



THE RULE OF LAW AND MEXICO'S ENERGY REFORM

Energy Reform and Political Representation: The Importance of Negotiation and Public Deliberation

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

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

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

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Introduction

The most recent energy reform in Mexico, which allows for private and foreign investment in the exploration, production, storage, and transportation of hydrocarbons, is the most radical institutional change this country has undergone since the legendary expropriation of oil companies by President Lázaro Cárdenas in 1938.

Under what conditions was such an institutional change possible? Answering this question involves, in the first place, analyzing the theoretical factors that increase the probability of a political change of such magnitude within a political context that is particularly complex—one in which no political party has had an absolute majority in Congress since 1997, and which has been historically adverse to a change of this nature (Serra 2011). Tsebelis (2005) posits that a change in the status quo of a public policy is possible only if there is a majority coalition of players who favor such a change. Considering that the origin of the energy reform was a constitutional change, its approval required the support of two-thirds of the legislators in both chambers of Congress. On December 12, 2013, the constitutional reform was approved by 77 percent of the senators,¹ 173 days after the bill was presented by the executive branch.

The main goal of this article is to analyze how this majority, one of the most relevant legislative majorities of the last seventy years of parliamentary history in Mexico, was achieved. The interest in this reform, called by the current government “the mother of all reforms,” arises from three paradoxical elements. First, during the past six-year term, the Institutional Revolutionary Party (PRI)—the party currently in power and the promoters of this change—opposed a similar initiative proposed by the previous National Action Party (PAN) administration of Felipe Calderón. Second, among the countries that opened their energy sector to private initiatives over the last decades, the current trend in the region is opposite to the policy being pursued by Mexico; that is, governments have attempted to recover total control (Argentina and Bolivia) or partial control (Brazil) of national companies.² This means that the state renationalized or increased its participation in the shareholding of the “national” energy companies. Finally, state-owned petroleum company *Petróleos Mexicanos* (PEMEX)³ is considered to be a national symbol, and Mexican public opinion mostly opposed the reform.⁴

This paradoxical situation, in addition to the sensitive nature of a reform that, according to the opposition, “jeopardizes the energy sovereignty of the nation,” has caused different players to question its democratic legitimacy. Critics point out two traits that characterized the political process that led to the reform: on one hand, the low representative nature of the ideas and arguments put forth by the political players of the majority coalition; and, on the other hand, the exclusion of relevant voices from the debate prior to coming to a decision.

In turn, the promoters of the reform argue that the need for change that would enhance domestic and foreign investment in the energy sector and would limit the monopolistic power of PEMEX and of the state-run Federal Electricity Commission (CFE) had been fully established during the public debate over the past several decades. According to this line of

argument, the populist position of a dogmatic left was the main obstacle to a higher-quality deliberative process. Confronted with an unwavering position, the majority coalition in both chambers maintains that it acted in a responsible manner, staking their political capital on a project that was unpopular, but necessary. Promoters and detractors alike use terms such as “masterly” or “paradigmatic” in reference to the efficacy of the political strategy employed to go ahead with this reform.

Critics and promoters also recognize that the actual energy reform legislation was preceded by decades of public deliberation during which both the privatization project as well as the nationalistic vision of the industry were discussed. However, there was no general consensus reached regarding these alternatives. Therefore, while defenders justify the reform based on criteria such as competitiveness, economic efficiency, and energy sustainability, its critics maintain that the majority coalition, knowing that it had the necessary votes for approval, prevented a frank and open discussion of all the relevant policy alternatives and blocked an in-depth analysis of the contents of the bill by the plurality of affected interests. This work analyzes the political process that gave rise to the reform in order to (a) understand the central elements of the political strategy used and the nature of the interests that were reflected in the final result of the *negotiation*, and (b) determine whether the criticism regarding the quality, scope, and inclusiveness of the *deliberations* is justified. This second level of analysis strives to answer the question of whether the legitimacy of the reform can be questioned.

The specific research questions that will guide our analysis are the following: Who were the actors that were promoting and opposing the reform that was ultimately approved? What were their interests, arguments used, and strategies deployed to negotiate the parliamentary majority? And, finally, what was the quality of the deliberation process prior to the reform, both in terms of the scope of the debate (alternatives to be discussed) as well as the set of players involved, to determine the degree of legitimacy of the reform?

Theoretically, our research uses diverse and complementary analytical frameworks: the theory of political representation (Pitkin 1985; Manin 1998; Stokes, Manin, and Przeworski 1999; Rehfeld 2006; Mansbridge 2011), deliberative democracy (Elster 2001; Mansbridge et al. 2008), negotiation (Walton and McKersie 1965; Thompson 2001; Lewicki et al. 2011), and political analysis of public policies (Knoepfel et al. 2007). Our empirical analysis is based on 18 in-depth interviews with government officials and legislators of different party backgrounds and ideological positions who participated directly in the process, as well as representatives of the corporate sector, civil partnerships, and academia, whose testimonies were analyzed using qualitative methodologies to address our research questions. Because legislative negotiations are politically sensitive processes that take place, at least partially, in private and informal venues or under confidentiality agreements, we offered anonymity to all interviewees as a general rule, as a way to induce a more candid conversation. This rule is generally used in stakeholder assessments to ensure interviewees feel comfortable speaking openly and interests are adequately explored (Susskind, McKernan & Thomas-Larmer, 1999). Three exceptions to this rule are interviews with party leaders, only because these were originally videotaped for a different purpose, with the informed consent of

interviewees. These interviews will be quoted in full form. For all other interviews, quotes will point to a member of a political party or stakeholder group in such a way that does not compromise anonymity. A complete list of all interviewees, dates of interviews, and their affiliations is included in the appendix.

In the following section we describe the different diagnoses that motivated the need for and the possible directions of an energy reform. In the third section, we present the analytic frameworks used to assess both the effectiveness of political negotiation and the democratic legitimacy of the decision-making process. In the fourth section, we describe and assess the key moments of the negotiation and deliberation process that led to the reform based on the interviews. The final section presents conclusions and reflections on the future.

The Energy Situation of Mexico: The Problem that Led to the Reform

Global population growth and the improvement of living standards have increased demand for energy. This fact intensifies pressure on governments to ensure a regular and sufficient supply for households and industry (Estrada and Islas 2013).

Within this context, countries producing oil and its derivatives face the double challenge of: 1) increasing effectiveness in terms of production of these resources, and 2) transitioning towards renewable sources of energy to both avoid a collapse in production and to reduce environmental impacts.

In Mexico, studies and debates around the need for a significant reform of the energy industry are not new. During the Administration of President Ernesto Zedillo (1994-2000), meetings were held by specialists in this matter to discuss the possibility of a broad reform aimed at improving the operation of PEMEX and opening the production of electricity up to private players. However, the political conditions at that time, which were characterized by a transition towards an increasingly competitive political system, as well as the sensitive nature of the issue, hardly made it feasible for the proposal—which, furthermore, was unpopular—to prosper.⁵

The topic found its way onto the government agenda a decade later, during the government of President Felipe Calderón of the PAN. The decline in oil production, the lack of managerial and fiscal autonomy to reinvest profits, and the operational deficiencies of PEMEX were the reasons that were put forth by the executive branch to advance toward a reform that would increase the productive capacity and reduce the dependency of public finances on taxes paid by PEMEX. To do so, according to the government in 2008, the opening of the energy market to private investment was a mechanism that could no longer be delayed (Hernández et al. 2009). That year, however, the reform encountered resistance from different sectors, including the PRI, and its scope turned out to be less comprehensive, as a result of which its diagnosis only became more pointed for the years to come.

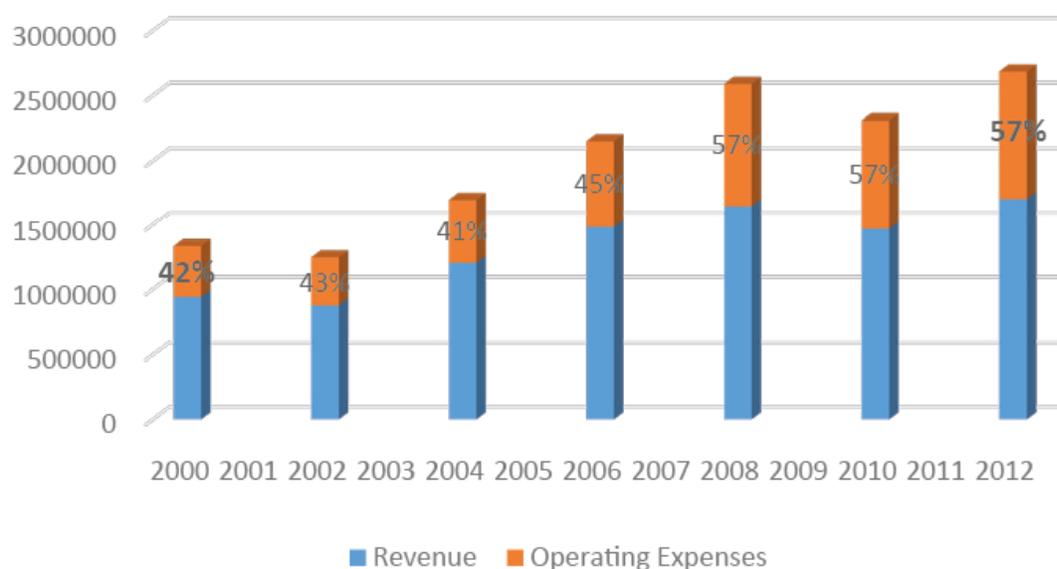
According to PEMEX data, since 2002, the company has been operating in the red. Despite being the second-largest oil company in the world in terms of its profits prior to taxes, fiscal pressures associated with the government’s tendency to extract these profits in favor of public spending and administrative inefficiencies have made PEMEX a company that loses money.⁶ As a result of oppressive fiscal regulations and the implementation of unproductive projects, the losses of the company are calculated to be in the billions of pesos every year. The financial reports of the company indicate that, since 2000, it has realized yearly losses that total, over two six-year terms, some 50 billion dollars.

Figure 1. PEMEX’s Tax Burden, 2000-2012 (in millions of Mexican pesos)



Source: Own work based on PEMEX data and the magazine *Reforma*.

Figure 2. PEMEX's Operating Expenses and Revenue, 2000-2012
(in millions of Mexican pesos)



Source: Own work based on PEMEX data and the magazine *Reforma*.

With respect to this assessment, starting during the six-year term of Calderón two visions of a solution emerged: the “nationalistic” vs. the “market-centric.” The nationalistic vision proposed to strengthen the management autonomy of state-run companies PEMEX and CFE and the stewardship of the state in order to guarantee a cash flow that would cover the required investments. In turn, the market-centric perspective proposed to open the sector up to competition and strengthen legal certainty in order to attract the private investments necessary to increase production and efficiency in the hydrocarbon and power-generation sectors.

There is no doubt that the second vision prevailed during the energy reform of 2013-2014. The following section introduces the concepts that we will use to critically analyze the political process through which the winning coalition was built and the terms of the deliberation upon which the decision was based.

Conceptual Framework: Political Representation, Deliberation, and Negotiation

One of the main criticisms directed against the energy reform is that, far from representing the preferences of the majority, its proposals satisfy the interests of powerful interest groups—some domestic, but mostly foreign.⁷ Likewise, critics maintain that this was possible because the political process of formulating the reform was characterized by shutting down public debate and excluding the arguments of the opposing sectors, whose proposals and technical justifications were never taken into consideration. In short, from

this point of view the reform was characterized by a bias of representation caused by shutting down deliberation.

In contrast, the promoters of the reform argue that specific ideological factors and certain radical postures (not being open to dialogue) prevented, for decades, the approval of a series of necessary reforms to make the energy sector viable in terms of investment as well as efficient, low-cost generation of the energy required to ensure the economic competitiveness of the country. For these players, the opposition was not ready to reason and put forth arguments based on evidence and instead used the symbolic nature of the oil as a national emblem in an attempt to impose its veto on any reform focused on promoting investment from the private sector.

Evaluating the plausibility of these two narratives involves considering the very concepts of and debates surrounding the theory of representation, negotiation, deliberation, and formulation of policies within legislative contexts.

Political representation is a process through which the voices, opinions, perspectives, and interests of citizens and social players “become present again”—that is, they are (re)presented in the decisions of authorities legitimized through elections. Through representation, certain *agents* speak, advocate, and act on behalf of others—those they represent, or *principals*—in the political arena (Pitkin 1985; Mansbridge 2011). Depending on the traits assumed by the exercise of representation, the *contract* of representation can be understood as one of two types: representation as a “mandate,” which implies specific instructions of the principal whom the *delegate* must follow; or representation as “authorization,” which reflects a “vote of trust” in the “highest” judgment of a *trustee* (Pitkin 1985; Manin 1998; Stokes, Manin, and Przeworski 1999).

Although any representative activity involves a separation of and, therefore, distance between the holder of the opinions and the one in charge of expressing them, the consideration of this distance (between agent and principal) varies depending on whether we refer to a delegate or a trustee. In the “elitist” (Pitkin 1985) or “aristocratic” (Mansbridge 2011) tradition of the trustee, separation is perceived as a positive phenomenon based on the principle of distinction (Manin 1998). The representative has better qualities than the principal to satisfy the preferences of the latter and therefore receives a vote of trust to judge and decide based on his or her own judgment because he or she is “superior.” It is this superiority and not only the independence of judgment that authorizes him or her to speak on behalf of his or her principal. However, when the relationship between principal and agent may be purely utilitarian (the principal must, for reasons of asymmetry of information, delegate to someone else the defense of his or her interests, although the latter may use his or her privileged position to pursue his or her own interests), effective representation requires additional precautions. The representative in this case might better be a delegate. He or she ceases to be a person of trust (trustee) in whose judgment the expectations of the persons represented by him or her are placed and becomes someone designated to comply verbatim with the instructions of the persons represented by him or her.

The most recent work regarding representation questions the empirical validity of these two archetypes and adds a third alternative: *gyroscopic* representation.⁸ Evidence seems to show that political agents do not strictly comply with the instructions of the persons represented by them, nor do they use their vote of trust based on their own judgment to promote the interests of the represented parties. Many representatives seem to make decisions based on their own judgment of what is “proper” and are relatively immune both to the preferences of the persons represented by them as well as the influence of interest groups (Rehfeld 2006; Mansbridge 2011). Under this modality, *gyroscopes* are characterized by three traits: 1) they have their own judgment regarding the problems to be resolved; 2) they do not direct their actions—as a priority—under the threat of ex post facto sanctions by the persons represented; and 3) they strive to achieve the wellbeing of the majority, according to their own concept of what is good, above that of a particular group.

In the case of complex problems such as regulation of the energy sector, determining what is “proper” or in the public interest is not a trivial issue, either for the representative or for someone studying the quality of representation. It is even less so when the political arena includes multiple players with veto power that may have other visions regarding the public interest. The representative therefore faces at least two challenges in doing a good job. The first one is *epistemic* by nature: how can a valid judgment be reached regarding what the public interest is in terms of the specific and complex problem of public policy that he or she faces? The second challenge is *strategic* by character: how can the required majority coalition be built to promote a binding decision that subscribes to such a notion of the public interest? These two challenges may also serve as the basis for a critical assessment of the quality of representation.

In the case of the energy reform bill, which represents a radical change in the regulation of the energy industry in Mexico, it is relevant to ask what traits representation⁹ acquires when facing these two challenges; that is, how the judgment of the representatives was justified as “the best decision for the country” and how the coalition to promote this vision was built.

Regarding the epistemic challenge, proponents of deliberative democracy postulate that decisions which are the result of processes of open and inclusive deliberation and based on the force of the best argument are more efficient in resolving public problems and more inclined to reflect the values of the majority, and therefore are more highly supported by citizens and are more sustainable over time (Habermas 1996; Elster 1998; Mansbridge 1980). This focus sheds light on the quality of representation in terms of whether the process followed by the representative to elucidate and make judgments regarding the public interest was solid.

In turn, the theory of negotiation, with its focus on the strategies of the players, offers a conceptual basis for the analysis of the effectiveness of a representative in terms of building the majority required to promote his vision of public interest.

In this respect, the two central dimensions for the examination of the political process which gives rise to institutional change are the following: 1) the *quality of the deliberation*; and 2) the *effectiveness of the negotiation*. Here, it must be pointed out that the distinction between these dimensions tends to be more analytic and conceptual, considering that in real-life situations both are part of the same process of interaction between political players.

Deliberative Quality and Effectiveness of the Negotiation

According to most deliberation theorists (Habermas 1999; Cohen 1997; Elster 1998; Dryzek 2002; Avritzer 2002; Fung and Wright 2003), the quality of the deliberative processes upon which a decision is based is essential to its validity from an epistemological and normative point of view and therefore determines its democratic legitimacy. The latter implies that citizens, either directly or through the expressing of their arguments by their representatives, are present in the debate process and that these arguments are either reflected in the decision or are faced with stronger counter-arguments from a technical point of view, or even—to a lesser extent—from a level of ideas and values. Democratic deliberation then does not necessarily imply that decisions are made that reflect the opinion of the citizens, but rather that the citizens themselves—or those who share their viewpoints—can participate in the debate to persuade others to share their point of view, to be convinced through better arguments, or to build a more comprehensive shared notion of the problem at hand.

The second dimension of the democratic legitimacy of a decision-making process is the effectiveness of negotiation. Strictly speaking, effectiveness refers to the conditions that allow a negotiating process to end in a decision agreed upon by the participants, and also includes the degree to which such decisions reflect the interests of the focal player. In other words, negotiation is a strategic action aimed at achieving specific goals by means of reaching an agreement with others who may have different or seemingly incompatible objectives (Carnevale and Pruitt 1992). However, this does not mean that any negotiation must be seen as a distributive process wherein one party gains what its counterpart loses. It is possible that as a result of negotiation, the different players involved create more value than had previously existed. This means that the distributive, or zero sum, vision could be replaced by a productive, or positive sum, vision in which everyone has something to gain (Fisher et al. 1987), even if we accept that negotiation is a strategic issue in which the goal of each player is to maximize benefit (Thompson 2001).

Negotiation theory (Walton and McKersie 1965; Thompson 2001; Lewicki et al. 2011) has traditionally distinguished between two dimensions that are common to almost any negotiation. On one hand, there is the value claimed by each part in the negotiation, i.e. the proportion of the total value that each party takes over as a result of the agreement reached. The sub-process of claiming value is designated as distributive, and the type of negotiation that focuses on this dimension is called zero sum negotiation, or negotiation based primarily on power. In contrast, the theory and contemporary practice of negotiation emphasize a second dimension, which is the total value created by the final agreement. The sub-process focused on increasing value for both parties is called value creation. The negotiation style that emphasizes this dimension is called integrative

negotiation, which is an interest-based or mutual gains approach (Walton and McKersie 1965; Susskind and Cruikshank 1987).

Negotiations and deliberations share two essential characteristics: a) both are communicative processes that require a reciprocal exchange of information between two or more parties, and b) the parties involved share the goal of arriving at a decision by mutual agreement for, at least, a winning coalition of the parties. Furthermore, negotiations require at least a certain degree of difference or incompatibility in interests, whether perceived or real, whereas deliberations strive to seek public interest. These two characteristics are not incompatible.

Hernández (2013) integrates these four characteristics to argue that any decision-making process regarding issues of common concern that is based on a reciprocal exchange of information to generate the agreement between two or more players with differing interests (such that they are not *ex-ante* aligned in a winning coalition) could be located in any point on the matrix in Figure 3, after characterizing the quality of the deliberations and the level of effectiveness during the negotiation.

In short, two key dimensions for the analysis of the quality of representation within the scope of a political process that gives rise to institutional change are the *quality* of the deliberative process and the *effectiveness* of the negotiating process.

Figure 3. Theoretical proposal to classify institutional change in accordance with the characteristics of the legislative process.

	Low-Quality Deliberation	High-Quality Deliberation
Effective Negotiation	Institutional change with low legitimacy	Institutional change with democratic legitimacy
Ineffective Negotiation	Closed deliberation without institutional change	Democratic deliberation without institutional change

Source: Own work based on Hernández (2013).

The proposal outlined here establishes that effective negotiation and quality deliberation will lead to democratically legitimate change. Although the latter is not essential for institutional changes to occur, it is at the very least desirable and may be a powerful indicator that a “proper” reform was achieved.

Below, we use these concepts to analyze the political process that gave rise to the reform both in strategic terms, which focus on the effectiveness of negotiation, and in terms of its democratic legitimacy, which emphasizes the quality of deliberation.

The Energy Reform: Effective Negotiation and Partial Deliberation

The tension between the market-centric vision and the nationalistic vision was palpable during the deliberations surrounding the reform of 2008. That year, President Calderón launched a comprehensive communications campaign aimed at focusing public attention on the crisis in the hydrocarbons industry. Although the majority of the PRI offered its support for the reform originally proposed by the president, the Party of the Democratic Revolution (PRD) and the nationalistic wing of the PRI allied to block radical market-centered reforms and only allow for an institutional reform very narrow in scope. This occurred in the context of a highly conciliatory negotiation between two opposing visions, first within the PRI itself and then between the PAN and the PRD.

This spirit of finding middle ground between the two visions was reflected in the content of the 2008 reform, which introduced new mechanisms for corporate governance, accountability measures, and planning instruments at PEMEX and in the broader energy sector, and also created some incentives for private investment through more flexible contracting rules. This reform was approved by consensus, receiving 93 percent and 83 percent of the vote in the Senate and the Chamber of Deputies respectively, and after broad public deliberation (Farfán and García Briones 2009).

According to legislators belonging to the three major political parties as well as experts and advisers interviewed by Farfán and García Briones, the deliberations upon which this reform was based were broad and inclusive. In particular, the exhaustive forums held in the Senate made it possible to create:

A pool of knowledge shared between decision makers... a feeling of urgency regarding the need to reform *Petróleos Mexicanos*... voice was given to experts of all ideological backgrounds and all parties.... For the PRD (and maybe for some of the PRI) ... it [became clear that it] was not necessary to privatize to resolve the ‘problem,’ which ‘depolarized’ the debate, since everyone had the perception that work was being carried out to strengthen *Petróleos Mexicanos* from the point of view of national assets (Farfán and García Briones 2009, 18).

In any case, although the reform was not questioned in terms of its democratic legitimacy, it was gradual in its approach to addressing the challenges facing the industry. This is to say that little value was created both for the market-centric camp, which was striving to incentivize private investment, and for the nationalistic camp, which intended to strengthen the autonomy and transparency of PEMEX. In addition, the 2008 reform did not even touch on the electricity sector, which is why it should more accurately be referred to as a “PEMEX reform” rather than a comprehensive “energy reform.”

It is very likely that the final decision of the PRI to support only a very gradual reform in terms of opening the industry to the private sector and framed within a nationalistic discourse responded to an electoral interest, both during the 2009 midterm elections and the 2012 presidential election. But the fact is that public opinion was opposed to a broader reform, even after a comprehensive communications campaign conducted by the presidential administration. Independent experts also supported the idea that the energy crisis could be handled without privatization by strengthening the governance of the sector with the implementation of long-term planning and accountability mechanisms, as well as with increased autonomy in terms of management and transparency for the state-owned company.

In any case, the major contribution of this political process was generating, a shared assessment of the political situation on the basis of a broad and pluralistic deliberation upon which most of the justification of the energy reform of 2013-2014 was based.

The First Stage: The Pact for Mexico, a High-Level Win-Win Negotiation

By 2012, it was quite clear that the 2008 reform had not generated changes with the depth necessary to address the problem. Despite being the second-largest oil company in the world in terms of pre-tax profits, PEMEX was (and still is) in a state of progressive deterioration as a result of both fiscal regulations and operational problems. Hydrocarbon production had not picked up, and the electric power industry was facing problems with low investment and production not growing at the same rate as demand.

A reform was necessary, and this need was addressed by the Pact for Mexico, a group of initiatives signed by the three leading political forces of the country. It included commitments to transform PEMEX into a competitive and transparent company, to increase hydrocarbon exploration and production, to promote the transition toward renewable sources of energy, and to establish a competitive environment for oil refining, petrochemicals, and transportation of hydrocarbons, all without turning to privatization. All of these points were also taken as goals for the energy reform legislation that was approved. That legislation, however, was carried out through constitutional reform aimed at promoting private investment, which was historically opposed by the PRD, and that also added in the liberalization of the electric power sector.

The Pact for Mexico constituted an unprecedented negotiation process among the political elite dealing with a shared agenda for the country. It was negotiated in a safe space for dialogue that the participants described as dominated by high-quality arguments, carried out in good faith, and being constructive at all times (interview with the presidents of the PRI, PAN, and PRD). It was a negotiation that created value for all parties involved, an admirable feat considering that the three parties' priorities were on the table and were all included in an ambitious agenda of 95 public policy commitments. However, deliberation was limited to the elite: there was no publicity whatsoever, and all players who would be affected by the decisions and even legislators were excluded. Nonetheless, the commitments and the language of the pact regarding energy policy maintained the conciliatory tone of the 2008 reform, which is partly why its publication in 2012 did not lead to major resistance.

According to the party leaders who were interviewed, PRD executives approached the PRI and initiated discussions. Based on these first meetings, they agreed to invite the PAN. According to Jesús Zambrano, president of the PRD party, the pact came to fruition in an environment of “absolute secrecy” in order to “generate trust and make it possible to work on the actual agendas put on the table during the negotiation.” (Zambrano, July 14, 2014). The attitude of full cooperation was affirmed by former PAN president Gustavo Madero (July 15, 2017), who stated that the PAN elected “not to declare itself an opposition party” and assumed, in return, co-responsibility, being willing to work with the ruling party “for the benefit of the citizens.” This position led to the development of agreements of mutual gain, although it explains the aversion to the pact expressed by different opposition legislators, who accused the government of having, in the words of a PRD legislator, “corporatized the opposition.”

Information regarding each party’s interests and priorities flowed and allowed for common interests to be identified and concessions to be exchanged. The presidents of the three parties agree that each started by laying their negotiation points on the table, which made it possible to find common ground. According to the party leaders, difficult topics—such as energy and tax policy—were left until the end, and more general language that was acceptable to everyone was used. This is reflected in the wording of the agreements on energy matters, which discuss expanding “the capacity of performance of the industry of exploration and production of hydrocarbons through an energy reform” and promoting “competition in the processes of refining, petrochemicals, and transportation of hydrocarbons,” although nothing is said regarding this will be accomplished, and terms such as “private investment” are excluded.

One key factor for the flow of information regarding the priorities of each of the parties were the following rules, which were agreed upon and respected by everyone: a) absolute confidentiality regarding the negotiations; b) respect of the participants in the event that they changed their position on the topics addressed or any agreements reached; and c) the prevalence of the principle that “nothing has been agreed upon unless everything has been agreed upon” (César Camacho Quiroz, president of the PRI party, June 13, 2017). Another fundamental factor reported by the presidents of the PAN and PRD has to do with the personal relationships that had been created during prior negotiations between the different political representatives.

All of these elements make the Pact for Mexico a negotiation with a high degree of effectiveness, which the negotiators report as having generated more value than expected and declare feeling fully satisfied upon signing the pact, despite the criticism of opposition legislators with respect to the lack of communication with their party leaders and the tensions that this lack of communication would generate during the following phase, as well as the frustration expressed by the opposition because of a perception that the political benefits of the pact would be overwhelmingly for the president.

Despite the overall effectiveness of the agreement in incorporating the public policy priorities of the three main political parties, the ambiguity present in the energy-related material limited the scope of the agreement by virtue of the uncertainty it generated in terms of the value created and distributed. This limitation jeopardized the survival of the pact itself, and its price was paid in particular by the PRD—which, according to a party member interviewed, underestimated the radical nature of the change that would be approved. On the other hand, it is likely that without this ambiguity, the pact as a whole would have lost viability, after taking into consideration both the high priority of this reform on the agendas of the PRI and of the PAN as well as the outright rejection that it would have awakened within the PRD.

Regarding the quality of the deliberation, the presidents of the three parties described an environment of good faith in which the parties were searching for “solutions to the large national problems” (César Camacho Quiroz, June 13, 2014), wherein competing arguments were genuinely and constructively contrasted. As input for such deliberation, the “Organisation for Economic Cooperation and Development (OECD) diagnosis” (Cesar Camacho Quiroz, June 13, 2014) is noteworthy. Furthermore, despite the elitist nature of the negotiations, the content of the pact incorporated the many key insights that had emerged from public discussion over several decades using conciliatory language. Nonetheless, the exclusive and non-transparent nature of the process as a whole limited the democratic legitimacy of this stage of the process and generated suspicion with respect to the content of unwritten political deals.

Most notably, there is a perception shared by opponents and proponents of the pact that the PRD had agreed not to interfere with an energy reform that included changes to the Constitution even when they had warned that, as leftists, they would vote against it. This means that mutual concessions were negotiated for issues that were the source of disagreement, although they were priorities for two of the three parties: tax reform was promoted by the PRI and the PRD, and energy reform by the PRI and the PAN. According to a PRD adviser:

The departure of the PRD was planned at the end of the reforms, so that it could help with the approval, but in the end [vote against the energy reform], appeal to its principles and ideology, to keep appearances. The energy reform was the strategic moment to discern and get out of the pact.

In the same respect, a legislator on the left confirms that “everything [had been] negotiated [...] Protests had been agreed upon, organized, with the permission of Gamboa [the PRI whip in the Senate].” Even a public official of the Energy Regulatory Commission (CRE) acknowledges that, although the energy reform “was not the product of the pact, [...] it did set the basis for an inertia which created a favorable environment to go ahead [...] with the energy reform.”

The Constitutional Reform: An Effective Market-Centric Coalition

As soon the implementation of the Pact for Mexico began, working tables were established around the eleven issues that had been identified as high-priority. These tables had a

tripartite composition similar to the party elites that had negotiated the pact. The issue of energy reform did not progress very far. According to a PAN legislator who participated in the table on energy reform:

This negotiation [within the scope of the Pact] was organized among all parliamentary groups, logically each and every one with its own visions, with its own points of view or implicit doctrines in each and every one of these reforms. The National Action Party comes up with a proposal... actually one regarding opening, competition, market prices and, finally, seeking energy efficiency in the sector. The PRD comes up with the most hermetic proposal, which was practically to continue like in the past and only change some secondary laws regarding PEMEX and the CFE [...] And the PRI comes up with a proposal somewhere between the two, [...] to achieve a balance of forces between the two proposals presented by the left and by us, although at the end of the day, the proposal of the PRI was quite close to our proposal.

To avoid disagreements regarding energy-related matters, the parties agreed to prioritize issues that had broad citizen support. As a result, initiatives dealing with educational reform, telecommunications, and transparency were presented first.

In order to create an environment specifically favorable for energy reform, President Enrique Peña Nieto ensured the unity of his party by reforming the PRI statutes and removing the famous “locks” that had prohibited advocating for constitutional reforms in energy-related matters since 1997. These reforms were fundamental in neutralizing the nationalistic sector of the PRI that included unions and sent a clear signal that the president was willing to subscribe to the market-centric vision of the energy reform.

However, how can the docility of this nationalist sector, which had such political weight that it had never been confronted by any other PRI president with a market-centric vision, be explained? One of our interviewees, a PRI militant, attributes this to be the result of three factors. First, “party discipline. The PRI is a party with a culture very much rooted in loyalty to the President.” Second, when they convened a meeting on the change in PRI statutes, “there was a wave of optimism and euphoria generated by the Pact for Mexico and the President’s approval ratings were sky-high.” Third, according to the same player, “Elba Esther [leader of the teachers’ union] had just been put in jail... and there are things that are not said, but are understood... during these months, Deschamps [leader of the PEMEX union] did not appear in any of the public meetings of the PRI.”

Despite the spirit of conciliation among the parties generated by the Pact for Mexico, as well as the political alignment within the PRI to back the market-centric vision, the different political forces in Mexico—which had shared in the need to reformulate of the national energy system for at least a decade—were not able to arrive at an agreement on a solution. As stated by a high-ranking technical official, there was a general consensus on the point that things could not continue as they had in the past, and also on its corollary, the need for change. However, there was no agreement regarding the type of change the sector needed.

Despite the negotiation attempts with the PRD, in the eyes of the ruling PRI and the PAN a constitutional reform that would allow participation of private agents in the exploration, exploitation, production, and trading of hydrocarbons was necessary. The hypothesis underlying this proposal is that opening to private investment and promoting competition would increase production and decrease service costs, thereby guaranteeing Mexico's energy sustainability and an increased effectiveness and competitiveness for the national industry. This market-centric vision was supported by liberal experts, academics, and civil organizations.

In turn, for the opposing state-centric coalition, energy sector reform had to focus on modernizing PEMEX, which was characterized by excessive spending, corruption, and "tax pilferage" to which it was subjected by the state governments. The solution, according to this more conservative vision, was not assigning control over strategic goods to private parties, and even less so to foreign ones. On the contrary, the most adequate strategy—both from a technical and a political point of view—was to give PEMEX the legal framework (fiscal autonomy) and suitable management tools (Ramírez 2011) to convert it into a lever for economic growth rather than a source of public income—as it had been—without modifying state property regulations. Among those who subscribed to this vision were the center-left PRD, Labor Party (PT), and Citizens' Movement; the two most outstanding political leaders on this end of the ideological spectrum, Cuauhtémoc Cárdenas and Andrés Manuel López Obrador; and leftist academics and social organizations. The PRD insisted that the energy sector's problems could be resolved without any constitutional reform.

Underlying these opposing positions, interviewees report agreement on several relevant issues. From the get-go, it was obvious to the three political parties that the 2008 energy reform and its conciliatory scope had come up short. But in addition, PAN legislators acknowledge that there was significant agreement with the PRD on some important issues: "The PRD also favored the restructuring of PEMEX, its Boards of Directors, both of PEMEX as well as CFE; the strengthening of regulators, environmental issue. This means that, yes, we had to fight against corruption in the sector, yes, there was agreement, although the models were entirely different" (PAN Senator).

In spite of these agreements, the mismatch between the two visions became untenable in terms of whether the constitution should be reformed or not. The position of the executive branch and the PRI was clearly in favor of constitutional reform. To this end, they set up an inter-institutional table led by the secretary of energy (SENER) and supported by the ministry of finance and the presidency's legal advisory office. The CRE and National Hydrocarbons Commission (CNH) also participated in the working group, along with other government agencies linked to the reform. In parallel, the PAN worked on an even more radical proposal in favor of opening up the sector with party leadership, party legislators, and former officials of the energy sector. The PRD proposal, which excluded any constitutional reform, was presented by Cuauhtémoc Cárdenas.

In his famous work on “veto players,” Tsebelis (2005) suggests that political change requires winning coalitions. And the narrower the ideological distance between the veto players—whether party or institutional—the more likely the coalition. Within the 62nd Congress (2012-2015), there were three veto players: the ruling PRI, the promoter of the reform; the PAN, a center-right party that historically (and unsuccessfully, due to opposition from the PRI and the PRD) had advocated for opening the Mexican energy market to the participation of private agents; and, finally, the PRD, a party set up for the 1988 elections as a leftist—nationalistic and anti-liberal—splinter group of the PRI, which ruled Mexico for seventy years, until 2000.

The constitutional reform that was necessary to implement the executive branch’s vision for energy policy required a two-thirds majority in both chambers of the Mexican Congress. The number of seats per party for the period 2012-2015 is as follows:

Figure 4. Party Representation in Both Chambers of Congress

	Center-Left Parties			Center-Right Parties				Total	Votes in Favor of the Constitutional Reform
									
Deputies	15	16	104	212	29	114	10	500	334
Senators	6	0	22	52	9	38	1	128	86

Source: Own work based on data from the Chamber of Deputies and Senate of the Republic.

To begin with, the government had the legislative support of its closest party allies, the Green Party and the New Alliance (shadowed cells in Figure 4). However, the sum of the votes of these parties was not enough to obtain the qualified majority of two-thirds that was required to approve a reform of Articles 25, 27, and 28 of the Mexican Constitution and thereby implement the energy reform proposed by the government. The numbers were also not enough to approve secondary legislation, because although an absolute majority could be attained in the Chamber of Deputies, in the Senate the guaranteed votes only accounted for 58 percent.

In this context, support from the PAN was critical, as had been clear since the negotiations of the Pact for Mexico. In ideological terms, the PAN proposal was even more radical in its aspirations than that of the government.

In spite of some ideological coincidences between the PAN proposal and the executive branch’s initiative, the PAN knew that the energy reform was the “crown jewel” for the government. By virtue of this assessment, the PAN demanded that the PRI support the political reform proposal that it had championed within the Pact for Mexico in exchange for its support of the PRI’s energy reform.¹⁰

However, in addition to political reform, the PAN also made its support conditional to the inclusion of several other issues. The PRI and the PAN worked for several months to refine a proposal that would be acceptable for both parties. The topics that were of main concern to the PAN included the following:

- More flexibility in modalities of contracting and cooperation of the state-owned companies (PEMEX and CFE) with the private sector.
- Increased autonomy of the regulatory bodies over the energy sector so as to ensure competition within the sector.
- Policies and mechanisms aimed at promoting a transition toward the production of renewable energy.

According to a player linked to the PRI, “The PAN [presents its initiative] in June 2013, and one month after, the Executive Branch sent its proposal... which was a little less pronounced in terms of opening than the PAN proposal, to avoid alienating our members; and based on these two initiatives, a very long process of conciliation began” (advisor of the Senate). According to legislative consultants and representatives of civil organizations, this conciliation process between the federal government and the PRI and PAN was supported by the national private sector and large transnational corporations as well as embassies and international banks that were looking favorably upon the opening up of the sector. Within this context, the PRI agreed to the PAN’s proposals and thereby assured a qualified majority in both chambers.

The price paid by the PRI to establish this alliance with the PAN created a major polarization between the “nationalistic” and “market-centric” visions, which would lead to the formal breakup of the Pact for Mexico in exchange for a radical reform that centered around open opportunities of investment and provided legal certainty to the private sector—both domestic and international.

The first moment of polarization occurred following the presentation of the initiatives by the three parties: the PRI and the PAN proposed a constitutional reform of Articles 27 and 28, while the PRD only proposed changes to secondary legislation. However, public discussion was becoming polarized, which led to the PRD and the remainder of the left breaking away from forums organized by the Energy Commission of the Senate to form their own, and also to the official rupture of the PRD with the Pact for Mexico. This resulted in two series of parallel forums that gave voice to many players but favored a reflective analysis of the competing visions while leaving out relevant issues that were not priorities for either faction, such as environmental protection and community development. Yet, several months of parallel public discussions followed. In the words of a public official:

I believe that the opposition focused a lot on this issue...that we Mexicans would no longer be the owners of the resources of the subsoil. And, on the other side, those who were defending the reform—the Executive Branch and the political parties who supported it—[focused on] defending this issue in particular, launching a very powerful campaign, instead of promoting more consultations, more forums, more

meetings regarding the different aspects of the reform; in particular regarding the electricity portion. (Public official, National Institute of Ecology and Climate Change [INECC])

Several sources report that the public forums did indeed contribute ideas and enriched the project in a significant manner. From Congress, and specifically the Senate, the most favorable opinions regarding the deliberation process came from PAN legislators. However, even these players acknowledge that participation was restricted to those supporting the market-centric faction. According to one of them:

Well, players, there were many. There were the legislators of the Institutional Revolutionary Party, the legislators of the National Action Party, obviously, some proposals were received from institutions, from chambers; in this case, the Corporate Coordinating Council played an important role, COPARMEX also provides its points of view and needs, what was required of this reform. There were a number of players who played a fundamental role to make this possible. (PAN senator, 2015)

Although contrasting testimonies claim that the deliberations were part of a strategy to lend legitimacy to the approved project, the process was seemingly enriched through the contribution of ideas within a *pool* of market-centric arguments from which the nationalistic voices had been excluded (or had excluded themselves). In other words, while there was some public deliberation between the two dominant positions, *reflective* exchange was lacking. Another result of this polarized deliberation was the encapsulation of the negotiations, which were conducted simultaneously with a public deliberation and whose focus of attention—already without the presence of the PRD—would be to generate conditions of competition in the sector and provide security for investors. These encapsulated negotiations involved a high-quality technical deliberation that included a review of international experiences. One senator describes the process in the following manner:

We had the opportunity to learn from other countries, from other implementations, from other energy models, and this led us to design our own Mexican model. We managed to eliminate the errors of other countries and replicate, let's say, cases of success for the needs of our country (Senator, PAN).

Those who participated in these negotiations and in the drafting of the initiative reported a high degree of satisfaction with the value generated around the priorities of the market-centric coalition. By contrast, the nationalistic faction, environmentalists, and civil organizations that are experts in community development reported frustration with a process in which their perspectives were not taken into account. The latter two groups acknowledge that they lacked organization and failed to build a coalition against the reform or to get their concerns included in the reform. The result was a reform project promoting the opening of the energy sector that was radical even compared to the initiative originally proposed by the executive branch.

Approval of the Proposed Constitutional Reform

Despite the effectiveness of the encapsulated negotiation and the technical quality of the public market-centric deliberations, the coalition promoting the reform knew that it was pushing a polemic and unpopular project. This explains why the legislative practices that were used to present and discuss the proposal greatly differed from optimal deliberative standards. For example, according to different members of the opposition, the proposal finally voted on in the commissions of the Senate was changed overnight:

According to the rules, bills must be sent to all senators 48 hours before in case of ordinary sessions and 24 hours before in case of extraordinary sessions. In this case, the bill was submitted less than 24 hours prior to the session, and when it came to the plenary, the proposal on the screens – the one to be voted on—was a different version. Some things had been changed in the morning hours... The internal rules were not respected, and even less so with Penchyna [PRI legislator leading reform]. (PRD Adviser)

The apparent polarization and reports on poor parliamentary practices notwithstanding, the reform was approved in both chambers (see Figure 5) without much confrontation. The latter is attributed to the Pact for Mexico, under which, as previously mentioned, even points of disagreement had been allegedly agreed upon.

However, Andrés Manuel López Obrador, the popular leader of the National Regeneration Movement (MORENA), a more radical offshoot of the PRD, and former PRD candidate, with a clearly anti-system discourse and political tactics contrary to the market-centric vision, was not a party to the Pact. This same leader was considered one of the main obstacles for a more far-reaching reform in 2008 due to his capacity of mobilization (Serra 2011; Farfán and Briones 2009). Why was he not capable of putting up any effective resistance?

“People did not hit the streets to protest; I was there, outside of the Senate, and there were no more than three guys,” a PRD member affirms. He continues: “We maybe occupied one lane on Reforma Ave. at one point in time.” This same interviewee states that he saw “the *Chuchos* (new left wing of the PRD led by Jesús Ortega and Jesús Zambrano) during the marches” and that he received instructions from the party leadership to attend and promote participation in these meetings. However, considering the broad network of clients related to the PRD and the city government, it seems that these players simply did not prioritize mobilization, as many feared López Obrador would do in 2008 and as he sought to do this time around as leader of Morena. In contrast to the dreary marches, what stands out are the efforts of the PRD and the city mayor inviting citizens to write in support for a referendum and their success in lawfully obtaining the signatures (even though they would ultimately be legally invalidated by the court). With a left divided in terms of its tactical priorities, mobilization was bound for failure.

The foregoing explanation is plausible, although it does not clarify why the people did not spontaneously join the protests, as many had feared, and despite the fact that Morena was indeed committed to this line of action. Among the possible explanations are high presidential approval ratings and the fact that the citizenry did perceive an impact or feel a

sense of indignation that was sufficient for them to take to the streets. What happened to Morena parallels Peter's fate in the story "Peter and the Wolf." By scaring people for so many years yelling, "Here comes the privatization," when privatization actually occurred, nobody believed them any longer.

Figure 5. Final Voting on the Modification

Chamber	Votes	Center-Left Parties			Center-Right Parties			Total	
									
Deputies	In favor				209	28	107	10	354
	Against	13	19	95	1		3		131
	Abstentions	1	1	6	3		4		15
Senators	In favor				54	7	36		97
	Against	6		20			2		28
	Abstentions			2	1		1	1	5

Source: Own work based on data from the Chamber of Deputies and Senate of the Republic.

Figure 5 shows that the proposal put forth by the executive branch and amended and supported by the PAN was approved by a two-thirds majority in both chambers (71 percent of deputies and 76 percent of senators). This vote regarding the energy reform, also called by the president "the mother of all reforms" (Villamil, 2015), evidences that, at least regarding priority topics (where the intensity of preferences is very high), party discipline is an efficient predictor of voting in the Mexican Congress. Only 4 out of 500 deputies (1 from the PRI and 3 from the PAN) and 2 out of 128 senators (both members of the PAN) issued a vote contrary to the one advocated by their respective parliamentary groups. Excluding absent representatives, 99 percent of the deputies and senators voted as indicated by their parliamentary leaders (602 out of 608). This shows that, beyond the more or less constructive dialogue moderating the positions of the parties, votes reflect the weight that the party and government hierarchies impose on their legislators.

The constitutional reform was therefore a paradoxical exercise during which: (a) a center-right market-centric coalition negotiated and deliberated with technical expertise and generated value for a subset of political and economic players, and (b) this coalition imposed its vision vis-à-vis a broad nationalistic faction that was marginalized and instead steered its efforts to push for referendum in an attempt to drive back the market-centric reform as a whole. Between these two factions, the principle of all or nothing prevailed, with no room for value-generating negotiations or deliberation based on the force of the best argument.

Secondary Legislation

This same dynamic was replicated during the negotiation of and deliberation on the secondary legislation, which took place without any desire for conciliation between the two competing visions. The nationalistic wing focused on capitalizing politically from the lack of popularity of the reform promoted by the PAN-PRI coalition through mobilization and referenda, while the coalition worked with allies to design secondary legislation that had to follow the criteria clearly delineated by the 21 transitional articles of the constitutional reform.

Civil organizations and environmental groups organized in an attempt to influence the environmental legislation:

As a result of the constitutional reform, published in December 2013, the NGOs start to review what happened—after the train had already run over them—and find that there are a series of loopholes in the transitional articles according to which they were going to change the secondary legislation, that this new agency will be created, that the environmental law needs to be changed, etc. (Environmentalist)

However, the winning coalition had already been consolidated, and environmental and social concerns were not a priority. Excluding these groups was easy because they did not manage to articulate a unified position. The exception was a set of observations prepared by Greenpeace and indeed picked up by a section of the PAN sensitive to environmental issues.

According to Greenpeace, Senator Sylvia Garza was their contact person and informed them that negotiation space had been created during the negotiation with the PRI at a time when the PRI was at the mercy of the PAN to approve the reform. The proposed changes, which addressed issues such as the prohibition of carrying out energy projects in protected natural areas and the exclusion of natural gas from the list of energies considered renewable, were incorporated in the draft the night before it was put to the vote. The environmental organizations lost the battle regarding other issues such the prohibition of fracking as an extraction and mining technique in protected natural areas; based on a recommendation by the Mario Molina Center for Strategic Studies on Energy and the Environment, at the last moment nuclear energy was also included in the list of renewable energies, a very polemical issue among organizations and experts on sustainable energies.

Regardless of whether this was good or bad, the rushed inclusion of these topics reflects the hardly deliberative attitude of the market-centric coalition toward outsiders and the lack of respect for the protocols of legislative due process that were rampant during this process.

However, according to an INECC official, the core issue was “passing from the generation of energy based on fossil fuels to clean energy: this is the key issue... Why do we not have any solar or wind power in Mexico? What are the technological, social, financial obstacles?... [However], this was not part of the discussion.” According to others, opposition deputies of the PAN and PRD who worked with environmentalist organizations such as Greenpeace, the Latin America Regional Climate Initiative (LARCI), and the Mexican Environmental Law Center (CEMDA) concurrently with reform advocates regarding an Energy Transition Act, this discussion took place in another space. This project was approved with the majority vote

of the Chamber of Deputies, although the negotiators of the PRI and PAN in the Senate simply did not prioritize it, as a result of which the initiative came to an impasse:

The Chamber of Deputies [approved] the Energy Transition Act, which includes everything that is renewable, wind, etc., etc., etc. I do not dare to make any predictions... although the priorities of the Senate seem to be different... Some of the large promoters of environmentalism, as well as Great Britain, China, to some extent, Russia, Germany, Spain, are returning to hydrocarbons, because this is cheaper... This is something that is happening right now in the energy market worldwide. Getting involved in the environmental issue means going a bit against the current. (PRI negotiator before the Energy Transition Act was approved)

In addition to excluding this issue from its negotiations, different testimonies state that the position of the PRI senators was to remove the Energy Transition Act from the legislative package being negotiated, to the point that its approval had to wait for the following legislative session. It was finally approved in December 2015 during an additional political process, and, according to environmentalists, only because “Jorge Olivares from LACRI had predicted the economic climate a year earlier” and convinced the executive branch that the law would leave “Mexico and the president in good shape at the COP 21 Summit in Paris,” despite strong resistance to the legislation from the industry. In any case, this law does reflect relevant environmental perspectives, and its approval involved negotiation and dialogue between the market-centric coalition and civil organizations. Unfortunately, this type of engagement with civil society did not nurture the package of reforms as a whole.

Conclusion

The players who participated in the political process that resulted in the energy reform of 2013-2014 report a paradoxical exercise. This reform was made possible to a great extent by the Pact for Mexico, although its price was the Pact itself. On one hand, interviewees report a center-right market-centric coalition that negotiated and deliberated with technical rigor to generate value in favor of a subset of political and economic players. On the other hand, accusations have been made that the same coalition imposed its vision against a broad, nationalistic center-left faction that was marginalized. At the same time, this opposing faction divided its efforts between a failed strategy of mobilizing the people and popular consultations in an attempt to drive back the market-centric reform as a whole. The failure to mobilize seems to reflect, at least partially, a negative public opinion that yet sympathized with the reforming spirit of the Pact for Mexico and never felt sufficiently outraged or convinced of the effectiveness of taking to the streets in an effort to prevent the change. In any case, among promoters and detractors, the principle of all or nothing imposed itself, which made both value-creating negotiations as well as quality deliberations that spanned the two visions impossible.

The interviewees agree that the market-centric project generates multiple opportunities for private investment in hydrocarbons and electricity, in addition to exposing the two large state-owned monopolies PEMEX and CFE to increased market competition and strengthening the autonomy of regulators.

In turn, the interests of environmentalists, civil organizations, and agricultural communities are partially reflected in the introduction of institutions and mechanisms such as the National Agency of Industrial Safety and Environmental Protection in the hydrocarbons sector, a social impact study, and indigenous consultations. In the case of social and agricultural issues, these measures were not designed directly as a result of deliberation with the affected parties or civil organizations and therefore lack their support, since it is doubtful that they represent an effective counterweight against economic interests. In the case of environmentalist interests, an alliance between environmental organizations and PAN legislators close to the environmental agenda made it possible to overcome the veto of the PRI and pro-business PAN members. The result was that some specific concerns were indeed included during the last segment of the negotiations regarding secondary legislation. Later, the Energy Transition Act—in which independent experts and civil organizations actively participated—was blocked from the original package of secondary reforms and only approved after the executive branch was persuaded of its virtues within the specific context of the COP21 summit.

The political and social players holding up the nationalistic perspective of the industry are the great losers, together with interests directly linked with PEMEX and CFE (its bureaucracy and trade unions). In exchange for a moderate opposition, the PRD presumably obtained the fiscal reform, which, in political terms, would appear to be more of a burden than a gain.

The evidence presented shows that: 1) the energy reform resulted from a process during which subscribers to the two dominant visions regarding the problem were not able to deliberate the advantages and disadvantages of their proposals; 2) as soon as the framework for deliberation had been established by the market-centered coalition, several public forums were organized during which many players were heard and could state their opinions and proposals as part of the coalition, or at least regarding the proposed coalition; 3) from the point of view of the opposition, these forums were biased and included only those who were aligned with the market-centered reform, a view corroborated to a large extent by the interviewees; and 4) a broad majority of those who did participate in the forums and negotiation tables agree that they were highly productive in terms of learning and, in particular, as venues for problem-solving and value-creation in favor of the stakeholders in the promoting coalition. The force of the best argument prevailed within the coalition, even between two opposing political parties (the PAN and the PRI), and the prototypical tug-of-war of political negotiation was not necessary. This is summarized by a legislator from the PAN, according to whom “this reform benefited the country, and there was no particular dark or hidden interest. Mexico won.” At least the Mexico that agreed with his reform proposal, it should be added.

In terms of the quality of the representation, one interpretation is that the PAN has been a consistently gyroscopic player in its manner of exercising its representation. This is to say that both as a power-player and as the opposition, this party sought to promote the industry model that it deemed suitable for the country, including moderately backing the environmental agenda. In turn, the PRD and the rest of the left remained faithful to their nationalistic mandate and therefore refused to participate in a deliberation that would involve going in a different direction, even after the constitutional reform had been approved and its passage was imminent. The PRI, in turn, exercised an opportunistic type of representation: it complied with the mandate of public opinion when in opposition, but then behaved more like a trustee when in power. When in power, this party blocked the environmental agenda when its priority was to gain the trust of investors, only to later promote this same agenda in order to effectively use the international COP 21 platform. Such opportunism is based on a political culture and some coercive mechanisms of party discipline that become particularly effective when the party is in power. Such a strategy might work very well from a political point of view, but it makes accountability difficult from the viewpoint of the citizens and might hurt the party's credibility in the long run.

In summary, the energy reform will most likely produce dynamism and growth in the energy sector in Mexico, especially considering that its content was the result of highly complex technical analyses. Those who participated in the design of the secondary laws are mostly proven specialists in the field and had as a primary goal improving the effectiveness, productivity, and fiscal sustainability of the Mexican energy sector. However, the reform was not the result of the participation of all relevant players, nor were all relevant policy options discussed. Players who were excluded or only participated marginally cannot expect to share in the benefits of the reform. In the case of some communities, their exclusion surely will translate into mistrust towards energy projects, as well as conflict and an impasse in their relationship with companies. In the case of the nationalistic faction, some fear that the market-centric model will advance at the expense of the dynamism and financial health of the state-owned companies even further and, therefore, the social support that they currently enjoy will erode. Should the high negative impact of fracking be confirmed, or in the event that regulators fail to protect the environment due to their lack of independence, citizens may pay a high price.

Representative democracy allows for partial representation of interests and perspectives when the votes of the majority coalition are sufficient. The cost of such partiality is a deficit of democratic legitimacy that may translate into technical shortcomings, a propensity for social conflict, resistance to its implementation, and rejection of the reform by citizens. The alternative is to correct such shortcomings through public policies based on a more inclusive deliberation process, such as the one that gave rise to the Energy Transition Act. Technocracy and democratic legitimacy do not always get along well, but they are not theoretically incompatible.

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Appendix 1

No.	Date	Name	Title/Position	Institution
1	December 1, 2014	Sergio Segura	Director of International Cooperation	CONUEE
2	December 10, 2014	Jorge Luis Lavalle	Senator	PAN
3	December 12, 2014	Ileana Villalobos	Consultant Coordinator	INECC
4	December 16, 2014	Odón de Buen	General Director	CONUEE
5	January 19, 2015	Manuel Bartlett	Senator	PT
6	January 24, 2015	Lourdes Melgar	Deputy Minister of Hydrocarbons	SENER
7	February 27, 2015	Noé Hernández	Consultant of Senator Rabindranath Salazar	PRD
8	March 03, 2015	Francisco García Cabeza de Vaca	Senator	PAN
9	April 09, 2015	Javier Zenteno	Entrepreneur and attorney	COPARMEX
10	April 13, 2015	Gabriel Valencia	Technical Secretary, Energy Commission of the Senate	PRI
11	April 24, 2015	Carlos Elizondo	Academic	CIDE/ITESM
12	April 27, 2015	Nadjeli Babinet	Project Coordinator	CCC
13	April 28, 2015	Gabriel Quadri	Expert	SIGEA
14	April 23, 2015	Edgar Alvarado	Deputy General Legal Director of Electrical Regulation	CRE
15	April 29, 2015	Rubén Flores	Former Commissioner (now independent counsel)	CRE
16	June 18, 2015	Alberto Rojas	Lobbyist at the Senate	Greenpeace
17	July 06, 2015	Layda Sansores	Senator	PT
18	July 07, 2015	Francisco Salazar	Chairman Commissioner	CRE
19	February 03, 2016	Gabino Robledo	Former Technical Minister (now consultant)	Executive Committee of the PRI
20	January 20, 2016	David Razú	Former counselor and Former General Director of Government (now consultant)	PRD

Appendix 2: Acronyms

CCC: Center of Civic Cooperation (nongovernmental organization)

CCE: Corporate Coordinating Council

CIDE: Center for Research and Teaching in Economics

CONUEE: National Commission for Efficient Energy Use

COPARMEX: Employers Confederation of the Mexican Republic

CRE: Energy Regulatory Commission

INECC: National Institute of Ecology and Climate Change

PAN: National Action Party

PRD: Party of the Democratic Revolution

PRI: Institutional Revolutionary Party

PT: Labor Party

SENER: Ministry of Energy

SIGEA: Comprehensive Environmental Management Systems (private company)

ITESM: Monterrey Institute of Technology and Higher Education

Endnotes

¹ It had been approved the previous day in the Chamber of Deputies by a vote of 354 in favor (71 percent of the total).

² This means that the state renationalized or increased its participation in the shareholding of the “national” energy companies. The fully or partially renationalized companies were Yacimientos Petrolíferos Fiscales (YPF) in Argentina, Yacimientos Petrolíferos Fiscales Bolivia (YPFB) in Bolivia, and Petróleo Brasileiro S.A. (Petrobras) in Brazil. In Venezuela, Petróleos de Venezuela, S.A. (PDVSA) never ceased to be a state-owned company, although after the promulgation of the Bolivarian Constitution in 1999, the holding of the entirety of the shares of PDVSA by the Venezuelan nation acquired constitutional standing as a strategy to consolidate the economic and policy sovereignty and ensure its exercise by the Venezuelan people.

³ PEMEX is the state-owned company exclusively in charge of the production of hydrocarbons in Mexico.

⁴ According to data from consulting company Parametría, in July 2013, prior to the presentation of the reform initiative, only 18 percent of the population was in favor of expanding the participation of private capital in the electrical industry, and only 16 percent in the case of hydrocarbons, with 27 percent and 25 percent, respectively, reporting neither being opposed nor in favor. See http://www.parametria.com.mx/carta_parametrica.php?cp=4562.

⁵ When Zedillo (PRI) attempted to promote the reform, the PAN was against participating in the debate. When the PAN promoted it in 2008, the PRI was the party that distanced itself from the proposal.

⁶ This is one of the arguments put forth by the coalition against the opening of the energy sector, claiming that it was not necessary as long as both the fiscal burden and the inefficiencies in the management of PEMEX were reduced.

⁷ The senators of the Labor Party and the Democratic Revolution Party, as well as representatives of the civil society, pointed out the participation of these players in the legal design of the 21 secondary laws resulting from the constitutional change.

⁸ A gyroscope is a mechanical device essentially formed by a body with symmetrical rotation that turns around its symmetrical axis. Whenever the gyroscope is subject to a “force moment” (when stimulated through any impulse trying to change the orientation of its axis), its behavior is paradoxical considering that in lieu of changing orientation, as a nonrotating body would do, the axis of rotation adopts a perpendicular direction (which is therefore different) from the “intuitive” orientation

that was desired. It remains relatively independent to the influences and/or forces exercised on it.

⁹ Were they delegates representing certain interest, men of trust authorized to make decisions they believed to be advisable, or firm defenders of their own idea of what was proper?

¹⁰ This is reported by several interviewees and the press: “The presentation of the initiative of the energy reform by the PAN takes place some hours before the members of the Covenant for Mexico would announce that first, the political reform would be discussed, a condition imposed by the PAN.” See <http://www.adnpolitico.com/congreso/2013/07/31/pan-presenta-iniciativa-de-reforma-energetica-en-el-congreso>.