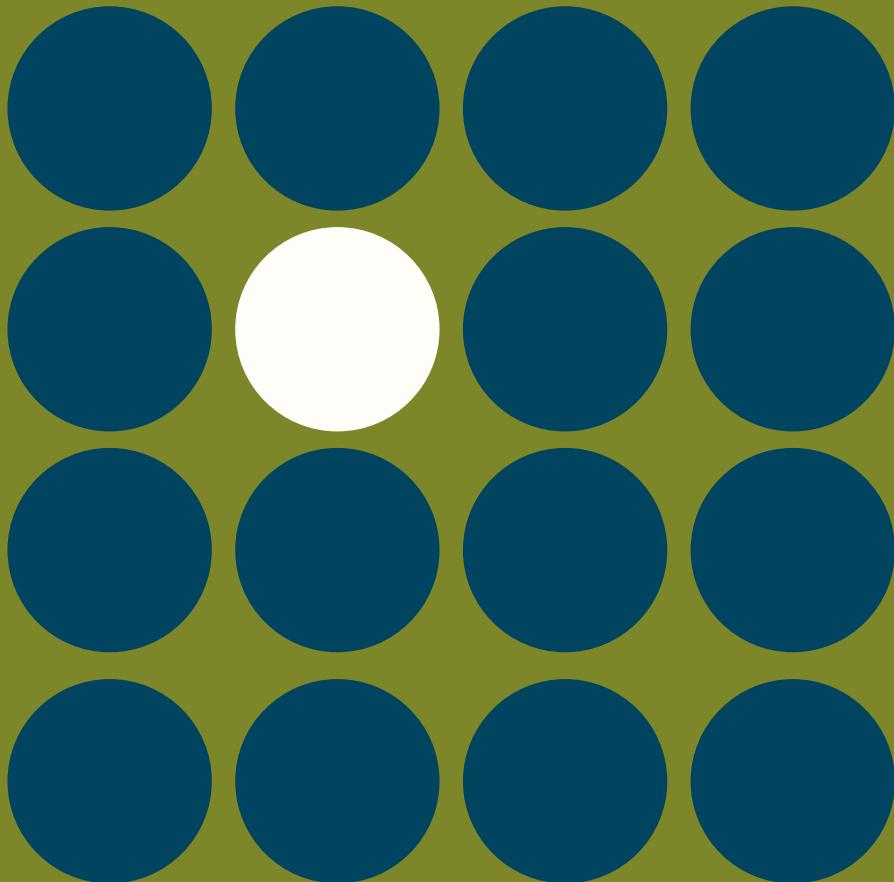


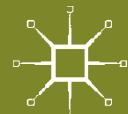
# MORALITY, GOVERNANCE, AND SOCIAL INSTITUTIONS

REFLECTIONS ON RUSSELL HARDIN



*Edited by*

*Thomas Christiano, Ingrid Creppell and Jack Knight*



Thomas Christiano • Ingrid Creppell •  
Jack Knight  
Editors

# Morality, Governance, and Social Institutions

Reflections on Russell Hardin

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# Assessing Constitutional Efficacy: Lessons from Mexico's Hegemonic Party Era

*Andrea Pozas-Loyo*

## INTRODUCTION

Mexico was governed by a hegemonic party system centered in a powerful executive from 1929 to 2000 when it lost the presidential election. During these 70 years, the PRI (*Partido Revolucionario Institucional*) had control over the administration, the Federal Congress, the state governments, and the judiciary. The president was the cornerstone of a well-disciplined political system: he was the head of the government and the head of the party. The president had the political capacity to go around some provisions of the 1917 Constitution without political opposition,<sup>1</sup> or rather to amend much of it due to the PRI's supermajoritarian legislative control.<sup>2</sup> Nevertheless, this does not imply that in this period the president could transform in an

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For Russell Hardin, in memoriam.

His generosity and integrity both academic and personal have been, and will continue to be, a motivational force.

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arbitrary fashion *any* constitutional article. In particular, during this president-centered era, Article 83 of the constitution that establishes a 6-year presidential term without reelection was neither altered nor violated, by any president. Without doubt this constituted a very strong constraint on power on otherwise powerful individuals. Why presidents could not change Article 83 nor violate it? Was Article 83 efficacious? How can we know? And, what lesson can we draw from this case about how to assess constitutional efficacy in general?

To answer these questions, I analyze President Miguel Alemán's (1946–1952) unsuccessful attempt to seek reelection. In particular, my account focuses on answering, “Why President Alemán failed?” Why was not he able to change or go around Article 83 to reelect himself or extend his tenure as he and many other important politicians at that time so wished? I argue that the mechanisms that protect a constitutional norm from ad hoc change or violation and their relation to the constitution are the key to assess the norm's efficacy. I show that understanding those mechanisms enables us to evaluate whether and to what extent Article 83 was efficacious in Mexico at the end of President Alemán's tenure.

The reminder of the chapter has four sections. In the first one, I present and discuss President Alemán's unsuccessful attempt to change the constitution to be reelected for a second term. My account focuses on the determinants of his failure, that is on the mechanisms of constitutional enforcement at play. In the second section, I discuss whether and to what extent Article 83 was efficacious and reflect on constitutional efficacy in autocracies and on how to assess it more generally. I claim that to determine the degree of constitutional efficacy of a constitutional norm, it is necessary to identify the mechanisms of constitutional enforcement and their relation to the constitution. As a generalizable test, I distinguish three levels of constitutional efficacy based on the relation between the mechanisms of constitutional enforcement and the constitution: (1) cases of parallel enforcement mechanisms, where there is mere text-reality coincidence; (2) cases of exogenous constitutional enforcement, where the constitution plays an important role (i.e. functions) but it is not strictly efficacious; and (3) cases of endogenous constitutional enforcement, where there is strict constitutional efficacy. In the third section, I briefly conclude.

## ENFORCING ALTERNATION OF POWER UNDER AUTOCRACY: ALEMÁN'S FAILED REELECTION BID

Mexican Constitution of 1917, Article 83: [...] The citizen who had performed as President of the Republic, popularly elected or under the interim or alternate character, or provisionally takes the office of the Federal Executive, in no case and under no circumstances may perform again this position.

### *On the Principle of No Reelection in Mexico*

After 7 years of a bloody war, the 1917 Constitution became the best political answer to return to the constitutional order, achieve peace, and consolidate the constitutionalist coalition victory in a country where there were still many uncertainties (Marván 2017). Whereas in the constitution-making process there were some disagreements (Marván 2017, 122–152), the principle of no executive reelection was unquestionable. To understand the significance of this principle in Mexico's history, some context is necessary. Since the nineteenth century, there was an extended belief that presidential reelection led to dictatorship. Hence, its prohibition was present in the *Plan de Tuxtepec* (1876) that had been Porfirio Díaz's ideological manifest; however, once president he betrayed his commitment and was reelected for nine periods, 30 years. Against this background, and with the motto “effective suffrage and no reelection,” the Mexican Revolution started in 1910, forcing Díaz into exile. Thus, the unchallenged absolute prohibition of executive reelection in the 1917 Mexican Constitution: it was considered a necessary institution to leave behind the great evils of strong men's dictatorship and political instability.

After a failed attempt in 1925, in 1927 and 1928, General Álvaro Obregón (president from 1920 to 1924) was able to amend Article 83 to enable non-consecutive reelection allowing him to run for a second term, but as would be stressed when President Alemán attempted reelection, Obregón was assassinated before taking office. In 1932, the National Convention of the National Revolutionary Party, predecessor of the PRI, proposed to reform Article 83 to its original form, with an absolute and clear prohibition of presidential reelection. Since then it has never been amended again (Barquín Alvarez 1990, 195–198). Nevertheless, from 1928 to 1934, Article 83 was hardly efficacious, since President Plutarco Elias Calles had de

facto kept the executive power while placing political puppets in the presidency.

Everything changed in 1934, when General Lázaro Cárdenas was elected president. President Calles had chosen General Cárdenas for the presidency, believing that he, as his predecessors, would be easily manipulated. President Cárdenas turned up to be an extremely capable politician; he acquired independence political force, eventually forcing Calles to exile in the United States in 1936. Lázaro Cárdenas was the first president to de facto hand in the presidential power at the end of his term; after him the absolute prohibition of executive reelection has never been violated nor changed.

President Cárdenas consolidated a political system that enabled the hegemony of a single party until 2000. In particular, even though he had amassed great political power, respect, and popularity, when his tenure came to an end, he did not seek reelection and instituted the intra-party mechanism by which Mexican presidents would be de facto selected until 1994: the serving president's last function was to choose the next presidential candidate (knowing that he would be elected) after consultation with the ideologically very diverse power groups that formed the party (Cosío Villegas 1975). So in 1940 General Manuel Ávila Camacho was elected president. President Cárdenas had picked him to be the official candidate, over his closest allies, who would have continued his policies. Cárdenas arguably sensed that a more center-right politician would enable political stability given the inconformity his leftist policies had caused among powerful social and political sectors. In this way starting with President Cárdenas, there was a periodic rotation of presidential power among the very different groups that constituted the hegemonic party. As Casanova explained in his 1985 account of the hegemonic party system, "Once the selection of the presidential candidate has been resolved, the new composition of forces produces a renovation of the directive positions, generally permitting a more realist reflection of the nature of the power coalition" (Casanova 1985, 70).

Miguel Alemán was the first civilian to become president after the Revolution, in 1946. During his tenure "authoritarianism was modernized" (Medina 1982). He strengthened the mechanisms of power control within the party,<sup>3</sup> over Congress, state governments, and socially active groups such as unions and organized peasants, using force at times (Medina 1982; Torres 1984; Servín 2002). For this reason, and for his support to the United States during the Cold War, he was resented by the left wing of the party, linked to President Cárdenas. In words of Lombardo

Toledano, a very influential union leader who, as we will see, strongly opposed Alemán's reelection:

During Alemán's government the workers did not dare to do large strikes because Alemán was completely on board with the cold war...it was the worst period we have went through...President Alemán is historically responsible for intervening for the first time in internal government of unions. It was he who ordered the military occupation of the railway union, deposed the organization's executive committee, and later did the same with the great industrial unions. (Wilkie and Monzón 1969, 314)

In the last months of 1949, after the death of Gabriel Ramos Millán who many thought would become the PRI presidential candidate, some of the closest allies of outgoing President Alemán launched an open campaign to promote his reelection. In what follows, I present a brief chronologic account of the months that this campaign lasted, from November 1949 to October 14, 1951. My aim is to answer why the attempt to change the 1917 Constitution to enable Alemán's reelection failed? Through which mechanisms was the constitution enforced? Can we claim Article 83 efficacious, and why?

### *The Reelection Campaign*

The first point I want to defend is that the attempt to amend the constitution to enable executive reelection can be ascribed to President Alemán. In other words, that it cannot be considered a campaign organized entirely by his subordinates without the president's support, as he and other politicians claimed at the time, and later (e.g. Alemán 1987, 242, quoted in Chanes Nieto 1993, 154). This point is important for my account on Article 83's enforcement not only because it takes as a premise Alemán's support to such a constitutional change but also because the mere fact that President Alemán did not explicitly accepted that he backed this very public campaign (encouraged by his behavior) already tell us that the constitution matter in some important way.

As Przeworski puts it, at a minimum the law can matter as does a pole streetlight: it may not alter the destination you want to reach, but you need to at least circumvent it (personal communication). This was the case of Alemán's public discourse on reelection early in this campaign, at a time he did not know whether it would succeed: Alemán publicly claimed respect for the prohibition on reelection while his and his

subordinates' behavior aimed at circumventing it. If Article 83 of the constitution would not have mattered, if it would not have had any normative weight at all, Alemán would have publicly recognized and supported his amendment project, as he did with the other 20 constitutional amendments his administration successfully passed (Fix-Fierro and Valadés 2016). This was not the case with regard to Article 83. In December 1949 he declared: "I have never thought of the possibility of a reelection in my favor. I do not encourage actions that are in disagreement with the legal principles that govern us" (Chanes 1993, 155).

As several historians (e.g. Cosío Villegas 1975; Chanes 1993; Sevin 2002) and politicians of that period (e.g. Wilkie and Monzón 1969) have argued, claiming that Alemán had nothing to do with the attempt to change Article 83 of the constitution is unfeasible: in this period no executive official would have dared to take such an important decision and back it with such a very well-organized campaign without the presidential support. In addition, the two leading figures of the campaign were high-ranking officials very close to the president: Santiago Piña Sorio, the Director of the Joint Chief of Staff (el jefe del Estado Presidencial), and Rogerio de la Selva, the Private Secretary of the Presidency (Secretario Particular de la Presidencia) (Cárdenas 1973, 440; Wilkie and Monzón 1969, 365; Servín 2001, 120; Medina 1982, 163). Moreover, Alemán's political behavior and how it was interpreted at the time backs the hypothesis that he was behind this campaign.

The press played a central role in the PRI Hegemonic Era: it was the space where many of the political messages among different political groups were sent. As I have already mentioned, the left wing of the party, linked to President Cárdenas, opposed President Alemán's policies and this opposition was crucial for the enforcement of Article 83. By the end of 1949 and the beginning of 1950, the campaign to amend the constitution was well known, and not surprisingly, the tensions between Cardenists and Alemanists were being displayed in the national press.

In an extremely uncommon public display of his political opinions, former President Cárdenas published a declaration against reelection in a national newspaper. In his diary, he selected the following paragraph from such publication:

Lessons from History oblige us to maintain the antireelectionist tradition, the vitality of our people requires the renovation of his men over any rule by 'a strong men' (*caudillaje*) that is so detrimental to democratic effectiveness and

to the progress of the nation. In this way, I consider myself respectful of these traditions that nurture the civic life of our own people. (Cárdenas 1973, 378–9)

This publication was immediately followed by a series of newspaper reports with harsh criticisms of Cardenas' administration characterizing it as dishonest and irresponsible (e.g. Mendieta Núñez 1949). These publications were perceived as coming from Rogerio de la Selva, the Private Secretary of the Presidency (Servín 2002, 133). The tension grew after the PRI's National Assembly in February 1950, in which several institutional changes were enacted to strengthen party discipline in face of the coming presidential succession such as the preclusion of local civic committees for the discussion of party candidates (Servín 2002, 129).

However, the signals of party union and discipline did not stop the publicity of the confrontation. On April 15, 1950, 25 former Cárdenas' collaborators published a whole page in *El Universal*, a leading national newspaper stressing that President Cárdenas "had strictly followed the principles of the Revolution" (i.e. he had not reelected himself) and that being a Cardenist meant "the identification with a presidential term...characterized by the loyal compliance with the constitutional commands that give structure to the nation..." (Angulo et al. 1950). It is important to note that several of the signers were still very important figures in the armed forces and the public sphere; therefore, such a publication carried an important political weight. Cárdenas noted in his diary on April 17th that he had been told that General Jara had organized the publication, and that former President Ávila Camacho (1940–1946) was informed of it before its publication. As we will see, former presidents played an active role as enforcers of Article 83.

Five days later, on April 20 several prominent politicians from the left visited the president of the PRI (General Taboada)<sup>4</sup> "to express their conviction that the 'revolutionary left' could only be part of the PRI, that the rumors that they wanted to create a new political organization were unsubstantiated." In such a disciplined party, just acknowledging "rumors" of a possible split was highly unconventional. Interestingly, as Servín notes, Charles Burrows, analyst of the US Department of State, interpreted the visit to the PRI president in the aftermath of the publication of the "Cardenist manifest" as a strategy to stop reelection "in which former President Cardenas may be involved" (Burrows NAW, RG59, 712 00/4-1850, quoted in Servín 2002, 133).

By June 1950 the reelection campaign acquired more intensity. In April Congressman Rafael Ortega, General Secretary of the Mexican Confederacy of Workers and Peasants (*Confederación Obrera y Campesina de México*), proposed in the assembly of that organization to explicitly support President Alemán's reelection, and the proposal was approved by acclamation, "in the following months groups with similar proposals appeared in different parts of the country" (Alemán 1987, 386). On June 3, the National Confederation of the Family made a formal request to the Federal Congress to amend several provisions of the constitution in order to enable the reelection of President Alemán (Hoy June 3rd 1950; Servín 2002, 121).

During the summer of 1950, two political parties were formed to support President Alemán's reelection. In June the formation of the Political Party "Constitutional Article 39" was announced. Article 39 of the 1917 Constitution states: "The national sovereignty is vested, originally and essentially, in the people. Public power comes from the people and it is institutionalized for the people's benefit. The people, at all times have the inalienable right to change or modify its form of government." The leaders of the new party claimed that this Article constitutionally grounded the possibility of reelection if backed by a popular mandate. Among the leaders of this party were Guillermo Ostos who was part of Alemán's cabinet (Medin 1990, 163). Additionally, in July the National Reelectionist organization tried to register as a party; according to a report of a British foreign office analyst, the leaders of the organization claimed to have 45,000 members including 3 generals, 2 senators, and 26 congressmen among other public servants (Fisher, PRO, FO371 quoted in Servín 2002, 122).

Moreover, in 1950 several Congressmen such as Alfonso Reyes Hernández explicitly backed Alemán's reelection. In this context, some governors opportunistically also sent a signal of support. This was the case of the governor of the state of Morelos who passed a law extending the presidential term in his state for 2 years. This law was declared unconstitutional by the Supreme Court, of course, since it was intended merely as a signal of political support not a legal norm that could be taken seriously (Cosío Villegas 1975, 119–120). The president of the PRI, General Taboada, threatened to expel from the party whoever supported those reelectionist parties, but the public display of political strength backing constitutional amendments in favor of presidential reelection was already made.

In May 1950, President Alemán's public exposure remarkably increased. He toured the south of the country, a series of performances that were

described by an analyst of the US State Department and by the British Foreign Office as a “candidate’s tour during an electoral campaign” (Burrous, NAW, RG59, 712.00/6-650; Fisher PRO, FO371 quoted in Servín 2002, 122). It is noteworthy that campaign tours were very important during the PRI Hegemonic Era. Of course they did not aim to gain the popular vote in a competitive election, but they were crucial for the PRI’s candidate since through them he consolidated links and created two-way commitments with the states’ political elite (Pozas-Horcáspitas 2009). That tour was followed by another presidential tour in the north of the country. Both tours included a large number of cabinet members and other important political figures. In Monterrey, the second most important city in the country, the walls, and principal avenues were covered with publicity in favor of President Alemán’s reelection (Servín 2002, 122–24).

Last, but by all means not least, the campaign in favor of Alemán’s reelection targeted the Armed Forces. On June 11, 1950, Cárdenas wrote in his diary:

Today Major General Federico Montes with whom I have an old friendship visited me, and told me that he was required by the chief of the Security Services of the Republic’s Presidency, Marcelino Inurreta, to sign a declaration of allegiance to President Alemán and a commitment to backup any constitutional reform in favor of re-election or presidential tenure extension. He also told me that he saw the document signed by the Generals Pedro Villaseñor, Lucas González, Aguiile Manjarrez, Tomás Sánchez Hernández and others. He added that he and General Alejo González refused to sign. (Cárdenas 1973, 399–400)

Montes also told Cárdenas that he and other generals worried for the state of affairs in the country, that they had decided to take an active role the following presidential election, and that they had told so to President Alemán (Cárdenas 1973, 400).

Before focusing on the responses that the previous behaviors elicited, let me briefly note the international context in which the reelection campaign took place, since, as we will see, it had a significant impact on Alemán’s perceived possibilities to reach his aim. On July 3, 1950, the United States had mobilized its troops to Korea. The beginning of the Korean War and the intensification of the Cold War were welcomed by the right in Latin America. Miguel Alemán was known by his affinity to Truman’s policies, and in this context, it was expected that if successful his reelection would be backed by the United States. In words of Lombardo Toledano<sup>5</sup>:

[The Korean War] was the cause of the political turn to the right that Latin America and of the *Coups d' Etat* [of the period]. Even the President of Costa Rica, doctor Calderón Guardia, who was a catholic, was considered a communist and an armed movement was organized against him. (Wilkie and Monzón 1969, 368)

In his long interview with Wilkie and Monzón, Lombardo Toledano describes a discussion he had with President Alemán that captures the importance of the international context on the reelection attempt.

[When I realized the reelection campaign was for real] I went to talk with Alemán and told him “It is nonsense”. “Why?” he asked, “Because your reelection is not possible, the Constitution needs to be amended.” “Well, but General Obregón was reelected”, he responded. “Those were other historical conditions -I replied- you cannot try it, you will fail, I know why you are attempting to be reelected because President Truman told you and the other Latin-American Presidents that the third war may happen in months...González Videla, President of Chile, declared so to a Brazilian newspaper....” (Wilkie and Monzón 1969, 368)

In this context, the right wing of the PRI felt empowered and the left threatened. There were some editorials asking for action against leftists to fight “Communism” (Cárdenas 1973, 418). There was a growing concern that acts of repression would be “legitimized by the war” (Cárdenas 1973, 417).

### *The Response to Alemán’s Reelection Attempt*

The opposition to any constitutional reform that would enable Alemán’s reelection was clear and strong and came from a diversity of fronts. It was also very public, and while the language maintained the standards of “political correctness” of the regime,<sup>6</sup> the signals and their political weight were by all understood.

On June 17, 1950, General Sánchez Taboada, the president of the PRI, gave a press conference in which he claimed that President Alemán and the PRI were opposed to reelection and that the constitution would not be amended. “The President would maintain his respect for the revolutionary principle ‘effective vote no reelection’” (*Hoy*, June 17).<sup>7</sup> It is hard to overestimate the political significance of this press conference. The very fact that the president of the PRI felt the need to publicly and strongly

oppose any constitutional amendment to permit reelection, a principle that had been taken for granted since Cárdenas, was extraordinary. The cautionary undertone was by no one missed. As we have seen, that summer President Alemán had been touring the country and the reelection campaign was in its higher point gaining impulse by Korean War.

General Taboada was not the only powerful party leader to publicly oppose the possibility of Aleman's reelection. As already discussed at least two generals had refused to sign the letter in support to an eventual constitutional change, and several generals had met with President Alemán to express their concern for the campaign supporting reelection as well as their intent to play an active role in the succession period.

Both President Cárdenas and President Ávila Camacho were also highly respected generals, with many strong ties in the Armed Forces, the unions, and the political elite of the PRI and also of the opposition. To understand the dynamics of the hegemonic party, it is crucial to know that the Mexican political elite was a very dense network, where individuals not only had many ties, but those ties were of different kinds. For instance, during the months that the reelection campaign lasted, President Cárdenas met with President Alemán three times, twice in a dinner with their wives and once in an official event. During these months, Cárdenas also met twice with former President Ávila Camacho and once with former President Ortiz Rubio; he met with several generals, ambassadors, governors, and Congressmen; and crucially, as I will discuss later, he met several times with General Henríquez and with Vicente Lombardo Toledano, both of whom decided to run for president as a response to Alemán's reelection campaign.

Former Presidents Cárdenas and Ávila Camacho met on June 20, when Ávila Camacho stayed overnight at Cárdenas' home in Michoacán. According to Cárdenas' account, they discussed the "reelection issue" and Ávila Camacho expressed his opinion that "despite the reelectionist propaganda that has been undertaken within the official sphere, he considers that President Alemán will [ultimately] reject the insinuations for his reelection..." (Cárdenas 1973, 401). Remember that Cárdenas had "selected" Ávila Camacho as the PRI candidate back in 1940, and that Ávila Camacho had done the same with President Alemán in 1946. Therefore, it is not surprising that Ávila Camacho reassured Cárdenas that Alemán would ultimately respect the no reelection constitutional norm. Nevertheless, as Servín stresses, 2 days later President Ávila Camacho felt the need to make public such "trust," and in a very unusual interview he stated:

I do not believe that in Mexico there will be a new reelection. I know the feelings of President Miguel Alemán and his antireelectionist convictions, therefore the efforts that his collaborators do in this respect...to re-elect him will be useless. Antireelectionism has helped our country in its development, enabling the renovation of men. Antireelectionism must be maintained in Mexico as an example for the whole world, an example that, if followed, would resolve many problems in Latin America...Antirrelectionism is one of the great conquests of the Revolution and without doubt one of the main motors of our economic development. (Excélsior, June 22nd quoted in Servín 2002, 127)

Moreover, according to Gustavo Espinosa Mireles, who was present during the interview, Ávila Camacho noted, “the only one who broke this constitutional prohibition, General Álvaro Obregón, was killed for doing so...” (Servín 2002, 127). While this strong comment was not published, it was noticed. As already mentioned, Cárdenas himself had also broken months before the informal rule that maintained former presidents out of the public eye, publishing in a National Newspaper his opposition to reelection. The extraordinary public statements were arguably only the tip of the iceberg: the PRI political elite was under turmoil.

The reelection attempt created a deep divide within the PRI and activated the opposition. General Cándido Aguilar decided to split from the PRI and agreed to run as an independent candidate for the presidency. General Cándido Aguilar was a respected military officer with excellent “revolutionary credentials”; he was the son in law of Venustiano Carranza (the leader of the Constitutional Army, which won the Revolution and enacted the 1917 Constitution). Cándido Aguilar had been nominated by Alemán to be part of the Legion of Honor of the Mexican Arm Forces and he had important political influence in the states of Veracruz and Tamaulipas.<sup>8</sup>

General Miguel Henríquez Guzmán also decided to split from the PRI, to run for president. He was also a renowned military officer, and his brother was a very successful businessman who put his economic resources behind Henríquez’s campaign. Henríquez campaign was able to mobilize a substantial number of people: by June 1950 there were already 22 Henríquista local committees in 10 states and the capital, and by 1951 the Henríquista movement had presence throughout the territory (Servín 2002, 136). Several important figures from the PRI split from the party and supported Henríquez’s candidacy. Last but not least, Henríquez was a very

close friend of President Cárdenas. There was a generalized perception that President Cárdenas backed Henríquez campaign, even if Cárdenas never explicitly said so. Henríquez often visited the former president, and several members of the Cárdenas family attended Henríquez's rallies, which filled large squares all over the national territory. To make clear how Cárdenas used the ambiguous relation to Henríquez's campaign, and how such ambiguity worried Alemán, it is noteworthy to quote Cárdenas' notes on a conversation he had with President Ávila Camacho in June 1950:

His [President Ávila Camacho's] conversation extended letting me know that "in Mexico" it's been said that friends of mine "proclaim" that they work in favor of general Henríquez with my authorization. And that he feels that Mr. Miguel Alemán is no friend of General Henríquez. I thanked his conversation, and manifested that those versions were natural in the political context in which the country is now, that my apolitical attitude stands invariable. That I am a friend of General Henríquez and that he is as well. (Cárdenas 1973, 401)

In addition to Cándido Aguilar and Henríquez, Vicente Lombardo Toledano also decided to run for president. In June 1950 Cárdenas wrote that Lombardo Toledano had paid him a visit and communicated his decision to take part in the elections:

On the country's politics he spoke about intention of being candidate to the Presidency of the Republic. That he admits he won't win the electoral fight, but [he thinks] . . . it will serve as platform to enhance the faith [hacer fe] in the principles of the Mexican Revolution. (Cárdenas 1973, 400)

Several years later Lombardo Toledano spoke of his candidacy in the following terms: "I knew very well I would not [win] . . . but the campaign opened a perspective that would become a reality in President López Mateos' term" [i.e. a new turn to the left] (James Wilkie y Edna Monzón 1969, 374). Finally, the PAN (*Partido Acción Nacional*), the historical opposition party from the right, nominated Efraín González Luna as its presidential candidate.

By June 1951 the possibilities of a constitutional amendment to permit reelection were vanishing. Probably as a last resource, on September 12, 1950, Alemán's Private Secretary sent General Adalberto Tejada and Gonzalo Vázquez Tejeda to speak with former President Cárdenas. Cárdenas described such visit in the following terms:

...General Tejada told me “Excuse us, Mr. Rogerio de la Selva ...wishes to know which is your opinion on the President’s reelection” ... I made clear ...that they could make it [my opinion] public. I consider that only false friends of President Alemán wish him to be reelected. I recognize enough intelligence in him not to admit his continuity leading the government, and that he will know how to contribute, with his example, to strengthen the democratic principles... that he will not permit that the false theory of indispensable men in power would again be nurtured. ...*Reelection, in the best of cases leads to dictatorship and dictatorship causes violence...Mexico must be guard of new civil wars...* (Cárdenas 1973, 440)

The threat was real. As Cosío Villegas, an influential historian and intellectual of the period, put it:

One can suppose that Don Miguel (President Alemán) weighed in the resistance to his permanence in power and even the serious risk that Cárdenas and other great personalities would decide to move the opposition to the terrain of arms, and that they would have an excellent flag to make a military movement succeed. There was a real proof of such a danger: The candidacy of General Miguel Henríquez Guzmán started to be supported by recognized Cardenists and even by members of the family of the General [Cárdenas]. (Cosío Villegas 1975, 120)

Two days later, Adolfo Orive visited Cárdenas in the name of President Alemán to inform him that the “official milieu” was leaning in favor of the candidacy of Adolfo Ruiz Cortines and that the continuation of President Alemán leading the government will come only in case of an international conflict that affected Mexico (Cárdenas 1973, 441). A month later, the PRI convention nominated Adolfo Ruiz Cortines as its candidate for the presidency for the period 1952–1958.

To close this section, I want to note that the reelection attempt had as one of its many consequences the nomination of Adolfo Ruiz Cortines as candidate for the presidency. Ruiz Cortines was clearly picked as a conciliatory move; he was considered a moderate, earnest, and austere politician who was not close to Alemán, and therefore could built bridges among the different resentful political groups that still constituted the PRI.

## WAS ARTICLE 83 EFFICACIOUS? HOW DO WE KNOW?

In this section I discuss whether and to what extent was Article 83 efficacious and reflect on what lessons can we draw on constitutional efficacy in autocracies and on how to assess it more generally from the case analyzed in detail in the previous section.

### *On Constitutional Change and Enforcement in Autocracies*

The first inference from our case is that the common claim that nondemocratic regimes' dynamics of constitutional change precludes the possibility of efficacious constitutional constraints in those regimes is false (see also Barros 2002, and Pozas-Loyo and Ríos-Figueroa 2017). According to this claim, in nondemocratic regimes the executive always has the capacity to make ad hoc constitutional amendments (i.e. make at will constitutional changes to serve its interests), and therefore the constitution and its constraints cannot be efficacious vis-à-vis the executive's behavior. In Tushnet's words: "the authoritarian leader has lawful power to alter constitutional provisions at will..." (Tushnet 2015: 425).

This claim is an implication of a familiar conceptualization of "authoritarianism": "I take as a rough definition of authoritarianism that all decisions can potentially be made by a single decision maker [and that] those decisions are [...] unregulated by law" (Tushnet 2015, 448). In other words, by this definition, "if the regime is authoritarian, it faces no constraints on abandoning law, courts, and constitutionalism, when doing so would serve the regime's interests..." (Tushnet 2015, 432). Therefore, this argument excludes *a priori* the possibility of efficacious constitutional constraints on authoritarian executives since by definition they always have the capacity to amend the constitutional provisions at will (Tushnet 2015, 425).

The failure of President Alemán to amend Article 83 of the 1917 Mexican Constitution is, I believe, a counterexample to the above argument. As I showed in the previous section, President Alemán *could not change* the constitution to enable his reelection. And therefore, since ad hoc *constitutional change* was not possible regarding Article 83, we can conclude two things: first, that in this case, we cannot *a priori* preclude the possibility of the efficacy of Article 83. And second that the initial claim, which *a priori* denies possibility of efficacious constitutional constraints of the executive in authoritarian regimes, is not generalizable over all nondemocratic cases.

### *Assessing Constitutional Efficacy Using Enforcement Mechanisms*

But was Article 83 efficacious? How can we know? Of course, the first step to answer these questions is to provide an account of “constitutional efficacy.” I have elsewhere discussed this issue at length, claiming that when constitutional roles are invested in an individual, she receives special kinds of motivations, which I call “constituted motivations.” The account of constitutional efficacy I defend is understood to be the prevalence of those motivations in the behavior of individuals holding constitutional roles (Pozas-Loyo 2012).<sup>9</sup> Now, of course, there is an observational problem to assess constitutional efficacy, so understood: if it is determined by the kind of motivations that cause constitutional role holders to behave in agreement with constitutional norms, how can we know if a given constitutional norm is efficacious if we can only observe whether behavior is in agreement with the norm, but have no access to what motivated such behavior? In other words, how can we assess constitutional efficacy given that motivations are not observable and behavior consistent with constitutional norms can be motivated by very different factors?

Here I want to argue that through the study of the enforcement mechanisms of constitutional norms and their relation to the constitution, we can approximate the nature of the motivations behind behavior consistent with constitutional mandates. In other words, I claim that to assess the degree of constitutional efficacy of a constitutional norm, we can approximate the motivations by identifying the mechanisms of constitutional enforcement and their relation to the constitution. By “enforcement mechanisms of constitutional norms,” I mean the factors that encourage behavior consistent constitutional norms, that is to say, the sources of costs or benefits that when known or believed by a person produce individual motivations, which lead to a behavior in agreement with constitutional prescriptions.

To clarify this point, let me identify the enforcement mechanisms that were at play in Alemán’s failure to be reelected. In the account of President Alemán’s impossibility to ad hoc amend or violate Article 83, two enforcing mechanisms can be identified: first, those linked to the intra-party opposition to Alemán’s reelection led by President Cárdenas, President Ávila Camacho, and General Taboada. Given the political and social capital of these three leaders, particularly their strong connections with the Armed Forces and diverse social and political organizations, their capacity to infringe huge costs over Alemán was considerable, and Alemán knew so. Moreover, they were emphatic and public about their opposition to

reelection, and the threatening undertones sent the message that action could be expected if Article 83 was not respected.

The second kind of enforcement mechanisms came from outside the PRI. In particular, the opposition formed by former members of the party who had decided to split from it were capable of producing high costs over Alemán. As we have seen, Henríquez candidacy was considerably popular, and more importantly it had the possibility to grow a lot if the left wing of the PRI decided to unify behind it in the face of a constitutional violation or amendment to enable presidential reelection. Such move was not unfeasible given that Henríquez was close to Cárdenas, and the latter still was the moral authority of the left. Moreover, the splits the PRI suffered were a vivid reminder that the party's integrity depended on the possibility of power alternation among the different ideological groups. Only as long as the alternation of presidential power within the party was possible (i.e. as long as no president sought reelection), no group would break with the party and all would respect the candidate selection. In sum, these two enforcement mechanisms arguably grounded in President Alemán a justified belief that the costs of pursuing reelection would be too high.

Now, why and how exactly can we approximate the motivations leading to behavior consistent with constitutional norms by identifying the mechanisms of constitutional enforcement and their relation to the constitution? To clarify this point, let me distinguish three levels of constitutional efficacy based on the relation between the mechanisms of constitutional enforcement and the constitution:

1. Cases of parallel enforcement mechanisms: mere text-reality coincidence
2. Cases of exogenous constitutional enforcement: the constitution functions
3. Cases of endogenous constitutional enforcement: constitutional is efficacious

A codified constitution is a system of norms. It is a system because its constitutional provisions are interrelated, creating a more or less consistent whole. And that system is of norms because its provisions establish constitutional roles (e.g. that of Supreme Court Justice or President) and regulate the behavior of individuals occupying those roles. But, codified constitutions are not the only normative systems of political life. Historically, in fact, they are latecomers: they have been present in the political scene only since

the late eighteenth century. Moreover, even in countries with codified constitutions, the constitution is only one among many political normative systems that can potentially regulate interactions of individuals who happen to be in constitutional roles. Furthermore, politics is not an isolated sphere, and normative systems are present in all areas of social life. In this way, a complex net of normative systems constitutes social and political life (Searle 2010).

Now, any given individual has a number of different roles. For instance, an individual with a constitutional role like that of “the President” can also be member of a party, a corporation’s stoke holder, a friend of many, and a parent of two. And, therefore, a given interaction between two individuals holding constitutional roles can be regulated by a number of different, potentially conflicting, normative systems (Merton 1949). For instance, an interaction between two individuals holding the constitutional roles of “vice-president” and “member of Congress” correspondingly could be regulated by a constitutional provision linked to those roles, by an informal corporative norm if they both are board members of a corporation, and by an interpersonal norm if they happen to be friends, among many others.

Here I am interested on what I call parallel norms. This is its definition: Two norms are parallel if an individual holds two roles linked to two independent normative systems, each role belongs to one of these systems and can be satisfied by the same individual physical movement. Note that in this case, there is no behavioral conflict derived from the norms associated to two different roles, as is the case with intrapersonal role conflicts. Now regarding parallel norms it is important to note that even if both norms are satisfied by the same behavior, then each norm corresponds enforcement mechanisms. In other words, the factors that encourage behavior consistent with both norms, the sources of costs, or benefits that produce individual motivations in each case are different.

For example, suppose that according to a constitutional provision in the case of a vacancy in the Supreme Court, the president is required to select the individual who will fill the position and such an individual should hold a law degree and have at least 10 years of experience in the judiciary. Now suppose that the president’s best friend satisfies the constitutional requirements, is unemployed, and in great need of work. Now if an interpersonal norm of friendship dictates that one ought to help one’s friends if one is in a position to do so, the constitutional provision regulating the selection of Supreme Court Justices and the interpersonal norm in question are parallel norms since they can be satisfied by the same physical movement: the

designation of the president's friend to the Supreme Court vacancy. Now, these parallel norms' enforcement mechanisms are very different: on the one hand, failing to provide help for friends in need would probably inflict costs on the relation, while the cost of failing to satisfy the constitutional requirements for justices' nominations would probably be a failure of confirmation by the Senate. It is noteworthy that a threat of non-compliance with a norm is often enough to activate the enforcement mechanism in an observable way, as was the case in our account of Alemán's failure.

What can we conclude of a case where a constitutional norm has a parallel norm and the only enforcement mechanisms activated by threats of behavior inconsistent with both norms are those of the parallel norm? To follow the previous example, what could we conclude if there are expectations that the president will not nominate his friend but instead someone else who does not satisfy the constitutional requirements to be Justice and Congress signals that would welcome such nomination (while the relation between the president and his friend become distant)? Clearly, if ultimately the president nominates his friend, we cannot claim that the constitutional norm was efficacious even if its requirements were met given that Congress had already signaled that it would not matter if those requirements were not met. If the enforcement mechanisms linked to the constitution did not play any role on the presidential motivation to make such nomination, then we would need to conclude that there was mere text-reality agreement but not constitutional efficacy.

It may be argued that the strategy of focusing on the enforcement mechanisms is not very helpful since it requires a clear threat of constitutional violation or ad hoc amendment. To clarify why this is not necessarily the case take Levinson and Pildes' argument in their article "Separation of Parties not of Powers" (Levinson and Pildes 2006). These authors claim that the United States' system of separation of powers is not efficacious because what motivates members of Congress to limit the executive is fully determined by the dynamics of parties and has little to do with the constitution. To support their claim, they argue that Congress' constitutional mechanisms of enforcement are plagued with collective action problems and, therefore, they are not associated with actual costs for not behaving in agreement with the constitutional norm. According to these authors, party politics are the only source of actual costs for members of Congress. In sum, researchers can design different strategies to study the enforcement mechanisms of constitutional norms and assess through them constitutional efficacy.

The following are cases where enforcement mechanisms are exogenous, but the constitution does play a coordination function by enabling the identification of governmental transgressions. Take Barry Weingast's influential article "The Political Foundations of Democracy and the Rule of Law." Weingast's central question is: "How are democracy's limits enforced?" His aim is to give "a unified approach to the political foundations of limited government, democracy, and the rule of law- phenomena requiring that political officials respect limits on their own behavior" (Weingast 1997, 245). Weingast's approach rests on a game-theoretic model of the stability of limited government that focuses on the relation between a single political official, called the sovereign, and the citizenry. To stay in power, the sovereign requires sufficient support from the citizens, and each individual supports the sovereign as long as he does not transgress what the citizen believes are her rights (Weingast 1997, 246). Different citizens have different "preferences and values" and, therefore, different conceptions of what her rights are (Weingast 1997, 245–6). So accordingly constitutions are devices that *coordinate* the citizens *on* what constitutes a violation of rights so that they can collectively react to transgressions by withdrawing their support from the sovereign. If the constitution functions, that is if citizens are coordinated on its content, the sovereign will avoid any behavior that violates the constitution because by doing so he risks losing power.

Notice that in the model the controls are exogenous to the constitution. Weingast claims that whether or not a constitution coordinates individuals on its content is a function of the social consensus on the rights of citizens and the limits of the state.

In terms of the model, limits become self-enforcing when citizens hold these limits in high enough esteem that they are willing to defend them by withdrawing support from the sovereign when he attempts to violate these limits. To survive a constitution must have more than philosophical or logical appeal; citizens must be willing to defend it. (Weingast 1997, 251)

Because citizens have different views about ideal limits, a unique set of ideal limits is unlikely. Coordination requires that citizens compromise their ideal limit...When the difference between each citizen's ideal and the compromise is small relative to the cost of transgression, the compromise makes the citizens better off. (Weingast 1997, 252)

According to this account, whether there is congruence between the constitutional text and the political actor's behavior mainly depends on the presence of a common set of citizen attitudes that are exogenous to the constitution and its incentives. What maintains the equilibrium of text-reality congruence has, therefore, very little to do with the constitution, its roles, and its design. This point is made clear in Weingast's account of why Latin American constitutions "have not worked" while the American has:

[Latin American constitutions "have not worked" because] Latin American states are not characterized by a common set of citizen attitudes about the appropriate role of government...[While] citizen reaction implies that US constitutional restrictions on officials are self-enforcing ...Latin American states exhibit a complementary set of phenomena: citizens unwilling to defend the constitution, unstable democracy and episodic support for coups. (Weingast 1997, 254)

In sum, in this model the constitution's function is limited to enabling coordination on what constitutes a violation and so that citizens collectively react to the transgression. However, the enforcement mechanisms, the costs that the sovereign knows would suffer if he does not behave in accordance with the constitutional mandates, are exogenous to the constitution, they do not depend on the constitutional roles and powers, and therefore in these cases we cannot claim that the constitution is efficacious.

Finally, we have cases of enforcement mechanisms endogenous to the constitution. In these cases we can affirm the presence of constitutional efficacy strictly speaking. To understand these cases, it helps to distinguish them from the previous ones. As Hardin argues, in claiming that a particular constitution is a device for coordination we could be making two quite different claims. First, we could be claiming that the content of a particular constitution coordinates or coordinated the most important sectors of a society (which are exogenous to the constitution). In other words, that those interests were coordinated *on* the constitution. This understanding of what it means for a constitution to coordinate may be given as an account of a successful constitution-making process, as an explanation of why the content of a particular constitution is such, or as Weingast does, as an account of one of the functions that constitutions have that is serving as focal points (on the functions of constitutions, see Ginsburg and Simpser 2014). For instance, this is the notion that Hardin nicely uses in his account

of the American constitution-making process, which he notes coordinated the most important economic interests and that, we may add following Weingast, also the most important attitudes about the appropriate role of government (i.e. that those interests and attitudes were coordinated *on* the content of the constitution) (Hardin 1998).

Now when we claim that a constitution that is efficacious is a coordination device, we are claiming that actions are successfully coordinated *under* it; that is, that the behavior that is its regulative target is attained, thanks to the incentives the constitution gives to the relevant constitutional role holders. That public actors act according to the constitution as a result of their pursuit of individual benefits under constitutional laws, using their constitutional powers. Paraphrasing Madison's *Federalists 51* an efficacious constitution provides "the personal interests and constitutional means" for its enforcement. In these cases "the interest of the man must be connected with the constitution....," (Hamilton et al. 2000) the enforcement mechanisms are therefore endogenous to the constitution, and we can claim that it is efficacious.<sup>10</sup>

Finally, to further clarify how the enforcement mechanisms at play can enable us to assess the efficacy of a constitutional norm, let us return to Alemán's unsuccessful reelection attempt. How can we know whether the 83 Article was efficacious? According to what I have argued, we need to analyze the enforcement mechanisms and their relation to the constitution. In particular, we need to assess whether the enforcement mechanisms were parallel, exogenous, or endogenous to the 1917 Constitution. I have already identified the two enforcement mechanisms that were at play in Alemán's failure: those linked to the intra-party opposition to Alemán's reelection led by President Cárdenas, President Ávila Camacho, and General Taboada and those associated with the opposition formed by former members of the PRI who had decided to split from it as a response to Alemán's attempt.

We know that in Alemán's succession there was text-reality agreement since he was not reelected. Now, I believe the account I have provided of the case shows that the enforcement mechanisms that enabled such agreement were not endogenous: the crucial enforcers (Cárdenas, Ávila Camacho and Taboada) did not hold at the time any constitutional role<sup>11</sup> and the costs they could infringe over Alemán were independent of the constitutional functions or powers. Therefore, we can conclude that according to my account, this is not a case of strict constitutional efficacy.

However, as is evident also in the account, the 1917 Constitution played an important function in the enforcement of Article 83. All enforcers coordinated *on* its content: "The citizen who had performed as President

of the Republic. . . *in no case and under no circumstances* may perform again this position" (Art. 83 1917 Constitution). The constitution was an ever-present reference, and as Cosío Villegas nicely puts it, there was a "serious danger that Cárdenas and other great personalities would decide to move the opposition to the terrain of arms, and they would have an excellent flag to make a military movement succeed" (Cosío Villegas 1975, 120): the violation of the 1917 Constitution.

In sum, an analysis of the enforcement mechanisms at play in Alemán's failure enables us to conclude that while in this case we cannot assert constitutional efficacy, we can say that the constitution function as a device *on* which enforcers were coordinated. Hence, *pace* Weingast, this Latin American constitution "functioned" according to his model but under a nondemocratic regime.

## CONCLUSION

I analyzed a case of constitutional enforcement in autocracies. I presented an account of why President Alemán failed to violate or amend Article 83 of the 1917 Mexican Constitution to enable his reelection, even if he was a president with extraordinary power in a nondemocratic regime. I discussed whether and to what extent was Article 83 efficacious in this case. Furthermore, I argued that this account illuminates how to assess constitutional efficacy more generally, and hence how can we respond to the challenge posed by observational equivalence of different types of motivations to behave in accordance with the constitution. I claimed that to determine the degree of constitutional efficacy of a constitutional norm it is necessary to identify the mechanisms of constitutional enforcement and their relation to the constitution. It is noteworthy that if my account is correct, some of the functions that have usually been ascribed to constitutions in democratic contexts, such as being a coordination device on which enforcers coordinate, are common to constitutions in certain authoritarian regimes (on this point see Ginsburg y Simpser 2009).

An important question that naturally derives from the account presented and that is not answered here is: Can strict constitutional efficacy be attained in nondemocratic regimes? I do not answer this question here because (similarly to the argument regarding the claim that autocrats can always make ad hoc amendments) to understand the roles of constitutions in autocracies, and its differences from those in democracies, it is important to proceed from empirical studies, and not from *a priori* preconceptions of how "all" autocratic regimes work.

## NOTES

1. For instance, the constitution mandated life tenure for Supreme Court Justices. However, every 6 years the incoming president used to appoint as much as 72% of the Court (Ruiz Cortines, 1952–1958) and no less than 36% (López Mateos, 1958–1964). “The president could thus somehow create vacancies to be filled by justices he appointed or, in other words, he could either dismiss justices or induce early retirements” (Magaloni 2003, 228–289). See also: Valdés Ugalde (2010).
2. Every incoming president amended the constitution to make it fit his political agenda: as much as 66 constitutional provisions were altered in the presidential term of Miguel de la Madrid Hurtado (1982–1988).
3. An example of these changes was the transformation of the selection of candidates from primary elections to local party assemblies that enabled more control of the party leaders over the governors, senators, and deputies candidacies (Servín 2001, 129).
4. The PRI had a formal president but as stated earlier the President of the Republic was the political leader of the party.
5. As I have said Lombardo Toledano was an important union leader who strongly opposed Alemán’s reelection. He was close both to President Cárdenas and to President Ávila Camacho.
6. For instance, many messages were expressed in negative form. As I stated before, the Generals’ denial of the “rumors” of a possible split from the PRI left wing actually brought that possibility to the table, and this was the way the message was understood by the politicians of the time and by the foreign analysts. In the same connection, stating that the president *would* never promote his reelection actually meant that he *shouldn’t*.
7. General Sánchez Taboada (1895–1955) was a hero of the Constitutional Army. He executed the death sentence of Emiliano Zapata. He was Governor of Baja California, Secretary of Marine, and president of the PRI both in Mexico City and at national level. It was known that General Taboada supported the presidential candidacy of Fernando Casas and strongly opposed any attempt to amend the constitution.
8. He eventually deposed his candidacy in favor of General Henríquez to more effectively “defend the principles of the revolution.”
9. Note this conceptualization of constitutional efficacy refers only to the organic sections of constitutions (i.e. to articles that establish the functions and powers of constituted organs).
10. Note that the need of separating these two senses in which a constitution is a coordination device follows from the recognition that an account of modern constitutional government requires a two-stage theory (see Hardin 1998, 83).
11. Neither ex-president nor PRI president has constitutional status (i.e. they are not part of the constitution).

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