

# **Reforma del Estado y Organismos Autónomos: La Dinámica del Cambio Institucional en México**

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## I. INTRODUCTION

[T]he full effectiveness of the rule of law has not been reached in any country. It is a moving horizon, since societal change and the very acquisition of some rights trigger new demands and aspirations, while the continued effectiveness of those that have been won can never be taken for granted...[O]ur intellectual endeavors should be properly conceived as being about a theory of endless and always potentially reversible democratization, rather than about

democracy *tout court*  
(O'Donnell, 1999a: 322).

The liberalization of political competition may or may not lead to good governance and the rule of law. Elections do not hold bureaucrats or the judiciary accountable, they provide very weak “accountability signals” to elected officials (Przeworski, Stokes & Manin, 1999), and the signals that do get through are often more “perverse” than beneficial for governance (Geddes, 1994; Varshney, 1999; Stokes, 2003). The hope has been that these problems can be resolved through the proper design of voting rules and institutions. Over the last decade there has been a surge of new studies on the impact of presidential v. parliamentary systems, proportional v. majority representation, open v. closed lists, two party v. multiparty systems and run-off elections on the quality of governance in new democracies (e.g. Mainwaring & Scully, 1995; Linz & Stepan, 1996; Lijphart & Waisman, 1996; Mainwaring, 1999; Colomer 2001; Shugart & Wattenberg, 2001; Norris, 2004). Unfortunately, political scientists have not shown a similar interest in understanding how the institutional design of the state as a whole has an impact on governance.

As a result, little attention has been paid to the recent explosion of Independent Pro-accountability Agencies (IPAs) throughout the developing world. IPAs are autonomous public institutions that are delegated authority over a core element of the liberal democratic order. Examples include autonomous corruption control bodies, independent electoral institutes, auditing agencies, human rights *Ombudsmen*, and “Public Prosecutors”<sup>1</sup>. In

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<sup>1</sup> In recent years, Belize, Brazil, Columbia, Costa Rica, Chile, Peru and Mexico have all created or revived one or more such independent institutions. This trend is also present in Asia, Africa, Australia and Eastern Europe. Some recent examples include the new *Ombudsmen* in Poland (Founded in 1987), the Philippines (Founded 1989) and South Korea (Founded in 1994), the National Counter Corruption Commission in Thailand (Founded in 1998), the Independent Commission Against Corruption in New South Wales, Australia (Founded in 1988), the Public Protector in South Africa (Founded in 1994), and the Inspector-General of Government in Uganda (Founded in 1996) See Pope (2000) for a full listing. Another indicator of this trend is that over 80 countries currently have a national *Ombudsman* while only a dozen had one only 20 years ago (Bennett, 1997).

presidential systems like those in Latin America, these independent agencies expand the division of powers beyond the traditional tripartite structure of presidential, legislative and judicial branches. This bodes well for the constant improvement of governance since it strengthens and expands the structure of checks and balances that has historically been less than adequate in the region. Good governance and the rule of law do indeed depend on the quality of “vertical accountability” embedded in voting rules, but they are just as heavily influenced by the exercise of “horizontal accountability” or the supervision and control that occurs between government agencies (O’Donnell, 1999b, 2003; Kenney, 2003; Mainwaring, 2003).

Why are IPAs created? When and why do they succeed or fail at improving government accountability and performance? Crisp, Moreno & Shugart (2003a, 2003b) have recently argued that such “superintendence agencies” are created when electoral accountability is weak and that under such conditions these agencies are doomed to be highly dependent and ineffective. In other words, IPAs are usually created by authoritarian, “majoritarian presidentialist” or patronage based governments in order to boost their legitimacy and apparent accountability without actually changing their behavior. “The proliferation of entities of superintendence in Latin America, then, must be seen as largely a product of discontent with the functioning of accountability and it represents an effort to find a way around the problem without tackling the roots of the accountability deficit” (Crisp, et. al., 2003a: 82). According to the authors, “‘good government’ reformers” should not allow themselves to be distracted by the fool’s gold of IPAs but should turn towards the real business of perfecting voting rules and institutions.

The problem with this strategy is that it is precisely what political scientists and “‘good government’ reformers” have already for the last two decades. The proposal to continue along the same path would be entirely legitimate if today’s IPAs were indeed still the authoritarian cover-ups they were in the past. But Crisp, et. al. forget that the most recent surge of IPA creation has occurred concurrently with the Third Wave of democratization (Huntington, 1991), not with a new wave of authoritarianism. Instead of writing off IPAs as artificial cover-ups, political scientists should confront this new *democratic* phenomenon and try to grasp the complex dynamics behind the institutional design and operation of these agencies.

In this spirit, the present article argues that the origin and effectiveness of an IPA depends on both the political context and the structure of decision making during its design and political development. Specifically, my hypothesis is that IPAs which are founded and function under the aegis of “decentralized authority” tend to be better designed and more effective than

those that exist in the context of “concentrated authority”. Authority is decentralized, or “deconcentrated”, when there is a high level of pluralism in political and civil society and when decision making is transparent and open to public participation. Free and fair elections are a crucial source of decentralized power in so far as they stimulate the creation of competing political parties, open up public debate and lead to an ideological diversification of public office holders. But they are by no means the only such source. Other sources include infighting (within political parties, government agencies or governing coalitions), freedom of information laws, public participation statutes, and social mobilization. In short, any action or law that expands the number and the diversity of actors who have a role in government and public policy decentralizes authority<sup>2</sup>.

In this article I demonstrate the salience of this argument through a careful exploration of the Mexican case<sup>3</sup>. Mexico stands out as one of the world leaders in the recent trend towards the restructuring of the division of powers through the creation of IPAs<sup>4</sup>. Since 1990, the Mexican government has created a new Federal Electoral Institute (IFE), National Human Rights Commission (CNDH), Federal Judicial Council (CJF), Superior Federal Auditor (ASF), and Federal Institute of Access to Public Information (IFAIP). The Mexican political system has always been unique in Latin America for its

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<sup>2</sup> This concept draws from George Tsebelis’ (1995, 2002) idea of “veto points” but goes beyond it to include actors that are not formally institutionalized and, even more importantly, finds the opposite effect of an increase in the number of actors who participate in decision making. While the veto point literature argues that an increase in actors works towards the maintenance of the status quo, the core of my argument is that an increase in “veto points” can facilitate institutional innovation and change.

<sup>3</sup> I limit myself to one country in order to control for important structural-historical variables like constitutional framework, international context, economic structure, and political culture.

<sup>4</sup> Taking a global perspective, a few countries have distinguished themselves as especially innovative cases in the creation of new pro-accountability institutions. Thailand’s 1997 constitution created seven different such institutions: a National Counter Corruption Commission, an independent Electoral Commission, an Ombudsman, a Constitutional Court, an Administrative Court, an environmental review board responsible for evaluating the environmental impact of public projects, and a consumer review board which involves consumer representatives in the design of consumer protection laws (Pratijarn, 2002; Unger, 2003). Hungary is another fascinating case in so far as it has recently established four different ombudsmen, one for human rights protection, a second for national and ethnic minorities, a third for data protections and freedom of information, and a fourth for education (Rose-Ackerman, 2003). In Latin America, there are a few particularly remarkable cases in South America, including the Chilean *Contralor* (Siavelis, 2002), the Peruvian Ombudsman (Santistevan, 2000) and the Brazilian *Ministerio Público* (Bastos, 2002, Sadek & Batista Cavalcanti, 2003). Nevertheless, Mexico is by far the leader in the region in terms of both the number and the strength of its independent agencies.

highly institutionalized form of governance. Today, instead of standing out for its institutionalized authoritarianism, Mexico distinguishes itself through its institutionalization of democratic accountability.

This study focuses on three of these institutions in particular, the IFE, the ASF and the CNDH<sup>5</sup>. Each one of these is an independent federal agency concerned with enforcing a core element of liberal democracy and each has undergone significant reforms over the past fifteen years. The IFE, founded in 1990 and reformed in 1993, 1994 and 1996, assures the fairness and probity of electoral politics. The CNDH, founded in 1990 and reformed in 1992 and 1999, defends the human rights of individuals and groups against the incursions of the state. The ASF is similar to the General Accounting Office (GAO) in the United States, although with a much greater measure of operational autonomy. It works on behalf of the legislature to monitor and sanction corrupt practices in the federal government. It was founded in 1999, although similar functions had been carried out by the *Contaduría Mayor de Hacienda (CMH)* in Mexico since 1824.

I have divided the analysis below into two sections. First, I fill out the concept of “decentralized authority” outlined above and lay out the specific mechanisms by which this type of authority should lead to the creation and growth of effective IPAs. Second, I put the model to the test by exploring the recent history of each one of the agencies under consideration. I first examine the moments of legal founding and reform of each agency during the past fifteen years. Here there are eight discrete observations: IFE 1990, IFE 1993, IFE 1994, IFE 1996, CNDH 1990, CNDH 1992, CNDH 1999, ASF 1999. At each one of these moments policy makers made crucial decisions with regard to the form and content of delegation to an IPA. In this subsection we will see that the strength of the constitutional reform and/or statute passed at each moment, as measured by the level of autonomy, capacity and internal dynamism it grants to the agency, is tightly correlated to the existence of “decentralized authority”.

In the following subsection I test the model a second time by exploring the political development of the agencies between reforms. Specifically, I examine the extent to which the agency was able to fulfill its mandate, legitimate itself in the eyes of the public, and expand its capacities between one reform and the next. There are eight discrete observations here as well: IFE

<sup>5</sup> It leaves out the CJF because, although it does carry out pro-accountability functions, it is not an “agency” that performs a wide variety of investigative and promotional activities but only a “council” with a minimal staff. It excludes the IFAIP because it has only recently come into existence (January, 2003) and therefore does not have a long enough track record to be able to evaluate its political development.

1990-1994, IFE 1994-1996, IFE 1996-2003, CNDH 1990-1992, CNDH 1992-1999, CNDH 1999-2003, ASF 1978-1999, ASF 1999-2003<sup>6</sup>. In this section we will once again see the beneficial impact of decentralized authority on governance and the rule of law. The evidence shows that the decentralization of power in the corresponding “issue arena” (Barraca, 1998) (i.e. free and fair elections, human rights, corruption) outside of the agency as well as within the top echelons of the agency itself are two of the most important drivers of political development. Finally, I will conclude by exploring the implications of the article’s arguments for future research in comparative politics and the study of democratization.

## II. “DECENTRALIZED AUTHORITY”

Authority is “decentralized” when a wide diversity of actors with multiple ideological positions and political commitments have a powerful role in the determination of public policy. Authority is “concentrated” when a homogenous group of individuals dominates policy making. These concepts reach beyond the formal rules that determine how individuals achieve public office in order to grasp the deep structure of politics and lawmaking. For most students of democratization the transformation and consolidation of the formal “rules of the game” take center stage. For instance, according to Przeworski,

Democracy is consolidated when under given political and economic conditions a particular system of institutions becomes the only game in town, when no one can imagine acting outside the democratic institutions, when all the losers want to do is to try again within the same institutions under which they have just lost (Przeworski, 1991: 26).

The problem with such a formalistic approach is that it says almost nothing about the transformation of authority as such. One can easily imagine a country with a democracy that was perfectly consolidated according to this definition but whose laws and public policies were only infrequently publicly discussed, debated or negotiated, and in which decision-making was concentrated in a small group of people and imposed on the rest of society. The contrary could also be the case. A country could experience systematic violation of its democratic institutions while simultaneously involving a great number and diversity of actors in the discussion and approval of laws and

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<sup>6</sup> There would be nine observations but for the fact that I exclude IFE 1993-1994. This is because only eight months (and no federal elections) passed between the 1993 and 1994 reforms of the IFE, too short a period to be able to evaluate the presence or absence of political development.

public policy. This argument does not mean to defend authoritarian institutions, but only to encourage political scientists to complement their discussion of formal institutional structures with a concerted focus on the deep structure of policymaking itself<sup>7</sup>.

Authority can be concentrated or decentralized within the political context as a whole or within the more reduced decision making context of a specific public policy or institution. These two realms of authority are often interlinked, but they are by no means necessarily connected. Some policies provoke widespread debate, mobilization and many contrasting proposals among diverse political actors, but are finally designed and negotiated by a small elite group of politicians and government planners. Other policies lead to little or no debate in the polity, but create intense conflict between different factions, positions or parties within government or a specific agency.

The nature of authority in these two different contexts can have an impact both on the formal design of an IPA and on its political development. Political scientists tend to emphasize the design of institutions and ignore what happens after a law or constitutional reform has been passed. This is highly problematic because, as Pierson has written, “there are strong grounds for challenging any presumption that institutional effects will reflect the expectations and desires of institutional designers” (Pierson, 2000: 486). Reality is far too complex and changing for the founding coalition of an institution to be able to anticipate all of the possible situations that might arise and precisely what agency response will be in their interests at each particular moment in the future. Therefore, it often turns out that, as Max Weber himself has astutely written, “the final result of political action often, no, even regularly, stands in completely inadequate and often even paradoxical relation to its original meaning” (Weber, 1958: 117).

The outcomes, or dependent variables, that most concern us here are “Empowered Autonomy” (EA) and “Political Development” (PD). The

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<sup>7</sup> This approach has proved to be extremely fruitful in the analysis of Mexico’s authoritarian past since it has allowed researchers to understand how regime stability itself is often the outcome of a dynamic process of negotiation and change. As Jonathan Fox has pointed out, “It is certainly remarkable that Mexico has had the most stable regime in Latin America, with uninterrupted civilian transfers of power since 1929. But political stability has not been based simply on the legacy of the past. Rather, it has been the result of the periodic renewal of a process of bargaining with the key forces in civil society” (Fox, 1992: 2). Jeffrey Rubin has taken a similar approach. “The Mexican regime is not the holder and exerciser of hegemonic power that has been described in the literature, but rather one partial and changing component in the complex set of power relations within which ordinary Mexicans live” (Rubin, 1997: 5). Using a similar analytical strategy, I look to explore the underlying political context that has driven and accompanied the creation of IPAs during Mexico’s transition to democracy.

concept of EA refers to the nature of the delegation that is necessary to create strong and effective IPAs. Delegation is usually understood as the opposite of control. Voters, legislators, presidents, countries and boards of directors (the principal) decide either to directly control and monitor a specific public policy, law or institution or to hand over the responsibility to an agent that works on the principal's behalf (delegation) (Bendor, Glazer & Hammond, 2001; Huber & Shipan, 2002). But this sort of delegation is not enough to create a strong IPA. In order to be able to fulfill its mandate an IPA needs much more than just freedom to act. It needs to be endowed with legal capacities that give it "teeth" and allow it to make its authority known (i.e. investigation & sanctioning powers) as well as an institutional structure that empowers both professional and pro-active reform agents within the agency. Without these latter two aspects IPAs are at a high risk of becoming the empty shells that Crisp, et. al. make them out to be in essence.

The concept of PD refers to the consolidation of institutional strength through time. Here I am particularly interested in three aspects. First, does the agency energetically pursue its mandate or does it fall into the bureaucratic equivalent of a "low equilibrium trap"? Second, does the agency achieve a high level of public legitimacy or does the public distrust its actions and intentions? Third, is the agency able to expand its capacities beyond those originally included in its statute or constitutional reform? Energy, legitimacy and expansion together capture the essential elements of a thriving public agency<sup>8</sup>.

To summarize, my argument is that *the decentralization of authority in the polity at large and among decision makers in particular works in favor of the design of empowered and autonomous independent pro-accountability agencies that pursue their mandates energetically and expand their legitimacy and capacities over time*. In order to test this hypothesis we need to indicate the specific mechanisms by which

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<sup>8</sup> My understanding of political development therefore borrows both from Samuel Huntington's (1965) classic understanding of the term as "the institutionalization of political organizations and procedures" (393), with institutions understood to be "stable, valued, recurring patterns of behavior" (394) and the more recent definition offered by Karen Orren and Steven Skowroneck (2001) of political development as "a durable shift in authority relations among political institutions. By shift in authority relations we have in mind a change in the direction of controls, enforceable at law, among the discrete agencies of governance that comprise a political order" (3). Huntington's definition is linear, focused on the measurement of the "strength" of individual institutions and applies a broad understanding of institutions as "patterned behavior" in general. Orren & Skowroneck's definition is dynamic, focused on relationships that exist both between and within institutions, and is exclusively interested in an analysis of the "discrete agencies of governance".



decentralized authority leads to empowered autonomy and political development.

I begin with the issue of delegation and institutional design. The literature on congressional delegation in the United States argues that an agency's statute is stronger when it is pushed through by a coalition that is unified both between the presidency and congress and within congress itself (i.e. under conditions of "concentrated" authority). According to this argument, when the "enacting coalition" is unified the statute will have more coherence since it will be free from side deals and negotiations that get in the way of effectiveness. "Divided government", it is claimed, leads to policy deadlock and disjointed delegation (Moe, 1995; McNollgast 1999).

According to this theory, for independent agencies created under conditions of radical political uncertainty (e.g. during transitions to democracy) a unified coalition would be both more important and effective. On the one hand, because these periods are characterized by the escalation of political conflict, a divided enacting coalition would be likely to lead to a self-defeating and contradictory delegation process with different factions battling for control of the new agency (Bennett 1997, Maor 2004). On the other hand, historical studies show that imminent political death encourages authoritarian leaders to quickly institutionalize their legacy by strengthening the bureaucracy. Authors such as Stephen Skowronek (1982) writing about civil service reform in the U.S., Bernard Silberman (1993) in his discussion of the rise of the administrative state in France, Japan, the U.S. and Britain, and Delia Boylan (2001a, 2001b) in her texts on central bank reform in Mexico and Chile have all argued that political uncertainty stimulates effective delegation to the bureaucracy and independent agencies by authoritarian power holders. Therefore, theory would predict that the statutes which were passed during periods of authoritarian, unified government in Mexico would have created stronger IPAs than those that were passed during periods of democratic but divided government.

My research shows that precisely the opposite is the case. Mexico's state-party system has a long history of creating new lame-duck "independent" agencies whose exclusive purpose is to maintain positive public opinion in national and international circles. While seeking to give the impression of change, the authoritarian coalition simultaneously fiercely defends its prerogatives by intentionally blocking the new institution's ability to carry out its mandate. María del Carmen Prado (1991) and Stephen Morris (1999) have documented how this has systematically occurred in the case of anti-corruption agencies and José Antonio Crespo (1999) has revealed how this has taken place in the case of electoral agencies throughout the past three decades.

Now, all three of the institutions under investigation were created and reformed with significant participation of the authoritarian coalition during a period of high political uncertainty. As of the “electoral insurgency” and electoral fraud of 1988, it was clear to most political actors that the days of the ruling Party of the Institutional Revolution (PRI) were numbered. As a result, since a powerful anti-corruption agency, human rights commission or electoral institute could easily be used by future democratically elected politicians to control or bring charges against the outgoing authoritarian coalition, there were particularly high incentives for the “reformers” to undermine the performance of the new agencies of horizontal accountability by building in institutional weaknesses. As Moe (1995) has argued “in the political system, public bureaucracies are designed in no small measure by participants who explicitly want them to fail” (127).

Therefore, my hypothesis is that plural “enacting coalitions” are more effective than unified ones for creating strong statutes. When there is an authoritarian ruling coalition afraid of losing power, the threat of a strong IPA being used against it in the future is so high that the presence of a unified ruling coalition tends to lead to the sabotage of the statute itself. Therefore, strong statutes will tend to be the result of an increase in pluralism. This is because pluralism means the inclusion of actors for whom a powerful IPA is in their interests and an increase in the overall level of publicity given to the statute. Both of these factors make “statute sabotage” much more difficult.

This can be modeled using a simple two-player non-cooperative game. Assume two players, the “power holders” (P) and the “challengers” (C), who are faced with the task of designing a new pro-accountability institution. Both players have the option (S1) of opposing/sabotaging the new institution or (S2) actively participating in creating a strong institution. Assume that if one player supports the agency and the other opposes it, then it will be created but in a way that is biased in favor of the player who supports it. Figure 1 below sets up the structure of the game under the simple assumption that the payoffs are symmetric.

Figure 1: The Politics of Delegation

		Player 2 (C)	
		<b>S1</b>	<b>S2</b>
Player 1 (P)	<b>S1</b>	(a,a)	(c,d)
	<b>S2</b>	(d,c)	(b,b)

If we assume that  $d > a > c$  and  $b > a > c$ , then the game has one stable Nash Equilibrium at  $(b,b)$  where both players work together to create a strong institution. In other words, if we assume that both players prefer having an independent agency to not having such an agency and that each player gains more utility from an agency that they participate in designing to one that they don't participate in designing, then the players will tend to work together to create a strong agency. This will be true even if  $d > b$ , that is, even if each player would prefer to design the institution to fit its own preferences without input from the other player.

Assume, however, that  $b > d$ , as would be the case if the opponent is not just passive, but also actively undermines an agency designed by the other. That would not affect the above result, but what happens if  $c > b$  for at least one of the players? In other words, assume that it becomes more beneficial for one of the players to undermine the agency that the other player creates (or tries to create) than to work together in the creation of the agency. Then it will be in the interest of that player to try to sabotage the agency's statute or constitutional framework. Now there is a Nash equilibrium with a payoff of  $d$  for the one who designs the institution and of  $c$  for the opponent. In practice, the result would be distorted, incomplete or nonexistent delegation.

Therefore, the crucial issue is to understand the nature of the relationships between  $c$  and  $b$  for each player and the link between one player's opposition and the other player's benefits from partial reform. I argue that when  $c > b$  for one or the other of the players this implies that there is either a lack of independent authority on the part of one of the players or an imbalance of power between them. If neither player has sufficient authority to create an

institution on its own, then it will most likely be in the other player's interest to oppose the creation of any institution at all, and vice versa. Thus, we could have  $d < a$ . Alternatively, if  $d > a$  and either player is able to significantly undermine the institution that the other player creates, then it is most likely in its interest to do so and the result could be S1S2 or S2S1. In other words,  $(b,b)$ , the strong agency solution, is the unique Nash Equilibrium for this game only when there is a balance of power between power holders and challengers so that the benefits of cooperation are sufficiently high to make it worthwhile. In other words, decentralized authority with a balance of power leads to strong institutional design.

With regard to the dependent variable of "Political Development" (PD), independent agencies are thought to perform best when they are led by a professional cadre of bureaucrats who are isolated from external influences (i.e. when their authority is "concentrated"). Indeed, such agencies are usually explicitly created in order to concentrate power. Central bank reform is a paradigm case. In order to prevent monetary policy from being used for political purposes it is carefully closed off from external influences and left in the hands of expert technocrats (Maxfield, 1997). The same logic is usually followed for independent auditing bureaus, independent prosecutors, regulatory agencies and electoral commissions (Pope, 2000). The reason for creating independent agencies in each case is to isolate extremely important, highly technical and contentious policies from the self-interested and short-sighted behavior of social and political actors.

This line of reasoning is also supported by the legislative-centric U.S. literature on bureaucratic accountability. According to authors like Weingast, McCubbins and Cox strong links between bureaucratic agencies and social actors corrupt the central accountability mechanism of democracy: free and fair elections. Therefore, the most effective agencies are those that behave themselves and follow the dictates of their legislative masters, the only body of government that can legitimately speak for "the people". This perspective once again discourages direct links between bureaucracy and society.

My counter-argument is that independent pro-accountability agencies display higher levels of political development when they institutionalize diverse standpoints within their leadership and open their doors to the active participation of civil society. This is the case for three reasons. First, the existence of "multiple eyes" (Smulovitz, 2003) serves to hold agencies to their public interest mandates. When every action is observed and reported on by a diversity of internal viewpoints and by civil society at large it is much more difficult for an agency or its employees to pursue particularistic agendas. Second, the participation of diverse perspectives and social actors within an

agency stimulates dynamic agency performance because it shakes up stagnant bureaucratic patterns. Third, the active participation of civil society and the existence of vigorous debate within the institution improves agency legitimacy in the eyes of the public because it shows citizens how the agency works from within.

This active engagement with diverse standpoints and with civil society is particularly important in the context of an authoritarian government. When the regime as a whole has a low level of legitimacy and societal confidence such active legitimation on the part of independent agencies is both more imperative and has a higher potential impact. It is *more imperative* because in such a context the immediate initial assumption on the part of society is that any new independent agency will not in truth be either “new” or “independent”. There is, therefore, a high risk that these low expectations will end up themselves provoking low performance through the establishment of a negative feedback loop between state and society. As a result, in such situations it is particularly urgent for a new agency to establish strong positive ties with society from the very beginning of its operation.

Active legitimation has a *higher potential impact* under conditions of low regime legitimacy because in such situations it becomes possible for an independent agency to actually *surpass* the legitimacy of the regime as a whole. Such a scenario would be virtually impossible in situations of overall high regime legitimacy because of the youth of the independent agencies when compared to the venerable age of the political system as such. Nevertheless, where the regime is perceived to be corrupt, authoritarian and elitist, it is much easier for a new agency to quickly surpass the standards set by its creator. Such a situation would imply much more than just a steady growth in legitimacy for the independent agency but would mark a discontinuous jump. In this situation the agency would be suddenly launched out into the public eye as an example for the future of the regime as a whole, transforming it into a pioneer of state reform. Indeed, as we will see below what has occurred with Mexico’s IFE over the past five years is a particularly good empirical example of how such a process can occur.

### III. MEXICO’S INDEPENDENT PRO-ACCOUNTABILITY AGENCIES

All three of the agencies under investigation began the 1990s as highly dependent, weak and underfunded agencies. By the end of the 1990’s each one of them had greatly expanded their autonomy, strength and impact. Nevertheless, although the IFE is today one of the most effective and highly respected institutions of the Mexican state, the CNDH and the ASF have

lagged behind in their process of institutional consolidation.

The IFE stands out as a particularly successful case. It is the IFE that guaranteed the fairness of the groundbreaking 1997 and 2000 federal elections that finally inaugurated Mexico's democratic transition. The lack of significant post-electoral protests and mobilizations in the year 2000 was unprecedented for a presidential election in Mexico. In addition, the fact that there has not been a new electoral reform since 1996 is a testament both to the great breakthrough of this reform and to the legitimacy that the institution continues to enjoy up through the present. Other than the 1933-1942 and 1963-1970 periods, the seven years from 1996-2003 marks the longest period the Mexican political system has gone without an electoral reform since the promulgation of the Mexican constitution of 1917 (Molinar Horcasitas, 1996). Finally, the IFE's recent historic 100 million dollar fine of the Party of the Institutional Revolution (PRI) and its aggressive investigation of the irregular financing of the campaign of sitting president Vicente Fox demonstrates its ability to stand up to even the most powerful interests.

The other pro-accountability agencies have been less effective. For instance, the ASF (*Contaduría Mayor de Hacienda (CMH)* before 1999) has been relatively timid in its efforts to root out corruption in government. It has recently made important discoveries with regard both to the illegal channeling of funds from the state petroleum company, PEMEX, to its official union in 2000 and to the illegal over-purchase of bad debt by the Institute for the Protection of Bank Savings (IPAB) in 1998. Nevertheless, these discoveries have yet to lead to serious punishments or policy changes and both are accusations against governments of the past. The CMH/ASF has yet to strongly sanction a sitting government nor has it presented a clear plan of action to uproot malfeasance in a country that ranks alongside China and the Dominican Republic in its level of corruption (Morris, 2003).

The CNDH is another less than entirely successful case. Its present head, José Luis Soberanes, has been extremely vocal in questioning the policies of Vicente Fox and has urged him to improve the human rights situation in the country. Indeed, the pressure has been so great that the Fox government has recently formed a special inter-secretarial commission that will coordinate the government's compliance with the recommendations of the CNDH. Nevertheless, Soberanes has not systematically followed up his words with actions. The procedures by which the CNDH prioritizes, investigates and follows-up on specific cases continue to be extremely opaque<sup>9</sup>. In addition,

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<sup>9</sup> The fact that Miguel Sarré has been forced to submit a *juicio de amparo* in order to gain access to the information in the over 95% of cases that do not end in a formal recommendation on the part of the CNDH is evidence of this (Sarré, 2003).

the CNDH has acted much less energetically with regard to human rights abuses in states ruled by the PRI and has failed to seriously investigate many of the most important violations that occurred when the PRI was in control of the executive. The obvious suspicion is that Soberanes' activism arises from partisan interests, not from a real institutional consolidation of the CNDH as such.

What explains the variation in performance between Mexico's various IPAs? What are the most important factors that strengthen or weaken such agencies? Why has Mexico moved forward so quickly in the electoral realm while dragging its feet on human rights and corruption? Answering these questions constitutes a crucial first step towards improving governance in Mexico and thereby consolidating its incipient democracy. In addition, discovering the source of uneven political development in Mexico provides important general lessons about the dynamics of political development and democratization throughout the globe.

#### A) "Empowered Autonomy" & the Politics of Delegation

IPA's tend to be endowed with a higher level of empowered autonomy when the relevant "issue arena" is the subject of intense public debate and pressure and when the decision makers who directly participate in design of the new agency represent a wide diversity of viewpoints and commitments. We can observe this by exploring the history of legal reform of each of the three agencies under consideration. Table 1 summarizes the values of our independent and dependent variables (IV & DV respectively) for each moment of legal/constitutional reform. Each agency is ranked on an ordinal 0-5 scale with 5 being the best possible score. The table shows an extremely tight correlation between decentralized authority and empowered autonomy.

Table 1: Decentralized Authority &amp; the Delegation of “Empowered Autonomy”

Reform	Political Decentral	Decision Decentral.	TOTAL IV	Autonomy	Capacity	Structure	TOTAL DV
CNDH 1990	2	0	<b>2</b>	0	1	1	<b>2</b>
IFE 1993	2	1	<b>3</b>	1	1	1	<b>3</b>
IFE 1990	3	1	<b>4</b>	1	1	1	<b>3</b>
CNDH 1992	2	1	<b>4</b>	2	1	2	<b>5</b>
IFE 1994	4	2	<b>6</b>	2	2	1	<b>5</b>
ASF 1999	2	4	<b>6</b>	2	3	2	<b>7</b>
CNDH 1999	3	4	<b>7</b>	3	1	2	<b>6</b>
IFE 1996	5	4	<b>9</b>	3	3	3	<b>9</b>

(Range=0-5)

The numbers above are based on a careful coding of over 400 documents, 50 interviews and a variety of proposed laws at each historical moment<sup>10</sup>. The eight cases in the table can be organized into four general categories of delegation. The first category is “clean hands delegation”. Such delegation occurs when the principal wants to avoid the responsibility of dealing with politically dangerous or difficult issues. An independent agency (the agent) is created in order to deflect attention and pressure from the

<sup>10</sup> The numbers in Table 1 are estimates based on an analysis of interviews, newspaper reports and official documents with the following criteria:

- 1) “Political Decentralization”: The quantity and diversity of public debate and social mobilization with regard to the relevant issue, as captured in newspaper reports and editorials.
- 2) “Decision Decentralization”: The quantity (backroom negotiations, legislative debate, public consultation & participation) and diversity (percentage of the ideological-constituency space) of actors who participated in the design of the law, as presented in the media and in interviews with the chief participants.
- 3) “Autonomy”: The extent to which political or other government actors can influence the actions of the agency and the selection criteria for the agency’s leadership, as inscribed in the constitutional and/or legal reform.
- 4) “Capacity”: The agency’s investigative and sanctioning capacities, as inscribed in the law/constitution.
- 5) “Structure”: The professionalism of the staff (e.g. civil service) and the empowerment of independent or civil society actors within the structure of the agency, as inscribed in the law/constitution.



principal, but the agent is not endowed with significant capacities or autonomy that would permit it to follow through on its mandate. CNDH 1990 is one example of this type of delegation. The first human rights commission of 1990 was created as a special office within the *Secretaría de Gobernación* and was not given any special powers or authority. It was clearly created only to deflect criticism of the Salinas government's human rights record.

The reforms of IFE 1990 and IFE 1993 are similar. For decades, electoral reform was one of the most important ways in which the authoritarian state-party regime of the PRI was able to accommodate opposition while simultaneously maintaining its control over the central levers of power. Since the founding of the PRI's precursor, the Party of the National Revolution (PNR) in 1929, the electoral laws have been modified 22 times (Molinar Horcasitas, 1996). At times, reforms have been made in order to stimulate the participation of small, loyal opposition parties, as when proportional representation was introduced in the 1962-1963 reform and then expanded during subsequent reforms. Other times reforms have been designed in order to assure the dominance of the PRI in the face of important threats to its hegemony<sup>11</sup>.

The constitutional amendment that created the IFE in 1990 followed in this tradition of double-edged electoral reform. In response to the crisis of political legitimacy that arose out of the fraud surrounding the 1988 presidential elections and the massive social mobilization demanding democratization that followed, the state-party regime had to demonstrate to both national and international civil society its seriousness about combating electoral fraud. Nevertheless, it was simultaneously interested in maintaining its power over the electoral process. As a result, the 1990 reform did not grant the IFE significant autonomy from the executive branch or the ruling party. The Secretary of Government (*Secretario de Gobernación*) was named the president of the institute, and the voting members included a disproportionate representation of council members whose appointments were closely controlled by or directly represented the PRI and the government (Molinar Horcasitas, 1996). The 1993 reform was not much better. Passed at the height of Salinas's power, it did not significantly strengthen the IFE as an institution, but only tinkered with the rules guiding representation in the senate, access to the media and campaign finance (IFE, 1995).

<sup>11</sup> An example is the notorious "governance clause" first established in the 1986 reform that required the party that won the majority of direct election seats to receive enough proportional seats in order to control over 50% of the Chamber of Deputies. This was then expanded in the 1990 reform by requiring that the dominant party only win 42% of the direct election seats in order to be assured of an absolute majority in the lower house.

The second type of delegation is “pressure delegation”. Here authority is handed over to an independent agency under extreme pressure and/or loss of support from crucial external actors. The result is usually a stonger IPA than under “clean hands delegation”. Although external pressure is the source of “clean hands delegation” as well, in this second category the shock to the system is much stronger and ends up forcing the regime to actually do something about the problem. Since the external actors who apply the pressure will also closely supervise the government’s response, the government needs to give some level of real autonomy and authority to the new IPA in order to demonstrate its “credible commitment” to improving accountability. Otherwise, the strategy will not successfully calm the waters.

CNDH 1992 and IFE 1994 are two examples of this second type of delegation. The 1992 reform of the CNDH occurred amid intense pressure from the international community on Mexico to improve its human rights record. Specifically, the passage of NAFTA in the U.S. Congress was at risk of being sidetracked by serious concerns over human rights on the part of legislators from the democratic party. As Reyes (2000) has documented, this was the principal stimulant for the significant reform of the CNDH in 1992. This reform modified the Mexican constitution to make the CNDH an entirely autonomous public institution, although various elements of the law limited its autonomy and effectiveness. The head of the CNDH was still proposed by the president and its policy making and sanctioning capacities were significantly limited (Remírez, et. al., 2002).

In 1994, the political crisis created by the Zapatista uprising, the mass mobilization against the North American Free Trade Agreement (NAFTA) and for democracy, and the assassination of the PRI’s presidential candidate, led to a new reform that significantly changed the character of the IFE. The reform formally established the figure of “Citizen Councilor”, giving the Chamber of Deputies the right to independently appoint six of the eleven council members. In addition, the reform gave an official role to both national and international electoral observers in the electoral process and created the special prosecutor for electoral crimes (FEPADE) (Pozas Horcasitas, 1996).

One of the most important influences on the 1994 electoral reform, as well as on the later 1996 reform, was the activism of non-profit electoral watchdog groups. The leading group during this period was *Alianza Cívica*. For the 1994 elections, this group mobilized over 12,000 national electoral observers and 400 international observers, carried out its own parallel “quick count” of the electoral results, published a report on bias in media coverage of

the campaigns as well as a guide for electoral observers and a final evaluation of the election as a whole (Olvera, 2003).

The third type of delegation we observe is “democratic delegation”. This type of delegation arises out of controlled conflict within and between political forces. When no single actor can have its way and is forced to debate and negotiate with other actors even stronger IPAs are created than when an authoritarian government is subject to intense external shocks. Here we have the examples of the reforms of the CNDH and the ASF in 1999 during the 57<sup>th</sup> Legislature, the first legislature in seventy years that was not ruled by an absolute majority of the PRI. Both of these reforms significantly increased the autonomy and strength of these institutions. The selection mechanism for the leadership of the CNDH was made more public and participative and the ASF was given important new sanctioning powers and made significantly more autonomous from the legislative branch (Remírez, et. al., 2002; Ugalde, 2000).

The fourth type of delegation might best be named “founding delegation”. Such delegation is the result of a pact between all major political forces in the face of a fundamental threat to the political system as such. Here the creation of the IPA is not only about the specific mandate or issue arena that is supposed to be addressed, but is also about the recomposition and redefinition of the political system as such. The 1996 reform of the IFE is the only case of this form of delegation. In 1996 the political system was still under the effects of the guerilla movement in Chiapas and the political assassinations within the PRI and, even more importantly, was also reeling under the intense social and political discontent caused by the 1995 economic crisis. President Zedillo desperately needed to achieve a new political pact in order to reconstruct his authority.

The 1996 electoral reform was designed to achieve this goal. It was the first one negotiated, designed and implemented by all of the important actors from all three of the main parties from the left, right and center. The 1990 reform had been pushed through by the PRI with the support of only a part of the rightist opposition party, the Party of National Action (PAN). The 1994 reform was passed by the PRI and the PAN along with a small fraction of the leftist opposition, the Party of the Democratic Revolution (PRD). But the 1996 reform was negotiated, designed and passed by all three of the main parties from left, right and center (Prud’homme, 1996). The reform finally put the IFE under the exclusive control of the members of the “Citizen Council” (removing the right to vote from the representatives from the executive, the legislature and the political parties), created a fully independent Federal Electoral Tribunal, vastly increased public funding for political parties, improved fairness in access to the media, controlled private campaign

contributions, and took the crucial step of granting political independence and elections for the leadership of the Mexico City Government (Becerra, Salazar & Woldenberg, 2000).

### B) The Politics of Political Development

Institutional design does not guarantee institutional outcomes. Although the problem of the implementation of laws and public policy has been particularly acute in Latin America, this is not something unique to developing societies. As Pierson has argued, “we should expect that social processes involving large numbers of actors in densely institutionalized societies will almost always generate elaborate feedback loops and significant interaction effects which decision makers cannot hope to fully anticipate” (Pierson, 2000: 483).

In this subsection I argue that the ability of an IPA to develop institutionally depends on the nature of authority both within the agency and in the wider political context surrounding the IPA’s specific “issue arena”. This can be tested by examining the different moments of political development of the three agencies under consideration and correlating them with the nature of authority that existed during these periods. Table 2 shows the results of this analysis<sup>12</sup>. Once again, using an ordinal 1-5 scale we see a very tight correlation between our independent and dependent variables (IV & DV).

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<sup>12</sup> The numbers in Table 2 are estimates based on an analysis of over 400 documents (newspapers & official documents) and 50 interviews with top policy makers, using the following criteria:

- 1) “Political Decentralization”: The quantity and diversity of public debate and social mobilization with regard to the relevant issue, as captured in newspaper reports and editorials.
- 2) “Decision Decentralization”: The quantity and diversity (percentage of the ideological-constituency space) of the members of the agency’s leadership.
- 3) “Mandate”: The extent to which the agency pro-actively pursues its mandate, as measured by the impact that the agency has in having an impact on the relevant policy area.
- 4) “+Capacity”: The expansion of the agency’s investigative and sanctioning capacities, as inscribed in the law/constitution.
- 5) “Legitimacy”: The amount of social trust accumulated by the agency, as measured by nationwide surveys and acceptance by the relevant civil society actors.

Table 2: Decentralized Authority &amp; “Political Development”

Reform	Political Decen.	Decision Decen.	TOTAL IV	Mandate	+Capacity	Legitimacy	TOTAL DV
ASF/CMH (1978-1997)	1	0	<b>1</b>	1	1	0	<b>2</b>
CNDH (1990-1992)	2	1	<b>3</b>	1	1	1	<b>3</b>
IFE (1990-1994)	2	1	<b>3</b>	2	1	1	<b>4</b>
CNDH (1992-1999)	2	2	<b>4</b>	2	0	2	<b>4</b>
CNDH (1999-2003)	2	2	<b>4</b>	2	1	3	<b>6</b>
ASF (1997-2003)	3	2	<b>5</b>	3	2	2	<b>7</b>
IFE (1994-1996)	4	3	<b>7</b>	3	2	3	<b>8</b>
IFE (1996-2003) (Range=0-5)	3	5	<b>8</b>	4	4	4	<b>12</b>

These eight cases can be grouped into four broad categories. First, there is the category of “stagnant development” in which a supposedly independent institution has been captured by actors who do not want an agency to function correctly. The only case that falls into this category is ASF/CMH in the period from its previous reform in 1978 until 1999. During this period, the *Contaduría Mayor de Hacienda* was held hostage by the consistent PRI majorities in the Chamber of Deputies.

The second category might be most appropriately called “Hollywood development” in so far as it refers to the appearance of political development without a real transformation and consolidation of the agency. The IFE between 1990 and 1994 and the CNDH between 1992 and 1999 fulfill this description. Although both agencies appeared a great deal in the media, especially during the NAFTA negotiations, and issued numerous reports, documents and declarations, their institutional behavior did not correspond with their public image. Most importantly, neither institution took a consistent and pro-active stance versus the entrenched power of the authoritarian ruling coalition.

The third category of “democratic development” refers to periods in which an agency struggles to find its identity and independence amidst the complex winds of democratic politics. Given the slow, protracted nature of Mexico’s democratic transition, these periods have not been ones of radical transformation in the capacities and behavior of IPAs, but moments at which

these agencies appear to waver between moments of significant political development and confusion about the direction in which to proceed. The cases of the CNDH 1999-2003, ASF 1997-2003 and IFE 1994-1996 correspond to this category.

The fourth category can be named “institutional mobilization” and refers to the case of the IFE from 1996-2003. During this period the IFE was able to fulfill its mandate of organizing free and fair elections, greatly expand its capacities (adding important sanctioning and investigative capacities) and build a level of public confidence equaled only by that of the church (ENCUP 2001, 2003) (Schedler, 2001). During this period the IFE became a true pioneer of state reform in Mexico, even carrying the weight of other areas of government while fulfilling its own mandate. For example, its 1999 civil service statute was by far the most advanced of its time and served as the model for the national civil service statute passed in 2003. Also, the IFE’s voter identity card has become the only national identity card trusted by all actors in society. In addition, the IFE has significantly expanded its investigative and sanctioning capacities. While the electoral law of 1996 does not permit it to investigate accusations and gives it a limited capacity to fine parties, by 2003 the IFE had become one of the most powerful and effective investigative bodies in the Mexican government (Lujambio, 2002). For instance, it is the IFE and not the Attorney General’s office (PGR) that has been able to lock in Mexico’s democratic transition by making the PRI pay for its history of corruption and abuse.

A closer look at the IFE reveals the salience of the hypothesis that it is the “decentralization” and not the “concentration” of power that has allowed it to be so successful. Specifically, the IFE has been remarkably successful in incorporating diverse perspectives and the active engagement of societal actors. It has done so in a variety of different ways. First, societal actors are directly involved in the direction and monitoring of the Institute’s activities. Within the IFE there is an independent, “citizen-run” General Council that serves as both a special horizontal accountability agency for electoral affairs and as the IFE’s principal directive body. The General Council is a permanent body made up of nine members who are responsible for monitoring the operations of the administrative staff of the IFE, resolving disputes concerning the interpretation and application of the Federal Electoral Code (COFIPE), and giving vision and direction to the institute as a whole (IFE, 2000). The Council is made up of councilors who are each appointed by two-thirds of the lower house of Congress to serve seven-year terms. The two-thirds rule is significant because no councilor can be elected unless he or she is backed by a multiparty consensus. This excludes councilors who are closely

affiliated with a single party and assures the professional “citizen” nature of the Council.

Two other aspects of the General Council help maintain its close link to society. On the one hand, the meetings of the General Council are public. Although the population at large cannot attend or directly participate in the meetings, the minutes and decisions are widely publicized, reported on by the media, and are available via the Internet. This is very different from the *modus operandi* of most government agencies both inside and outside of Latin America and permits civil society to fulfill the crucial task of “second order monitoring” by overseeing the monitoring activities of their “representatives” on the General Council.

On the other hand, one representative from each registered political party and one Legislative Councilor from each political party that has representation in Congress sits on the General Council. These party representatives can fully participate in the discussions of the General Council and have access to all of the same information as the councilors but do not have the power to vote on initiatives or decisions. It is said that they have the power of “voice” but not of the “vote”. The presence of all of the political parties assures the non-partisan behavior of the councilors and means that any misstep by the IFE will be immediately publicized. Meanwhile, the politicians’ lack of full authority guarantees the citizen nature of the council and legitimates its claim to be above the interests of individual political parties. In general, all of the above elements of institutional design are intended to guarantee that the General Council represents the interests of society as a whole against the dominant “partyocracy” (Cárdenas Gracia, 2000).

Second, during its most important moment of “service delivery”, the organization of the federal elections, the IFE puts in place a structure of multiple surveillance by recruiting a huge army of citizen volunteers. During the months leading up to the 2000 elections the IFE trained over 800,000 volunteer citizens to run 113,423 polling sites (Woldenberg, 2001). Each polling site consists of seven members: a president, a secretary, two “counters” and three general substitutes. These members are unpaid and are selected by a double lottery from the full electoral roll in order to assure impartiality (IFE, 2000). All of the participants receive two training courses that are designed and implemented by the IFE. In addition, the IFE trains both national and international observers in the basics of electoral law so that they can serve as additional “eyes” at the voting booths. Finally, each political party is permitted to send one representative to each voting booth on election day. In total, between 10 and 15 citizens participate at each voting booth in the monitoring of the electoral process, meaning that in the year 2000 more than one million

citizens were mobilized in order to assure the realization of free and fair elections. Each one of the citizens present at a voting booth is empowered to file complaints concerning how the voting process was organized and how the votes were counted (IFE, 2000).

## V. CONCLUSION

The classic formula of free and fair elections plus bureaucratic isolation and expertise is not enough for the construction of a fully accountable political system. It is of course important to refine and strengthen these basic defenses against authoritarianism and malfeasance. Nevertheless, new democracies will have much more success if they conceptualize the tasks of democratic consolidation as *expansive* instead of as terminal. The improvement of governance and the rule of law in Latin America requires institutional innovation and widespread public debate, not a retreat into the inner chambers of the state.

The above exploration of the legal transformation and political development of three independent pro-accountability agencies in Mexico has revealed significant problems with the dominant literature on delegation and political development. First, while this literature focuses on the salutary effects of “unified government” and bureaucratic isolation from society, this article has demonstrated the positive impact of the “decentralization” of authority through divided government and the full involvement of society in the core areas of government. Second, while many authors argue that political uncertainty should lead to strong delegation and bureaucracies, the above account shows how uncertainty can lead to “statute sabotage” and disjointed delegation. Third, while the “veto point literature” theorizes that an increase in the participation of actors in the design of public policy works in favor of the status quo, the present article reveals how the multiplication of participants can stimulate a radical transformation in public institutions.

This article has focused on the historical development and design of three independent pro-accountability institutions in Mexico, but its conclusions reach far beyond this specific context. Today, looking towards the consolidation of the new IFAIP in Mexico as well as the future political development and reform of other independent agencies throughout the developing world we need to keep a keen eye on the political context and the active participation of society. My research reveals that empowered autonomy and healthy pro-accountability institutions do not arise out of the “concentration” or “unification” of authority but from its decentralization



through the exposure of the core issues and institutions of accountability to public debate and participation.

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