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**Understanding Intra-branch Conflict**  
The Political Logic of the Mexican Administrative Procedures Law

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## Abstract

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*Why presidents support administrative procedural reforms designed to restrict their abilities to act freely? Administrative procedures reduce discretion during policy making and implementation by opening up the bureaucracy to social groups that were previously excluded; in so doing, administrative procedures limit executive's power in the design, implementation and reform of public policy. In this paper, we follow Baum (2005) to argue that administrative procedures for policy implementation reforms are more likely to have the executive's support when presidents confront control (delegation) problems within the bureaucracy. Presidents will support these reforms even if they reduce the executive's power to unilaterally determine public policy; in particular, presidents opt to support administrative reforms when they want to promote changes in the status quo but face a bureaucratic structure that is reluctant to any transformation. In this paper, we re-examine this argument by looking the process of design, approval and implementation of the Mexican Administrative Procedures Act of 1994. The Mexican APA is a particularly interesting case to analyze because by the middle 1990's the executive remained as the dominant political figure and his political party (PRI) held the most powerful position in the legislative arena. Why did a president so dominant cede power by opening up the policy procedure? Our paper reviews the institutional and political environment in Mexico before and after the passage of the administrative procedures act in 1994.*

## Resumen

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*¿Por qué los titulares del poder ejecutivo impulsan reformas administrativas que restringen su habilidad para actuar? Al abrir la burocracia al escrutinio externo, la aprobación de leyes que establecen procedimientos administrativos reduce la discrecionalidad del poder ejecutivo durante la creación e implementación de políticas públicas. Este tipo de legislación limita el poder discrecional del Presidente para diseñar, implementar e incluso reformar política pública. En este documento de trabajo, seguimos el argumento de Baum (2005) para discutir cómo reformas a la legislación de procedimientos administrativos tienen mayor probabilidad de ser apoyadas por el Ejecutivo cuando éste enfrenta problemas de control sobre la burocracia bajo su cargo. En particular, los presidentes tienden a apoyar reformas administrativas cuando buscan promover cambios al status quo, pero enfrentan la resistencia de la estructura burocrática. En este*

*documento reexaminamos este argumento a la luz del proceso de diseño, aprobación e implementación de la Ley Federal de Procedimientos Administrativos de México originalmente adoptada en 1994. Esta legislación es un caso interesante porque a mediados de los años noventa el presidente todavía concentraba un amplio poder de decisión en la arena política. ¿Por qué un presidente tan dominante cedió poder de decisión al “abrir” el procedimiento administrativo? Este documento de trabajo revisa el entorno institucional y político en México antes y después de la aprobación de la LFPA de 1994.*

## Introduction

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To date, scholars have devoted substantial time and effort to understanding the logic of electoral reforms and elections in developing democracies. However, there has been less attention to how the electoral performance of parties, over time, affects the degree of conflict within the executive branch and thus the nature of government policies in developing democracies.

Free and fair elections are a critical first step in the chain of democratic accountability. However, also critical is the ability of citizens to hold unelected bureaucrats accountable for policy decisions. This raises an important question: When politicians delegate policymaking authority to bureaucratic agents and both actors have agendas that conflict, what types of tools do the politicians have at their disposal to control them? The answer depends on the nature of the agency problem (Alchian and Demsetz, 1972; Fama, 1980; Kiewiet and McCubbins, 1991). There are multiple strategies to help politicians to insure bureaucratic obedience. One of them is to rein in these bureaucrats by empowering the public to participate directly in bureaucratic policy making or by creating strict regulations for all bureaucratic offices. An Administrative Procedure Act (APA), or similar law, is a mechanism through which politicians can “set up” structures and guidelines that *all* executive agencies must follow in order to implement policy across all regulatory policy areas.<sup>1</sup> In other words, imposing guidelines for administrative procedures is an alternative to manage intra-branch control problems.

Facing a contending bureaucracy from the previous authoritarian period is a common challenge for politicians in developing democracies. According to some analyses, it is in these circumstances that politicians try to impose limits on bureaucratic activities (Baum, 2007); however, it is puzzling when politicians with full control of their bureaucracy both openly propose and support legislation which aims to limit bureaucratic discretion. This was the case in Mexico during the nineties with the approval of the Federal Law on Administrative Procedures (LFPA).

The Mexican APA requires that bureaucratic agencies provide the public with information on their past performance (e.g. public disclosure) and with direct opportunities to participate in future bureaucratic policymaking (e.g. notice, public hearing, and comment procedures). They also bestow on civil society the right to monitor bureaucratic compliance with legislative directives (e.g. citizen lawsuits). While procedural reform promotes transparency and accountability, it can also slow, and thereby raise the cost of, the policy implementation process. In light of these effects, why would a chief executive support such reforms?

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<sup>1</sup> Scholars of American politics have argued that administrative procedures are designed to enfranchise particular groups over others (McCubbins, 1985; McCubbins, Noll, and Weingast, 1987, 1989; Moe, 1989).

The case of Mexico is puzzling because they were not implemented by a President facing the legacy of an adverse bureaucracy. Instead, these reforms were supported by presidents whose party monopolized bureaucratic positions. It seems likely that President Carlos Salinas (1988-1994) and Ernesto Zedillo (1994-2000) would have had easier and less costly method(s) of controlling their underlings in order to implement their programs. Thus, why would a president subject his own branch to arduous procedures? We argue that setting mandatory guidelines for administrative procedures helped Mexican presidents to solve intra-branch control problems that were caused by disagreements within the President's party regarding economic policies and a declining electoral performance of the party.

In the remainder of this paper, we proceed as follows. In the next section, we develop a theory of intra-branch delegation, identifying the conditions under which chief executives, including the president, will support administrative procedural reform. We then provide a brief history of the political and economic background surrounding Mexico's pursuit of administrative procedural reform. Following this historical review, we apply the theory to the Mexican case, presenting evidence on the adoption of LFPA. The final section concludes.

### ***Intra-branch Conflict and Procedural Reform: A General Theory***

Does an APA matter in a developing democracy? (see Baum, 2005, 2007). In what way would an APA prevent a president from unilaterally creating and ignoring regulations? Our answers to these questions hinge on the assumption that the logic of inter-branch delegation should apply to delegation within the executive branch. The ability of presidents to control the agencies nominally under their authority is arguably of equal importance for democratic governance. However, the voluminous literature on delegation has focused primarily on the U.S. Congress (McCubbins and Schwartz, 1984; Bawn, 1995; Epstein and O'Halloran, 1999; but see Moe, 1985; Huber and Lupia, 2001).

Presidents play a significant role in many new democracies, and they would seem to have easier ways to solve delegation problems than through codified administrative procedures. After all, why not simply appoint heads of agencies that agree with them and fire them if they do not behave as expected? Yet, presidents do not always have the constitutional authority to appoint and dismiss freely.

The key to our argument is that variations in presidential power have direct implications for presidential control over the executive branch, and, hence, for a president's ability to implement his preferred policies. These variations can arise either from constitutional or legal restrictions on a president's ability to appoint ministers or bureaucrats, or from having to share political power with allies who have different preferences. The less

autonomous the president is, in either sense, the greater the risk that his underlings will act contrary to his interests, and hence, the more interested the president will be in instituting procedural controls to mitigate this risk.

We argue that the more intra-branch conflict a president faces while in office, the more likely he will support greater public participation via administrative procedures. Presidents can use procedures to help them overcome *current* control problems. Current control problems —i.e., a president's inability to effectively manage his agencies— in turn, can arise in several different ways, any of which can induce a president to support administrative procedural laws. We discuss each of these circumstances below.

*Appointment and Dismissal Powers.* Presidential powers vary across different separation-of-power constitutions (Shugart and Carey 1992). In particular, the president cannot necessarily perfectly control who can be in his cabinet. While most presidential systems do not require legislative approval of appointees, many countries give the assembly some influence over cabinet formation. Consequently, divergent preferences within the executive are more likely to arise and persist in these latter cases, compared to countries where presidents have exclusive control.

So, if the president's policy preferences differ from those of the dominant forces in the legislature, a situation of divergent preferences between the president and the cabinet ministers could arise. This implies that the more the president's ability to appoint and dismiss cabinet ministers is constrained by a constitutional requirement for legislative approval *and* the greater the divergence between presidential and legislative preferences, the more the president will prefer administrative procedures.

Presidential power can also vary by the size and cohesiveness of a president's political support/coalition base. Variation in a president's support/executive coalition in the legislature affects his ability to control the executive branch. These variations in presidential power have direct implications for presidents' ability to "control" the executive branch. Appointment powers are particularly critical for understanding the level of conflict that arises in the executive branch. If the president is constrained in his appointment powers or his party does not have a legislative majority, he might appoint a multiparty coalition cabinet. Doing so would mean a greater likelihood of conflict arising from the heterogeneous makeup of the cabinet.

*Intra- and Inter-Party Conflict.* When ministers are selected on a partisan basis, the president must share executive powers with coalition partners from other parties, most likely representing different constituencies and policy preferences. On average, we would expect to see lower congruence of preferences between the president's party and other parties sharing the cabinet, compared to circumstances in which the president's party controls all cabinet posts. The other parties sharing the executive branch are likely to

oppose at least some of the president's preferred policies, which may differ significantly from their own policy agenda. When this situation arises, there is a greater possibility that the president's party will be unable to achieve its preferred policies because it will have less influence over executive agency activities. Thus, in order to reduce a cabinet minister's ability to move policy toward his own party's ideal point (Thies, 2001), the president has a greater incentive to favor *ex ante* versus *ex post* controls. *Ex ante* controls, such as extensive administrative procedures, reduce coalition partners' informational advantage. Ironically, it is precisely because of this two-way benefit of reducing hidden information and hidden action that, in a coalition cabinet, the partners would also tend to support extensive administrative procedures.

Similarly, factionalized single-party cabinets threaten a president's agenda because: (a) there may be a substantial disagreement over policy between the president's faction and the other factions within his party, or (b) the opposing factions may be large enough to effectively block the president's program within the executive branch. In short, under factionalized single-party cabinets, the president is more likely to face a ministry whose preferences differ from his own and thus has an incentive to institutionalize his control, *ex ante*, by supporting administrative procedures. As a consequence, we anticipate that the president is likely to prefer more extensive procedural constraints on bureaucrats when his support coalition is either a multiparty coalition or a factionalized ruling party.

*Civil Service Autonomy.* Meritocratic recruitment and promotion of the civil service restrain political patronage. At one end of the continuum, the civil service might be highly professionalized with a merit-based recruitment and promotion system, giving a president less control over his bureaucracy. At the other end of the continuum, the bureaucracy might be highly politicized, with a personalistic, patronage-based system, giving a president greater control over his agents. Because promotions are politicized, civil servants in this system worry more about satisfying their superiors or influential politicians.

If civil servants are protected under the law (e.g., cannot be easily fired), there is a greater possibility of bureaucrats not complying with elected politicians' policy preferences. From the civil servant's point-of-view, knowing that he cannot be fired for his actions, there is little risk in resisting the president's preferred policies. Therefore, a president who cannot unilaterally fire civil servants needs alternative mechanisms to constrain their behavior. Hence, we anticipate that a president will prefer more extensive procedural constraints if he confronts bureaucrats he cannot replace who do not share his preferences.

Taken together, these several circumstances under which *current control* problems are likely to arise suggest an explanation of *presidential* incentives and the political conditions under which extensive administrative procedures

is a viable solution for principal-agent problems. In sum, presidents are more likely to prefer extensive administrative procedures when they are weak. Whether their powers are constrained by constitutional requirements (appointment and dismissal power of the cabinet), coalitional support with heterogeneous preferences, or bureaucrats who cannot be fired, strict administrative procedures can mitigate agency problems by keeping track of bureaucrats' activities.

Between 1988 and 2000, the period under study, the Mexican executive faced a factionalized party (over policy and government management) (1988-2000), divided government (1997-2000), and a bureaucracy with heterogeneous preferences. Importantly for our purposes, the executive's power to appoint and dismiss members of the cabinet does not necessarily guarantee full control of all state agencies. Given these circumstances, the expectation according to the theory is that the president will have an incentive to enhance control over his agents. In general, when presidents confront problem bureaucrats or problem party members with divergent preferences, we expect them to support extensive APAs as a "second-best" solution to agency slippage.

### ***Historical Background***

This section briefly discusses the political and economic background in Mexico, highlighting the development of factional disputes within the PRI and the impetus for administrative reform.

#### *Preliminaries: Factional disputes within the party*

Since the 1930s, the existence of a hegemonic party system centered in the Partido Revolucionario Institucional (PRI) undermined the separation of powers in the Mexican presidential regime (Sartori, 1976). By the middle of the 1970s, the Mexican political system began a slow but steady process of political liberalization. This process reached a significant threshold in 1997, when increasing political plurality led to the first divided government during the long "PRI era". This process of institutional and political change peaked in 2000, when the Partido Acción Nacional (PAN) defeated the PRI in the presidential election.

During the seven decades of PRI political control, the presidency became the focal point in the political system and the PRI gradually transformed itself from a political party of *movements* to a party of *organizations* (or sectors). The four main sectors were labor, popular organizations, agriculture and business (Cornelius, 1996). Each sector had its own internal organization based largely on corporatist practices. However, research (Langston, 1995; Camp, 1999) has shown that the organizational principle in Mexican politics was the "camarilla" or cooperation teams, which were groups "of people who

have political interests in common and rely on one another to improve their chances within the political leadership" (Camp, 1999, xx). Members of a "camarilla" helped each other to rise through the party and governmental hierarchies. The most important camarilla reached the presidency, thus influencing the entire system.

Until the early 1970s, similar types of politicians participated in all camarillas. The profile of the traditional politician started to change in the 1970s, particularly in those ministries whose jurisdiction demanded more technical skills, such as planning and budgeting.<sup>2</sup> The new politicians, known as technocrats, gradually started to gain control of senior positions throughout the federal bureaucracy. They also became involved, with considerable success, in electoral politics. By the end of the 1980s, "a career in the national bureaucracy was the foremost means of ascent" (Camp, 1999, xx). Mexican Presidents after 1982 are representative of this change. All priista presidents until José López Portillo (1976-1982) had previous experience in an elected office. However, neither López Portillo (1976-1982), Miguel de la Madrid (1982-1988), Carlos Salinas (1988-1994) nor Ernesto Zedillo (1994-2000) held an elected office before becoming president. Rather, their reputations were built within the national bureaucracy.<sup>3</sup> This change was not welcome among traditional politicians. They were trapped between the traditional discipline of the sectors to the president, but were extremely uncomfortable with the new trend of recruitment and succession.

The political power of technocrats deepened after the economic crises of 1982 when President López Portillo announced a series of governmental decisions to address the most severe economic crisis in Mexican history since the revolution. Among these measures were default on the government's debt and nationalization of the banking system. The government subsequently initiated a major economic reform package aimed at replacing the import substitution industrialization regime with an open economy.

The crisis recovery and the transformation of the economy were major concerns for the PRI governments of Miguel de la Madrid (1982-1988), Carlos Salinas (1988-1994) and Ernesto Zedillo (1994-2000). De la Madrid occupied the presidency during an uneasy period. In September 1985, just after the midterm legislative elections, a strong earthquake hit central Mexico, leaving the center of Mexico City in complete disarray. Two years later, in November 1987, the peso was devaluated. The perceived ineffective federal government response to the Mexico City tragedy and the inability to ameliorate the harsh consequences for the middle classes of recent economic crises contributed to an image of governmental incompetence, while also demonstrating the fragility of the Mexican economy. At the ending of De la Madrid's term, two

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<sup>2</sup> The trend seemed to have started even before. See Grimes and Simmons (1969).

<sup>3</sup> "Among national officeholders in the Salinas administration, only a minuscule 2 percent served in a local government post" (Camp, 1999).

governmental imperatives were clear: 1) produce tangible benefits for the majority of Mexicans, and 2) adapt the organization of the government to the new environment. Neither task was easy. Both the transformation of the economy and the reform of the public administration were hampered by entrenched interests within the party, the government, and the labor and business sectors.

The presidential succession of 1988 exemplifies the growing discontent within the party. Formally, the designation of the PRI candidate for the presidency was a decision of the Executive National Committee. However, in reality, the president had the last word. Disagreements about this method were evident during the candidate selection process of 1987. A faction within the party known as the “democratic current” requested a selection process that would guarantee a candidate that was responsive to the preferences of the majority of the party members. This faction also raised an open critique to the neo-liberal government policies (Valdés Zurita, 2002). The PRI leadership invited six pre-candidates to present a “working plan” to initiate the process (though none of the members of the “democratic current” were invited). Ultimately, they designated Carlos Salinas de Gortari, former minister of Planning and Budgeting, as the PRI’s presidential candidate.

The central outcome of factional disputes surrounding presidential succession was the decision of Cuauhtémoc Cárdenas —leader of the “democratic trend”— to break with the PRI as a protest over what he considered an unjust process.<sup>4</sup> Even though the fracture of the Cárdenas group was a shock for the PRI, the party did not experience a rampage of priistas, probably because most politicians within the PRI could not afford to break with the party. However, the dispute over the presidential succession made explicit the disagreements within the party.

### *The Salinas Administration and the Need of Reform*

The beginning of Carlos Salinas’ government was critical to our story. Carlos Salinas won the presidency with the lowest vote ever received by a priista candidate in an election plagued with irregularities that were never fully explained. Salinas not only initiated his government facing severe legitimacy problems, but also confronting intense pressure to stabilize the national economy. To cope with these challenges, Salinas followed his predecessor and appointed a cabinet dominated by technocrats.

In the economic realm, President Salinas clearly intended to pursue continuity and deepen the liberalization of the economy. During his mandate, a majority of state enterprises, as well as the national banking system (which

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<sup>4</sup> Cárdenas ran for the presidency with the support of an electoral coalition of minor leftist parties, the Democratic National Front (Frente Democrático Nacional, FDN) which later became the leftists Party of the Democratic Revolution (Partido de la Revolución Democrática, PRD) and Cuauhtémoc Cárdenas became the moral leader of the institutionalized left in Mexico.

was nationalized in the early 1980s), were privatized. President Salinas also initiated and successfully concluded negotiations for the North American Free Trade Agreement (NAFTA) with Canada and the United States, and successfully won incorporation of Mexico into the OECD. However, as time passed, it became clear that the successful implementation of economic reforms also required an important adaptation in the structure and behavior of the public sector.

Despite Salinas' influence in internal party affairs, events in the PRI's XIV National Assembly made clear that discontent within the traditional sectors was still present. In that meeting, priistas opted for a direct poll of militants as the principal mechanism for determining party candidates. Militants also concluded that candidates without party experience weakened their capacity to maintain the social base of the party. To be presidential candidate, the applicant needed to have at least 10 years of party experience and to have held political experience in an elective office. But rules unfavorable to the executive's interests "remained in force only when the executive became weaker in relation to other groups within the governing coalition" (Langston, 2001). Salinas easily curbed these attempts to devolve power to members of the party.<sup>5</sup> Discontent within the party was appeased with the legislative elections of 1991 when the PRI regained a super-majority in congress and did not lose any of the seven governorships in dispute. Salinas' political predominance and the centrality of the government to the survival of the PRI temporarily overshadowed the discontent, but did not fully resolve it.

It was in this context of contentious politics that President Salinas initiated an ambitious program of administrative reform and deregulation aimed at adapting the public sector to the demands of an open economy. The reform process had multiple aspects. We concentrate on those changes that pertain to the regulation of government procedures. The first phase of the reform started in 1989 with the creation of the Economic Deregulation Office, EDO (Unidad de Desregulación Económica) within the Ministry of Trade and Industrial Development. In this early stage, the role of the EDO was quite limited since it was restricted to reviewing and reforming administrative procedures and regulations in areas directly related to strategic economic sectors. The goal was to "grant a level playing field to companies, regardless of who their shareholders were" (Ibañez and Hernández, 2007).

A second stage began in the early 1990s with the revision of government regulations that prevented the reduction of market costs and the improvement of the country's competitiveness. This second set of changes affected several laws and new legislation emerged.<sup>6</sup> It was at this time that

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<sup>5</sup> After these reforms, the balance of power shifted to a territorial base. See Langston (2001).

<sup>6</sup> Federal Law on Measures and Standards; Official Mexican Standards, NOMs; Consumer Protection Law and the Federal Law on Economic Competition. See Ibañez and Hernández (forthcoming), and Salas (2004).

the Salinas Administration sponsored discussion of unique legislation on administrative procedures.

### ***Passage of the Mexican Law on Administrative Procedures***

In this section, we analyze three episodes of administrative procedural reform in the Mexican case: the 1994 passage of the LFPA, and the 1996 and 1999 amendments. Our dependent variable is the change in the extent or degree of procedural control during an administration. First, we analyze the legislative history of the LFPA. Next, we explain the institutional changes within the PRI, focusing on the rise of technocrats and selection of presidential candidates. Then we explain how these changes led Zedillo to view his bureaucracy as a hurdle in implementing his economic policies and to institutionalize bureaucratic activities with an APA.

#### *Legislative History: The passage of the Mexican Law on Administrative Procedures*

In April 1992, the sub-committee of administrative justice at the Chamber of Deputies appointed Representatives Cuauhtémoc López Sánchez (PRD), Juan Hernández Mercado (PRD) and Fauzi Hamdan (PAN) to coordinate the work on new legislation to normalize the administrative procedures and decisions of federal agencies. López, Hernández and Hamdan summoned experts from the three branches of government to discuss several proposals for a new federal law on administrative procedures. After two years of deliberation, and seven different drafts, Representative Fauzi Hamdan submitted to the lower chamber the initiative of a new Federal Law on Administrative Procedures (Ley Federal de Procedimientos Administrativos, LFPA). According to Hamdan, the principal rationale of this new legislation was to “soothe the jungle of laws dispersed in the public administration which suffocate individuals at the execution and enforcement of laws by the federal executive”.<sup>7</sup>

Fauzi Hamdan was prescient. By June 1994, the Mexican Federal government was regulated by a tapestry of 118 different administrative laws with a similarly wide-ranging set of administrative principles and procedures. Although the new LFPA did not supersede these administrative laws, it provided a unified set of principles and guidelines federal agencies should follow regardless the public policy area. Specifically, the new LFPA aimed to reduce the legislative anarchy that prevailed in the daily functioning of the government.

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<sup>7</sup> “[...] aliviar la selva de disposiciones que están dispersas en el ámbito de la administración pública, que asfixia prácticamente al particular en la ejecución y en la aplicación de las leyes que le corresponde al ejecutivo federal”. Fauzi Hamdan Amud’s speech to the assembly delivered on June 28th, 1994 at the presentation of the LFPA proposal (Cámara de Diputados, 1994).

The proposal was welcome in both the Chamber of Deputies and the Senate where it passed with 317 and 43 votes respectively and went into force one year after its approval on June of 1995.<sup>8</sup> The LFPA of 1994 was extensive legislation divided into six titles and 96 articles. There were three major innovations in this legislation. These are summarized in the second column of Table 1.

**TABLE 1. MEXICAN LAW ON ADMINISTRATIVE PROCEDURES (LFPA)**

	YEAR PASSED	FIRST AMENDMENT	SECOND AMENDMENT
PROCEDURAL REQUIREMENT	1994	1996	1999
PUBLIC NOTICE OF PROPOSED RULES	X	X	X
PUBLIC COMMENT FOR PROPOSED RULES			
PUBLIC HEARINGS	X	X	X
APPEAL WITHIN AGENCY	X	X	X
PUBLISH FINAL RULES			X
CENTRALIZED REGULATORY REVIEW COMMITTEE			X
REGULATORY IMPACT ANALYSIS		X (NO PUBLIC)	X (PUBLIC)
REGULATORY IMPROVEMENT PLAN			X
JUDICIAL REVIEW OF ADMINISTRATIVE ACTION (IN APA OR APA-LIKE LAW)	ONLY AFTER ADMINISTRATIVE RESOURCES ARE EXHAUSTED	ONLY AFTER ADMINISTRATIVE RESOURCES ARE EXHAUSTED	ONLY AFTER ADMINISTRATIVE RESOURCES ARE EXHAUSTED

First, it clearly defined an administrative act and the requirements every administrative act issued by any agency of the centralized and decentralized federal administration should follow, such as the notification of affected parties. Second, it spelled out the conditions under which administrative acts were cancelled, nullified or superseded. It also established regulations that guaranteed individuals or interested parties a response from the pertinent government agency, such as the definition of a fixed period for the agency to respond after which the petition was considered rejected (*negativa ficta*). The definition of such deadlines and outcomes was fundamental for appealing agency decisions. Third, the new law regulated the appeal and review process of administrative acts which gave affected parties the opportunity to plea for intervention by the judiciary. Despite exclusion of state enterprises, public trusts, autonomous institutions, such as the federal institute for elections,

<sup>8</sup> In the lower chamber, the proposal was rejected only by two deputies. No Senator voted against the law. Quorum in the lower chamber was 319; in the Senate the quorum was 43.

and the central bank, the new legislation had a substantial impact, since it directly constrained the actions of most agencies of the federal administration.<sup>9</sup>

In general, the LFPA aimed to consolidate administrative justice by standardizing and systematizing the decisions and actions of nearly all federal agencies. In this sense, the LFPA was also an attempt to curtail the bureaucratic labyrinth of government actions and in so doing curb inefficiency, duplicity of functions and the slowness of government decisions. Indeed, the new legislation was considered complementary to the administrative reforms the Federal government initiated in the early 1990s to improve the functioning of the government (Arellano-Gault, 2000; Salas, 2004).

Even though the president had wide leverage to appoint and dismiss members of his cabinet, the ministers were not necessarily in full control of all administrative agencies or bureaucrats. The lower ranks of the federal bureaucracy were not homogeneous. For instance, in March of 1994, the Federation of Workers of the Federal Government (Federación de Sindicatos de Trabajadores al Servicio del Estado, FSTSE) had 87 affiliated organizations. Consequently, establishing a unique set of rules to control the administrative work of the federal bureaucracy facilitated executive control over public administration.<sup>10</sup>

The LFPA was also consistent with the preferences of political parties at the time. On the one hand, PAN's ideology was compatible with such reform since it was aimed at facilitating the relationship between the government and business sector.<sup>11</sup> On the other hand, the original proposal was publicized as a solution to bureaucratic corruption and inefficiency, thereby making the change agreeable to the PRD.

### *The Zedillo Administration and the First Reform of the LFPA: Coping with the Crisis*

In November 1993, President Salinas designated Luis Donaldo Colosio, Minister of Social Development, as the PRI presidential candidate. Colosio had never held elected office, but he was appointed as president of the PRI in the early days of Salinas Administration and was later appointed as minister of social

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<sup>9</sup> The complete list of entities excluded is as follows: Central Bank, Attorney's General Office, National Commission of Human Rights, Agricultural Attorney's Office, Consumer Attorney's Office, Federal Institute for Elections, state enterprises and public trusts.

<sup>10</sup> The Federation of Workers of the Federal Government was created in 1938. The FSTSE monopolized the representation of all unionized bureaucrats. Out of its scope were all political appointees (trabajadores de confianza), which were subject of discretionary appointment and removal. Trabajadores de confianza would be equivalent to what is label in other latitudes as *senior service*.

<sup>11</sup> PAN, the most structured opposition party at the moment, had an important transformation after the economic crisis of 1982 with the sudden incorporation of important business men to the ranks of the party (the first PAN governor –and the first non-PRI governor in the country– came from the business sector so did Vicente Fox).

development. As president of the PRI, Colosio confronted the traditional sectors by changing the corporatist structure of the party through the promotion of new alliances between traditional groups (e.g. labor) and new channels of communication between the party and civil society. Colosio's performance during the midterm elections of 1991 counterbalanced the opposition to him within the party. Colosio was the only candidate able to bring together the different factions of the PRI.<sup>12</sup>

However, 1994 proved to be a difficult year for the PRI. In the early hours of the New Year, a guerrilla movement struck the south of Mexico and three months later, the priista presidential candidate Luis Donaldo Colosio was assassinated in Tijuana. These events had a profound effect on the economy, provoking a sudden drop in the national reserves. Markets calmed down in April of 1994 with the announcement of Ernesto Zedillo as the PRI's new presidential candidate. However, the rapid consultation and "auscultation" made by Salinas after Colosio's death left several sectors within the party unhappy about the final outcome. Colosio was a unifying figure, supported not only by the technocrats, but also by traditional politicians. Ernesto Zedillo, by contrast, was not only a pure technocrat, but also someone without the political lineage of the previous two presidents. Nonetheless, Zedillo prevailed in the elections of 1994 in what was considered a relatively clean – although, not necessarily entirely fair – election.

The first major action of the new government was a drastic devaluation of the peso in December 1994. To face the economic crisis of 1994, Zedillo initiated a series of economic measures that severely affected entrenched economic and political interests "that were not going to stay idle while their sources of power and livelihood were being drastically altered" (Rubio, 1997). Moreover, the required reform entailed a "radical redefinition of the role of the government in society and in the economy, of private as well as foreign investment, and of the very structure of the political system" (Rubio, 1997).

The federal government initiated almost immediately a major plan known as the Alliance for the Economic Recovery which included several agreements between the central government, the 31 state governments, and representatives of the economic, social and academic sectors. As part of the economic recovery plan, in November 1996, President Zedillo submitted a proposal to the Senate known as the Legislative Miscellanea for Economic Deregulation (*Miscelánea de Desregulación Económica*). This legislative package –summarized in the third column of Table 1– introduced important reforms not only to the LFPA but also to five more federal laws and two federal codes.<sup>13</sup>

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<sup>12</sup> See the chapter "Carlos Salinas de Gortari" in Castañeda (1999).

<sup>13</sup> The laws and codes affected were: the Federal Law on Administrative Procedures, Federal Law on Foreign Investment, Federal Law on Mining, the Federal Law of Business Associations and the Federal Law on Measures and Standards.

As the title of the miscellanea indicates, the presidential proposal was aimed at reducing the number and complexity of administrative procedures pertaining to business and economic investment. The proposal was based on the recommendations of the Council for Economic Deregulation which was created by executive mandate as part of the economic recovery measures.<sup>14</sup> With regard to the LFPA, the executive proposal required that all federal government agencies report any new proposal of regulation that would impact the productivity of the business sector to the Ministry of Trade and Industrial Development (MTDI). The proposal also required each agency to issue a regulatory impact assessment, and gave the MTDI the power to comment on any such regulations.<sup>15</sup> The proposal also clarified deadlines for submissions and requests for information by both individuals and the administration. The proposal included an important change for the process of appealing administrative acts by clarifying that the director—or the highest administrative authority in the agency’s hierarchy—is responsible for declaring an administrative act null or superseded. Before the reform, the law did not provide any such authority within the responsible agency.

At the floor, the committee report generated heated debate and a strong rejection by PAN and PRD representatives. However, most of the arguments in the debate centered on the Federal Law of Foreign Investment and the Federal Law of Business Associations and not on the proposed LFPA reforms. The miscellanea were finally resolved with 99 votes in favor and 2 against in the upper chamber.<sup>16</sup> In the lower chamber, the legislative debate was similar with representatives from PRD and PT explicitly criticizing reforms to the LFPA because they “represent[ed] the [government’s] resignation to defend the most unprotected areas of the national economy and the wellbeing of the small and medium producers of this country”.<sup>17</sup> Despite the controversy, the Miscellanea for Economic Deregulation were finally approved with the full support of the PRI and PAN with 365 votes in favor and 27 votes against most likely from PRD and PT.

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<sup>14</sup> On November of 1995, President Ernesto Zedillo announced the new Council for Economic Deregulation (CED). Among the major goals of the new CED were the construction of a unique database of federal regulations (Registro Único de Trámites Federales) and the review of all major regulations that were in force by 1996. According to President Zedillo the new CED was a “step forward towards a regulatory framework of more certainty and juridical security for business and workers alike that protects consumers with efficacy and that avoids improper privileges and bureaucratic discretion”(Zedillo, 1995).

<sup>15</sup> The Unit for Economic Deregulation at the Ministry of Trade and Industrial Promotion (created in 1989) was in charge of these new activities.

<sup>16</sup> The vote was divided into two parts. First, senators voted to approve the Legislative Miscellanea in general and then they evaluate in a separate vote reforms to the Federal Law on Foreign Investment (LFI). Although the general vote was 92 yeas and 2 nos, the particular vote on the LFI was passed with only 67 votes; 22 senators opposed the reforms, most likely from PAN and PRD.

<sup>17</sup> Ysabel Molina Warner, Voto Particular (Cámara de Diputados, 1996).

*The Zedillo Administration and the consolidation of the Mexican Law on Administrative Procedures (LFPA)*

Ernesto Zedillo won the presidency with a bare majority of votes. Since the beginning of his term, the new president committed himself to continuing his predecessors' economic policies. He also pledged to implement two additional reforms: the strengthening of judicial power and public education (Rubio, 1997). In the political realm, Zedillo explicitly recognized at the beginning of his term the need for a renovated PRI. He thus opened the doors not only to the most important electoral reform to date, but also to a new party era where the president remains aloof from internal party matters. During Zedillo's term judicial power was fundamentally transformed and the institutional reforms leveled the playing field in the electoral arena.<sup>18</sup>

Discontent within the party did not dissipate during the first half of the Zedillo Administration. Several factors played a role in maintaining dissatisfaction within the party, including the lost gubernatorial races of the states of Jalisco, Guanajuato and Baja California in 1995, the electoral reform of 1996 that left several groups within the party unsettled,<sup>19</sup> and the disappointing 1997 electoral results (see Figure 1), when the PRI not only lost the majority of the Chamber of Deputies, but also the first election for governor in Mexico City, a position it has never since recovered.<sup>20</sup> The electoral outcomes of 1995 and 1997 were important for maintaining the loyalty of the party to the president and for furthering changes in the party's internal organization; changes that altered the traditional process of selecting the PRI's presidential candidate. After 1994, and with the electoral reform of 1996, the PRI was no longer able to ensure electoral victories and the electoral competition allowed new and old groups within the PRI to openly challenge the executive and the national leadership (Langston, 2001).

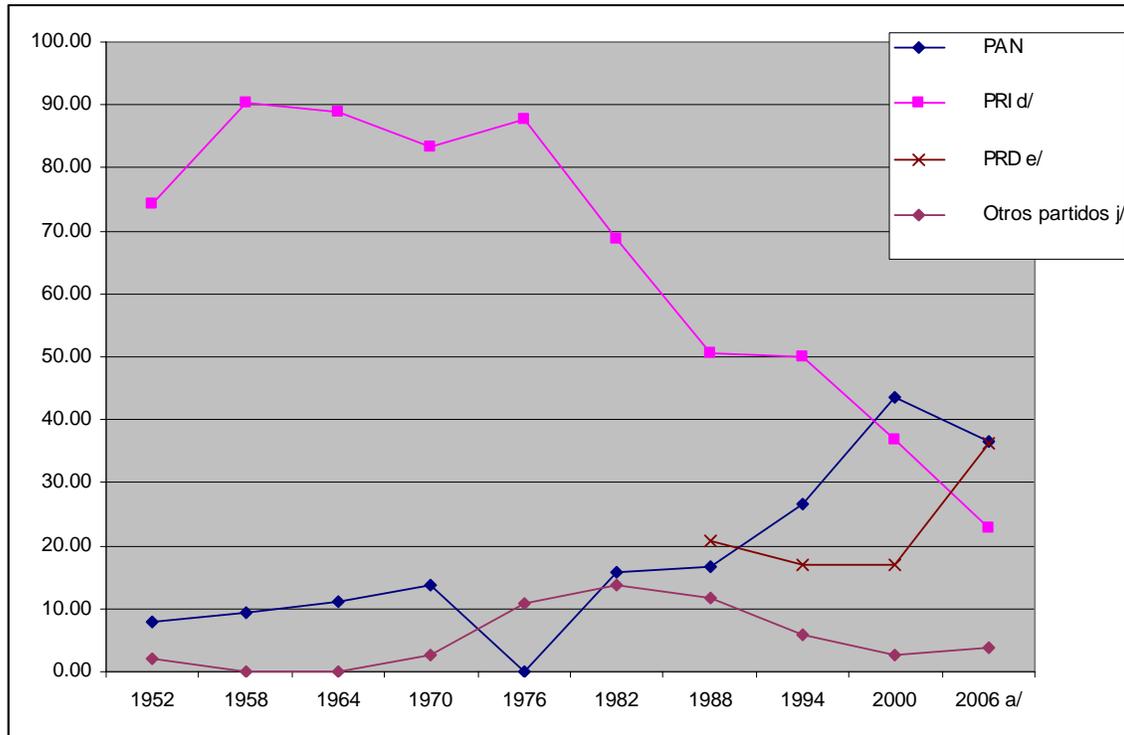
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<sup>18</sup> The 1996 reform granted the Federal Institute of Elections full autonomy from the federal government and institutionalized an agreement for the public financing of political parties. For a detailed description of this reform see Becerra, Salazar, and Woldenberg (1997).

<sup>19</sup> Recent analysis of the negotiations behind the electoral reform of 1996 suggests that internal divisions within the party, the divergence in preferences between the president and the hardliners and the profound dependence of the PRI to public resources explain the support of the PRI (Brinegar, Morgenstern, and Nielson, 2006).

<sup>20</sup> Previous 1997, the main executive authority in Mexico City was appointed by the executive. In 1997, Cuauhtémoc Cárdenas, leader of the leftists PRD and presidential candidate in 1988 and 1994 won the election for major while the PRD won the majority in the novel assembly of representatives of Mexico City.

FIGURE 1. PARTY VOTE SHARES IN FEDERAL ELECTIONS – EXECUTIVE 1952-2006



Source: INEGI Vote on Federal Elections for President per political party, 1952-2006 (Votaciones en elecciones federales para presidente por partido político participante, 1952-2006) URL: [www.inegi.gob.mx/est/contenidos/espanol/rutinas/ept.asp?t=mgob14&c=1910](http://www.inegi.gob.mx/est/contenidos/espanol/rutinas/ept.asp?t=mgob14&c=1910)

In September of the same year the miscellanea for economic deregulation was passed, the PRI leadership passed a series of resolutions implementing a modified version of the unsuccessful reforms of 1990. In the 17<sup>th</sup> National Assembly, priistas restricted the party's presidential candidacy to individuals with certain party credentials. Most importantly, only individuals who had previously held elective office would be allowed to gain the party's nomination; a requirement that no candidate since Luis Echeverria in 1970 has met (Camp, 1999). This left few members of the executive cabinet eligible for the position and opened the door to priistas outside of the president's inner circle. The PRI also decentralized the selection of legislative candidates, giving more leverage to local preferences

The president's response to the new requirements for presidential candidates was to distance himself from the process and to encourage an open primary as the principal mechanism for candidate selection. Four competitors and two front-runners emerged from the open nomination process. The front-runners were Francisco Labastida, a former secretary of agriculture and government and former governor of Sonora (according to journalistic accounts, Zedillo's preferred candidate) and Roberto Madrazo,

governor of Tabasco and political adversary of president Zedillo.<sup>21</sup> There were two immediate consequences of the new process. First, potential contenders were forced to develop new political alliances; and second, political contenders were forced to position themselves with regard to the Salinas and Zedillo administrations. The intense competition was evident in a televised debate among the four contenders during which Madrazo and Labastida exchange harsh comments.<sup>22</sup> After the debate—one of the few opportunities for all candidates to gain national attention—the opinion polls were almost evenly divided between Madrazo and Labastida. While one survey showed Madrazo leading Labastida by 37.7 to 29.1%, a second survey conducted at the same time showed Labastida leading Madrazo by 34 to 26% to Madrazo (Source-Mex, 1999).

The first open primary was held on November 7, 1999. Francisco Labastida won with 90% of the 300 electoral districts. His main contender Roberto Madrazo won 20 electoral districts. The other two candidates, Manuel Barlett and Roque Villanueva, won 6 and 0 districts, respectively. The disparity between the prior polls and the final results could be explained by the concentration of the population and districts in the major urban areas that strongly supported the Labastida nomination.<sup>23</sup> However, the PRI electoral problems did not end there. Even though Labastida won with a substantial majority the internal nomination, he also faced an increasingly powerful challenge from the PAN candidate Vicente Fox. By early January, polls showed steady support for Labastida, but growing support for Fox. For the first time in more than seven decades, the electoral success of the PRI was in doubt.

We argue that this electoral and political environment helps explain the submission and approval of the important reform to the Mexican Administrative Procedures Law of 1999. Electoral success by the PRI's candidate would not guarantee the continuity of reform. Neither would the potential victory of the opposition candidate from PAN. The Administration appears to have reacted to these possibilities when President Zedillo submitted to Congress a proposal to reform the LFPA just one year before leaving office (November 1999).

In justifying this new set of reforms, Zedillo explained that while previous legal reforms had significantly improved the efficiency of the federal government by creating a transparent regulatory framework for bureaucratic

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<sup>21</sup> The other two candidates were Manuel Barlett, former governor of Puebla and main contender of Carlos Salinas in the presidential succession of 1988; and Roque Villanueva, former legislators and president of the PRI.

<sup>22</sup> Roberto Madrazo expressed: "The official candidate [Labastida] just wants to continue with the same failed policies we have now [...] And that's logical, because he represents everything you and I want to change." In response, Labastida "called Madrazo "two-faced," saying the Tabasco governor presented one position to foreign investors and another to the Mexican public on such matters as the privatization of the state-run oil company PEMEX" (Source-Mex, 1999). Despite the epithet that Labastida was the "official candidate" accounts show that Mr. Labastida held important divergences in policy preferences with president Zedillo.

<sup>23</sup> More importantly, Labastida had received the pledge of the National Confederation of Workers which has a strong electoral power in urban areas.

activities, there was still a need to institutionalize some practices that his government was carrying out by executive order (rather than by constitutional or legislative mandate). Examples included the publication of proposals for new regulations and regulatory impact assessments. In sum, the reform of 1999 was an attempt to safeguard the advances of previous years. The proposal was approved without debate in the Senate early December 1999 and likewise in the Chamber of Deputies three months later.<sup>24</sup>

The proposal recommended seven major changes. First, it included all administrative acts related to public bids, concessions, social security, public works and official norms that were formerly excluded from any regulation. Second, it expanded the LFPA jurisdiction to cover all processes related to “authority acts” of state enterprises. This change was needed because some of these entities (e.g., Pemex) grant powers or recognize rights in specific matters and in so doing behave as any other agency of the central administration. Third, the proposal clarified and extended the definition of administrative procedures. Fourth, it required each agency to submit a regulatory improvement plan every two years. Fifth, it established explicit sanctions for public servants that fail to fulfill the new requirements or that fail to submit the proposal for regulatory improvement. Sixth, the proposal also shortened the period for a governmental response from four to three months. Finally, and perhaps most important, it transformed the Unit for Economic Deregulation of the Ministry of Trade and Industrial Development (UDE) into a new agency with full autonomy, named the Federal Committee for Regulatory Improvement (Comisión Federal de Mejora Regulatoria, COFEMER).

The President intended to make COFEMER responsible for the promotion of transparency and efficiency in the development, implementation and enforcement of all federal regulations. He proposed a Council for Regulatory Improvement as the major authority of COFEMER, whose principal responsibilities were to serve as liaison between the social, private, public and academic sectors and, more important, to review the regulatory framework and provide the executive with recommendations for improvement. The COFEMER was also tasked with overseeing the periodic publication of all regulatory proposals, regulatory impact assessments, and reports.<sup>25</sup> The last legislative reform, strengthening the LFPA, was aimed at enhancing control over the bureaucracy.

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<sup>24</sup> 67 yeas and 7 abstentions in the Senate; and 367 yeas and 5 abstentions in the Chamber of Deputies.

<sup>25</sup> Federal Commission of Regulatory Improvement was created as an autonomous institution accountable to Congress. The directive board of the FCRI is made of the ministers of Economy (president), Treasury, Public Administration and Labor, a representative from the Social Security as well as the responsible of the Office of Legal Advisors of the Presidency (*Consejería jurídica*). The following are “permanent guests of the FCRI (advisors): the governor of the Central Bank, the president of the Federal Commission of Competitiveness, the Attorney Federal for the Defense of Consumers, and all other public servants designed by the President. There should be at least five

## Conclusion

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Our central argument is that presidents support APAs in order to manage intra-branch control problems. The theory identifies the conditions under which presidents seek bureaucratic control via administrative procedures. The three conditions are: When presidents confront divergent preferences (1) within their party or with coalition partners, (2) with the legislature and their cabinet appointment and dismissal powers are constrained, or (3) with entrenched bureaucrats they cannot fire.

The Mexican APA occurred in a context of a reconfiguration of the role of the state. First, the APA was passed as strategy to reinforce the structural transformations needed to reinforce new economic policies. However, these policies generated opposition among the most traditional bastions of the party. The dissatisfaction within the party grew stronger with the declining performance of the PRI in national and local elections. As a consequence, in the second half of the nineties, the Mexican president not only had to face an uneasy federal congress (which constrained his ability to advance his agenda), but also a (some times recalcitrant) party. To handle the economic situation, the president needed bureaucratic discipline; however, he confronted sectors of the bureaucracy with vested interests in the old policies that were tied to traditional politicians.

Carlos Salinas supported the 1994 LFPA because it included procedures designed to speed up economic reform and also because it constrained the discretionary ability of some bureaucratic offices. The need to cope with economic emergencies explains the first reform of 1996. However, in 1999, Zedillo and his party saw the writing on the wall; the PRI was losing electoral ground and feared losing power in upcoming presidential elections. Moreover, victory of the party's candidate was no longer a guarantee of continuity. In this political environment, Zedillo wanted to ensure that certain policies would outlive his administration; thus in order to manage the same bureaucrats who began implementing his economic policies, he supported the 1999 amended LFPA, which included extensive procedures.

In focusing on the case of Mexico's APA, we analyzed a reform law that on the surface seems unlikely to have been the *best* solution to problems of bureaucratic control. After all, administrative procedures tend to slow down policy implementation, which would appear contrary to the interests of an incumbent president. However, presidents, especially in developing democracies, sometimes have limited control over the governments they nominally head. This was the case for Zedillo, who confronted entrenched bureaucrats and party factions resistant to his reform policies. We argued that

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representatives of the business sector and one for each of the following sectors: academic, labor and agriculture at the national level (Art. 69f). The FCRI will have one executive director appointed by the President.

when presidents confront conflict within their own branch, they will likely support APAs as a “best available”, means of changing, or lock in, the direction of policy.

There are some pending questions, mainly with regard to the real impact of the APA in policy implementation. This paper is just one attempt to answer the theoretical question about the conditions under which presidents, like Salinas and Zedillo, will favor strict administrative procedures, even though such procedures limit their own freedom of maneuver.

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