

# A Way Out of Hyper-Reformism? A Project of Constitutional Reorganization and Consolidation in Mexico

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Mexico has one of the world's oldest and most amended constitutions: its 99-year old constitution has been amended 642 times. *De jure*, Mexico's constitution is pretty rigid: amendments require three-quarters of the present members of congress and approval of the majority of the states' legislatures. During the hegemonic-party period, the PRI had unilateral control over all the institutions whose votes are required to amend the Constitution. Interestingly, and contrary to all expectations, the rate of constitutional reform increased with political pluralism, and it skyrocketed with transition to democracy. Just in the last two presidential terms (2006-2015), the constitution has been amended 200 times. This extreme pattern of constitutional change, known as *hyper-reformism*, is widely recognized as problematic by the Mexican legal community.

In this post, I present a possible way out of hyper-reformism: a project of constitutional reorganization and consolidation commissioned by the Chamber of Deputies in 2015 to two constitutional scholars of [the Institute of Legal Studies of the National Autonomous University \(IIJ-UNAM\)](#), Héctor Fix-Fierro and Diego Valadés, which is now being discussed by the major political parties. The project is available in English in the CCP [here](#). I will proceed as follows: First, I will briefly describe the constitutional problems that hyper-reformism has created; second, I will present the project of constitutional consolidation and how it aims to address them. Finally, I will briefly note some of the questions this project has raised.

## 1. The problematic consequences of hyper-reformism in Mexico

Hyper-reformism in Mexico is the result of wide political agreement among the three main political parties.<sup>[1]</sup> In this sense it has been inclusive, and arguably it has had several political benefits. Nevertheless, it has also produced high costs for constitutionalism in Mexico: the constitution has become a very long, disorganized, obscure, inaccessible, at times inconsistent, and ever-changing text.

From 2006 to the present, the Mexican Constitution has increased by more than twenty thousand words (i.e. it has incorporated almost as many words as it originally had). The current text contains more than *three times* the number of words it had when it was enacted in 1917.<sup>[2]</sup> Importantly, much of this growth is the result of the introduction of regulatory articles. The constitutional text has also become disorganized and unsystematic: piecemeal, continuous constitutional reforms have broken the structure of the original text. For instance, the first chapter on human rights contains many articles on governmental agencies (e.g. the Central Bank). Moreover, the Mexican Constitution uses very heterogeneous and often obscure language resulting from the many cuts and insertions added over decades. Finally, the instability of constant changes makes it hard to even understand what is in the constitution. In sum, hyper-reformism has produced serious epistemic obstacles for the regular citizen and even for legal practitioners: knowing and understanding the constitutional text is very challenging. This has alienated citizens and arguably has made the constitution less efficacious.<sup>[3]</sup>

## 2. Project of Reorganization and Consolidation of the Mexican Constitution

The project of reorganization and consolidation of the Mexican Constitution aims to respond to the constitutional problems that hyper-reformism has created without altering the substance of the constitution. In the words of its

authors, "...the text that results from the proposed exercise of reorganization and consolidation will be the *same existing constitution*,"<sup>[4]</sup> but streamlined. The project has the following general characteristics:

1. It preserves unaltered all the rights, their restrictions and exceptions, as well as the method of selection or appointment and the powers of the three branches of government.
2. It includes a new layer of laws that is located (in terms of legal hierarchy) below the constitution but above ordinary laws. These organic laws are called *Constitutional Development Laws* (CDL). The procedure for their change requires the approval by two-thirds of the members present in both houses of the Congress, as well as the favorable opinion of a majority of the Supreme Court (*prima facie* a more flexible procedure than that of constitutional amendment). The president has no veto over these CDLs.
3. The consolidation and reorganization of the constitution will transfer all provisions that are regulatory (e.g. those that formulate public policies) to the CDL level.
4. The reorganization process relocates constitutional provisions not made into CDLs into the articles considered most appropriate in order to attain a well-structured text. This exercise is done without altering the total number of articles (136), and it will preserve the location of articles that are emblematic of the constitution (e.g. Article 3 on education, or Article 27 regulating land ownership).<sup>[5]</sup>
5. The consolidation of the constitutional text also implies summarizing and clarifying long and/or obscure provisions, eliminating redundancies, and improving grammar and punctuation.

The reorganized and consolidated text (as of July 2015) is 26.1% shorter than the original text. It is noteworthy that, if successful, this project would not only produce a clearer, shorter, more systematic constitutional text, but it would also transform the dynamic of constitutional change in Mexico. This aim would be attained by the introduction of the CDLs, which would remove from the constitution the provisions that have driven most of the amendments after democratization. For this project to become law, the CDL and the consolidated and reorganized constitutional text will need to be passed following the current amendment procedure.

### 3. Questions for debate

The project has raised numerous interesting questions, both theoretical and empirical. <sup>[6]</sup> To conclude, I want to highlight some of these questions: First, to what extent is the resulting constitution "the same Constitution," as the authors of the project claim? What is the real scope of the proposed change? And, if the transformation is large, is the amendment procedure the appropriate way to adopt it? Moreover, is the reorganization and consolidation of the constitutional text sufficient to counter the negative effects of hyper-reformism on the Mexican Constitution? Some critics of the project have argued that hyper-reformism has created deep inconsistencies that reach the substance of the text, and that therefore the only adequate answer to it is to enact a new constitution. To this criticism, the supporters of the project respond that initiating a constituent process is not currently feasible politically, and that even granting that the consolidated and reorganized constitution would be sub-optimal, it would be an improvement over the *status quo*.

Next year the Mexican Constitution will be 100 years old. This anniversary is seen by many as a window of opportunity to transform the problematic dynamics of Mexican constitutional change. Whether this opportunity will be taken remains to be seen.

**Suggested citation:** Andrea Pozas-Loyo, *A Way Out of Hyper-Reformism? A Project of Constitutional Reorganization and Consolidation in Mexico*, Int'l J. Const. L. Blog, Mar. 2, 2016, at: <http://www.iconnectblog.com/2016/03/a-way-out-of-hyper-reformism-a-project-of-constitutional-reorganization-and-consolidation-in-mexico>

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<sup>[1]</sup> Casar, María Amparo and Ignacio Marván (2014): *Reformar sin mayorías. La dinámica del cambio constitucional*

*en México 1997-2012*. Mexico: Taurus.

[2] Fix-Fierro Héctor, Diego Valadés and Daniel Marquez, “Toward the Reorganization and Consolidation of the Text of the Constitution of the United Mexican States of 1917. Introductory Essay” Paper to be presented at the seminar “Constitutional Change and Efficacy: the Case of Mexico’s Hyper-reformism.” Institute of Legal Research (IIJ-UNAM) on November 20, 2015, at <http://comparativeconstitutionsproject.org/wp-content/uploads/Introductory-Essay.pdf?6c8912>.

[3] Pou Francisca (2015) “Hyper-reformism and constitutional inefficacies in Mexico” paper presented at the seminar “Constitutional Change and Efficacy: the Case of Mexico’s Hyper-reformism.” Institute of Legal Research (IIJ-UNAM) on November 20, 2015.

[4] Fix-Fierro et al., *supra* note 2.

[5] For a helpful graph of the reorganization click [here](#).

[6] The consolidation project has been debated on a series of seminars and workshops. The questions that I highlight here were among those most debated in a seminar I co-organized with Tom Ginsburg in November 2015, that was fortunate to count with participants such as Hugo Concha, Zach Elkins, John Ferejohn, Héctor Fix-Fierro, Pasquale Pasquino, Francisca Pou, José María de la Serna, and Alberto Simpser, among others.