹⁷ In Argentina, however, a presidential candidate can also win if he or she obtains more than 45 percent of the vote in the first round. In this case, a minimum margin over the runner-up is not required.

round of voting, as in majority runoff, would avoid the possibility of electing the alternative least preferred by a majority of voters (Negretto 2004b).

Congressional elections

Although often considered as a compromise between plurality rule and PR, the electoral system for electing deputies in Mexico, in force since 1986, is indeed a segmented system using two unrelated formulas to translate popular votes into legislative seats.¹⁸ The 200 list seats allocated by PR do not really compensate for the 300 seats allocated by plurality in single-member districts. In these districts, voters cast only one vote which automatically counts for the allocation of seats coming from the multi-member districts. In the final tally, each party receives a total share of seats that results from the *addition* of the two sets of seats.

With this system, the party with the greatest ability to win most single-member races is likely to obtain a disproportionate share of seats. This party has traditionally been the PRI, whose over-representation (that is, the difference between its share of votes and its share of seats) in the 1994, 1997 and 2000 elections was 9.9, 5.6, and 7.1, respectively. This is not surprising; the current electoral system was meant to lower the entry barriers for opposition parties without jeopardizing the dominance of the leading party (Diaz Cayeros and Magaloni 2004).

A relatively minor reform could eliminate the current bias toward the dominant party in single-member races. First, all seats should be allocated according to the PR formula applied in multimember districts. Second, the final seat tally should be calculated by subtracting the number of constituency seats won by each party from the total number of seats to which each party is entitled according to the proportional formula. The proportionality of the system could also be strengthened if ticket splitting were allowed by giving voters two votes, one for the constituency seats and another for the list seats. With these adjustments, the system for electing deputies in Mexico would maintain the benefits of a personalized vote while not deviating from proportionality.¹⁹ A similar electoral system, inspired by the German system, is currently in use in Bolivia and Venezuela.

There are no proposals for reforming the electoral system in this direction. In fact, PRI deputy Rodriguez Lozano and PAN senator Sheffield Padilla have presented initiatives in congress to reduce the number of deputies elected by

¹⁸ The origins of the mixed system may be found in the 1977 electoral reform, which created 300 single-member districts allocated by plurality rule and 100 compensatory seats distributed according a Hare quota PR formula. The 1986 electoral reform increased the number of deputies elected by PR from 100 to 200 and increased the total size of the chamber from 400 to 500. Further aspects of the electoral system have since been changed, such as the “governability clause” which provided the plurality winner with an absolute majority in the chamber. In 1996 a maximum limit for over-representation (8 percent) and a maximum number of seats (300) that the majority party can win were established. On the modifications to the electoral system in Mexico, see Diaz Cayeros and Magaloni (2004) and Saltiel Cohen (n.d).

¹⁹ Since each party would obtain a seat share that closely resembles its share in the popular vote, there would be no need to establish a maximum limit for over-representation.

PR from 200 to 100. Such a change could increase the existing disproportionality between seats and votes in favor of the largest party. It is unclear, however, how much support this reform would ultimately muster among legislators, particularly among deputies from parties other than the PRI, who clearly benefited from the introduction of a proportional formula in the late 1970s.

Since the 1996 inclusion of 32 senators elected by PR in a single national district, the Mexican senate, like the chamber of deputies, has used two different unrelated formulas to elect legislators. The use of a PR formula distorts the principles of representation of this chamber. In a federal state like Mexico, the second chamber is supposed to specialize in representing regional interests. With the addition of senators elected by PR, however, the second chamber includes a form of representation that is already present in the chamber of deputies. This creates an unnecessary duplication in the political composition of both chambers and deprives the senate of its specific role as the representative body of state interests. It should also be noted that the inclusion of PR senators has also increased the size of what is supposed to be a relatively small body. With a total of 128 senators, Mexico has today the largest upper chamber in Latin America.²⁰

Since the incorporation of PR senators provided parties, particularly the PAN and PRD, with additional forums for political competition, it is not surprising that few proposals have been advanced to eliminate them.²¹ Only deputy Rodriguez Lozano of the PRI has presented a proposal in this direction. This is consistent with the partisan interests of the PRI, which as a large party with relatively uniform support across the country, already has an advantage in the plurality elections for the senate.

Terms

Along with Mexico, only Chile and Venezuela (after the 1999 reform) have a six-year presidential term.²² Most countries whose constitutions had presidential terms of six years or longer reduced them to periods of five or four years during the twentieth century. There are sound reasons to praise this change. As the "critics" of presidentialism have rightly pointed out, a fixed presidential term makes the presidential regime particularly vulnerable when the president has lost political and popular support in the context of a deep economic or political crisis (Linz 1990a, 1990b, 1994).

This risk obviously increases the longer the presidential term is, particularly if the constitution, as is the case in Mexico, lacks a clear and efficient mechanism to replace the president in the event of a premature

²⁰ With a total population of 180 million (80 percent more than Mexico) and 27 states, each represented by three senators elected by plurality, Brazil has a senate of 81 members.

²¹ After the incorporation of the PR senators, the PRD went from a share of 6.2 percent of the seats in the senate in 1994 to 12.5 percent in 1997. The PAN increased from 19.5 percent in 1994 to 25.8 percent in 1997 and to 35.9 percent in 2000. The PRI maintained an absolute majority in 1997, but only reached a plurality in 2000.

²² A constitutional amendment in 1928 extended the presidential term from four to six years.

termination of the presidential term. From 1978 to 2003, several presidents in Latin America were unable to finish their constitutional terms due either to social upheaval, an impeachment process or the threat of a coup (Negretto Forthcoming). Institutional designers in Mexico should take these precedents into account and provide for a shorter presidential term of four or five years, along with a mechanism for replacing the president in the event of a premature termination of the constitutional term due to death or forced resignation.²³ While there are initiatives for the creation of mechanisms for replacing the president in cases of permanent or temporary absence, there are no formal proposals for the reduction of the presidential term.

In contrast to the relatively long presidential term, deputies in Mexico are elected for one of the shortest terms in all Latin America. Only El Salvador has a constitutional term as short as three years for deputies.²⁴ But unlike deputies in El Salvador, Mexican deputies cannot be consecutively reelected. This creates a strong asymmetry with the president. Although the executive cannot be reelected either, he has a longer window that he can use to his advantage. In a period of three years, deputies are forced to remain generalists without the opportunity to specialize in different areas of legislation. This weakens the capacity of congress to make proposals for legislative change in complex areas of legislation and impedes adequate control over the initiatives originated in the executive branch.

The proscription of immediate legislative reelection, which only Costa Rica currently shares with Mexico, was established in 1933 in order to align the preferences of deputies and senators with those of party leaders in the process of building a hegemonic, hierarchic party (Nacif 1995; Weldon 1997). This rule is highly dysfunctional under the present democratic scenario. It both creates a legislature of amateurs and deprives voters of the ability to penalize or reward deputies in subsequent elections.

The number of proposals allowing the consecutive reelection of legislators gives the impression that this reform has broad support among the political elite. The proposal was made by the incumbent president, along with legislators from the PRI, PAN and PRD. The proposals do not, however, reflect the extent to which the level of support for the consecutive reelection of legislators differs across and within parties. In a recent vote, a majority of the senate, mostly made up of PRI legislators, rejected a constitutional amendment that would have removed the proscription on immediate reelection.²⁵ Several factors could explain this vote, such as the influence of

²³ The adoption of a shorter presidential term of, say, four years, might also lead to a reconsideration of other related issues, such as electoral cycles. For instance, if the midterm election for the chamber of deputies is maintained, it should be held every two, rather than three years. In addition, a shorter presidential term might lead reformers to reconsider the suitability of removing the absolute proscription of presidential reelection for only one consecutive reelection, as in the US.

²⁴ Only the 1979 Ecuadorian constitution established a shorter constitutional term of two years, for provincial deputies. The 1998 constitution, in contrast, created a single term of four years both for provincial and national deputies.

²⁵ See "Frena PRI en Senado Reelección," *Reforma*, February 10, 2005.

PRI leaders who probably see legislative reelection as impairing their traditional power to impose discipline on legislators, or the fact that senators have a longer term in office than deputies. However, it seems that the negative view of legislative reelection among the PRI's constituents and voters at large was one of the main factors explaining the senate vote. According to polls circulating among senators at the time of the vote, 77 percent of the population was against the consecutive reelection of legislators.²⁶

Distribution of Powers

Legislation

Following the American model, the Mexican constitution makes the president a co-legislator by means of a package veto. The veto, however, provides the president with an effective power only when the status quo is closer to his policy preferences than a proposal of legislative change is. But it is generally ineffective for promoting legislative change.²⁷ As indicated above, most Latin American presidents acquired various types of agenda powers during the twentieth century. Some of these powers, such as the capacity to enact decrees with legislative content or propose binding referendums, may have negative consequences for the legitimacy and stability of legislation because they delegate the capacity to make arbitrary decisions to the executive. But other forms of agenda powers, common in both presidential and parliamentary regimes, may actually favor inter-branch cooperation for the provision of public policy.

One instrument for achieving this form of cooperation is the power to submit "urgency bills" to congress. Variants of this procedure have been incorporated in the constitutions of Brazil, Chile, Ecuador, Nicaragua, Paraguay, Peru, and Uruguay. The common characteristic of urgency bills is that they invest the president with the ability to force legislators to vote on important initiatives within a certain time limit. The reversion point in the absence of congressional approval may be the previous status quo, the presidential proposal, or an amended version of it, depending on whether congress may amend presidential proposals and whether the approval of these proposals requires an explicit vote by legislators. The strongest version, of course, would be an urgency bill that can only be accepted or rejected by congress and that becomes law within a constitutionally defined time limit in the event of inaction.

The presidential regime in Mexico could benefit from this instrument, even in its weakest version, in which congress is only constrained to make a decision within a time limit. In this form, legislators would be forced to take a public

²⁶ See "Pactan Priistas ir Contra Reeleccion," *Reforma*, February 9, 2005.

²⁷ Unless, of course, president and legislators are able to trade support on different pieces of legislation in which they have opposite preferences regarding the status quo.

stance on important issues without losing their capacity to approve, reject or amend the executive proposal. It would simply eliminate the possibility of an important reform dying in committee without a vote on the floor or legislators imposing an excessive delay on final decision. In order to prevent the abuse of this instrument by the president, the constitution could establish a limited number of times that the executive can introduce an urgency bill per congressional session or during the president's term. Since it is the president who requests urgent treatment of a bill, the provision could also include the possibility that congress might reject the request by qualified majority.²⁸

PAN deputy Alvarado Elias Loredó has recently put forth a constitutional proposal for the introduction of urgency bills. As it stands, however, the initiative is quite incomplete. It does not establish a constitutionally defined period during which congress must vote on the proposal, nor does it specify whether congress can introduce amendments or simply vote for or against the proposal, or the reversionary outcome in case of inaction. These are crucial aspects to be regulated. At a minimum, the constitution must establish a time limit and the number of times an urgency bill may be presented by the president.

An important area of legislation that also requires revision is budget approval. Given that only the chamber of deputies (rather than both chambers, as in a regular law) is involved in approving the level of spending, it has been a matter of controversy whether the president can veto the modifications that deputies might introduce to his proposal. In a constitutional controversy provoked by the president in December 2004, the Mexican Supreme Court ruled in favor of the executive, acknowledging his constitutional power to veto the budget.²⁹ However, the ruling has also created uncertainty regarding the effects of this veto.

According to the constitution, the budget should be approved by November 15 of each year. In it not clear, therefore, what happens if the veto is rejected but the chamber of deputies does not obtain the 2/3 majority needed to override it. Since the current outcome in the event the budget is not approved is no budget, a presidential veto that is rejected but not overridden may make it impossible to comply with the deadline established by the constitution. A possible solution, already proposed in several initiatives, would be to carry the previous year's budget forward.³⁰ Another important aspect of budget approval in Mexico that might require revision is the lack of constitutional restrictions to legislators' power to increase expenditures. While during the PRI's era the executive was the only actor able to determine the overall level of federal spending, now spending is under the control of a congress divided among multiple parties. This could lead to conflictive inter-branch negotiations and to growing deficits. One limited but reasonable

²⁸ This provision exists, for instance, in the 1992 Paraguay constitution (Art. 210).

²⁹ See "Votos y Veto," *Reforma*, May 15, 2005.

³⁰ See the 09-03-2003 initiative brought by PAN deputy Javier Parada.

restriction would be that legislators may only reduce but not increase the expenditures contained in the budgetary law bill.

Government

Various authors have pointed out that the presidential office created in 1917 has relatively weak powers.³¹ This is not necessarily true, however, in the area of government powers. Unlike his American counterpart, the Mexican president does not need any chamber of congress to ratify his cabinet appointments. Also unlike some other Latin American presidents, the Mexican president is not forced to remove a cabinet minister following the minister's censure by congress. The weakening of some of the Mexican president's government powers may provide incentives for inter-branch cooperation and coalition formation when the president's party falls short of a legislative majority in any of the chambers.

One method of promoting more consensual and cooperative relations between the presidency and the congress would be to require congressional ratification for presidential cabinet appointments. While congressional ratification alone may seem too weak a measure of control, it may at least force the president to avoid controversial appointments. In a minority presidency, it may also provide incentives to build and maintain an executive coalition. Starting with President Fox's speech of February 5, 2001, a significant number of initiatives by PRI and PRD legislators include this constitutional reform.³²

Another option would be to establish ratification *and* censure of cabinet ministers by congress. Several constitutions in Latin America have introduced the mechanism of binding censure to achieve a closer integration between presidents and assemblies. Motions of censure alone, however, may lead to a dual responsibility for cabinet ministers which would stimulate inter-branch conflict (Shugart and Carey 1992; Colomer and Negretto 2005). If legislators are invested with the power to force the resignation of cabinet ministers, they should also be responsible for appointing them. Otherwise, the constitution would provide legislators with an incentive to encourage the resignation of cabinet ministers only for the purpose of obstructing government action.

For this reason, the alternative to congressional ratification of cabinet ministers is allowing congress both to approve cabinet appointments and make binding censure motions, not congressional censure alone. It would be problematic, therefore, to adopt a reform like the one proposed in May 2004 by PRD deputy Portillo Ayala, which introduced a binding motion of censure approved by a majority in each chamber.

This debate should be related to the eventual creation of a chief of cabinet. If a mechanism of congressional ratification and censure of cabinet

³¹ See Casar (1997, 1999), Weldon (1997).

³² See the constitutional reform proposal made by Deputy Espadas Ancona (PRD) on 04-04-2002, Deputy Demetrio Sodi (PRD) on 10-07-2002, and Deputy Rodriguez Lozano (PRI) on 27-03-2001, in Galavis (2003).

ministers were adopted, it might be convenient to apply it only to a particular official, such as a chief of cabinet. While a congressional censure to the whole cabinet would require investing the president with the parallel capacity to dissolve congress and call new elections, a censure limited to the chief of cabinet would simply require a limit to the number of times the censure can be invoked during a presidential term. To prevent inter-branch conflict, there should also be a limit in the number of times that congress can reject a presidential nomination to fill this office.

For this reform to be effective, the chief of cabinet should have more than ceremonial powers and actually share powers and responsibilities as chief of government and chief of the administration with the president. The president, of course, could also increase those powers via delegation. Given that the office of vice president does not exist in Mexico, a chief of cabinet appointed by the executive with the support of a legislative majority could also replace the president in the event of death in office or resignation.

A proposal to create a chief of cabinet has been made by PRI senator Fidel Herrera.³³ It is not clear, however, what the precise role of the chief of cabinet is according to his proposal. The initiative also requires that the presidential appointment of the chief of cabinet be ratified by two-thirds of the members in attendance in each chamber. But this qualified majority seems an unnecessary obstacle, given that the president may nevertheless dismiss the chief of cabinet at will.³⁴

The rules for congressional impeachment of the President could also be revised to introduce congressional control in the operation of government. The distinction between impeaching or trying the president for a criminal act is explicit in only a few countries, including Bolivia and Chile. An act of criminal wrongdoing is not necessary for initiation of the impeachment process; any serious transgression of the constitutional order should be sufficient. In Mexico, however, the president is exempt from impeachment except in the event of an ordinary crime. This deprives congress of a powerful instrument to prevent arbitrary acts or punish gross violations of the constitution. There seems to be a growing consensus that presidents should be liable to impeachment for political reasons. This has been proposed by President Fox, his party and members of the PRI and PRD.

³³ Deputy Beltrones, also from the PRI and president of the Chamber of Deputies, has recently supported this reform. See Audiencias Públicas "Gobernabilidad democrática: ¿Qué reforma?," Cámara de Diputados, September 27-30, 2004.

³⁴ Other proposals creating a dual executive imply a more radical shift toward a parliamentary model of government. Such is the case of PRI senator Ricardo Cárdenas's proposal, in the sense that it would create a chief of government (unlike the president, who would remain as chief of state) appointed and subject to political responsibility before congress.

Conclusions

The political conditions under which a constitutional reform may be proposed and negotiated are a crucial determinant of the potential outcomes. Constitutional changes made under the influence of a dominant party or two large parties tend to be based on electoral rules that restrict party competition and secure the party that wins the presidency a majority or near-majority in congress. Conversely, constitutional changes made under the influence of several small parties tend to be based on permissive electoral rules that secure their political survival. In the former case, presidents are likely to be constitutionally weak, precisely because they would have strong partisan powers. In the latter case, executives are likely to be constitutionally strong because they would normally lack majority support in congress.³⁵

Institutional designers in Mexico should avoid these two alternatives, taking advantage of the fact that the current party system in the country is neither concentrated in two large parties nor fragmented among several small parties. In this context, a viable and desirable strategy would be one based on an electoral system that promotes congruence between voter preferences and those of policy makers, and a distribution of powers that aims at inducing inter-branch cooperation when the presidency and the congress fall under the control of different parties. I have discussed some of the central reforms that could be part of this design:

- Qualified plurality rule with a minimum margin of difference to win a presidential election
- A system of personalized proportional representation for election of deputies
- The elimination of PR senators
- A shorter presidential term
- A mechanism for replacing the president in the event of a premature termination of the presidential term
- Consecutive legislative reelection for legislators
- Urgency bills
- Chief of cabinet subject to congressional ratification or to congressional ratification and censure
- Allow impeachment of the president

While I believe that these reforms deserve consideration, the main purpose of this chapter has been to provide a comparative analytic framework to discuss alternatives that might improve the performance of constitutional democracy in Mexico. It is not assumed that all reforms suggested would be equally feasible in an actual process of constitutional change nor that they would all

³⁵ On this, see Negretto (2004c).

enjoy the same levels of support across and within parties. At this initial stage of debate on constitutional reform, however, the most important task is to identify the weaknesses of the Mexican constitution and to deliberate possible solutions. A more positive analysis of institutional choice can wait until political parties define their positions or until a formal process of constitutional change takes place.

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