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The Paradox of Mexican Self-Reinforcing Hyper-Reformism: Enabling Peaceful Transition while Blocking Democratic Consolidation

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Introduction

Within the conventional mapping of different modalities of constitutional change — replacement, amendment and interpretation— Mexico exemplifies the reformist strategy taken to an extreme, since its 1917 Constitution been amended, sometimes radically, 699 times. It also illustrates a scenario in which constitutional amendment and democratization appear to have gone hand in hand: while amendment dynamics was at first moderate, it dramatically accelerated over the last three decades, when political plurality took hold after seventy years of single-party hegemonic rule (Casar & Marván 2014). Through continuous, piece-meal reform, the country has progressively added or incorporated rights, institutions and regulatory solutions that are part and parcel of the characteristic contemporary Latin American constitutional "kit", such as a long and robust declaration of rights, instruments of direct democracy, openness to international sources of law, or a multi-faceted system of judicial review (Pou Giménez 2016).

It could hardly be affirmed, however, that Mexico has installed something even remotely close to a satisfactory version of democratic constitutional life, as it can be hardly been affirmed that, despite including the characteristic Latin American staples, the country lives under a standard democratic constitutional text. What are the relations between the two processes? To what extent are the pathologies that haunt Mexican legal and political life related to a dynamics of uninterrupted, fragmentary amendment that has been going on for one hundred years? What is the relation between the hectic Mexican constitutional amendment dynamics, and the sort of constitutional life that obtains in the country?

This paper argues that, after delivering gains for quite long, Mexican reformism is reaching an exhaustion point. The country is currently trapped in a pattern that we call "hyper-reformism", which is a particular species of reformism that has become self-

sustaining, and that is now closely associated to the obstacles the country faces to install a recognizable version of the rule of law and attain democratic consolidation.

Constitutional amendment was first part of a virtuous circle that supported the gradual completion of a largely peaceful process of democratic transition. In the decades of the 80s and 90s, amendment created an interesting space for political negotiation: formal rigidity made governmental commitments credible, and gave the opposition parties a guarantee against opportunistic changes by the PRI legislative majority. But reformism had several un-intended consequences on the Constitution itself —on its content, which became increasingly convoluted and incoherent, and on the way politicians started to go about reforming it.

At the moment, we argue, Mexico's reformism has turned self-reinforcing and is no longer correlated to the need to adapt the constitution to "environmental" social, economic and political demands. We identify at least three mechanisms though which automatic feedback to reform works. First, the great amount of long and detailed regulatory norms written to respond to political juncture, naturally require continuous and often piecemeal reforms. Second, the obscurity and complexity created by continuous and fragmentary reforms motivates in its turn more reforms, which in turn lead to more complexity and confusion. And third, the success of reformism as a political tool has lead politicians to use it as default option to face credible commitment and coordination problems.

In our view —in contrast with those that consider Mexico's constitutional flexibility mainly a story of success (Elkins, Ginsburg & Melton 2009: 199), and in contrast with the more favorable views generated by intensive amendment dynamics in countries like Brazil (Benvindo 2016)—, hyper-reformism is closely associated to many of the difficulties that Mexico experiences to consolidate the rule of law and transcend a purely electoral form of democracy. At the level of the legal functions of the constitution, serious problems stem from the fact constant change, obscurity, disorganization and internal inconsistencies make it difficult for both citizens and officials to apprehend its mandates and find in it guidance and identifiable reasons for action. This hampers the development or execution of constitutional mandates by legislative and executive means, and makes it particularly difficult to build consistent judicial interpretation, which is central for the general well functioning of the system. At the level of political functions of the constitution, hyper-

reformism severely hampers the development of political action sensitive to the different political and moral relevance of different issues, fails to bestow the benefits of a division of labor that liberates the government from having to address anything at any point, and alters or impedes dynamics intrinsic to a healthy democracy, such as the combination of representative politics with episodes of heightened debate and participation, and the adequate development of accountability practices. Hyper-reformism also damages the integrative function of the Constitution, in a moment when Mexico faces challenges that will be difficult to surmount with a deficit in social cohesion.

As Elkins, Ginsburg and Melton point out (2009: 34), beyond the advisability of having a nuanced debate about the advantages and disadvantages of constitutional longevity, and whatever moderate merits endurance might have in that context, there is no denying that some constitutions deserve to be "euthanized": they outlive their utility and create great pathologies in the political process. Because of the features that assure a sort of "perpetual motion" at the amendment level, the Mexican constitution has actually a very low risk of death and replacement, but unfortunately, at the point we have reached, and given the vicious circle between legal, political, and constitutional dynamics, this is something we should probably regret.

The analysis goes in four parts. Section I describes Mexican amendment patterns, trying to document "amount of amendment" through a combination of quantitative and qualitative dimensions. Section II describes the theoretical framework that explains self-reinforcing phenomena, identifying features of Mexican amendment dynamics that justify a diagnostic of "hyper-reformism" –with a pathological tint. Section III describes in detail the different mechanisms that operate in Mexico as positive triggers of reform. Section IV, finally, illustrates how today hyper-reformism hampers the adequate fulfillment of the legal and political functions of the constitution. A brief conclusion will close.

I. Apprehending Amendment Intensity in Mexico

For normative constitutional theory, constitutional reform is a notion with great conceptual and systemic weight, since it represents the entrance into play of a modality of constituent

power —"derived constituent power"—, a particular instantiation of the will of the people, as opposed to that of the representatives that govern ordinarily in their name.[1] For this reason, it is habitually portrayed under an air of extraordinariness: it evokes an exceptional episode, an interruption of ordinary dynamics imagined naturally not to happen very often. The influence the US experience has exerted on legal and political imagination —explained, in part, by the power asymmetries that pervade the political economy of global knowledge (Bonilla 2016) — has also nurtured the idea that constitutional amendment is intrinsically rare.

In fact, as the burgeoning field of comparative constitutional studies based on "large-n" analysis has shown us, constitutional amendment is far more frequent than assumed by this theoretical image. Ginsburg and Melton's analysis about amendment dynamics between 1800 and 2010 shows an amazing increase in amendment magnitudes over time: the number of constitutions amended per year in 1850 was less than 4, 10 by 1950, 40 in the 1990s, and 30 in the 2000s[2]. In an analysis that covers 18 Latin American countries from 1789 to 2001 —minimalistically computing all amendments enacted in a year as only one amendment— Negretto documents 141 amendments, being 0.28 the mean amendment rate —i.e., the mean number of amendments that regional constitutions have endured per year of life—.[3]

For sure, these ciphers give only an approximate sense of what is happening. The same body of literature clearly illustrates that capturing and measuring the "amount of reform" in any given constitutional system is something filled with methodological complexity. Calculations in terms of "mean" numbers hide considerable variability among countries and cause a very different impression when they control for the durability of constitutions —when it is "rates" that are calculated— and when they do not. But most of

[1] See Partlett 2016, pp. 1-4 (echoing the distinction between original and derived constituent power and noting that, both in case of amendment and in case of replacement, constitution-making is assumed to be different from ordinary politics in terms of popular engagement and in terms of encouraging more deliberative and consensual elite decision-making than ordinary politics). Along the same lines, Negretto 2012, p. 751; Murphy 2007, p. 498; Colón- Ríos 2010, p. 236.

[2] Ginsburg & Melton 2015, p. 4. These authors underline that the increase is partly explained by decolonization, which multiplied the number of constitutions, and so the number of fora where amendment can take place; but only partially, since it does not explain the steep increase from the 1960s onwards.

[3] On a counting that goes from 1946 to 2008, this author calculates a mean number of amendments per constitution of 6, and a mean amendment rate (amendments per year of life of each constitution) of 0.19. Op. cit., p. 765.

all, calculations are typically based on different definitions of what "an amendment" is (Negretto 2012: 765): some count by article —so that several changes to the same article count as a single amendment—, others by subject matter —so that the number of articles amended is not relevant if they all touch on the same issue—, and others by aggregate packages —so that all the changes to constitutional provisions enacted at the same moment in time, or over the same period of time (typically, a year), count as "one amendment"—.

Moreover, most people agree that, to really capture the phenomenon, quantitative assessments must be complemented by qualitative ones, though it is not clear in what exact way. As we know, a small change in words or syntax can have huge impact in terms of meaning —legal rules being the meaning of words, not words themselves— and, conversely, a considerable amount of formal change may leave core structures and decisions untouched. Juliano Benvindo (2016) remarks, for instance, that although the number of amendments passed in Brazil over the last thirty years looks pretty impressive —ninety-two, an average of more than three a year— they have not significantly affected the substantive core of the 1988 constitution. Ginsburg and Melton have struggled to account for the relevance of content variation by coming up with a "weighted amendment rate" which abandons the assumption —implicit in conventional approaches to amendment rate calculation— that all amendments are equal. This weighted magnitude takes into account both frequency and the "index of similarity", which compares the contents of a constitutional text before and after an amendment has been passed.[4] Again, however, the strategy has intrinsic limits because assessment of content change is based on the analysis of a list of variables that are insensitive to changes that may look irrelevant from the viewpoint of registered institutional and regulatory choices but have significant impact in legal or political life.[5]

What can we say, within the limits of these methodological caveats, about Mexican constitutional amendment patterns? From a quantitative stance, numbers look imposing. The counting starts at the beginning of the XX century, when the Mexican revolution led

[4] Ginsburg and Melton 2015, p. 17. On the index of similarity see also Elkins, Ginsburg and Melton 2009, pp. 56-57 and 222-224.

[5] An example would be a change in the period Congress is in session, or a change in the date the Government must send Congress the Budget bill, which can have an important impact in Executive-Legislative relations, as evinced by the Mexican experience (Magar 2014). Another would be the addition of collective *amparo,* besides the individual one, which may completely alter access to justice and several important dimensions of rights protection, as shown by the Argentinian experience (Saba 2016).

to the summoning of the Querétaro constitutional assembly and the subsequent approval of the 1917 text, still in force.[6] The amendment formula, enshrined in Article 135 and never amended, requires the positive vote of 2/3 of attending members in each chamber of the federal Congress and ratification by half of the state legislatures.[7] Mexican scholars usually track down amendment evolution by defining "one amendment" as a change in one article formally enacted at a particular moment in time[8] —something that underplays amount of change given the large amount of subsections (and paragraphs within subsections) many of the articles have today—. From 1921 to August 2016, there have been 699 amendments. Figure 1 (see next page) provides the snapshot, organized by Presidential terms.

As we can see, it was from the 80s onwards, as political pluralism progressively grew after decades of iron-handed PRI political control —and contrary to natural expectations under Section 135's formula— that amendments increase sharply. 70% of the total is post-1982; almost 40% of them passed during President Calderón and President Peña Nieto periods. Only in the first year of his presidency, Peña Nieto propelled six major reforms in the areas of education, telecommunications, energy, anti-trust, transparency and the electoral system which touched around 60% of the total number of constitutional sections, besides adding to the Constitution an extraordinarily long, detailed, codified body of transitory provisions, which do not deal with problems of temporal efficacy, as would be expected, but rather develop detailed public policy regulations in all those regulatory fields.

[6] The XIX century was dominated by replacement, not amendment, Thus, after a brief period in which the country proclaimed the Constitution of Cádiz as its own (1812-1814, 1820-1821), and after an influential constitution-making process in Apatzingán (1814), whose resulting text never entered into force, the country approved several constitutions in a row, in 1824, 1836, 1843 and 1848. Then the pattern changed and several decades were spent under the formally long-lasting liberal 1857 constitution —which was only intermittently in force because of great political instability—.

[7] At the moment, 32 state legislative bodies. Mexico City was traditionally a Federal District, not a State, and for this pretty formal reason it was excluded from the ratification process. This oddity was suppressed with the constitutional amendment on "Mexico City political reform", published in January 29, 2016.

[8] Fix-Fierro & Valadés 2015, p. 12, footnote 1; Carpizo, 2011. The change may be a world or, as we said, a great quantity of sentences and paragraphs within an article. Mexican scholars habitually refer also to "amendment decrees", which are the legal instruments that contain all amendments enacted (and officially published) at the same moment in time.

Fig. 1. Constitutional amendments by Presidential period (1921- Aug 15, 2016)

Period	Reforms	Percentage	Decrees	Words	Increase
1920-1924	8	1.14	2		
1924-1928	18	2.58	5		
1928-1934	28	4.01	12		
1934-1940	15	2.15	10		
1940-1946	18	2.58	10		
1946-1952	20	2.86	13		
1952-1958	2	0.29	1		
1958-1964	11	1.57	9		
1964-1970	19	2.72	8	27 638	
1970-1976	40	5.72	14	28 532	+864
1976-1982	34	4.86	14	29 938	+1406
1982-1988	66	9.44	19	34 916	+4978
1988-1994	55	7.87	15	36 856	+1940
1994-2000	77	11.02	18	42 802	+5946
2000-2006	31	4.43	17	45 365	+2653
2006-2012	110	15.74	38	54 815	+9450
2012-2016	147	21.03	24	67 657	+12842
Total	**699**	**100.00**	**229**		

Source: Fix Fierro & Valadés 2015, working with the data available at the Diputados website, and, for 2012-2016, our own data, working with the same source.

This figure registers as well increases in constitutional length, leaving out transitory provisions. If we include these provisions —as we should, given the amount of substantive regulation they contain—, the dimension of constitutional growth becomes more transparent: if in January 2010, only five years ago, the Constitution had 78,295 words, in September 2016 it has 125,345 words. In 2010, transitory provisions represented a 28% of the constitution; they now make for 43% of it.[9]

What can we say from a qualitative viewpoint, from a stance attentive to the substance of all those changes? The impact of those more than six hundred amendments has been far-reaching. In their 2006 study —which does not reflect the sweeping changes

[9] It is true that contemporary constitutions are often long, last-wave Latin American ones particularly so: the 1991 Colombian text has 39,896 words, the 2009 Bolivian Constitution has 41,788 words, and the 2008 Ecuador Constitution has 52,649 words. But still, note that the Mexican, is larger than them all. If we include transitory provisions it is three times longer than any of them. It is 3.14 times longer than the Colombian, 3 times longer than the Bolivian and 2.34 times longer than Ecuador's (Our data. We thank Samuel G. Cataño for assistance in completing all countings).

of the last ten years— Elkins, Ginsburg and Melton already concluded for the Mexican case that the cumulative effect of amendments from 1917 to 2006 was more substantial than the change reflected by the approval of the 1917 Constitution —that is: the Constitution was in 1917 closer to the Constitution of 1957 than to its present-day instantiation—.[10] Available content-based evaluations echo the profundity of changes in all areas, including the creation of dozens of new institutions and the complete redirecting of core constitutional decisions in all areas,[11] and —as we will later expand on— through developments that go more in the direction of addition or accumulation, than of substitution, with no systematic concern for the maintenance of systemic harmony.

There is a last, conspicuous trait, that we believe must be added to the ones already mentioned to obtain a full portray of Mexican Amendment dynamics: the nature of the amendment decision-making *process*. Though, again, the theoretical reverberations of constitution-making should not define the canon, it seems natural to associate the prospect of changing the constitution with a moment of political "discontinuity" of some sort, maybe in terms of inclusion, participation, procedural adequacy, or at least in terms of public opinion mobilization. In Mexico, by contrast, constitutional reform is just another incidence of ordinary politics. Partly because Article 135 does not require action by special actors outside the ordinary political process, nor special steps, partly because of other factors that we will later explore, there are really no traces of "higher law-making" (Ackerman 1993). Amending the constitution in Mexico is legislating by other means: constitutional bills are presented and wait their turn just as legislative bills; they are lobbied for as easily as ordinary law; and emerge from elite negotiation as much as ordinary law.[12] Public opinion, and even the legal community, often finds out about amendments once they have already been passed. Occasionally, certain changes gain higher profile —but just in the way some statutory bills generate more debate from time to time—.

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[10] Elkins, Ginsburg & Melton 2009, p. 59. According to their calculations, the comparison between the 1917 text and the amended version of 2006 produces an index of similarity of 0.69, while the index of similarity with the 1857 document is 0.87. That is to say: with respect to the scope of topics covered, the 1917 constitution matches its predecessors in 87% (ibid., p. 57).

[11] See Fix Fierro & Valadés 2015, pp. 13-14, and the different chapters in Casar & Marván 2014, organizing amendment activity in five main areas: rights, federalism, separation of powers, the judiciary, the electoral branch and transparency and accountability matters. The studies map out exclusively amendments in the fifteen years between 1997 and 2012. The area with less substantive changes is the horizontal division of powers (Magar 2014).

[12] Even the celebrated 2011 Human Rights reform was a top-down product of elite negotiation. See Saltalamacchia 2011 (mentioning how the reform emerged from high-level contacts between politicians, international actors and a few selected civil society organizations).

Fast track dynamics is further reinforced by the fact judicial review of constitutional amendments has been progressively foreclosed by the Supreme Court, quite paradoxical a move in a country that lives under hectic constitutional change. No doubt among the factors that prompted the Supreme Court of India to develop its bold doctrines on the matter one can count the frenzied dynamics of constitutional amendment propelled by Indira Gandhi and kept lively after that (Jacobsohn 2005, Mate 2015). In Mexico, by contrast, the Court has closed the door both to substantive and procedural control in all channels of review.[13] It is not that this sort of review is unproblematic —particularly if the constitution does not contain stone clauses and does not explicitly grant this power to the judges—. The point is that the absence of the more complex interaction between courts and legislators this review would assure reinforces an image of quick, unbounded constitutional change.

II. Hyper-Reformism: A Self-Reinforcing Process

As seen so far, describing and measuring something so apparently simple as the amount of amendment that obtains in a country is less obvious an attempt than one may think.[14] We have combined three elements to that effect, and held that Mexican dynamics is very intense because of the frequency of amendments, because of their import in terms of change in the constitutional system, and because of a decision-making process that makes amendment an incidence of daily life.

Before this scenario, a question inevitably comes to mind: Why? How can we explain this trend? In our view, Mexico's reformism is a recurring pattern of constitutional change that we should expect to continue. Specifically, we claim that it is a self-reinforcing

[13] See CC 82/2001 (no review of procedural or substantive regularity in constitutional controversies); AAII 168/2007 and 169/2007 (no review of procedural regularity in actions of unconstitutionality); and AR 488/2010 (procedural and substantive flaws not ultimately reviewable in *amparo*).

[14] Note that we are not assessing whether a particular amendment rhythm is excessive, moderate, or insufficient, from an external, systemic viewpoint concerned with maintaining harmony between environmental demands for reform and actual reform. Negretto has this wider perspective in mind when he points out that the idea of formulating a universal standard to capture what would be a "moderate amendment rate" seems implausible because such a standard will depend on how frequently the constitution needs to be modified, and this, in turn, "will vary across cases as a result of extra-constitutional factors, such as the relative stability of the political, social and economic environment" (op. cit., p. 760).

process, and we call it hyper-reformism to mark that specific trait. Hence, our thesis runs against an alternative hypothesis that would portray Mexico's hyper-reformism as the result of certain non-recurring causes, most likely as a sign of constitutional accommodation to social and political transformations. If this were the case we would expect hyper-reformism to die out once the social-constitutional fitting were satisfactory to the relevant forces. Such was, arguably, the amendment rate's most common explanation in the early years of Mexico's hyper-reformism. But three decades of ongoing hyper-reformism casts serious doubts on this hypothesis, and raise the need of an alternative account (Fix-Fierro, for coming). In our view, Mexican patterns can be fully explained only if we take into account several endogenous mechanisms at play. To support this claim, we first clarify what a self-reinforcing process is, identifying the components of an explanation based on this theoretical category.

The category of self-reinforcing (or positive feedback) processes was developed by the "social sciences turn to history". This "turn" has been lead by authors such as North (1990), Arthur (1994), David (2000), Thelen (1999), Mahoney (2001), and Pierson (2004), among others. As Pierson makes clear, the turn is not mainly about the introduction of historical narrative or historical evidence into social sciences' accounts, but about defending that "examining temporal processes allows us to identify and explicate fundamental social mechanisms in a theoretically grounded way" (Pierson 2004: 10). In this way, the category enables explanations that use historical processes to explain why certain social and political outcomes are hard to change, even in face of serious path inefficiencies.

It may be somehow counter-intuitive to use this category to account for hyper-reformism —e.g. a trend of continuous constitutional change— because positive feedback processes have mainly been used to explain why certain outcomes, such as the choice of a certain technology (Arthur 1994) or particular institutions (North 1990), become resistant to change. But in our view it is perfectly apposite to explain why the choice to amend the constitution is chosen over and over again despite substantial path inefficiencies: in this case, what is resistant to change is the pattern of continuous constitutional modification.

There are four central elements to self-reinforcing processes (Pierson 2004: 18 summarizing Arthur 1994) and all of them are present in the Mexican scenario. First, positive feedback processes are *ex ante* highly unpredictable, since in the early stages several

outcomes are possible, and early events have an important effect as to the specific path that is taken. Mexico's last thirty years of hyper-reformism were highly unexpected. An hegemonic party, the PRI, had governed Mexico for more than fifty years, so when it started to lose positions of power in a gradual process of electoral democratization, the expectations of local and international experts were that political pluralism would lower the rate of constitutional amendment or even lead to the enactment of a new constitution (Elkins, Ginsburg & Melton 2009). To everyone's surprise, however, neither of the two things happened. As we showed in the last section, hyper-reformism rather took off.

Second, self-reinforcing processes exhibit inflexibility —that is, the further into the process we are, the harder it becomes to shift to another path. For sure this does not imply that change is not possible, only that change has higher costs later on into the process. As Margaret Levy nicely puts it:

> Perhaps the better metaphor is a tree, rather than a path. From the same trunk, there are many different branches and smaller branches. Although it is possible to turn around or to clamber from one to the other-and essential if the chosen branch dies- the branch on which a climber begins is the one she tends to follow. (Levi 1997: 28 quoted in Pierson 2004: 20).

As we show in greater detail in the next section, Mexico's hyper-reformism is pretty inflexible. There are two broad alternatives to it: to substantially lower the rate of amendment while keeping the 1917 Constitution, or to enact a new constitution. To lower amendment rate would be very costly because the Constitution contains many long and detailed regulatory norms that require continuous and piecemeal adjustment. Moreover, as continuous and fragmentary reforms have generated constitutional complexity and obscurity, this in turn makes it necessary to incorporate new reforms. And last but not least, because reformism has been an extremely successful political tool that has lead politicians to use it as the default option to overcome credible commitment and coordination problems, delivering important short term gains to the heads of the three most important parties (PRI, PAN and PRD).

To enact a new constitution is also very costly. As is well known, constitution-making processes entail high risks and costs (Landau 2013), which loom large in the minds of Mexico's political and legal elites (Fix-Fierro 2015: 702). Moreover, the idea of retaining

the 1917 Constitution has greater popular acceptance than this option —according to the 2011 National Survey on Constitutional Culture, only 18.6 percent support the idea of enacting a new constitution, the rest preferring to leave the 1917 text as it is, or to amend it.[15] Finally, and crucially, enacting a new constitution would presumably imply that the three main parties abandon their practice to constitutionalize their bargains and commitments over power positions and budget.[16]

Another way to characterize the kind of inflexibility that mark self-reinforcing processes is to point out that "if one imagines a counterfactual in which an alternative outcome emerges, the size of the change needed to generate the different outcome will be smaller —perhaps much smaller— at the onset of a self-reinforcing process than it will be at a later date" (Pierson 2004: 51). This is clear in our case: an alternative path (leading to a lower amendment rate) would have been easier, say, in 1982, when 69.4% of the reforms had not taken place, or in 1988, when it was approximately 36,225 words shorter (data used Fix Fierro 2015) and many of the constitutional bargain chips, such as high positions of the autonomous organs (the electoral tribunal, the electoral commission, the transparency agency, etc.) had not yet been created.

The third element of self-reinforcing processes is non-ergodicity, which means that accidental events early in a sequence do not cancel out. In other words, this feature underlines the importance of early events that lead to the particular path that was *ex ante* highly unpredictable. As we argue later on, hyper-reformism is the result of the gradual and negotiated transition to democracy in Mexico. We claim that exogenous events, such as the economic crises of the late seventies-early eighties, played an important role in the type of response the PRI gave to the social and political pressures for change —that is, a gradual electoral inclusion of the opposition—.

The fourth feature of positive feedback processes is, finally, path inefficiency. In our view hyper-reformism exhibits also this feature. In particular, in the fourth section of this paper we hold that hyper-reformism undermines the rule of law because of the way continuous change, obscurity and disorganization of the constitutional text damage in

[15] See http://www.juridicas.unam.mx/invest/areas/opinion/EncuestaConstitucion/.
[16] A group of researchers at the IIJ-UNAM have proposed a third option: the reorganization and consolidation of the Constitution (for a brief account of this possibility see Pozas-Loyo 2015). Arguably, for the political elite, this option would entail some of the risks involved in the enactment of a new constitution as well as some of the costs of changing the amendment rate.

several ways the mechanisms that make law function as a system of effective human regulation. If the claim is correct, it may also imply additional costs since the rule of law has been linked to economic growth and development (e.g. Barro 1997), state capacity (e.g. North & Weingast 1989), human rights protection (Apodaca 2004; Cross 1999; Keith 2002) and social and political order (e.g. North & Weingast 1989; North, Summerhill & Weingast 2000).

Under this theoretical framework, we must now account for the mechanisms of reproduction of hyper-reformism, presenting the historical sequence that lead to it —i.e., showing how the peculiar transition to democracy in Mexico from 1977 to 2000 gave rise to this pattern of constitutional change— and showing that this pattern is path inefficient by assessing the balance between its benefits and costs.

III. Hyper-Reformism: Mechanisms of Reproduction

In what follows we present three of those mechanisms. As will be clear, they are not independent, but we believe it advisable to give a separate account of each of them to make more transparent the political and legal factors involved. The first mechanism mainly focuses on the political dynamic that drives hyper-reformism, while the second and third are more focused on the textual factors.

The first mechanism is linked to the Constitution's role as an enabler of credible commitments. In the late 70's and early 80's the hegemonic party confronted a series of social, political, and economic crises that threatened the regime stability. In this scenario President López Portillo decided to open the political arena (just enough) to political participation through constitutional reforms in exchange of certain degree of cooperation. In 1977 the first of those reforms took place. President José López Portillo convened a dialog with opposition parties and associations to discuss a set of constitutional reforms. They all met in the Ministry of Interior and their agreements were constitutionalized. "The reform was seen by the government as a preventive operation capable of providing a channel to discontent, a place for the "minorities"…But for the oppositions, the reform was a platform to continue their efforts (Woldenberg, 2012:20). In the following years, due to further social and economic crises the opposition won further spaces. The PRI lost the monopoly over the constitutional reform process in 1988 when it no longer retained the

2/3 super-majority in the Chamber of Deputies. From then on, constitutionalizing the compromises among the three main parties' elites (PRI, PAN and PRD) meant shielding them from future majoritarian defection (Salazar 2013). The Mexican Constitution was extremely successful as enabler of credible commitments, and it was without doubt central to the completion of a process of democratic transition that was consensual and, to an important extent, pacific (Woldenberg 2012, Valdés 2010).

Now, when constitution-making processes —either to replace or to amend a constitution— are multilateral (not controlled by a single political group), there is a tendency to produce institutions that distribute power. The different groups within the constituent body "face a constraint over the type of institutional framework they can attempt to enact: other group's veto" (Pozas-Loyo & Ríos-Figueroa 2010: 298). This has been the case in Mexico: the institutional framework created by the successive constitutional reforms of the last thirty years has distributed both power and resources, to the great benefit of the three leading political parties. Electoral reforms, for instance, created a system where Congress is elected through a combination of majoritarian and proportional representation formulas both at the federal and the state level, which in turn has lead to a increasingly plural political arena (Becerra, Salazar & Woldenberg 2000; Córdoba 2014). They also created an enormous and extremely well-funded electoral branch with probably no peer at the comparative level (Pou Giménez 2016), in which political parties are controlled but also have a great say, and a very generous public funding for political parties (Aparicio and Pérez, 2007).

Moreover, multilateral hyper-reformism has created an institutional framework populated by autonomous agencies, and has amended pre-existing institutions to increase their autonomy. Among them we can find the National Human Rights Commission (1992-1999), the Bank of Mexico (1993), the National Electoral Institute (1996-2007-2014), the National Institute of Statistics and Geography (2005), the National Institute for the Evaluation of Education, the Federal Economic Competition Commission, the Federal Telecommunications Institute, the National Council for Evaluation of Social Development Policy (all in 2013), the Federal Institute for Access to Information and Protection of Personal Data (2014)", the Federal Judicial Council (1995-1999), the Superior Audit Office (1999-2009-2015), and the Supreme Court of Justice (1987-1994-1996-1999) (Fix-Fierro & Valadés 2015). Importantly, one of the institutional means to guarantee the autonomy of

these institutions has been to incorporate super-majoritarian mechanisms of selection for their leading members —which has conveniently served, at the same time, the system of power and resource distribution political parties are accustomed to.

In sum, hyper-reformism has created a plural political arena in charge of managing a highly complex institutional framework that requires constant bargain and settlement. Fortunately or unfortunately, hyper-reformism has also made available many resources and power positions to exchange as bargaining chips, and to make those many compromises credible for leading parties, the Constitution comes in. Thus the first reproduction mechanism of hyper-reformism appears. The way constitutional reform has worked to reinforce commitments reached by the leading parties explain three central features of Mexico's amendment dynamics: the fact most of the amendments of the last thirty years have been passed with more than the two-third majority required by the Constitution (Casar & Marván, 2014: 40); that most have been voted by the three most important parties[17] (Casar & Marván 2014, Fix-Fierro & Valadés 2015), and that states have never vetoed a constitutional reform.[18] Most reforms over the last thirty years have been agreed upon by three leading political parties, which enjoy a super-majority in Congress and a strong influence over local legislatures.[19]

The second and third mechanisms of reproduction are linked to the constitutional text itself. The second mechanism is associated to the fact that, as we mentioned in the first section, reforms have led to an extraordinarily long and detailed text. Beyond aggregate number of words, something that increases the overall sensation of longitude in the Mexican Constitution is the extension of some of its articles. Article 27, for instance, which famously regulates property, has 3,885 words; Article 41, which deals with elections and political parties, has 4,384 words; Article 122, about the political regime of Mexico City, has 2,864 words; and Article 107, which draws the boundaries of jurisdiction of the federal judiciary, has 3,190 words. The constitution has only 135 articles, but while some of them occupy four or five sentences, others are true codifications of entire areas of public policy

[17] From 1997 to 2014 83% of the constitutional reforms were voted by the three leading parties (Casar and Marván, 2014:40), since 2014 this trend has only increased, the majority of the 90 constitutional reforms from 2012 to 2015 were part of the "Pact for Mexico" that had the support of these parties too.

[18] Remember Article 135 requires approval of at least a majority of the state legislatures.

[19] Here we only want to note that our account of the constitutional reforms as means to make credible commitments helps to understand this counterintuitive feature of Mexico's pattern of constitutional change. However, a complete explanation of this feature would require an account of the party structure that we cannot provide here.

or integral regulations of state structures. It is then actually quite difficult to separate longitude from detail in the overall perception of what the text communicates.

Much of this over-detail and longitude are byproduct of the political dynamics that characterize hyper-reformism. As we have already argued, constitutional reforms have been used to make political commitments credible and to shield them from majoritarian posterior tampering, hence the need to include all the details in the political negotiation. A clear example of this is the constitutionalization of extremely specific political agreements over electoral matters. Consider Article 41.III.A.a, that states: "From the run-up to the election campaign until the election day, the National Electoral Institute shall get forty eight minutes daily, distributed in two to three minutes segments per hour in each radio station and television channel".[20] Or consider the 890-word long regulation of the transparency agency in sub-section VIII of Article 6 —strangely inlaid in the bill of rights, in an article that starts by enshrining the right to information—. It was added February 7, 2014 —at that time it was sub-section VII, not sub-section VIII as it results now, after other reforms— and includes dozens of detailed rules touching on all dimensions of operation. So detailed a regulation naturally touches on several other parts of the constitution that must necessarily be modified in their turn. For instance, to include in Article 6 the provisions that regulate the appointment of the commissioners of the Transparency Agency by the President and the Senate,[21] it was necessary to simultaneously amend Articles 76 and 89, which make a detailed list of the Senate and the President's areas of jurisdiction, to give the former power to "appoint the commissioners of Article 6 guarantor institution", and the latter to "object the appointments of the commissioners of Article 6 guarantor institution." And it was necessary to amend sub-sections XXIX-R, XXIX-S, and XXIX-T of Article 73, to give federal Congress jurisdiction to dictate general statutes developing the basic principles regarding transparency, access to state information

[20] Mexican Constitution, October 2015, http://www2.juridicas.unam.mx/constitucion-reordenada-consolidada/en/vigente). This example is taken from Fix-Fierro 2016

[21] The provisions are the following: "The guarantor institution is composed of seven commissioners. To appoint them, the Chamber of Senators, after conducting a wide consultation with civil society, following the proposals of the parliamentary groups supported by a 2/3 vote of attending members, will select the commissioner that will cover the vacancy, following the procedure prescribed by law". "The appointment", then adds, "will be open to objection by the President for a period of ten business days. If President does not object to the appointment in that period, the commissioner's vacancy will be filled by the person selected by the Senate". But "[i]f President objects, the Senate will make a new proposal, following the steps of the former paragraph, but under a vote requirement of 3/5 of attending members. If this second option is objected, the Senate, following the steps of the former paragraph, with a vote of 3/5 of attending members, will select the commissioner that will fill the vacancy".

and data protection, and to change the regulation of archives to create a National Archive System capable of assuring their homogeneous management at all government levels. And when in January 2016, a long constitutional amendment conferring a new political status to Mexico City was passed, those sub-sections of Article 6 were among those which had to be amended because the Constitution has traditionally felt it like to refer to "the Federation, the States, the Federal District and municipal authorities", instead of using a generic, more "durable" expression (such as "all levels of public authority").

We find the same dynamics in countless areas: the hyper-detailed nature of the regulation makes in turn additional, piecemeal reforms necessary, both because it becomes obsolete sooner, and because it naturally touches on countless points —of preexisting constitutional clauses that are, themselves, very detailed— and that therefore must be included in the amendments even if there was no direct intention of doing so.

Thirdly, amendments have generated a constitutional framework with lagunae and internal tensions because, in perfect hyper-reformist style, amendments are not done with an eye on their impact on the pre-existing constitutional body, and this creates a third mechanism of positive feedback. For sure, substantive heterogeneity obtains always to some extent in constitutions, which are typically the result of political transaction —and, as has been noted, producing a constitution *ex novo* does not ensure coherence either.[22] Moreover, certain degree of internal tension is arguably inherent to the constitutions of plural societies, which must include a wide range of values and principles to have a chance to be accepted. Basic values and rights, because of their structure and nature, prone to enter into conflict in the context of specific cases, and contemporary constitutional law includes many rich developments to deal with this fact, which is not pathological in the least. But in Mexico, the pattern of un-ending, fragmentary change, stirred by political conjuncture, pushed forward by politicians who ostensibly see gains only in what they add to the text —not in what they do to harmonize novelties with the extant clauses— has produced a set of sometimes very troubling inconsistencies and dysfunctions.

We find them in both the "organic" and the "dogmatic" part of the Constitution. Let us take some examples from the organic part. A conspicuous trait of constitutional evolution in Mexico has been the creation of a large number of independent agencies. While this development is common to many countries, what is characteristic of Mexico is

[22] See Blount, Elkins & Ginsburg 2012, p. 50 (stressing that, for all contemporary emphasis on constitutional design, quite many factors remain operative in actual constitution making, propitiating heterogeneity).

that no less than thirteen have been enshrined in the constitution —and, the majority of them, regulated there in great detail—. They are often called OCAs ("organismos constitucionales autónomos"). For many years, more and more OCAs were added without nobody accounting for the huge impact their creation was having on pre-existing schemes of power division. Even if no explicit changes were made to the corresponding articles, OCA proliferation was detracting powers and functions from the Executive and Legislative branches, both at the federal and state level, profoundly altering, in its turn, an already very complex federal system. Over time, conflicts naturally grew between traditional branches and OCAs, and among the latter, with the constitution offering no channel to solve then, because nobody had bothered to adjust meanwhile the articles that enlist the institutions with standing to start a "constitutional controversy" before the Supreme Court —the channel created to solve inter-branch conflict. Finally, in February 2014, the occasion was taken to amend Article 105 and enlist as recognized conflicts those between "two constitutional autonomous institutions, and between one of them and the Federal Executive or Congress, whenever they dispute the constitutionality of general acts or rules". But then an additional sentence was added: "This will be applicable to the guarantor institution regulated in in Article 6." What does this last sentence imply? Does not standing reach other OCAs? Yes, because the first sentence is more encompassing. But the fact this amendment was passed when the transparency agency was created led amending politicians to lightly add this specific mention that now creates only doubts.[23]

Similar problems derive from the amendment of sub-section II of the same Article 105, which regulates standing in "action of unconstitutionality" —abstract review—. This sub-section, after the 2014 amendments, gives standing to *three* specific OCAs —the National Commission of Human Rights and analogous state institutions, the Article 6 "Transparency guarantor" agency, and the General Attorney Office— and is *not* complemented with a more general standing clause.[24] This will surely generate new amendments, as soon as the excluded ones discover they cannot defend themselves against certain general statutes and rules.

The domain of federalism is another example of an area where amendment-associated disorder prevails. José María Serna shows, from instance, that from 1997 to 2014 there were 26 constitutional changes in the constitutional regulation of federalism

[23] See Article 105. I. letter "l".
[24] See Article 105. II. letters "g), h) and i).

arguably having been "predominately motivated … [by] disorder, dispersion, and ambiguity with regard to the different levels of government's competencies, which translates into lack of clarity with regard to their responsibilities and inefficacy in policies" (Serna 2014: 303-4). Fragmentary and constant changes create ambiguity and inconsistencies that in turn motivate more fragmentary reforms.

The bill of rights is in no better shape, even if its heterogeneity and internal inconsistencies do not trigger more reform so systematically because they typically affect disempowered citizens, not high public officials and governmental institutions. Even so, it is important to pay attention to them since they are crucial to understand the path inefficacy of hyper-reformism that will be discussed in the following section. A first general problem derives from the great heterogeneity in style of the rights clauses: while some follow the typical abstract pattern and refer to the value that must be protected, others must be thought as the implied "negative" face of a bundle of specific rules about what authorities may or may not do.[25] But the most troubling difficulties stem from the fact there is blatant, open contradictions among certain rules. Many of them derive from the fact the 2011 human rights constitutional reform, which gave constitutional hierarchy to the rights enshrined in treaties, did not simultaneously get rid of previous constitutional incompatible with those rights. The result is that the Mexican Constitution contains at the moment several anti-conventional provisions, such as the one denying political rights to persons under criminal process —contrary to Section 23 of the American Convention, and contrary to the right to the presumption of innocence enshrined in Section 20.B.I of the Constitution[26]—, the ones allowing Prosecutorial detention for as much as 80 days in some cases —in conflict with Article 7 of the American Convention[27]— or the imposition of community-labor penalties by administrative authorities —incompatible with at least three major international law sources[28]— (Pou Giménez 2014).

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[25] Moreover, some of them find a counterpart in the federalist division of power —i.e. they are treated as areas of jurisdiction attributed to certain levels of government — and others don't

[26] Article 23 of the ACHR refers to the limitation (not denial) of the right to vote (not the range of political rights referred to in Article 38.II of the Mexican constitution), and only for persons convicted (not those simply charged with certain counts; the charges could of course have no merit, yet a person can be under Article 38 have already been banned from running an electoral race).

[27] See the regulation of the so-called *arraigo* (house arrest) in Article 16 of the Mexican constitution, which is incompatible with the provisions of Article 7 of the ACHR.

[28] See Article 21 of the Mexican constitution, which contradicts Articles 1 and 2 of the ILO Covenant 29, Article 8 of the ACHR and Article 8.3 of the International Covenant on Civil and Political Rights (exempting community work from being "forced labor" wherever it is dictated by a *judge* after due proceedings).

IV. Obstruction to the Rule of Law and Democratic Consolidation

In our view, self-reinforcing reformism seriously impairs today in Mexico the adequate deployment of core basic constitutional functions, setting unnecessary and maybe insurmountable obstacles to the construction of a society governed under the rule of law and under recognizably democratic principles. Let us elaborate on some of these problems, which illustrate the path inefficiencies that, we believe, hyper-reformism is currently associated with.

Normative constitutions —i.e., constitutions conceived as enforceable and often directly applicable legal rules— can be attributed many functions, but two among them seem paramount. First, a constitution sets a basic program for the structuring and management of collective life, and provides tools for its own enforcement. We can call this dimension the *legal* function of the constitution. The constitution is a key element in a distinctive system of social regulation —the law—, which competes with other normative systems that also project demands on people, and aspires to have distinctive advantages over them: advantages because of its origins —who produces legal rules—, because of its content —potentially more acceptable in plural societies than the rules of other systems—, and because the law aspires to guarantee its own enforcement and dedicates many resources to that. A constitution, specifically, sets a basic substantive program for the organization of collective life. At a preliminary level, its provisions intend to motivate citizens and authorities and attain a fair degree of self-enforcement. But constitutions create also a large apparatus of legislative and executive structures to implement, develop, and enforce, the substantive program. And they create a judiciary, in charge of directly enforcing constitutional rules, or setting in motion processes that operate as a motivational reinforcement for citizens and authorities.[29]

Unfortunately, the now hyper-amended Mexican constitutional text, both for content-dependent and content independent-reasons —because of its impermanency— works very poorly as a piece of legal machinery. Gigantic areas of the constitution, and the text holistically seen —in so far as extraction of a general "constitutional ethos" is sometimes attempted— cannot really motivate citizens and public authorities because they

[29] See Kokott and Kaspar 2012 (mapping out different judicial and non-judicial models as methods to assure the efficacy of the Constitution).

do not convey understandable messages, and because, to the extent people know they change all the time, they do not constitute for them strong "reasons for action" (Raz 1999). Although it is probably the case that constitutions are known poorly by citizens everywhere, the text of Mexican constitution is a distinctively mysterious text for both street people and specialists. It is fair to assume that even those that "feel" subjectively motivated by it, and show appreciation for the Constitution if asked, are moved not by the actual content of the text, but rather by what they imagine this content to be.[30]

This opens great margins for unintended non-abidance by both citizens and public officials and creates difficulties at the level of legislative and administrative "development" of the constitution —precisely a dimension that should be well served in a system where the Constitution endures[31]—. But where pathologies are perhaps more blatant is at the critical level of constitutional adjudication. A distinctive institutional responsibility of the judiciary is to provide the community with a clarification of what the law says —of what counts as law—, constructing narratives about the meaning of the constitution that can be defended as coherent across time. As we know well, interpretation tasks are never simple due to a wealth of factors[32]. But this complexity is in Mexico multiplied by an amazingly above-the-standard degree of internal constitutional heterogeneity and by the dynamics of perpetual change.

A painful example of this is the amount of time and effort Mexican judges must currently devote to what would be, in Dworkin's terms (1986: 90-91) mere "pre-interpretative" tasks: tasks oriented not to ascertain what the constitution means in order to resolve conflicts under it, but to ascertain what the constitution *is*. This is what happens with the brand new Mexican bill of rights, after the 2011 reform, for the reasons we described before. The Supreme Court has spent more than three years trying to come up

[30] People may, for instance, retain a loose sense of what were the great social and political deals the 1917 text meant to convey; a quite radical social conception of property and the separation of church and state would no doubt be among them. In actual fact, amendments to sections 25, 26, 27, together with the economic provisions that the 2013 amendments added to the transitory clauses, have radically altered the property regime, as have done the July 2013 amendments to Section 24 as far as the constitutional treatment of religion is concerned, though it is very difficult to ascertain in what exact direction.

[31] See Elkins, Ginsburg & Melton 2009: 19-20 (underlining that constitutional endurance promotes the development of ancillary institutions).

[32] Among them. just to recall, the fact interpretation can be attempted from many different perspectives, the fact that there are no shared meta-rules about how to select among the different methods, and the fact constitutions, in particular, are very special rules whose interpretation and application require a special approach.

with a scheme capable of making sense of the relative position of national and international sources of rights within the Constitution, paying a very high cost in terms of the internal divisions this attempt has created within the Court, and in terms of failing to provide the guidance the community expected from it. The Court crafted a first "clarification" ruling in the *Varios 910/2012* case. The criteria set down in this ruling were painfully revisited but confirmed in the *AI 155/2007* case, disregarded in several cases decided by the Second Chamber in 2013, and finally overruled in the *CT 293/2011* case, who sets criteria which are internally in tension, and that do not fully dissipate doubts about the contours of the bill of rights and the relative position of national and international sources of rights.[33] The problems struggled with in these cases are not problems created by them, but by an irresponsible amendment dynamics. The transformative potential of changes ends up mortgaged by the un-ending amount of technical talk produced to confront the problems caused by extreme internal inconsistency. The community cannot focus yet on the task of having the constitution *enforced* because it is not even clear what the Constitution *says*.

The Mexican constitution, in sum, offers small guidance and, by the same token, also small constrain. While the degree to which different legal forms are constraining is variable and never (D'Aspremont 2011) absolute, law retains its functionality to the extent not everything can be convincingly argued in legal terms. Following the rules of the "game of law" must be perceivably different from following the rules of other social games — violence, exclusion or corruption. In Mexico, by contrast, central traits of hyper-reformism —constitutional obscurity, and the fact public authorities are often in the position of choosing between abiding the Constitution or changing it— debilitate the position and functionality of the legal system.

The second main function of a constitution is to provide a framework for an adequate expression of the democratic will. We may call this dimension the *political* function of the constitution. A constitution marks points of equilibrium and labor division between majorities and minorities, between the government and the governed, and between past, present and future generations. By drawing lines between different kinds of decisions and decision-making processes, it tries to ensure the productive and non-abusive development of the democratic conversation. Thus, the constitution identifies what issues must be debated giving ample consideration to decisions taken in the past and which ones are more

[33] About this judicial saga, see Silva García 2014, Sánchez Gil 2014 and Pou Giménez in press.

freely manageable from the present; it distinguishes issues where non-utilitarian, right-based thinking must prevail, from those where majoritarian political logics is less constrained; it separates questions where the private judgment of individuals or groups enjoys wider space from those where the margin is small, and it generally liberates political life from the duty to address anything at any point. As citizens and institutional actors respect these lines —enforcement—, discuss where they are drawn by the constitution —interpretation— or should be drawn—normative criticism—, democratic political life ensues with certain intelligibility and order.

For instance: if constitution is rigid, but can be amended, it draws certain lines to the tasks of the judiciary that are democratically enriching. As Rosalind Dixon and Adriane Stone have recently argued, constitutional amendment is democratically critical because it provides a channel for political majorities to "respond" to courts even in strong judicial review systems, providing a way of diluting the problem of the judiciary having the last word. In their view, "political constitutionalists" like Waldron have too easily discarded this argument because they take as paradigm case the US experience, which is in fact, when contemplated from an informed stance, an exceptional case of constitutional hypo-reformism.

Finally, an additional important political function of constitutions has to do with their capacity to enhance the development of a sense of political *demos* around the constitutional text (Elkins, Ginsburg & Melton 2009) or, in other words, to deploy an "integrative function" (Grimm 2005, Müller 2007) that can be of critical importance in divided societies. And as several authors have underlined, whether a Constitution is successful in this sense may depend on its content, but often depends, crucially, on how the constitution is made —and on how amendments are made—, and the extent constitution-making processes make people feel the Constitution is "theirs" (Voigt 2003, Blount, Ginsburg & Elkins 2012).

Unfortunately, none of the dimensions identified by this portray of political functionality are well served in the hyper-reformist scenario. For starters, hyper-reformism empowers legislators and judges well beyond the frontiers expected in the context of a constitutional democracy that seeks the sort of equilibriums identified above. In Mexico, for instance, it is very difficult to hold the legislature accountable because of the difficulty of ascertaining what the constitution says, and because legislative chambers in Mexico

attempt simultaneously statutory and constitutional change. It is difficult to say, for instance, whether the 2014 Federal Telecommunications and Broadcasting Act fully respects the constitution, because it is very difficult to ascertain what is really set forth in the extremely long constitutional transitory provisions about the matter, combined with those in Articles 6, 25, 26, 27 and 28.

The judiciary is, on its part, over-empowered even more. It is difficult to think of an argument that judges could not present as a derivation of the extremely large and heterogeneous pool of constitutional provisions. And hyper-reformism debilitates both internal controls within the judiciary and the external supervision of its tasks. For one, judges (and the Supreme Court in particular) lack incentives to make the sustained effort necessary build strong interpretive doctrines under the constraints of integrity: it is foolish to make such an effort if one knows the constitutional provisions these doctrines gloss upon may be replaced just tomorrow. By the same token, professors, practitioners and political commentators lack incentives to develop the sort of critical apparatuses that would make the judges feel closely supervised, and both their tasks and general public opinion debate is hampered by the difficulties of, again, pointing out what the constitution says. On the top of it, an incoherent and always changing constitution prevents the country from reaping the deliberation-reinforcing benefits of judicial review understood as an institution that, by forcing majorities to pause, on the basis of arguments that articulate the meaning of the constitution, allows for an overall richer democratic debate.[34]

It does not allow either for the sort of dialogue between judges and amending majorities that Dixon and Stone have imagined (see above). For even if legislative branches "respond" to a judicial ruling with an amendment, the constitution will be the unpredictable result of combining this response with the heterogeneous pool of existing provisions, and judges may easily insist on their previous views by presenting them as derived from a different combination of constitutional ingredients. And while this may happen everywhere, the Mexican over-amended constitution allows this potentially very rich interaction to proceed with a distinctive degree of arbitrariness. Even if it is true, therefore, that present-day generations have in Mexico the constitution more in their hands

[34] We mean to refer to the sort of dynamics that Ferejohn and Pasquino, analyzing Friedman's argument along those lines, call "the counter-majoritarian opportunity" (Ferejohn & Pasquino 2014). See also Ferreres 2000.

than in other countries, in our view this does not translate itself into gains in terms of obtaining a more robust, healthy democratic life.

The constitution of Mexico does not fulfill, either, its potentially very relevant identity-related functions and other indirect effects. A pretty ugly constitutional text and a frequently pointless dynamics of elite-driven constitutional change are incapable of projecting an image of collective dignity, and fail to provide the gains in terms of heightened popular participation and debate that amendment dynamics have when different patterns obtain. The only indirect effect we could register with some optimist is an increasing collective awareness of the problems and traps this paper has tried to describe: an increasing dissatisfaction, an increasing fed up with the sort of society / constitution we are. So, maybe in this modest, incremental, indirect way, the Constitution of 2016 will be politically effective in bringing about the process that will ultimately lead to its own replacement.

Note, then, that the problem all along is not that Mexico lives under a constitution that is ineffective or inefficacious. The Constitution has important effects, symbolic and material. The problem lies in the sort of effects it deploys and the sort of obstacles it poses, for even the better intentioned of actors, to play the "game of law" and the "game of democracy".

Conclusion

In this paper, we have shown that in the last thirty years Mexico has exhibited a pattern of constitutional change that can be characterized as *hyper-reformism*, because of the large number of constitutional reforms, because of the scope of the changes involved, and because it is a self-reinforcing process. We have identified three mechanisms that lead to its reproduction and sustainability. Finally, we argued that hyper-reformism is path inefficient and is currently blocking the country's democratic consolidation by undermining different aspects of the rule of law.

To conclude we would like to briefly underline three implications of our paper. First, we believe that the theoretical proposal of accounting for hyper-reformism in terms of self-reinforcing processes could be fruitful to better understand other countries' patterns of constitutional change. In general terms constitutional reforms can be the result of two

different kinds of causes. First, constitutional amendments in a given period can each be motivated by independent causes, such as the need to adapt the constitution to exogenous social or political transformations. In these instances it makes sense to study each reform as a case in itself. Second, and herein lies our contribution, under certain circumstances a pattern of constitutional change can emerge as result of self-reinforcing processes. In these instances, mechanisms of reproduction are underneath the pattern, and thus the stream of changes cannot be fully accounted for without incorporating such mechanisms as explanatory variables. In other words, in these cases constitutional change is better understood as a process, and not as a set of individual and largely independent reforms. We think that our theoretical framework can be useful to identify and account for other types of reformism: other hyper-reformisms, hypo-reformisms perhaps, and generally to better "read" what is going on in terms of amendment dynamics —and what could happen in the middle and long term— in other countries.

Second, we believe that thinking patterns of constitutional change as processes enables the evaluation of their effects as a whole, independently of the evaluation of the individual reforms' effects. In other words, we can think of the consequences that the pattern itself has, and analytically separate it from the evaluation of the particular amendments' consequences. In connection to this, we argued that hyper-reformism in Mexico has had negative effects on the consolidation of the rule of law and democracy. This evaluation depends on the effects of the pattern of change on different aspects of the rule of law, and the conclusion would be different had we focused on the effects of individual reforms. Moreover, the theoretical framework enables us to understand why the hyper-reformist pattern has acquired resistance to change (i.e. become to an important degree inflexible) even if it is path-inefficient.

Finally, we think that incorporating an account of the mechanisms of reproduction behind the pattern of constitutional change is fundamental as an epistemic tool to identify what would be required to transform an undesirable pattern. As we pointed out in the paper, Mexico's hyper-reformism has been perceived as having important negative effects, yet there have been no successful efforts to change it. If our account is correct, to transform the pattern of constitutional change in Mexico it would be necessary to change its mechanisms of reproduction.

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