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AUTONOMOUS REGULATORY AGENCIES IN DEMOCRATIC MEXICO**

Jacint Jordana*

I. INTRODUCTION

Many specialists have analyzed the establishment of new regulatory regimes in Mexico since the early 1990s and considered how liberalization introduced regulatory policies designed to transform the way markets operated in the country, moving away from protection and central control toward a market-based economy.1 The political economy of reform was complex and produced a variety of results including newly delineated regulatory regimes for most sectors, and the creation or reform of a number of regulatory agencies. But, a report on Mexico, published by the Organisation for Economic Co-operation and Development (OECD) in 1999, both celebrated the establishment of diverse regulatory agencies and warned about their limitations. In particular, the OCED warned of limitations in supervising dominant firms after major privatizations—firms that in many sectors undermined performance and reduced effective competition. In this respect, the report concluded that the Competition Agency would “need more power to check anti-competitive decisions by other regulators.”2 For particular sectors, for example telecommunications, more asymmetric regulation of incumbents would be required, as well as more transparency in their decision procedures.

During the first decade of the twenty-first century, Mexico progressively transitioned to democracy, and the Mexican public administration underwent major reforms in the civil service. New regulatory agencies

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were set up, and most of those already existing were reformed, with the strong involvement of the legislature. In this paper, I aim to examine how the institutional design of the agencies worked “in practice” during the 2000s, to what extent the de jure rules were respected, and, more generally, whether some of the competition problems identified by the OECD in the late 1990s were addressed in succeeding years. I focus on the development of strategies for the institutional adjustment of regulatory agencies, discussing how policymakers attempted to articulate partial or comprehensive responses to the institutional limitations already observed in the regulatory framework.

The emergence of a competitive democratic regime profoundly changed Mexican political life after the late 1990s, when, for the first time, the Institutional Revolutionary Party (PRI) lost control of the legislature. Until then, the key players in the political process were the president, a circle of highly trained officials in the government, and corporatist leaders. Neither the courts nor the legislature exerted significant influence, despite their formal role in the Mexican constitution. This involved a system of unified government, under conditions of limited accountability and also restricted political representation. It was in the legislative elections of 1997, however, that the PRI lost its absolute majority in the Chamber of Deputies (although it maintained its control of the Senate). A new political regime started to emerge, which involved the logic of divided government and the progressive democratization of the country, along with increased accountability and improved political representation. Later, in the 2000 presidential election, Vicente Fox, the National Action Party (PAN) candidate, won the presidency, although his party failed to obtain majorities in either the Chamber of Deputies or the Senate. This situation of divided government continued under President Felipe Calderon, elected in 2006, and created a profound change in policymaking processes: “Presidents continue to consult corporatist sector leaders, but they must also lobby Congress because government is divided . . . the policy space becomes increasingly multi-dimensional and requires building different coalitions to enact legislative programs.”

The institutional development of regulatory agencies is just one dimension of the broad processes of state reform related to the establishment of the new democratic regime, but the conflicts and problems that accompanied other reforms were present here, too. In this paper I examine some problems with the institutional development of four regulatory agencies and the central bank, and aim to identify the major challenges that face the new regulatory regimes in addressing the shortcomings of different market-oriented sectors in the country. I aim to identify the basic difficulties in making Mexico’s regulatory regimes simultaneously more accountable and more effective while finding a more secure place within the

4. Id. at 23.
country's political institutions. To this end, I observe the institutional aspects related to agencies' autonomy and the scope of their responsibilities as well as make a few basic points about the regulatory regimes in which the agencies are involved and analyze how they participate in policymaking. In Section II, I develop an analytical framework and present some exploratory hypotheses. In Section III, I examine the cases selected, then in Section IV, I compare and discuss the results obtained in the wider context of public administration reform in Mexico during the 2000s, and finally I conclude with Section V.

II. AN ANALYTICAL FRAMEWORK: DEMOCRATIC REGIMES AND REGULATORY INSTITUTIONS

The creation of regulatory agencies in Latin America was largely a typical case of institutional "window dressing." The agencies were set up to fulfill the expectations of international organizations, multinational firms, and other global actors. Thus, in many countries, newly established agencies were not necessarily assumed to be able to control markets or supervise firms at their inception. Traditional political powers would retain their capabilities to control and intervene in many domestic markets, and to this end they undermined the regulatory agencies' operating procedures or prevented the enforcement of their rules when they considered that their own objectives were not being achieved. These episodes undermined the credibility of the agencies' efforts to supervise and guide specific sectors and weakened them institutionally. They also resulted in a significant mismatch between de jure and de facto rules. But I also should warn that it is not always a solution to expect actual behavior to follow the de jure rules. Sometimes the main obstacle to strengthening institutions is the de jure rules themselves, which may not be suitable for the country's institutional structure as a whole.

Institutional strength refers to a feature of institutional analysis that is very relevant to studies of developing countries like Mexico because of the highly variable effectiveness of formal rules. Levitsky and Murillo suggest focusing on two dimensions for characterizing institutional strength: stability and enforcement. Stability refers to the durability of institutional rules over time, while enforcement refers to the extent that institutional rules are actually followed. Only when both dimensions are strongly present do we have consistent and credible institutions. Often, this is not the case, however. Many institutions are weak, often displaying unpredictable patterns of stability and enforcement over time. Problems of stability and problems of enforcement combine to generate a range of pathologies of institutional strength.

In this article I enquire whether the institutional weakness of Mexican regulatory agencies is related to a lack of stability and enforcement arising from political and economic interference, or whether it can be better attributed to inadequate institutional design that creates persistent institutional mismatch. In dealing with this issue, I set out arguments about the limitations of the regulatory state (and its agencies) in Mexico that allows me to explain the poor performance observed for some Mexican regulatory policies. I suggest that key political institutions and major political events (such as transitions to democracy) have had an impact on the performance and strength of regulatory agencies. In my view, the process of the transition to democracy during the 1990s in Mexico had a significant impact on the institutional design of regulatory agencies. In general, PRI governments at that time aimed to retain some control over the policy areas, responsibility for which was delegated to the regulatory agencies. In this sense, as autocrats, they allowed a certain degree of autonomy for these new agencies, but retained instruments for political intervention in their own hands. This outcome could be related to uncertainty about the continuity in power of the political group that led the transition to democracy, which also constituted a pro-market coalition. They faced a trade-off: in making the agency more autonomous they also shaped its future structure, and thus its process of preference formation, but unfortunately they also, to some extent, lost their capacity to determine policy during the agency’s current mandate, and also possible future mandates, if they continued to be in charge of government.

There are some parallels with the case of Chile, where during the 1980s, the dictatorship also set up some regulatory agencies, but gave them very limited autonomy (with the exception of the central bank). The same pattern of trade-offs seems to apply to autocrats. They do not like to lose control when they are in power, but they also foresee the dangers posed by the relevant changes when moving toward a democratic regime. Furthermore, they do not like radical changes in most policy areas in the future. Thus, delegation provides an institutional tool to smooth and, eventually, to lock in future policy changes. In my opinion, since the late 1990s, the PRI leadership in Mexico grew increasingly doubtful about continuing in power, and thus favored greater agency autonomy as a way to shape future preferences by renouncing their influence over short-term policy developments. Institutional innovation also became more important and relevant, in so far as many players were able to participate in the design of agencies, increasing their political delegation features to make them more difficult to control by future power-holders. In addition, I suggest that democratic competition contains a logic that increases agency autonomy beyond the level allowed by autocrats. The existence of more veto players (particularly in the parliament) would make agencies more autonomous (at least from the executive), in

so far as all veto players might want to intervene in order to supervise the agency.

To make this interpretation more operational, here I enquire into the specific influence that the presidential institution in Mexico may have exerted on the behavior of regulatory agencies. According to Moe and Caldwell, in presidential systems, legislatures tend to favor independent agencies that limit executive power and that are more accessible to parliamentarians. Thus, one might expect that in Mexico, with its presidential system, the legislature would be prone to setting up independent regulatory agencies accountable to it. One might also expect Mexican agencies to be likely to engage in conflicts with the executive. The legislative powers of the president, however, are highly relevant to overcoming possible parliamentary blockages. In this sense, if the Mexican legislature does not control agencies, one may find in the country more institutional similarities with regulatory agencies in parliamentary regimes, where the executive usually does not share supervision with the legislature. As I am interested in the consequences of such institutional designs, I propose several hypotheses on how the relationship between executives and regulators evolved following the creation of regulatory agencies, taking into account the different political contexts of the 1990s and the 2000s.

As a point of departure, I believe that in the Mexican presidential regime, the legislature protects delegation. More generally, one could say that the more veto players are present in a political regime, the more anchorage possibilities there will be for regulatory agencies to realize their de jure autonomy (or, at least, accountability to multiple principals). In presidential regimes with weak legislatures, however, institutional anchorages to protect delegation are almost non-existent, and conditions are not very favorable for effective political delegation. To better discuss such conditions, I entertain three hypotheses about the relationship between legislatures, executives and regulatory agencies in presidential regimes, with a particular focus on the effectiveness of political delegation:

1. The stronger presidential legislative power is, the weaker will be effective political delegation to agencies, to the extent that anchorage for independent institutions will be more limited.


10. These hypotheses have been suggested previously in: Jacint Jordana & Carles Ramió, *Delegation, Presidential Regimes, and Latin American Regulatory Agencies*, 2 J. POL. IN LATIN AM. 3, 14 (2010).
H2. The risk of effective political delegation failure will be greatest after political transitions (such as presidential change), but the continuity of public bureaucracies, when they exist, may curb it.

H3. The stronger the requirements are for time-consistent policies (such as investments in utility sectors versus other economic sectors), the more intense will be the pressure on presidents to maintain effective political delegation to agencies.

To aid the discussion of these previously introduced hypotheses, we identified mechanisms of political delegation within the institutional settings of regulatory agencies in four different sectors, namely, competition, telecommunications, energy, and financial services, and we established how they are followed in practice. We essentially concentrated on the rules governing the appointment and departure of agency heads and commissioners. We also enquired into whether legislatures were involved in the appointments and into the reasons for any early dismissals. As fixed-term mandates are the most common delegation mechanism among regulatory agencies, observing them is an excellent way to measure effective political delegation.

For our four cases, we also focused on the amendments and changes in the rules governing the establishment of regulatory agencies and their responsibilities and supervisory powers. The critical conjunctures in which relevant changes were introduced are examined carefully to identify the direction of change. They are also considered in the context of the interplay between presidents and legislatures and in the light of the hypotheses presented in the paper. The paper also considers how the whole institutional constellation works, particularly for the critical conjunctures of crossed controls of the agency by other powers, like the judiciary, and various other horizontal agencies.11 Also, the logic of the transition to democracy in Mexico is discussed in relation to the changes introduced in the institutional design of agencies after its establishment.

In the Mexican case, the actual role of the president differed greatly as between two different periods of time, namely, before and after 1997, in light of which makes possible a very useful comparison to discuss the first hypothesis on the effective political delegation of agencies. Also, as most Mexican regulatory agencies were created or reformed before 1997, one can consider the initial conditions and institutional development further under the impact of different presidential roles. In the new context of divided government and democratic conditions, the role of Mexican president appears to be very different, more reactive, relying on veto power to block the legislature's initiatives and maintain the status quo, and not enjoying a monopoly of legislative initiative.12 In fact, the formal powers...
of the Mexican presidency before 1997 were also weak, but the control of the political processes by the PRI and corporatist leaders gave the presidency an extremely powerful de facto predominance.

III. EXAMINING THE INSTITUTIONAL DEVELOPMENT OF MEXICAN REGULATORY AGENCIES

Table 1 provides a preliminary overview of the characteristics of regulatory agencies in Mexico, focusing on market regulation, whether horizontal or vertical. Most agencies were created during the 1990s, but some are much older, and a few others were created in the 2000s. In most cases, these Mexican agencies do not show a strong pattern of formal autonomy. In this sample, some agencies have fixed terms for the head and the commissioners, and they also include provisions requiring professional experience and preventing early dismissal as a result of policy disagreements. For most agencies, however, the nomination of the head remains in the hands of the president or the Secretary (minister), without any legislative supervision except in the case of the central bank.

**TABLE 1: PRO-MARKET REGULATORY AGENCIES IN MEXICO.**

<table>
<thead>
<tr>
<th>Sector</th>
<th>Name</th>
<th>Abbreviation</th>
<th>Year created</th>
<th>Year introduced</th>
<th>Term (years)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Competition</td>
<td>Comisión Federal de Competencia</td>
<td>CFC</td>
<td>1992</td>
<td>1992</td>
<td>10</td>
</tr>
<tr>
<td>Telecommunications</td>
<td>Comisión Federal de Telecomunicaciones</td>
<td>COFETEL</td>
<td>1995</td>
<td>2006</td>
<td>8</td>
</tr>
<tr>
<td>Electricity and Gas</td>
<td>Comisión Reguladora de Energía</td>
<td>CRE</td>
<td>1995</td>
<td>1995</td>
<td>5</td>
</tr>
<tr>
<td>Oil</td>
<td>Comisión Nacional de Hidrocarburos</td>
<td>CNH</td>
<td>2008</td>
<td>2008</td>
<td>5</td>
</tr>
<tr>
<td>Financial Services and Security and Exchange</td>
<td>Comisión Nacional Bancaria y de Valores</td>
<td>CBNV</td>
<td>1925/1946</td>
<td>(1995)</td>
<td>-</td>
</tr>
<tr>
<td>Central Bank</td>
<td>Banco de México</td>
<td>BANXICO</td>
<td>1925</td>
<td>1993</td>
<td>6</td>
</tr>
<tr>
<td>Insurance</td>
<td>Comisión Nacional de Seguros y Finanzas</td>
<td>CNSF</td>
<td>1970</td>
<td></td>
<td>-</td>
</tr>
<tr>
<td>Pensions-Social Sec.</td>
<td>Comisión Nacional del Sistema de Ahorro para el Retiro</td>
<td>CONSAR</td>
<td>1994</td>
<td></td>
<td>-</td>
</tr>
<tr>
<td>Regulation</td>
<td>Comisión Federal de Mejora Regulatoria</td>
<td>COFEMER</td>
<td>2000</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

The shape of Mexican agencies varies greatly. Older agencies, like those in the financial area, have different organizational characteristics from new ones, and these characteristics have persisted over time. As for the distribution of regulatory responsibilities, it is not uncommon to find cases of some overlap between different agencies, or between Secretaries (ministers) and agencies, in specific fields. This overlap has created many difficulties for the regulatory development of different sectors.

In order to examine in more detail the issues under discussion, I next focus on four different regulatory agencies, for competition, energy, tele-

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communications and banking supervision, all of which are designed to deal with market failures. But, I first examine certain institutional characteristics of the Mexican central bank (Banxico), not only because of the strong influence its institutional model has exerted on the establishment of autonomous regulatory agencies in the 1990s (in Mexico and beyond), but also because of the particular formal conditions introduced for central bank operations in the context of the Mexican democratic transition.

The decision to grant independence to the central bank in Mexico was taken by the Carlos Salinas government in 1993, at a time when many other governments in the world had made similar decisions. Board members were appointed for fixed mandates of six years, with staggered renewals and congressional approval for appointments and dismissals. The governor was to be appointed at the start of the fourth year of the national presidency. The new bank statutes, however, required governors to comply with the decisions of the exchange rate commission—which was in fact under control of the Finance Ministry—on pain of dismissal from their posts.\textsuperscript{15} This limitation constrained the bank's capacity to set the country's interest rates autonomously, and was clearly designed to keep the bank close to the cabinet's view. In 1993, Salinas also appointed as central bank governor and board members from a team of economists at the Finance Ministry, instead of relying on bank officials or independent professionals, thus further weakening the bank's independence.

Later, in 1994, the central bank struggled with the Finance Ministry to gain more autonomy. This was the last year of the Salinas presidency and a period of persistent debate about the country's monetary policy. But, this period is better understood as an internal battle among Salinas's bureaucratic teams during the last year of his presidency, exacerbated by the country's increasing economic difficulties.\textsuperscript{16} In addition, in 1995, the new President, Ernesto Zedillo, decided, in the midst of an economic crisis, to dismiss the entire economic team at the Finance Ministry, aggravating the already existing coordination problem with the central bank.\textsuperscript{17} As a consequence, "The new partial insulation created communication problems, and, indirectly, determined the new path of reform."\textsuperscript{18} Then, the new finance minister introduced changes to the autonomy of the central bank, enhancing its organizational autonomy and giving it the legal power to implement and exercise monetary policy without interference.\textsuperscript{19} The finance minister became Governor of the central bank in 1998. Nominated

\textsuperscript{15.} Ley del Banco de Mexico (Mexico Central Bank Statutes), art. 43. This restriction was still in effect in 2010.


\textsuperscript{18.} Ballinas-Valdes, supra note 16, at 19.

\textsuperscript{19.} \textit{Id.} at 20.
for a second term, he retained his mandate until the end of 2009. His successor was likewise the incumbent minister of finance.

The creation of the competition agency, Comisión Federal de la Competencia (COFECO), in June 1993 was largely a result of liberalization processes that took place in Mexico in the early 1990s, also in connection with the signing of the North American Free Trade Agreement (NAFTA). In previous decades, Mexican governments had sought to protect internal markets by avoiding competition, and competition policy remained extremely underdeveloped as they were not especially interested in competition issues. In fact, the first president of COFECO, Santiago Levy, was previously in charge of drafting the Economic Competition Act, as a director since February 1992 of the Economic Deregulation Program at the Ministry of Trade and Industrial Promotion, where he also worked on deregulation of electricity and telecommunications.

COFECO was designed to be administratively dependent on the Ministry of Commerce and Industry (now called the Ministry of Economy), but with some decision-making “autonomy.” The agency’s decision-making independence was protected in part by the duration of commissioners’ tenure. The commission’s chairman and four commissioners are appointed for staggered ten-year terms by the President of Mexico, and are removable only for cause. This is the longest fixed term in Mexican agencies, and represents an important protection. In fact, it was one of the first cases in which the commissioners were insulated from the usual practice of the virtually complete personnel turnover after presidential elections every six years. Furthermore, in contrast to some sectoral agencies, the basis of the commission’s autonomy was established by statute, not by ministerial regulation. Additionally, the President, not ministers, appoints the commissioners. During the late 1990s, the commission developed its internal ordinances and focused on improving the efficacy of its procedures, aiming to be more efficient and to increase the number of cases addressed.

Observing the actual tenure of commissioners (see Table A1), I found in this case that de facto and de jure rules coincide, and since the creation of COFECO almost eighteen years ago, the commissioners’ mandates have been fulfilled as expected in almost all cases (only the first president resigned earlier to assume a governmental office). Also, their professional profiles show a consistent pattern, comprising lawyers (two) and economists (three, including the president). The commission has not been involved in major political disputes, but it has been very active in supervising many relevant markets and particularly, in confronting monopolistic tendencies in sectors like telecommunications, aviation, or energy distribution. It has acquired a good professional reputation is

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experiencing growing problems in dealing with the tactics of adversarial litigation employed by many firms.\textsuperscript{21}

\begin{table}
\centering
\begin{tabular}{|c|c|c|c|c|}
\hline
Year & Personnel & Budget (Millions Pesos) & Files concluded & Mergers & Monopolistic Practices \\
\hline
2010 & 162 & & & & \\
2009 & 182 & & & & \\
2008 & 173 & 181.5 & 581 & 192 & 152 \\
2007 & 176 & 159.6 & 738 & 266 & 46 \\
2006 & 143 & 153.5 & 738 & 252 & 39 \\
2005 & 154 & 162.5 & 930 & 218 & 62 \\
2004 & 175 & 164.5 & 866 & 194 & 42 \\
2003 & 174 & 158.6 & 1450 & 196 & 38 \\
2002 & 192 & 153.8 & 1399 & 260 & 68 \\
2001 & 198 & 143.3 & 603 & 311 & 64 \\
2000 & 208 & 109.3 & 529 & 276 & 63 \\
1999 & 208 & n.a. & 469 & 245 & 41 \\
1998 & 208 & n.a. & 514 & 195 & 51 \\
1997 & 208 & 52 & 499 & 218 & 52 \\
1995-96 & 165 & 30.83 & 250 & 109 & 27 \\
1994-95 & 165 & 50.73 & 176 & 89 & 16 \\
1993-94 & 165 & 31 & 148 & 57 & 30 \\
\hline
\end{tabular}
\caption{COFECO: Personnel, Budget and Activity\textsuperscript{22}}
\end{table}

According to the OECD, this agency has technical and operative autonomy, and enough credibility and capacity to control economics processes.\textsuperscript{23} Although the competition agency has some relevant sanctioning powers, its decision-making powers are relatively limited, and coordination with sectoral regulatory agencies and governmental offices is not clearly established. The resulting overlap of powers encourages intense judicial litigation.\textsuperscript{24} In addition, most of the regulatory instruments in use have not been powerful enough to cope with vested economic interests and firms' strategies, and the attempts over many years to pass a new competition law were not successful until 2006. The law reform approved unanimously by Congress, introduced many innovations, like increased fines to increase the agency's effectiveness. It also identified further non-competitive practices, introduced significant legal revisions to facilitate COFECO procedures and inquiries, and facilitated agency intervention in the regulatory policymaking process. Other specific innovations introduced by the reform, such as inspections under judicial control and Senate confirmation of commissioners, were declared unconstitutional by the Supreme Court, which argued that they

\textsuperscript{21} Commission Federal de Competencia Mexico, Compendio Normativo en Materia de Competencia, [Compendium of Standards in the Field of Competition] 293 (COFECO, 2004); see also OECD/IDB, Peer Reviews of Competition Law and Policy in Latin America: A Follow-up (2007).


\textsuperscript{23} OECD, supra note 2.

\textsuperscript{24} Id.
violated the separation of powers enshrined in the Constitution.\textsuperscript{25}

Despite the improvements introduced by the 2006 reform, Congressional debates continued in succeeding years about the need to strengthen the regulatory powers of the commission. More than ten amendments to the Competition Act were proposed during 2006 and 2009, suggesting the need to provide the agency with more regulatory instruments to increase transparency and accountability in its procedures, and also to revise its institutional design and organizational features.\textsuperscript{26}

Although no proposed reform succeeded in this period, the increased interest in amending the Act revealed high expectations about the relevance of competition policy and the need to improve regulatory interventions and capacities in this policy area. Only in April 2010, President Calderon presented a new reform package to improve the Competition Act to the legislature, which was approved by a solid majority and implemented quickly. In this package, the commissioner tenure period was shortened to four years with the opportunity to renew once.

Despite the previous reform of the Competition Act in 2006, the main problem the agency has faced since its inception remains the quite meager resources at its disposal. In fact, the commissioners themselves have often stressed the limitations to policy effectiveness arising from the small size of the commission and the limited resources available to it.\textsuperscript{27}

The OECD-IDB and many other observers have made the same point, although Frías suggests that certain management problems should also be addressed in order to increase efficiency.\textsuperscript{28} The 2010 reforms aimed also to address most of these shortcomings; however, in any case, it is a fact that the agency has never been awarded a major budgetary increase despite constantly requesting more resources. From Table 2, one can observe that it started as a small agency, with a very limited amount of resources. After a significant increase in its budget in the late 1990s, the agency increased its personnel. During most of the 2000s its personnel numbers remained more or less stable, and while budgets increased during the initial years of the two presidencies, they then stagnated or shrank.

To summarize, this is a case of an agency that has been autonomous since its creation, with stable and effective political delegation to the executive board of commissioners, without major interference, enjoying a fair international reputation and displaying a stable pattern of regulatory

\begin{itemize}
\item \textsuperscript{25} Commission Federal de Competencia Mexico, Compendium Normativo en Materia de Competencia, [Compendium of Standards in the Field of Competition] 293 (COFECECO, 2006, 2009).
\item \textsuperscript{28} See generally Frías, supra note 26.
\end{itemize}
interventions. But its effective control over anti-competitive practices has been severely limited by two major factors constraining its actual autonomy: a persistent shortage of organizational resources (reflecting its budgetary dependence on the Ministry of Economy, although commissioners are nominated by the President), and major delays in the modernization and improvement of its regulatory instruments (the first reform of the agency law was introduced thirteen years after the original law was passed, and failed to live up the expectations of many observers).

The enactment of the Energy Regulation Commission Law in 1995 set up the Energy Regulation Commission (Comisión Reguladora de Energía, CRE). This law formed the CRE out of an existing consultative organ (established by decree in 1993) dealing with electricity matters, turning it into a special organ linked to the Ministry of Energy (Secretaría de Energía), with technical and operative autonomy, and charged with regulating natural gas and electricity in Mexico. In this case, the law strengthened the institutional framework, widened the CRE’s authority, and concentrated in the agency functions that had been dispersed over different departments and agencies. Agency decisions are made in a collegiate manner by five commissioners appointed by the President of the Republic for renewable periods of five years (as recommended by the Ministry of Energy). To strengthen political delegation, these appointments are phased to avoid the simultaneous removal of more than one commissioner. Additionally, the law introduced protections against removal of commissioners, requiring them to have previous professional experience related to the sector. The legislature does not intervene in commissioner nominations or other activities. The regulatory capacities of the agency are quite strong, particularly in the area of natural gas, where the agency has the responsibility of determining prices and delivery conditions when non-market conditions exist, for authorizing and licensing activities, and also for framing directives and technical regulations. The agency has mechanisms to protect regulatory competition. For example, appeals against GRE decisions are first made to the energy commission itself, not to the minister. The CRE frequently uses public hearings to promote contact with the public.

The mandates of the CRE commissioners since 1995 have been relatively stable, in most cases lasting their expected periods of time (see Table A2). All three CRE presidents have completed their five-year mandates. While Vicente Fox nominated the second CRE president during the first month of his presidency—the previous CRE president had already completed his mandate two months beforehand—the third CRE president was nominated by Fox in his last year, and continued during the Calderon presidency. In addition, three of the commissioners nominated in the 1990s, during the Zedillo presidency, continued during the Fox presidency, and their mandates were renewed as well. While most of the commissioners are engineers, with different technical backgrounds, some are economists or jurists. Some circulation between
the Secretaria and the Commission can also be observed. Most of the time, the Commission consists of three engineers, one economist and one jurist; however, we have also detected a trend in recent times toward profiles with a slightly more political background.

Importantly, most of the electricity sector in Mexico has been under public control until now, and the public company is especially strong vis-à-vis the regulator. Also, energy production as a whole remains in state hands, and oil production is in fact excluded from the scope of the agency’s regulation, but this justifies stronger delegation in order to make emerging markets credible to new investors. In fact, the Comisión Nacional de Hidrocarburos (National Commission for Hydrocarbons), with a similar institutional design to that of the CRE, was also established in the context of the energy policy reform passed in Fall 2008 by the Congress, which sought to modernize and reform oil regulation in the country, a sector dominated by the public firm, PEMEX. Although these innovations might produce some overlap in the area of gas regulation, the initiative was wholly focused on strengthening public capacities to supervise and better regulate the energy sector and obtained the support of all major political parties in the Congress. The 2008 energy regulatory package also reformed the CRE by introducing additional regulatory responsibilities (e.g., renewable energy), which also eliminated possible ambiguities that encouraged litigation.\textsuperscript{29}

To summarize, the CRE displays a relatively significant degree of \textit{de jure} as well as \textit{de facto} autonomy within the Mexican government, it is subject to quite limited supervision by the executive, and its characteristics resemble those of other energy regulatory agencies in most OECD countries. The agency faces significant regulatory challenges in its interventions to improve efficiency and quality in the distribution of electricity and gas in the country, to the extent that public monopolies are dominant in most markets. It has been argued, however, that sophisticated regulation has been introduced quite successfully to deal with this situation.\textsuperscript{30} With the existence of a public monopoly in Mexico, it is clear that an independent regulator is necessary to separate state interests in the sector from market regulation, as is in fact done now, although in this particular regulatory situation market regulation remains on the margins.\textsuperscript{31} As this is a sector in which public organizations predominate in all cases (public enterprises, ministries, states, etc.), the regulatory agency’s responsibilities are not easy to define clearly or to separate from the policy responsibilities of the Secretary. To some extent, the CRE regulates gas distribution markets, but also regulates


\textsuperscript{31} OECD, \textit{supra} note 2, at 3.
PEMEX and public electricity companies that, in many cases, operate under monopolistic conditions. On the other hand, SENER, the Ministry of Energy, is often also involved in regulating prices, especially when they might have some political impact. Furthermore, the energy minister is simultaneously the chair of the PEMEX board of directors.

In this context, the identification and enforcement of different preferences about the public interest within the wider institutional context appears to be a key issue in the development of the regulatory regime, with each public actor acting according to precise roles. This is probably the basic challenge in this sector for increasing the legitimacy of the regulatory regime. In addition, it is also important to note that the energy sector has been involved since the 1990s in significant policy debates in Mexico about the public nature of its energy model, in which powerful political and economic factors that are well outside the agency's regulatory scope have participated.

The Federal Commission of Telecommunications (COFETEL), responsible for regulating communications networks, was set up by presidential decree in 1996, following the passing of the Federal Telecommunications Act the previous year, and six years after the privatization of Telmex. The agency was established as an autonomous entity attached to the Secretaría de Comunicaciones y Transportes (Ministry of Communications and Transports), and many Secretaría employees were then transferred to the new agency. To some extent, COFETEL represented the transformation of the vice ministry of communications into a regulatory agency, enjoying better work conditions, including more stability, and probably aiming to gain professional prestige. The institutional design of COFETEL at its birth allowed the agency a weak form of political delegation, and its resources flowed directly from the Secretaría budget. The four members of COFETEL's board were nominated by the President of the Republic on the advice of the Secretary of Communications and Transport. As they were not nominated for a fixed term, their autonomy was weaker than that of agencies whose board members had fixed-term mandates.

The political autonomy of this regulatory agency was also quite limited, as many of its main regulatory functions overlapped with those of the policymaker, the Secretary, which had the formal power to sanction and also to revise the agency's decisions. In this sense, the regulatory responsibilities of the agency are also quite limited. COFETEL derives much of its power from its ability to recommend the approval or refusal of concessions, or to recommend the imposition of conditions on concessions. But COFETEL cannot act as arbitrator, and many decisions remain under the control of the Secretary and the President. In fact, COFETEL's institutional design resembles that of an advisory technical body with restricted powers to implement regulatory policy. Not being created by law, but by a presidential decree, the administrative capacities of the agency remain very limited. Moreover, the agency is unable to
establish communications ordinances, and the whole legal framework includes many ambiguities and dual procedures that encourage the progressive emergence of strong adversarial litigation in the regulation of the sector.

Since the agency’s establishment in 1996, its relationship with the ministry has been very close, but not always collaborative. Tensions between these bodies emerged quite often, partly because of the unusual distribution of resources and responsibilities. To some extent, while the Secretary has more policy instruments to intervene, the agency has more technical resources, information, and fine-tuning capacities to supervise and guide the sector. For example, the agency’s budget amounted to about 300 million Pesos in early 2000s, and increased to more than 600 million at the end of the decade. The organizational size of both units makes it clearer: the Subsecretaria was downsized to only a few dozen personnel, while COFETEL’s personnel grew rapidly to several hundred. Also, the commissioners enjoy some autonomy from the Secretary because they are nominated by the President, and also because of their operative independence, but they are also too dependent in a significant way to effectively guide the policy sector. These contradictions have produced a very peculiar pattern of behavior regarding the naming of commissioners, especially board presidents. In fact, we observe to our surprise that four of the five COFETEL presidents until 2010 had previously been vice ministers (Sub-secretarios) in the Secretaría de Comunicaciones y Transportes, and became COFETEL presidents by “jumping” directly from the positions they had at the Secretaría rather than the other way around.

As a result of this paradoxical situation, the political leadership in defining relations with private firms and the market was unclear, as the agency had many more interactions with private firms than the Secretaría (Ministry). The twofold institutional design performed poorly creating multiple problems for the legitimacy of the new regulatory regime, and also created many opportunistic possibilities for the firms it regulated. Because of the strong legitimacy that the agency model implied for telecommunications, and the human resources assembled, COFETEL was in practice the main policy actor, and its main policy preference was to promote and enhance competition in telecommunications. The Secretaría, meanwhile, had more political concerns which were in line with the government’s policy of supporting the formation of “national champions” in the telecommunications industry. To overcome these difficulties, COFETEL developed and disseminated its policies primarily through administrative rules and official resolutions of disputes, but these procedures were more appropriate for judicial litigation. Also,

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33. See generally JUDITH MARISCAL, UNFINISHED BUSINESS, TELECOMMUNICATIONS REFORM IN MEXICO (2002).
COFETEL shared the regulatory space with other agencies, increasing the fragmentation in telecommunications policy. On the one hand there was PROFECO, the consumer protection agency, but on the other hand there was COFECO, the competition regulatory agency, which often intervened in regulatory disputes related to telecommunications, and had more effective sanctioning powers than the telecommunications regulator itself, and gained a relevant place as an effective regulator among the actors in telecommunications markets.

Regarding the stability of COFETEL's commissioners, one can observe from Table A3 that in spite of having no fixed-term mandate (at the time the agency was created), their period of tenure was quite extended in most cases. The professional profile of commissioners used to be quite technical, most of them being engineers and lawyers, and some of them being economists. However, we also find three successive presidents during the first five years, resulting in significant instability in the agency. The first president was dismissed because of certain policy tensions, the second presented his resignation for reasons related to his political career, and the third was replaced one year after the new national presidency, when the whole board was also changed, and President Vicente Fox named new commissioners. While the new agency head nominated by Fox remained in position for more than four years, the other commissioners, nominated in January 2002, remained in office for less time than the previous commissioners (who remained in office for more than five years). Two presidents lasted only six months in office, another president less than two years. He was replaced in 2003, but in April 2006, three of four commissioners decided to present their resignations as a protest against a new law on communications being passed in the Congress. They considered that the law was against convergence in regulating communications markets (by introducing separate rules for television and radio broadcasting) and also maintained the weak and inefficient intervention capacities of the regulatory agency.34

The 2006 revision of the Mexican telecommunications law aimed to strengthen the agency’s delegation rules, introducing an eight-year fixed-term tenure for commissioners (with the possibility of an additional period), some strong protections against removal, the election of the president by the commissioners themselves, and also a requirement for Senate approval of the commissioners nominated by the President.35 The law also banned the renomination of current commissioners after the approval of the law. The law was passed at the end of the Fox presidency, meaning that he and the Congress were aiming to tie the hands of the next president with the long fixed-term and the new Senate approval rule.

In a way, Fox clearly saw these procedures as a way to influence policy developments in the sector after his presidency. Although the next president, in the event that he would prefer not to be tied, might have liked to change the law to create the power to nominate commissioners, that goal would not be easy to achieve in a fragmented legislature. In fact, during most of the 2000s, Congress discussed the need to change or revise the communications law, debating many aspects of the regulatory framework and the institutional design, although the only effective reform was the aforementioned one in 2006. To summarize, because of the opportunistic behavior in establishing new rules of the game and the subsequent political crisis, the entire situation opened the door to more institutional revisions in the future.

The 2006 law-making episode reflects the complex bargaining between the Mexican Congress and the President at that time (including their intertemporal expectations), and also the inherent tensions of a divided government. However, there is a second part to the story. Once the law was passed, the President sent five nominations to the Senate, but the Senate rejected three of them. The President made another three nominations a few weeks later, in June 2006, that were finally accepted by the Senate. But, two of the three commissioners initially nominated decided to go to court, arguing that their constitutional right as citizens to be nominated for those positions had not been respected. After two years and a complex judicial process, the Supreme Court (Suprema Corte de Justicia de la Nación) ruled in their favor, arguing that constitutionally, the Senate did not have the powers to veto the President’s nominations because of the existing division of powers (it employed a similar argument in respect of for COFECO’s commissioners). The Supreme Court amended the articles in the communications law referring to this issue and also ruled that the commissioners originally nominated should occupy the offices, replacing those nominated after the Senate’s first rejection. Then, in September 2008, the two initially nominated commissioners who had begun the litigation assumed the office (at the time they were responsible for telecommunications policy at the Secretaría), replacing two commissioners nominated in July 2006, but only for the period of time they still had to remain in office in each case.

The last regulatory agency to be considered is the National Banking and Values Commission (Comisión Nacional Bancaria y de Valores, CNBV), which concentrates on banking supervision and on securities and exchange. The agency was created in 1995 after the peso crisis, but in fact is a result of a merger of two long-established commissions in banking and securities respectively, the former dating back to 1925, the latter to 1946. The aim of these new structures was to strengthen the regulatory framework, increasing supervision and introducing stricter regulatory criteria. The agency’s basic structure is quite peculiar because the Ministry of Finance (SCPH) nominates its president, the CNBV president nominates two vice-presidents, the Ministry of Finance nominates five
members of the board, the Bank of Mexico nominates three members of the board, the insurance regulatory agency nominates one member of the board, and the pension regulatory agency nominates one member of the board. The commission's president must have five years or more experience in the area of financial regulatory policy. Such a board ensures that the Ministry of Finance is highly dominant within the agency (with eight of thirteen positions on the board: the president, two vice-presidents and five members), but also that decisions are shared with representatives from the other agencies in the financial regulatory area. This is a case of including the wider institutional context in the board, aiming for explicit coordination logic. This design involves the dependence of the regulatory agency on the finance ministry. Further, there are no fixed-terms for the appointees—all board members are dependent on their appointers and they face stronger incentives to coordinate their decisions than to deliberate about them.

Since the banking and securities agency merger in 1995, presidents of the CNBV have maintained the stable pattern already established many decades beforehand in the Banking Regulatory Commission. Usually they were nominated during the first months after the federation’s presidential change, and remained until the end of the President’s term. In 2007, however, the nominated CNBV president remained in office for only six months because he was nominated as a sub-governor of the Mexican central bank (Banxico). The banking agency is probably the least independent of the four regulatory institutions examined here, but the law creating the commission in 1995 significantly increased the regulatory responsibilities of banking supervision during the 1990s. The grave financial crisis in Mexico reinforced the view that the necessary regulatory instruments should be provided to the agency so that it could efficiently control the Mexican financial system. Thus, the agency exercised wider regulatory responsibilities, avoided fragmentation, and had strong sanctioning capacities, but was closely controlled by the executive through different means (in particular supervision by the Ministry of Finance).

As for the regulatory responsibilities of the agency, experts have argued that no completely clear definition of them exists within the financial area, and some emerging financial activities remain weakly regulated because of a lack of more general capacities to regulate the financial sector as a whole. Also, there remain some areas of overlap with the central bank, in particular regarding procedures and supervisory instruments. The experience of the banking crisis in the country in the 1990s encouraged the executive to provide the commission with stronger supervisory instruments, and also to develop efforts to keep the banking

community under close control in order to reduce the risk of a future crisis. However, the regulatory regime in the area is, in fact, strongly dominated by the Ministry of Finance (SCPH) and the central bank (Banxico), while the CNBV operates under conditions of technical autonomy having a clear policy objective, but remaining closely dependent on the Ministry's strategies.

IV. THE POLITICS OF REGULATORY AGENCIES AND PUBLIC ADMINISTRATION REFORMS IN THE 2000S

Why was the Mexican central bank designed to be only partially autonomous when politicians reformed it in December 1993, precisely in the midst of an international diffusion wave that was giving complete political autonomy to central banks? One explanation that has been advanced stresses the fact that this reform was carried out during the country's transition to democracy. The rationale is that "authoritarian elites try to insulate their preferences in autonomous agencies. . . because they. . . fear the populism that may be endemic to new democracies." It is maintained that the degree of delegation granted to the agency is related to the intensity of this fear: the greater the fear the more complete delegation will be, whereas if the risk is milder, the delegation will be limited because authoritarian elites may retain control of more relevant decisions in the policy area (reflecting the power structures during the transition process, as well as their future expectations). Once the autonomous institution is established, it could be very difficult to reform its design because of the existing veto players and actors involved in defending the status quo and the complex rules possibly introduced to limit future change.

Based on the evidence presented in the cases examined, here I discuss the extent to which this interpretation can be confirmed, and whether it can be extended to most of the regulatory agencies in Mexico. In fact, one might consider this view as a null hypothesis: no institutional changes after agency creation, because in democracy multiple veto players prevent them. Thus, if agencies were created without strong political delegation, they would remain. If de facto rules emerged under autocracy, diverging from de jure rules, they will persist as a lock-in convention. If one focuses first on the central bank, it seems that these predictions are fundamentally borne out. On the one hand, the autonomy of the central bank was reinforced in the late 1990s when the fear of losing power increased among the authoritarian elites (although they still retained certain instruments to control the bank which remained during the 2000s). On the other hand, the informal rule that the finance minister would become a bank governor was maintained in democratic times. In this sense, our hypotheses H1 and H2 are not confirmed in this case: changes in the president's legislative power did not alter the level of political delegation.

39. Id. at 5.
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and presidential transitions didn’t alter the fixed-term mandates of the central bank.

Now, I shall discuss whether these hypotheses can be confirmed or rejected for the regulatory agencies examined in order to determine whether they followed the central bank pattern. Summarizing the situation of the four regulatory agencies considered, I derive a few critical points. First, three out of the four agencies experienced reforms in their institutional design during the 2000s, mainly related to the issues of agency accountability, autonomy, and transparency. Second, the actual tenure of commissioners, as well as their professional profiles, did not undergo any major transformation in the 2000s as compared to the situation in the 1990s. But, certain informal rules emerged involving some adjustments of commissioners’ mandates to the presidential term. In this sense, predictions about the persistence of agency institutional designs as they were framed before democracy do not appear to work; veto players did not impede adjustments to the new political circumstances.

One can clearly observe that, in many cases, the level of formal autonomy of the Mexican regulatory agencies increased during the 2000s, confirming hypothesis H1. Political delegation was circumscribed in the 1990s, not only relative to developed countries, but also relative to other Latin American countries. This corresponded with very great presidential de facto legislative power. But, in the 2000s when the divided government regime emerged reducing the legislative power of the president, effective political delegation increased by means of different legislative reforms: longer fixed-term rules were introduced in some cases (CRE, COFETEL), and also the terms were well-respected in most cases (and when they were not, as with the COFETEL changes in 2006, it was because of a legislative decision).

The second hypothesis (H2) focuses on the impact of presidential change on the survival of commissioners. Here one finds a number of cases in which the agency presidency changed after the new national president took office. In the case of CNBV, without a fixed-term mandate, this was a de facto rule. For the CRE, its president changed in December 2000, but also coincided with the end of the fixed term. Yet, the new president nominated in December 2005 continued in office during the Calderon presidency. For COFETEL, there also was a president change in November 2001 (the former president remained in charge for only about two years). But the next president was nominated in July 2006 with a fixed-term mandate of eight years, and continued in office during the Calderon presidency. Finally, with COFECO, which had a fixed term of ten years, I observed that almost all mandates were respected, although they spanned several presidential terms. All in all, it appears to be a growing tendency to respect terms during political transitions, although I observed only two transitions (Fox and Calderon, being from the same party), which prevents one from drawing clearer conclusions. One may consider, however, whether the strength of the public bureaucracy in
Mexico contributed to enforcing de jure rules of delegation, despite presidential changes.

Efforts to modernize public administration in Mexico since the mid-1990s have been substantial. Reforms advanced on very different fronts, from increasing accountability and transparency, to the establishment of a renewed civil service system based on professionalism and technical competence.⁴⁰ Within the diverse initiatives adopted, one finds the establishment of the Federal Civil Service in 2003 and the Ministry for Civil Service (Secretaría de la Función Pública), as well as the creation of two horizontal agencies. One such horizontal agency is the Federal Regulatory Improvement Commission (Comisión Federal de Mejora Regulatoria, COFEMER), oriented to improving bureaucratic procedures and more generally to pursuing regulatory reforms. The other is the Federal Institute for the Access to Information (Instituto Federal de Acceso a la Información, IFAI), an agency devoted to improving citizens’ access to information and promoting transparency in the Mexican public administration.⁴¹ These innovations were designed to ensure accountability while also reducing the risk of capture for the sectoral agencies that already existed.⁴² COFEMER was set up in 2000 as a “second generation” agency devoted to introducing wiser regulation, ensuring transparency in the regulatory process.⁴³ COFEMER gained a relevant intergovernmental role in supervising regulators in multiple areas. Thanks to strong political support at the presidential level, which was maintained during the Fox and Calderón presidencies, COFEMER represented a serious governmental attempt to keep the new Mexican regulatory state manageable in the 2000s.

During the 2000s, these significant changes were introduced in the Mexican public administration. The aim of these changes was to strengthen its professional profile, marginalizing the traditional spoils system that was dominant under the authoritarian regime, and also to significantly increase its transparency and accountability to the general population. Accountability mechanisms in the Mexican case are related to four different powers: legislative, judicial, executive, and other regulatory agencies. There has also been a greater involvement of the legislature and the judiciary in the regulatory process, and without doubt the

⁴⁰ See generally MARÍA DEL CARMEN PARDO, LA MODERNIZACIÓN ADMINISTRATIVA EN MÉXICO, 1940-2006 (2009).
⁴¹ See José Juan Sánchez González, El cambio institucional en la reforma y modernización de la administración pública Mexicana, 18 Gestión y Política Pública 67 (2009), available at http://www.gestionypoliticapublica.cide.edu/num_anteriores/Vol.XVIII_No.1_Iersem/03_Jose_Juan_Sanchez.pdf.
increasing quality of regulatory governance also helped to prevent the emergence of *de facto* rules distinct from the *de jure* rules in the agencies' institutional development.

The last hypothesis (H3) considers whether the diversity in effective political delegation to regulatory agencies is related to the nature of the regulated sectors. In the case of Mexico, what is more astonishing is the great sectoral diversity observed among the agencies, not only in their political delegation characteristics, but also in their organizational aspects. This sectoral diversity has changed over time. During the 1990s, for the two sectors operating active markets with strong stakeholders, namely banking and telecommunications, the Mexican government rejected autonomy. The two areas without strong private interests (competition is horizontal, electricity is dominated by state companies) received more formal autonomy. Later, in the 2000s, agencies in utility sectors gained *de jure* autonomy while the others remained as they were originally, thus providing some evidence for the arguments presented by H3 (showing also that political delegation under autocrats worked differently).

The amount of organizational resources made available to the agency is another dimension of agencies' autonomy, which is not related to political delegation rules. This important dimension, not discussed in detail here, can restrict the operational capacities of any regulatory agency. In particular, in the Mexican case I found that COFECO, the competition agency, had a significantly reduced budget that limited its capacities to investigate cases (a situation pointed out by the OECD as well). Also, the energy commission complained about its reduced budget several times. It seems that Mexican agencies exercising higher degrees of political delegation since the 1990s have not been provided with better budgets: quite the contrary. Although this issue requires further scrutiny, it might be suggested that constraining the agencies' budgets can represent another way of restricting agencies' autonomous behavior, or at least to limit their impact on the policymaking process. In fact, one can observe that budgets for COFECO increased substantially during the 2000s, representing some corrections to the initial circumstances imposed before the democratic period.

I conclude this section by pointing out that the regulatory state in Mexico developed during the 1990s under the influence of external pressures and models, and most probably through fragmented and sector-based channels. Presidents, after gauging the risks of losing office, allowed some delegation designs of a modest nature. The presidents aimed to shape future preferences, but also to avoid losing control of those particular sectors where more intense political economy struggles existed. But, when the political regime was transformed, a divided government emerged and presidents lost some of their legislative power. Some transformations slowly started to appear, not only in the institutional designs of the agencies, but also in the effective rules governing the exercise of
political delegation. As the legislature gained more political power, political delegation to agencies increased, thus limiting the risk of delegation failure during presidential changes and better adjusting delegation characteristics to the nature of each sector.

V. CONCLUDING REMARKS

To some extent, in general for Latin America and in particular for Mexico, it has been argued that the establishment of regulatory agencies since the 1980s was related to the introduction of the “neo-liberal” project in the region, particularly in the 1990s (the period when most agencies were created). In the United States, however, many regulatory agencies were created during the progressive era, or later on during the “New Deal,” and were considered part of a liberal movement to control large economic groups by way of protecting citizens’ interests and concerns. Explaining these differences is a matter for another paper, but here it can be said that, because of their institutional origin, regulatory agencies can be used in defence of citizens’ interests, reframing markets, and introducing specific policy priorities. In fact, the construction of a regulatory state in Latin America means taking advantage of such opportunities and creating spaces for social participation in regulatory policies while also generating a different way of legitimizing state intervention in the region.

It is possible to observe some increase in the accountability of already existing regulatory agencies after the political changes in Mexico in 2000, when PAN came to power. This has been achieved indirectly by means of constructing more sophisticated regulatory regimes in the country, including horizontal mechanisms to supplement the already existing sector-focused regulatory agencies (COFEMER, IFAI), but also the introduction of a modern and professional civil service framework for the entire public administration. This can be seen as an institutional adjustment to democratic conditions in the country. The regulatory state has introduced more checks and balances, giving greater legitimacy to the regulatory units, which then contributes to widening their margins of policy manoeuvre based on their application of technical knowledge to the policy process.

The regulatory state in Mexico, however, still faces many challenges. A recent Delphi evaluation of regulatory agencies undertaken in Mexico aimed to assess the overall performance of the agencies, collecting the opinions of a number of experts. Using a scale from 0 to 10, they assigned 5.2 points to COFECO; 4.2 to COFETEL; 6.1 to CNBV, and 5.1 to CRE. Surprisingly, the less autonomous agencies obtained the better assessments. Thus, it is clear that considerable room still exists to increase agencies’ performance, in spite of their institutional design changes introduced in recent years by the legislature as it adjusted to the

44. CEEY, supra note 37.
new democratic conditions. In constructing the regulatory state, I suggest that the main issue in strengthening agencies is protecting them against oligarchs and clans that construct power networks across the public and the private realms, and to this end it is essential to promote accountability and transparency in public policymaking.\footnote{See generally Michael Johnston, Syndromes of Corruption: Wealth, Power, and Democracy (2005).}

No doubt, a key issue would be to enhance the social legitimacy of regulatory agencies as arms of the state guiding markets in the public interest. To this end, more accountability will be required as it produces more room for autonomous decision-making and allows agencies to attract support from wider constituencies. When autonomous regulatory agencies are open to the participation of civil society and include multiple points of view, their institutional development can be enhanced and their social legitimacy strengthened. Participation in the agency and observation from multiple sides encourage the search for the public interest and prevent bureaucratic drift or dependence on private interests, thus generating internal developments that provide better responses to and clarifications of agency decisions.\footnote{Ackerman Rose, supra note 7; see also Jørgen Grønnegaard Christensen, Public interest regulation reconsidered: From capture to credible commitment, JPRG Paper No. 19, July 2010, available at \url{http://regulation.huji.ac.il/papers/jp19.pdf}.} Wider participation in regulatory institutions may encourage the agency to pursue the public's interest because this participation involves multiple observers, monitoring agency activities, and demands clearer responsibilities in agency decisions.
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47. Source: own elaboration. Data for tables A1, A2 and A3 has been recollected for the author directly from agencies websites, legal repositories, and newspapers digital archives (until December 2009).
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