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## PRESIDENTS' STRATEGIC ACTION AND POLICY CHANGE IN MEXICO:

Agenda Setting, Political Maneuvering  
and Hydrocarbon Policy Reform  
in the Presidencies of Felipe Calderon  
and Enrique Peña.



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# **Presidents' Strategic Action and Policy Change in Mexico: Agenda Setting, Political Maneuvering and Hydrocarbon Policy Reform in the Presidencies of Felipe Calderon and Enrique Peña**

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## *Introduction*

In 2013, the Mexican congress approved a hydrocarbon policy reform involving a goal shift from a statist/rentist paradigm involving simply extracting rents from the state oil company (Petroleos Mexicanos, PEMEX) to a market one aimed at generating economic value and growth in this industry. In order to achieve that, the 75 years' state monopoly in exploration, extraction and refining of hydrocarbon goods was broken. This reform involved constitutional changes in both the goals and instruments of the policy regime. Thus, even if such changes are still being implemented, it can be described as a paradigmatic, third-order type of policy change (Hall 1993).

At first sight, such a paradigmatic shift seemed quite unlikely. The state monopolistic hydrocarbon policy regime had been established since 1938, when president Lazaro Cardenas expropriated the American and British oil companies. From then on, Mexican oil came to be seen as if it were the nation itself, to be managed –from the subsoil to the pump station— only by the Mexican state. Furthermore, the oil public monopoly was a central flag of the Partido Revolucionario Institucional (PRI), the hegemonic party who ruled Mexico for 70 years (1929-2000), but also of all the leftist parties, including the Partido de la Revolucion Democratica (PRD), the third biggest Mexican party founded in 1988 by Cuahutemoc Cardenas (the son of the legendary president). Thirdly, the policy coalition included of course the immense oil state company and its powerful union. Fourth, unsuccessful attempts at breaking the state energy monopoly had been performed by the last three presidents preceding Peña, one of them of the same PRI and the two others from the conservative Partido Accion Nacional (PAN). Finally, by 2000 this monopoly was safeguarded by two thick institutional “walls”: Article 27 of the Mexican Constitution and the written principles of the PRI. The first could only be changed by a two thirds majority at both the House of Representatives and the Senate as well as a two thirds majority of the 32 state congresses; however, since 1997 the party of the president has not had even a majority of seats in either one or both of the chambers. Changing the principles of the PRI, in turn, could only be made by the party's 4,000 members general assembly. At least then for the Mexican case, Hall (1993) seems to be right when arguing that energy, just as macroeconomic policy, is an issue area where strong paradigms tend to develop. In this case, the existence of a statist paradigm can be clearly seen not only in the iconic social images that surrounded it and its inclusion in the written principles of the biggest Mexican political party but in the constitution itself. The strong political positions and social reactions present in the debates involved in the reforms proposed by presidents Calderon (2006-2012) and Peña (2012-present) would further attest to the paradigmatic nature of this policy field in Mexico.

So, how was this paradigmatic change possible? This text aims at supporting the hypothesis that, although social learning and contextual factors (declining oil production, low economic growth rates, a gas provision crisis, etc.) “fostered” this change, it was however “brought about” to a great extent by three sets of presidential strategic moves: 1) Building a coalitional legislative agenda before the start of the administration and quickly promoting its enactment through a “hidden hand” presidential approach. 2) Using a “rifle-agreeable bills/shotgun-contentious bills” strategy, whereby the more agreeable bills for political parties were introduced first one by one, while the more divisive energy bill was introduced later together with other reforms. And 3) acting on the “incentives structure” of political actors (mainly unions, parties and legislative groups) through a positive/negative incentive (“carrot/stick”) strategy.

To provide empirical evidence for this hypothesis, a most similar cases research design (Prezeworsky and Teune 1972; George and Bennett 2005) is used, involving a comparison of Peña's 2013 hydrocarbon reform with Calderon's 2008 one, two cases within the same sector and country as well as the same divided government/low presidential powers context, in which there is variation in the

dependent --paradigmatic vis a vis incremental hydrocarbon policy change-- and the independent variables --more strategic vis a vis less strategic--, as in several regards Calderon's administration acted in just the opposite way than Peña's. Although the systemic and subsystemic (policy sector) similarities combined with the value differences in the variables of this controlled comparison would allow to empirically support the proposed hypothesis, a "sequencing process tracing analysis" (George and Bennett 2005:212) is provided for each case to identify how key decisions by each of these presidents in agenda setting and political action gradually closed or opened "opportunity structures" for policy change.

More broadly, this comparison supports the view that legal norms, policy "legacies", power structures or external shocks are factors that frame or even may incline actors towards certain options, but still leave them with important "degrees of freedom". In turn, agents may hold ideas and/or interests but they would not necessarily be able to make them prevail. Thus, context and ideas are "necessary but not sufficient" factors to explain policy outcomes (for instance, a crisis, idea and/or interest may push an agent to act but does not necessarily make him/her act or indicate him/her how to act). The "strategic action perspective" therefore proposes that to understand policy change and stability we have to look at the way the strategic interplay among actors occurs in particular contexts. In turn, it further argues that while the playfield is not necessarily even because certain actors can be in a more advantageous position (e.g. a state actor such as the president), the degree to which the latter steer the course of politics would depend on the extent to which their behavior is strategic. In this way, the strategic action perspective differs from pluralistic, ideational, institutional and statist approaches.<sup>2</sup>

This text also assumes that to understand change it is necessary to look at the micro level of individual/group interactions within the specific junctures and structures of meso level policy subsystems, but also that these are in turn "nested" in the overall agenda setting process and evolving correlation of forces at the macro level of the political system. Furthermore, although the 2013 hydrocarbon Mexican reform seems close to a pattern of "punctuated equilibrium" (Baumgartner and Jones 1993), this text differs from such approach in at least two regards: First, by focusing on the ways presidential strategic action can affect policy evolution it offers a less "pluralistic" and "subsystemic" view; second, by considering the previous 2008 incremental reform it shows that change also involved social learning and reactive sequence processes ((Hall 1993; Mahoney 2000; Howlett 2009), which thus made change less "punctuated" by external shocks. Thus, probably it would rather be an example of a "quasi-homeostatic" pattern (Howlett and Cashore 2009), with the difference that this text does not highlight external shocks themselves but the extent to which reformers act strategically when they occur<sup>3</sup>.

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<sup>2</sup> For the use of the strategic action perspective using other cases, see Mendez 2013 and 2014.

<sup>3</sup> For a similar argument looking at external events as "necessary" and strategic actions as "sufficient" factors to explain the unexpected shift in energy policymaking in the EU, see Eberlein 2012. However, while saying that a factor is necessary but insufficient involves a "soft" claim while, although providing a more robust explanation, referring to "necessary and sufficient" factors involves a rather "strong" one. Sometimes, for instance, fortuitous events have a strong effect on policy outcomes and thus significantly reduce the strength of strategic action/s as a "necessary and sufficient" factor. This type of argument is however always made in the framework of the known factors by a given study and thus, as any other social science analysis, should not be taken as aiming at offering any "truths". That is not, at least, the aim of the present text. The strategic action perspective would thus rather argue that such action tends to be a "necessary and possibly sufficient" factor in the explanation of policy outcomes.

The text is divided into three sections. The first one presents the strategic action approach, while the second and third ones present the overall context and actors' strategic interplay leading to the 2008 and 2013 Mexican hydrocarbon reforms, although for space reasons the focus will be on the nature and effects of presidential strategic actions on agenda setting and political maneuvering. The text also looks at the degree of change achieved in the energy governance regime and not at the extent of actual change produced by the implementation of the reforms on the energy's sector structure, intermediate objectives or business models (especially for the 2013 one, still in progress).<sup>4</sup> An overall discussion of the results of the comparison of these two cases is presented at the end.

### *I. The Strategic Action Approach and Policy Change*

Although it was central in Machiavelli's (1989) and Weber's (1981; 2005) works, and hinted by Arrow (1951) when he showed the instability of social choice, the strategic action approach was first explicitly developed by Schattschneider (1961). As it is well known, this author conceived organizations as "the mobilization of bias". He also considered all political arenas as in constant conflict, where equilibrium (even if to some extent induced by institutions) has to be defended by dominant groups through the use of their political resources against the threats posed by alternative coalitions. Likewise, change is not spontaneously produced by institutional decline, but rather by the strategic use of external shocks and regime's dysfunctions by challenging coalitions.<sup>5</sup>

Hence, Schattschneider's statement (1961:72) that we "get confused about the meaning of politics because we underestimate the importance of strategy". For him, ignoring this factor kept analysts from realizing that politics was neither pluralist nor elitist but rather a sort of strategic game, elitist to the extent that dominant groups hold the strategic advantage in defending a given policy regime, but pluralist to the extent that non-dominant ones have always the possibility of changing such regime through superior strategic maneuvering.

In this sense, we could agree with rational choice approaches in that agents tend to be rational in the sense of purposely attempting to further certain ideas or interests. However, first they do not always do so (sometimes they act "emotionally") and, second, even when they try to act strategically in the pursuit of their ends, that does mean they would succeed at doing so. The key factor we have to focus on is thus the extent to which they are strategic enough as to outmaneuver their rivals' in their aim at either sustaining a policy regime or pushing for a new one.

There have been recently some attempts to better integrate the role of actors with those of institutions or ideas, although without really focusing on the role of strategic action. For instance, Mahoney and Thelen's (2010) differentiate among various types of agents, but still consider the emergence of one or the other as highly dependent on the institutional framework. Béland and Waddan (2012), in turn, coincide with the strategic action perspective in that actors are not so much dependent on institutions, arguing that ideas greatly influence agent's capacity to modify the status quo. The ideas actors choose to pursue are indeed key. However, actors can act strategically or not in such selection, and the way they

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<sup>4</sup> For an analysis of energy policy paradigmatic or incremental change in these latter terms, see Kern, Kuzemko and Mitchel 2014 and Fontaine 2015.

<sup>5</sup> In other words, any institutional or "path locking" mechanisms are far from being self-sustaining, as they have to be guarded against actors constantly attempting to "unlock" them.

use them and frame them to defend or attack the status quo greatly affects policy outcomes. Besides, the impact of strategic action goes beyond the ideational realm, for instance political maneuvering<sup>6</sup>.

After Schattschneider, other authors within Sociology or Political Science have to one extent or the other highlighted the important “degrees of freedom” agents have to choose among different options within their contextual frameworks, and thus engage in strategic interplay<sup>7</sup>. In turn, a somewhat extensive literature on strategic behavior has developed within the fields of presidential and executive-legislative studies<sup>8</sup>, International Relations<sup>9</sup> and game theory<sup>10</sup>, although in general it has not been discussed in the framework of the debate with rival statist, ideational or context centered approaches.

The importance of strategic behavior has been taken into account in the public policy field too, although in most cases without extensively developing or explicitly assuming the strategic action perspective, as for instance in Bardach’s (1977) description of implementation games or in the role Kingdon (1984) gives to policy entrepreneurs when taking advantage of opportunity windows. Jenkins-Smith and Sabatier (1999) also briefly mention such role, although they seem to pay greater attention to policy beliefs and external shocks. Tosun (2013) discusses the relevance of actors in environmental policy change, especially NGOs, although did not put much emphasis on the strategies they use. In turn, some authors within the policy design perspective stress the effect of the right understanding of public problems and selection of policy tools in policy success (e.g. Peters and Hoornbeek 2005; Peters 2015). Baumgartner and Jones (1993), in turn, focus on the ways actors can produce change by reframing an issue or changing its institutional venue, while Howlett and Ramesh (2002) complete their analysis with the consideration of the ways actors use exogenous events. Although it stressed the role of the strength of policy paradigms and social learning, Hall’s (1993) influential article on macroeconomic policy also highlighted the importance of strategic action when it described the various strategic moves Margaret Thatcher made so that the monetarist paradigm became policy in the U.K at the early eighties. He thus concluded that “many of the actors involved in changing policy not only ‘puzzle’; they also ‘power’”.

It should be noticed, however, that despite the extent to which strategic behavior has been either explicitly or implicitly considered in all these fields and works, the strategic action perspective has not been yet clearly recognized as such in Political Science and has not been able either to fully uncover the explanatory limits of statist, ideational and context-centered approaches (institutionalist, path dependency, external shocks, etc.). Probably, this is related to the various difficulties yet remaining in the systematic study of its main independent variable. For instance, strategic action is inherently contingent on contexts, which are always specific; however, it can also modify such contexts.

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<sup>6</sup> The literature on contextual and ideational factors is too extensive to be cited here. A somewhat recent discussion of Hall’s 1993 article and the role of ideas can be found in Governance, 26-2, April, 2013.

<sup>7</sup> Bordieu (1998), Bachrach and Baratz (1970), Crozier and Friedberg (1980), Polsby (1984), Riker (1986) and Archer (1995).

<sup>8</sup> For instance, Neustadt 1960; Pfiffner 1988a and b; Cohen 1997; Hargrove 1998 and 2007; Ponder 2005; Lawrence, Suddaby and Leca 2009, Tallberg 2010; Eberlein 2012. After discussing several cases and studies on the effects of legislative skills in the U.S., Edwards (1989; 2009) argues that the effects of strategic action take place more on the margins. I would make however three points regarding this argument: Even if on the margins, 1) presidential action can still be an important precipitating factor; 2) political outcomes can still be seen as a result of the interplay of actors’ strategic actions; and 3) as the cases presented in this text show, it is possible that such effects go beyond the “margins” in more fragmented and less ideologically driven political contexts, such as Latin America.

<sup>9</sup> Lake and Powell 1999; Baylis, Wirtz and Gray 2013.

<sup>10</sup> Although game theory literature is too voluminous to be cited here, it has discussed various case studies and experiments to show how, especially in adversarial and non-cooperative games, strategies such as “tit for that” or “assured destruction” affect outcomes.

Furthermore, it is often studied in relation to alternative courses of action, which are always counterfactual.

The question then arises: Is it possible to study this variable systematically? How can we differentiate strategic from non- strategic action? How can we know when it leads to policy change or success? Although many of the abovementioned works have contributed to the greater specification of strategic action and its effects, unfortunately they still offer a quite fuzzy, disperse and untidy universe of research concepts and results as to provide clear answers to these questions. No doubt, a clearer and more parsimonious framework for the systematic comparative study of strategic action has yet to be developed, in which its several domains and traits are further specified and ordered. Such framework cannot be fully developed here, but next I would briefly discuss some traits of strategic action I consider useful for the analysis of policy change in the selected cases --and maybe to other ones as well.

Although strategic action can occur in all stages of policymaking, I will focus here on agenda-setting and policy formulation. As to the first one, presidents can manipulate the context of “political engagement” by acting upon the “time and space” of the legislative agenda. In his text, the values of strategic action as independent variable that I would focus on and which are expected to better promote policy change are the following. First, as to timing, whether presidents introduce bills within the “honeymoon” period --approximately the administration’s first year-- or later on. Second, in terms of the agenda “space” or size, whether the executive deploys a “shotgun” (presenting several important initiatives at about the same time) or a “rifle” (one important initiative at a time) approach (Pfiffner 1988a). Third, as to the sequence of policy issues, whether the more agreeable bills are presented first or later. In this sense, Nuestadt has argued that the presidential agenda should be “prospective”, that is, face pressing problems but also be formulated as to increase the president’s room of maneuver and political capital in the following years. Fourth, whether the president promotes bill through a “hidden hand”/“soft talk” approach or a “visible hand”/plebiscitarian one. And fifth, whether the president appoints a politically threatening public figure as the leading negotiator of the reforms (as for instance a potential presidential candidate) or a more politically undamaging one. In short, it could be argued that, *ceteris paribus*, a paradigmatic reform would be more likely to pass in congress if it is presented after other (less radical) bills have been passed but still within the honeymoon period and with a non-threatening leading negotiator as well as a shotgun and hidden hand approaches rather than with a potentially damaging advocate or rifle and visible hand legislative strategies. In the description of the cases I will also discuss the nature of the framing of the reform proposals, although this variable as well as other I will discuss below (such as the length of the legislative sessions) are more contingent and case-specific.

In policy formulation, strategic behavior would involve carrying out actions that increase the clout of political resources. In this respect, presidents have at their disposal an array of political tools to affect actors’ “structure of incentives” in ways that incline them to support the presidential agenda, or at least reduce their resistance to it. I have proposed (Mendez 2013a) to divide such resources in three types: 1) “Passive”, such as *authority*, *charisma* or *custom*; 2) “soft-active”, such as *influence* or *bargaining*; and 3) “hard active”, as *power* (i.e. threat of force) or *force*. Machiavelli (1989:61-63) argued that political clout increases when the prince is “both a lion and a fox”, that is, when passive or soft-active resources are used combined with hard-active ones. Weber was also probably thinking on this when he referred to the use of both force (sticks) and “incentives” (carrots) (Weber 2005:59-79). More recently several authors have recovered this insight, such as Burns (1956), Mendez (2005 and 2007), Nye (2008) and Rockman (2008). Thus, here it is proposed that the combination of passive and/or soft-active types of



resources with hard-active is the type of strategic action that in policy formulation more effectively promotes policy change.

In turn, as it was mentioned above, strategic action cannot be conceived without a consideration of context. Skowronek (1998) seminal work on political time considered two key elements to define the contexts presidents face: Whether the president is “affiliated” or “opposed” (same or different party) to the preceding one and the vulnerability to change of the national regime. However, recent literature has also considered other important factors allowing for a more complete assessment of opportunity structures (Mendez 2013a): On the executive’s side, constitutional powers, popular approval and margin of election; on the legislative side, number of seats of the president’s party or coalition and the degree to which party’s legislative groups are programmatic and disciplined.<sup>11</sup> At the meso level, policy paradigm vulnerability and type of policy subsystem (Lowi 1964; Wilson 1980; Hall 1993) would also be important contextual elements (Hall 1993; Baumgartner 2013). In this regard I would argue that paradigmatic, highly contentious change would be quite difficult to achieve – and thus strategic action more crucial-- when context is unfavorable at either the macro or the meso level (for instance, when divided government and low presidential powers are present despite the fact that favorable winds blow at the policy subsystem level –as was the case in the paradigmatic hydrocarbon policy reform of Peña).

In this way, although it claims that contextual elements have a circumscribed influence, this approach does not disregard them: First, the inducing or framing effects of institutions are acknowledged, and, second, the strategic nature of actions can only be defined in relation to the surrounding circumstances and the resources they provide to actors. Thus, this viewpoint eludes conflating structure and agency and falling into one or other determinism (Archer 1995), specifying instead the way in which structure and agency, respectively, influence political outcomes. In other words, it highlights the role of strategic action but recognizes that the political outcomes are always the result of a complex mesh of both context and agent related factors.

As to the definition of policy change, as it was already mentioned, in this text I will use Hall’s (1993) well known typology. As he describes it more extensively, here it suffices to recall that for him there are three types of policy change: First order change involves routine adjustments to known policy instruments, second order brings changes in the policy instruments themselves used to achieve shared policy goals, while third order involves shifts in the goals themselves. This typology has been already subject to a great deal of discussion and, as Hall acknowledged, it does not necessarily apply to all policy fields because not all of them possess policy paradigms as the ones present in the field of macroeconomic policymaking he studied. Such paradigms are most likely to be found in fields where policymaking involves some highly technical issues and a body of specialized knowledge. According to him, the energy policy sphere is one of those with such a character and thus, as it was mentioned in the Introduction, I consider it quite susceptible to the application of Hall’s typology. In fact, as I will show below, the policy change process involved in both of the 2008 and 2013 hydrocarbon reforms had several of the characteristics Hall discussed in his study of macroeconomic policy paradigmatic change, such as the involvement of actors outside the state. In some other ways, this text follows the study of the transition from a Keynesian to a monetarist macroeconomic policy paradigm in Britain but studies the transition from a state monopolistic hydrocarbon policy paradigm to a market one.

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<sup>11</sup> Of course, other contextual factors have been also discussed and could be important. Some of them are rather casuistic, such as the particular person in charge of a key congressional committee, a staff or cabinet position, etc. Others are more structural, although not always fit with the particularities of the Mexican political system.

## *II. Strategic Action and Hydrocarbon Policy Change during the Presidency of Felipe Calderon (2006-2012)*

In December 1, 2006, Felipe Calderon, from PAN's party, became president. In April 8, 2008, he sent to the senate a hydrocarbon reform bill that proposed modifying several secondary laws to increase the participation of the private sector in several areas of the industry. In October 28 of that year, congress passed a hydrocarbon bill, although somewhat watered down from the one Calderon had proposed. This section presents the conditioning context, strategic interplay among political actors and final outcome of this reform.

### *Overall political context*

As it was said above, to understand Calderon's hydrocarbon reform we have to set it in its overall political context. According to the abovementioned contextual elements, how could we describe Calderon's "opportunity structure"? First, he was an affiliated president: Just as his predecessor Vicente Fox, he was a PAN member and had developed a campaign based on the achievements of the previous presidency. Second, he had few presidential powers, as the Mexican constitution granted to the executive only the powers of legislative initiative and full instead of partial veto. Third, he had won the presidential election only by a slim 0.56% margin (around 250 thousand votes) over his closest rival, PRD candidate Andres M. Lopez Obrador, who then led strong demonstrations questioning Calderon legitimacy. Fourth, he had no control of the PAN, since its leader Manuel Espino was not politically close to him.

On the other hand, Calderon had a good level of popular approval, a feature that made it more difficult to resist his initiatives (64% in November, 2006) (Consulta Mitofsky 2012). Perhaps even more important, the president faced a quite vulnerable regime, involving pending structural reforms in several policy issues in a critical situation, such as education, energy, public finance, telecommunications, infrastructure, etc. In congress his party had obtained only 206 out of 500 representatives and 52 out of 128 senators. However, this meant PAN was by far the biggest minority (the next one in size was the PRD, with 127 representatives and 26 senators), something that allowed him to exercise a certain degree of legislative leadership. Besides, he had developed a campaign against the candidate of the PRD not the PRI, with whose 106 deputies and 33 senators he could sum a 312 and 85 majority in those chambers.<sup>12</sup> To this we have to add the fact that in comparative terms in Mexico legislative groups are somewhat disciplined (Flores 2011) while, with the exception of some specific issues, parties tend to be pragmatic rather than programmatic (Aranda 2010; Johansson 2012). That is even more the case for the PRI, a center party which historically has oscillated between right and left.

In short, although Calderon had to face divided government and had comparatively low constitutional powers and certain weakness associated to being an affiliated president and winning the election with only a slim margin, he had a good level of presidential approval, a wide array of reforms to establish himself as the driving force behind a "new order" as well as considerable legislative room for maneuver and a feasible possibility of forming a majoritarian coalition with the PRI. In this mixed type of context,

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<sup>12</sup> In this case, he would have the two thirds (85) majority in the Senate needed to make constitutional changes and, if the seats of two smaller allied parties (PVEM and PANAL) in the Chamber of Representatives were added, a total of 338 votes, slightly above the 334 needed; it should be noted, besides, that in fact the two thirds required are those of the legislators **present** at the moment of the vote. These changes also need to be approved by half (16) of the state legislatures, although in most cases the latter have approved them once they been passed by the national congress.

the number and intensity of the reforms to be achieved by the president would greatly depend on his strategic capacity.

### *Legislative agenda and strategy*

After winning the July 2006 election, Calderon's two main tasks were the formation of the government and setting the presidential agenda. Regarding the first one, on September the elected president stated that if the cabinet integration helped to form a majority in congress he would probably include former PRI members (El Universal, September 8, 2006). According to Nuñez (2012: 39), Calderon even mentioned to possibility of a coalition government with the parties that wished to join. However, the appointment of a cabinet composed of only close collaborators would soon show the elected president's inability --or lack of will-- to form a coalition government or develop a common agenda. Furthermore, the elected president did not use the three months (September-November) that congress was in session immediately after his election to promote reform bills in congress (with the exception of a minor pension reform bill, which had started to be negotiated even from before).

As to the political agenda, in his inauguration speech Calderon made it clear that the highest priority in his administration would be the fight against drug-trafficking: "You can be sure this is a battle in which I will be upfront; it is a battle we have to fight and which we Mexicans, united, will win against crime" (Calderon 2006). To leave no doubt about this, in December 11 he launched a 5,000 federal troops joint operation, backed with dozens of military planes and helicopters, in his home state Michoacan. Then, right after the Christmas holidays in January 3, 2007, he visited that state and, dressed in military jacket and cap, personally launched there what since December 4, he had called the "war against organized crime". During 2007, joint military operations followed in Baja California, Guerrero, Nuevo Leon, Tamaulipas, Veracruz and Chihuahua, again accompanied by personal visits and strong presidential speeches. There some evidence that Calderon decided to focus on this issue since some time before his inauguration (Nuñez 2012), which kept him from taking advantage of the last months of the first session of congress.

The first significant bill approved during Calderon's administration was an incremental reform in the law regulating the federal government pensions. This reform could not be approved in December, but it was swiftly approved in late March by the PAN and PRI (Guillen 2009; ISSSTE civil servant interview). This same month, the president sent to the Senate his bill for constitutional reform in public security and justice. However, this bill will collide with other one introduced by a PRI representative in December, 2006, promoting due process and oral trials, and which was supported by a wide policy community (Aguilera, Merino and Hernandez 2009). Thus, strong debates would drag the full approval of this bill until March 6, 2008. In turn, in mid-2007, Calderon proposed a tax bill and legislative negotiations started around an electoral reform, mainly of the interest of PRD and PRI.

In this way, despite the fact that he had ran a campaign as "the president of employment", which had rightly stressed economic growth issues (GDP average annual growth rate during Fox's presidency had been a disappointing 2.2%)<sup>13</sup>, and there was still a long list of pending structural reforms, Calderon set a sort of "rifle and pistol" strategy --to follow up on Pfiffner's terms-- which involved one big, high priority policy issue --fighting drug trafficking-- and its related initiative for a major constitutional reform on public security and justice, together with the minor tax policy initiative. Putting the divisive

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<sup>13</sup> World Bank website, consulted on August 3, 2015. Simple average of the annual growth rate of GDP at market prices based on constant local currency.

public security bill at the forefront of the presidential legislative agenda was a strategic mistake (especially when there was no need),<sup>14</sup> because it would crowd out all other reform initiatives during the executive-legislative “honeymoon” period, while allowing only a minor incremental change in the tax regulatory regime. Furthermore, in the next months and years the president’s political capital will be drained in an impossible to win (and badly framed) “war” against drug trafficking, an hydra sort of enemy, which used a guerrilla type of warfare and was continuously fed by the significant, non-stopping U.S. demand for drugs.

Of course, adopting a legislative rifle or shotgun approach does not lead by itself to legislative failure or success. Referring to Reagan’s legislative strategy, Pfiffner (1988a) specified that the effectiveness of one or the other depends to some extent on how they are combined with other elements. For instance, facing a divided government Reagan used a rifle type of agenda, as well as the bully pulpit and other somewhat “active” resources, together with reconciliation and the “southern strategy”. He also was characterized by a “soft-sell” approach in his dealings with congressmen (Edwards 2009). Besides, the issue he chose was the back then little divisive, but quite important for republicans taxing and budget reform. As for Calderon, he was well known instead for a style closer to the “Johnson treatment” (used however by the latter president in a united government context), that is, a plebiscitarian, quite dominant, “visible hand” and “credit taking” presidential approach, which would help little in passing initiatives within a divided government juncture --and even less if they were highly controversial ones as public security reform.<sup>15</sup>

### *The 2008 Hydrocarbon Reform*

As the critical situation of the energy sector was well known since the nineties, in his 2006 electoral platform Calderon had called for private investment and strategic alliances between public and private enterprises in the energy sector. After all, Calderon knew well the difficult situation of this sector as he had been, although for a short time, Energy Minister in 2003. In turn, in March 18, 2007 (the anniversary of the oil expropriation), Jesus Reyes, the PEMEX CEO, said before the president that “the situation of the company is critical and requires immediate attention”, as proven reserves had gone down from 32, 614 millions of barrels in 2001 to 15, 514 millions in 2007. This meant that, without the discovery of new reserves, Mexico would be importing oil in 9 years. He and the president himself also referred to other acute problems, such as the fact that PEMEX passives were over one million of millions pesos, of which half were pensions. Its debt amounted to 569,000 million pesos. All this meant that the company was in “technical bankruptcy”, as passives were 3% superior to actives. Furthermore, it was a well-known that it was a highly inefficient company in almost all respects, in part due to the strong influence of the oil worker’s union in the management of the company (it had, for instance, a seat in the corporate board). Furthermore, by 2006 Mexico was a net importer of oil products (for about 17,000 million pesos per year), as well as of natural gas. Oil production had started a declining trend, going down from around 3,383,000 barrels per day in 2004 to 3,256,000 in 2007, but it was known it

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<sup>14</sup> Although they still were important issues, up to 2006 organized crime and violence had been decreasing in Mexico and were comparatively low. Besides, Calderon’s popularity was at a good level. Furthermore, he was explicitly warned against the risks of launching an upfront offensive against drug trafficking, by Vicente Fox as well as by some members of this president’s presidential office. Interview to Vicente Fox, *Excelsior*, November 15, 2012. Interview with member of the presidential office, Mexico City, 2013.

<sup>15</sup> For the innumerable references to Calderon’s dominant, irascible and often even offensive political attitude see Mendez 2015.

will continue declining (Ministry of Energy 2008). Before this critical situation, the President called to urgently find solutions (La Jornada, March 19, 2007).

Despite this that year he would not send any energy reform bill to congress, and only supported a small legal change proposed by several parties in July 17, which was approved quickly in September and reduced PEMEX tax burden from 79% to 72% (Rousseau 2010). Such lack of action is quite surprising given the importance Calderon had given to the issue a few months before and the excellent window of opportunity he had to promote a more comprehensive reform in the second 2008 legislative period, which started September 1 and ended December 15. The tax bill Calderon had proposed since mid-2007 was approved in September 14, although it only slightly increased the historically very limited Mexican tax revenue. The electoral reform in turn was approved in September 13, and involved the substitution of the general council of the Federal Electoral Institute and a greater control of the political party's propaganda in the media. In this way, Calderon had more than three months to propose a more comprehensive energy reform.

Furthermore, although the ill-disposed Espino was still the PAN leader, in June Calderon's political group had gained control of the party's council and by late September the president was clearly winning the battle against him (actually, Espino would be pushed out two months later). It could be argued that one of the reasons not to promote a reform at this time was the good price of the Mexican oil mix (which averaged 62 dollars per barrel in 2007) and the consequent significant government's oil income (35,000,000 dollars in 2007) (Centro de Estudios 2007). However, by April 8, 2008, when Calderon would finally present the hydrocarbon bill, prices would be much higher (above 100 dollars per barrel). In this way, everything seems to indicate that the main factor for not sending the energy bill at this time were the difficulties the public security bill still faced in congress from September to November of 2007 (Aguilera, Merino and Hernandez 2009). Thus, the choice Calderon made of focusing and introducing the divisive public security bill first preclude him from advancing the hydrocarbon bill when the context was best.

That the former bill crowded out the latter in the fall legislative session was further confirmed by the fact that once a legislative agreement on the public security reform had been reached in December, in the first week of January, 2008, the PAN and PRI would actively develop negotiations in the Senate around an energy bill allowing for private investment in oil exploration. Before the clear signals at the beginning of the year that the president and both the PAN and PRI had decided to push an energy bill possibly including radical changes, PRD's former presidential candidate Lopez Obrador would react immediately by establishing the National Movement for Oil Defense in January 9 and announcing demonstrations against the "privatization" of the oil industry.<sup>16</sup>

Even if passing a radical reform was more difficult in 2008, it still hold some chances. However, several courses of action taken by the president would increasingly reduce them. To begin with, the very next day, Calderon defended opening the oil industry to private investment arguing it would increase its competitiveness. Since that date until several weeks after the hydrocarbon bill was presented in April 8, the president would constantly call for the reform in his public speeches (Huerta 2011). This would be however counterproductive, because in this way he associated the reform directly to him, instead of allowing it to develop as a congress matter, thus increasing the opposition against it.

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<sup>16</sup> Enrique Méndez y Georgina Saldierna, "Confirma el PRI que apoyara la reforma para abrir PEMEX a la IP", La Jornada, January 10, and "Desdeñan Larios y Gamboa debate con Lopez Obrador", La Jornada, January 16, 2008. Alma Muñoz, "Constituyó AMLO el Movimiento Nacional en Defensa del Petróleo", La Jornada, January 10, 2008.

Furthermore, a few days later, in January 15, the president appointed his chief of staff, Juan C. Mouriño, as Minister of the Interior. Mouriño's first public statements would confirm that the priorities the Calderon administration had set for 2008 were to give the final steps for the public security reform, and push for two other reforms, in the energy and labor sectors.<sup>17</sup> This appointment was yet another mistake, for at least two reasons. First, as Mouriño had been Calderon's right hand since 2004 it was clear that he would likely be the next PAN's candidate to the presidency. Thus, supporting an important reform led by him meant strengthening his candidacy.

Quite likely this was one of the factors leading the PRI national leader, Beatriz Paredes, to publicly oppose in late January any constitutional changes in this sector (La Jornada, February 1, 2008), blocking in this way any more radical reformist attempts by Francisco Labastida, the then head of the key Senate's energy committee and part of a group within the PRI that supported privatization. She made reference to the fact that defending the oil state monopoly was stated in the PRI written principles and that her party could not thus support any constitutional change. For a quite experienced political leader such as she, it should have been quite clear that approving the reform in the short spring legislative session was quite unlikely and thus would be postponed until the fall or perhaps even the winter of 2008, thus reaching its highest political momentum just some months before the July, 2009, elections to renew the Chamber of Representatives. It was obvious that the party holding the leadership of this new legislature would be in an advantageous position to control the political agenda of the years immediately previous to the 2012 presidential elections. According to several interviewees, she knew that if the president and his party managed to approve a constitutional hydrocarbon bill, no doubt they will use it to try to maintain or even increase their legislative power and in turn push their presidential candidate<sup>18</sup>.

The second reason why appointing Mouriño was a strategic mistake was that his family had been involved for decades in the oil industry and in February 28 Lopez Obrador disclosed contracts he had signed as representative of the family business with the Energy Ministry, of which Minister (Calderon at the time) he was then an advisor. These accusations strongly weakened Mouriño's legitimacy to coordinate the negotiations for the reform while strengthened the social movement against it, putting the promoters of radical changes on the defensive.

In March 5, the Energy Ministry started a TV and radio campaign with a spot called "The Treasure". It argued that Mexico had a big oil treasure in its deep waters, which should be recovered with the help of oil foreign companies with experience in such type of endeavors. Framing the issue in this way was however one more mistake, as it only fueled the protests against privatization and spread the perception among the legislators of the PRD and other left parties that, given the stated urgency of

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<sup>17</sup> Sergio Jimenez, "Defiende Calderon inversión privada en Pemex", El Universal.mx, January 10, 2008. Jorge Ramos and Sergio Jimenez, "Mouriño se acerca a los actores políticos", El Universal.mx, January 17, 2008. See also Katia D Artigues, "Reforma Energetica ¿posible?", El Universal. com.mx, January 21, 2008. The labor reform however would not be discussed and approved until 2012.

<sup>18</sup> In a book he published in 2014, Calderon argued that he decided not to propose any constitutional amendments in his hydrocarbon bill because the PRI leader, Beatriz Paredes, had openly stated her party would oppose them. What he does not explain, however, is how delaying the introduction of the bill until the spring legislative session and appointing his right hand as the leading negotiator fostered Paredes' quick and open opposition to any constitutional change and her mobilizing the bias constructed in 70 years in favor of the state monopoly, which involved holding up to the PRI written principles and also allying with the PRD against the reform. Of course we cannot know what the position of the PRI's leader would have been at the start of the September-December 2007 legislative session, but no doubt the president would have been in a more advantageous position and, with the legislative elections farther away and a chief negotiator different than Mouriño, there is a chance she would not have opposed substantial changes so quickly and strongly.

exploiting such “treasure, the administration, the PAN and the PRI would try to approve the hydrocarbon bill through a fast track (in the same way the pension reform had been approved in a few days one year before). On the other hand, since PEMEX had already signed some contracts to make deep water oil explorations since March, 2007, these spots were not well received in congress because they made some legislators feel the president was only pushing something he was already trying to do (Lajous 2010). Finally, instead of promoting among the public a perception favorable to the reform, the TV and radio spots backfired as mass media commentators started mocking the campaign referring to the “little treasure” of the administration. In March 18, during his speech at the 70<sup>th</sup> anniversary of the Mexican oil expropriation, Calderon asked PEMEX’s CEO to study the possibility of building a new refinery, something well seen by the company’s union and thus a way of promoting the support of the PRI to the reform. In turn, in March 30 the Energy Ministry presented a “Report: The situation of Pemex”, which basically insisted on the critical situation of the industry and the urgency to act, already stated in March, 2007. However, on the other side, Lopez Obrador had led several demonstrations against a radical reform and in this way, as Schattschneider (1961) would said, he had successfully “expanded the conflict” around the issue.

In April 8, 2008, the president would finally send to congress the hydrocarbon bill. It did not include any proposals for constitutional amendments, although proposed allowing the direct participation of the private sector in the refining, transport and storage of oil products; thus, this latter proposal made the bill less incremental as it was proposing a goal shift in downstream. The bill also proposed a new type of performance “incentive contracts” to promote oil exploration and extraction, especially in deep waters (which were though only service contracts) as well as the appointment of four professional members of PEMEX corporate board, the creation of a new Hydrocarbon National Commission, among other things.

However, if it was already difficult for the energy bill to pass in this short March 15-April 30 legislative session, by sending in April 8 the administration lost the first 20 days of the session and left only 22 days for the negotiations. This strengthened the already present fears of a “fast track” approval of the bill among the legislators of the PRD and other left parties, which thus took by force the podium of the Chamber of Representatives two days after the president introduced the bill. These legislators conditioned freeing the podium to a compromise by the PAN and PRI of scheduling a 75 days period of public hearings. As a result, the bill was not approved in the spring legislative session and such hearings were scheduled for the period between May 13 and July 22. Once the latter took place, between the end of July and the end of October the PRI, PAN and PRD introduced their respective proposals and negotiations on the bill took place.

As the president did not promote the negotiation of other bills of the interest of the opposition parties and this was the only structural change bill being negotiated during the fall legislative session, it can be said that to pass the hydrocarbon bill he used rather a “rifle strategy”. This type of strategy may have the advantage of focusing presidential efforts in one bill. One of its disadvantages is, however, that it reduces the bargaining concessions the administration can offer to the other parties in exchange for supporting its bill. One interviewed stated that in the hydrocarbon bill negotiation process the PRI asked for an immense amount of federal budget resources for the states ruled by it, something the president was not going to oblige (the PRI most probably knew that but then it had a good excuse to say no to the more radical changes present in the administration’s bill). On the other hand, as it had been the case with the other bills Calderon introduced, rather than being a “soft-talk” president he used a plebiscitarian approach to promote the hydrocarbon bill, whereby he assumed congress had to support bill because the president was proposing it and because it was “good for the country” (in this case, as we saw, because

there was a “deep water oil treasure” Mexico had to exploit). In the interviews there were also references to a lack of coordination between agencies in the hydrocarbon bill formulation and negotiation (see also Lajous 2015: 573).

During the negotiations of the hydrocarbon bill, Calderon could not use any “sticks” either. Since the beginning of his administration he made strong alliances with corporatist union leaders, specially the union of education workers (SNTE), which had supported Calderon electoral campaign, but also the PRI’s oil workers one (STPRM) (Mendez 2015). According to one interviewee, the latter had historically presented itself as “a guarantee of stability and safety in the oil industry”. In fact, if these unions had received a favorable treatment in PRI times, they were even more privileged during Calderon’s presidency (according to several interviewees, in the latter case most probably out of plain fear). In these circumstances, the PRI and its oil workers union knew there would be no costs in resisting any attempt by the president to make radical changes in the hydrocarbon sector. In contrast, the latter feared there could be if he attempted them.

In October 8, after he had asked PEMEX to study this possibility in March, Calderon announced his administration will invest 12 thousand million pesos in the construction of a new refinery<sup>19</sup>, which was a good move to secure the votes of the PRI for the reform. However, although by this time, this party and the PAN could have passed together the bill, the president accepted including the PRD in the negotiations to reach a consensus bill, although that would involve watering down the original administration’s proposal. In this way, the bill was finally passed in October 28. Due to the opposition of the PRD and some legislators from the PRI, direct private participation in oil products refining, storage and distribution was rejected. However, the performance contracts did pass, together with the creation of the National Commission for Hydrocarbons and the inclusion of the four new professional PEMEX board members, among other changes. Soon after, however, PRD legislators introduced a constitutional controversy in the Supreme Court against the performance contracts. This, together with government delays to elaborate the model for these contracts and its uncertain legality (even after the Supreme Court ruled they were legal), would not allow to make extensive use of them in the following years. Thus, they were not useful in bringing new private investment, either for superficial or deep water oil exploration and production.

As it did not include any constitutional changes or allowed for a goal shift in downstream hydrocarbon activities, the historic industry goal remained the same (simply extracting the oil rent from the state monopoly) and there was only a change in policy tools. In short, following Hall’s (1993) typology, the 2008 reform can be characterized as a second order, incremental reform. As I tried to highlight above, although of course context was important, the specific actions taken by Calderon from the beginning of his administration regarding agenda setting and political action increasingly closed the opportunity structure for a more radical hydrocarbon reform and thus strongly contributed to such policy outcome. Of course, on the other hand, his actions allowed for at least an incremental reform in this sector, as well as passing the abovementioned pension, tax and public security reforms.

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<sup>19</sup> Redaccion, “Anuncia Calderon una nueva refineria para PEMEX”, El Universal.mx, October 8, 2008.



### ***III. Strategic Action and Hydrocarbon Policy Change during the Presidency of Enrique Peña (2012-2014)***

On December 1, 2012, Enrique Peña became the new Mexican president. He won backed by an electoral coalition of his party, the PRI, and two other small ones, the Partido Verde Ecologista de México (PVEM) and the Partido Nueva Alianza (PANAL). In November, 2013, congress passed a paradigmatic reform (Hall 1993) involving a goal shift in the hydrocarbon sector, from simply extracting rents from PEMEX to generating economic value and growth within the industry. For that purpose, hydrocarbon exploration and extraction, as well as the refining, distributing and direct sell of oil products, would be opened to private direct participation. In this way, the 75 years PEMEX's monopoly was broken and the state company would have now to compete with national and foreign private enterprises along upstream and downstream oil activities.

#### *Overall political context*

Enrique Peña came to power as an “opposition” president, since he was the candidate of a different party than his predecessor and had developed an electoral campaign criticizing the two previous PAN administrations. As during Calderon's administration average GDP annual growth remained at the same 2.2% and the structural reforms in education, energy, public finance, telecommunications, infrastructure, etc. had not been achieved either, Peña also faced a quite vulnerable regime. Furthermore, he had won the election with a difference of about three million votes from his closest rival (Lopez Obrador).

On the other hand, however, he had the same low presidential powers and an approval rate of 54%, about ten points below Calderon at the start of the administration (Consulta Mitofsky 2014). Furthermore, he also faced divided government: Although his electoral coalition had a 251/500 majority in the Chamber of Representatives, in the Senate it only had 62 out of 128 seats (4 short of the majority) (the PRI alone had 213 representatives and 52 senatorial seats). Most importantly, it did not have the two thirds majority needed in each chamber to pass constitutional amendments. To achieve the 334 representatives and 85 senators required, Peña's governmental coalition needed PAN's 38 senators and 114 representatives, just as his predecessor had needed those of the PRI.

#### *Legislative agenda and strategy*

In contrast to Calderon, facing a divided government Peña accepted first and encouraged later an agreement (originally proposed by the PRD leadership) among the three main parties around a common reformist agenda. Negotiations for such agenda lasted about two months, from October to November, 2012. In this way, in December 2, 2012, right the next day after the presidential inauguration, a “Pact for Mexico” was signed by the president, his Secretary of the Interior and the heads of the three main political parties –PRI, PAN and PRD. The Pact included reform proposals in many policy areas, among them education, telecommunications, energy, taxes, finance, etc. However, it did not amount to a governmental coalition, as Peña also appointed a cabinet rather close to him and the PRI.

The new president decided to put at the central place of his agenda education reform, a “Crusade against Hunger” and promoting economic growth through several infrastructure projects as well as telecommunications, energy, taxes and financial reforms. On the other hand, he avoided putting the fight against organized crime as the central issue of his agenda, although he said he will continue such fight with a different strategy, rather aimed at crime prevention and decreasing violence. Peña's agenda and the Pact for Mexico seem to show there was some political learning by both the president and political

parties on how to better deal with divided government. However, the president still had to act strategically in the following months so that congress would pass the reforms, even though his party did not have a majority in both chambers.

The education bill was the first Peña sent to congress, just a few days after his inauguration, in December 10, 2012. Although it involved constitutional amendments, by December 22 it had been already passed. During January and February, 2013, it started to be approved by the state legislatures. By presenting the bill during the holiday season, the government preempted the mobilization of hundreds of thousands of teachers by their powerful union leader, Elba Esther Gordillo. However, teachers came back to school in January and arguably this leader was about to set a national movement against the education bill right after it was enacted. Thus, in February 26, precisely the day the bill was published, she was detained, accused of illegal use of union funds. As she was widely considered a highly corrupt union leader, Peña's tour de force was seen favorably by most people. Furthermore, by putting her in prison, the president showed he was willing to distance himself from the reforms' negotiations but also was capable of using coercion against those opposing them, in case it was necessary and justifiable. Quite probably this was of great help in the hydrocarbon reform, in which the president would also face a powerful union leader, Carlos Romero (in this regard, for instance, a few days before the detention of Gordillo, the press "find out" and published a report about a Ferrari Romero had given to his son as "a gift") (Proceso, February 23, 2013)

Once the education reform passed, Peña sent to congress two other reforms agreed in the Pact for Mexico. In March 11 (just four days from the start of the second legislative period) he introduced the telecommunications constitutional bill, which would be passed by congress in April (and enacted in June, after the state assemblies had approved it). In turn, once this reform was approved, Peña immediately sent on May 8 the financial reform bill, which, as congress was in recess, had to wait until the start of the legislative period in September.

In this way, we can see how Peña used at the beginning of his administration a "rifle-more agreeable bills" strategy, whereby he sent the reforms one after the other. Passing them was far from easy, but most probably they were chosen because, in addition to being agreed within the Pact for Mexico, were the ones the government could more easily push in congress. However, it should be noted that the president also furthered these reforms by distancing himself from the negotiations, allowing parties to carry them as part of the agenda of the Pact and, thus, feel they would be able take credit for their approval. According to one interviewee, all these actions were consciously planned by the Minister of Finance, the Head of the Office of the Presidency and the Minister of Energy. Although these reforms are still being implemented, at least up to the end of 2013 they promoted a favorable political environment and helped to increase Peña's political capital, something that no doubt would aid in the approval of the energy constitutional bill.

### *The 2013 Hydrocarbon Reform*

As the 2008 hydrocarbon reform did not succeed in bringing further investment in exploration, the oil production declining trend started in 2004 continued, leading to a level of close to 2,500, 000 barrels per day between 2009 and 2012, a decline of about 25% from the 3,383,000 barrels per day of 2004. Although prices in 2011 and 2012 were at record levels of around 100 U.S. dollars per barrel (Coldwell 2014) and compensated for this drop, as it had been the case with Calderon, Peña's electoral platform included promoting private investment in the oil industry. Furthermore, after his election in July, 2012, an explosion September 18, 2012, in an important regional gas station in the northeast state of

Tamaulipas killed 26 people and aggravated for several months the already critical situation in the provision of gas for the center and northeast parts of the country (which was related to the low levels of national gas production and insufficient transport infrastructure, in turn due to the lack of investment in both of these areas).<sup>20</sup>

In this way, according to several interviewees, by the end of 2012 it was clear for the incoming administration that another incremental reform like the 2008 one was no solution to the problems of the hydrocarbon Mexican industry. We can assume that during the fall of 2012 policy “learning” had also spread to the other biggest political parties, PAN and PRD, as they accepted to include a reform promoting private investment in the energy sector in the Pact for Mexico, as we saw signed December 2 of that year.

Then, in March, 2013, the unthinkable happen: The PRI’s 4,000 member general assembly met to change its written principles to allow the participation of the private sector in the energy industry. With this modification, the president was now able to introduce a constitutional energy reform (while it showed the level of the president’s power within the party, for instance to the oil workers union belonging to it). Just five years before the PRI leader had defended those principles and used them to oppose any attempt at constitutional reform. In early 2013 several factors could explain however this change. First, of course, Peña was from the PRI. It must be noted, however, that although in general during the Twentieth century this party had been quite disciplined to the president, that had not been always the case (e.g. with Ernesto Zedillo). But Peña clearly controlled it, as he had had several years building a strong partisan leadership. Besides, he was just starting his presidency and was at the height of his power. Also, the PRI is a social democrat party, at the center of the political space and which thus has been historically a more pragmatic, less ideological party. Finally, it is fair to assume that the detention of the teachers’ leader just a few days before also had some influence.

In this new context, with the education and telecommunications reforms passed, the constitutional energy reform bill was introduced by Peña to the Senate on August, 2013, just a few days before the start of the longer, fall legislative period. It was to be negotiated together with two other Pact for Mexico bills: The political and tax reforms, introduced by the PRI in August and by the president in September, respectively. In this regard, several of the interviewees stated that PAN had a particular interest in the former bill and that, although it was more attuned to its ideology, this party supported the energy reform as an exchange for PRI’s support to the political one<sup>21</sup>. Several of the interviewees stated also that, although at the very end the PRD did not vote in favor of the energy bill, the acceptance of the government of some PRD proposals for the tax bill<sup>22</sup> avoided strong mobilizations against the former

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<sup>20</sup> In January 31, 2013, another big explosion would occur, this time in the basement of the executive tower of PEMEX right in Mexico City. After this, the next big oil explosion would be more than two years later, in April, 2015, in the sea platform of Abkatun. Of course, although suspicions always arise, the union cannot be blamed for any explosions, which are somewhat frequent in the oil industry and in which union workers often die.

<sup>21</sup> The then PAN Senate’s coordinator, Jorge L. Preciado, openly acknowledged that “we are exchanging the political for the energy [reform]; if they do not give us the political one, we do not give them the energy one”. Rodrigo Barranco, “Pan condiciona reforma política por la energética”, *El Universal*, October 27, 2013. [www.eluniversal.com.mx/nacion-mexico/2013](http://www.eluniversal.com.mx/nacion-mexico/2013), viewed October 9, 2015. PRD representatives Uriel Flores (and others) confirmed that in a separate press interview by referring to such as agreement as “open and public; that was PAN’s condition”. Claudia Montero, “Reforma político-electoral sólo beneficia a clase política, no a la sociedad: Uriel Flores”, in [www.alcalorpolitico.com](http://www.alcalorpolitico.com), Xalapa, Veracruz, 06/12/2013, viewed on October 9, 2015.

<sup>22</sup> Which were reported in “Hacienda pacta con PRD por reforma fiscal”, in *El Economista*, October 30, 2013, viewed October 9, 2015.

reform by this latter party.<sup>23</sup> Furthermore, instead of any image of a deep waters “treasure”, the argument the government used publicly was that with the energy reform economic growth and overall employment will significantly increase, while electricity and food prices will go down. Another interesting framing strategy involved stating that the reform was only bringing back hydrocarbon policy to the spirit of the original Lazaro Cardenas expropriation decree, which established that all subsoil reserves belonged to the nation but allowed for contracts with private companies to explore it and extract it. As in 2008, there were also public hearings, which went from September 20 to November 20.

While the tax reform and the financial reforms were approved by Congress in November, the energy reform was passed in December 12 and the political reform the next day. So, passing the energy bill took only about three weeks of negotiations once the hearings had finished. (Calderon’s bill took three months). At the end, as it was expected, PRD announced it would not vote in favor of constitutional changes, so the president decided to go ahead anyway and pass them together with the PAN (as we saw, Calderon persisted instead in getting an unanimous vote). The energy secondary legislation started to be discussed in April, 2014, and was quickly approved by July of the same year.

As it can be seen, in contrast to the first more agreeable reforms, for the more divisive energy bill Peña developed a shotgun strategy, which allowed him to make concessions to the other parties in the bills the latter ones were interested, in exchange for their support --or reduced resistance-- to the energy bill.<sup>24</sup> However, in addition to introducing this bill just before the start of the longer 2013 fall legislative session, and thus farther away from the intermediate elections too, as in the previous reforms, the president also distanced himself from the energy bill negotiations. Furthermore, contrary to Calderon, he avoided politicizing them by giving the leading bargaining role to the Head of the Office of the Presidency, Aurelio Nuño, and the Energy Minister, Pedro J. Coldwell, none of them prospective presidential candidates at the time.

As it was said, the energy reform broke the monopoly of PEMEX, which became a “productive public company”. Thus, the Ministry of Energy can sign now contracts with PEMEX but also with private companies, which can register oil reserves as assets when signing “shared production” or “shared gain” contracts for oil exploration and extraction. Permits can be given now to private companies for their direct participation in refining, import/export, transport, storage, distribution and sale of oil products. The new regulatory regime establishes that by 2018 there would be open competition in price, quality and brand at the very pump station. However, no current public actives would be privatized, the state would maintain ownership of all subsoil hydrocarbon assets and PEMEX would remain a dominant actor within the sector, now with a lower fiscal burden. Also, several provisions for the strengthening of the Energy Regulatory Commission, the National Commission of Hydrocarbons and the Energy Ministry were included, as well as for greater transparency and accountability in the granting of contracts (Coldwell 2014). Finally, the oil workers union was taken out of the corporate board of PEMEX (without its leader saying a word).

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<sup>23</sup> It should be noted that although in the second half of 2013 Lopez Obrador organized some demonstrations opposing the energy reform, his mobilizing power had been weakened by his split out of the PRD and by the fact that in the fall of 2013 he was quite busy organizing the dozens of district assemblies needed to get his new party, MORENA, accepted by the Electoral Institute. Then, in December 2, 2013, he suffered an unfortunate (but not mortal) heart attack.

<sup>24</sup> The political reform gave the Federal Electoral Institute further powers to participate in the organization of local elections and allowed for the reelection of legislators, among other changes. In turn, the tax reform involved taxes on new goods (junk food, soft drinks, pet food, etc.) and also included a VAT increase from 11 to 16% on the border, higher deductibility caps and a rise in the income tax.

As all this meant a goal shift from a state rentist paradigm involving simply extracting rents from the state oil company (Petroleos Mexicanos, PEMEX) to a market one aimed at generating economic value and growth in this industry and the 75 years state monopoly in exploration, extraction and refining of hydrocarbon goods was broken, this reform involved constitutional changes related to both the goals and instruments of the sector's policy regime. Thus, even if such changes are still being implemented, it can be described as a paradigmatic, third-order type of policy change (Hall 1993). And as I showed, it was brought about by a set of strategic actions by Peña in both agenda setting and political action, which were the opposite to those developed by Calderon. Of course this does not mean he could not also make important strategic mistakes. For instance, also contrary to his predecessor, he underestimated the problem of public security, a mistake that would hit hard the standing of his administration the following year.

In this way, after the constitutional reform and changes in 21 laws, the basic design of the Mexican oil industry's new architecture is now in place, although some specific rules will be developed as needed. In round zero, PEMEX already chose the oil blocks it will reserve for itself (83% of 2P reserves and 21% of prospective reserves) (Coldwell 2014), while the results of the first upstream auction of round one (covering a total area of 28,000 square kilometers), in which private companies were able to participate, were made public in July, 2015. As such results were rather disappointing (only 2 of the 14 auctioned blocks were assigned, in this case to two Mexican private companies), a few days later the Minister of Energy announced the terms for future auctions will be modified. The Mexican hydrocarbon industry in fact is facing and would continue to face in the next years a quite complex and challenging scenario (Lajous 2015). Thus, although the energy state monopoly has now been legally broken, the precise extent and pace of actual change in the structure of the industry and its governance system remains to be seen.

### ***Conclusion***

This text has compared, within a most similar cases research design, the presidential strategic behavior and political interplay among various actors taking place in the hydrocarbon reforms of Enrique Peña and Felipe Calderon, within the context of the evolution of their legislative agendas. This comparison aimed at showing that, although fostered by contextual factors, a paradigmatic change in the first case and an incremental one in the second were to a great extent "brought about" by a cluster of specific actions taken by each of these presidents, which regarding such reforms was more strategic in the former case and less so in the latter. More specifically, it has argued that the 2013 hydrocarbon paradigmatic reform to a great extent was brought about by three sets of presidential strategic moves: 1) Building a coalitional legislative agenda before the start of the administration and quickly promoting its enactment through a "hidden hand" presidential approach. 2) Using a "rifle-agreeable bills/shotgun-contentious bills" strategy, whereby the more agreeable bills for political parties were introduced first one by one, while the more divisive energy bill was introduced later together with other reforms. And 3) acting on the "incentives structure" of political actors (mainly unions, parties and legislative groups) through a positive/negative incentive ("carrot/stick") strategy.

It was argued that context had a limited influence, as these two presidents faced similar policy subsystem and overall institutional opportunities and constraints (in addition to systemic similarities resulting from acting in the same country at about the same time). For instance, in 2013 the industry was in a critical situation and the president wanted to open it to private investment and competition, but in 2008 too. In turn, in 2008 the president was strongly constrained by divided government and low constitutional powers to produce radical reform in a policy field where paradigms tend to be strong, but in

2013 too. In both cases, energy reform was not the first priority in the presidential agenda and thus were presented after other reform bills.

Of course there are some specific differences between the cases. First, the crisis in the oil Mexican sector in 2013 (lower production levels; gas scarcity) was more acute than in 2008. Second, in 2008 Calderon had to bargain with the PRI --which principles were against a constitutional hydrocarbon reform-- while in 2013 Peña had to do it with the PAN --with a more market oriented ideology. Also, Peña and the political elite had the chance of learning from the failed Calderon's reform. No doubt, these differences greatly fostered change in 2013 as compared with 2008. However, ideology does not by itself make a political actor concur with its opponents, learning does not automatically translate into "doing" and a crisis does not necessarily bring action, not to mention strategic action.

Thus, although some of these circumstances facilitated Peña's task at promoting change, it would be difficult to maintain that they "made" him take the strategic choices he took. He still had to choose among various courses of action all the way from his electoral triumph to the approval of the energy bill. Nothing "force" him, for instance, to move quickly his legislative agenda in the first two long congress sessions of 2012 and 2013, distance himself from legislative negotiations, use a "rifle-agreeable bills/shotgun-contentious bills" sequence strategy or framing the reform in a nationalistic way, or go ahead with a bipartisan instead of an unanimously approved bill, to mention just some of his choices. Besides, even if probably he did not have to ideologically persuade PAN about opening the energy sector to private companies, making his party make a programmatic U turn in this highly sensitive issue and deterring the powerful oil workers union were no easy tasks either. In the case of Calderon, it is even more difficult to see what contextual features could have "made" him launch a "war against drug trafficking" and even less putting it at the forefront of his legislative agenda, a move that only left room for incremental in his pension, tax and energy reforms. In 2006, organized crime and its related violence still were public problems, especially in some states, but they had been going down in the nation as a whole (furthermore, he was explicitly warned against the great risks involved in launching such a war).<sup>25</sup> Low rates of economic growth seemed to be pushing him instead towards economic development, and this issue indeed was at the heart of his presidential campaign, but then all of the sudden he turned towards public security.

As it was said at the introduction, the comparison of these cases it is not aimed at showing that legal norms, policy "legacies", power structures or external shocks and social learning do not frame or sometimes even incline actors towards either resisting or promoting change. It rather aims at supporting the view that such factors still leave them with important "degrees of freedom" and thus cannot fully explain policy change or stability. Even when facing similar circumstances, actors take choices regarding agenda setting and political maneuvering and these have crucial effects on the evolution of opportunity structures and ultimately policy outcomes; therefore, to explain such outcomes we have to look at the specific nature and evolution of actors' strategic interplay within their particular contexts. This focus makes the strategic action perspective different from pluralistic, ideational, institutional and statist approaches.

This text also tried to show as well that to understand policy outcomes it is necessary to realize that micro strategic interplay is "nested" not only in the historic evolution of the policy subsystem in which it takes place, but also in the macro level of the political system. In this way, although the 2013 hydrocarbon Mexican reform seems close to a pattern of "punctuated equilibrium", by focusing on the

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<sup>25</sup> In footnote 12.

ways presidential strategic action affected policy evolution, this text offered a less “pluralistic” and “subsystemic” view. On the other hand, by considering the previous 2008 incremental reform it showed that change involved “social learning” and “reactive sequence” processes (Hall 1993, Mahoney 2000; Howlett 2009), which thus made change less “punctuated” by external shocks. In this sense, it seems to have rather followed a “quasi-homeostatic” pattern (Howlett and Cashore 2009), with the difference that it was not the aggravated crisis in the oil industry itself what precipitated change but rather the strategic actions the president took in the context of such crisis.

## **Interviews**

High civil servant of ISSSTE, México City, November 27, 2010.

Civil servant at Office of the Presidency, Mexico City, 2013.

Pemex manager, Mexico City, April 10, 2014

Independent consultant on hydrocarbon policy, Mexico City, June 2, 2015

Ministry of Energy high civil servant. Mexico City, June 16, 2015

Ministry of Energy high civil servant. Mexico City, June 16, 2015

Ministry of Energy high civil servant. Mexico City, June 19, 2015

Think tank expert on hydrocarbon policy, Mexico City, June 19, 2015

Former Pemex General Director, Mexico City, July 30, 2015

Pemex manager, Mexico City, August 7, 2015

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