More than a Regulatory State: Divergent Trajectories in the Mexican Polymorphous State

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Abstract

This thesis investigates the Mexican regulatory reforms focusing on the evolution of the institutional arrangements of the regulatory state across policy regimes. It is based on a qualitative research design and the results are presented under the structure of three articles. The first article develops an interpretative framework from which hypotheses are extracted for the study of institutional interactions between the regulatory and developmental state. The second article compares the relations between institutional arrangements in the regulatory and developmental state across utilities policy regimes like electricity, telecommunications and water, in order to show how the trajectory of regulatory change and developmental reproduction is affected by interactions between the pre-existing institutions of the state, and newer institutions. The third article explores how regulatory agencies in banking, pharmaceutical and telecommunications incorporate and deploy strategies of accountability to strengthen their position in the regulatory space and the political process. The three articles are linked to the idea of the polymorphic state.

Resumen

La tesis investiga las reformas regulatorias de México en las últimas décadas, centrándose en el análisis de la evolución de los arreglos institucionales del Estado regulador a través de diversos regímenes políticas. A su vez, la tesis se basa en un diseño de investigación cualitativa y los resultados se presentan bajo la estructura de tres artículos. El primer artículo desarrolla un marco interpretativo del que se derivan hipótesis para el estudio de las interacciones institucionales entre el estado regulador y el estado desarrollista. En el segundo artículo se comparan las relaciones entre los arreglos institucionales del Estado regulador y el Estado desarrollista a través de los regímenes de política de servicios públicos, como la electricidad, las telecomunicaciones y el agua, a fin de mostrar cómo las diferentes instituciones estatales preexistentes y sus interacciones con las nuevas instituciones configuran la trayectoria del cambio regulativo y la reproducción del desarrollismo. El tercer artículo explora cómo las agencias reguladoras en los sectores de la banca, la industria farmacéutica y las telecomunicaciones incorporan y despliegan estrategias de rendición de cuentas para fortalecer su posición en el espacio regulador y el proceso político. Los tres

artículos se refuerzan y vinculan desde la idea del estado polimórficos.

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A mi hijo,

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INTRODUCTION

One of the most salient historical debates in the political realm is the one related to the questions of why and how states should regulate markets. Across this topic much has been written delineating the principles under which the state acts and should act in the economic realm (Bevir 2007; Lindblom 1977). Clearly, within scholarship, the roots of the current debates remain very much influenced by the classical thinkers, particularly in the case of political economics (Block and Evans 2005; Muller 2002). In this domain it is almost impossible - or at least *naïve* - to isolate the normative dimension of the state from the *corpus* of its actions (Sunstein 2007).

There is a burgeoning field of literature on regulation, exploring the contemporary position of the state as an intersection between political and economic order. During the last two decades regulatory studies has become one of the central intellectual projects in social studies (Braithwaite and Drahos 2000, 10). But it is not only within the social sciences that the study of regulation has gained importance. Its incursion into public debate is increasingly salient. Regulatory values, means and ends are contested among social groups and political coalitions. Normative and functional approaches to regulation have theorized about the rationales by which the state should regulate markets, about how and who should regulate them, and what the contribution of regulation should be to welfare (Breyer, 1984). However, it is difficult to distinguish between methodological and theoretical approaches contained within the boundaries of a single discipline. However, it is difficult to distinguish between methodological and theoretical approaches contained within the

boundaries of a single discipline. Moreover, during recent decades the sense of a regulatory epistemic community has been building across the social sciences, in disciplines including legal studies and economics. Regulation is thus characterized by "a broad but shared conception of regulation […] with different but largely interdisciplinary research agendas" (Lodge and Koop 2015: 119). Thus, the approach to regulatory phenomena is interdisciplinary, taking analytic tools from different disciplines that converge in the study of regulatory institutions and processes.

More specifically, the research agenda of regulation usually ranges from studies on "state-authority-based bureaucratic activities to those non-state-based transnational ones" (ibidem). The agenda of this thesis is framed within the tradition of the former. It is about the state and it is about regulation. It poses questions such as: what is the role of the state in the developmental process? How can we understand the role of regulation as both a market-building tool of government, and something that limits the effect of the market on society? These questions are not only key to research agendas about the so-called regulatory state, but perhaps more importantly, they are of great political salience across modern and contemporary societies (Baldwin et al, 2010, Orbach, 2013, Jordana and Levi-Faur 2004, Levi-Faur 2011). This is the debate that motivated and framed the contribution of this thesis.

In the following sections the objective is to describe and explain the theoretical background of the thesis, the polymorphic state approach from which it departs, then the relevance of the Mexican case for the purposes of this work. I also introduce the research question and the

methodological approach, concluding with the presentation of the three papers included in this thesis.

1. A state background: the polymorphic approach

The study of the state is an issue that can easily overwhelm any attempt to address it. It is not the purpose of this thesis to depart from a systematic and detailed study of the history of ideas and the multiplicity of approaches that have already covered the many dimensions of state theory extensively. Rather, the modest aim of this section is to make more explicit some theoretical assumptions about how I understand the state as a category and how I incorporate this into the analysis of the regulatory state. I do not take for granted the importance of the theory of the state to the study of the regulatory state. On the contrary, I criticize the way the state has been incorporated into the study of regulatory institutional trajectories across countries and within sectors. Building on this, I seek to contribute to the analysis of regulation by using a better theoretical lens through which to view the institutional development of the regulatory state in Mexico. To do so, it is necessary to briefly introduce some of the assumptions on which the analysis is based.

To start with, historically, the analysis of the state goes in tandem with capitalism as two of the main artefacts of modernity in the social order (Mangabeira 1977). In this regard, the idea of studying the state is, of course, an inquiry that offers theoretical approaches as diverse as the multiple 'idioms of analysis' in social sciences (Weale 1992). In other words, the various social science paradigms have approaches that emphasize different elements of the notion of the state. The broad

diversity of approaches includes Marxism, elitism, pluralism, institutionalism, feminism, environmentalism, poststructuralism and so on (Hay et al 2006, Jessop 2015, Jordana 1995). Vom Hau (2015) offers a way of organizing analytically the puzzle of the different trends of approaches to the state. He identifies four analytical streams in his study: 1) a class-analytic approach, 2) a liberal approach, 3) a neo-Weberian approach and 4) a culturalist approach.

Table 1. Four analytical traditions in state theory

	Class-analytic approach	***Liberal approach***	***Neo-Weberian approach***	***Culturalist approach***
Root concepts	Class conflict	Social contract	Formal organization	Cultural representations, cultural practices
State-society relations	State as institution-alized class relations	State as arena of strategic action	State as (potentially) autonomous actor	Cultural constitution of state-society boundary
State capacity	Derived from class relations	Derived from solving freerider problem	Derived from bureaucratic competence and territorial reach	Derived from disciplinary and identity effects of culture
Consent to state power	Derived from false consciousness, hegemony	Derived from "quasi-voluntary" compliance	Derived from output legitimacy and state	Derived from rituals, everyday practices, and

	e among citizens	ideological work	world cultural models

Source: Vom Hau 2015.

As can be seen in the table, the four analytical traditions of state theory offer different conceptions of the character of the state at different levels. The origins of each conception emphasize their theories on issues such as class conflicts, the social contract, formal organization or cultural representations and practices. In the same way, they establish state-society relations, state capacities and forms of consent to the state power that are analytically distinguishable but difficult to isolate when the observer looks at the complex chain of actors, institutions and power relations embedded in social reality. These four analytical traditions, each offering antithetical visions of the state, seem to produce complementary images that respond to different questions, all relating to different historical contexts of state-building processes.

Another classification is offered by Bob Jessop. He identifies at least six approaches to the analysis of the state: historical constitution, formal constitution, institutional analysis, agent-centred institutional analysis, figurational analysis and state semantics, and political discourse (2016: 6). However, Jessop claims that there can be "no general, let alone transhistorical, theory of the state especially if this is understood as a single theory that aspires to comprehend and explain the origins, development, and determinations of the state without reference to other kinds of inquiry" (ibid:7). This is an important point because more deductive interpretations of the state usually project, the opposite: that is to say, ideas about the state and

society as if those could represent the totality of state configurations across countries and sectors. This is precisely where ideas such as the polymorphic state offer potential theory-building channels to integrate state theory into the meso-level analysis. In fact, the polymorphic approach allows us to adopt more than one specific approach, revealing "the complexity of the state as a polymorphous institutional ensemble, insofar as different viewpoints reveal different facets of the state and state power" (ibidem), thus "[…] combining *commensurable* perspectives allows a more complex analysis, which may put apparently contradictory statements about the state into a more comprehensive analytical schema that reveals how the truth value of observations and statements depends on the contexts in which they are made" (ibidem, emphasis in original). Accordingly, the polymorphous character of the state takes diverse forms depending on the "dominant principles of societal organization or according to the most immediate problems, crisis, or *urgences […]* in particular conjunctures*"* (ibidem).

With such a background, I understand the state in Poulantzasian terms (1979), that is, as a social relation. Therefore, those relations that cross the political process should be institutionally, a 'material condensation' of the balance of political forces that seek control over the state apparatus in order to promote their governmental agendas (*idem*.; Jessop 2002, 2016). Now, seen in this light, in my view a workable definition consistent with the polymorphic approach, conceptualizes the state "as composed of differentiated networks of institutions and personnel that reach out from the center to control the territory they claim to govern" (Vom Hau 2018: 331). The definition

offers some advantages for my approach. Firstly, it does not imply that the state is a homogenous or unified entity, on the contrary, the state reflects different constellations of institutions depending on the configuration of the society and power among multiple actors with contested goals. Secondly, it allows for the exploration of the dynamics between formal and informal actors who dispute change and continuity within state institutions. Third, it connects with the idea of locating the analysis of the state at meso-level, within policy networks (Jordana 1995). Consequently, I argue that a polymorphic approach to the state, could potentially recouple the empirical analysis of institutional networks and state personnel with state theory.

In this regard, the thesis incorporates more systemically some of the tools of institutional analysis, but that is not to say that other 'idioms' did not influence the ideas developed across these three papers. From this point of departure, in the following pages I briefly describe the standard theoretical approaches to regulation.

2. The polymorphic state in a regulatory era

According to the propositions of Block and Evans (2005: 505): 1) "the state and the economy are not analytically autonomous realms but mutually constitutive", 2) states and economies are embedded in societies and 3) "this embedding dynamic is often reshaped by institutional innovation that reshapes the way states and economies intersect". If the analysis of institutional innovations is indicative of state-market dynamics (ibidem), recent state transformations should shed light on them.

During recent decades in the context of the consolidation of a neoliberal global era, diverse approaches (Garret 1998, Genschel and Seelkopf 2015, Hardt and Negri 2000, Rodrik 2011) saw the state as constrained and incapable of organizing national collective action in many realms due to global interdependence and the 'borderless' condition of capital. Thus the state was transformed into an arena of competitive world market forces, leaving state-run national institutions in a weak position. Meanwhile, for some others (Block and Evans 2005, Hall and Soskice 2001; Weiss 2003, Vogel 1996) state-run institutions maintained a crucial role in defining policy outcomes within that context of a global economy. In any case, there was a revival of studies on this subject. And because of this revival, we have gained a better understanding of the salience of contemporary transformations of the state (Sørenson 2004, 2006; Piccioto 2011).

In such a context, I interpret contemporary transformations of the state in a narrower sense, that is, as shifts in the scope of state activities, tools, capacities, purposes, and the re-arrangements of the structure of authority (Huber et al. 2015), driven by power struggles among competing coalitions. According to Sørensen, part of the contemporary transformations of the state is related specifically to when "the activity of states has moved away from stressing functions of economic management towards stressing procedural-regulatory functions" (2006: 193). This is a fundamental shift across countries and sectors that modifies state activities, tools, capacities, purposes and institutional arrangements, as well as the structure of authority. But any shift in the role of the state faces political and institutional

constraints. Therefore, if the change from economic management to procedural-regulatory functions is one of the contemporary transformations of the state, the interaction of previous modes of governance with regulatory institutions seems a central part of the story in contexts with regulatory change trajectories. Thus, states subject to transformations are of course not situated in a politico-institutional vacuum. Indeed, institutional changes always imply some level of conflict between competing values and projects. As a result, previous state institutions play a critical role in shaping and conditioning state transformations. In such a context, I argue state transformations should carry, in one way or another, the overlapping of different state types.

Therefore, I maintain that the study of the regulatory state as a transformation of the state in the context of developing countries without a strong regulatory tradition, should incorporate a better understanding of the dynamics of adaptation of regulatory reforms in the context of previously established state institutions - not only across countries but across and within policy regimes. In this regard, Vogel (1996) stated in his study about regulatory reform in industrially advanced countries, that, in the case of Germany, to characterize regulation one must look at the historical trajectory in which the state was active in fostering industrial development and regulation. In this way one can make sense of public policies - the analysis cannot be narrowed to economic thinking alone, but rather should incorporate the legal and administrative traditions within which new institutions are adapted. A similar institutional pattern can be seen historically in the analysis of the development of the

regulatory state in Latin America, where *superintendencias* in several countries continue to hold administrative and regulatory functions (Jordana 2011). Consequently, in my view, the study of institutional adaptation and development of regulatory institutions should have as a prerequisite an in-depth understanding of the institutional trajectory of a given country, and the policy regimes typically inspired and shaped by historical state projects. Indeed, this is a common issue that can be observed at the empirical level, across countries and policy regimes, more commonly than the literature concerning the regulatory state has recognized up until now.

Looking at recent decades there are reasons to believe that this kind of polymorphic dynamic across countries is greater in the so-called global South for at least two reasons. Initially, the idea of the regulatory state was originally located in the USA and then adopted in Europe, but more recently the rise of the regulatory state and its institutional development has been located mostly in countries of the global South, from Asia to Latin America (Dubash and Morgan 2012, 2013; Jordana 2011). Thus, the observation of how they have adapted and the tensions between them – i.e. how their institutional arrangements interact across different eras and sectors, should be clearer when we look at recent decades.

Second, there are contextual reasons (Dubash and Morgan 2012, 2013) that make the geography of the global South a relevant area for the polymorphic approach, namely that these countries meet at least one of the following conditions: 1) the presence of external pressures, especially from international financial institutions; 2) pressure towards redistributive politics that makes the adaptation to a

transformation of the state more contested; 3) limited state capacity, either because of weak fiscal structures or the lack of professional bureaucracies that diminish the imperium of the rule of law; or 4) all of these conditions were interacting with transitions in the local and global order, and with the consequential transformations of the state (examples include: democratization, the opening up of economies, and structural adjustments, to mention a few). In this conceptualization, regulatory reform as part of the transformation of the state met with public policies and institutional arrangements in the global South in such a way that makes its cohabitation with previous forms of the state more salient in recent times.

Furthermore, this conceptualization offers some advantages. On the one hand, it opens up a more comprehensive perspective on the study of regulatory reforms. It is clear that the regulatory reforms of the 1980s and 1990s transformed the scope, the tools, the structure and the arrangement of the states that pursued those changes, and, of course, that the experience of transformation varied extensively across these states. Considered within this spatial and temporal context, one of the relevant intersections relates to the institutional legacy of the developmental state, which inspired many policies in the preceding decades and shaped multiple institutions across the Latin American countries. In this scenario, Mexico is one of the countries where the tradition of the developmental state is stronger (Schneider 1999, Knight 2018), and as such is a country that engages intensively in regulatory reforms, as will be seen below.

In short, to offer a better understanding of the dynamics of the state in policy regimes highlighting overlapping processes among

different roles. Against conventional wisdom, that approaches the regulatory state as a monomorphic entity, here the argument follows the idea that in a polity, the coexistence of different state functions and roles within regulatory regimes is captured more accurately by first acknowledging the polymorphic character of the state (Mann 1986, Jesop 2016, Levi Faur 2013). Thus, the strategy I use to show and to understand the polymorphic dynamics of the state is based on the use of cross-sectorial comparisons. Generalist snapshots covering short historical periods when the changes are still occurring and have not matured and adapted to the institutional landscape produce simplified view of state transformations. This paints a picture that implies the regulatory state is just the successor of the welfare state (Yeung 2010) or the replacement of the positive or developmental state (Lodge 2006, Majone 1997). If there is not a careful comparison and analysis of the varieties of policy regimes viewed over a longer temporal basis, the regulatory state can easily be misrepresented. So, when the regulatory state interacts with different countries and sectors, and meets with other types of state, it forms something that should be visible by examining the institutional development of different approaches to and structures within the state, across policy regimes.

Therefore, if the policy principles and organizational features of different state rationales can exist simultaneously within a country, I argue that the idea of a polymorphic state can be better captured at a meso-level through the analysis of policy regimes. It is at this level of analysis where state features meet and produce policy

cohabitations not only at a national level, but across sectors and even within sectors, thus resulting in polymorphic policy regimes.

3. The Mexican state beyond the regulatory reform

A wave of global transformations has affected Mexico over the last four decades. Historically these transformations make Mexico as a developing country an interesting case-study of how institutional legacies embedded in the constitution can be shaped by a clash between the post-revolutionary developmentalist project and the rise of neoliberalism (Tello and Cordera, 1981). Somehow, the process and outcome of regulatory reforms was the by-product of this ideological and institutional cohabitation in the policy-making process. Therefore, this is a relevant background to understanding the role played by the state, its rules and organizations, in each policy regime.

In the post-war years of the twentieth century, when the so-called 'Import substitution industrialization' (ISI) strategy was active, the role of the state was massive in the development of domestic and national production. In fact, between 1920-1980 (Knight 2019), the Mexican state actively nurtured industrial and economic policies through state owned enterprises (SOEs), from commodities like oil and other natural resources up to infrastructure projects, such as ports, airports, railways, highways, telecommunications, water, electricity and financial services.

In later years, with the arrival of the Washington Consensus during the eighties and nineties, Mexico modified its developmental strategy. The huge growth of developmental structures was aggressively dismantled, with public investments in SOEs cut, and a

rise in privatization, liberalization and instruments of deregulation, all of which was done with the aim to build a market economy. New ideas about the role of the state in the economy, as was the case in many parts of the world, impacted the state structure in Mexico, bringing in new public bodies to support the marketization of the economy. Moreover, during this period an amalgam of economic and political processes was reshaping the institutional landscape. Processes such as integration within the global economy - specifically with the North American region - impacted enormously on the timing and the trajectories of regulatory reforms, thus further expanding the privatization, liberalization, and ultimately the marketization of the economy. At the same time, the country was in the middle of a long and gradual quest for democratization. By the same token, new rationales of public management were introduced and, importantly, there was a drive to institutionalize transparency and accountability.

Constitutional structures were also transformed in order to dismantle some of the informal powers established under authoritarian dominant party rule and hyper-presidentialism. To achieve this, reformers gradually changed the balance of public powers. In fact, throughout the long process of democratization, a new separation of powers arises not only between the three classical powers, but also affecting autonomous bodies set up to protect civil and political rights, as well as what might be termed a constitutional regulatory branch of the state. Hand in hand with this, human rights were formally at the core of a new legal regime incorporated in the Mexican constitution. The bottom line here is that these institutional

changes interacted with the specific forms of the state including the legacies of previous forms of the state in the making of the new, regulatory state. Together they constitute a network of complex institutional paths within the Mexican polymorphic state.

One way of examining institutional changes in the Mexican case is by observing the evolution and frequency of constitutional reforms. According to Fix Fierro (2017:144), since 1982 constitutional reforms, coinciding with the decline of the developmental state, were much more frequent, this being one of the most visible political characteristics of the transformation of the Mexican state throughout its quest for democratization.

Table 2

Constitutional reforms by presidential period

President	Period	Reforms	(%)	Party	Divided government
Alvaro Obregón	1920-1924	8	1.1	PNR	No
Plutarco Elías Calles	1924-1928	18	2.6	PNR	No
Emilio Portes Gil Pascual Ortíz Rubio Abelardo Rodríguez	1928-1934	28	4.0	PNR	No
Lázaro Cárdenas	1934-1940	15	2.2	PRM	No
Manuel Ávila Camacho	1940-1946	18	2.6	PRI	No
Miguel Alemán	1946-1952	20	2.9	PRI	No
Adolfo Ruíz	1952-1958	2	0.3	PRI	No

Cortínez					
Adolfo López Mateos	1958-1964	11	1.6	PRI	No
Gustavo Díaz Ordaz	1964-1970	19	2.7	PRI	No
Luis Echeverría	1970-1976	40	5.7	PRI	No
José López Portillo	34	4.9	4.9	PRI	No
Miguel de la Madrid	1982-1988	66	9.5	PRI	No
Carlos Salinas	1988-1994	55	7.9	PRI	No
Ernesto Zedillo	1994-2000	77	11.0	PRI	Yes
Vicente Fox	2000-2006	31	4.4	PAN	Yes
Felipe Calderon	2006-2012	110	15.8	PAN	Yes
Enrique Peña Nieto	2012-2018	145	20.8	PRI	Yes
Total		697	100		

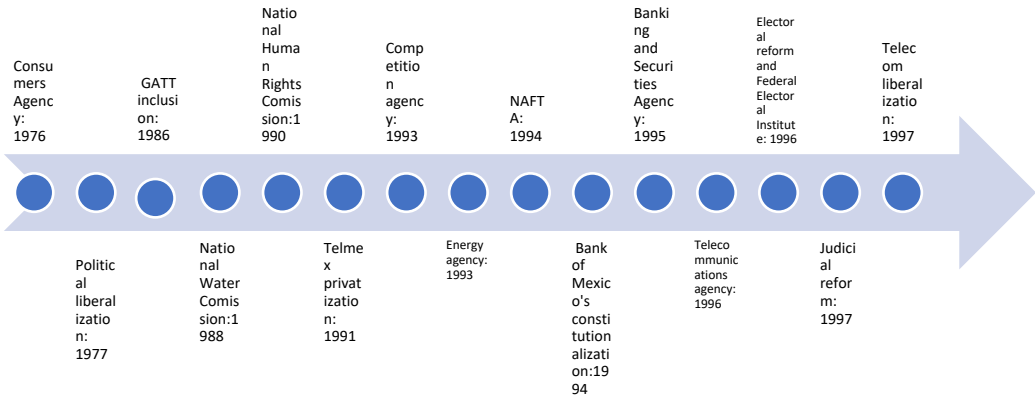
Source: based on Fix Fierro (2017).

Date on constitutional reform show how intense and frequent this process has been during the last two decades, beginning with a wave of reformism under De La Madrid's government, when the economy was undergoing structural adjustments. Furthermore, in order to make sense of the institutional changes implied by most of these processes and reforms, I have organized some of the major institutional changes concerning the reconfiguration of the Mexican state into two timelines, demonstrating that most of them related to processes of constitutional reform. They are presented at Figures 1 and 2 in a single sequence divided into two periods: 1) between 1976 and 1997, when the country took steps towards a democratic transition but continued with a single party regime; and 2) between

1997 and 2015, when the country had already achieved significant levels of democratization in terms of electoral competition, divided governments, and yet also continued along the path of the previous reforms. These changes were established at different policy levels. Some were legal and administrative decisions, another group were international agreements, and, not least, there is the importance of the constitutional reforms themselves. Taken together they give us an idea of the scope of state reforms.

Figure 1

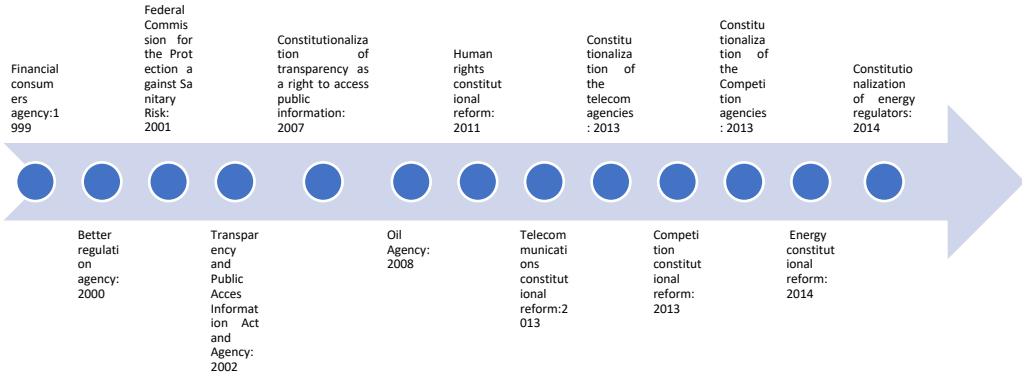
Institutional changes 1977-1997



Source: own elaboration.

Figure 2

Institutional changes 1998-2015



Source: own elaboration.

As noted, the aim of both figures is simply to visualize the scope and duration of this long process of reforms, including regulatory reforms. In this way it is easier to understand the scale of these changes and how they evolve over time, interacting with regulatory reforms and the institutional progress of the country's regulatory state. Indeed, it can be said that this was a very intense period of reforms that altered the structure, organization and apparatus of all spheres of the state. Against such a background what about regulatory agencies? Clearly the rise of the model of independent regulatory agencies (IRAs) and new policy instruments reshaped the role of the Mexican state across policy fields. However, the position of IRAs in the institutional landscape diverged across sectorial regimes. Partly

because of the ideas dominating professional networks, political struggles with a different set of actors and path dependence institutional logics.

Of course, as is well known, the diffusion of regulatory agencies was a regional and global phenomenon. In Latin America and other parts of the world, this was especially notable during the nineties. Such proliferation continued even afterwards, and Mexico was not the exception. Yet Mexico experienced this process with some peculiarities that make its case an interesting one that demonstrates the challenging complexity of politico-institutional settings in which the regulatory state has to mature across sectors and time. Indeed, because Mexico also experienced a democratic transition in recent decades, the intersection of regulation and accountability there can potentially offer insights about the institutional development of regulation and accountability in a post-authoritarian context.

In the context of an intense decade of reformism, this thesis studies the cases of telecommunications, electricity, water, banking and security as well as pharmaceutical regulatory regimes, in order to make sense of this long process of regulatory reform. Below I explain in more detail why these case-studies were chosen.

4. Research question

The thesis addresses different research questions in the three papers, though these different questions are linked. they all concern an analysis of regulatory institutions and discuss some of the most salient issues in the field of research on regulatory governance. In this sense, the central question that unites them can be summarized

as: how can we understand the institutional evolution and dynamics of the regulatory state in the context of the traditions of the developmental state? Is it as simple as one form of the state substituting another from one period to the next? In other words, is the developmental state substituted by the regulatory state or do they coexist for a time across policy regimes? And, more specifically, how these relationship impact in terms of variation in the sequence and institutional outcomes of regulatory change over time across sectors? For instance, if an agency was created during period one (i.e. under the developmental state), and not period two (i.e. under the regulatory state), are the ensuing regulatory reforms stronger because of this continuity, or is it the case that an agency adapts more quickly to institutional change within a given sector? These are the questions that form the framework of the three papers and will be subject to theoretical and empirical analysis throughout this thesis.

The first two papers address the relationship between regulatory change and the institutions of the developmental state. In the first paper, this is explored at a theoretical level, and in the second paper at an empirical and analytical level. The latter locates its study within the context of the broader process of what is usually labelled neoliberal market reforms. Thus, regulatory change appears embedded in the context of institutions established by the previous, developmental state. From that point a process of regulatory change and developmental continuity evolved both across policy regimes and within them.

The third paper takes a similar approach, but also explores how regulatory agencies - as well as regulatory change - in various sectors,

have been subjected to a parallel process: the emergence of a accountability regime in a context of democratic change. Thus, again regulatory change (the creation of regulatory agencies and the development of their capacities in a given sectoral/institutional environment) is shaped by wider and more long-term political processes that have an impact across different sectors in different ways.

Therefore, the research questions situate regulatory reforms in the broader context in which they are introduced, as well as revealing their relationship with other institutional processes that were established before or after the reforms. In this manner, their interactions with other kind of institutions allow us to examine feedback processes, and the constant adaptation and adjustment that occurs in such institutional environments. In this regard, the thesis does not only place special emphasis on the temporal evolution of the regulatory state in Mexico. The study of diverse institutional fields should help to identify patterns, regularities and differences and as a consequence I am able to obtain more robust results. With this aim, the study incorporates six case studies in order to show a more heterogenous regulatory space and thus to gain more information.

While it is true that the temporal and sectorial analysis of the thesis is limited to the examination of events in a single country, as noted, the analysis of the six case-studies has been designed to cover long periods of time, so as to observe a number of episodes and conflicts driven by regulatory change. Moreover, the analysis of various sectors and time periods allows us to test whether the theoretical model of the dynamics of the polymorphic state is plausible, or

whether state processes and their patterns are more homogeneous than expected.

In the following section, I will present the methodology employed in this work.

5. Methodology

When defining an inquiry or area of research, the tools chosen should be informed by the kind of problem that is going to be addressed and the availability of data for the specific context that will be subject to analysis. In other words, the properties of what is going to be studied predetermine how to approach the research questions. In this sense, my thesis follows a problem-driven approach, as opposed to method-driven approach, or, as Firebaugh suggests, I "let the method be the servant" (Firebaught, 2003, p.7).

Some scholars support the employment of mixed methods (Brady and Collier, 2010) to improve research designs and some even suggest using quantitative rationales to strengthen qualitative methods (King et al, 1994). Fortunately, the qualitative/quantitative dichotomy that has dominated much of the social sciences is now shifting towards a continuum of tools and techniques of research with their own logic and structure (Ragin, et al, 2003).

The use of the qualitative approach in identifying complex patterns and relationships - either through a historical perspective, sociological perspective, a political or legal lens - is in helping to identify methodological processes that are useful, prior to designing studies of bigger populations with broader aims. Regarding the latter point, one of the major and more crucial differences employing

qualitative research is that rather than relying on a larger number of cases and populations and a set of variables or mechanisms defined *a priori*, we look for a small number of cases exhibiting complex phenomena with conceal associations that cannot be identified in advance. As is stated in a significant report of the Workshop on Scientific Foundations of Qualitative Research: "the important point is that no matter how cases are defined and constructed, in qualitative research they are studied in an in-depth manner." (Ragin et al, 2004).

This thesis, as a comparative qualitative analysis of the trajectories of regulatory change within Mexican policy regimes, must, by necessity, incorporate a lot of in-depth information. For this reason, and as explained above, the historical process in which regulatory change in Mexico is implemented is a more suitable to guide to the structure of this study in terms of the qualitative research standards.

a) The comparative method

In the Weberian 'infinite web of causality', the "major goal of social sciences is to generalize in a way that reflects the diversity and complexity of the social world in general and of cases in particular" (Levi Faur, 2006, p.187). Moreover, according to Hall (cited *idem,* p. 189), "a case-oriented approach advocates ontologies that acknowledge more extensive endogeneity, the ubiquity of complex interaction effects, reciprocal causation, distant events, sequencing, and multi-causality". In the words of Charles Ragin:

> the case oriented approaches are oriented towards comprehensive invariant examination patterns common to relatively small sets of historically defined cases and phenomena, [and that is distinguished

> from the variable-oriented approach which] is concerned instead with assessing the correspondence between relationships discernible across many societies and countries, on the one hand, and broad theoretically based images of macro-social phenomena [on the other] (1987, p. 33; 2000).

The comparative method is essentially a case-oriented strategy of research where the main objective is to compare cases and find patterns of constant association. Thus, it is intended to determine the different combinations of circumstances associated with specific outcomes or processes (Ragin 1987). Being examined as a whole, that is to say, as combinations of characteristics, the cases compared allow for the identification of particular configurations of conditions. Contrariwise, the variable-oriented approach (Ragin 1987) is theory-centered and designed to assess probabilistic relationships between variables.

Furthermore, case-oriented methods stimulate a rich dialogue between empirical evidence and ideas. They allow for a flexible approach to the data collection process without constraining or restricting the examination of evidence. They provide a basis for examining *how* conditions combine in different ways and in different contexts to produce different outcomes, allowing a comprehensive examination of defined cases and phenomena (Ragin 1987). Based on this distinction and given the research aims, the methodological strategy deploys a case-oriented approach. Hence, the research does not build on a dependent-independent variable logic focused on the quest for causal relations between both.

The selection of this particular research methodology was based on

the idea that the method of structured and focused comparison (George and Bennett 2005) provides a better opportunity for gaining detailed knowledge of the ways in which regulatory trajectories differ across or within sectors in Mexico, connecting these differences to the conceptions of state intervention in regulatory and developing states. This detailed knowledge constitutes the basis of the analytical narrative suggested here. Analyzing regulatory change entails how this unfolds over time and in different contexts in an attempt to reveal patterns of change and flux. Regulatory change is embedded within the context of policy regimes and it is crucial to study it as such. In fact, regulatory change cannot be understood in a vacuum. Hence, the emphasis is on the contextual understanding of regulatory changes and their articulation across and within particular policy regimes.

Accordingly, case-oriented analysis that uses the comparative method is indeed a common and useful research design for regulatory governance studies. In this regard, according to Levi Faur (2004), four methods of research strategy are identified:

- An approach led by national patterns: this assumes that specific national characteristics exert a major impact on regulatory policies, with variations being determined by the embeddedness of specific state traditions.
- An approach led by policy sector: comparing a specific sector (e.g. electricity regulation) across national systems may predict convergence within a sector even where there are significant differences between national systems.

- An approach led by international regimes: this approach predicts that national and/or sectoral activity will be determined by variations in the strength and scope of international regimes (e.g. in trade, finance, labour standards).
- And approach led by temporal patterns: in this approach, it is suggested that current activity will be best explained by the shaping influence of past events (war, crisis, scandals).

For Levi-Faur none of these approaches is adequate on their own for the exploration of institutional phenomena, since each research design is defined by the particular context of the initial question. As a result, in order to make a strategic research decision regarding the analysis of regulatory change, one must consider 1) the context and the object that is going to be studied and 2) the availability of data and informational resources. Since my focus is on historical trajectories in utility policy regimes in the second paper, and takes a more contemporary outlook (2000–2015) in the third paper, using only one country but with six different examples of regulatory regimes, the research presented in this thesis is well designed to compare temporal patterns and regime changes as explanatory elements of the current modes of regulatory change.

b) Levels of analysis

My qualitative approach to regulatory, developmental and accountability regimes does not extend to take into account the effectiveness and efficiency of the outcomes of these regimes. The

study is not focused on the impact of state measures on welfare conditions, rather is focused on a more fundamental and basic issue, that is: how do state policy regimes interact in the context of reforms to regulations and accountability, and how do those interactions in a given policy framework produce certain institutional outcomes. Keeping this point in mind, the thesis is intended to fulfill two important research objectives.

In the first place, in a more general sense, a major objective is to foster a dialog between the theories underlying regulatory and developmental studies in the context of the contemporary state. Particular focus is laid on the way regulatory reforms have interacted with the legacies of the developmental state. Secondly, the study is intended to contribute to the existing literature by providing a more detailed and fine-grained analytical model to assess the conditions under which particular regulatory trajectories intersect with developmental and accountability institutions across and within regimes. Thus, it is worth noting that in order to organize the research design, the unit of analysis is the relationship between the state at a macro level and the policy regimes, on a meso level, the latter being represented by regulatory (administrative, legislative and constitutional) changes and the rules and practices of the observational accountability unit. In addition, the micro level, which is related to individuals, will be employed as a complementary resource providing contextual data, although it will not be used as a unit of analysis itself.

c**) Research resources**

The research is based on primary and secondary resources. In order to collect adequate empirical evidence for the case studies, a wide range of written resources, both primary and secondary were analyzed. Data collection included:

- Secondary literature and existing studies on related topics
- Primary documents, namely, institutional records, public documents and communications
- Reports and press releases, together with newspapers
- Data searches on the Internet taken both as an account and as interpretation of these same events
- Interviews with actors and specialists related to the policy regimes included in this research

These various materials reinforced and provided a more complete and detailed understanding of the kind of dynamics observed in each sector, for the later process of data analysis. In the next pages, I will briefly dwell on the importance of interviews in the research design and how this tool was integrated into the research.

d**) The use of interviews**

Interviews are a very important methodological tool for gaining in-depth knowledge. Understanding a complex institutional process is an enterprise that should be accompanied with direct observation in order to enable stronger empirical findings. With the purpose of gaining a more comprehensive understanding of the policy environment within which regulatory regimes evolve, as well as of

the variation within the research period covered, interviews are relevant as a complementary source of data for the second paper, while they form the main source of analysis for the third paper.

My intention is to use this technique to contextualize the institutional period covered by my research, as well as the paths of institutional changes that were carried out within regulatory and policy regimes. Moreover, interviews are a relevant source of information to look at informal institutional dynamics, as said something particularly explored in paper three. For this reason, interviewees included representatives from current or former regulatory authorities as well as corporate executives and occasionally experts, all of them with close ties or related to the six cases analyzed across the second and third chapters of this thesis.

In order to establish confidence in the data collected through interviews, they are based on the criteria of saturation, as this is one of the more effective strategies for establishing the standard of qualitative research through interviews (Small 2009). Accordingly, using this strategy, once one has reached a point of saturation, it should be the case that the inquiries related to the process or the information are adequate, and thus further interviews would not offer any new knowledge. It is generally supposed that twenty or so interviews should be enough to achieve saturation regarding a particular topic. Nevertheless, there is no fixed number of interviews that guarantee saturation, it might even be achieved with a smaller number of interviews. Even though I faced some limitations in obtaining a higher number of interviewees during my fieldwork, the standard of saturation was achieved for all three case-studies in the

third paper. The interviews with regulators and representative actors from corporate associations, for instance, gave me enough information to obtain insider views of relevant processes of accountability and regulation. In fact, for paper three, I conducted 35 interviews across the three policy sectors analyzed that is, more than 10 for each case. Whereas, for the second paper, interviews were not the main source of information, rather they were used only occasionally to get a better understanding of decision-making processes. In fact, with regards to the most recent wave of regulatory reforms, I was able to interview a small number of key actors related to those processes.

Now, a further methodological issue related to gathering information from interviews, is how to choose your interviewees. In this regard, snow-ball sampling is a useful technique to employ, that is, asking interviewees to recommend other interviewees. This technique almost always increases the possible number of respondents and has the advantage that "people become more receptive to a researcher when the latter has been vouched for by a friend as trustworthy (this trustworthiness might also translate into greater openness)" (Small, Mario, 2009). Interview procedures range from standardized questionnaires to semi-structured and non-structured, open question techniques. In the case of unstructured interviews, the interviewer has only a limited knowledge of the topic under discussion and interviews are hence used as a way of obtaining insights, more information, or even an insider perspective. On the opposite end of the spectrum, structured interviews with closed-ended questions allow the interviewer, who already has a lot of knowledge on the

issue, to ask questions that are more specific and thus get very precise information. Between these two extremes, it is common to find semi-structured interviews with open-ended questions.

In the research conducted for this thesis, I used semi-structured interviews with open-ended questions for the third paper. This is because the formal instruments of accountability were known to me in advance, but little information was available regarding informal accountability practices, thus this kind of semi-structured interview showed clear advantages for obtaining more detailed and in-depth information, as well as offering an insider's point of view. In the case of the second paper, where interviews were just a complementary data source, and provided insider information of the reform process, open-ended-questions were chosen as a better technique for obtaining more in-depth information on the context of both recent and historical processes of regulatory reforms.

In the next section I present the abstract of the three papers and demonstrate how the three papers are linked both theoretically and empirically in a cohesive background and method of analysis.

6. Linking the three papers

In order to address the logic that links and underpins the three papers, in this section I present a summary of each paper and explain how they address the broader research question outlined above from different angles and perspectives.

a) Cohabitation dynamics between the regulatory state and the developmental state: a polymorphic state approach

To start with, the main idea and motivation behind the first paper is the need to build a better theoretical lens for understanding the

political arena, that is, the state arena, in which regulatory change evolves across time and across sectors. Specifically, the first paper seeks to understand how regulatory states insert themselves into institutional environments with previous state trajectories - such as, for example the developmental state - from the perspective of state theory. Since Majone's seminal paper, theoretical approaches to studies of regulatory governance have highlighted the change from the positive state to a new state, the regulatory state, reflecting the idea of a massive global expansion of regulation as the predominant instrument of government in the era of global capitalism. Both in public discourse and in certain theoretical approaches, this intersection is positioned as a moment of tension in which one state substitutes another. This had led to simplifications that, in my view, reduce our potential understanding of both the institutional complexity in which regulatory agencies and nascent regulatory regimes are fostered, as well as the interactions that occur between multiple forms of institutional adaptation and cohabitation. Thus, from this perspective, the institutional arrangements that precede the rise of the so-called regulatory state can be seen to largely determine patterns of regulatory change across time and various sectors, creating new dynamics of what is labeled by state theoreticians as the polymorphic state.

Against this background, the first paper advances an interpretative framework based on the idea of the polymorphic state, which is understood as a state with the capacity to integrate different roles, rationales, goals, techniques and instruments, that allows interactions of differing intensities within countries, across sectors and even

within sectors. Using this approach, I develop a framework for exploring the interactions between the regulatory state and the developmental state in contexts drawn from both the global North and the global South. Institutional analysis tools are used to present hypotheses about the forms of coexistence between the regulatory and developmental state. In sum, the argument shows how, when the regulatory and developmental state interact, institutional dynamics go well beyond simple linear processes and the appearance of one system directly replacing another automatically. That is to say, state theory ideas and its theoretical lens help to understand and bridge different contemporary conceptions about the way regulatory policy and its institutional arrangements are part of major transformations of the state and of larger processes of change and institutional development, thus giving a more robust interpretative framework on the complex institutional relations that are established between different state morphs.

Furthermore, this theoretical paper not only builds an interpretative framework for the study of the regulatory state, it also helps to pave the way for an approach that explores the intersection between the regulatory and the developmental state on an empirical level. This approach is then integrated and tested in the second paper. Additionally, although the first paper is much more directly related to the second paper, as it explores empirically the premises laid out in the first paper, it is also related to the third paper. Below, I explain briefly why this is the case.

b) Divergent paths of regulatory change. The case of utilities regulatory governance in Mexico

Mexico has pursued an ambitious program of market reforms during the last three decades. Since then the introduction of regulatory agencies to different policy regimes has formed part of a consistent strategy aimed at modernizing state structures and improving the technical quality of the regulatory decision-making process. Most of the studies on regulatory governance until now have highlighted the growing importance of regulatory governance in several regulatory fields across sectors in Mexico (banking, food, pharmaceutical industries, competition between businesses, and so on). Although utilities across various countries have been very much influenced by the model of regulatory governance, the Mexican experience seems to show that a different path of regulatory reform is possible. Telecommunications as a sector has been much more receptive to the introduction of regulatory governance structures, while the electricity sector has faced more political and institutional obstacles to the development of regulatory governance structures, and the policy regime concerning water providers has been even less receptive to regulatory reforms.

When compared, these three cases show different processes and intensities in the adoption of regulatory governance. How can we make sense of these differences within policy regimes concerning the utilities, even though all three examples have been subject to some extent to the structures of regulatory governance? I argue that the structures established under the developmental state have influenced the way these policy regimes have diverged in the process of accommodating and adapting to institutions of regulatory governance.

The analysis points to the importance of the sequence of institutional continuity and change between the regulatory and developmental state in order to see the intensity and depth of their interactions in an empirical manner. Thus, this paper, in turn, begins with an empirical exploration of the way in which regulatory change evolves in polymorphic states and compares this change both temporally and across sectors - in this regard, it is related to the first paper.

As noted, the second paper presents an empirical analysis of the evolution of regulatory change in Mexico across the utilities sectors. The central idea in the second paper is that, given that regulatory reforms began in sectors such as telecommunications and electricity, by analyzing the trajectories of institutional change in these sectors, we might observe patterns of change over time and through sectors which - as argued in the second paper and in the interpretative framework of the first paper - are largely determined by pre-existing institutions of the state, in this case those established by the institutional arrangements of the developmental state.

Importantly, the sequential analysis of regulatory change across policy regimes also allows to see how it interacts with other processes such as democratization or the expansion of socio-economic human rights in contexts of economic regulation.

The second paper is not only related to the first paper at the theoretical level, but it is also related to the empirical analysis and to some extent theoretically to the third paper. That is to say, the second and third papers share research designs founded on similar terms of qualitative analysis. Even so, of course, some differences remain in terms of the use of interviews and the extent of the timeframe under

analysis. But, in the end, both papers are comparisons of regulatory change and both use three case studies taken from different policy regimes.

Both papers two and three also use an approach through which the analysis of regulatory change is related to other processes of institutional change. In this paper regulatory change is related to the temporal and sectorial evolution of developmental institutions, and, in the third paper, regulatory change is also studied at the temporal and sectorial level, but this is considered alongside the evolution of the accountability regime. All in all, in the second paper the emphasis is on the structure in which regulatory change evolves, whereas in the third paper the focus is on the interaction of agency power and democratic changes, including systems of accountability, within the institutional structure.

Below, is presented he third paper.

c) Regulatory agencies accountability strategies in Mexico: the cases of CNBV, COFEPRIS and IFT[1]

During recent decades, transparency and accountability have been very important principles within the administrative reform of the Mexican public administration, as part of several attempts by federal governments to modernize state bureaucracies. The third paper in this

[1] I am the first author of this paper and Jacint Jordana is co-author. The paper was part of the research agenda of The Political Economy of Regulatory Agencies: Accountability, Transparency and Effectiveness (ACCOUNTREG) a project in which I participated as external contributor. See: https://www.ibei.org/en/the-political-economy-of-regulatory-agencies-accountability-transparency-and-effectiveness-accountreg_19011

thesis discusses the extent to which regulatory agencies have been able to go beyond the general trends in the public sector to improve transparency and accountability within regulatory regimes. We ask whether the regulatory agencies were able to develop their own agenda in terms of effectively introducing these mechanisms into their activities, making strategic use of them as a way of obtaining greater autonomy and leverage vis-à-vis other public and private actors.

This research allows us to identify an element of democratic change that in Mexico has occupied an important institutional position in the transition. Besides, theoretically, is also important because regulatory agencies typically emerge with questions about deficits of democratic legitimacy. And as is known in Mexico they emerged in a context of authoritarian governments, just in middle of the long process of democratization, and with a strong technocratic profile. But then the institutional trajectory of the agencies interacted with novel administrative reform structures promoted by democratic reformers who saw in mechanisms for accountability a strategic innovation to aid democratic change. Along these lines, institutional accountability has triggered formal and informal mechanisms that have been key to the development of regulatory change strategies.

The paper contains an analysis of three case studies of regulatory agencies in Mexico. The Commission for the Protection of Health Risks (*Comisión Federal para la Protección de Riesgos Sanitarios*), the National Banking and Securities Commission (*Comisión Nacional Bancaria y de Valores*), and the Federal Institute of Telecommunications (*Instituto Federal de Telecomunicaciones*) are

case studies that represent a representative part of the diversity of institutional environments in which formal and informal accountability mechanisms are developed in the field of social and economic regulation in Mexico.

As a result, the intersection between the rise of the Mexican regulatory state and a democratic state has two implications for the general question posed by this thesis. First, the trajectory of regulatory change through these types of transformations in the bureaucratic rules and practices, demonstrates clearly the importance of thinking of the state as a polymorphic arena. Since there are diverse agendas pursuing changes to the very structure of the state, these sectors remain irreversibly linked to a political arena in which principles that inspire different visions are disseminated through institutions. Second, and more specifically, the temporal and sectoral development of agencies is embedded in a network of relationships between actors that also shapes the evolution of the regulatory change.

In sum, the third paper articulates and helps to answer the general question of the thesis, insofar as it allows us to observe regulatory change from another angle, within the context of institutions of accountability. Theoretically and methodologically the paper is linked by common premises to the first and second papers, and at the same time complements them with an analysis that allows us to see the more proactive role of 'regulocrats' as a central agent of regulatory institutions.

A final introductory commentary

Academics engaged in the study of the regulatory and developmental states have focussed research on their 'own' institutions without seeking to foster dialog between each other's disciplines, despite the fact that, in one way or another, their discourses about the policy process are juxtaposed with the study of states and markets. Within the field of social studies, they share similar methodological and theoretical backgrounds but more importantly: empirically they are unavoidably related across sectors and countries.

It is argued in this work, that it is a mistake to limit our view of the contemporary capitalist state in monomorphic terms. A polymorphic approach can be useful in this context to frame the more complex institutional settings of the state and regulatory bodies. In order to put forward the case for the polymorphic model, I will explore the question of how processes of regulatory change can evolve across time and across sectors while interacting with other kinds of politico-institutional legacies.

The dissertation features three papers that are linked theoretically and methodologically and that locate the space of the regulatory state in the context of other iterations of the state. Thus, it is shown that the central role of other kind of institutions and politics, with power at the core of these processes, plays an important role in the explanation of the scope of regulatory states. It is important to note that, in order to show the advantages of this research, the focus on the intersection and interaction of regulatory change across nations are not enough, variation across and within policy regimes is crucial to our approach. Thus, we may have a polymorphic state not only across countries but across and within regimes.

I am certain that this dialog is worthwhile, not only to be played out within the academic realm but also in socio-economic and political debates. I believe this is a subject with relevant implications for the cumulative process of knowledge about politics and the contemporary stat

References

Baldwin, Robert and Cave, Martin, (1999), *Understanding Regulation. Theory, Strategy and Practice*, Oxford University Press, Oxford.

Baldwin, Robert, Cave, Martin and Lodge, Martin, (2010), *The Oxford Handbook of Regulation*, Oxford University Press, Oxford.

Bennet, Andrew and Alexander, George L., (2004), *Case Studies and Theory Development in the Social Sciences*, Cambridge, Massachusetts.

Bervin, Mark, and Trentman, Frank (eds.), (2007), *Markets in Historical Contexts: Ideas and Politics in the Modern World*, Cambridge University Press, Cambridge.

Block, Fred and Evans, Peter (2010), "The State and the Economy", in Smelser, Neil J. (eds.)*, Handbook of Economic Sociology*, Princeton: Princeton University Press.

Brady, Henry, Collier, David, (2010), *Rethinking Social Inquiry. Diverse Tools, Shared Standards*, Rowman & Litlefield Publishers, Plymouth.

Braithwaite, John and Ayres, Ian, (1992), *Responsive Regulation. Transcending the Deregulation Debate*, Oxford University Press, New York.

Braithwaite, John and Drahos, Peter, (2001), *Global Business Regulation*, Cambridge University Press, Cambridge.

Braithwaite, John, (2008), *Regulatory Capitalism*. *How it Works, Ideas for Making it Better*, Edward Elgar Publishing, Cheltenham.

Christenses, Jorgen Gronnegard, (2011), "Competing theories of regulatory governance: reconsidering public interest theory of regulation"; in Levi Faur, David (ed.), *Handbook on the Politics of Regulation*, Edward Elgar Publishing, Cheltenham.

Centro de Estudios Espinosa Yglesias (CEEY), (2009), *Evaluación del Desempeño de los Órganos Reguladores en México*, México.

Cordera, Rolando and Tello, Carlos, (1981) *México, la disputa por la nación: perspectivas y opciones de desarrollo*, Siglo XXI.

Culebro, Jorge and Larrañaga, Pablo, (2013), "Development of the regulatory state in Mexico: from economic reform to institutional failure", *Jerusalem Papers in Regulation and Governance*, Working Paper 53.

Croley, Steven P., (2011), "Beyond Capture: Towards a New Theory of Regulation", in Levi Faur, David, *Handbook on the Politics of Regulation*, Edward Elgar Publishing, Cheltenham.

Daintith, Terence, (1998) "Legal Measures and Their Analysis", in Balwin, Robert, Scott, Colin and Hood, Christopher (eds.), *A Reader on Regulation* Oxford University Press, Oxford.

Dawn, Oliver, Prosser, Tony and Rawlings, Richard, (2011), *The Regulatory State: Constitutional Implications*, Oxford University Press, New York.

Dubash, Navroz, (2013), "Regulating Through the Back Door: Understanding the Implications of the Institutional Transfer", in *Dubash, Navroz and Morgan, Bronwen (eds.), The Rise of the Regulatory State of the South: Infrastructure and Development in Emerging Economies*, Oxford University Press, Oxford.

Dubash, Navroz and Morgan, Bronwen (eds.), (2013), *The Rise of the Regulatory State of the South: Infrastructure and Development in Emerging Economies*, Oxford University Press, Oxford.

Firebaugh, Glenn, (2008), *Seven Rules for Sociological Method*, Princeton University Press, Princeton, NJ.

Fix Fierro, Héctor (2017), "¿Por qué se reforma tanto la constitución mexicana de 1917? Hacia la renovación del texto constitucional y la cultura de la constitución", in Esquivel, Gerardo; Ibarra Palafox, Francisco y Salazar Ugarte, Pedro, (eds.) *Cien ensayos para el centenario, tomo 4, estudios políticos*, UNAM-IIJ, IBD.

George, Alexander L., and Bennett, Andre, Case Studies and Theory Development in the Social Sciences, MIT, Cambridge.

Garret, Geofrey, 2000, "Shrinking States? Globalization and National Autonomy", in Woods N. (eds), The Political Economy of Globalization. Palgrave, London.

Genschel, Philipp and Seelkopf, Laura, 2015, "The Competition State: The Modern State in a Global Economy", in Leibfried, Stephan et al (eds.) *The Oxford Handbook of Transformations of the State*, Oxford University Press, Oxford.

Hancher, Leigh and Moran, Michael, (1989), "Organizing Regulatory Space", in *Capitalism, Culture and Economic Regulation*, Clarendon Press, Oxford.

Hardt, M. and Negri, A. (2000). *Empire*. Harvard University Press, Cambridge, MA.

Hau, Matthias Vom, 2015, "State Theory: Four Analytical Traditions", in Leibfried, Stephan et al (eds.) *The Oxford Handbook of Transformations of the State*, Oxford University Press, Oxford.

_____ 2018, "The Developmental State and the Rise of Popular Nationalism: Cause, Coincidence, or Elective Affinity?", in Miguel Centeno and Agustín Ferraro (eds), *State and Nation Making in Latin America and Spain. The Rise and Fall of the Developmental State.* Cambridge University Press, New York.

Hay, Colin, Lister, Michael, Marsh, David, 2006 (eds.), *The State: Theories and Issues*, (Political Analysis, Red Globe Press, London.

Jessop, Bob, 2015, *The State: Past, Present, Future*, Polity Press, Cambridge.

_____, 2002, *The Future of State Capitalism*, Polity Press, Cambridge.

Jordana, J. (1995): "El análisis de los policy networks: ¿Una nueva perspectiva sobre la relación entre políticas públicas y Estado?" en GAPP nº 3 Mayo – Agosto.

_____(2011), "The Institutional Development of the Latin American Regulatory State", in Levi-Faur, David (Ed.) *Handbook on the Politics of Regulation*, Edward Elgar Publishing, Cheltenham.

Jordana, Jacint , and David Levi-Faur, 2004, The politics of regulation in the age of governance. In The politics of regulation, ed. Jacint Jordana and Levi-Faur David , 1-28. Cheltenham, UK: Edward Elgar.

Jordana, Jacint, Levi-Faur, David and Fernández I Marin, Xavier, (2011), "The Global Diffusion of Regulatory Agencies: Channels of Transfer and Stages of Diffusion", *Comparative Political Studies*, Vol. 44, No. 10.

King, G., Keohane, R. O., and Verba, S., (1994), *Designing Social Inquiry*,: Princeton University Press, Princeton, NJ.

Larrañaga, Pablo, (2009), *Regulación. Técnica Jurídica y Razonamiento Económico*, Porrúa-ITAM, México.

Levi-Faur, David, (2004), "Comparative research designs in the study of regulation: how to increase the number of cases without compromising the strengths of case-oriented analysis", in Jordana, Jacint and Levi-Faur, David (eds.), *The Politics of Regulation. Institutions and Regulatory Reforms for the Age of Governance*, Edward Elgar, Cheltenham.

_____, (2006), "A Question of Size? A Heuristics for

Stepwise Comparative Research Design", in Rihnoux, Benoit and Grimm, Heike (eds.), *Innovative Comparative Methods for Policy Analysis. Beyond the Quantitative-Qualitative Divide*, Springer, Heildelberg.

_____, (2011), "Regulation and Regulatory Governance", *Handbook on the Politics of Regulation*, Edward Elgar Publishing, Cheltenham.

Lindblom, Charles, (1977), *Politics and Markets, The World's Political-Economic Systems*, Basic Books, New York.

King, Gary, Keohane, Robert O., and Verba, Sidney, (1994), *Designing Social Inquiry*, Scientific Inference in Qualitative Research, Princeton University Press, Pricenton.

Knight, Alan, (2018). "The Mexican Developmental State, c.1920-c.1980". In Ferraro, A. and Centeno, M. (eds.), *State and Nation Making in Latin America and Spain: The Rise and Fall of the Developmental State* (pp. 238-265), Cambridge University Press, Cambridge.

Koop Christel and Lodge, Martin, (2017), What is regulation? An interdisciplinary concept analysis. *Regulation & Governance* 11 (1): 95–108.

Mann, M. (2008). The infrastructural power of the state. *Studies in Comparative International Development* 43: 355–65.

Mann, M. (2012a). *The Sources of Social Power*, vol. 3: *Global Empires and Revolution*. Cambridge University Press: Cambridge.

Mangabeira, Unger, 1977, Law in Modern Society. Toward a Criticism of Social Theory. The Free Press, Nueva York.

Majone, Giandomenico, (1997), "From the Positive State to the Regulatory State: Causes and Consequences of Changes on the Mode of Governance", *Journal of Public Policy*, Vol. 17, No, 2, May-Aug.

Moran, Michael, (2003), *The British Regulatory State. High Modernism and Hyper-Innovation*, Oxford University Press, New York.

Müller, Markus M., (2002), *The New Regulatory State in Germany*, The University of Birmingham Press, Birmingham.

Müller, Jerry Z., (2003), *The Mind and the Market, Capitalism in Western Thought*, Anchor Books, United States.

Piccioto, Sol. 2010. "International Transformations of the Capitalist State", *Antipode*, Vol.43, No. 1.

Poulantzas, Nicos. 1979. *Estado, poder y socialismo*, Madrid: Siglo XXI Editores.

Ragin, Charles C., (1987), *The Comparative Method. Moving Beyond Qualitative and Quantitative Strategies*. University of California Press., Berkeley, CA

----------, (2000), *Fuzzy Set Social Sciences*, Chicago University Press, Chicago, IL.

Ragin, Charles C., et al, (2004), *Report prepared for the Workshop of Scientific Foundation of Qualitative Research*, National

Science Foundation, Arlington, Virginia.

Rodrik, Dani. 2011. *The globalization paradox: democracy and the future of the world economy*. W.W. Norton & Co, New York.

Scott, Colin, (2004), "Regulation in the age of governance: the rise of the post-regulatory state, in Jordana, Jacint, Levi-Faur, David (eds.), *The Politics of Regulation. Institutions and Regulatory Reforms for the Age of Governance*, Edward Elgar Publishing, Cheltenham.

Seidman, Harold and Gilmour, Robert, (1986), *Politics, Position and Power. From the Positive to the Regulatory State*, 4th ed., Oxford University Press, New York.

Shapiro, Sidney A. and Tomain, Joseph P., (2014), *Achieving Democracy: The Future of Progressive Regulation*, Oxford University Press, Oxford.

Schneider, Ben Ross, 1999, "The Desarrollista State in Brazil and Mexico." In Meredith Woo-Cumings (ed.), The Developmental State. Cornell University Press, Ithaca.

Small, Mario Luis, (2009), "How many cases do I need?: On science and the logic of case selection in field-based research", *Ethnography*, Vol. 10, No. 5.

Sorenson, George, (2004), *The Transformations of the State: Beyond the Myth of Retreat*, Palgrave McMillan, London.

_____, (2006), "The Transformations of the State", in Hay, Colin et al. (eds.), *The State. Theories and Issues*, Palgrave

McMillan, London.

Sunstein, Cass, (1993), *After the Rights Revolution. Reconceiving the Regulatory State*, Harvard University Press, Cambridge, Massachusetts.

_____, (1997), *Free Markets and Social Justice*, Oxford University Press, New York.

Vogel, Steven K., (1998), *Freer Markets, More Rules. Regulatory Reform in Advance Industrial Countries*, Cornell University Press, Ithaca, NY.

Weale, Albert, (1992), *The New Politics of Pollution.* University Press, Manchester.

Weber, Max, (1949), "'Objectivity' in Social Science and Social Policy", in *The Methodology of the Social Sciences,* The Free Press.

Yeung, Karen, 2010, "The Regulatory State"; In Baldwin, R., Cave, M. and Lodge, M. (eds.), The Oxford Handbook of Regulation, Oxford University Press, Oxford

I. COHABITATION DYNAMICS BETWEEN THE REGULATORY STATE AND THE DEVELOPMENTAL STATE: A POLYMORPHOUS STATE APPROACH

Introduction

In the literature of regulatory governance, across the last two decades it has become commonplace to talk about the rise of the regulatory state. According to these studies, from the 1980s onwards, a global transformation of the state has driven national governments (and, subsequently, sub-national units) that were previously responsible for the direct provision of public services, to transfer segments -or even the totality- of sectors such as telecommunications, electricity, water, and sanitation over to markets, shifting responsibility to the forces of competition and regulation.

The expansion of regulatory institutions was remarkable and quite intense during the 1990s in countries that did not previously have strong regulatory traditions - although many of them used some regulatory arrangements before, in order to control systemic risks in the financial sector. In the 1990s regulation was associated much

more with economic regulation in the utilities and infrastructure, but it is important to keep in mind that, as a policy instrument, regulation is also used to govern social risks and welfare issues that guarantee peoples access to rights (Sunstein 1990). This is because regulation as a governmental tool is not only useful for addressing market failures but can also be employed to protect societies from technical and social risks across fields such as environmental policy, pensions, work and health.

In fact, during recent decades, it can be seen that -where privatization had taken place and public companies had been transferred to private ownership- if a crisis or new policy agenda dictated the need for state intervention due to social risks, new structures and tools based on the idea of the regulatory state were established. These had the purpose of maintaining governmental oversight over activities in the market. This is why some have claimed that regulation is expanding as the preferred tool of the contemporary state (Levi-Faur 2011). In this regard, studies on the diffusion of regulatory agencies by Jordana and Levi-Faur, as well as Gilardi - to mention some of the most prominent examples - demonstrate that this phenomenon is not limited to a single sector or a region, but can be seen globally, and has a presence in a panoply of sectors. Nevertheless, as shown by several case studies and comparative research on the functioning of regulatory agencies at the national level, there is a great deal of variation in their institutional design. The extent of their scope, the level of their political independence, their degrees of autonomy, the institutional development of their capacities, their internal organization and so on - all vary widely from context to context (Jordana et al 2018).

In this regard, the aim of this paper is to offer a useful way of interpreting the variations and idiosyncrasies of regulatory regimes. The argument being that those variations have to do with *how* the incorporation of regulatory structures interacts with the arrangements made under previous states that had their roots in a different state model (i.e. the developmental state, the welfare state, and so on).

The interaction between pre-existing state structures- that were established by coalition with their own rationalities, whose means and ends were inspired by different governmental projects- is one of the institutional factors that conditions the development of the regulatory state. During the introduction of reforms, disagreements and political struggles between competing coalitions dominate, but pressure is maintained, and these factors are still relevant throughout the whole sequence of institutional changes, even in incremental strategies of reforms. While this phenomenon can be inferred by comparing studies of regulation across different sectors and countries, it has been little explored thus far. It has yet to be developed theoretically or analyzed in a systematic fashion in the academic literature. Although the literature on regulatory governance has demonstrated an awareness of state transformation across countries and policy sectors, little effort has been made to integrate the empirical findings of this field with theoretical contributions to state theories (Levi-Faur 2013a). This paper seeks to offer a more robust interpretative framework for the theoretical analysis of overlapping state models by drawing on the idea of the polymorphous state (Levi-Faur 2013b, 2014; Jessop 2016; Mann 1986). Specifically, my argument illustrates how different principles and

intellectual positions which coexist within the same country -and are evident through institutional arrangements and instruments- interact across and within policy sectors. This demonstrates the advantages of studying the dynamics of the polymorphous state at a meso-level, that is, through policy regimes.

Hence, the paper starts by contextualizing the regulatory state as part of the transformation of the state, that is, the change in the state's role, moving towards the regulation of sectors previously governed by other means, altering state outcomes, structures and tools. Next comes a review of the academic literature, in which I highlight the coexistence of institutions of the regulatory state (RS) and the developmental state (DS), examining evidence from across different countries and sectors. Subsequently, I use ideas based on path dependency arguments as a potential explanation for hybridization processes of state models. Finally, after showing some of the overlapping processes between the arrangements of the regulatory and the developmental states, I offer an interpretative framework on the crystallization of polymorphic state structures. To conclude this chapter, with the use of institutional insights, I present some hypotheses about the coexistence of regulatory and developmental forms of the state within countries and policy regimes. My enquiry aims to posit how institutional dynamics allow for the layering and diffusion of path developments, and so hopefully adds new elements to a framework describing regulatory governance, that goes beyond simple ideas of on state model replacing another, as if we live in consecutive, ahistorical, monomorphic states.

1. Beyond regulatory agencies

During the last three decades, new dynamics in the capitalist system have been dramatically shaping the markets that rule national and international institutions (Braithwaite 2008, Hancher and Moran 1989). Within this process, the regulatory reform has attracted a great deal of interest from studies of institutional and political regulation, with particular focus being given to the institutional diffusion of regulatory agencies associated with the wave of liberalization and privatization in a diversity of sectors across countries (Majone 1997, Jordana and Levi-Faur 2004; Vogel 1998). This interest has been demonstrating both normatively and empirically why and how agencies and regulation emerged and whether this occurred by sector, region or nation.

Originally, the expansion of the regulatory agencies was identified with the American classical model of the regulatory agency (Moran 2003), and – because of the historical period of its diffusion – with the concurrent neoliberal agenda (Braithwaite 2008). Historically, in the United States, the regulatory agencies (an arm's length of the executive regulatory power) have been the key institutional setting from which changes to the administrative state emerged as the populist era evolved into the deregulatory era (Rabin 1986; Sunstein 1993, DeCanio 2015). Following this, a new iteration of the RS, apparently inspired by the 'American way' of conducting regulation, was expanded to the supranational European institutions (Majone 1994), as well as being adopted within European countries (Moran 2003; Muller 2008, Gilardi 2008). This extended to Latin America (Jordana and Levi-Faur 2005) and with even with less clarity it was adopted in Asia (Datta and Majumdar 2018; Jayasuriya 2001; Hsueh

2011). As can be seen, the expansion of regulatory institutions has been a global phenomenon. From these diverse points of evidence, there is a broad consensus that, as a departure point, recent decades have seen the spread of regulatory arrangements, manifest in the form of independent regulatory agencies (IRAs). IRAs are only a single aspect of regulatory reforms, but they are a marker of the expansion of the RS that can be traced world-wide. Nevertheless, each national case has its own institutional peculiarities, making the world of national regulatory institutions a very diverse one (Jordana et al 2018).

Additionally, some scholars claim to have observed different properties in the performance and style of contemporary regulation. Ideas like the post-regulatory state (Scott, 2004) and 'decentred' regulation (Black, 2002), are just some examples of different trends that have been identified within regulatory policy regimes. In fact, 'the post-regulatory' state is more closely related to an era of governance where the contrast between public and private organizations has broken down, as have national and global boundaries and thus regulation is better depict with those accounts (Jordana and Levi-Faur 2005; Levi-Faur 2011). Furthermore, a related concept is the idea that the global political economy depends more than ever on rulemaking: following processes outside legislature and the courts, opening up new avenues of non-state-implemented regulation, and giving transnational networks of experts a growing importance in the context of regulatory capitalism. Thus, this is another concept that reflects the transformation of the national

boundaries between state and capitalism (Braithwaite, 2008; Levi-Faur and Jordana, 2005).

Regardless of the diversity of concepts and representations that can be captured by the relationship of capitalism and states in the regulatory field, whatever the differences across countries, sectors and regions. The focus on this important institutional change has been one dedicated to depicting the institutional transformation of capitalism in a global age. Through the study of those political and economic processes we have gained a much clearer image of a broad and complex process: the transformation of the contemporary state.

When Levi-Faur (2013b, p. 45) stated, "The regulatory state is not exhausted by the existence or prevalence of independent agencies or commissions", he surely had in mind this institutional complexity, which has also been recognised by other scholars. Even in a socio-legal context, the same point resonates in the idea of the 'the regulatory enterprise', by which Tony Prosser (2010) suggests that an agency's autonomy should not be seen as the key institutional principle of contemporary regulatory institutions, because regulation is a collaborative enterprise between regulatory agencies and other governmental bodies in a given regulatory space. Therefore, looking at IRAs in isolation is not enough to understand the means and ends of the contemporary regulatory space (Hancher and Moral, 1989). Thus, although IRAs are the most distinctive institutional form of the regulatory state, it is also true that they do not account for the diversity of institutional forms and arrangements by which the state regulates our capitalist societies.

In short, analysing the institutional dimension of regulation through the IRAs might undercut the analysis if the goal is to give an account of the complexity, function and operation of the state institutions as they interact with the market and the contemporary world. In this regard, it seems more reasonable to understand the features of the RS as one of the transformations undergone by the institutional state and at the same time as part of the general capitalist state toolkit.

If the RS and the IRAs are components of a major transformation of the capitalist-democratic contemporary state (Levi-Faur, 2013b), it might be said, then, that the idea of the RS is more than "an intellectual brazier around which scholars can all gather in a world of increasingly fragmented academic professionalism" (Moran 2002: 411-12). Rather, the RS is a combination of tangible aspects of institutional and political realities and a major aspect of the transformation and development of the state in the governance of capitalist economies (Jordana and Levi-Faur 2004).

2. The regulatory state as a transformation of the state

Literature on regulatory governance presents one narrative of this institutional reconfiguration of the state which uses the metaphors of steering and rowing to distinguish the (regulatory) state in the age of governance (Braithwaite 2000; Jordana and Levi-Faur 2004). One of the transformations observed across countries has been the move from the so-called positive state to the RS (Holzinger and Schmidt 2015). This transformation, in essence, implies a fundamental change in the role of the state: from provider of public goods to regulator of privatized and competition based (public) services This change not

only modifies the scope of state activities, but also the structure of authority and the toolkit with which the state relates to the market economy.

Within this context, despite the conversation about de-regulation during the 1980s and 1990s (Braithwaite and Ayres, 1994), there has been extensive re-regulation in the advanced industrial economies (Vogel, 1998). This has been accompanied by the emergence of global regulatory networks (Braithwaite and Drahos 2000; Braithwaite 2008) acting across both the public and the private spheres.

In the same vein, the transformation has brought with it the lack of a clear hierarchy of norms: there is a confusing distinction between hard and soft law (Karlsson-Vinkhuyzen 2011), and the fragmentation of public functions has led to a resurgence of "apolitical" technocracy (Piccioto, 2011) or as Vibert (2007) terms it, the "rise of an unelected", a sort of expertocracy. In sum, the transformations wrought on the state can be perceived across politico-administrative systems, legal systems and economic systems.

Because this is a multidimensional process changing the boundaries between the public and private interactions, a "new reality" has been created at both national and global levels, and it is within this new context that the state performance takes on a greater complexity (Levi-Faur, 2011a). Specifically, one concrete area where this transformation is observed is in the way the state is perceived in the economic realm. For instance, after huge waves of privatizations of

state-owned enterprises (SOEs), there followed the idea that, as a consequence, direct state economic involvement would be reduced, as without responsibility for the direct provision of public services, the state ought to have a reduced role in the economic realm. In many sectors subject to regulation, development was not viewed any longer as the product of (direct) governmental (positive) action, but as the result of competitive markets. The truth is that state action was not reduced but in fact expanded through regulatory institutions.

Whether the state has in reality reduced its role is a matter of empirical assessment, but in any case the perception of a reconfiguration of the state involving new types of formalized regulation, fragmentation of the public sphere, the decentering of the state and the emergence of multi-level global governance (Piccioto 2011), seems a plausible overall characterization in certain contexts. In fact, this characterization of the transformation of the state in a global age, is closely connected with characterizations of the RS.

Take for instance, Levi-Faur's (2011b: 666-67) six major characteristics of the RS. First, bureaucratic functions of regulation are separated from service delivery. Second, policy-making and regulatory functions of government are separated as well; the autonomy of regulators and IRAs is institutionalized. Third, rulemaking is separated from the policy-making process, regulocracy is distinct from bureaucracy. Fourth, a more formalized rule-based procedure replaces the discretionary club style of informal relations that characterized older processes of decision making. Fifth, there exists a multilevel field where the regulatory state is integrated as an international player. Sixth, regulocrats are part of transnational

(regional and global) networks of experts that are crucial sources of innovation across countries and sectors.

All in all, as Patrick Le Gáles (2013: 20) concluded in a paper exploring the trends of the state in the context of the Great Depression in Europe:

> …a different kind of state is in the making: one equipped with a *wide variety of new instruments and technologies*" (*emphasis added*). Accordingly, the instruments and technologies are the key to understand and capture the variety of transformations of the state.

3. From the positive State to the regulatory State?

While the origins of the RS as an institutional arrangement have a long and contested history, particularly in the United States (De Canio 2015), diffusion studies on IRAs (Levi-Faur and Jordana 2005; Gilardi 2008) shows that it was not until the 1980s and 1990s that exponential growth took place across regions, countries and sectors. Before this diffusion process was identified, Majone's seminal works (1994, 1997) had accounted for the transformations in economic governance by portraying this process as the substitution of the positive state and the emergence of the RS in the context of Europe. Before Majone's article took on such a significant role in our understanding of state transformations taking place in Europe and beyond, Seildman and Gilmour (1986) conducted their own study in the United States. They argue along similar lines that the positive state derived from the New Deal Coalition and the Great Society was being replaced by a RS, meaning they associated this new kind of

state with the deregulation movement and reaganism, thus with neoliberal ideas.

Based on the ideas of Seildman and Gilmour, and developed in a more analytical manner by Majone (who even used their subtitle for his paper), it was taken as granted that in the wake of privatization, deregulation or liberalization, if the state relied on the creation of IRAs to control the establishment of markets, then the emergence of a new state, the regulatory state, was the consequence.

From that point, the phenomenon of the regulatory state gained notoriety in different disciplines and fields. If economic reforms inspired by the regulatory model outlined by Majone were identified, it was thought that the presence of a change in the role of the state meant the appearance of a regulatory version of the state. John Braithwaite went so far as to assert that "the Keynesian state had been replaced by a new regulatory state that is more a Hayekian response to the risk society" (2000: 222). It is known that in some policy contexts OECD has been an important channel for the transfer of regulatory ideas not only in the 'rich' countries but also in developing ones. For instance, the OECD (2002) report *Regulatory Policies in OECD Countries. From Interventionism to Regulatory Governance*, promoted the idea that states across its organization were moving in that direction. Both the global North, usually via case studies of individual countries, (Moran 2004; Lesering 2011; Veggeland 2009), and the South as well (Amann and Baer 2005; Jayasuriya 2005; Hsueh 2011; Pardo 2012), use the same idea to demonstrate through national case studies a shift towards the RS and the relinquishment of previous state arrangements such as the DS.

It seemed, therefore, that we had reached a consensus: state models that prevailed until the end of the last century were gradually replaced through the dissemination of regulatory reforms and the creation of IRAs in which regulation is a key instrument for the governance of the economy and the risks associated with it. It does not mean that the previous state forms were completely gone, rather, as has been said, that the identified institutional change was based on the regulatory model. During the period in which the studies registered this change, the evolution of the RS was in an initial phase that has since evolved along with other forms of the state and created new patterns of change.

Another strand of studies used the idea of the rise of the RS in a more heuristic way (Yeung 2010), without considering national or sectorial comparisons, which, in turn, rely on an ideal type version. This interpretation took for granted the insights of previous comparative studies of the diffusion of IRAs, as if the macro trend represented the whole story and thus produced a static images of one form of the state being replaced by another.

One of the few studies that actually goes beyond the use of the RS as an heuristic and aprioristic concept, used without the necessary careful empirical meso-analysis, is that of Lodge and Stirton (2006). In *Withering in the Heat? In Search of the Regulatory State in the Commonwealth Caribbean*, the authors formulate the regulatory state as a hypothesis in the context of regulation across two sectors and two countries: the electricity and telecommunications regimes in Jamaica and Trinidad and Tobago. Developing Majone's proposal,

they identify three fundamental institutional changes as part of the idea of the rise of the RS:

1. The separation of the provision of production, i.e. the separation of policy setting from operative activities.

2. The creation of IRAs.

3. The formalization of relationships within the policy domain, that is, greater reliance on explicit formal rules.

These three dimensions of the transformation implied by the RS model is reconceptualized by Lodge and Stirton as variables to facilitate the exploration of comparisons between countries and sectors. The first dimension is related to ownership and market structure, the second to the allocation of regulatory authority and the third to the decision-making style. Using these criteria to make empirical observations, they found in the four cases that the institutional arrangements showed substantial variety that goes beyond "the properties usually associated with the regulatory state" (idem. p. 492). That is, while the components of the institutional arrangement of the RS are observed, it interacts with previous arrangements that persist despite the reforms.

Analytically, even the authors did not recognize explicitly the interaction of the RS with previous state rationales, clearly the regulatory state hypothesis in those countries and sectors showed varieties in the way it coexists with previous institutional legacies (e.g., state-owned enterprises, highly politicized policymaking, etc.). But as Lodge and Stirton's analysis departs from the monophormic theory of the state, they were not able to describe those interactions

in a polymorphic way. Thus, they only found partial validity for their hypothesis.

In turn, it should be questioned to what extent, once the institutional arrangements of the RS are introduced in a particular country or sector, there is a plain substitution as Majone, as well as Seildman and Gilmour, inferred in their works. It seems that what we have - when we observe the interaction of different institutional logics and arrangements in policy regimes - is the cohabitation of two or more institutional features of the state. Thus, the rise of the RS operates in a complex set of institutions inspired by historical trajectories and based on ideas and interests with different roots. As such, there is the potential for different scenarios of convergence-divergence within countries and across policy sectors (Levi-Faur and Jordana 2005).

4. The persistence of the developmental state

As with the regulatory state of Seildman and Gilmour, and also Majone, Chalmer Johnson followed a similar route, that is, the idea that a country can be characterized by a single state model in a given historical period. Although he did not document the substitution of one state model by another as his peers did, he did distinguish and contrast the roles of the state in comparing Japan and the U.S.A.

For him, the former was plainly a DS while the latter was a RS. This suggests that Chalmers Johnson thinks of the role of the state in binary terms. One state can have one form but not multiple forms at the same time. In other words, one state can use regulatory tools but not at the same time as it uses developmental ones. The literature of the DS seems to accept this premise to the extent that it has not been

challenged. And many studies continue to analyze countries that seems to share traditions of DS.

Interestingly, while many of the studies of state policies from the 1990s-2000s share the idea that regulation across countries and sectors was practiced increasingly by governments, the literature on the DS has focused on Asian examples in order to draw a contrast with the liberal democracies that, in turn, promoted the expansion of market economies across countries. But the debate about what the role of the state should be gained new momentum after the Great Recession of 2008. That moment opened up new questions about the limits of the state as a regulator, since positive action of the governments was necessary in order to stabilize their economies. This trend was visible to the extent that, in this context, *The Economist* published (2012) a special report on 'the Rise of State Capitalism in emerging markets'(see: https://www.economist.com/leaders/2012/01/21/the-rise-of-state-capitalism), with particular reference to China, Russia and Brazil. Briefly, what *The Economist* noticed was that "the crisis of liberal capitalism has been rendered more serious by the rise of a potent alternative: state capitalism…" (2012: 2).

One interesting point in the special report has to do with the transformation of SOEs into emerging market multinationals and their importance within certain sectors. In fact, according to data from Deutsche Bank (2011), the share of national/state controlled companies in the MSCI emerging market index by industry sector shows the prevalence of SOES in energy, holding more than 60% of the total share, more than 50% in utilities, and more than 30% in

telecommunication services (2011). The data presented by *The Economist* in its special issue show that other forms of state intervention persist and go well beyond the role of regulator in emerging economies and the global South, even in the case of disparate political trajectories: institutional processes such as the democratization of Brazil, the transition to capitalism in Russia and the integration into the global economy of China.

The 2008 crisis opened a new chapter in the discussion of the role of the state, not only in the global South but also in the North. For instance, Fred Block (2008, 2011), in an influential paper, began by comparing the policies of Europe and the United States, stating: "In Europe, both national governments and the European Community are open and explicit about their developmental agendas... In the United States, in contrast, the developmental state is hidden..." (*idem*: 2). The reference is interesting in the sense that Block reveals with this comparison that in both cases he observed the presence of components from the DS with the difference being that in one case, that of Europe, the influence of the developmental state is explicit, while in the case of the United States, it is hidden. Although Block recognized "the long history of state developmental efforts that goes back to Alexander Hamilton and the beginning of the Republic" (*idem*: 30), according to him the hidden DS in the U.S. appeared between 1980–1992, when legislative and executive decisions "expanded the capacity of the U.S. state to accelerate technological development in the business economy" (*ibid.*). Interestingly, this period of developmentalism coincides with ongoing Reaganism and the implementation of the neoliberal agenda, including deregulation

policies. In the case of contemporary developmental policies in the U.S.A., Block - building on Ó Riain (2004) uses the idea of the developmental networked state to explain how the United States nurtures new industries that are strategic for the country. This is done through various public agencies, such as the paradigmatic DARPA - which "help firms develop product and process innovations that do not yet exist, such as new software applications, new biotech medications, or new medical instruments" (*idem*: 4). Asian DS can be observed to do the same thing, albeit in a more visible manner.

The work of Block is echoed as well in the idea of Mazzucato's 'Entrepreneurial State' (2013) which shows again the influence of American state agencies in the development of new technologies and their associated industries. Again, by looking at state policies in a given sector, in the case of Block and Mazzucato, who examine the regulation of new technologies, it is possible to identify patterns of state intervention that diverge from generalist ideas that conceptualize the state as a monolithic cluster of institutions. On the contrary, as one observes the role of the state in specific policy regimes it is possible to recognize diverse models of policy involvement, each organized according to different relationships, interactions, goals, purposes and instruments that articulate the coordination of state and capitalism across national and sectorial levels.

Paradoxically, while the process of diffusion of IRAs intensified in the 1980s and 1990s and the so-called rise of the RS began to be part of the transformation of the state in many of the countries undergoing pro-market reforms, in the United States Block identified - precisely

at the height of the Washington Consensus - a set of policies embedded within the information and communication technologies that would typically be associated with the ideals of the DS. In short, as the RS expanded in different countries and sectors, in the United States industrial policies were implemented in a form more familiar to the DS. They successfully nurtured new information and communication industries that would go on to dominate global markets in the ensuing decades. Hence, is interesting to see how a hidden DS expanded even during a time in which the RS had entered a phase of deregulation.

5. The hidden coexistence of the regulatory state and the developmental state

Although there has been a great deal of concurrent research on both the RS and the DS, studies on the two areas have engaged in little dialog. On the one hand there was a conflict between the models studied: developmentalist models were in crisis as a new model replaced the institutions under scrutiny. On the other hand, there was regional variation between countries as to whether a state was more open to the influence of regulatory or developmetalist ideas and strategies. Plainly, the perspective from which scholars have approached each field has not allowed them to observe the overlapping phenomena studied in both. Rather, it seems that the distinction that Chalmer Johnson made on the one hand, and Majone on the other, has conditioned and entrenched the distance between the subsequent interpretations and analyses of both literatures.

It is only, in the wake of the Great Recession of 2008, that a space emerged for dialog between these areas of study. However, efforts at dialog dropped off sharply and were, in any case, not systematic. One of the few works that abandoned the idea of substituting one form of state for another, and instead begins from the premise that both models can coexist in the geography of the global South, is that of Morgan and Dubash (2013). In this work, presented by a selection of highly-regarded scholars in the field of regulatory governance, one finds a number of case studies from the global South that either implicitly or explicitly demonstrate the many possible intersections between the institutional components of the RS and DS.

In this book, an interesting empirical intersection between some features of the RS and DS is presented by Jordana (2013: 202), in a comparison of telecommunications policies in Brazil across a short period of time. Jordana establishes that, under President F. H. Cardoso, regulatory reforms were first introduced. During his rule, the governance of this sector was oriented through policies of regulation and competition via the creation of an IRA, ANATEL. Those regulatory arrangements were maintained afterwards, under President Lula, but new schemes of direct intervention were introduced through the creation of a state-run company and greater direct public investment in the sector. Such instruments form part of the Brazilian developmental experience and rather than replace the regulatory scheme, they seek to accommodate, albeit not without tensions, the regulatory system as a complementary tool of the state. That is to say, the fact that these instruments and institutional arrangements emerge from different conceptions of the role of the

state - particularly with regards to its role in certain policy regimes - points to the possibility that the DS and RS can coexist (Levi-Faur 2013).

A different form of coexistence in the region is visible in Chile. Analyzing the history and development of the Chilean RS, Jordana (2011) identifies four historical phases and waves of regulatory institutions. First, it is interesting that Chile experienced the development of its RS much earlier than most of the countries that introduced most of its institutions at least until the regulatory revolution of the 1990s (*idem*). In Chile's second wave of regulatory growth, the introduction of regulatory institutions coincided with the global predominance of the DS model (the 1940's-1970's) and continued up to Pinochet's coup in 1973. In this historical period the intersection is interesting: while the state was involved in the direct promotion of production and focused heavily in the provision of public services, in the same period, in 1959, the authority of the Defense of Competition was created. Of course, further questions are raised regarding the effectiveness of regulatory institutions in an epoch of DS activism. Jordana views the fourth wave of Chile's regulatory expansion as equivalent only to the first in significance (*idem*:232): this epoch of the Chilean regulatory state followed the fall of Pinochet as democracy returned to the country. In addition to Jordana's study, Negoita and Block (2012) analyze Chile's development policies in the democratic period and identify a state strategy in the agroindustry that conforms to the practices of the DS, even though this was a major period of institutional regulatory development.

They review the cases of salmon, wine and fruits and vegetables. In all of these three cases, they identify the fact that agencies such as the Production Development Corporation (CORFO), which were created at the beginning of Chile's developmental period, have been key to fostering the country's productive capacities when it comes to these and other products. One more key agency that developed productive networks for these products and, in particular, for providing them with access to foreign markets, is the National Agency for Export Promotion (PROCHILE), created at the beginning of the Pinochet regime in 1974 (Jordana et al 2010). Just as the development of these industries necessitated support in technology transfers, industrial organization, marketing and business plans, in order for their successful entry into foreign markets, they also required compliance with certain standards and regulations. Thus, for example, in the case of salmon, a strategic factor in its success and international competitiveness was the development of a code written by the industry through the Association of Salmon and Trout Producers (APTSC). Despite appearances, this code is not simply an arrangement stemming from autoregulation: its implementation as a certification was financially supported by the Chilean State. Moreover, once the code and certification had been settled, they were adopted by the body in charge of fisheries regulation - SERNAPESCA - making certification mandatory for any company seeking to operate in the Chilean salmon industry (*idem*). The Chilean case shows clear demarcations of historical trajectories between the developmental and regulatory forms of the state. However, it also shows how those trajectories overlapped across and

within sectors (as in the agroindustry) and became useful instruments for pursuing different policy goals.

In a similar vein, more recent regulatory reforms associated with a period of crisis also created dynamics where a consolidated DS could be seen to coexist with the arrangements of the RS. For Asian countries such as South Korea, the 1997 financial crisis represented a critical juncture that resulted in important changes to their developmental model. Ian Pirie (2007) characterizes this moment as the origin of the crisis of the Korean DS. Regulatory changes seen there include: the financial reforms promoted by the International Monetary Fund, the independence of the Bank of Korea (BOK) and the creation of the financial regulator, the FSA, and the FSA's incorporation of regulations that were in line with the international standards of the Bank of International Settlements and the International Organization of Security Commissions. According to Pirie, these regulatory changes opened the door for neoliberal reforms in the Korean financial sector (2012). Hence, the endurance of the Korean developmental state was brought into question.

However, when Pirie (*idem*: 377-83) compared reforms in the financial sector with changes in the telecommunications regime, he identified an interesting contrast. While in the financial sector the state abandoned its developmental profile in order to play a different role; in telecommunications the state - despite the fact that international organizations such as the OECD and the United States promoted agendas of liberalization and the opening of the Korean telecommunications market - maintained its industrial policies for the development of this sector. An interesting divergence of these

sectors, though both are subject to regulatory reforms, is in the changes in the bureaucratic structure. Korea had been criticized for the lack of an independent telecommunications agency and also for the problematic role played by the Ministry of Information and Communications (MIC) due to potential conflicts between the regulator and the industry. In 2008, the administrative structure of the sector was reformed. The MIC was eliminated and the Korean Communications Commission (KCC) and the Ministry of Knowledge Economy (MKE) were created. But the KCC was not created as an independent agency; on the contrary, it was subordinated to the presidency of Korea. In such a way regulation remained subordinate to the objectives of the industrial policy. For Pirie, while the reforms to the financial sector moved Korea away from the ideal type of the DS, in the telecommunications sector the policy regime maintained developmental characteristics by adopting the classic strategy of "active market management to support the development of indigenous industrial capacity in a strategic industry" (*idem*: 380).

Pirie concludes by observing the different ways in which the Korean state participates in both sectors, highlighting the difficulties of defining it at a macro level. He supports an understanding of Korea as a hybrid state, in the sense that the country incorporated neoliberal reforms but that its regulatory regimes "continue to conform to different logics" (*ibid*: 383); nevertheless he recognizes that hybridity has major limitations: 1) to some extent all states could be consider 'hybrids', even if their main characteristics relates to an ideal type: "certain aspects of policy regime will be at variance…" (*ibidem*). 2)

Hybrid characterization oversimplifies the nature of particular national political trajectories. According to Pirie, the idea of hybrid states should only be considered as a starting point, because what really describes state configurations is observed at the meso-level. Across sectors is where the distinct logic that is employed to govern policy regimes can be identified.

Although it might be said that in some sense Chile and Korea are examples of two extreme forms of state involvement in the economy, since their backgrounds come from different traditions of the state. Yet from neoliberalism to developmentalism, they share patterns in terms of the cohabitation of RS and DS arrangements across policy regimes. Chile, is a paradigmatic laboratory for neoliberal reforms, having seen consistent periods of success as a RS. In its agroindustry sectors, for instance, it also exhibits features of a DS that were put in place during a period where the Chilean RS was flourishing. For its part, Korea, one of the most successful developmental states in Asia, shows that despite the regulatory reforms it has undergone in recent decades, previous developmental logic is maintained in strategic sectors such as telecommunications, while in sectors such as finance the role of the state has moved towards a regulatory logic.

Both experiences, and also that of Brazil, show how state models inspired by different principles in different periods can coexist and develop institutionally within a country, across policy regimes and even within sectors. That is the case of the Chilean salmon industry and also of telecommunications in Brazil. As the principles of different state models may complement or reinforce the goals of state

policies, their arrangements and instruments coexist in perhaps unexpected ways.

The dynamics between these approaches show different intensities, diverse ways of intersecting according to the particularities of each country and each sector, and they are always informed by policy traditions. For instance, historically Brazil has a stronger DS; meanwhile Chile has a stronger RS. However, that general trend can be fuzzy if one looks at and compares sectorial patterns only. All in all, these ideas exemplify the phenomenon that Morgan and Dubash (2013) call regulation for development.

Thus, it seems clear that, regardless of whether a state model may predominate in a given historical period, institutions built over time have continuities and coexist within policy fields in various ways. Thinking of their operations in practice as separate entities or monolithic arrangements seems to mischaracterize how the dynamics of the contemporary state evolve within policy regimes.

6. From the monomorphic economic state role to a polymorphic policy regime approach

Levi-Faur (2013a), who argues for a more comprehensive strategy in our approach to understanding the contemporary state, suggests abandoning the idea of the RS as a thin, monomorphic concept derived from the American example, in favour of viewing it as a global, robust and polymorphic concept, more capable of capturing the features of the capitalist-democratic state. 'Polymorphy' is a novel and relatively undeveloped concept within state theory, but it has the potential to shed light on ideas related to and dynamics of the

contemporary state. But first, let us pause and review the origins and meaning of this concept. The term 'polymorphy' has been from the natural sciences borrowed (Levi-Faur 2013a; Jessop 2016; Mann 1986). When a species passes through different forms in its life cycle, scientist refer to this phenomenon as polymorphous; also, in chemistry when a physical compound can crystallize into two or more durable forms, it is referred to as polymorphous (Jessop 2016, p. 42). Michael Mann (1986) originally rejected the idea that states in capitalist societies are necessarily capitalist based on the scientific idea of polymorphy. Based on Mann, Jessop (2016: 42) stated that although:

> the state's organization and capacities may be primarily capitalist, military, theocratic, or democratic according to the balance of forces, especially as these affect the ensemble and its exercise of power… {the} dominant crystallization is open to challenge and will vary conjuncturally.

Therefore, for a polymorphous crystallization of the state to be possible, it is necessary to have a corresponding dominant principle of social organization during the historical period in question. But the organizing principle would diverge according to the most pressing issues at a given (critical) conjuncture, from which general crystallizations emerge from particular conditions. Complementary to the idea of polymorphy, is the description of the state as polycontextual (Willke 1992). According to Jessop following Willke:

> Whereas polymorphous crystallization refers to state effects derived from competing state and societalization projects, polycontextuality refers to the complexities of these effects in

> multiple contexts. States exists at many sites and scales and undertake different (sets of) tasks in each context. They will appear differently according to context. This explains the many alternative definitions in which the state is qualified by different adjectival descriptors: administrative state, constitutional state, cooperative state, regulatory state, democratic state, network state, developmental state, welfare state, and so on. (Jessop 2016: 44-45).

If the idea of polymorphy can be applied to state theory, we should expect the interaction of different forms of the state across countries and policy regimes. As a result, states are not just monomorphic, although one form could predominate in the public policies of a particular historical period or region. Rather we should expect to see polymorphous states. Additionally, if states are polymorphous, as in some of the examples of cohabitation discussed in the previous sections, it is because states pursue different outcomes across policy regimes, and to achieve these ends they use different tools and strategies, which means that the state has a different role across those policy regimes. Underlying the variety of the state's role in policy regimes, of course, there is a historical trajectory that results in particular political configuration and projects and produces varying levels of state involvement in these activities. As Jordana (1995: 517) stated:

> … el Estado ya no es un actor unificado, sino una multiplicidad de actores, en todo caso conectados débilmente entre sí por numerosas reglas que no evitan el predominio de direcciones particulares y específicas por parte de cada uno de sus agentes. Desde esta perspectiva, la discusión sobre una autonomía global

> o relativa del Estado se desintegra, ya que en cada ámbito de políticas públicas los agentes estatales podrán actuar con dinámicas distintas. En unos casos impondrán sus preferencias frente a los actores sociales, mientras que en otros estarán dirigidos por intereses sociales.

Up to this point, we can summarize the ways in which the RS and DS can interact through different approaches in table 1.

Table 1. Approached to interaction between the Regulatory and Developmental State

Approaches and state interactions	DS	RS	Cohabitation
Monomorphic approach	The overall institutional arrangements were shaped by the DS model.	A diffusion process substitutes previous institutional arrangements, which creates new policy regimes based on the RS model.	None at all. One kind of state model usually predominates in a given historical period, and later on it is substituted by another model.
National polymorphic regimes	Within the country some policy regimes and their institutional arrangements are inspired by the DS.	Within the country some policy regimes are subject to the diffusion of institutional arrangements inspired by the RS model.	Cohabitation at the national level. Each model predominates and has a tradition in a particular policy regime.
Sectorial polymorphic regimes	Within policy regimes some institutional arrangements and policy styles are inspired by the DS.	Within policy regimes some institutional arrangements and policy styles are inspired by the RS.	Cohabitation within policy regimes is commonplace through their institutional arrangements.

Source: own elaboration.

Following Majone and Johnson's approach, it would seem that it is only possible to imagine the predominance of a single kind of state model in a given period and space. Meanwhile, from the approaches that conceive of the state as a polymorphous entity, it is possible to explore the strategies of coexistence between different forms of state institution across countries. Thus, it is possible that in the same country, in the same setting or macro-level, multiple state models coexist. Furthermore, the cohabitation of different state models is possible not only at the national level but also at the meso-level of policy regimes, viewed across and within the same sector as in the case of the examples used to illustrate these dynamics above.

As can be observed in Table 1, there are at least three approaches to interactions between the RS and DS. In the first place, we have monomorphic approaches to the state: in their view, each historical period is dominated by one state project, thus this characterization usually use one ideal type. In this regard, is important to note that this kind of analysis is based on case studies or small N comparisons that pay attention to macro trends, leaving little room for variation because of this research design and its foundational premises. In sum, there is little scope in this type of analysis for the identification of dynamics of cohabitation. A second approach, that I term national polymorphic regimes in Table 1, is more suitable for the analysis of interactions between models and their cohabitation dynamics, since these kinds of studies compare the impact of RS or DS institutions in a specific sector, thus integrating the macro with the meso-level. In

this approach, it is common to find the predominance of one model in one sector, though it may then have little relevance in another one. This is often because structures imposed by previous states demonstrate more resilience in some policy regimes than in others, and this clearly demonstrates the dynamics of the polymorphous state. Finally, through a third approach, one might consider analysing institutional changes through policy regimes. When it comes to comparative research designs, this meso-level of analysis should allow us to find more varieties in the way the state intervenes in policy regimes, lending an even wider scope to the identification of polymorphic dynamics within policy regimes. If the latter can be said to be the case, then it is not only states that are polymorphous but also policy regimes. Indeed, what informs us that a state is a polymorphic entity is the varieties of state models in its history, its ideas, strategies, capacities and tools within policy regimes.

It follows that the strategy for capturing the transformations of the capitalist state and its policies at a macro-national scale may not be equally appropriate for capturing the complexity and diversity of the state's role in the economy, if we fail to understand the complexity of the contemporary coexistence of forms of the state. If the historical legacies within institutional settings across the region and the concrete economic and political characteristics of each sector's institutional framework can be seen to have laid the groundwork for a diversity of state forms, and even a diversity of approaches within specific sectors, then a meso-level analysis should produce clearer findings- both empirically and theoretically- and be the key to avoiding any misleading generalizations about the economic role of

the state (Jordana, 1995, Levi-Faur, 2013b). Of course, generalizations operate on a different level of abstraction and can still be useful for understanding trends, but their relevance is weaker if one wants to look sectorial transformations and a more detailed sequencing of institutional adjustments.

With this general overview of the coexistence of the RS and the DS, the foundations have been laid for me to set out my hypothesis for future empirical explorations.

7. Framing the argument

As has been noted, traditionally the distinction between the RS and the DS has been made not only in terms of the intensity of the state's intervention but in terms of the tools and modes that characterized said intervention (i.e. command and control, incentives, subsidies and so on), and whether the approach might be termed antagonistic or dialectic. For example, the standard view is that rulemaking is a classic tool of the RS, while the DS relies more on active intervention, nurturing some industries over others, investing public resources and distributing them in aid of this purpose. However, as has been stated elsewhere, scholars in the US, Europe and the developing countries have suggested that what might actually be the case, is that these types of intervention are part of different strategies used by the state to organize and manage society's resources across policy frameworks (Block, 2008, Niklasson, 2012, Levi-Faur, 2013a). Assuming the latter is the case, we then have different configurations of the state coexisting, where the tools associated with each configuration are able to interact across and even within sectors.

The premises of this approach follow three important arguments made by Levi-Faur, (2013a: 9):

- The DS and RS are, or at least can be, interdependent forms of governance.
- It might be useful not only to consider the possibility that the instruments of the RS and the DS can coexist, but also that they might simultaneously expand their influence.
- It is necessary for any discussion of the regulatory state to take the theory of the state seriously. Independence, autonomy, capture, and legitimacy of agencies, for example, are products of our conception of the state.

Allow me to present one hypothetical example that shows, and perhaps problematizes, the manner in which multiple ideas, interests and roles of the state produce complex interactions between different forms of the state both across and between policy regimes. If a given regulatory agency has a mandate to regulate one particular industry, for instance, telecommunications, and it found that an enterprise was behaving in an anticompetitive way, the agency might punish the enterprise with a penalty or with regulatory restrictions. But to complicate matters, it might also be the case that the governmental department of science and technology develops a financial plan to stimulate research in the electronics sector and in doing so funds a different enterprise, this being one which has shares of, say, 20% of the capital in the sanctioned telecommunications enterprise. Moreover, imagine in this situation that the same sanctioned telecommunications company that was responsible for anticompetitive practices, is simultaneously the retailer of a national

mobile company which sells some of the electronic whose development was funded by the government, and even has the state as a shareholder. The interconnectedness of capital across industries on a global and national scale makes the dynamic of the interaction of the state with the market more complex. In an industry in its infancy, the state might want to nurture a market and in a more mature industry the state might want to control negative externalities produced by its growth.

In such a context, the question arises: what kind of state do we have? Surely a capitalist state, but what kind of capitalist state, if we take seriously the idea of that capitalism varies not only across countries but also across policy regimes? Is it both a regulatory state and a developmental state and something else at the same time? Clearly, in this complex capitalist structure the idea that there is a monomorphic state seems inadequate. Instead, what exists takes different inspirations for the design of its policies and encounters multiple points of tension in the implementation of the policy and regulatory process.

To reiterate, the key point here is to build, conceptually and empirically, a framework that does not begin by assuming the existence of an aprioristic monomorphic state, but rather assumes the existence of a polymorphous one (Levi-Faur 2013a, 2013b) which can only be established if we confirm its existence in our empirical explorations. In the words of Levi-Faur, this is a research gap that deserves important attention:

> "The regulatory state opens a new agenda for state theorists and allows them to think about the capitalist state as a polymorphous state. *The notion of coexistence of different types of state within single polity challenges methodological nationalism and monomorphic characterization of the state (emphasis added)*. If states can be both regulatory and developmental, the research agenda is changing and so is the conceptualization of *comparative capitalism: no longer capitalism that varies only or mainly across nations but capitalism that varies both across and within nations*. (Levi-Faur 2013, p. 9)."

Although there are many indications that suggest the state is a polymorphous institution, this matter is yet to be verified. It is necessary to design comparisons of policy regimes with this conceptualization in mind so that there can be more empirical evidence that brings together the different dynamics and interactions between the RS and the DS.

I have tried to locate the field of regulatory studies within the debate about the contemporary features of the state, a place where the idea of the regulatory state plays a significant role. I have presented a picture of an emerging field of research that demonstrates the fundamental necessity of extending academic dialog into other features of the contemporary capitalist state, in particular in the context of the global South. All in all, these insights respond to the need to expand certain frontiers that ought to allow us to develop a better conceptualization of the state.

8. Some hypothesis of polymorphous state cohabitations

As noted, in order to narrow down the focus of my inquiry in this thesis, I am interested only in how the RS coexists with the DS in a given space and time. If it is the case that both arrangements predominate in one particular policy regime and if they interact with each other there, how can this interaction within a policy regime lead to institutional outcomes? One possibility worth investigating relates to processes of path dependence, that is, the particular sequencing of events and processes, which may be a key part of the explanation for divergent outcomes.

Douglas North (1990) said that in the context of social interdependence, new institutions often have high start-up costs, they produce considerable learning effects, coordination effects and adaptive expectation. In the history of institutionalism, much of the literature has focused on why and how particular sets of actors can function as catalysts for institutional change. In contrast, we are looking for "explanations for the question of how the lengthy processes of institutionalization condition the circumstances confronting these reformers" (Pierson, 2004: 133). Paul Pierson stated that: "by pointing to the interplay of multiple institutions as a source of both tensions and opportunities, this discussion of institutional change highlights a possible source of dynamism which studies focused exclusively on a single institution are unlikely to capture" (*ibidem*: 136). To this end, we can distinguish between three types of mechanism for institutional change:

1) Layering
2) Functional conversion
3) Diffusion

The layering process "involves the partial renegotiation of some elements of a given set of institutions while leaving other in place. In some cases, existing institutional arrangements may remain intact, but other institutions are added on - perhaps modifying the functioning of pre-existing ones" (*ibid.*: 137). Moreover, Schickler (2001:15) argues that "new coalitions may design novel institutional arrangements but lack the support… to replace pre-existing institutions established to pursue other ends." Interestingly, layering can also imply that reformers who lack the support to overturn existing institutional arrangements can try to create new ones, with the hope that in time they will have a chance to gain more importance themselves (Pierson 2004: 137).

Next, functional conversion refers to processes where the institutions in place are reoriented to novel purposes, modifying their role and performance and acquiring new functions. In the field of organization activity there is a strong consensus that diffusion indicates the wholesale replacement of institutions (Meyer and Rowan 1977; DiMaggio and Powell 1991; Jeperson 2001). In this regard, this approach develops the idea of institutional isomorphism, which refers to instances where practices in a number of organizations within a field demonstrate greater convergence than they would appear to if we based our insights on purely endogenous processes alone (Pierson 2004). From this institutionalist perspective, Pierson suggest that institutional development deals with changes in an

incremental and gradual way (*ibidem*: 153). The opportunity available for the replacement of regulatory or developmental arrangements would be determined by barriers to internal change in the policy regime. The barriers for institutional change are determined by conversion and replacement. When replacement or conversion costs are high we would expect greater stability in the policy regime that encompasses processes of institutional layering or conversion, that is, in the first case, conversion and replacement costs are high for reformers so they opt to create new institutions without eliminating the old structures; in the second scenario, replacement costs are high but conversion costs low, as a result reformers may opt for an internal adaption of the existing institution. Nevertheless, when replacements costs are low and conversion costs high, a process of isomorphism, that is an institutional diffusion, should be more viable, giving reformers the possibility of eliminating or replacing the whole policy regime with new institutions.

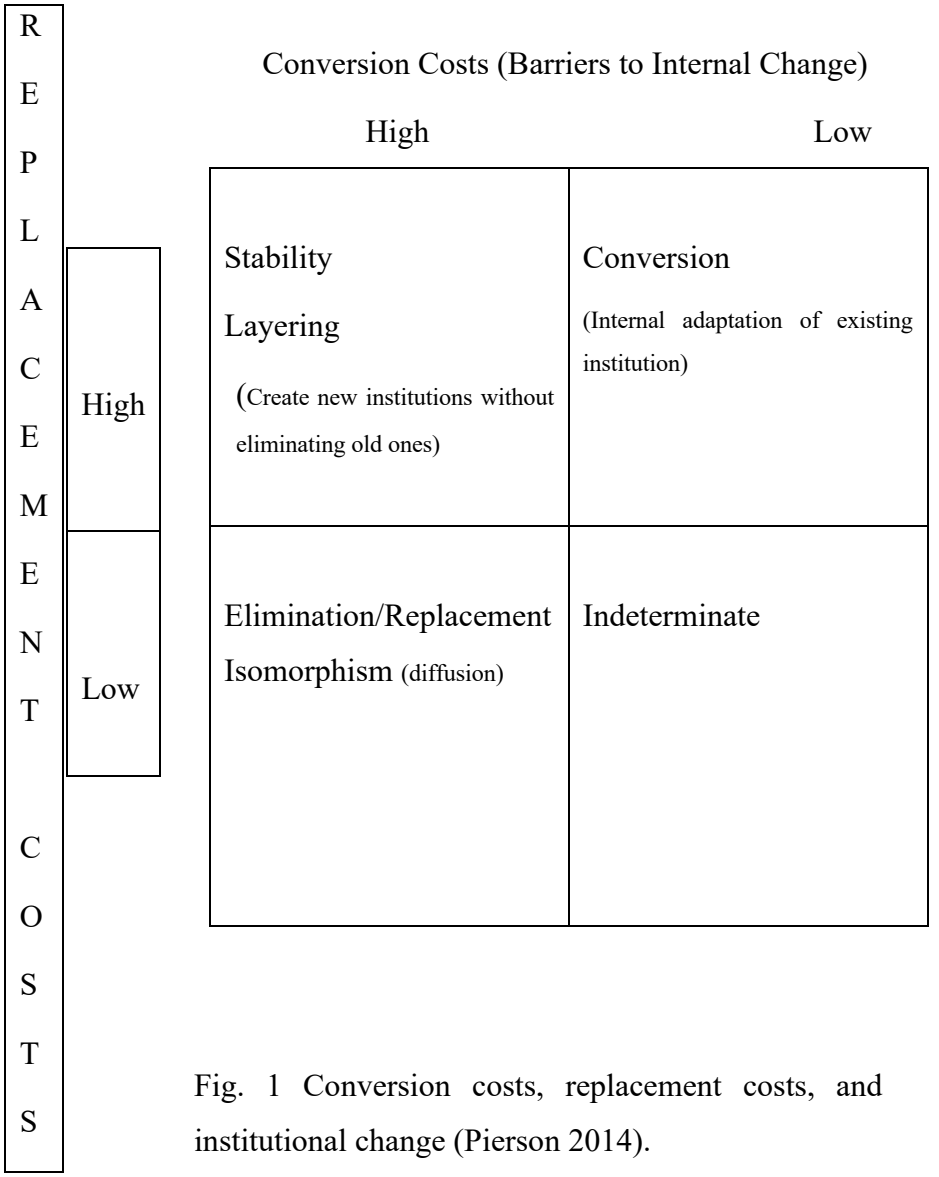


Fig. 1 Conversion costs, replacement costs, and institutional change (Pierson 2014).

In this line of argument, it is possible to identify institutional mechanisms that project possible interactions between institutional arrangements of the RS and DS within a country and also overlap with particular policy regimes. As a result, some implication of this study may show that the state can use its tools both to regulate and to develop policy regimes and that both sets of tools have the potential to mediate and reinforce the process and outcomes of policy regimes. If this is a valid point, then what we would have is not cases of monomorphic regulatory or developmental states within countries, as depicted through the studies of Majone and Johnson in the last decades of the twentieth century, but rather polymorphous states discernible across and within policy regimes that respond to different rationales and needs of the capitalist states. To integrate this scenario of interactions between the RS and DS, I present four hypotheses about their relationship across and within policy regimes.

Hypothesis 1: If a capitalist state has experienced successive historical periods under DS and RS, the legacies of the institutional arrangements established by these different forms of the state will be embedded not only at a national level, but also across different policy regimes, that is across and within sectors. In other words, by definition, if one country, historically, had experienced different developmental projects, their institutional legacies might persist and interact across policy regimes. For instance, the examples given above of Chile, Brazil and the US, are illustrative of such dynamics.

Hypothesis 2: If any given policy regime experiences regulatory reforms without simultaneous privatization or (partial) processes of

liberalization, but incorporates regulatory agencies, regulatory tools and new principles overall in the functioning of the policy regime without eliminating previous institutions, then we should see a layering process which consists of incremental changes that gradually modify the balance of pre-existing institutions.

In this scenario, the strength of the DS in that particular regime could prevent new ideas and institutions from penetrating the established logic of the policy regime. For instance, this may be seen to be the case in the telecommunications policy regime in South Korea. This is related closely to the idea that to have a polymorphous state it is necessary to identify those amalgamations within policy regimes; thus, policy regimes can be polymorphous as well.

Hypothesis 3: If in any given policy regime reformers are capable of introducing processes of privatization of SOEs, liberalization and the creation of regulatory agencies, as well as re-regulation strategies, we should see critical junctures in which there is room for mechanisms of institutional isomorphism as a diffusion process. This would imply that there are low costs for the replacement of preexisting institutions, and that replacement can be achieved in a shorter period of time. This is the kind of scenario of institutional change that Majone and Seidman and Gilmour where thinking of when they identified the trend towards the regulatory state in Europe and the US. But to reduce great transformations to only this kind of institutional processes, seems, as we have seen, to provide an incomplete picture.

Hypothesis 4: If the institutions are adapted internally without eliminating existing ones, but through a restructuring of the nature of the policy regime, we should see mechanisms of functional

conversion. In this scenario the façade of the institutions may change without modifying their underlying, traditional function. This scenario might be less common. Nevertheless, it should not be underestimated as a potential alternative method of change. One example of this type of institutional process can be find in the case of SUBTEL in Chile. Without eliminating SUBTEL and substituting it for the typical IRAs design in the telecommunication policy regime, the organization was transformed into a proper regulatory agency, modifying the nature of the regime without affecting existing institutions. In this regard, there is a possibility that institutions of the DS could be reoriented towards typical RS goals and the use of instruments typically associated with the RS.

In all of these hypotheses, institutional changes such as the ones typically associated with regulatory reforms can also be accommodated. The difference consists of the extent to which Reformers seeking to implement principles and logic related to a new form of the state find that pre-existing conditions differ, affecting the susceptibility of a particular policy regime to the implementation of advanced reforms.

Faced with different structures of opportunity, costs and needs, they may decide to pursue different strategies for the introduction of their institutional blueprints. Institutional change might converge on some state features, such as the introduction of IRAs in the policy regime, but the design, institutional weight and powers of these agencies in the political and administrative constellations may still diverge. Thus, the scope of these changes would be determined to some extent by previous paths of institutional change that continue to receive support

from powerful political coalitions that view the role of the state and the political tradition in a static manner that makes it difficult to shift the direction of the institutions. In the end, these institutional mechanisms frame the different outcomes that shape the form of the state and its structure over time, constituting, through their institutional development, the polymorphous character of the state. Across these mechanisms of layering, functional conversion and diffusion, the RS and DS meet across policy regimes and their interactions and structure are defined by the way in which they cohabit the institutional landscape.

Concluding remarks

As, the scope of regulatory reforms is broader than commonly recognized, they should be understood as intrinsically related not only to trends in regulatory governance but as a genuine part of the transformations of the state in the global age. I argue that the very limits of this transformation stem from the process of path dependence, which functions as a mechanism for reproducing the trajectory of DS patterns. The paths taken by previous institutions can define the extent to which new institutions are incorporated within policy regimes. In these kind of conditions, institutional layering can be a mechanism for interaction between the RS and the DS. However, when there are positive conditions for a more aggressive kind of change, is common to find the process of institutional diffusion within some policy regimes. Nevertheless, changes designed to maintain the institutional arrangements can also be observed, even with alterations to their traditional functions. In order to observe these

mechanisms of interaction between the regulatory and developmental state in motion, it is useful to limit the analysis of state institutions to the meso-level. Within policy regimes institutional changes should inform our insights about the mechanisms that are in place and the ways in which different state models cohabit during processes of reform. To this end it is relevant to look beyond time-limited snapshots that do not display the complexity of the interactions between forms of the state across time.

In this paper, I have sought to draw out the previously unobserved theoretical conversation between the RS and the DS in order to show how commonly they interact across policy regimes and across countries. Using the conceptual tools of state theory and supplementing this with institutional analysis, I argue that the interactions of both models can be understood as part of the polymorphous dynamics of the state. There is plenty of scope for future research to expand upon the theory building potential of polymorphous state dynamics. It should also incorporate more fine-grained empirical analysis in order to test hypotheses within comparative research design frameworks. More meso-level comparisons across countries and within sectors could enrich these insights.

References

Bervin, Mark, and Trentman, Frank (eds.), (2007), *Markets in Historical Contexts: Ideas and Politics in the Modern World*, Cambridge: Cambridge University Press.

Block, Fred, (2008), "Swimming Against the Current: The Rise of a Hidden Developmental State in the United States", *Politics & Society*, 36(2), 169-206.

Block, Fred and Keller, Matthew (eds.), 2011, State of Innovation: The U.S. Government's Role in Technology Development. Paradigm, Boulder.

Braithwaite, John and Ayres, Ian, (1992), *Responsive Regulation. Transcending the Deregulation Debate*, New York: Oxford Univeristy Press.

Braithwaite, John and Drahos, Peter, (2001), *Global Business Regulation*, Cambridge: Cambridge University Press.

Braithwaite, John, (2008), *Regulatory Capitalism. How it Works, Ideas for Making it Better*, Cheltenham: Edward Elgar Publishing.

Croley, Steven P., (DATE), "Beyond Capture: Towards a New Theory of Regulation", in Levi-Faur, David (ed.), *Handbook on the Politics of Regulation*, Cheltenham: Edward Elgar Publishing.

Datta, P. K., and Majumdar, S., (2018). "Role of Regulatory Agencies in India's Governance", *Indian Journal of Public Administration*, *64*(3), 427–441. https://doi.org/10.1177/0019556118785426.

DeCanio, Samuel, (2015), *Democracy and the Origins of the American Regulatory State*, New Haven: Yale University Press.

Dawn, Oliver, Prosser, Tony and Rawlings, Richard, (DATE), *The Regulatory State: Constitutional Implications*, New York: Oxford University Press.

DiMaggio, Paul J. and Powell, Walter W., 1991, 'Introduction'. In P. J. DiMaggio and W. Powell (eds.) 'The New Institutionalism and Organizational Analysis', pp. 1–38. Chicago: University of Chicago Press.

Dubash, Navroz, (2013), "Regulating Through the Back Door: Understanding the Implications of the Institutional Transfer", in *Dubash, N. and Morgan, Bronwen, The Rise of the Regulatory State of the South: Infrastructure and Development in Emerging Economies*, New York: Oxford University Press.

Dubash, Navroz and Morgan, Bronwen, (2013), *The Rise of the Regulatory State of the South: Infrastructure and Development in Emerging Economie*s, New York: Oxford University Press.

Gilardi, Fabrizio. 2005. "The Institutional Foundations of Regulatory Capitalism: The Difussion of Independent Regulatory Agencies en Western Europe", en *The Rise of the Regulatory Capitalism: The Global Difussion of a New Order*, Annals of the American Academy of Political and Social Science, Sage, Vol. 598, March.

Hancher, Leigh and Moran, Michael, (1989), "Organizing Regulatory Space", in Hancher, L. and Moran, M. (eds.), *Capitalism, Culture and Economic Regulation*, New York: Oxford University Press.

Holzinger, Katharina and Schmidt, Susanne K., 2015, "From the Positive to the Regulatory State: A Transformation in the Machinery of Governance?", In Leibfried, Stephan et al. (eds.), *The Oxford Handbook of Transformations of the State*, Oxford University Press, Oxford.

Hsueh, Roselyn, (DATE), *China's Regulatory State. A New Strategy for Globalization*, Ithaca: Cornell University Press.

Jessop, Bob, (1977), "Recent Theories of the Capitalist State", *Cambridge Journal of Economics*, N. 1, p. 353-73.

_____, (2002), *The Future of State Capitalism*, Cambridge: Polity Press.

_____, (2016), *The State. Past, Present, Future*. Cambridge: Polity Press.

Jayasuriya, Kanishka, (2001), "Globalization and the Changing Architecture of the State. The Politics of the Regulatory State and the Politics of Negative Co-ordination", *Journal of European Public Policy*, Vol. 8.

Johnson, C. A. (1982). *MITI and the Japanese Miracle: The Growth of Industrial Policy, 1925–1975*. Stanford University Press, Stanford.

Jordana, Jacint, (1995), "El análisis de los policy networks: ¿una nueva perspectiva sobre la relación entre políticas públicas y Estado?", *Gestión y análisis de políticas públias*, No.

Jordana Jacint, (2010), "Autonomous regulatory agencies in democratic Mexico", *Law and Business Review of the Americas*, Vol.16, No. 4.

_____, (2011), "The Institutional Development of the

Latin American Regulatory State", in Levi-Faur, David (ed.), *Handbook on the Politics of Regulation*, Cheltenham: Edward Elgar Publishing.

Jordana, Jacint, Levi-Faur, David and Fernández I. Marin, Xavier, (2011), "The Global Diffusion of Regulatory Agencies: Channels of Transfer and Stages of Diffusion", *Comparative Political Studies*, Vol. 44, No. 10.

Jordana, Jacint and Levi-Faur, David (eds.), (2004), *The Politics of Regulation. Institutions and Regulatory Reforms for the Age of Governance*, Cheltenham: Edward Elgar Publishing.

Karlsson-Vinkhuyzen, Sylvia I., (2011), "Global Regulation Through a Diversity of Norms: Comparing Hard and Soft Law", in Levi-Faur, David (ed.), *Handbook on the Politics of Regulation*, Cheltenham: Edward Elgar Publishing.

Keller, Matthew R., Block, Fred, & Negoita, Marian. (2017). How does innovation work within the developmental network state? New data on public-private agreements in a U.S. Department of Energy laboratory. *Sociologias*, *19*(46), 102-164.

Le Gàles, Patrick, (2013), "States in Europe: uncaging societies and the limits to the infrastructural power", *Sase Annual Meeting, University of Milan*, *Socio-Economic Review*.

Levi-Faur, David and Jordana, Jacint, (2004), "The Global Diffusion of Regulatory Capitalism", *Annals AAPP*, 598.

_____, (2011), "Regulation and Regulatory Governance", in Jordana Jacint, and Levi-Faur, David, *Handbook on the Politics of*

Regulation, Cheltenham: Edward Elgar Publishing.

_____, (2013a), "The Regulatory State and the Developmental State: Towards Polymorphic Comparative Capitalism", in Morgan and Dubash (ed.), *The Rise of the Regulatory State of the South: Infrastructure and Development in Emerging Economies,* Oxford: Oxford University Press.

_____, (2013b), "The Odyssey of the Regulatory: From a "Thin" Monomorphic Concept to a "Thick" and Polymorphic Concept", *Journal of Law & Policy*, Vol. 35, No. 1-2, January-April.

Lodge, Martin, and Stirton, Lindsay, 2006, "Withering in the heat? The regulatory state and reform in Jamaica and Trinidad & Tobago", Governance, vol. 19 (3), July 2006, pp. 465-95.

King, Gary, Keohane, Robert O. and Verba, Sidney, (1994), *Designing Social Inquiry. Scientific Inference in Qualitative Research*. Princeton: Princeton University Press. Mann, M. (1986). *The Sources of Social Power*, vol. 1: *A History of Power from the Beginning to* ad *1760*. Cambridge University Press: Cambridge.

Majone, Giandomenico, (1997), "From the Positive State to the Regulatory State: Causes and Consequences of Changes on the Mode of Governance", *Journal of Public Policy*, Vol. 17, No, 2, May-Aug.

_____, (1996), *Regulating Europe*. London: Routledge.

Mangabeira, Unger, (1977), *Law in Modern Society. Toward a Criticism of Social Theory*, New York: The Free Press.

Meyer, John W. and Rowan, Brian, 1977, "Institutionalized organizations: Formal structure as myth and ceremony", American Journal of Sociology, 83: 340-363.

Miliband, Ralph, (1970), *El estado en la sociedad capitalista*, Madrid: Siglo XXI Editores.

Minogue, Martin, (2005), "Apples and oranges: problems in the analysis of comparative regulatory governance", *The Quarterly Review of Economics and Finance*, Vol. 45, 195-214.

Moran, Michael, (2003), *The British Regulatory State. High Modernism and Hyper-Innovation*, New York: Oxford University Press.

Morgan, Browen and Yeung, Karen, (2007), *An Introduction to Law and Regulation. Text Material and Material*. Law in Context Series, New York: Cambridge University Press.

Müller, Markus M., (2002), *The New Regulatory State in Germany*, Birmingham: The University of Birmingham Press.

Mazzucato, M. (2013). *The Entrepreneurial State: Debunking Public vs Private Sector Myths*. Anthem: London.

Niklasson, Lars, (2012), "The Regulatory State vs the Developmental State: The Case of the EU"; paper presented at the 4th Biennial ECPR Standing Group for Regulatory Governance Conference on "New Perspectives on Regulation, Governance and Learning", Exeter, 27-29 June.

Offe, Claus, (1996), *Modernity and the State*, MIT Press, Cambridge, Massachusetts.

O'Riain, S, 2004. The Politics of High Tech Growth: Developmental Network States in the Global Economy (Structural Analysis in the Social Sciences). Cambridge University Press Cambridge.

Pérez, Caldentey, Esteba, (2008), "The Concept and Evolution of the Developmental State", *International Journal of Political Economy*, vol. 37, no. 3.

Phillips, Nicola, (2006), "States and Modes of Regulation in the Global Political Economy", in Minogue, Martin and Cariño, Ledivina (eds.), *Regulatory Governance in Developing Countries*, Cheltenham: Edward Elgar Publishing.

Piccioto, Sol, (2010), "International Transformations of the Capitalist State", *Antipode*, Vol.43, No. 1.

Pierson, P. (2004). *Politics in Time: History, Institutions, and Social Analysis.* Princeton University Press.

Pirie, Ian, 2007, The Korean Developmental State: From Dirigism to Neo-Liberalism, Routledge, London.

_____2012, "The new Korean political economy: beyond the models of capitalism debate", *The Pacific Review*, 25:3, 365-386, DOI: 10.1080/09512748.2012.685092

Poulantzas, Nicos, (1979), *Estado, poder y socialism*, Madrid: Siglo XXI Editores.

Prosser, Tony, (2010), *The Regulatory Enterprise: Government, Regulation and Legitimacy*, Oxford: Oxford University Press.

Rabin, Robert L., (1986), "Federal Regulation in Historical Perspective", *Stanford Law Review*, Vol. 28, No. 5.

Ragin, Charles, (2000), *Fuzzy Set Social Sciences*, Chicago: Chicago University Press.

Seidman, Harold and Gilmour, Robert, (1986), *Politics, Position and Power. From the Positive to the Regulatory State*, 4th ed., New York: Oxford University Press.

Shapiro, Sidney A. and Tomain, Joseph P., (2014), *Achieving Democracy: The Future of Progressive Regulation*, Oxford: Oxford University Press.

Sorenson, George, (2004), *The Transformations of the State: Beyond the Myth of Retreat*, Palgrave McMillan, Hampshire.

_____, (2006), "The Transformations of the State", in Colin, Hay et al (eds.), *The State. Theories and Issues*, Palgrave McMillan. Hampshire.

Sunstein, Cass, (1993), *After the Rights Revolution. Reconceiving the Regulatory State*, Cambridge, Massachusetts: Harvard University Press.

_____, (1997), *Free Markets and Social Justice*, New York: Oxford University Press.

Veggeland, Noralv, 2009, Taming the Regulatory State. Politics and Ethics, Edward Elgar Publishing, Cheltenham.

Vibert, Frank, 2007, The Rise of the Unelected. Democracy and the New Separation of Powers, Cambridge University Press, Cambridge.

Vogel, Steven K., (1998), *Freer Markets, More Rules. Regulatory Reform in Advance Industrial Countries*, Ithaca: Cornell University Press.

Willke, H. (1992). *Die Ironie des Staates*. Suhrkamp: Frankfurt.

II. DIVERGENT PATHS OF REGULATORY CHANGE. THE CASE OF REGULATORY GOVERNANCE IN MEXICAN UTILITIES

Introduction

In Mexico over the last three decades the contrast between change and continuity of institutional legacies has been evident in various spheres of its public life. On the one hand, political processes have been contested between demands for democratic change and the persistence of authoritarianism. For instance, Mexico's democratic transition was the longest within the wave of democratization that swept through Latin America, as the PRI hegemony survived political pressures for regime change. Electoral institutions were instead opened up to political competition slowly and incrementally from 1977 onwards, culminating in the year 2000, when the PRI lost its first presidential election after seven decades in power (Diaz-Cayeros & Magaloni 2001, Magaloni 2005, Magaloni 2006). This configuration permeated state territorial politics, which were characterized by a centralized federalism that saw local government punished or rewarded according to party loyalty. Thus, a hegemonic punishment strategy was in place and it maintained the centralized power of the authoritarian regime, even within what was -on paper- a federalist constitutional arrangement (Díaz-Cayero, Beatriz, and Weingast April 2003; Weingast 2003, 2008). Although federalism became a space of political change during democratization, the political process and the first divided government in 1997 saw the emergence of new actors and new tensions between centralist

tendencies and demands for decentralization in a new arena of intergovernmental politics (Flamand, 2004).

The role of the state in the economy was a part of these processes of change. In this case tensions were between those who sought pro-market reforms and thought this was a way of modernizing the state apparatus, and those who defended the traditional presence of the state in strategic sectors, -although this occurred among new policy narratives regarding civil society, that now incorporated a defense of the social and economic right to public services. As part of this interaction, a long period of building up state regulatory institutes was begun.

Indeed, the analysis of this shift towards a regulatory state has made two things clear. First, that Mexico, like other countries in the region, was part of the global wave that saw regulatory agencies spread across various sectors of national policy (Levi-Faur & Jordana, 2006; Dussauge, 2016). Second, that this diffusion had been the result of neoliberal authoritarian reforms and the older corporativist state. Thus, the power struggles were between, on the one hand, a coalition integrated by technocrats and capitalists using new economic ideas as a response to the imbalance in the Mexican economy and as weapons to promote pro-market reforms and, on the other hand, different groups that came from the institutional structures (i.e., unions representatives and bureaucrats), that had been part of the previous state-owned enterprises that predominated during the period of the developmental state (Ballinas, 2011).

The product was a unique evolution of the regulatory state, as Mexico - along with Brazil – was on a trajectory from one of the most

expanded, traditional developmental states in the region (Jordana, 2013; Ross, 1999; Minns, 2006) , thus is clearly a case of interaction with the developmental state, It should be expected that some institutions from the developmentalist period would endure. But over time, as the new regulatory institutions were adapted and accentuated, they were expected to become less important across policy regimes. However, this was not the case. In fact, new ways of reproducing developmental institutions appeared. This is precisely the institutional process that this paper aims to explain.

Previous studies on regulatory reform analyzing the case of Mexico have already recorded the expansion of institutional arrangements such as regulatory agencies and regulatory instruments to govern various sectors. Some of these studies have reviewed the reforms of the 1990s and 2000s in detail (Culebro and Larrañaga, 2013; Pardo, 2011) and the divergence of institutional design and independence among regulatory agencies (Ballinas, 2011; Jordana, 2010), but no analysis has been made yet to capture the historical and institutional interaction with legacies of the previous state. None yet have sought to highlight and explain the institutional innovations that were introduced to a variety of policy sectors, instead the importance and the role played by the persistence of institutions that preceded them has been relegated to the background.

On the one hand, this issue has been neglected by Mexican studies of regulation, despite the traditional focus on the study of utilities and infrastructure in the literature of regulatory governance (Jordana, Levi-Faur, & Puig, 2006; Mota Prado, 2012; Dubash & Morgan , 2013). On the other hand, the Mexican case has not been subject to

recent comparative analysis on regulatory reforms. Besides, after an intensive process of a new wave of regulatory reforms across sectors during the years 2012-2014, regulatory governance studies on this subject have been rather scarce.

In addition, usually in the literature of regulatory governance, comparisons between electricity and telecommunications regimes are common. But although the trends of regulatory reform also have an impact in water utility regimes, the trajectory of reforms in urban water management has not generally been incorporated into the comparative analysis of regulatory changes in the utilities. Indeed, in Mexico this is also the case. Thus, comparatively, the trajectory of reforms in utilities, including water regimes, shows an interesting variety of institutional outcomes that merit greater study.

As highlighted above, another reason to look at the trajectories of institutional change in the Mexican utilities regimes is their relationship with other processes of institutional change. In fact, processes such as democratization, decentralization and the expansion of human rights have intersected and created divergent paths of change. The underlying distributions of power have produced important institutional changes, thus the ways in which their influence at the sectoral and temporal level have varied across the utilities sector is another relevant part of this analysis.

In this context, the present paper seeks to answer how state structures emerge within the regulatory governance of national utilities, creating dynamics of continuity and change that produce different ways for the regulatory and the developmental states to coexist.

In essence, this paper analyses how the institutional arrangements of the regulatory and developmental states were integrated across the utilities sector and how their relationship evolved. To answer the research question, I argue that divergent paths of regulatory change evolved as a consequence of different configurations and interactions between multiple roles of the state.

In other words, when the regulatory state is constructed the older developmental state does not just disappear. Thus, different type of interactions and cohabitation between both preexistent and new institutions evolve across time and policy regimes.

In my response to this puzzle, I support my analysis with primary and secondary sources and, in order to contextualize the more recent period of reforms, I complement this with a small number of interviews. The structure of the article is as follows: first, I will present the analytical framework and some hypotheses that will guide the analysis of the cases. Secondly, I review the historical trajectory of institutional changes undergone within utilities regimes in Mexico. I start by reviewing the case of the electricity regime, then I look at the telecommunications regime, and finally the case of urban water infrastructure is presented. The three cases are structured in a chronological and sequential fashion that covers the main moments of failure and success regarding historical institutional changes. Temporally, the three cases start with the building of developmental institutions and conclude with the last round of regulatory changes conducted during the so-called *Pacto por México*, between 2013-2015. In the third section, I make a comparative institutional analysis with the main findings and contrast them with the hypotheses from

section two. I conclude with some insights that point in the direction of future research questions.

1. Conceptual and analytical framework for developmental reproduction and regulatory change

Institutional legacies are relevant for the observation of how societies and policy regimes evolve across time, as institutions are embedded in concrete temporal processes (Koning, 2016; Thelen, 1999; Pierson, 2004; Orren and Skownorek, 1994; Vom Hau 2008). Time matters for actors as a conditioning factor that precedes their action. In short, time operates as a premise of action (Offe, 2004: 12). In this regard, the sequence and timing of any attempt to change institutions structures the multiple patterns of change taken by actors, creating a sort of historical chain of change and reproduction from one time to another (Pierson, 2000). Thus, the modification of institutions (norms, rules, identities and practices) is mediated by the weight of the period in which they have developed and adapted (March and Olsen 2008). Of course, their weight may vary in terms of symbolism, public values and convictions, political and economic interests, depending on their effectiveness and contribution to welfare.

Yet, it has to be clear that institutions are not static, rather they are dynamic and penetrated by relational processes. They operate, as Clause Offe (2004) stated, in a tripolar field of power: conflicts that are structured by interactions between guardians, beneficiaries and potential challengers. From this perspective, institutions mirror and are better explained by social power relations than by functional approaches that present institutions as merely the result of goals and

objectives that are used to justify their creation (*ibidem*; Thelen, 1999). In fact, Campbell (2010: 98-99), points out that "the possibility that multiple models may exist side by side suggests that national political economy may be less homogeneous institutionally than is generally recognized…". Moreover, he adds, "the existence of multiple institutional models may exist simultaneously for extended periods of time within the national political economy or an industry" (*ibidem*). Thus, the process of institutional reproduction and change are mutually constitutive, which means that the forces that change institutions, i.e., change and conflict, also stabilize them (ibid.). Consequently, moments of institutional change, by definition, have power at their core, are contended, involve battles, conflict and negotiation. The task is, therefore, to carefully identify the mechanisms that allow for the stability or transformation of institutions.

Another premise of institutional analysis has to do with arguments about temporality and the deployment of different processes over time. This intersection of processes matters in the chain of institutional change because they show alternative dynamics and inconsistencies between the intersections of different processes and institutional logics as they unfold over time (Orren and Skowronek, 1994). The bottom-line is: the growth of institutions takes time, their adaptation is not automatic, it is not necessarily continuous or as precise as is assumed by standard equilibrium models, in fact, institutional change has multiple path-dependent equilibria (March and Olsen 2008). Accordingly, if institutions can be self-perpetuating, then in theory "the longer they are in place, the more

robust they grow, and the more immune they become to challenges" (Offe 2006, p. 18). Consequently, innovation is more costly, as guardians and beneficiaries empower by institutions resist change and thus established the premises, constraints and likewise policies becomes path dependent. In such an environment, change usually follows strategies of incremental and partial adjustments.

Martínez-Gallardo and Murillo, (2011) show that in spite of some policy convergences emphasized by the literature on regulatory diffusion, the ideological legacies of government coalitions play a key role in delineating differences in the process of regulatory diffusion and its regulatory outcomes. In this sense, one interesting and useful approach to the sequential analysis of institutional change was developed and elaborated schematically by Mark Blyth (2002) comparing two periods of transformations: the Great Recession of 1929 and the neoliberal reforms of the 1980s. Blyth, inspired by Polanyi's double movement, institutional change based on the observation that the battle for ideas is crucial to understanding how institutions unfold. In his *The Great Transformations, Economic Ideas and Institutional Change*, Blyth explain how the breaking of institutional orders is a sequential phenomenon. For him, the role of ideas is critical for institutional change at a time of public uncertainty as massive economic failure create opportunities for change. He identifies five phases of change articulated around ideas. The underlying argument in Blyth's approach is related to critical junctures as a catalyst for major economic and institutional policy changes. Blyth's sequence goes as follows: in the initial phase, if institutions face a crisis, ideas give agents the opportunity to reduce

uncertainty and to create conditions for interpreting the crisis in a way that serve as a first step towards the construction of new institutions; in the ensuing phase, they serve to mobilize collective action and coalition-building; thirdly, they are used to delegitimate current institutions, as weapons to attack them (Blyth terms this phase "institutional contestation"). The fourth phase is institutional replacement, here agents use ideas as blueprints to build the new institutions; the last phase is termed "expectational coordination", and it describes the period when ideas have become embedded within institutional arrangements and as such are used to coordinate expectations and promote stability over time.

As a result, the analysis of institutional change needs to follow the sequence of steps that structure the opportunity for agents to change institutional frameworks.

As can be seen, Blyth's approach is clearly based on the notion that critical junctures are exceptional moments at which change is more likely to be politically successful. While at a national/macro level, moments of massive failure can be important for introducing changes to the system, Blyth's view fails to account for the ways in which intra- and inter- institutional dynamics can result in change too.

In this line of argument, focus on critical junctures can obfuscate incremental steps that also nevertheless produce transformative results (March and Olson, 2006; Streeck and Thelen, 2005). Another issue with Blyth's approach has to do with political regimes - his cases (the US, UK and Sweden) are all democratic regimes, but it is to be expected that in authoritarian regimes the sequence of phases posited by Blyth could be altered and show different patterns.

However, since the first regulatory reforms in Mexico were introduced in the middle of the democratization process, and to some extent at that point the elections remained embedded in a competitive authoritarian regime (Levitsky, 2010; Lawson, 2000), Blyth's sequence can be partially followed as regulatory change evolved together with the democratization of the country.

Furthermore, what seems clear is that without a careful temporal analysis of how institutional ideas evolve over time, the task of understanding institutional change is incomplete. If the regulatory and developmental arrangements are, after all, the result of government policy, then to understand any changes to these arrangements, it is necessary to look at the sequence of events and episodes that made them possible. Blyth's perspective is therefore useful for this thesis, since it allows me to analyze the evolution of regulatory and developmental institutions, while paying attention to a sequence that incorporates reproduction dynamics that came from moments of institutional crisis but that continue to take a longer path of adjustment, adaptation or failure. For the purposes of this paper, although Blyth's phases one to three are part of the context of how new regulatory regimes emerge and they help us to contextualize regulatory change, the main focus here is on phases four and five. These phases address the situation that occurs once regulatory state institutions have become embedded in the institutional landscape of utilities regimes and they show how institutions of the regulatory state evolve and interact with developmental states from that point on.

Related to the importance of analyzing institutional change and the ideas that inform it over time, is the analysis of the type of change that occurs. Peter A. Hall (1993), developed a typology in which he distinguished three levels, or orders, of state policy intervention. Among these three orders of change there are simple and complex changes. The first and second orders occur within the same paradigm, involving changes in instruments, and technical adjustments to the methodologies through which policies are formulated. The third order implies a change of the policy paradigm itself, that is, a reformulation of the goals, or a change in the role of the state and society towards the management of public issues. Thus, while the first and second types of change occur as adjustments within the same policy, the third order concerns a transformation that implies the replacement or structural change of policies and institutions. The difference, then, lies in the magnitude of the sub-types of change (ibidem). Of course, one could assume that the ideas that structure regulatory and developmental institutions have a matrix that comes from different paradigms and therefore that their interaction in the policy process is antithetical, that one replaces the other. But it is also possible that once both paradigms are institutionalized, their institutions coexist in both a more cooperative and a more conflicting manner. As a result, their interaction could have a strategic use for agents. So, if that is the case, changes that can be viewed at the policy macro level took shape as institutional arrangements that adapted to and complemented each other at the meso-level.

The argument here is that once multiple paradigms are established, in this case regulatory and developmental paradigms, they can interact at Hall's first and second levels of institutional dynamic.

According to Hall's third order of intervention, new ideas regarding regulatory change ought to be accompanied by new goals and objectives. Examples might include the shift from protected monopolies to a competitive market in utilities provision, or from the exploitative extraction of natural resources, to extraction that conforms to standards in place for the protection of future generations. Consequently, if the goals and objectives accompanying new regulations remain in place, there is an increased likelihood that they will continue to encourage new ideas in the innovation of regulatory instruments, and provide the means of pursuing Hall's first and second orders of change, thus creating a mechanism for the reproduction of change.

Another relevant point in the analytical framework of the paper has to do with the selection of cases. In a study by Henisz (et al 2005), four elements of regulatory reform were reviewed in the context of the global spread of market reforms in the infrastructure sector. The elements are as follows: 1) privatization of public enterprise (i.e. the change from a supplier to a public service regulator) 2) the formal separation of the regulator from the executive branch 3) the de facto elimination of the executive's influence on the regulatory authority, and 4) the opening up of the retail market to a multiplicity of service providers. These amount to a separation of utilities from the electoral cycle and a major consistency to the market dynamics. According to Henisz's study, between 1977 and 1999, 71 countries adopted market

reforms in their telecommunications and electricity sectors. However, there was significant variation between countries in the four elements of the reforms studied. In any case, the study shows the potential to explore variation across and within sectors and is a useful benchmark for gaining an empirical perspective on the scope of regulatory change across countries and sectors – or, in the case of this thesis in Mexican utilities. As noted previously, it is important when studying state configurations to descend from national or macro-level approaches to a meso-level analysis, where it is more feasible to identify varieties of state legacies and their interactions across policy regimes (Jordana 1995; Levi-Faur 2013).

In the fields of comparative politics and public policy analysis, the study of utilities is commonplace, as utilities provision conforms to the following physical and economic rationales: first, utilities technologies and infrastructure imply sunk costs, and as a result they share a natural monopoly structure; second, they also share economies of scale and scope; third, their services and products are object of massive consumption (Spiller and Tommasi 2008).

In Mexico, utilities regimes have been historically influenced by the ideas, institutions and traditions of different state eras.

A developmental coalition influenced the policy process during a long period of the country's history. This can be tracked across several decades, and the influence of this coalition remains present in the contemporary electricity, water and telecommunications sectors. The nationalization and the institutional establishment of the developmental state during the twentieth century - alongside strong

unions and state-owned enterprises – resulted in a situation where the political cost of changing the path of these developmental institutions was high. The utilities sectors were a key element of the state's industrialization strategy during that period, so movement towards regulatory governance was slow (Jenkins 1991). However, since the 1980s, a technocratic coalition emerged with market-oriented ideas about how to manage the economy and strategic sectors. Following different attempts to introduce privatization, liberalization, competition and regulatory reforms, the strengths and weaknesses of the country's developmental heritage was brought into question across various sectors, in particular, within the utilities.

Since then, the introduction of regulatory agencies within different policy regimes has been a consistent strategy used to modernize state structures and improve the technical quality of the regulatory decision-making process. The intention behind the analysis of institutional evolution and regulatory change is, therefore, to locate the mechanism of reproduction that sustains particular institutional configurations. In this way it is possible to understand how common international trends very often still result in a divergent range of national institutional consequences (Thelen, 2006; Locke & Thelen, 1995).

Hypothesis 1. To the extent that a state has experienced related periods of developmental and regulatory strategies, its legacies and institutional arrangements may persist, interact and even cohabit across and within policy regimes.

Another possibility that arises, is that once a policy regime is subject to regulatory reforms, reformers, due to the balance of social power,

understand that at that moment the only way to galvanize a process of regulatory change is not, in fact, to privatize or liberalize an industry. Instead, without eliminating the existing institutions within that sector, they introduce agencies that can drive first and second order changes within the sector, gradually creating conditions for more regulatory intervention, without getting rid of developmental institutions. This is the idea behind the second hypothesis:

Hypothesis 2: When a policy regime undergoes regulatory reform without the inclusion of privatization or liberalization, but does incorporate a regulatory agency, its instruments and new objectives into the policy regime, without eliminating the previous institutions, then a process of layering is opened up that allows for incremental changes that may eventually lead to a new balance between the pre-existing institutions.

It could also be the case that given certain conditions, it is possible for reformers to go further and act more quickly in the process of change. In this instance, a weak state could produce more institutional uncertainty meaning that coalitions grasp it as an opportunity to introduce more comprehensive changes. These are the moments when critical junctures help reformers to take more radical paths of regulatory change. Now, even though pre-existing institutions could be substituted, there is always the possibility that previous institutions from the developmental state could maintained some of their activities at Hall's first or second levels, this maintaining the possibility for new processes of feedback. This is the main idea in hypothesis three:

Hypothesis 3: But if in a policy regime reformers are able to introduce more aggressive changes involving processes of privatization of public enterprises, liberalization and the creation of regulatory agencies - that will have to regulate the marketization of the sector in a short period of time - then the change may appear at critical junctures that open up space for mechanisms of institutional isomorphism or diffusion. This is because opportunities for change at a low cost can be found in the replacement of pre-existing institutions and during these moments, space remains available for regulatory logic to coexist with developmental logic, that may later on find new ways of reproduction.

An additional scenario could be informed by the reorganization and internal adaptation of institutions that incorporate some levels of regulatory change, but maintains the previous dynamics, thus in these cases the logic of change is not fully incorporated and it is not possible to clearly distinguish new state arrangements from former ones. This is the basis for hypothesis four:

Hypothesis 4: The possibility of an institution adapting internally without eliminating existing institutions, but restructuring the policy regime, can occur in cases where the façade of an institution is changed without a simultaneous change in its traditional functioning, producing a conversion.

In the following sections, three to five, the evolution of the utility policy regimes - in case studies from electricity, telecommunications and water - is presented following the evolutionary premises of this section.

2. The trajectory of regulatory change and developmental reproduction in the electricity regime

The trajectory of the electricity regime shows the predominant role that the state has taken in the provision of this utility service. The state succeeded in building a national network through which it continues to determine its policy structure. In the next pages, I review in detail the developmental roots of the Mexican electricity sector and the multiple attempts to incorporate regulatory structures within it, creating overlapping paths towards pro-market and regulatory schemes in what is predominantly a developmental regime.

2.1 The developmental roots of the electricity regime

Initially, after Porfirio Díaz's regime fell from power, Mexico did not have a national energy industry to speak of: each single sector in energy was in the hands of foreign companies and the state had no involvement – not as regulator, policymaker, investor or producer. State involvement in the electricity regime was decentralized to local levels, leaving the country incapable of building up the power required to regulate and develop a national industry. In such a context, a first step towards the creation of a developmental-oriented electricity regime was to centralize the policy regime.[2] From then on, the state gradually began to create national regulatory institutions and policies (Ayala Espino, 1988; Ruíz Dueñas, 1988: 116; MacLeod, 2004) that started a process of policy activism regarding issues such

[2] In 1926 the National Electricity Code was issued, which federalized the regulation and supervision of electric power generation.

as the technical conditions of the service provided and concessions and tariffs that were generating increased concern and dissatisfaction among citizens. Thus at this stage, the state intervened through regulatory instruments. But as the sector was considered a public utility the state started to intervene by using planning tools (De la Garza Toledo, 1994).[3]

Simultaneously, after President Cárdenas nationalized the oil industry in 1938, a more active and direct process of intervention by the state in the economic sphere began, demonstrating particular intensity in the energy sector. The electricity sector in Mexico cannot be fully understood without acknowledging the parallel trajectory of the oil sector. Historically, the development of these two sectors usually goes in tandem. The development of the energy industry took place in the post-revolutionary decades when energy sovereignty was considered a central goal for the development and industrialization of the country. In this context, as the state took control of the whole energy value chain through SOEs, the sector became a symbol of national values and the economic sovereignty, thus it was part of the strategy industrialize and grow the political economy of the revolutionary regime. In terms of policy, this process led, alongside other policies, to the creation in 1933 of the *Comisión Federal de Electricidad* (CFE) as an SOE, and the creation of the Electricity Industry Law in 1938 during the Cárdenas administration (Carreón-

[3] In 1922, for example, the *Comisión Nacional para el Fomento y Control de la Industria de Generación y Fuerza* was created and later, in 1926, the electrical regulation was reorganized in the *Comisión Nacional de Fuerza Motriz.*

Rodríguez et al, 2003).[4] Since that moment, during the next two decades, coexistence evolved between public and private producers in power generation and the provision of electricity (idem: 129). Gradually the regulatory intervention of the state was losing strength, while at the same time the public investment in power generation through the participation of the CFE was increasing, with the purchase of numerous electric companies that had been formerly in hands of the private companies. Thus, in this period there were clearly new ideas and a new policy paradigm - a third order change - that created the conditions for the emergence of developmental state arrangements.

Later on, the Cárdenas Coalition (MacLeod 2004) identified an opportunity to further the nationalization of the electricity industry. It was something that began to be publicly discussed in the 1950s, particularly in the 1958 elections when an electoral plan was issued, demanding its nationalization (ibidem). In 1960, the final steps were taken with the purchase of the last private companies in operation in the sector and the constitutional reform of article 28, by which the state established exclusive public participation in the whole industry chain. Thus, in practice, the state merged the entire industry chain both horizontally and vertically: production, transmission,

[4] Interestingly, during that era, policies in the electricity sector felt the influence of both the Five-Year Plan of the Soviet Union and Franklin D. Roosevelt's speeches, like Looking Forward, in which he attacked the scandals of the electric companies controlled by financial trusts. Both influences "clearly showed the most aware Mexicans, that neither industrialization nor economic development were possible without an abundance of electrical energy" (Wionezek 1973: 83).

distribution and retail were placed in the hands of the CFE, and later on in central Mexico partly with Luz y Fuerza del Centro. This process was not legally consolidated until 1975 with the Public Service Law of Electric Energy (LSPEE) that declared the CFE and the LFC as public electricity providers (Interview with former CRE official).

In sum, from the beginning of the twentieth century, with its privatized, decentralized and deregulated electricity regime, the state became actively involved in transforming the marginal role inherited by the *Porfiriato* to subtly increase its presence through regulatory means From the post-revolutionary period the state increased the strength of its position during the 'Desarrollo Estabilizador', when the industry was nationalized, through to a later period of populist policy activism that successfully nurtured universal access to electricity, and installed high capacity across the country through the consolidation of a public monopoly in the entire production and supply chain (Ayala,1988; Wionczek, 1965).

In the context of the economic crisis of the 1980s and onwards, successive governments attempted to restructure the electricity regime towards some market-oriented schemes. As a result, a new process of institutional change and reproduction began in which regulatory state arrangements were introduced to the electricity regime and thus interactions with the developmental state structured the path of regulatory change.

2.2 The crisis of developmentalism and the electricity regime

During the 1970s power generation in Mexico was based on fuel oil, the SOE *Petróleos Mexicanos* (PEMEX) sold it to CFE and LFC for

30 percent of its opportunity costs (Carreón-Rodríguez et al, 2007). The *Secretaría de Hacienda y Crédito Público* (SHCP) that was in charge of designing and defining tariffs for federal public services, responded to the crisis in the electricity regime by pursuing two, in principle, contradictory goals: reductions on the financial losses caused by low tariffs while at the same time controlling hyperinflation. To do so, SHCP increased the price of fuel oil burned for electricity and also reformed commercial and industrial tariffs, which in 1983 had reached historically low prices. This was done while keeping flat the more politically sensitive residential and agricultural tariffs that were a critical part of the PRI's constituency (*Ibid.*).

At the same time, in the 1980s, innovations stimulated by the investments of independent power producers and low gas prices in the US reduced construction time and decreased the efficiency of energy generation from combined cycle gas turbines. Oil fell out of use as it was more costly than gas alternatives, and the state's efforts focused on securing gas a larger share in power generation (Fabrizio 2005: 31). As Mexico is such a rich country in natural gas, PEMEX did not include gas as one of its core businesses, therefore it was not capable of maintaining gas supply to the power sector. In addition, Mexico also did not have access to good quality coal. For an oil-rich nation, oil-fired facilities were easier to construct and supply with fuel, as opposed to gas or coal plants, which relied to a greater extent on the purchase of equipment from abroad (*ibid*.). The major challenge during this period was a financial crisis driven by external debt, hyperinflation and huge public deficits. In the electricity sector

alone, the deficit represented almost 2.4 percent of GDP through which the state was basically subsidizing domestic users, small producers and the agro-industry. But even this crisis showed how exhausted the developmental strategy was. Although a modest one, the most relevant policy adjustment that paved the way for future reforms was related to tariffs and created conditions for commercial users to lobby for alternative schemes of electricity access, owing to the cross-subsidy by which the government supported agriculture and domestic users consumption.

In the 1980s, a shift in the economic structure began, due to some of the internal and external factors mentioned, and to some extent due to a rising political coalition led by pro-market economists who thought the government should modernize its policies by advancing privatization, liberalization and free trade policies in a vast number of sectors - in short, enacting neoliberal ideas through market reforms (Babb 2001: 179-81). Thus, new conditions with financial constraints, technological changes and a new policy paradigm triggered changes in the electricity regime during the following decades.

2.3 Structural market reforms and the electricity regime

An important shift occurred during the Salinas administration (1988-1994). His government - forged from an elite coalition dominated by technocrats - designed an ambitious structural adjustment plan to intensify economic reforms that incorporated privatization, deregulation, liberalization, lower state investment in infrastructure and a modernization of the administrative apparatus, together with the reform of social policies (Lustig, 1998; MacLeod, 2004). In line

with this, the context of the NAFTA negotiation accelerated the reforms in a variety of sectors where the goals and instruments of the state radically changed its role towards regulatory approaches. Due to the size of the external debt accumulated at the beginning of the 1980s, which, as noted, led to electricity SOEs enduring severe financial constraints, at a time when a boost in electricity demand was expected as a result of the NAFTA foreign investment benefits, the door was opened for some groups (mainly bureaucrats and firms) to explore the possibility that such conditions could trigger a privatization process of the SOEs (Ballinas, 2011).

The political complexity of negotiating NAFTA and the country's financial dependency on oil revenues at the same time, prevented a more ambitious opening up to market forces in the energy sector (*idem*:172-3). Salinas's administration advanced legal reforms to comply with the energy chapter of NAFTA, which was built in accordance with the constitutional Mexican regime, permitting the state to control oil and electricity sectors, while simultaneously allowing some room for private companies to make inroads in the power sector (*ibíd)*. Interestingly, although in 1992 the government had a majority in the Congress - like almost all PRI one party rule governments during those decades - Salinas did not try to reform the constitution, instead he opted for a more modest legislative amendment. Broadly speaking, Salinas's reform included two fundamental changes that created new private and public actors and interests for future reforms. First, the government reformed the LSPEE in 1992 to allow private participation in power generation through schemes such as: self supply, cogeneration, independent

power producers (IPPs), import and exports and small scale-generation. IPPs had to sell their production to CFE through long-term power purchase agreements. Second, the Organic Law of Mexican Oil included an article where the Congress delegated to the executive branch the enactment of an autonomous advisory body. Hence, in 1993 the *Comisión Reguladora de Energía* (CRE) was formally established through an executive decree under the structure of the Ministry of Energy to support the market-building regulation in the gas (which historically did not have a high profile in the politics and policy issues of the sector) and the electricity industries. This first institutional design of the CRE is the predictable consequence of the complex matrix of developmental institutional arrangements and coalitions in the energy sector (MacLeod, 2004; Murillo, 2009). Both unions and CFE bureaucrats tried to resist Salinas's reforms, among them the Secretary of Energy, Fernando Hiriart[5] - an engineer, who in the De la Madrid's *sexenio* was general director of CFE - and consequently, without the support of the secretary, the creation of the "real" regulator was postponed (Ballinas: 174-76). This is the original source of the tension within which subsequent regulatory reforms had to evolve. Nevertheless, in recognizing the political limitations to more comprehensive and ambitious regulatory reform, Salinas's government understood that the creation of the regulator in an area of low political salience, such as the gas industry in Mexico,

[5] Interestingly, Hiriart started his career as state official working for the Comisión Nacional de Irrigación (antecedent of the former Secretaría de Recursos Hidráulicos) in the role of experimental engineer.

could create a new bureaucratic dynamic in which regulatory logic could evolve.

In the end, although Salinas's electricity reform had a subtle effect upon the governance of the sector and paved the way for the participation of private investment in power generation. However, this change did not alter the Mexican Constitution. Thus, the State still held the exclusive right to generate, dispatch, transmit, and supply electricity for public services. Salinas's reform also did not bring an end to the power of the SHCP over the allocation of resources in the electricity sector, on the contrary the SHCP continued to control policies through tariffs and did not alleviate the administrative and financial burdens on the SOEs budgets. In fact, the delegation of regulatory energy issues to the new agency was very limited. The space for a more depoliticized corporate governance of CFE was also constrained. What Salinas's administration achieved was a gradual and "silent" retreat of the state by limiting public investment in power generation, so as to create opportunities and conditions for the allocation of private domestic and foreign investment as part of the commitments required by NAFTA without affecting the Constitution (Sanchez Salazar et al 2004: 71). A combination of strong developmental ideas and tradition regarding the role of the state in the electricity regime, the strong union presence and interests in the sector, the success of CFE's universal coverage, and the rise of the PRD as a leftist nationalist party defending the PRI's Cárdenas coalition and its legacy of energy sovereignty, all complicated the scenario for the governmental plans to further expand market-oriented policies across the electricity

network. Nevertheless, as other sectors were reforming at a much faster pace, successive attempts at reform would eventually bring the electricity regime up to pace with these other sectors.

2.4 A first attempt of a radical reform

Overall, changes in the energy sector during Zedillo's presidency (1994–2000) continued along Salina's institutional path with the idea of enhancing regulatory reform in the sector (Rousseau, 2006: 35). Once again, an economic crisis of great scale came in December 1994, the so-called "*error de diciembre*", which further restricted prospects for public expenditure in the development of infrastructure within utility sectors. The government severely constrained the capacity of CFE to contract more debt, but since Zedillo's team projected a sluggish demand for electricity the sector was seemingly prepared to respond to the needs of electricity consumption. The predictions for demand were based on the fact that the economy was expected to enter into a recession, and that the country had inherited an excess capacity from over-building during the 1970s and 1980s - but contrary to this scenario, demand showed a higher growth rate, creating the need for greater capacity in power generation (Carreón-Rodríguez et al 2007: 191). The government found relief in applying legislative reforms to the LSPEE that allowed the participation of IPPs- prior to this, even though it had been on the books the policy had not been implemented.

In addition, during the crisis, Mexico and the United States governments signed a plan –the North American Framework Agreement, NAFA - which included a loan from the USA government and the IMF, and signed an agreement called Oil

Proceeds Facility Agreement (OPFA), which guaranteed the repayment of this loan through oil. As part of the agreement, Zedillo's government committed to adopt the privatization of central power stations, petrochemistry complexes and to open - through concessions - private investment in distribution, transport and storage of natural gas (*ibid.*: 35). The agreement was approved in 1995 by the Mexican Congress without having been presented to the public beforehand, in a legislative process characterized by opacity and secrecy (Shields 2003: 49). During the latter years of Zedillo's government and the years following, a new round of changes proceeded.

A further step towards regulatory change in the sector appeared when Zedillo, with the support of a PRI majority in Congress, enacted the Energy Regulatory Commission Law (*Ley de la Comisión Reguladora de Energía*).

The CRE was originally created by Salinas's government as a consultative agency to regulate private participation in the electricity regime and since then had been fostered by the private sector and technocrats who pretended their interest in splitting regulatory policy from the CFE (the public utility). The CRE was then transformed into an autonomous regulatory agency with the capacity to regulate electricity and natural gas, and it gained technical and operative autonomy even as it continued to exist within the hierarchical system of the Ministry of Energy. (Ballinas 2011: 178). Formally and at first glance, the CRE received substantial powers: participation in the setting of tariffs for wholesale and final sale of electricity; issuance of permits for private power generation; verification for the public

electricity service purchase; approval of methodologies for calculating payments for the purchase of electricity used in public service and for calculating payments for electricity transmission, as well as responsibility for transformation and delivery services. However, although the CRE participated in the process, the agency lacked the authority to set tariffs and did not have oversight of the investment plans of companies, nor did it have financial autonomy, but rather depended upon the secretary's budget (indeed, most of the responsibilities in the electricity and gas sector were shared and coordinated by the Secretary of Energy) similarly, the CRE lacked the authority to manage competition between electricity and gas SOEs (ibidem; Andres et al 2007: 24). Overall, the CRE shared its regulatory activities with previous administrative structures that constrained the possibility of its exercising a truly regulatory power. As Ballinas pointed out: "the creation of the CRE resulted, then, in an incomplete body, as it became a regulatory authority that has no market to regulate" (2011: 181).

In 1996 a second initiative of Zedillo's administration was the creation of an Investments Promotion Unit to facilitate private proposals and projects in power generation, within the natural gas industry and other segments of the energy sector (interview with a former CRE official). In the same year, the government established a new financial investment mechanism for new infrastructure in the energy sector called PIDIREGAS which from that point was the main financial vehicle for public spending on energy infrastructure projects (interview with a former CFE official).

In 1997, for the first time in the PRI's rule, the party lost its majority in Congress in the federal elections, meaning that for the first time, the government did not have a majority to enact constitutional reforms. In this unprecedented context, the opposition formed a coalition to press for electoral reforms in preparation for the coming 2000 presidential election.

In the meantime, in 1998, the administration continued its policy of widening private investment in the electricity sector through regulatory changes to the public procurement of energy and electricity installation for industrial, commercial and touristic developments. The turn in 1999 was for a corporate change in CFE. The government created the Corporate Transformation Program, through which it set up an internal reorganization in approximately 20 business units with responsibility for the generation, transmission and distribution of energy, and it established the National Energy Control Center (CENACE) which was in charge of dispatching electricity and controlling access to the national electric network. Within the political restrictions that the 1997 elections left in the congress, this was a strategic move, since CENACE later on became the agency in charge of monitoring and controlling the national grid operator, and the access, distribution and transportation network operations (interview with former CRE official, 2016). Finally, in the same year, prior to the lead up to the presidential election, the government chose that the time to propose comprehensive reforms to the electricity sector that included the modification of the Constitution. In fact, the corporate changes in CFE were a

preparatory step towards the major constitutional reform and the liberalization of the sector.

Luis Tellez, the Minister of Energy and chief of the reform team, justified the reforms as necessary: "In order for the electricity sector to evolve in accordance with the most recent transformations in the country" (Nexos, March, 1).[6] He recognized that "the government cannot be the only foundation for the expansion of the country's electricity sector… it is essential to open channels for the private sector… [due to] important technological and regulatory transformations, it is possible to establish this participation" (ibidem). This is a clear acknowledgement that, on the one hand, the limits to electricity regulatory change were political and that the sector continued along a developmental path, thus - as in other sectors – the electricity regime should instead follow a regulatory state path. According to some electricity scholars and experts, the proposal closely followed the UK model (Campos Aragon, 2003; Carreón-Rodríguez et al 2007). Once the institutional and regulatory frameworks were established, the proposal included the seeds of the private participation in existing companies that would surge through deeper corporate reorganization at the CFE and LFC, and that sought market competition in the generation, distribution and commercialization of electricity. In the first stage of the reform the government was interested in creating new public enterprises to hold on to nuclear and hydro assets, although responsibility was partially

[6] See: https://www.nexos.com.mx/?p=9193

distributed across several companies for them to foster vertical and horizontal separation between the areas of generation, transmission and distribution. In the second stage, the government claimed it created the regulation to allow for a new wholesale market with both short and long-term markets as well as competition for contracts with distributors and large users. In the third and final stage, the arm's-length entities would be separated fully and privatized (Carreón-Rodríguez 2007: 201, Téllez 1999).

Still, even though the proposal contained a strong component of market reform, the government would maintain universal policies in the rural sector and poor urban areas; transparent subsidies for specific social groups; nuclear and hydro generation would be kept in the hands of the state; as well as the exclusivity to control and dispatch the national transmission network and overall, the policymaking and regulation of the whole industry (Téllez, 1999).

The reform faced resistance from popular movements, led by unions, from internal bureaucratic resistance and even from within the legislators and politicians of the PRI, who were part of the old developmental coalition, and opposed the erosion of even more of their traditional power base as had happened with previous privatizations (Ballinas 2011:18; Carreon-Rodríguez 2007: 200). The reform failed to create a market-oriented electricity regime. The CFE continued as a public monopoly, both vertically and horizontally. Notwithstanding, since September 2000, the CFE replicated a sort of "shadow market" through which the previous incorporation of CENACE within the CFE structure as an administratively separated dispatch office, was critical to the coordination and growth of market

capacities for a one-day-head as well as a "real time" balancing market so that IPPs could participate in bids for hourly slots (interview with former CFE official). In short, the multiple strategies of Zedillo's administration to reform the electricity sector were, in the end, incapable of fundamentally changing a policy regime where the state-maintained control through the CFE in the areas of power generation, transmission, and distribution (Melgar, 2010:109). However, some market logic did develop as first and second order changes, as the regulator was strengthened and gained a better position in the electricity regime. Importantly, the reform was a blueprint for the coming attempts to change the electricity regime.

2.5 Electricity regime reform in the pluralist era

Vicente Fox's administration (2000-2006), was the first presidency in the hands of the National Action Party (PAN), and in 2005, towards the end of his government, there was a renewed attempt to reform the constitution to open up the oil and gas sector, but just as with Zedillo's electricity bill, Fox faced significant opposition. The political polarization between the two factions intensified under Fox's government: on the one hand, there were those within the PRI and PAN who pushed for a continuation of the market reforms initiated by Salinas, while on the other hand, there were the members of the PRI developmentalist faction and the PRD, who defended the energy SOEs as the cornerstone of the national developmental state they had inherited. Consequently, political conditions suggested low likelihood of reform, due to the ability of the opposition to mobilize institutional and political resources.

In relation to this, two examples of new institutional constraints to the reform of the electricity regime under democratic conditions tell us a great deal. Firstly, through the PAN and the Ecological Green Party of Mexico (PVEM), Fox tried to advance in the Senate an electrical reform that was not approved even by the commissions. At that moment, the PRI and PRD's legislators were against measures that could eventually open up the electricity regime to greater private involvement. Secondly, Fox made some modifications to the executive rules of the LSPEE in which the Senate identified a conflict because its executive powers were exceeding legislative provisions. Here again, a group of PRI and PRD senators asked the Supreme Court of Justice of the Nation (SCJN) to intervene. In a constitutional controversy the SCJN concluded that Fox's regulatory rules went bayond the constitutional framework.[7] These failed attempts to modify the structure of the energy sector, and in particular the electricity regime, clearly show how the democratic transition altered the relationship between constitutional powers and the functioning of new checks and balances among them that stalled the continuity of political deals to enact transformations that had been pending since

[7] The Court implied in its decision that, if asked, it would rule against the IPP scheme that had become the bedrock of efforts to expand the power system. Important investors – such as Électricité ´ de France, the largest private investor in the Mexican power sector – announced that they would not participate further in the IPP scheme until further reforms that clarified their constitutional position had taken place.

the 1990s. Interestingly, since Salinas, presidents have operated as challengers to the position of the developmental state in the electricity regime, while its guardians could be found in the opposition, defending the established regimes. Among this conflict of ideas and interests within the sector, actors were gradually creating intersections between the regulatory and developmental state and were creating a space for the dynamic cohabitation of these two approaches.

One more measure to restructure the electricity regime was taken by the PAN's second presidential government. Felipe Calderón's administration (2006–2012), did not try to reform the electricity regime, recognizing the difficulties faced by a divided government with a polarized distribution of power in Congress, torn between center-right pro-marketeers and leftist developmentalist politicians. The major measure of Calderón's government was the termination of *Luz y Fuerza del Centro,* an electricity utility under the SOE regime that operated the service for the central Mexico region. The decision created a conflict between the Mexican Electricians' Union (SME) and the government, as Calderón took over the facilities of the Union with the support of the Federal Preventive Police in October 2009, but also because the dissolution of the company would lead to a massive dismissal of 44,514 employees (accounting for unionized and trusted personnel). The conflict was seen as another step along the process of adjustments that pursued a conversion in the energy sector from the monopolistic public electricity regime to the market model (Belmont, 2012). Although the service in this region of the country was transferred to the CFE, for technocrats and the PAN

government, this was an important step towards privatization as it weakened one of the stronger unions that had a corporatist and developmental idea of the electricity regime. This was another incremental step towards a more comprehensive reform of the sector. Interestingly, Calderón's government did not pursue constitutional energy reforms, following Fox's failed negotiations with opposition lawmakers to pass a constitutional proposal on oil and gas, and knowing the alignment of forces was not positive due to divisiveness within the PRI that split the party into two major groups over this single issue: one in favor of the structural reforms which was close to the technocrats, another consisting of politicians who feared that these kinds of reforms could trigger the growth of the left and social constituencies that had previously been in the PRI's coalition, not least as the party was in the hands of this second group and was distancing itself publicly from the PAN government, weakening the pro market coalition. Thus, constraints in the political coalition drove his government to negotiate a much more realistic and gradual path to reform (Petersen Cortés, 2016). The legislative proposal included the creation of a new agency in oil and gas exploration and extraction, the *Comisión Nacional de Hidrocarburos* (CNH), some amendments to the Law of the Energy Regulatory Commission[8] and a Law for Renewable Energies and for Financing Energetic Transition.[9] These reforms broadened and strengthened the role of the CRE in the gas and electricity sector, giving it greater technical, operational and

[8] For detailed analysis of this reform, see Ballinas 2011.

[9] For a complete picture of this renewable energy policy process see Melgar 2011.

managing capacities in the regulatory decision-making process - thus the agency gained more autonomy (Ballinas 2011; Jordana, 2010). In the end, the growth of private involvement in the electricity sector meant that, as Carreón-Rodríguez (et al 2007:208) pointed out, the largest industrial users found relief in cogeneration and self-supply schemes as a way of making their systems more cost-effective. This meant that the biggest users had the chance to exit from the public system, through the schemes put in place by the regulator -similar to what was happening in places like India. Since industrial groups were ineffective to lobbying Congress and mobilize public opinion in favor of private involvement in electricity, the result was the persistence of same constitutional constraints, thus leaving legal loopholes and regulatory uncertainty for IPP's. During the first decade of the twenty-first century, fifteen years after Salinas was in power, the private investors at LPSEE provided about 7% of the electricity produced in Mexico for self-supply and 30% if one includes IPPs (Melgar 2011: 109).
Besides the strong persistence of the developmental state institutions in the sector, the truth is that gradually, incremental changes were reproducing and opening an institutional space for market dynamics. Taking advantage of technical changes and expectations for service provision in the private sector, more of the regime was opened up to private involvement.

2.6 The *Pacto por México* and the electricity reform

Since 1997 no party in government has had a constitutional majority in the Congress. Pluralism and multi-party deals have become a fundamental feature of the Mexican political system. This period was

one of great legislative activism and reformist coalitions (Casar, 2013). Until 2012 this was one of the political outcomes of the democratic transition: reformism through divided governments and multi-party and single-issue deals with more or less stable legislative co-operation between the PRI and PAN. However, previous attempts to change the electricity regime showed how complex and difficult it could be to move the state structure towards a more market-oriented regime with greater privatization in the sector. It is true that the vertical and horizontal separation of electricity monopolies across the world have demonstrated major political and operative complexities. For instance, just across the border with the US, the case of California showed how risky it could be to pursue a market design in the provision of electricity. In fact, in this utility sector it is clear that, without building a strict and strong regulatory framework, the market performance has inherent limitations (Fabrizio, 2005). In spite of these limitations, successive governments attempted to transform the electricity regime in a more fundamental way but, because political costs were higher in the context of democratization, legislative and administrative measures were used instead to gradually create internal and external conditions for a major reform within the sector. Is also true that a great number of countries achieved market reforms much more quickly in their electricity regimes (Henisz et al 2005). It seems that the idea of creating the regulator and establishing the strength of the regulatory framework prior to privatizing and liberalizing the sector, was in the mind of the Zedillo and PAN governments' incremental reforms – although these were then brought to a halt due to a negative political balance. At this stage, in

Mexico the greatest challenge to the regulatory state was political rather than technical.

The PRI came back to power with the government of Enrique Peña Nieto (2012–2018). From the very beginning, his team understood - based on the previous failed attempts at constitutional market reforms - the political limits of a presidency with a limited majority that was reliant on unstable, single-issue, reformist coalitions. Just after winning the election, Peña Nieto's team opened a dialog with the leaders of the two major opposition parties: the right-wing PAN and the leftist PRD. Conversations were carried out under the utmost possible secrecy. Finally, the PRI, PAN and PRD agreed to sign 95 commitments, and the deal was signed one day after Peña Nieto took office. The pact outlined 95 goals across a range of issues, including regulatory reforms in fiscal, financial, telecommunications, education, and, of course, energy domains, including oil, gas and electricity. Since PRI lost the Congress and then the Presidency, the *Pacto por México* represented the first coalition with a comprehensive reform package across several regulatory domains.

As the constitutional approach to energy includes electricity within the same articles (its generation, transmission and distribution), and oil and gas, the package of electricity reforms that was agreed was included within a comprehensive energy reform. Electricity reform was finally sponsored by PRI and PAN legislators, but in this particular issue the PRD's agreement to reforming the energy sector came later, following disagreements regarding the constitutional reforms embedded within the policy design (Melgar, November, 2017). As a result, and as a consequence of internal division on the

issue - on which the majority of the party base could be associated with the state's developmental role in the sector - the PRD voted against the reforms in both the Senate and the lower house. Originally the electricity reform did not opening up the power sector, because the government thought that by increasing the use of gas in the electricity supply, it would be enough to lower rates, but as the issue was reviewed, the challenges were revealed to be enormous and a more comprehensive reform was needed (*ibid.*). The reform included 3 constitutional changes to articles 25, 27 and 28; 22 changes to the law, of which 10 were new laws and 12 were reformed; 25 regulations; organizational adjustments to strengthen the regulator; 4 new institutions from which CENACE was created to be administratively distinct from the CFE which, itself, was transformed into a for-profit state productive enterprise and legally separated both horizontally and vertically. By any measure, the reform was a historical political achievement, since for the first time a constitutional reform radically changed the fundamentals of what had been the core sector for the developmental state since 1938.

So, what was the policy background of the electricity regime reform before the implementation started to show some outcomes? The main issue facing the electricity reform was the fact that the CFE was the SOE with the highest debt and with prices, despite subsidies for residential and agricultural users, that were 25% higher than in the US (or 73% higher without subsidies), 85% higher for industry users, 135% for businesses users and 149% for residential users with high consumption (Hernández Ochoa, 2018). Access to electricity in Mexico's population is about 98.5%, practically universal access

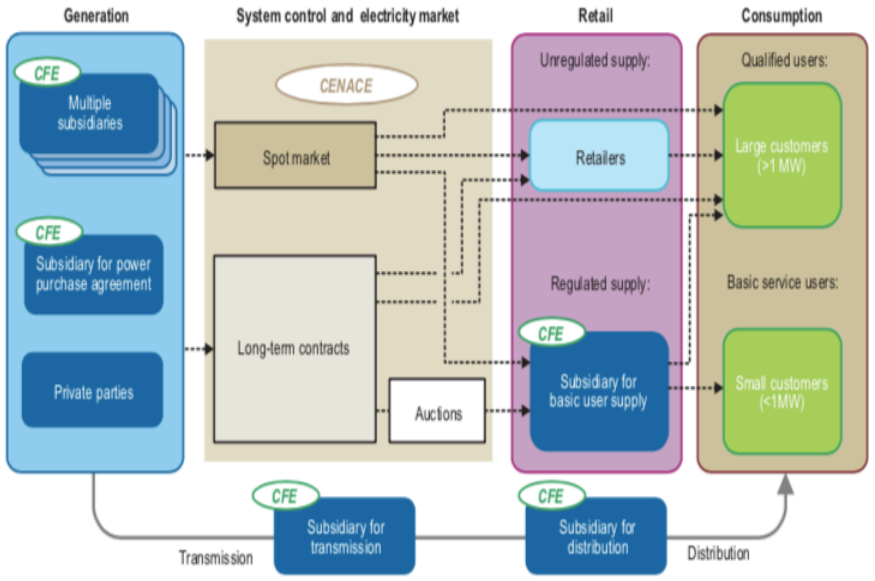
(IEA, 2017), and IPPs already accounted for about 40% of Mexico's power generation (former CRE official, November 2016). 57.2% of electricity was generated by the CFE, IPPs produced 28.4% and self-supply 14.4%. Natural gas use grew rapidly, too: from generating 40% of the country's electricity in 2005, it jumped to 82.6% in 2015 (IEA 2017: 132) and this shows how important the earlier opening up of the midstream and downstream gas sector was to the development of the Mexican electricity policy reform (former CRE Official, November 2016). The CFE itself employs 92,000 people, owns 62% of generating capacity, produces around 55% of all electricity and is the sole retail supplier in the country (IEA 2017:138). Mexico's transmission and distribution network consisted of 550,000 miles of lines; almost half of them were 20 years old or more and the expansion of transmission relied only on the CFE's strained budget (Vietor and Sheldahl-Thomason 2017). The networks were afflicted by significant distributional losses: in 2012 CFE reported that nearly 16% of transported energy had been lost in distribution and significant losses were non-technical (i.e. due to theft) (Vietor & Haviland 2017).

The fundamental shift of the reform aimed to transform a hybrid public single buyer model into a competitive wholesale market (Rodríguez Padilla 2016). Generation is now completely open, with the exception of nuclear energy that can only be generated by the state through the CFE. The new cost structure of the wholesale market was designed based on Texas and California's cost methodology models (former CFE independent board member's advisor, April 2018). Promoting clean energies is a very relevant part

of the new energy regime, so the wholesale market has also incorporated a secondary market on clean energies and also a derivative secondary market (*Ibid.).*

Thus, the new template for the electricity industry has multiple subsidiaries of the CFE operating in power generation, that compete in a spot market for large consumers through retailers and small consumers through another subsidiary for basic user supply; there is also a subsidiary for power purchase agreements and private parties that must compete in auctions for long-term contracts that later are sold to large and small scale customers (again through the subsidiary for supplying basic users) (former CFE independent board member's advisor, April, 2018; SENER official, April, 2018). Those in the transmission network can sell their electricity to: 1) retailers that sell it to large customers, in the unregulated supply scheme; and 2) a subsidiary as part of a power purchase agreement. The subsidiary can then compete in auctions for long-term contracts alongside private parties and can sell electricity in a scheme whereby private parties can sign long-term contracts and sell electricity directly to qualified users -, meaning industrial and high intensity consumers. An interesting point and very peculiar to the new electricity structure in Mexico is that the CFE's generation, transmission and distribution subsidiaries are legally separated, but remain within the jurisdiction of the CFE, which makes the use of cross subsidies feasible (former CFE independent board member's advisor, 2018); IEA 2017: 164).

Figure 8.5 The new structure of the electricity industry



Source: SENER.

An important point of the new industry and governance of the electricity regime is the removal of CENACE from the CFE. CENACE was converted to an independent body operating under the administrative hierarchy of the Ministry of Energy. CENACE is in charge of the dispatch of electricity, as well as the operation of transmission and distribution networks (former CFE independent board member's advisor, April 2018). Transmission was not transformed into a contestable market, rather this area was reserved by the state, and the state is the only owner of the National Transmission Network. Apparently, this design was inspired by the British experience of TransCo (interview, April 2018; former CRE official, November, 2016). Nevertheless, the Constitution allows for a lot of flexibility in terms of contracts and the type of contracting that the CFE can take advantage of, in order to benefit from private participation (Melgar, February, 2017).

Distribution follows the same design of transmission through another of the CFE's subsidiaries reserved exclusively for this purpose. In sum, the CFE was legally unbundle though some doubts remain about the effectiveness of the implementation of this split. Interestingly, the reform team that designed the changes, as Lourdes Melgar, among others, has observed, was in fact a group of technocrats who had previously contributed to the design of Zedillo's attempt to reform the sector. Again, previous ideas that materialized in policy proposals, can be seen to serve as a blueprint for what later became embedded institutions. And even though the reform was, no doubt, a market-oriented one the state developmental structure persists, showing the strength of historical policy legacies and the resilience that long-term institutional path dynamics have created within utilities regimes.

The institutional arrangement for the governance of the electricity regime was subject to important changes. On the one hand, the Ministry gained bigger regulatory and policy-making powers that had previously been held by the CFE (former CFE independent board member's advisor, April 2018; Rodríguez 2016: 24). In the area of generation, transmission and distribution, SENER is in charge of planning the infrastructure, that prior to the reform had been known as the National Energy Strategy, and formerly had to be approved by Congress. Now SENER, without parliamentary involvement, in coordination with CENACE and the CRE has to publish a five-year plan – updated every year – called the System Development Program (PRODESEN), which sets out forecasts for the expansion of the whole electricity system. For instance, all the investment in power

generation has to follow this baseline, that methodologically takes into account market rationale, and compulsory guidelines for the expansion of transmission and distribution investment needs (CFE Official April 2018; CRE Official November 2016). In fact, the CRE has to follow this plan in order to issue permits for power generation. Through this plan SENER decides whether a new project is built by the CFE or by PPPs. Moreover, the reform removed CENACE from the CFE and shifted its operation to the hierarchy of SENER.

The regulatory scope of the CRE changed in significant ways. Previously, it had an administrative structure with low levels of independence (CEEY, 2010; COFEMER, 2011; Roldan Xopa,), since then, it has gained constitutional status (Article 28) - although not under the autonomous constitutional regime. Rather the CRE was kept under the executive sphere via a new arrangement that was only applied to the energy sector, called regulatory coordinated agencies. Thus, constitutionalization gave the CRE more independence, without isolating it completely from SENER and the executive (Roldán Xopa, 2018). The CRE shares competition authority in the energy sector with COFECE, the competition authority, that maintain a presence in the energy sector. These two agencies are in charge of different parts of the antitrust process, and together they can sanction anticompetitive behavior. The CRE also has regulatory powers along the whole energy value chain, with the exception of exploration and exploitation of hydrocarbons. Nowadays, the CRE participates in the electricity regime by regulating electricity interconnections, the supply for customers' contracts, electric power market bases,

auctions and long and short-term contracts, the clean energy market, and tariffs for basic users (since larger users were deregulated).

The case of tariffs is interesting, prior to the reforms, the SHCP decided them through a special unit for different federal public services, now the reform has transferred this responsibility to the CRE, to the extent that the regulator did not have enough experience determining tariffs, and recruited former SHCP officials (Senators advisors, April, 2018)). Yet, the Electricity Industry Law maintain the possibility that the Federal Executive could determine tariffs, just in the case of specific users (Article 139). Finally, in this regard, for the first-time subsidies must be transparently publish in the federal budget (CRE Official, November 2016).

The reform was complex and by any means comprehensive. There are clear patterns in the reform that followed Zedillo's proposal and were based on Salinas's first steps towards a market-oriented regime. However, some of the logic of the old developmental path clearly persists. For instance, privatization of the CFE was not even considered. SENER, on the other hand, maintained an important role with responsibility for policy and sectorial planning tasks. At the same time, the CRE strengthened its position as regulator, gaining constitutional recognition and acquiring responsibilities that had previously been in the hands of the SHCP, such as the determination of tariffs, thus taking on a more solid institutional position and greater independence. All in all, the state plays both old and new roles in the governance of the electricity regime. In other words, transformation in the electricity regime can be understood as the intersection of changes and continuities between developmental and regulatory

approaches to the state's role. Despite the conflicts around the cohabitation of both forms of the state, it seems that this kind of dynamic allows for complementarities that are less antithetical than is believed to be the case when regulatory and developmental state structures meet within policy regimes.

3. The path of institutional change in the telecommunications policy regime

From a historical point of view, the telecommunications regime in Mexico throughout the twentieth century shows a pattern of constant - and at times even radical - change. Change that involved the deployment of a variety of goals and instruments that indicated transformations in the role of the state. Those changes were reflected in institutional arrangements that sought to centralize the regulation and allocation of telecommunications resources, and then to provide, deregulate and re-regulate them. The process can be summarized as follows: it started with the centralization of the policy regime, followed by the integration of two monopolies that derived from the Mexicanization of the sector, then the creation of a national monopoly, before the country passed through a brief period in which public ownership predominated, but that culminated in rapid privatization and a prolonged series of sectoral disputes over the liberalization of the sector and the construction of an agency with effective regulatory powers.

In the next pages I will draw out the historical context through a chronological and sequential analysis, that illustrates this path of regulatory change and its relation to developmental structures.

3.1 The path towards centralization and nationalization in the telecommunications regime

The legal and regulatory framework in telecommunications began to be developed in April 1926, when president Plutarco Elías Calles issued the Electric Communications Law. This law gave the Secretary of Communications and Public Works full federal jurisdiction over telegraphy, telephony and any other system for the transmission of communications(Álvarez, 2018). By 1931 a new piece of legislation was published, the General Roads of Communication and Means of Transportation Law, issued by President Pascual Ortiz Rubio. This legislation established an obligation of interconnection between communications companies, sanctioned and regulated under terms fixed by Secretary of Communications and Public Works (SCOP). In fact, the power of this secretary is the main precedent to proper regulation in the sector.

At that time, the sector was dominated by two companies: *Compañía Telefónica Mexicana* and *Teléfonos Ericsson*. Both companies were competitors in the Mexican market, while at the same time their controller companies had a shareholding and financial relationship. Despite the legal regulatory framework that already gave the authority the power to oversee interconnection agreements, the infrastructure of both companies grew without the interconnection of their networks and regulatory supervision by the government was deficient. Thus, the problem grew to reach the public agenda during the Cárdenas government in 1936. Seeking the compliance of the legal regulatory framework, Cárdenas asked the secretary of the SCOP, Francisco J. Mújica, to intermediate between the companies and to resolve this issue, otherwise the authority would intervene to

define the terms of the interconnection directly. Not surprisingly, instead of implementing interconnection, the two companies responded by requesting authorization to merge, and the SCOP did not agree with their proposal (Alvarez, 2018: 31; Cárdenas, 1987: 63).

In this context, the Expropriation Law was issued in 1936. In 1937 the Cárdenas government presented a bill, the General Ways of Communication Law (LVGC). In this bill - which approved and came into force in 1940 - two central ideas were raised that later permeated the telecommunications policy regime. On the one hand, it was denounced that "concessions... have always been granted to pursuit the patrimonial interests of the concessionaries concessionaires, the interests of the Nation have not been protected...", for that reason, "it has not been possible to guide the operation of general communication ways as true public services, [either] controlled or regulated by the State..." (Alvarez, 2018: 33). Given the tensions faced in the oil sector at the time, it was predictable that the companies would perceive high political risks, and so in 1938 they ultimately presented their plan for interconnection.

The General Ways Communications Law was finally approved in 1940. The importance of this change in the legal regulatory framework is relevant, since this legislation conceived a more active role for the state in the sector and expanded its instruments to intervene (Cassasus, 1994). The law succeeded in further centralizing the federal regulatory jurisdiction of telecommunications, as it invalidated the use of previous permits and licenses granted by state and municipal governments and gave a deadline for the renewal of

permits and licenses under the federal authority (Alvarez, 2018). Furthermore, this legal framework lasted even after the Federal Telecommunications Law was enacted in 1995 for a post-privatization policy regime - in fact it is still in force for some aspects of communications.

After the Cárdenas government, during the 1940s, the process of Mexicanization continued until 1950 when the government, contrary to Cárdenas's policy, induced the two companies to merge. According to Cassasus (1994: 178), during the period of *Desarrollo Estabilizador,* "telecommunications developed within the private sector, but with the active support of government", using policy measures that "approved adequate tariffs, provided soft financing for accelerated network development", and so on. By the same token, the company grew steadily at a rate of 10% annually during this period, which was actually above the rate recorced in most developing countries at that time (*ibídem*).

Despite the consolidation of the national private monopoly model, in 1976, during a period of populist policies, the company and the government opened negotiations that led to the control of the company by the government, which as a result became majority owner of the company and private capital continued only as a small part of the company. Nevertheless, very quickly political dynamics permeated the management of the company (*idem*: 179).

The company's revenues and profitability deteriorated, and cross-subsidies from long-distance users to local service users worsened. Labor pressures grew on the company, creating productivity problems. Internal financing proved insufficient and difficulties in

obtaining external financing increased. As a result, the company was unable to meet the demand for service and, due to insufficient capacity, the network became congested, and the quality of service deteriorated. As a consequence, during the 1980s the situation of the sector worsened (Cassasus, 1994). Because of the fiscal pressures inherited by previous governments and the devastating 1985 earthquake in Mexico City, the government implemented an austerity policy that cut annual investment in telecommunications (Aspe, 1992), while increasing taxes on telephone services. The problems with coverage, connections and the quality of the service increased. Telmex, as an SOE, was part of a fiscal and employment policy, leaving the provision of the service and its quality as secondary goals (Ballinas, 2011).

3.2 Salinas's privatization and the struggles over the regulatory framework

In such a context, the economic team of De la Madrid's administration, led by Carlos Salinas and Pedro Aspe, understood that in Telmex they had a case that offered favorable conditions to promote what, in the end, was going to be the most aggressive privatization program that Mexico has thus far experienced (Ballinas, 2011; Mariscal, 2002, Mariscal, 2004; Noll & Salas, 1997). When Carlos Salinas (1988-1994) became president, in 1989 he appointed Pedro Aspe - who served as Secretary of Finance and Public Credit - as chairman of the board of directors of Telmex, removing a traditional administrative space from the control of the Secretary of Transport and Communications (SCT). In fact, later on Salinas removed the head of the SCT, who had a long career in the public

sector and SOEs, to appoint a close collaborator of his, Emilio Gamboa. Internal opposition from the telephone union against this privatization was neutralized with a negotiation conducted directly by Salinas himself, through which the union received credit from NAFINSA - a state development bank – to allow it to buy 4.4% of Telmex shares (Murillo, 2009; Ballinas 2011). In the telecommunications sector there was no strong tradition of state-ownership, as for long periods there had already been private involvement in it (and indeed there always remain a place for private capital). Without lower institutional constraints (i.e. constitutional limits) to reform the sector , privatization was politically feasible (Murillo 2009). There had been no steps taken towards the vertical disintegration of the monopoly- although it was considered at points (Ballinas 2011)- rather, its existing structure had simply been transferred to the private sector. With all these conditions in place, without guardians and beneficiaries simultaneously struggling to defend an established regime, the design and implementation of telecommunications reform was politically achievable. Indeed, under the conditions of competitive authoritarianism neither a legislative nor a constitutional reform was necessary to proceed with privatization (Murillo 2009). And, in fact, within a single year of these changes, 1990 saw a new regime in the telecommunications sector in Mexico begin to emerge.

The Salinas government held up the telecommunications sector as its major achievement as a sponsor of market reforms, thus the timing of the reform was the key for Salinas's government. The government transferred the state-owned company, Telmex, to Carlos Slim's

CARSO group and various foreign investor groups such as France Telecom, by granting a concession that granted the company a monopoly for five years with the idea of turning it into a national champion. This went hand in hand with Salinas's strategy to expand and strengthen a Mexican business class who would kickstart the process of liberalization (Mariscal 2002; Mariscal and Rivera, 2007; Ballinas 2011). If Salinas's objective was to create a national champion, and its seems it was, to be part not only of the national but of the global telecommunications market, then the reform can be said to have been a real success; but in in terms of establishing a sound regulatory framework the outcome was just the opposite, a total failure. In any case, the state's function in the sector changed from the service provider to, eventually, a new role as a (very weak) regulator.[10] Moreover, neither the regulator nor the regulatory framework were prioritized in this reform, while the position of a monopolistic player was reinforced and market-building institutional structures had to wait.

[10] According to Mariscal and Rivera: "Salinas's reforms included the Public Entity for Telecommunications as a result of the merger of the Telegraph Agency and the Directorate General for Telecommunications. This entity was to provide services such as fax, telegraphs and by virtue of a constitutional mandate was to supervise satellite services and take control of the Federal Microwave System, the latter with the objective of creating some competition for Telmex. However, this objective was not fulfilled since Telmex's buyers established the condition of keeping the system under their control, and therefore proceeded to purchase it in December 1990." (2007:10).

Nevertheless, the government postponed the creation of a specialized telecommunications regulatory agency and maintained the new regulatory regime under the jurisdiction of the Ministry of Communications and Transport, specifically through the Undersecretariat of Communications, which supervised TELMEX's compliance with its obligations mainly through the supervision of the concession title. This first step in the construction of the new regulatory regime for telecommunications was based on a weak institutional structure with no experience of the creation of a competitive market, and as a result a period of unregulated privatization was established (Ballinas, 2011). Consequently, after privatization the institutional path of the emerging telecommunications regime in the years to come consisted of building a regulatory structure to prepare for the opening up of the market in long-distance and local phone services - scheduled for 1996 - and later, gradually, for another group of services including interconnections, radio calls and so on. Until 1995, the sector's legislation remained anchored in the old 1940 General Roads Communications Law. In sum, without modifying the institutional framework, formally the government operated under first and second order changes to actually introduce a new paradigm in the telecommunications regimes. This created a situation in which the state abandoned its role as a provider and its developmental approach to the sector without really creating a regulatory state to replace it. The full transition towards regulatory change had to wait.

3.3 The struggles for liberalization and regulation in the democratization process

Under the presidency of Ernesto Zedillo, in 1995 the first Federal Telecommunications Law (LFT) was issued without any major obstacles. But the LFT did not create a regulator, leaving only a transitory article that mandated the federal executive to create an administrative body "to regulate and promote... the efficient development of the country's telecommunications" (transitory article 11), thus, legislators delegated the creation of the regulator to the presidency. The President went on to create the *Comisión Federal de Telecomunicaciones* (COFETEL) in 1996, precisely the same year that competition in the sector was opened. COFETEL was created within the administrative structure of the SCT with consultative powers only and, literally, as a "deconcentrated body".

The SCT maintained control over policy formulation and the critical stages of the decision-making process through the Undersecretariat of Communications, which traditionally had relative autonomy to carry out government policy in the sector (Ballinas, 2011). Thus, the design of the regulator created a division of labor that caused overlap in the functions of the regulator and the SCT, which was identified at the time in the administrative jargon of the sector as a the "double window" (CEEY, 2009; OECD, 2012), meaning basically that, by design, there was a duplication in the functions of COFETEL and SCT, leaving the administrative field open for bureaucratic competition and struggles over regulation between both bodies. In sum, in this first stage of the creation of the regulatory regime, the scope of telecommunications regulation was limited by a fragile

institutional design, in which the dominant position of Telmex and its role as national champion prevailed over other objectives.

Moreover, as the regulatory process was closed to competitors, a pattern of judicialization appeared in the context of liberalization of local and long-distance services. Judicial conflicts in the sector started when Telmex and its competitors, Avantel and Alestra, repreatedly failed to negotiate interconnection and billing issues (Mariscal 2007, Murillo 2009). In fact, COFETEL intervened to facilitate a negotiation on interconnection fees. An interconnection agreement was reached with operators, but in the end Avantel litigated against it and asked for a judicial injunction which was granted. From that point COFETEL's consensual decision-making style of managing the regulation between the agency and regulatees was broken, and as a consequence the dynamic of the agency turned towards a more bureaucratic, politized and judicialized regulatory process (interview with a former COFETEL official, March, 2015). In this period, issues of competition took on a greater salience, since Avantel also denounced Telmex's monopolistic position to the Anti-Trust Commission, an even brought the issue to the World Trade Organization. In the middle of these tensions, Carlos Cassasus, who was the first president of COFETEL, left office and Javier Lozano, who was at that point undersecretary of communications, was designated as the new president commissioner. What is clear is that a litigious dynamic within the sector was established as a substitute for a strong legal regulatory framework and a well-established regulator. This pattern is consistent with the idea of the regulatory state, as it is well known that one of the characterizations Majone

observed was related to the plurality of actors involved in the regulatory process, with tribunals holding an important position in the dynamics of regulatory state policy.

With the electoral victory of the opposition in the 1997 congressional mid-term elections, and later on with PAN ascending to power under President Vicente Fox in 2000, a democratic period was initiated which promised that greater visibility and public importance would be allocated to disputes between public and private actors, extending to other public powers such as legislation and the judiciary. The result was that regulatory conflict was prolonged for more than a decade, until the culmination of the 2013 reform. In this period, the dispute was essentially between those who wanted to advance a stronger regulatory framework and a more independent agency to boost competition in the sector and those who sought to keep the monopolistic industry in place. So, the preferences of both sides of the argument were channeled easily into initiatives that reached the public agenda during this time. A first episode occurred in 2001 when a handful of initiatives and bills to reform the LFT were presented. One initiative was promoted by CANIETI, representing Telmex's competitors, and this proposal mainly included asymmetric regulation for the incumbent, local loop unbundling and independence from COFETEL (Murillo, 2009: 218). The PAN legislators called for a public discussion to design new legislation. Their proposal included similar measures as those proposed by CANIETI, such as prioritizing technical conditions instead of the collection of revenues through the spectrum of auction criteria, the independence of COFETEL, asymmetric regulation for the

incumbent, interconnection obligations, local loop unbundling, and a universal service fund (ibidem). At first glance, PAN appeared to support a pro-competition initiative, however, they did not have a majority in both chambers and the PRI legislators were divided between those who supported CANIETI's initiative and those who supported Telmex's position (ibidem). Then again, Senators from the PRI and PRD presented an initiative that followed the changes to the regulatory framework reflecting those preferred by Telmex (Ballinas, 2011). The Senate Communications Committee prepared a draft that took up some of the proposals presented, which included new rules about dominance and asymmetric regulation for the incumbent, regulatory obligations regarding coverage and the universalization of the service, stronger rules for interconnection agreements. I In exchange, Telmex would receive some benefits with which its position in the market would be partially protected. However, the proposal failed to receive support due to differences among the industry operators and the lack of a clear position of the executive that some critics related to Telmex's lobbying of the secretary Cerisola - a former officer in Telmex - (Mariscal and Orozco, 2002; Murillo 2009; Ballinas 2011). In any case, an interesting pattern emerged from this struggle to implement regulation: the importance of legislative commissions for the regulatory process was brought to the fore, which is another aspect of the regulatory space usually highlighted by regulatory governance studies as part of the policy style of the regulatory state.

3.4 *Ley Televisa* and the clash over the regulator

In its original design COFETEL was created without regulatory powers in broadcasting, which were allocated to the SCT, under the direct involvement of the presidents. The next episode of reform came in March 2006 when reforms to the LFT and the Federal Radio and Television Law (LFRT) were approved - in only 7 minutes in the Chamber of Deputies, receiving no changes in the Senate – and justified under the argument of increasing delegation to the regulatory agency and its position vis-à-vis the SCT and dominant market players. Under that premise, the reform extended the period of the commissioners' appointments by 8 years by offering the possibility of a second term; it was accompanied, in turn, by rules that protected against the removal of commissioners.; The appointment falloff commissioners already fell to the secretary, but the president would directly appoint them after ratification by the Senate, and, finally, the appointment of the president of the commission was left up to the commissioners themselves (Jordana 2010: 768). Of equal importance to note, the powers to regulate broadcasting held by the SCT were transferred to COFETEL, including the allocation of concessions and permits. The content of the reform nevertheless complied with some of the usual practices for strengthening independent regulators.

The reform received a gale of criticism in the public area, since the legislative procedure was so expeditious and secretive at a moment when some private actors anticipated political risks in the 2006 coming presidential election. The public debate after the enactment of the reform was intense and indeed action against it was begun

across different institutional channels. Moreover, the law was labeled by challengers as the "*Ley Televisa*" because of the clear influence of that corporation in the legislative process of the reform. In response, a minority group of senators - led by Javier Corral (PAN) and Manuel Bartlett (PRI) - challenged the legislation before the Supreme Court (SCJN), asking for a constitutional review (Madrazo Lajous and Zambrano Porras, 2007). The SCJN ended up validating some aspects of the reform that strengthened COFETEL's role in broadcasting but, for instance, it declared unconstitutional the senate's ratification procedure for the appointment of commissioners, and the extension of periods offered for concessions. On the other hand, President Fox and his legislature would define the commissioners of COFETEL for a far longer period than the legislature of his successor. In turn, three commissioners also dissented against the law and resigned.

The implementation of the reform began with the appointment of commissioners. The President sent his proposal for five appointments to the Senate, three of which were not ratified. Subsequently, the President sent a new proposal that was successfully ratified. However, again there was a challenge through the tribunals, this time by the three commissioners who were not approved by the Senate in Fox's first proposal. Subsequently, in 2008, the Court decided that the commissioners should be reinstalled, replacing the commissioners appointed by the Senate. In sum, at the end of this episode the regulatory agency was strengthened in the broadcasting domain, being in charge of the whole regulatory sphere in this area, while, at the same time, it maintained a weak regulatory position in

telecommunications (interview with former COFETEL President, September, 2015). The legislative establishment and recognition of the agency did not come from the LFT framework but from the power it now had to regulate broadcasting. More importantly, the credibility of the agency was severely damaged.

When Felipe Calderón assumed the presidency in 2006 amidst questions about the legitimacy of the election, regulatory conflicts continued during the following years. The ungovernability of the sector and the evidence of capture that had taken place show how necessary it was to intervene robustly. But under this administration conflicts persisted within the sector, and matters degraded further when Luiz Tellez, secretary of SCT, and Purificación Carpinteyro, undersecretary of communications, clashed due to differences of policy and personality (Proceso, 2009).[11] As a consequence of that conflict, shortly thereafter, Calderon appointed Juan Molinar Horcasitas - an academic and PAN politician, who had been one of the founding electoral commissioners at the IFE - as secretary of communications and transport, substituting Luis Téllez. In 2010 Hector Osuna[12] resigned as president of COFETEL. This restructuring opened the door for an intense period of regulation in the broadcasting sector. In June of the same year, Calderon appointed Mony de Swaan - until then Molinar's chief of staff at SCT - as

[11] See: https://www.proceso.com.mx/86088/el-escandalo-una-cortina-de-humo.

[12] Prior to his appointment as a president commissioner of COFETEL in 2006, Hector Osuna was a Senator and president of the communications commission that originated and processed the "*Ley Televisa*".

commissioner for an eight-year term. Subsequently, the commission's board appointed de Swaan president of the agency, with three votes in his favor and two against his nomination.

Immediately, different voices in Congress, including legislators from the ruling PAN, questioned de Swaan's appointment, arguing that he did not meet the requirements of suitability and independence established by the legislation. Within the commission, de Swaan was supported by commissioners Gonzalo Martínez Pous, José Luis Peralta and Rafael del Villar, who thought it was the time to leave their disagreement behind and work to improve the conditions of the sector with a sound regulatory agenda.[13] Furthermore, the conditions to push forward the commission's agenda were to some extent favorable, as the public was weary of the regulatory outcomes of the sector, and a politician such as Molinar Horcasita, could see that the SCT needed to completely delegate regulatory policy to the commission. To this end, Horcasitas decided to leave - for the first time in COFETEL's existence - the position of undersecretary vacant (interview with a former COFETEL president, march, 2015). This is an unprecedent informal change in the relations between COFETEL and SCT that helped to stop bureaucratic competition and struggles within the sector. Interestingly, at this point the regulatory agency did not received acknowledgement of its power through legal means, but by an informal, political decision. In any case, this is symptomatic of

[13] See: Proceso, *Advierte Mony de Swaan que no renunciara a la COFETEL*, July 14, 2010, https://www.proceso.com.mx/103768/advierte-mony-de-swaan-que-no-renunciara-a-la-cofetel.

the ways in which ideas about the need for the state to take on a regulatory role were already creating different ways of reproduction to consolidate a proper regulatory state in the sector.

3.5 The activism of the last COFETEL years and the preparation of the telecommunications reform

Immediately after De Swaan (2011) was named president of the commission, he established an agenda that consisted of 24 projects to address the multiple regulatory bottlenecks that had accumulated because of the judicial and political *impasse* that kept the regulator immbilized for more than a decade.[14] De Swaan (ibid.) established four short-term working priorities: 1) institutional strengthening of the commission, 2) boosting infrastructure growth, 3) strengthening current competitive conditions, 4) establishing key technical standards to modernize the industry. De Swaan also targeted a long-term plan for a broader reform strategy. Without doubt, the commission was in the midst of a completely fragmented and divisive institutional context with a history of capture and interference of regulatees within the regulatory process. This context was reflected within the commission itself by the fact that is plans were leaked often to firms and the media (Interview with a former COFETEL president, March 2015). An example of this weakness was the lack of internal organization or rules that clearly defined the distribution of responsibilities and participation in the regulatory process shared between the commission and the SCT (de Swaan, 2011).

[14] See: https://www.nexos.com.mx/?p=14080.

In terms of infrastructure, two decades following the emergence of a new regulatory regime alongside the privatization and liberalization of the sector, the situation was no better. Mexico ranked last among the OECD countries in telecommunications investment and was one of the markets with the highest concentration of spectrum (ibid.). In De Swaan's assessment, the problem with the infrastructure deficit was related to the slowness, inefficiency and litigiousness of bidding processes.[15] For instance, in the commission's history, the first auction for spectrum was in 1998, followed by an auction for personal communications services held in 2005 (OCDE, 2012). This was the extent of the attempts to allocate the available spectrum in the market. Again, a conflict between the regulator and legislator brought the issue to the SCJN, which ruled that pure auction was unconstitutional for spectrum allocation (*Acción de Inconstitucionalidad* 26/2006). Partly due to these judicial processes, from 2005 to 2010 auctions for spectrum allocation were stopped. In this regard, is important to note that tribunals not only participated in the telecommunication regulatory process as a procedural guardian, but they also were involved in technical issues with no judicial deference at all to the regulator. Following this precedent, COFETEL held the last auction of the spectrum for broadcasting and mobile services (auctions 20 and 21) which saw an important intervention by COFECO to apply caps that would prevent a single market player

[15] COFETEL was working on a bidding program, according to de Swaan (2011) that would have been "the most ambitious in the history of our country ... that would double the amount of spectrum in the hands of operators".

from accumulating a broad band of the spectrum- thus, the allocation of frequencies would no longer be based on economic criteria alone. Nevertheless, once more there were challenges from tribunals. In fact, in fourteen years, Mexico has only made three tenders to allocate spectrum; meanwhile the US completed fifteen in the same period, thus by 2011, Mexico only had 240 MHz of the 750 MHz that the UIT recommended as standard by 2010 (de Swaan, 2011).

In terms of technological modernization, the commission faced similar political and judicial regulatory obstacles. In 2004 the country initiated the process for the digital switchover, but the policy was not supported by any major actor, and as a consequence, by 2010 only 1% of the population had access to digital TV (de Swaan, January 14, 2015).[16] So in 2010, Calderón issued a Presidential Decree to foster the digital switchover, including the possibility of subsidizing devices among the less well-off members of the population, and he fixed December 31, 2015 as the final date by which to conclude the analogue switch-off (*ibid.*). The Congress pursued a constitutional controversy, arguing that it was defending the powers of the regulator. PRI and PVEM both accused Calderón of seeking to influence the state elections of 2011 (particularly in the State of Mexico), as well as the elections of 2012. As a consequence, the chamber of deputies froze the use of public reousrces that had been allocated for the transition to digital, while PAN and the President defended their policy. In 2013 the first blackout in Latin American

[16]See:https://lasillarota.com/opinion/columnas/blindar-la-transicion-y-la-incongruencia-nacional/69948.

occurred in Tijuana (*ibid.,* OECD 2013). Interestingly, in this project, the state not only played the role of regulator but actively supported the change to this new technology. SCT and SEDESOL, secretaries, invested in TV equipment in order to facilitate the transition among the urban poor, something that was deeply unpopular in public opinion because it was viewed as particularistic and electorally-driven.

For de Swaan (2011), the medium and long term agendas of COFETEL and SCT necessarily meant working with the Congress to prepare conditions for making changes to the legal regulatory framework. Thus, a first step for the commission was to request through the SCT a study by the OECD, that would address the problems and challenges of the regulatory framework and the agency (de Swaan, 2011; interview with a former COFETEL President, March, 2015). If previously the only audience the commission was independent from was the consumers, then one way in which the commission might increase the possibilities for future reforms was to strengthen public appetite for change in the sector. Thus, de Swaan supported the creation of a consultative council with a strong representation from public interest organizations such as *OBSERVATEL* and *El Poder del Consumidor*, while some criticize the council for having industry representation. In fact, in the 2012 presidential election the need for changes found fertile ground. On the one hand, much of the election focused on the need to advance structural reforms hindered by the political interference experienced under the PAN governments, so the PRI with Peña Nieto was presented as the government that could successfully relaunch these

reforms; on the other hand, a movement of university students, known as *Yo Soy 132*, demonstrated against *Televisa* and the corporate media for their biased coverage in the election and, specifically, for coverage of Peña Nieto's visit to the *Universidad Iberoamerica*, where he had faced various claims regarding human rights violations in the State of Mexico where he was former governor. Once again, the pluralization of the telecommunication regulatory arena, as far as it incorporated new actors, created conditions that brought about gradual pressure for regulatory change that would consolidate the regulatory role of the state.

3.6 The making of the telecommunication reform

Hence, from COFETEL's position, it was clear that under the conditions of the 2012 election there would be an opportunity for a telecommunications reform agenda (interview with a former COFETEL President, March 2015). Despite multiple controversies and judicial claims surrounding the election, Peña Nieto won. In the same year, the *OECD Review of Telecommunication Policy and Regulation in Mexico* was presented, which subsequently had a great deal of influence and highlighted the need for telecom reform. Once the presidential transition began, Peña Nieto's team initiated talks with the main parties represented in Congress in order to establish a political agreement that, fundamentally, revived plans for structural reforms to the sectors that had shown resistance to processes of liberalization and modernization during the democratic transition.

In terms of the telecommunications reform, among the groups of negotiators, an important contribution to the reform came from one of the PAN negotiators, Calderón's former Secretary, Molinar

Horcasitas. As he maintained a very close relationship with the then-president of COFETEL, Mony de Swaan, and with José Ignacio Peralta - who previously worked for the commission and sometime later became the undersecretary of communications – he was placed in charge of the telecommunications transition team (interview with a former COFETEL President, March 2015). On December 2, 2012, Peña Nieto's government presented the so-called *Pacto por México,* which included a constitutional telecommunications reform. The constitutional reform to telecommunications was approved by both chambers with the sponsorship of all major parties and the government, and the Decree reform was published on June 11, 2013. Among the many changes involved in reforms to the telecommunications sector, it is worth mentioning some of the most important ones in order to understand the relationship between the episodes of conflict that preceded these changes (*Diario Oficial de la Federación*, June 11, 2013). First, COFETEL was terminated. This was interesting because originally the policymakers behind the *Pacto por Mexico* did not contemplate its termination but rather the strengthening regulatory delegation, thus its autonomy and decision-making capacity, in principle following the path suggested by COFETEL to the political negotiators (interview with a former COFETEL President, March, 2015). However, the reform took another path and created the Federal Institute of Telecommunications (*Instituto Federal de Telecomunicaciones*-IFT) which was granted constitutional autonomy, following the design of other state bodies (i.e. *Banco de México-Banxico)*, known in Mexican constitutional jargon as *órganos constitucionales autónomos*.

Under this constitutional figure, the protection and political independence of the agency was strengthened to the extent that separated it from the executive power, and thus the relationship among them no longer was one of administrative subordination but rather one of policy coordination. Secondly, a mechanism was established for the appointment of commissioners. An evaluation committee was established, made up of other autonomous constitutional bodies such as the INEGI and Banxico. Based on their results, the president proposed the 7 triads of candidates and sends them for approval to the Senate, which in turn has the power to appoint the president of the institute with a vote of two thirds of the chamber. Thirdly, the assignment and administration of the spectrum, as well as the enabling titles were left entirely in the hands of the regulator in both telecommunications and broadcasting, thus strengthening and growing its powers. The executive, through the SCT, can only participate in the assignment process by providing a non-binding, advisory opinion. Fifth, the agency was also empowered as competition authority with the possibility of issuing asymmetric regulation and disincorporating operators with anticompetitive market power. Fourthly, specialized competition and telecommunications courts were established, as well as limits for judicial injunction that were used to block regulatory decisions. Sixth, broadcasting rights for audiences, broadband rights and the right to information were established in response to some of the demands of *Yo Soy 132* and other public interest organizations. Likewise, the right to use the spectrum for broadcasting is established for the first time through the allocation of concessions for social

organizations with non-profit aims. Seventh, the reform created an Audiovisual Promotion Agency to support a public broadcasting institution and a consultative council to supervise the protection of these rights within IFT's regulatory activity. Clearly, almost all these ideas and institutional arrangements emerging from the reform correspond to the policy regimes of a regulatory state. The path of regulatory change that started decades ago with the privatization of the SOE was in this way consolidated through a strong regulatory framework.

But there is more. The reform not only established those constitutional changes, it also anticipated conflicts that could arise later with the development and implementation of secondary legislation and regulation. Anticipating that scenario within the same constitutional reform, the Congress issued some obligations for the different public actors participating in the telecommunications regime, including themselves.

In particular the Congress established a legislative and regulatory implementation schedule. Among the most outstanding issues that the reform requested to be urgently attended, the following were considered (*Diario Oficial de la Federación*, June 11, 2013): 1) the sector should be opened to as much as 100% foreign investment in telecommunications and 49% in broadcasting; 2) the completion of the digital terrestrial transition by 31 December 2015, including the necessary budgetary resources as Calderon's presidential decree originally called for; 3) regulations to ensure free telecommunications and broadcasting retransmission, that is must-carry, must-offer rules; 4) the IFT had to determine the preponderant

economic agents in telecommunications and broadcasting, defined as those that held 50% or more of the market value; 5) obligations to bid for broadcast television frequencies that must be grouped together to form at least two new television channels with national coverage, among others.

3.7 More than regulation: bringing back the developmental state?

Interestingly, once regulatory reform could finally be said to be comprehensive in the sector, a new path was also set out to develop the sector's infrastructure policy. Despite the fact that most of the content of the reform was inspired in many ways by examples of regulatory governance, such as OFCOM in the UK (interview with a former IFT commissioner), this policy deserves special attention since it clearly shows how the reform also incorporated unexpected elements of developmental governance. Right at the end of the reform (transitional articles 15 and 16) two measures were established for the development of telecommunications infrastructure. On the one hand, Congress asked the CFE, the same electricity utility discussed above, to transfer to *Telecomunicaciones de México* (Telecom) "its concession to install, operate and exploit a public telecommunications network" (transitional article 15) and all the necessary resources and equipment, guaranteeing infrastructure to foster access to broadband services, as well as mandating the planning, design and execution of the expansion of a spine network in telecommunications, that would allow for national coverage of broadband access (ibidem). On the other hand, the reform (transitional article 15) established a project that later would be

known as the *Red Compartida*. That article requested that the state, through the federal executive and the IFT, should guarantee the installation of a new shared public telecommunications network, allowing four years for the implementation of the project. The project should include the transfer of 90 MHz of the spectrum released by the digital terrestrial transition in the 700 MHz band, as well as the resources of the CFE's optical fiber spine network and any other state assets for its operation. The possibility of combining public and private investment was also considered. Finally, it was mandated that no telecommunications service provider should have any influence or participation in the operation of this network.

How is it possible that a regulatory reform that was expected to consolidate the regulatory role of the state in the sector ultimately opened up a new space for developmental dynamics? The answer to this lies behind the story of the spine and shared network projects. It is particularly interesting because it shows how a regulator, in the middle of severe institutional constraints, sought solutions to expand coverage and competition in telecommunications services through developmentalist instruments. During Mony de Swaan's tenure at COFETEL, alternatives were sought to weaken the dominant position of TELMEX and TELCEL. The working group studying the issue, concluded that their dominant position was due to the impossibility of replicating their infrastructure: "no one could replicate the backbone, fiber optic and last mile network infrastructure" of the incumbent providers (interview with a former COFETEL President, March, 2011). Therefore, they concluded that a solution might involve the reallocation of the spine and the shared

network to the electricity utility, CFE. Once they defined the policy problem, the working group led by de Swaan looked for alternatives to ensure the implementation of the shared network project, thus they identified the 700MGz band as the main way of facilitating it and conceived the management of the network as a public-private partnership instead of something that occurred through auctions or concessions, as happened with the case of TELMEX.

In order to ensure that all localities in the country were reached to within 40 km, the fiber backbone needed to be increased from 22,000 km to 50,000 km, which required an investment of $700 million (ibidem). Politically, the project was championed by Molinar Horcasitas who participated as a negotiator in the *Pacto por Mexico*. In this way, COFETEL was able to promote and influence the constitutional reform to the benefit of both projects (*ibid*.). COFETEL knew that, as with other measures such as the transition to digital, these projects need to be part of the reform, otherwise they could easily lose political importance, and thereafter the sponsorship of the government. COFETEL believed that the shared network project should be in the hands of the IFT, as it mainly concerned the allocation of spectrum, and the spine network should be in the hands of the executive, as it was a matter of public investment. However, the reform left both projects under the jurisdiction of the SCT, just as had happened with the digital transition. Nevertheless, it is interesting to note that the conception and development of the project, and its impulse within the reform came from COFETEL (ibid.). Together with TELMEX's network, the only network that could potentially provide telecommunications services with a national coverage, was

that of the state-owned company, the CFE, which is why OECD (2013: 91-92) suggested the development of a broadband plan in which CFE's fiberoptic network had the potential to increase competition through competitive auctions. Industry members (interview with a Nextel vice president, March, 2015) believe that the return to a model of direct state intervention in the operation and development of the telecommunications sector was a mistake. In their opinion, through the same regulatory scheme, bidding for the spectrum could develop the network, that is, the same objectives could be achieved through regulatory means. In compliance with the reform, Peña Nieto's government created a new public body in March 2016, PROMTEL (*Organismo Promotor de Inversiones en Telecomunicaciones*), which was decentralized and operated under the administrative sphere of the SCT, to manage the project of *red compartida* through which the government was looking to expand telecommunications infrastructure and increase the coverage of the services.

This episode clearly shows that even when a regulatory change seems to have been consolidated, new institutional paths for the state can appear within the sector. In this regard, telecommunications provide an interesting example of how reproduction mechanisms can come from other utility regimes that maintain the structures of the developmental state. Therefore, a new role for the state was emerging in the telecommunications regime.

4. Paths of institutional change in the provision of urban water

The water regime shows a trajectory of change in which ideas interact on multiple structural levels, going beyond the predominance of state or private provision, it shows more clearly the variation and divergence that can exist in sectors that have incorporated, to some degree, developmental or regulatory ideas and structures within a fragmented and complex institutional setting. In the following subsections, the different stages of change that have influenced the drinking water regime are developed.

4.1 The nationalist and centralist roots of water policy

The water sector in Mexico, like much of the provision of natural resources in the country, comes from a nationalist tradition with a strong state presence that was consolidated throughout the twentieth century. Its origins within such a tradition can be traced to the constitutionalization in 1917 of water as a public and national good. In this constitutional article the roots of the institutional framework can be found. During the first decades of the revolutionary regime, water policy was a key component of the agrarian reform policy through which successive governments sough to make full use of both the land and the water. It was through the National Commission of Irrigation that water policy was developed with a nationalistic ethos throughout the sector (Aboites Aguilar 1998, Domínguez 2019). Already in the 1930s, during the Cárdenas government, progress had been made on the first 'plan sexenal', incorporating planning tools within the water policy.

Later on, from 1946, with the creation of an exclusive Secretariat of Hydraulic Resources (SRH) for the sector, and following the period of state developmentalism known as '*Desarrollo Estabilizador'*, water policy acquired a central place not only within agricultural development but in the industrialization and urbanization plans of the PRI governments, and this led to an even more direct process of centralization or 'federalization' of water resources.[17] Thus, for instance, urban drinking water systems have been provided by the SRH since at least 1948, when the General Directorate of Drinking Water and Sewerage first created a body to specialize in urban water supply. The National Office for the Provision of Water Supply and Sanitation (WSS) was given responsibility for the project management and building of urban water systems across the country (Pineda, 1999). For a period of 30 years, from the presidency of Miguel Alemán to that of Luis Echeverría, the WSS remained the national office for these services (*Ibid*.).

With the expansion of water systems associated with urbanization, an office was created for the supervision of drinking water supply, called the General Directorate of Drinking Water and Sewerage Systems Operations (DGOSAPA). This same office was later transferred in 1976 to the Secretariat of Human Settlement and Public Works (SAHOP), which was directly in charge of urban policy in the country and consequently also of WSS (Pineda 1999; Pineda 2002).

[17] For instance, groundwater was not originally part of the national water supply regulated by article 27, and it was Miguel Aleman whose presidency 'federalized' the regulation and administration of this source of water (Wolfe 2013).

The centralization of WSS was conducted in the municipalities predominantly through federal *Juntas* of water supply. It is estimated that until the 1970s around 236 *Juntas* were operating principally in the urban municipalities of central and north Mexico (Palerm & Martinez S. 2009: 223). The boards of the *Juntas*[18] were integrated with three representatives, one of them from the board of SRH, while the rest were state and municipal representatives. *Juntas* were in charge of the management, operation and regulation of WSS's urban systems (Pineda 1999; Domínguez 2019).[19]

Although SOEs were created at that time in several policy fields, in urban water this corporate structure was not used. Thus, the institutional arrangements of the developmental state in this sector were quite different. Yet, there is a consensus that in this period the state followed more or less the same general patterns of the developmental state in the water policy regime and, in particular, in urban water provision.

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[18] DGOSAPA counted 34 regional operative delegations in charge of 873 Federal Boards, 146 Municipal Committees, and 37 Administrative Committees (Pineda, 1999 from SRH 1976, 293).

[19] Among their main tasks, they carried out certain functions of regulation and provision such as: 1) approval of the draft tariff for the collection of drinking water and sanitation services, 2) the approval of the WSS's internal regulations, 3) the provision of drinking water and sewerage services to the system's users, 4) the collection and management of the system's funds, the approval of regulations concerning penalties for violations of the terms agreed, 5) the maintenance and improvement of the network (see Domínguez 2019: 215).

4.2 Water municipalization and subnational democratic pressures

After decades of centralization in water policy, by 1980, meeting with democratic pressure at state and municipal levels, the government began a policy of decentralization of WSS systems to states governments. In fact, this was a unique change towards decentralization in the context of what was still a national authoritarian regime. In the context of growing domestic political pressure and international pressure from the environmental movement, there also followed a change in the structure of the federal PRI's cabinet, with the creation of a Secretariat for Urban Development and Ecology. Demand for bottom-up policies were increasing as democratization at a local level - particularly in the north of the country – was rising with PAN gaining increasing electoral success in the municipalities (Pineda, 1999: 15-16).

Consecutively, the government was finding it increasingly difficult to respond to the growth of cities and the rising demand for urban services such as drinking water. In this context, the government of De la Madrid decided to municipalize urban services, including water, sewerage and sanitation. This was a definitive step towards decentralization in the urban water sub-sector. However, it was a slow process, conditioned by a homogenous institutional design that was applied across a quite heterogenous range of cities and, as a consequence, there were many deficiencies in the implementation of these changes. In fact, on the one hand, many municipalities, if not most, did not have the technical capacity to take over the administration of WSS systems, while on the other hand their fiscal dependence on the state and federal governments did not allow them

to meet the demands of service expansion. Initially, it was necessary for the state to take over the management of the service, and then to gradually transfer it to the municipal governments. To put it in numbers, according to Pineda (2002), by 1988, only 11 of the 31 states and the Federal District had transferred WSS to municipal control and in those cases where municipalization had been achieved, the service had deteriorated, revealing important deficiencies in its management. It was in this context that Salinas took office as president.

4.3 A reform to recentralize decentralization and modernization of the water regime

Salinas's government embarked upon a program of restructuring public spending and brought in new ideas about the role of the state, implementing privatizations and strategies for downsizing the state across sectors. Water was not an exception. Firstly, as a result of a disordered process of decentralization of the WSS and the fragmentated roles this sector had among different federal offices and subnational governments, Salinas's government accepted the need to unite and rearticulate the national water policy by concentrating the diverse responsibilities and tools within a single entity (*ibidem*). Following on from this, the government recognized the need for a technical autonomous agency to regulate the sector, and in 1989, through a presidential decree the *Comisión Nacional del Agua* (CNA) was created. The CNA was an administrative body, deconcentrated but within the sphere of the Secretariat of Agriculture and Hydraulic Resources (SARH), and it was granted with the aforementioned technical autonomy. Interestingly, since then, its technical autonomy

has been subject directly to the Managing Director of the CNA, rather than the Secretary, as was more usual for other deconcentrated regulatory bodies established since then. Moreover, the CNA emerged with such a broad mandate and set of powers that it covered the administration and regulation of all type of national waters; the allocation of water use rights; the construction, maintenance, and financing of (big) water infrastructure projects; and even the regulation of the infrastructure of irrigation districts administered by consumers' councils, and WSS services administered by states and municipalities (Pineda 1999, 2002; Rodríguez, 2008). With regard to WSS, the CNA was intended to modernize water utilities by turning the old *Juntas* that were transferred to the state and the municipalities into specialized and professionalized public (or private) corporate water utilities. In order to do so, the CNA – with support from the World Bank (WB) - published new guidelines and recommendations for WWS services, asking local governments to change their laws and implement at the state and municipal level effective decentralization, granting independence to water utilities and allowing private participation in the operation of WSS services (CNA, 1989).

The next step towards the modernization of the water sector, was the publication of a new law in 1992 that recognized the authority of the CNA in the water sector and made the institutional framework much more open to private involvement, introducing regulatory instruments by which the CNA could supervise water allocation and

use.[20] In order to pursue the implementation of the new urban water regime, the federal government made use of financial incentives. It created a technical assistance program and borrowed money from the WB and the Inter-American Developmental Bank (IDB). 95.7% of this loan was put into investment and modernization of state and municipal public utilities (Pineda and Salazar Adams 2008).[21] As can be observed, the first step towards modernization and even privatization stemmed from the idea that the country needed corporate water utilities at the local level. By 1996, 17 of 31 states had published new water laws or reformed their legal frameworks to implement the national policy of decentralization, municipalization and corporatization of urban water. In the same year, a majority of states (21 states) had municipalized their WWS services.

The creation of the CNA was, in this sense, a new way of organizing the sector towards a more private, market-oriented regime, and so it formally incorporated similar arrangements to some regulatory agencies in the country. Even if these arrangements seemed to strengthen the position of the CNA, at least in terms of its scope and budgetary powers, it remains difficult to observe a clear regulatory pattern or a recognizable regulatory role for the CNA.

[20] For instance, the law allowed a water rights portability among users to facilitated private transactions.

[21] According to Pineda and Salazar (2008: 64), following a CNA report covering the period 1990–1994, the first loan came to $300 million and the second $200 million. By 1994, the WB had opened a new credit for $350 million.

4.4 Privatization and the path to the commodification of drinking water

The next step in the modernization of WSS services was to push for the privatization of the newly created public utilities. Various examples demonstrate the administrative alternatives to corporate privatization in the municipal services: one can look at experiences such as Mexico City's with service contracts (Pineda 2008); Aguascalientes, Cancun and Navojoa's use of concessions (Pineda 1999, OECD 2013); and later on Saltillo, which established a service run by a quasi-public/private partnership with *Aigües de Barcelona*. However, there is a consensus among those studying the provision of water in Mexico that the privatization of these utilities did not really reach a significant degree of diffusion among Mexican cities (Pineda and Salazar Adams, 2008). This outcome is interesting, particularly in the context of the 1990s, a time when the privatization of utilities was considered best practice by most national and international policymakers working in utilities sectors- and, as mentioned, this was the case in the CNA's own agenda, which was influenced by the recommendations of international organizations. To a large extent, the lack of success in the privatization of Mexican WSS utilities had to do with the temporary structure of local government due to the very short electoral cycles in the municipalities. Thus, lacking mechanisms that might provide stability, such as municipal re-elections for a longer policy cycle, the political conditions were highly volatile, resulting in uncertainty in the provision of WSS, as majors coalitions maintained strong short-term control over public services utilities (Pineda 2000; OECD, 2013). Thus, the political

costs of reforming water utilities and introducing regulatory change were high, within a very fragmented and decentralized arena.

Rather, the path towards water privatization advanced in other directions. The CNA, the state and even municipalities rely on private companies for as the construction of aqueducts, wastewater treatments, and other so-called megaprojects. Another important area of privatization is the one related to drinking water. As the establishment of water utilities advanced, a process of privatization in the provision of drinking water progressed in parallel. The lack of confidence in the professionalism of utilities and in the quality of tap water, the lack of institutional capacity (i.e. to monitor drinking water levels) and the precariousness of the infrastructure, contributed to a situation where water for human consumption became a high value market for water companies, especially for multinational corporations (Pacheco-Vega 2015). This happened despite the fact that clean drinking water[22] reaches 92.4% of the population and sanitation coverage is at about 91% (CNA, 2015); along with substantial public spending which concentrates 70% in the drinking water and sanitation subsector (OECD 2013). In this context, informally, it was within the provision of drinking water that consumers and producers found a mechanism for the coordination of their needs and interests outside the involvement of the public sector. Of course, behind the scenes the roles of the CNA and the federal

[22] By 2014, in urban areas the coverage of water supply reached 95.1% and in rural areas it was 82.9%, meanwhile, coverage in sanitation reached 96.3% in urban areas and 72.8% in rural ones.

government have been no less significant in producing this policy outcome, since despite the country's alarming levels of water stress, companies have been able to obtain commercial extraction rights from the CNA in highly compromised basins (Pacheco, *ídem.*). In this, the CNA was playing the role of market-building but did so without deploying regulatory instruments and without being acting as a regulatory authority in this kind of market, instead just allocating water resources to encourage a market dynamic. Again, it is problematic to interpret these interventions as conforming to the role of a regulatory state.

4.5 Democratization and the human right to water

In 2004 Mexico saw its first water reform -since the enactment of the law in 1992- that recognized the statutory authority of the CNA. Indeed, in the context of democratization and under the first two PAN-controlled governments, civil organizations advocating for human rights and the environment strengthened their position in the political process and had more of a say over policy decisions. In 2010 the United Nations General Assembly recognized the human right to water and sanitation access in Resolution 64/292[23] (UN, 2010). Just

[23] On 28 July 2010, through Resolution 64/292, the United Nations General Assembly explicitly recognized the human right to water and sanitation, reaffirming that clean drinking water and sanitation are essential for the realization of all human rights. The resolution calls on states and international organizations to provide financial resources, training and technology transfers to assist countries, particularly developing countries, in providing safe drinking water and sanitation that is healthy, clean, accessible and affordable for all.

after this, in 2011, Mexico incorporated a major reform to the Constitution in article 1. It declared that all persons shall enjoy the human rights recognized in the Constitution and in the international treaties to which the country is a party. This constitutional amendment represented a new epoch for the Mexican constitutional system (Salazar 2014). The impact of the reform reached the water regime too, opening a new institutional path in the sector.

In February 2012, legislators from the PRD and the Ecologist Green Party of Mexico (PVEM) achieved the reform that brought the human right to water into article 4 of the constitution, and henceforth the state has been obliged to guarantee "access, provision and sanitation of water for personal and domestic consumption in a sufficient, safe, acceptable and affordable manner" (CPEUM art. 4). The importance of the reform was to move the core of the constitutional water regime from the nationalistic article 27 into the context of human rights as laid out in article 1, thus changing the way in which subsequent policies and efforts to alter the water regime were framed politically. In fact, within the same constitutional reform a transitional article was agreed that mandated the Congress to provide a new water law within a period of 360 days.

As discussed in the previous sections, in 2012 the PRI under Peña Nieto presented the agreements of the *Pacto por México*, which included some aimed at reforming the water regime. The agreements established the need for "rethinking the country's water management" and creating a Drinking Water and Sanitation Law together with a reform of the National Water Law (Presidencia, 2012). In 2013, the

OCDE issued a report on *Making Water Reform Happen in Mexico*.[24] In it, the General Secretary, José Angel Gurría, recognized that: "there is now an opportunity for the new administration to make Mexico a leading example of successful water reform in OCDE and Latin American countries." Among the many recommendations included in the report, the OCDE suggested a whole-of-government approach and the redesign of regulatory functions that had come to overlap under the fragmented multilevel structure of former regimes of governance. Furthermore, many improperly regulated issues in water and public utilities, including health and environmental risks were also targeted. It was the first time that the idea of regulatory change that was much more directly connected with the arrangements of a regulatory state had been directly installed in the public arena.

As stipulated in the reform, the government later presented a bill known as *'Ley Korenfeld'*, which was named in this way because the proposal by Peña Nieto's administration was led and drafted in the CNA offices by David Korenfeld, the CNA's managing director. Contrasting with the objectives of the *Pacto por México*, water was not a priority in the legislative package approved by this coalition, as the energy sector was the main priority of the governmental reform. It was not until 2015, once most main structural reforms had been approved (in education, telecommunications, oil, electricity and finance among others), and as the intermediate legislative federal

[24] Actually, it is interesting to note that this report is, according to General Secretary José Angel Gurría, the first OECD country review on water (OECD, 2013: 4).

elections drew near, that a new water bill was presented in the Congress. At that point, civil society organizations, activists and academics were already mobilized and collaborated on a common water citizen's bill through which the debate was thereafter framed (Domínguez 2015). Both bills were criticized: the governmental bill was labeled a market-oriented reform and the left parties and the civil organizations defended their approach as a human rights issue, as established by the Constitution (El Financiero, 2015). Interestingly, neither the government nor the opposition defended the established institutional framework. In the end, demonstrations in the CNA offices and the Congress, and an intense public debate forced the government backwards, as it was afraid its proposed reforms to the water sector could impact the implementation of its energy reforms (interview with former CNA official). By the same token, organizations feared that the bill was essentially about gaining the support of big oil companies with industrial strategies for developing the hydraulic fracking industry in the country (Foreign Policy 2015). From that point on, the public and legislative debate around water issues was placed on hold. But the bills had already shaped policy discourse in ensuing debates, where new political groundwork could be established for future institutional changes. However, regulatory changes in the water sector remained mired in conflicts between market-oriented approaches and those that prioritized access as a human right.

This last episode established a new trend towards regulatory change in the sector. It was now reasonable to expect that future institutional arrangements would be connected to the idea of the regulatory state.

In such a way, the importance of the dissemination of regulatory ideas can be seen and is revealed to be the first step towards embedded regulatory structures within policy regimes. It is less clear to what extent developmental state structures might find mechanisms for reproduction in this setting. The introduction of human rights as a driving factor also opens new questions regarding the extent to which this new institutional path could enhance developmental, regulatory or both kinds of state logic within the regime. The human rights approach itself could be seen as a new iteration of the state within the sector: the constitutional state.

To summarize the institutional features of the electricity, telecommunications, and urban water regimes, I present a table with this information.

Table 1. State features of utility policy regimes

Utility policy regime	Historical roots	Regulatory governance reforms	IRA	SOE	Constitutionalization of the regulatory state
Electricity	• Developmentalist • National public control • Centralist	Several reforms	CRE	CFE	Yes
Telecommunications	• Developmentalist	Several reforms	COFETEL-	No	Yes

	• Public and private participation • Centralist		IFT		
Urban water	• Developmentalist • National public control • Multilevel	No	No	Municipal utilities	No

Source: own elaboration

5. Comparative analysis of utility regimes: divergent paths of change

During Mexico's developmental period, the electricity regime was the first to experiment with the creation of SOEs to provide its service. It seems clear that the developmentalist evolution of the electricity sector was closely linked to ideas of economic sovereignty that had already had an impact on the oil industry. Thus, the publicly owned electricity companies, despite being founded only to replace early private suppliers, quickly acquired a nationalist identity with strong unions that succeeded in their objective of building a national electricity network and service. In contrast, in the telecommunications sector, although the developmentalist period involved a great deal of state intervention and activism to develop the

growth of the service and the network, the nationalization of the company came at a time when the developmentalist model was beginning to weaken, and the involvement of private investment in the industry was not forbidden. The provision of urban water took a different developmental path yet again. During the developmentalist period, despite the water sector being subject to legal conditions influenced by ideas of nationalism and sovereignty over natural resources, a national, publicly owned company was never established. Rather, a territorial network of administrative organizations was made responsible for the service through *Juntas* in which the state and municipal governments had a stable presence, while the federal government made a significant number of administrative adjustments to the sector that involved the repeated termination of secretaries and the creation of new ones. Since then intergovernmental coordination was necessary even when the sector was managed through centralized mechanisms – thus the provision of the service through *Juntas* laid the foundations for the subsequent processes of reform.

This divergence within the same developmentalist paradigm affected the mechanics and intensity of the institutional change in the three sectoral regimes discussed. Although they took different developmental paths, it is remarkable to observe the penetration of the ideas of the developmental state and its institutional arrangements across the utility regimes during this period. A particular point of interest relates to the longevity of the institutions. As Offe stated, the longer an institution is in place, the more immune it is to change. In this regard, the electricity regime was the most stable, with a stronger

developmental outlook. This point is important, since it helps to explain how the electricity regime resisted regulatory change later on. This provides a picture of how the developmental and regulatory state can coexist across and within utility sectors.

As noted, in the 1980s the economic crisis led to a deep restructuring of the public sector. Although the program of privatization began in that decade, no major changes were made in the electricity and telecommunications sectors. In fact, it was in the area of water that the greatest changes took place. In 1983 a constitutional reform was enacted through which a series of urban public services were municipalized, including services for the provision of drinking water. However, the process of decentralization in the sector had already begun before the reform, in 1980, when the public water systems were transferred out to the individual states, so it is difficult to argue that this change was triggered by the financial crisis. Moreover, in the electricity and telecommunications sector, there were no major changes during this decade either, other than a few financial adjustments to public investment and service tariff policy. In terms of the temporal sequence of regulatory change, it can be said that in this crisis, the uncertain conditions made it more likely that new policy ideas and institutions would be brought to the utilities regimes later. In this sense, this period was a critical juncture in which regulatory ideas gained leverage within the coalition in support of market reform, using regulation as a weapon to delegitimate some of the existing institutions, most visibly in the telecommunications sector. Supporters of market reform also started to draw up blueprints for proposed institutional changes. In a way, this moment was closely

related to the third order type of change, in which a new policy paradigm can be introduced, but it does not necessarily eliminate the existent developmental policy paradigm.

The first wave of regulatory reforms began in the late 1980s, gaining strength through the first years in the 1990s. Salinas's government understood that Mexico's position within the contemporary geopolitical sphere, provided him with a critical juncture for forging major institutional transformations. As has been shown, utilities were not excluded from these changes. In 1989, Salinas's government created the CNA. Indeed, the creation is in itself significant because the CNA is the first agency to have been created as a deconcentrated body, an administrative arrangement that later was used for subsequent regulators. It is also interesting that the appointment of the CNA's general director remained the responsibility of the president, as if the commission were a secretariat. The appointment is made for an indeterminate period, so it is up to the president to remove the general director of the CNA. There are more reasons to challenge the idea of the CNA that portrays it as if it were inspired by ideas of the regulatory state. In fact, its mandate covers - even now - a range of issues that were traditionally the responsibilities of previous secretaries during the developmental period. For instance, its powers range from the allocation of water resources, the management of large-scale hydraulic infrastructure projects and the provision of regulation, as well a technical and financial assistance to states and municipal utilities. Particularly, in the area of urban water service, the president delegated to the CNA responsibility for the modernization of state and municipal water utilities. Of the three

utilities sectors, it also was the first to endure legislative changes with the enactment in 1992 of the National Water Law. Thus, as seen during this period, the drinking water sector underwent important institutional changes that, thus, as seen during this period, the drinking water sector underwent important institutional changes that, through the sector's varying structure across multiple levels of government, were subject to the implementation of heterogeneous agents. At the same time, the policy regime allowed for the coexistence of local public water utilities and privatized municipal water utilities, as could be seen in Aguascalientes in 1993. In sum, despite of the commission being created with the administrative façade of what later would be the case with other regulatory agencies, it is difficult to characterize water reforms as regulatory reforms.

Nevertheless, the path of the urban water regime shows some patterns of accommodation between regulatory and developmental arrangements, although without a clear state ethos behind either. In some policy areas the developmental structures seem at present to be dominant, with large infrastructure projects and the provision of urban water remaining mainly in hand of public utilities. However, some market logic was introduced to water legislation through the reform of utilities. The institutional path of the water sector at first glance seems to follow a third order type of change, a policy paradigm change. However, previous developmental structures persisted and there were no actual challengers nor beneficiaries to intervene or stop any of the changes. So, although it could be argued that this constitutes a layering mechanism of institutional change and reproduction involving both forms of the state, it is not clear how this

arrangement would allow for incremental reforms. In fact, this sector was, in comparison to the evolution of telecommunications and electricity, rather less dynamic. All in all, it seems that some room for cohabitation between market and developmental arrangements remains in place.

The electricity regime also underwent shifts that introduced the potential for a gradual change in the logic of the sector. Salinas reformed the legal regulatory framework to open up electricity production to the private sector, mainly to allow industrial self-generation. In the same reform, in a transitory article, the legislation mandated the creation of the CRE, via a presidential decree (as had been the case with the CNA). Its original design was based on the same deconcentrated administrative arrangement that structured the CNA, alongside the standard technical and managerial autonomy - although in this case the CRE did not have the power to intervene in an electricity sector that remained in the hands of the public utility. Unlike the CNA, the CRE's commissioners were appointed by the secretariat, meaning it had less political influence in the administrative sphere. Although neither of these changes substantially modified the electricity sector's structure, and the predominance of developmental state institutions was maintained, the reforms did allow for the gradual introduction of market and regulatory logic to the sector.

In comparison, the relationship between regulatory change and the institutional path of the electricity sector seems clearer. Due to high political costs, third order changes were less feasible in the context. Thus, to galvanize matters, first and second order types of change

were introduced that incorporated regulatory and market logic within the policy regime, paving the way for future regulatory change. Once new ideas and regulatory institutions became embedded in the utility's regimes - although existing institutions were not eliminated - space was opened up gradually to allow for the introduction of stronger regulatory arrangements, while the state maintained a broadly developmental role. In any case, this path created a dynamic of change and reproduction that confirms the idea that both are mutually constitutive. Furthermore, the layering process that initiated this first reform shows how important incremental changes can be, in order to produce more transformative changes in the future.

The change in the telecommunications regime, on the other hand, focused on achieving the privatization of a public enterprise. As an act of privatization, this was undoubtedly the change that had the greatest impact on national and international public opinion. And yet, during the Salinas government, no new legislation was drafted for the sector and no regulator was created for the telecommunications market. The privatization was conducted directly by the president's team and the oversight of the concession was left to the SCT, without making any major adjustments to the institutional arrangement of the sector.

In view of the three changes in utilities during this period, it seems clear that while, in both the drinking water and electricity sectors, the changes were more cautious than they were in the telecommunications sector in opening up the provision of their services to private participation, the changes to water and electricity provision were also greater than in telecommunications in terms of

administrative modernization. An important difference for this outcome was the fact that in telecommunications it was not necessary to obtain constitutional or legislative changes in order to privatize the industry; while in water and electricity legislative and constitutional reforms respectively were necessary. This means that the influence of previous institutions was relevant at the time the government defined its agenda and strategies for change. Overall, changes in the water regime responded to a context of high technical/low political costs, combined with low expectations, meaning change could be obtained at a low cost. In the electricity sector, the situation was: high political and technical costs with lower expectation costs. Finally, in telecommunications the whole structure of costs (technical, political and expectations) was rather low, allowing for a more aggressive change in the service provision.

At this point, the telecommunications sector was the only one that really saw radical change from state-backed provision as part of the role expected within the developmental state, to a market regime. But even though privatization was implemented very fast, the process of building a regulatory state and introducing a regulatory framework was not automatic and easy. However, the goals and the objectives of this institutional change were a third order type of change, meaning that a new policy paradigm was established in the telecommunications regime. In order to achieve this, the government took advantage of a critical juncture in which the state in this sector and its developmental tools appeared rather weak. What this reform and the condition of the telecommunications sector make evident is that different approaches to regulatory reform within utilities regimes

were needed in order to respond to different structures of the developmental state, and had to account for a variety of costs for change. Thus, at this temporal point in the institutional evolution of utilities regimes, divergent paths had already been established for regulatory change.

The same dynamic of change continued under Zedillo's government. In the urban water sector, the process of implementing municipalization, the creation of water utilities and a few instances of privatization continued in cities like Cancún and Mexico City. In telecommunications, a legal and regulatory framework was established in 1995 with the creation of the Federal Telecommunications Law and, as was the case with the electricity regime, the legislation included a transitory article that obliged the executive to create a regulatory agency with the purpose of laying the groundwork for the liberalization process. In 1996, the agency was created and in 1997, when the long-distance liberalization began. The electricity regime underwent changes that built on what had begun under Salinas. The legal regulatory framework of the Energy Regulatory Commission was created. The regulator thus gained powers in the electricity and gas sectors and, although its powers did not extend to carrying out the regulatory process for the sector directly , since responsibility continued to be shared with the secretariat, its powers did allow the regulator to become technically stronger in terms of economic regulation. Other changes were related to financial innovations that allowed the sector to woo private investment in the development of infrastructure. At the same time, it was decided that the corporate governance of the CFE should be

modernized, and thus CENACE was created within the CFE to take responsibility for the distribution of electrical energy and the management of the national electrical network, and to organize the utility into 20 service regions. This last change, in some sense, is related to the strategy observed in the provision of drinking water, that was intended to modernize the corporate governance of municipal utilities and prepare them for possible privatization. But what was perhaps the main change did not come from the utilities regime itself but from the repercussions of the Zedillo government's electoral reforms, following the first legislative victory of the opposition in the history of the one-party regime. The democratic transition undoubtedly altered the political dynamics of regulatory change (Jordana, 2010). In fact, the changes made to the electricity regime during the Zedillo government foreshadowed his proposal for electricity reform, that would have involved the privatization and liberalization of the sector, had the timing of his initiative in 1999 not coincided with the first divided government.

The intersection of processes of change create conditions that alter the trajectory of regulatory reforms across time. The regulatory arena in the provision of utilities became a contested field, and it became harder to affect radical change because more limitations existed. For example, stakeholders who were opposed to change gained leverage in the political process and used different institutional channels to constraint efforts at reform. The intersection of democratization and regulatory reform can be seen to have created inconsistencies, new tensions and different paths for institutional change. Thus, in this novel context, the idea of maintaining incremental changes through

first and second level orders was a consistent strategy allowed for the advancement of institutional regulatory change and the reproduction of the conditions that fostered it.

Since the transition to democracy, there has been a period of increased politicization and interaction between the utility regimes and other public authorities, such as the courts and the Congress, that can be said to have modified the rules of the game of regulatory change. For instance, competition and liberalization in the telecommunications sector was very much influenced by the tribunals, in part due to the poor design of the regulator and the inadequate legal regulatory framework. In this context, the power struggle that usually occurred at the level of the executive was passed instead to the Congress. Interestingly, during the 2000s, although its equivalents in water and electricity, the CNA and CRE, had been included in the legislation of their sectors since the 1990s, COFETEL was not included in the legislation of telecommunications. This remained the situation until a legal reform to broadcasting, the so-called *Ley Televisa*, included the regulatory agency in that sector's law. In turn, the water and electricity regimes were less impacted by the judicialization of their regulatory and policy-making processes, but their growth was affected by the political cost of repeated divided governments, which persisted during the 2000s, as public opinion rejected privatization. Nevertheless, changes in the behavior of citizens/consumers and businesses reduced the structure of expectation costs, allowing new forms of coordination outside the provision of public services. This was true for the drinking water providers, where, without any major institutional changes, there

occurred a process of the commodification of water for human consumption. The failure of water utilities in creating confidence in the quality of tap water allowed for the informal expansion of this form of privatization. And to some extent this also occurred in the electricity sector, where independent, private power producers increased their generation capacity for different industrial users. All in all, it is clear that political cost of institutional change was higher during this period, and that technological and, especially, expectation costs were reduced to incorporate different mechanisms of change in the relationship between producers, companies and citizens. During this period the telecommunications regime was subject to comparatively greater institutional tensions, and to political and corporate power struggles. Greater stability was shown by the electricity and urban water regimes, which did not suffer from the same increased tensions due to the lack of political conditions that would foster major changes, and the lack of public interest in the regulatory issues they faced.

At this stage, the telecommunications sector maintained patterns of regulatory change and consistent reproduction without any indication of developmental participation of the state. Despite the executive constraints on the action of the regulator, the policy style in the sector was much more suited to the introduction of dynamics of regulatory state isomorphism than was the case in other utility regimes. Change occurred more slowly than might have been anticipated, but a solid path towards a regulatory state was in the making in telecommunications. Indeed, up to this point, confirming hypothesis one, the evolution of the three utilities sectors has allowed for

cohabitation dynamics, as both developmental and regulatory state structures were already embedded in the sectors and developmental and regulatory strategies persisted through two decades of adaption and stabilization across the utility regimes. Thus, it seems plausible that that when states experienced both kinds of state involvement in policy regimes, institutional arrangements began to interact and cohabit, creating paths of institutional change and reproduction. So, multiple paths of state intervention within a national economy and across policy regime were available.

From 2010, the speed and dynamics of institutional change shifted. To a large extent, this was a process of institutional learning as both public and private interests had to be accommodated that did not agree on the type of institutions that should run the utility regimes. Clearly the political cost structure was reduced with the results of the 2012 elections. The process of replicating regulatory and developmental institutions had reached a limit, where adjustments were needed to rebalance institutional arrangements - or at least this had become part of the perception of the public and the elites who had experienced the impasse during the transition to democratization of the country. The paths of change within the utility sectors diverged, but at the same time the patterns of interaction and connections between the changes in each sector are interesting to examine in more detail. First, the provision of drinking water became constitutionalized as a human right. This change involved a mandate for the creation of a new water law. Within the agreements of the *Pacto por México*, a bill considered to separate WSS services from the National Waters Law. This shift, which has still not taken place,

would represent an opportunity for the regulatory logic to expand more explicitly into this sector, since it included the suggestion of the OECD, that each state of the country should see the creation of water regulatory agencies to regulate municipal water utilities. In any case, the constitutionalization of the right to water opened up a new path that separated the utility water sector from its national constitutional tradition related to the Article 27. However, unlike the electricity and telecommunications regime, it was not possible to implement the reform at the legislative and regulatory levels. In the wake of the stability that the sector had shown, the constitutional change opened up a Pandora's box that showed the impossibility of reaching an agreement between social movements, the government and the private sector on the institutions of the drinking water regime. To a large extent, the timing of these reforms, just after telecommunications and energy reform were approved by the *Pacto por México* coalition, may have altered and increased the political cost of success, since the discussion of the legislation took place just a few months before the mid-term elections.

Change in the water regime is less clear. There is some of the logic of regulation, but without state structures that replicate the regulatory state arrangements. At the same time, there is also some of the logic of developmentalism, but also a growing marketization of the sector that lacks the incorporation of dynamics of a regulatory state. The change in the urban water regime, conforms much more closely to hypothesis four, in which I suggested that it was to be expected that some sectors might display conversion dynamics, that is, an internal change in the regime without any alteration to the traditional

functioning of the state in the sector. An important indication in this regard is the comparatively recent bill for a new law in the provision of urban water services, which incorporates the ideas and logic of regulatory reform. Nevertheless, the move towards an approach driven by human rights could reveal a different logic of interaction between forms of the state, but an exploration of this dynamic exceeds the scope of this thesis. In sum, the results regarding hypothesis four are much more connected with the institutional changes in the urban water regime, though some questions remain.

In contrast, in telecommunications where disagreements between the actors in the sector were the norm, constitutional and legislative changes advanced without any major problems. From a period where it took several years just for the regulator to gain recognition, to now, when the regime has moved with broad political consensus to a position of constitutional regulation. Moreover, the reform included a long list of agreements that represented a true transition from a quasi-monopolistic regime to a much more competitive one. The ideas of regulatory governance were clearly incorporated into the constitutional reform and the legal regulatory framework was substantially strengthened. Despite the contrast with the incomplete change in the drinking water regime, there are some elements where the changes to the telecommunications regime are similar: most notably, thought the incorporation of an institutional path based on human rights. The enshrinement of audiences rights and the right to information within the regulator's mandate shows the intersection that the constitutional expansion of human rights in Mexico had with regulation. But the intersection of the telecommunications regime

with other utility sectors went beyond this. The creation of the *Red Compartida* and the spinal network projects are clear examples of objectives and instruments that go beyond the logic of the regulatory state. Moreover, this type of intervention, closer to developmentalist ideas where the state takes on responsibility for developing the utilities infrastructure, was made possible by the investment that the state itself had made in the electricity sector through the CFE. Thus, the development of state infrastructure that continued under the electricity regime with predominantly developmental structures facilitated the return of forms of developmental intervention to the telecommunications regime. While there is no doubt that the telecommunications regime consolidated a regulatory state model, even as developmentalist forms of intervention returned; the electricity regime also consolidated the regulatory model, with the constitutionalization and strengthening of the CRE and the liberalization of the electricity sector. However, the reform did not include the privatization of the CFE, although it did include its restructuring: the CFE was legally divided, with the creation of new subsidiaries for the different segments of the sector (generation, transmission and distribution). While these subsidiaries are controlled by a holding company- that remains under the umbrella of the CFE- the separation of CENACE, among others, has shifted responsibility to the executive. In fact, the executive, through the secretariat, retained important planning powers for the sector in terms of generation, transmission and distribution policymaking. Thus, it is difficult to establish the case that, in the logic of the reform of the electricity sector regime, regulatory governance predominated over

the other forms of intervention that characterized the sector in its developmental phase. It should thus be very clear that both change, and the reproduction of existing institutional dynamics are present in the reform of the electricity sector.

The most recent reform in the telecommunications sector not only consolidated the predominance of the regulatory state approach within the sector, it also created new dynamics and interactions between the regulatory approach and pre-existing, developmental institutions. Thus, through state infrastructure policy, the developmental path found a way back into the policy regime. As observed, this picture of multiple state paths being followed within a country and within as well as across sectors, resonates with the proposals laid out in hypothesis one.In addition, it confirms hypothesis three, as the telecommunications sector experienced a more radical reform towards marketization, while scope remained for the intersection of developmental dynamics with the market, thus producing an interaction between the regulatory and the developmental state within the sector. A similar dynamic, with a different path, is observable in the electricity regime. The layering of institutional arrangements and the accommodation between those associated with the regulatory state and those drawn from the developmental state (which nonetheless predominated) evolved, opening up new space for a broad regulatory change without dismantling the legacies of the developmental state. The reform reinforces the layering dynamic in the cohabitation of these forms of the state, showing the effectiveness of incremental changes as a way of triggering greater and more complex transformations. Again, the

institutional legacies of the regulatory and developmental state interact and found new ways of complementing each other, rather than seeking to replace one system with another, antithetical system. Thus, hypothesis two is confirmed through the case of regulatory change in the electricity regime.

Change and reproduction are mutually constitutive. The three cases clearly show how the roots of the state, embedded as different policy paradigms and different institutional arrangements within utility regimes, interact across sectors and even within the same sector. This is most evidently the case in the electricity sector but can also be observed in the wake of the recent changes introduced to the telecommunications regime, and to some extent in the urban water regime. Institutional legacies manage to persist and reproduce, encouraging the cohabitation of multiple state models of government. In the case of water and telecommunications it was interesting, if unexpected, to see that human rights had become an important part of the logic of the institutional path in these regimes. This observation not only provides an insight into the way the developmental and regulatory states interact and coexist within policy regimes, but also shows how they can interact with other kinds of processes and institutional paths, like democratization and the growth of the constitutional state. These cases can thus also be said to confirm hypothesis one, and open new avenues for empirical and normative analysis.

Also, a mechanism of layering was visible in the electricity regime, as the regulatory reform was initiated prior to any processes of privatization and liberalization, thus the regime incrementally

incorporated structures of regulatory governance as the participation of the agency and private actors gradually gained more power within the regime. Support for hypothesis two is less clear in the water sector, where the CNA did not create the conditions required for incremental regulatory reform. In turn, hypothesis three is difficult to apply. At first glance, privatization was effectively implemented in the middle of a critical juncture, however, the previous institutions were actually not completely replaced by the regulatory structures, rather their *de facto* and even *de jure* institutional accommodation was slow and gradual. Moreover, although the telecommunications sector was more open to private participation even before the privatization of Telmex, it seems also to have developed layering mechanisms.

Finally, to some extent the case of CNA and the urban water policy regime show some patterns of functional conversion. This can be observed in the sense that, the role and the jurisdiction of the CNA was not fundamentally changed during the periods of regulatory reform. Developmentalist logic persisted, as was the case under previous arrangements, although some market logics were now accommodated, they were not incorporated properly into regulatory governance structures. In fact, seems that this path of change might only recently have begun to open up.

Table 2. Regulatory and Developmental State cohabitation dynamics across and within utilities regimes

Utilities regime	Layering cohabitation	Isomorphism cohabitation	Conversion

Electricity	Regulatory and developmental state arrangements interact and cohabitate within the regime, reinforcing processes of incremental regulatory change and the endurance of developmental practices.	The creation of regulatory arrangements could be considered a form of isomorphism, but isomorphism cohabitation also requires the persistence of previous institutions.	No conversion processes are observable.
Telecommunications	The arrangements of the regulatory state predominantly rule the sector, elements of layering appeared once the regulatory approach was well established.	Regulatory isomorphism leaves little room for patterns of cohabitation and change with the developmental state. But as has been showed, the developmental state finds ways of reproducing when utility regimes interact materially through share infrastructure.	No conversion mechanism is visible in the dynamics of the sector.
Urban water	No proper layering mechanisms were observed. There are some developmental patterns and non-standard	The CNA followed in part the administrative design of some Mexican agencies, but its dynamics are instead closer to	The incorporation of some regulatory arrangements is a part of a process of internal adaptation

	regulatory arrangements.	Weberian bureaucracy than to a regulocracy.	related to a conversion process.

Concluding remarks

The discussion of the three cases as a whole shows similarities and differences that illustrate the ways in which change, and continuity occur. The institutions that predominated determine the patterns of change and institutional reproduction. In the twentieth century, the state's presence through the logic of development was crucial for the expansion of the network infrastructure with which these services managed to attain almost universal coverage. But the institutional roots out of which the three services developed varied considerably. If one looks carefully at the Mexican experience, it appears to show the persistence of some national developmental paths alongside the process of regulatory diffusion across sectors and countries. In this sense, the diffusion of regulatory agencies and regulatory approaches to utilities were, somehow, conditioned by the roots of previous states

that found different ways of reproducing. If, as I argue, developmental and regulatory paths came together in Mexico's utilities, it is important to study and analyze how those paths evolved to create the present policy regimes in the utilities sectors where the regulatory and developmental state structures coexist.

Thus, the article shows that the idea that the regulatory state would automatically replace the state institutions preceding it, as if it were a binary distinction, is an oversimplification that may be useful in showing certain trends within institutional change but which, when observed empirically across different sectors, is somewhat misleading. An approach that incorporates the possibility of dynamics between different forms of the state within a period of regulatory change seems to reflect actual state dynamics more accurately. It follows that there are many more varieties of institutional mechanisms for producing regulatory change than commonplace analyses of the regulatory state generally account for. The same is also true for the idea of developmental state institutions, where the literature takes it as given, that the cohabitation of developmental and regulatory institutions is an impossibility. Rather, these approaches seem to be based on functionalist conceptions of the state and national (macro-level) analysis that do not allow for a more complex understanding of the institutional reality in which state institutions operate, such as the persistence of institutional dynamics across time and the creative ways in which cohabitation at meso-level is made possible through reproduction mechanisms.

The observations presented in this chapter have the potential to be explored beyond the context of Mexican utilities. In fact, almost any

developed or developing country can display interactions and accommodations between different state models such as the regulatory and developmental state. The central issue here is to move from generalizations based on the analysis of macro trends over short periods of time, to the analysis of a greater number of cases over a longer period of time. This latter approach allows us to see the varieties and divergent paths in which regulatory reforms occur, as well as their interaction with previous state models. An interesting and unexpected finding of this research relates to the potential of exploring and researching the relationship of regulatory reforms with the human rights framework as another form of interaction between state models, demonstrating similar mechanisms of institutional change and reproduction, fundamentally through processes of diffusion and isomorphism.

All in all, this chapter makes clear the substantial influence of previous, developmental state structures through the process of reform, and how these structures lay the groundwork for regulatory change and policy action. Divergence across utility regimes has showed divergent paths in the adoption of regulatory governance and its reforms, as well as the varying sectorial salience of such institutional changes. Thus, analysis points to the importance of understanding processes of path dependence to the making of reforms in regulatory governance and in particular to the interactions of the regulatory state and the developmental state as mutually constitutive institutional forces of change and stability. To this end, a sequential and temporal analysis that pays attention to how change is pursued and systems are reproduced across policy regimes has shown that it

has the methodological and analytical strength necessary to capture the complex processes in which regulatory change evolves and is shaped. The future of the regulatory state might not be in the replacement of older state models, but might be pursued through regulatory reforms and regulation that complements and reinforces, and thus cohabitates with, the institutional arrangements of other state models.

References

Álvarez, C. L. 2018. *Telecomunicaciones y Radiodifusión en México.* Posgrado de Derecho de la UNAM.

Aboites Aguilar, L. (1998). *El agua de la nación. Una historia política de México (1888-1946).* México: CIESAS.

Aspe, P. 1992. "Estabilización macroeconómica y cambio estructural. La experiencia de México (1982-1988)", En Bazdresch, C., Bucay, N, Loaeza, S. y Lustig, N., *México: auge, crisis y ajuste*. México: Fondo de Cultura Económica.

Ayala Espino, J. L. 1988. *Estado y desarrollo: la formación de la economía mixta mexicana, (1920-1982).* Fondo de Cultura Económica- Secretaría de Energía, Minas e Industria Paraestatal.

Babb, S. 2001. *Managing Mexico: Economists From Nationalism to Neoliberalism.* Princeton: Princeton University Press.

Ballinas Valdes, C. 2011. *Political Struggles and the Forging of Autonomous Government Agencies* . Palgrave Macmillan .

Belmont, E. 2012. "Luz y Fuerza del Centro: ejes del conflicto entre el Sindiato Mexicano de Electricistas y el Gobierno Federal", *Estudios sociológicos* , 331-365.

Blyth, M. (2002). *Great Transformations: Economic Ideas and Institutional Change in the Twentieth Century.* Cambridge: Cambridge University Press.

Cárdenas, D. l. 1987. "El Teléfono", En Secretaría de Comunicaciones y Transportes, *Historia de las comunicaciones en México.*.

Campbell, J. L. (2010). "Institutional Reproduction and Change", En G. Morgan, J. L. Campbell, C. Crouch, & K. P. Richard, *The Oxford Handbook of Comparative Institutional Analysis* . Oxford: Oxford University Press.

Campos Aragon, N. L. 2003. *El modelo británico en la industria eléctrica mexicana.* México: Siglo XXI editores.

Carreón-Rodríguez, V. G., Jimenez San Vicente , A., & Rosellon , J. (2003). "The Mexican Electricity Sector: Economic, Legal and Policital Issues", *Working Paper 5*, 50.

Carreón-Rodríguez, V. G., Jimenez , A., & Rosellon , J. 2007. "The Mexican Electricity Sector: economic, legal and political issues", En D. G. Victor, & T. Heller , *The Political Economy of Power Sector Reform: The Experiences of Five Major Developing Countries.* Cambridge: Cambridge University Press.

Casar, M. A. 2013. "Quince años de gobiernos sin mayoría en el Congreso mexicano", *Política y gobierno, XX*(2), 219-263.

Cassasus, C. 1994. "Privatization of Telecommunications: the case of Mexico", En B. Wellenius, & P. A. Stern, *Implementing reforms in the telecomunications sector: Lessons from experience.* Worldbank.

Centro de Estudios Espinosa Yglesias (CEEY). 2010. *Evaluación del desempeño de los órganos reguladores en México.* México.

Comisión Federal de Mejora Regulatoria. 2011. *Fortaleza Institucional de los Reguladores Económicos en México*. México.

Comisión Nacional del Agua (2015). *Estadísticas del Agua en México.* México.

Culebro, J. E., & Larrañaga, P. 2013. "Development of Regulatory State in Mexico: From Political Economical Reform to the Institutional Failure", *Jerusalem Ppapers in Regulation & Governance, Working Paper* (53).

De la Garza Toledo, E. a. (1994). *Historia de la Industria Eléctrica en México Tomo 1.* Universidad Autónoma Metropolitana.

De Swaan, M. (2011). Un mercado inmaduro y concentrado. *Nexos*.

Diaz-Cayeros, A., & Magaloni, B. (2001). "Party dominance and the logic of electoral design in Mexico's transition to democracy". *Journal of Theoretical Politics, 13*(3), 271-293.

Diaz-Cayeros, A., Magaloni, B., & Weinsgast, B. (2003). "Tragic Brilliance: Equilibrium Party Hegemony in Mexico". *Available at SSRN*.

Domínguez, J. (2019). *La política del agua en México a través de sus Instituciones 1917-2017.* México: El Colegio de México.

_____. (2015). *La propuesta de Ley Generald e Aguas en México. Dos visions diferentes: la de la autoridad y la de la sociedad organizada [PowerPoint presentation]*. Available at: https://www.cepal.org/sites/default/files/events/files/presentacion_de_la_sra._judith_dominguez_serrano.pdf

Dubash, N. K., & Morgan , B. 2013. *The Rise of the Regulatory State of the South. Infrastructure and Development in Emerging Economies*. Vol. Law and Global Governance. Cambridge: Cambridge University Press.

Dussauge Laguna, M. I. (2016). "Organismos Constitucionales Autónomos y Reforma Administrativa en México". En Pardo, María del Carmen y Cejudo, Guillermo, *Trayectorias de reformas administrativas en México: legados y conexiones.* México: El Colegio de México, Centro de Estudios Internacionales .

Fabrizio, K. 2005. "Electric Power". En Nelson, R. R., *The Limits of Market Organization*, Rusell Sage Foundation.

Financiero, E. (2015).

Flamand, L. (2004). *The Vertical dimension of government: democratization and federalism in Mexico.* University of Rochester, Pro Quest Dissertations Publishing.

Foreign Policy. 2015. The War for Mexico's Water. Available: https://foreignpolicy.com/2015/07/31/the-war-for-privatization-mexicos-water/

Gingrich, J. 2015. "Varying Costs to Change? Institutional change in the public sector". *Governance, 28*(1), 41-60.

Hall, Peter H. (1993). "Policy Paradigms, Social Learning and the State: The Case of Economic Policy-Making in Britain". *25*(3), 275-96.

Henisz, W. J. (2005). "The Worldwide Diffusion of Market-Oriented Infrastructure Reform, 1977-1999", *American Sociological Review, 70*(6), 871-897.

Hernández Ochoa, C. E. 2018. *Reforma energética. Electricidad.* México: Fondo de Cultura Económica.

International Energy Agency, I. 2017. *Energy Beyond IEA countries: Mexico 2017.* IEA.

Jenkins, R. 1991. "The Political Economy of Industrialization: A Comparison of Latin American and East Asian Newly Industrializing Countries", In Development and Change, 22(2), 197-231.

Jordana, J. 2010. "Autonomous Regulatory Agencies in Democratic Mexico", *Law and Bussines Review of Americas, 16* (4).

_____ 2012. "The institutional development on the Latin American Regulatory state". En Levi-Faur, D., *Handbook of the Politics of Regulation* . Cheltenham: Edward Elgar.

_____ 2013. "Institutional Challenges of the Regulatory State in the Developing world", in Dubash, N. K., and Morgan , B., *The Rise of the Regulatory State of the South. Infrastructure and Development in Emerging Economies*. Vol. Law and Global Governance. Cambridge: Cambridge University Press.

Jordana, J., Levi-Faur, D., & Puig, I. 2006. "The Limits of Europeanization: Regulatory Reforms in the Spanish and Portuguese Telecommunications and Electricity Sectors". *Governance, 19* (3).

Koning, E. 2016. The three institutionalisms and institutional dynamics: Understanding endogenous and exogenous change. Journal of Public Policy. 36(4), 639-664. Doi: 10.1017/SO143814X15000240

Lawson,C. 2000. "Mexico's Unfinished Transition: Democratization and Authoritarian Enclaves in Mexico", Mexican Studies, 16(2): 267-287.

Levi-Faur, D. 2013. "The Odyssey of the Regulatory State: From a "Thin" Monomorphic Concept to a "Thick" and Polymorphic Concept", 35(1-2), 29-50.

Levi-Faur, D., & Jordana , J. 2006. "Toward a Latin American Regulatory State? The Difussion of Autonomous Regulatory Agencies Across Countries and Sector". *International Journal of Public Administration, 4* (1), 335-366.

Levitsky, S., and Way, L. 2010. Competitive Authoritarianism: Hybrid Regimes after the Cold War (Problems of International Politics):

Cambridge: Cambridge University Press. Doi: 10.1017/CBO978511751353.

Locke, R. M., and Thelen, K. 1995. "Apples and Oranges Revisited: Contextualized Comparisons and the Study of Comparative Labor Politics", in Politics and Society, 23(3): 337-367.

Lopez Noriega, S., & Velasquez Lopez Velarde , R. (2018). *Pacto por México.* México: Fondo de Cultura Económica .

Lustig, N. (1998). *Mexico: The Remaking of an Economy.* Washinton: Brookings Institution Press.

MacLeod, D. (2004). *Downsizing the State. Privatization and the Limits of Neoliberal Reform in Mexico.* The Pennsylvania State University Press.

Madrazo Lajous, A., & Zambrano Porras, J. L. 2007. "La 'Ley Televisa' ante la Suprema Corte", *ISONOMÍA* (26), abril.

Magaloni, B. 2005. "The Demise of Mexico's One-Party Dominant Regime: Elite Choices and the Masses in the Establishment of Democracy", En F. Hagopian, & S. Mainwaring, *The Third Wave of Democratization in Latin America: Advances and Setbacks* (págs. 121-146). Cambridge: Cambridge University Press.

Magaloni, B. 2006. *Voting for Autocracy: Hegemonic party Survival and its Demise in Mexico.* Cambridge : Cambridge University Press.

March, J. G. and Olsen, J. P., 2006. "Elaborating the "New Institutionalism", in Binder, S. A., Rhodes, R. A. W. and Rockman, B. A., The Oxford Handbook of Political Institutions, Oxford: Oxford University Press.

Mariscal, J. 2002. *Unfinished business: telecommunications reform in Mexico.* Westport: Greenwood Publishing Group.

Mariscal, J. 2004. "Telecommunications reform in Mexico from a comparative perspective", *Latin American Politics and Society, 46*(3), 83-114.

Mariscal, J., & Rivera, E. 2007. "Regulación y competencia en las telecomunicaciones mexicanas", *CEPAL, Serie Estudios y Perspectivas*(83), 44.

Martínez-Gallardo, C., and Murillo, M. V. 2011. "Agency under constraint: Ideological preferences and the politics of electricity regulation in Latin America", in Regulation and Governance, 5(3), 350-367.

Melgar, L. 2010. "Energy transition: a path toward sustainable development for Mexico", *Latin American Policy, 1*(1), 98-113.

Melgar, L. 2017. *Mexico'a Energy Reform [PowerPoint presentation].* Lecture at the Massachusetts Institute of Technology, Center for International Studies. Available at: https://energy.mit.edu/wp-content/uploads/2017/01/Lourdes-Melgar-Mexicos-Energy-Reform.pdf.

Minns, J. 2006. *The Politics of Developmentalism. The Midas States of Mexico, South Korea and Taiwan* . Cheltenham: Palgrave MacMillan.

Mota Prado, M. 2012. "Implementing independent regulatory agencies in Brazil: The contrasting experiencies in the electricity and telecommunications sectors", *Regulation and Governance, 6*(3).

Murillo, M. V. 2009. *Political Competition, Partisanship, and Policy Making in Latin American Public Utilities. Cambridge Studies in Comparative Politics.* Cambridge: Cambridge University Press.

Noll, R. G., & Salas, F. 1997. *Reestructuración y Privatización de Teléfonos de México.* Mexico: Unpublished Report for the Mexican Government.

OECD. (2012). *OECD Review of Telecommunication Policy and Regulation in Mexico,* OECD Publishing .

OECD. (2013). *Making Water Reform Happen in Mexico* . París: OECD Studies in Water.

Offe C. (2004) Political Institutions and Social Power: Some Conceptual Explorations. In: Stykow P., Beyer J. (eds) Gesellschaft mit beschränkter Hoffnung. VS Verlag für Sozialwissenschaften

Orren, K. and Skowronek, S. 1994. "Beyond the Iconography of Order: Notes for a ''New'' Institutionalism". *In The Dynamics of American Politics*, ed. L. C. Dodd and C. Jillson. Boulder, Colo.: Westview Press.

Pacheco-Vega, R. (2015). Agua embotellada en México: de la privatización del suministro a la mercantilización de los recursos hídricos. *Espiral, Estudios sobre Estado y Sociedad. Mayo-junio, XXII* (63).

Palerm, V. J., & Martinez S., T. 2009. *Aventuras con el agua: la administración del agua de riego: historia y teoría.* México: Colegio de Postgraduados.

Pardo, M. C. 2011. “El Estado mexicano: ¿de la intervención a la regulación?” En Loaeza, S. y Prud'homme, J., *Los grandes problemas de Mexico.* Instituciones y procesos políticos. Vol. XIV, págs. 71-119. México: El Colegio de México.

Petersen Cortés, G. 2016. Instituciones, agentes y reformas estructurales. Las reformas energéticas de 2008 y 2013 en perspectiva comparada. *Foro Internacional* , 657-683.

Pierson, P. (2000). “Not Just What, but When: Timing and Sequence in Political Processes”, *Studies in American Political Development, 14* (1), 72-92.

Pierson, P. (2004). *Politics in Time: History, Institutions, and Social Analysis.* Princeton University Press.

Pineda, N. 1999. *Urban water policy in Mexico: municipalization and privatization of water services.* Dissertation. University of Texas, Austin. .

_____ 2000. “La privatización de servicios urbanos. El caso del agua potable en Navojoa, Sonora”, *Estudios Sociales, 19*.

_____ 2002. “La política urbana de agua potable en México: del centralismo y los subsidios a la municipalización, la autosuficiencia y la privatización”, *Región y Sociedad, XIV*(24).

Pineda, N., y Salazar Adams, A. 2008. “De las juntas federales a las empresas de agua: la evolución institucional de los servicios de agua en México 1938-2008”, en R. Olivares, & R. Sandoval, *El agua potable en México. Historia reciente, actores, procesos y propuestas.* México : Asociación Nacional de Empresas de Agua y Saneamiento A.C.

Presidencia de la República. 2012. *Pacto por México* .

Proceso. (22 de February de 2009). El escándalo una cortina de humo. *Proceso*.

Rodríguez Padilla, V. 2016. Industria eléctrica en México: tensión entre el Estado y el mercado. *Revista Problemas del Desarrollo, 185*(47).

Rodríguez, B. E. (2008). Agua y saneamiento en México: avances, errores y alternativas. En R. Olivares, & R. Sandoval , *El Agua potable en México: Historia reciente, actores, procesos y propuestas* . México: Asociación de Empresas de Agua y Saneamiento A.C. .

Roldán Xopa, J. (2018). *La ordenación constitucional de la economía. Del Estado regulador al Estado garante.* México : Fondo de Cultura Económica.

Ross, S. B. (1999). "The Desarrollista State in Brazil and Mexico", in M. Woo-Cumings, *The Developmental State.* Ithaca: Cornell University Press.

Rousseau, I. 2006. "Las transformaciones de la política de hidrocarburos en México en el contexto de la transición democrática. Esquemas organizaciones y estrategias de actores (1984-2004)". *Foro Internacional*.

Ruíz Dueñas, J. (1988). *Empresa Pública* . México: Fondo de Cultura Económica.

Salazar, P. 2014. La Reforma constitucional sobre derechos humanos. Una guía conceptual. Instituto Belisario Domínguez, Senado de la República. México.

Sanchez Salazar, M. T. 2004. La inversión privada en el sector eléctrico en México: marco

institucional y estructura territorial. *Boletín del Instituto de Geografía, UNAM*(54), 67-92.

Spiller P.T., Tommasi M. 2008. "The Institutions of Regulation: An Application to Public Utilities". In: Ménard C., Shirley M.M. (eds) Handbook of New Institutional Economics. Springer, Berlin, Heidelberg

Streeck, W. and Thelen, K., 2005. "Introduction: Institutional Change in Advanced Political Economies", in Streck, W. and Thelen, Kathlen (eds.), *Beyond Continuity. Institutional Change in Advanced Political Economies*, Oxford: Oxford University Press.

Téllez, L. 1999. La Reforma Eléctrica. Nexos: https://www.nexos.com.mx/?p=9193

Thelen, K. 1999. "Historial Institutionalism in Comparative Politics", Annual Review of Political Science, 2:1, 369-404.

United Nations. 2010. *Resolution 64/292.* United Nations .

Vietor, R. H., and Haviland, S. T. 2017. "Mexico's Energy Reform", *Harvard Business School Case*, 717-027.

Weingast, B. R. 2003. "The Performance and Stability of Federalism, Mexican Style: An Institutional Perspective", Series on the Role of

Institutions in Promoting Economic Growth, Forum 7: Institutional Barriers to Economic Change: Cases Considered. Washhington D.C.
Weingast, B. R. 2008. The Performance and Stability of Federalism: An Institutional Perspective. En C. Ménard, & M. Shirley, *Handbook of New Institutional Economics* (págs. 149-174). Springer .

Vom Hau, Matthias. 2008. "State Infrastructural Power and Nationalism: Comparative Lessons from Mexico and Argentina", *Studies in Comparative International Development,*43: 3-4:334-354.

Wionczek, M. 1965. *The State and the Electric-Power Industry in Mexico, 1895-1965.* Cambridge, Massachusets: Harvard University Press.

Interviews

1. Interview with former CRE president's chief of staff
2. Interview with former SENER's official
3. Interview with CFE independent board's advisor
4. Interview with former COFETEL's president
5. Interview with former Nextel's vicepresident of the regulatory division
6. Interview with former IFT's commissioner
7. Interview with former CNA'S legal subdirector
8. Interview with water policy expert

III. ESTRATEGIAS DE RENDICIÓN DE CUENTAS DE LAS AGENCIAS REGULADORAS EN MÉXICO: LOS CASOS DE LA CNBV, COFEPRIS E IFT[25]

Introducción

Desde los años noventa, se desarrolló en México un proceso de innovación institucional basado en el establecimiento de agencias reguladoras independientes (ARI), sugiriendo la progresiva construcción de un estado regulador, con características distintas al modelo tradicional de estado desarrollista que había caracterizado al estado mexicano durante buena parte del siglo XX (Jordana 2011, Culebro y Larrañaga 2013, Pardo 2012). Por otra parte, en el contexto de la transición democrática, especialmente durante la primera década del siglo XXI, la rendición de cuentas de las instituciones públicas se convirtió en un principio clave del debate político en torno a la modernización de la administración pública mexicana (Ackerman, 2007; Pardo y Cejudo 2016, Cejudo *et al* 2012).

A partir de estas trayectorias de transformación institucional, en este capítulo se discute y analiza en qué medida los debates sobre rendición de cuentas afectaron las agencias reguladoras mexicanas ya establecidas, impulsando procesos de cambio en el modo en que rendían cuentas.

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Nuestra atención se centra en explorar en qué medida las agencias impulsaron agendas propias de rendición de cuentas que fueron más allá de las obligaciones formales a las que les sujetaba el marco institucional, desarrollando nuevos mecanismos, tanto formales como informales. En ese marco, nos proponemos conocer mejor cómo las agencias reguladoras mexicanas consiguieron asentarse institucionalmente -sí realmente lo lograron-, y en qué medida la rendición de cuentas fue un aspecto clave de su proceso de consolidación institucional.

Con este propósito, el capítulo analiza tres casos de agencias reguladoras (ARI) con distintos grados de independencia, cuya actividad se centra en sectores muy distintos: La Comisión Nacional Bancaria y de Valores (CNBV), así como la Comisión Federal de Telecomunicaciones (COFETEL) con su transición al Instituto Federal de Telecomunicaciones (IFT) y la Comisión para la Protección de los Riesgos Sanitarios (COFEPRIS). Mientras la CNBV representa un caso de larga tradición en el entorno administrativo mexicano, la COFETEL nos muestra un caso de agencia reguladora creada en el proceso de reestructuración y liberalización de la economía mexicana durante los años noventa. Finalmente, el caso de COFEPRIS constituye una agencia más joven, centrada en la regulación de riesgos, impulsada a principios de este siglo.

Para centrar nuestro argumento partimos de las siguientes preguntas: primero, indagamos, ¿cuáles son los mecanismos formales e informales que usan las agencias para rendir cuentas a sus audiencias?, después, observamos si su uso muestra un propósito

estratégico que les dé mayores posibilidades de fortalecer su autonomía e independencia *vis-à-vis* otros actores públicos y privados. Observamos, por tanto, los diseños institucionales y el funcionamiento en la práctica de los mecanismos de rendición de cuentas de las agencias reguladoras mexicanas, tanto si fueron definidos en el momento constitutivo de las agencias, como si se incorporaron con posterioridad. Asimismo, también consideramos la incorporación de mecanismos generales de rendición de cuentas, o bien las iniciativas particulares, fundamentalmente informales, que las propias agencias impulsaron.

La construcción de los casos se basa en una variedad de fuentes. Primero, identificamos los mecanismos formales de rendición de cuentas mediante el análisis de la legislación, informes y literatura jurídica; segundo, para identificar y contrastar los mecanismos formales con los informales utilizamos entrevistas que incluyen a reguladores y otros actores públicos y privados que participan en los procesos de regulación de las agencias; y tercero, incluimos un breve análisis de prensa sobre las actividades de las agencias, que nos permitió identificar eventos que ayudar a mostrar las dinámicas de interacción entre las agencias y las audiencias en el proceso regulatorio a propósito de ciertas prácticas de rendición de cuentas.

El recorrido que proponemos es el siguiente. En primer término, situaremos el debate de las ARI y la rendición de cuentas en la regulación, así como los conceptos clave para este trabajo. Posteriormente, contextualizaremos las reformas administrativas mexicanas de las que se derivan las dos tendencias de reforma que analizamos: la de rendición de cuentas y la de regulación.

Inmediatamente después, desarrollaremos los tres casos de estudio. Finalizaremos con los principales resultados de la comparación y las conclusiones.

1. Agencias reguladoras, legitimidad y el análisis de la rendición de la rendición de cuentas

Una de las transformaciones globales en la gobernanza del capitalismo más visibles al inicio de este siglo fue la difusión de agencias reguladoras. Con frecuencia su diseño supone la delegación de poderes del Ejecutivo con una protección formal a su toma de decisiones, lo que les suele dar un carácter independiente dentro de la administración pública. Este proceso de agencificación se incorporó de manera vertiginosa a partir de los años ochenta, generando una oleada de difusión de carácter global, que implicó la creación de agencias reguladoras en casi todos los países del mundo (Gilardi 2005; Levi-Faur y Jordana 2005; Jordana *et al* 2011). Una parte de las nuevas agencias se crearon para regular sectores financieros, o en nuevos mercados liberalizados, como los sectores de servicios en red, pero también se crearon numerosas agencias en sectores de regulación de riesgos, como los medicamentos, los riegos laborales o la seguridad alimentaria. Aunque la historia e idea de Estado regulador (Braitwaite 2006; Majone 1994, 1997; Moran 2003) supone una constelación de arreglos institucionales policéntricos (Levi-Faur 2013) que van más allá de la creación de agencias reguladoras, estas son su institución más visible y conspicua (OECD, 2002:91). A través de estas se estructura y modula la gobernanza de la regulación**.**

Las fórmulas de diseño institucional de las agencias -a la par de la

autonomía de la que gozan- a menudo incluyen también estructuras institucionales de rendición de cuentas (Majone 2000) o, en otras palabras, mecanismos que buscan legitimar tanto su desempeño como sus procedimientos (Maggeti 2010). Algunos autores han argumentado que pueden surgir tensiones entre los arreglos de autonomía y rendición de cuentas, en la medida que la rendición de cuentas puede minar la efectividad de su autonomía (Scott 2000, Black 2007). El equilibrio no es de ninguna manera sencillo. Hay cierta evidencia empírica que sostiene que al incrementar la atención en la rendición de cuentas como valor público e institucional se pueden afectar negativamente otros valores públicos igualmente importantes, como la efectividad, la eficiencia y el aprendizaje (Bovens y Shillemans 2014). Se trata, pues, de un arreglo institucional complejo, con sus propios riesgos. Al mismo tiempo, es un mecanismo necesario para mejorar el desempeño de las ARI, por tanto, un instrumento de la mayor importancia para conocer los resultados que la sociedad espera de éstas (Black 2012).

Antes de avanzar en nuestro marco conceptual, hay que destacar que la investigación sobre rendición de cuentas en la actividad de las agencias reguladoras ha enfrentado problemas conceptuales típicos de nociones a las que se les da expansivo uso como mecanismo y la sobrecarga valorativa como virtud pública en la que se incurre cuando se habla del concepto de rendición de cuentas (Bovens 2010). Así, con el paso del tiempo, la idea de rendición de cuentas se ha expandido en una miríada de nociones confusas (Mulgan 2000), provocando su estiramiento conceptual (Sartori 1970). De aquí que se haya dificultado – y seguramente oscurecido- la posibilidad de

construir evaluaciones empíricamente adecuadas (Bovens 2007). Creemos que la definición acotada y agnóstica de rendición de cuentas de M. Bovens (2007, p. 450) que entiende ésta como un mecanismo específico mediante el que se establece una "relación entre un actor y su foro, en el que el actor tiene la obligación de explicar y justificar su conducta, el foro puede plantear preguntas y emitir juicios, mientras que el actor puede enfrentar consecuencias", captura el encadenamiento de acciones y relaciones que reproducen las prácticas de rendición de cuentas entre las agencias y su foro. Las agencias tienen la obligación de explicar y justificar sus decisiones, y frente a estas decisiones el foro puede juzgar la pertinencia, proporcionalidad, eficiencia, legalidad, etc., de la decisión, lo que puede derivar en importantes consecuencias para los objetivos de la agencia. Por otra parte, es importante para nuestra aproximación que la definición de Bovens no distingue en su secuencia los mecanismos formales de los informales, con lo cual no excluye la posibilidad de que ambos tipos de prácticas coexistan y se refuercen.

Consecuentemente, las relaciones de rendición de cuentas entre la agencia y su foro se vinculan con toda la cadena de relaciones de la agencia, y contribuyen a estructurar las redes complejas de pesos y contrapesos institucionales en las que estas desarrollan su actividad (Scott 2000, p. 55). Usualmente se ha enfatizado el análisis de los mecanismos más formales de rendición de cuentas, especialmente en la importancia de canales gubernamentales y legislativos en el proceso de control o supervisión de las actividades de las agencias reguladoras (Lodge 2004). En otras palabras, se trata de enfoques en los que predomina el análisis agente-principal de la rendición de

cuentas de las agencias (Busoic y Lodge 2015; Bianculli et al 2015). Sin embargo, aquí consideramos que para entender las dinámicas y prácticas de los regímenes de rendición de cuentas se necesita ampliar el análisis a tres tipos de relaciones: 1) ascendentes, de tipo agente- principal (típicamente en esta dirección se registra la relación entre ARIs con el congreso y el ejecutivo); 2) horizontales (típicamente relaciones entre agencias, esto es, intergubernamentales a nivel nacional y transnacional[26] y y 3) descendentes (típicamente con los regulados, asociaciones de usuarios y ciudadanos) (Scott 2000, p. 42). Las tres dimensiones componen una visión de "360 grados" de las relaciones de rendición de cuentas (Mulgan 2011, p. 4).

Ahora bien, dentro de estas tres dimensiones (ascendente, horizontal y descendente) proponemos identificar las prácticas (formales e informales) de rendición de cuentas que despliegan las agencias.

En el campo de la gobernanza de la regulación, recientes estudios han demostrado la utilidad de pasar de las reglas y el análisis legal a la investigación empírica de las prácticas de rendición de cuentas (Busoic 2013). Una ventaja de esta aproximación es que se amplían significativamente las posibilidades de entender las implicaciones de los regímenes de rendición cuentas en el fortalecimiento, efectividad y legitimidad de las agencias. Con esto no se quiere decir que las reglas formales no importen en el contexto de la rendición de cuentas, simplemente se señala que siendo necesarias son insuficientes a la

[26] Para autores como Maggeti (2011) las relaciones transnacionales que interactúan formalmente como relaciones horizontales tienen la potencialidad de impulsar una mayor rendición de cuentas y fortalecer su legitimidad.

hora de capturar las relaciones que se establecen entre las ARI y sus foros si éstas las entendemos también como relaciones de poder. De aquí que sea necesario capturar la interacción entre la dimensión formal e informal de la rendición de cuentas.

Además, la idea de la interacción entre lo formal e informal en el estudio de las ARI, también tiene eco en el argumento que Morgan y Dubash (2013) presentaron en su libro sobre regulación y desarrollo en sectores de infraestructura en países del llamado sur global - Argentina, Brasil, China, Colombia, Filipinas, India, entre otros- en el que encuentran que contrario a la idea de la regulación como un fenómeno cuidadosamente juridificado, con una cultura organizacional poco flexible, en realidad las agencias reguladoras se suelen mover en un continuo que va de las reglas a los acuerdos, es decir, del derecho a la política.

Más aún, conviene recordar que históricamente en el contexto latinoamericano, y mexicano en particular, la presencia de mecanismos informales que articulan y estructuran la vida pública ha sido un componente clave para el entendimiento de sus instituciones (Helmke y Levitsky 2006; O'Donnell 2006). En este orden de ideas, entendemos los mecanismos de rendición de cuentas formales como aquellos que se expresan en términos, fundamentalmente, jurídicos. En contraste, aquellos que identificamos como informales están basado en relaciones interpersonales (Romzek 2015), entendidos como aquellas interacciones que se transforman en convenciones sociales en las que se activan con regularidad y normalidad ciertos patrones de rendición de cuentas entre los actores involucrados (p. ej. a partir de reuniones, presentaciones o intercambios de información).

La relación no necesariamente es dicotómica, de hecho, los mecanismos informales pueden reforzar a los formales y construir relaciones de rendición de cuentas más fructíferas. No obstante, los problemas entre la agencia y su foro pueden darse cuando predomina un tipo de interacción sobre otra, esto es, en los extremos de lo formal y lo informal. También pueden entrar en tensión cuando un mecanismo informal empieza a reemplazar mecanismos formales que distorsionan la lógica pública del proceso de la política regulativa, o bien cuando un mecanismo formal se activa y colisiona con una práctica informal previamente establecida.

En suma, la relación entre la agencia y su foro a través de mecanismos ascendentes, horizontales y descendentes, tanto formales como informales, debe entenderse de manera dinámica con una multiplicidad de configuraciones espaciales y temporales que producen encadenamientos de acciones y eventos entre la agencia y su foro.

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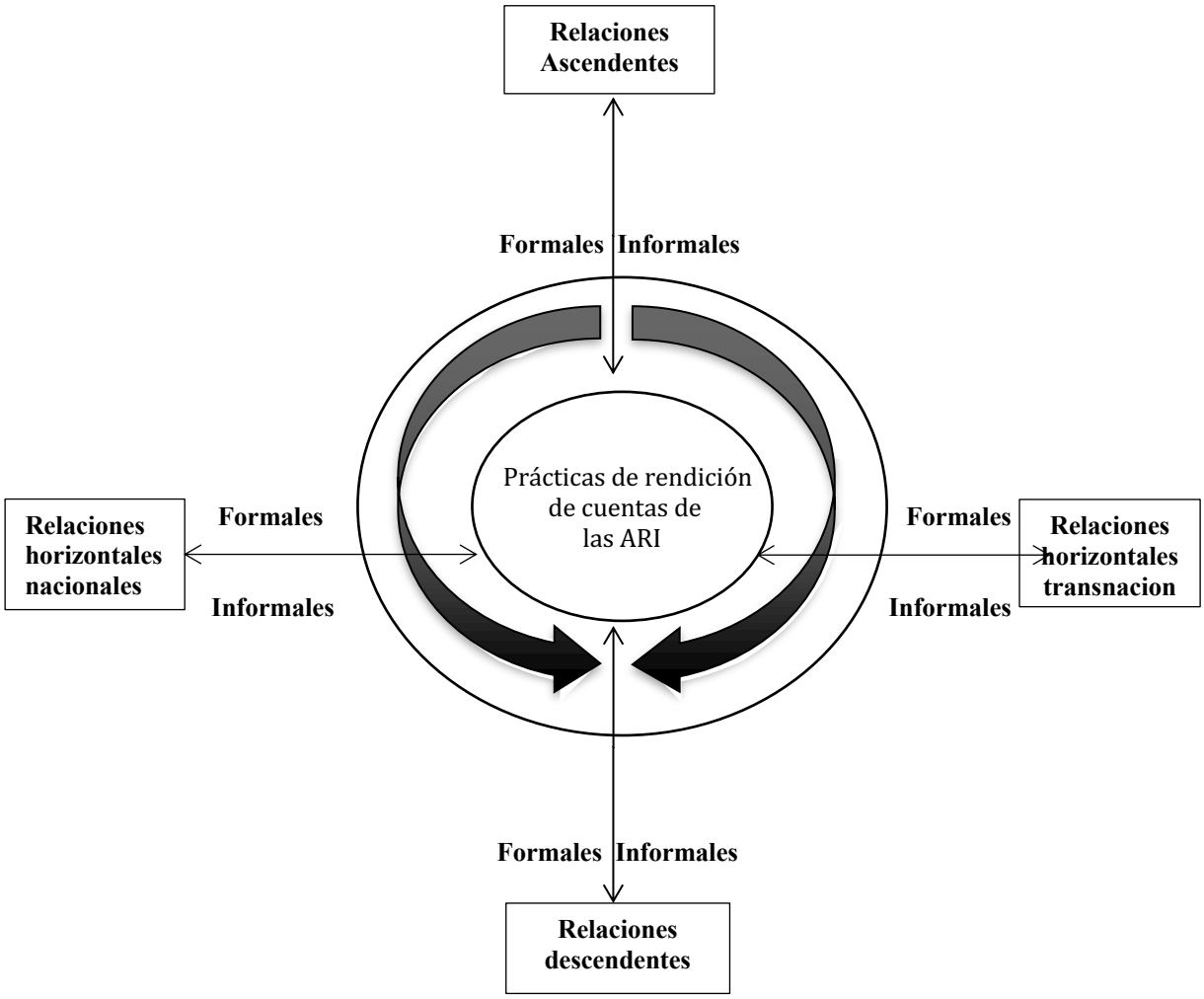
Gráfico 1. Relaciones e interacciones entre las prácticas de rendición de cuentas de las ARI y su foro



El gráfico 1 presenta el espacio en el que se intersectan las prácticas formales e informales de rendición de cuentas de las ARI y su foro en los distintos tipos de relaciones que se establecen entre los actores.

De nuevo, la idea central es que las relaciones ascendentes, horizontales (nacionales y transnacionales) y descendentes que establece la agencia, pueden darse tanto a través de prácticas formales como informales. También ilustra la interacción que estas prácticas pueden tener entre sí.

Pongamos un ejemplo. Un usuario solicita información sobre los riesgos de determinados fármacos. El usuario revisa la información, la compara con el registro sanitario de otros países y observa diferencias importantes que alertan sobre posibles efectos contra la salud. Decide hacer una campaña de divulgación en sus redes sociales. La sensibilidad de la información puede atraer la atención de medios de información. Lo que era una solicitud de información se convierte en noticia. La información resulta de interés para una comisión legislativa. Si la agencia no tiene relaciones con mecanismos formales con los legisladores, los integrantes de la comisión legislativa podrían buscar algún mecanismo parlamentario para que los reguladores expliquen la razón por la que se mantienen esos medicamentos en el registro sanitario. Esa interacción a su vez puede desencadenar que organizaciones de la sociedad civil denuncien ante tribunales la permanencia de esos medicamentos en el registro sanitario y su afectación al derecho a la salud.

Este ejemplo ilustra las maneras en que un mecanismo formal, que se da a partir de una relación en dirección descendente, se puede transformar en un asunto público que produce interacciones en la dirección ascendente y horizontal activando otros mecanismos formales e informales. De manera que, al aproximarse al estudio de la rendición de cuentas en las agencias, las dinámicas en las que se

activan las prácticas de rendición de cuentas se entretejen sucesiones de eventos y acciones que se expresan mediante mecanismos formales e informales que la agencia y su foro tienen a su disposición. A continuación, para situar el marco institucional de los casos de estudio, revisemos el proceso de agencificación y el importante desarrollo de mecanismos formales de rendición de cuentas en el caso mexicano.

2. Los caminos convergentes de las agencias reguladoras y la rendición de cuentas en México

México tiene su correlato de cambio institucional que, en alguno de sus componentes, concretamente en la delegación de poderes regulatorios a agencias autónomas, converge con la idea del 'surgimiento' del Estado regulador. Y aunque no es el propósito aquí examinar de manera exhaustiva el surgimiento y desarrollo de las agencias mexicanas, repasaremos, sucintamente, el contexto en el que se han creado y desarrollado, de manera que podamos entender cómo la reforma administrativa del Estado mexicano ha coincidido con el desarrollo de procesos y mecanismos relacionados con la rendición de cuentas.

Como en otras partes de Latinoamérica y Europa, se observa en México en las últimas décadas una clara inclinación por acompañar el diseño institucional de la reforma regulatoria con procesos de agencificación. Cabe decir, que el proceso de reformas administrativas y regulatorias ha formado parte, a manera de componente, de un programa más amplio de reconfiguración de la economía mexicana (Lustig 1998) dentro del cual se observa un énfasis, sobre todo en diversos sectores que han sido sujetos a

procesos de privatización y liberalización, en la función reguladora del Estado (Pardo 2012). Durante la década de los noventa, en un contexto todavía de hiperpresidencialismo, muchas iniciativas encontraron fuertes limitaciones en el diseño de su autonomía (Ballinas 2011). Sin embargo, estas condiciones político-institucionales en las que surgieron las agencias se fueron modificando gradualmente, abriendo nuevas posibilidades de diseño institucional.

De hecho, la puesta en marcha de los regímenes de regulación y la consolidación de sus agencias coincidió con una doble transición: la transformación del régimen político que pasó de un partido único a uno con elecciones competitivas (Magaloni 2005; Becerra, Salazar y Woldenberg 2005) al mismo tiempo que se avanzaba en la internacionalización del régimen económico que inició en los noventas con la firma del TLCAN (Calderón Martínez 2014). El proceso de democratización abrió espacios para que las demandas de rendición de cuentas adquirieran otro peso en la agenda pública. El cambio en las condiciones políticas modificó el número y peso de los actores que participan en la definición de las políticas, dejando un lugar menos central a las estructuras del viejo presidencialismo. La mayor pluralidad legislativa y alternancia en el poder ejecutivo derivó en unos gobiernos divididos, que abrieron un mayor espacio para la autonomía del poder legislativo en la configuración de la agenda de políticas públicas y su intervención en la política regulatoria (Nacif 2004; Jordana 2011).

Durante estos dos periodos, de creación y desarrollo de las ARI durante los gobiernos unificados y divididos, la efectividad y

fortaleza de las agencias se convirtió en el aspecto de mayor preocupación entre los circuitos de expertos y promotores de la agenda regulatoria (CEEY 2005, OECD 1999; Faya 2010). En este sentido, el diagnóstico del Centro de Estudios Espinosa Yglesias es relevante para entender y dimensionar las complejidades para la implementación de la política regulatoria. Este estudio valoró en forma crítica, a partir de paneles de expertos, tres dimensiones institucionales de las agencias reguladoras mexicanas: 1) su diseño normativo (mandato), 2) sus sistemas de procedimientos y de gestión (creación de normas y su adjudicación) y 3) su efectividad (resultados). Otro registro importante de las fortalezas y debilidades institucionales de la política de regulación son los estudios y recomendaciones de la OCDE (1999, 2004, 2012, 2017) particularmente influyentes en el sector de las telecomunicaciones. Todos estos estudios han delineado el menú de opciones de reforma regulatoria en la agenda pública en este sector, mientras en los otros sectores han encontrado menor eco.

Las recomendaciones de las instituciones que han promovido un mayor fortalecimiento de las ARI, generalmente, han visto en la fragmentación legislativa y las disputas políticas un impedimento para la profundización de la reforma regulatoria, aunque lo cierto es que sin que estas condiciones se modificaran han existido casos en los que se dan tanto secuencias de reformas incrementales como cambios institucionales de mayor profundidad. Ejemplo de lo anterior son los casos de la reforma energética y de hidrocarburos de los presidentes Felipe Calderón y Enrique Peña Nieto que enfrentaron condiciones similares de fragmentación legislativa y lograron, sin

embargo, resultados contrastantes (Petersen 2016; Méndez 2017). Las reformas regulatorias que incorporó el Pacto por México, entre 2013 y 2014, fueron el colofón de décadas de reformas modestas, de resistencias y una alta politización de actores públicos y privados que disputaron los niveles de independencia de las agencias.

Durante tres décadas de reformas regulatorias se generaron una multiplicidad de arreglos institucionales en los grados de autonomía, extensión de mandatos y recursos institucionales. Se generó una suerte de sistema dual de autonomías (Roldan Xopa 2016), en el que algunas agencias como el Instituto Federal de Telecomunicaciones y la Comisión Federal de Competencia tienen autonomía constitucional, al tiempo que otros reguladores sociales y económicos, como la COFEPRIS y la CNBV, mantienen un estatus de autonomía administrativa más acotada dentro de la estructura tradicional de la administración pública centralizada.

A pesar de estos cambios institucionales y del mayor interés de la literatura internacional por el impacto de la rendición de cuentas en el desempeño de las ARI, este ha sido un aspecto menos abordado en el análisis de su desarrollo institucional en México. Uno de los pocos estudios que hacen una revisión sistemática del diseño institucional de las agencias con relación a la rendición de cuentas es el de López Ayllón y Haddou Ruíz (2007). Los autores analizan los mecanismos formales de rendición de cuentas, verticales y horizontales, de la Comisión Federal de Competencia, la Comisión Reguladora de Energía, la Comisión Federal de Telecomunicaciones, la Comisión Federal de Mejora Regulatoria y el Instituto Federal de Acceso a la Información Pública. De estas cinco agencias, cuatro han sido

sustancialmente reformadas con posterioridad y, por otro lado, el estudio se enfoca en capturar, describir y evaluar los mecanismos formales poniendo énfasis en aquellos que se despliegan alrededor de las relaciones verticales con los otros poderes, y horizontales entre las agencias.

Paralelamente al proceso de transformación institucional que hemos descrito en el rol y la función reguladora del Estado mexicano a través de la incursión de las ARI, la operación de la administración pública en el que se sitúa la regulación ha experimentado un largo proceso de reformas administrativas vinculadas también al período de democratización y la preocupación de diversos sectores por articular una administración publica más transparente, que responda a las demandas de la sociedad de mayor rendición de cuentas. Desde los años noventa, la creación del IFE, ahora Instituto Nacional Electoral; de la CNDH; el IFAI, ahora Instituto Nacional de Acceso a la Información, pero también del Banco de México y el INEGI, los cinco con protección constitucional en términos de su autonomía, son ejemplos claros del esfuerzo de modernización administrativa y construcción de instituciones que controlan aspectos clave del ejercicio del poder público en México.

En el diseño constitucional de la transición democrática, diversas reformas conformaron un sistema institucional orientado a dotar a las instituciones y a la sociedad de mecanismos puntuales de rendición de cuentas. En este tenor, el acceso a la información pública es un mecanismo que obliga por regla general a las instituciones públicas, sujetos obligados en términos de la legislación, a proveer información a los ciudadanos. Entendido como derecho fundamental (Salazar

2008) se busca garantizar que las instituciones públicas o de interés público se sujeten al principio de máxima publicidad de manera que los ciudadanos y la sociedad civil tengan la posibilidad de obtener información y evaluar el quehacer gubernamental. Se trata, pues, de un principio y mecanismo que articula una política pública con un alto grado de institucionalización y que abrió la puerta a las demandas de apertura de la administración pública, de sus decisiones, actividades, recursos y organización (Larrañaga 2008). Como se puede observar, este mecanismo se relaciona únicamente con el primer paso de la secuencia que sigue la definición de Bovens de rendición de cuentas, es decir, mecanismos para presentar la información sobre sus decisiones al foro.

Por otra parte, otro mecanismo relevante para el estudio de la rendición de cuentas de las ARI en México es el que se ha desarrollado alrededor de la política de mejora regulatoria, impulsada por la Comisión de Mejora Regulatoria (COFEMER)[27], que se encarga de la evaluación del impacto y la calidad regulatoria de la administración pública federal. El mecanismo a través del cual la COFEMER promueve la transparencia en la elaboración y aplicación de las regulaciones es a través de la publicación de los proyectos de regulaciones de las agencias, que someten a evaluación su potencial impacto regulatorio. El proceso de mejora regulatoria sirve, entonces, a diferencia del acceso a la información pública, como un mecanismo *ex ante*.

[27] Al momento de realizar las entrevistas para este artículo seguía funcionando la COFEMER, por lo que en el período que se analiza aún no se reformaba la agencia que posteriormente fue sustituida por la Comisión Nacional de Mejora Regulatoria (CONAMER).

Si bien es cierto que el entramado de rendición de cuentas de aplicación general del Estado mexicano es más amplio que estos dos mecanismos de transparencia y mejora regulatoria, en el ámbito de la regulación, en tanto actividad pública que concentra sus tareas en la producción normativa más que en el gasto público, estos dos mecanismos son los de mayor uso y relevancia.

3. Metodología

Nuestro estudio explora los mecanismos de rendición de cuentas de tres agencias reguladoras y el uso estratégico que hacen de estos los reguladores para vincularse con sus respectivos foros. Los casos fueron seleccionados por dos principales razones. Una primera razón tiene que ver con la sensibilidad de la información que administran los reguladores. Administrar y evaluar los riesgos, hace a estos más susceptibles de interactuar a través de mecanismos informativos con sus foros. Al mismo tiempo, en los tres casos, las agencias se encuentran integradas en redes transnacionales de regulación con un desarrollo importante de mecanismos de rendición de cuentas que implican relaciones de intercambio de información.

Una segunda razón tiene que ver con los momentos en los que las agencias se crearon y su evolución junto al desarrollo de la rendición de cuentas en México. El orden cronológico es el siguiente: La CNBV fue creada en 1995, la COFETEL en 1996 y su sucesor el IFT en 2013, la COFEPRIS se crea en 2001. Las tres agencias se crean en momentos en los que el desarrollo institucional de la rendición de cuentas en México se encuentra en distintas fases de maduración. Esto nos posibilita observar posibles relaciones de esas fases con el desarrollo de mecanismos propios de las agencias. Si bien es cierto

que se trata de tres agencias que muestran cierta divergencia en términos de arreglos institucionales, todas comparten un mismo régimen general de rendición cuentas, lo que nos permite controlar sus diferencias en el uso de mecanismos formales e informales de rendición de cuentas.

Los mecanismos formales puestos en práctica por la CNBV, COFEPRIS e IFT fueron identificados con el análisis de los textos legales relevantes, sus páginas web y literatura secundaria. Para la búsqueda de prácticas informales, estas fuentes fueron complementadas con el análisis de eventos que enfrentaron las agencias en los que tuvieron que desplegar distintas estrategias de rendición de cuentas. Adicionalmente, se incorporan al análisis 35 entrevistas (11 en el caso de la CNBV, 12 en el de COFEPRIS y 12 en telecomunicaciones) con funcionarios y ex funcionarios de las tres agencias (incluyendo presidentes de las comisiones, comisionados y ex comisionados y representantes de diferentes áreas de las tres agencias sensibles a la política de rendición de cuentas), también fueron entrevistados representantes de diversas organizaciones (del sector público, privado y social) que intervienen en alguna de las tres dimensiones (ascendentes, horizontales y descendentes) como parte de las audiencias y el foro de las agencias. Estas entrevistas se realizaron durante el periodo que va del mes de abril al mes de noviembre de 2014. Con lo cual, la información incluye los aspectos de rendición de cuentas de las últimas reformas regulatorias y administrativas.

4. Los casos de la CNBV, COFEPRIS y el IFT

4.1 La Comisión Nacional Bancaria y de Valores (CNBV)

La organización actual de la CNBV es el resultado de sucesivas reformas en la regulación del sector financiero mexicano, como respuesta a diversas crisis que tuvieron como colofón la privatización y liberalización de la banca (Sigmond, 2010). La CNBV en 1995 se creó a partir de la fusión de dos agencias de larga tradición: la Comisión Nacional Bancaria[28] (CNB) y la Comisión Nacional de Valores[29] (CNV). La fusión se produjo como reacción a los desequilibrios que se produjeron en plena transición entre la Presidencia de Carlos Salinas de Gortari y la nueva Presidencia de Ernesto Zedillo.[30] Con ello, se realizaron importantes reformas para fortalecer la supervisión de las instituciones financieras, lo que llevó a una reorganización que incluyó la fusión de la CNB y la CNV (Culebro 1998).

Como lo establece el artículo primero de la LCNBV, la agencia surgió con el mandato de "supervisar y regular en el ámbito de su

[28] La CNB fue creada en 1924 por la Ley General de Instituciones de Crédito y Establecimientos Bancarios, contaba con cierta independiente de la Secretaría de Hacienda y Crédito Público (SHCP) -que antes de 1924 dirigía directamente la supervisión del sector bancario-.

[29] Por su parte, la CNV fue creada en 1946 por decreto del entonces presidente Manuel Ávila Camacho, con la tarea de aprobar la oferta de valores y acciones mexicanas; aprobar o prohibir el registro de valores y acciones en el mercado de cambios mexicano u otros asuntos relacionados. En las próximas décadas, la CNV extendió sus prerrogativas a la evaluación, supervisión y sanción de las entidades que participan en la bolsa mexicana.

[30] Una crónica sobre la crisis en el periodo de transición de ambos gobiernos priistas se puede ver en este texto en *Nexos* de Sergio Silva Castañeda: http://www.nexos.com.mx/?p=15706

competencia a las entidades del sistema financiero mexicano… a fin de procurar su estabilidad y correcto funcionamiento, así como mantener y fomentar el sano y equilibrado desarrollo de dicho sistema en su conjunto, en protección de los intereses del público". Entre las principales responsabilidades de la CNBV se encuentran: la formulación de regulación prudencial (art. 4, II de la LCNBV), expedir y revocar las licencias de operación de los servicios financieros (art. 4, XXIX de la LCNBV), mantener el Registro Nacional de Valores y supervisar las entidades registradas (art. 4, XXVIII y XXX de la LCNBV), así como ordenar la suspensión de transacciones cuando el mercado se encuentre en condiciones adversas (art. 4, XXXV de la LCNBV).

En el plano organizacional, la CNBV es dirigida por un presidente que es designado por el Secretario de Hacienda y Crédito Público (art.14 de la LCNBV) y una Junta de Gobierno (artículo 11 de la LCNBV) que formula los objetivos y estrategias de política pública y regulatoria de la institución en términos de las necesidades del funcionamiento del conjunto del sistema financiero. La Junta está integrada por trece miembros: 1) tres miembros de la CNBV (el presidente de la Junta que es a su vez el Presidente de la CNBV y dos vicepresidentes), 2) cinco miembros son designados por la Secretaría de Hacienda y Crédito Público (SHCP), 3) tres por el Banco de México (Banxico), 4) mientras que la Comisión Nacional de Seguros y Fianzas (CNSF) y la Comisión Nacional del Sistema de Ahorro para el Retiro (CONSAR) tienen un miembro cada una.

Aunque la CNBV no es una agencia independiente de la estructura del ejecutivo, al estar incorporada en la administración pública

federal como órgano desconcentrado de la SHCP, cuenta con un grado importante de autonomía técnica y operativa (art. 1, LCNBV). Su estatus institucional se encuentra protegido a nivel legislativo y sus costos de gestión son cubiertos y financiados parcialmente por las entidades que regula, a través de los derechos que forman parte de sus ingresos (art. 18, LCNBV); en otras palabras, también cuenta con cierta autonomía presupuestaria.

A pesar de su persistencia durante más de veinte años en el aparato regulatorio de México, se observan algunas debilidades importantes en términos de autonomía e independencia (COFEMER 2012; Jordana 2010). Claramente la falta de protección con períodos fijos en la designación del presidente de la comisión y ausencia de claridad en las causales de destitución, mantienen a la agencia con niveles formales de incertidumbre e inestabilidad institucional en comparación con otras agencias mexicanas más consolidadas a nivel de autonomía como es el caso, incluso dentro del mismo sector financiero, del Banco de México (CEEY 2009).

4.1.1 Mecanismos de rendición de cuentas ascendente

A) La CNBV y el Ejecutivo

En relación con los mecanismos de rendición de cuentas con el Ejecutivo, un espacio de mucha influencia en la actuación de la CNBV se encuentra en su Junta de Gobierno. De aquí destaca que La LCNBV obliga al presidente de la agencia a presentar anualmente a la Junta de Gobierno la aprobación del presupuesto de la Comisión que, una vez aprobado, se presentará a la SHCP (art. 16 XI). Otros mecanismos están relacionados con sanciones a los prestadores de servicios financieros y el otorgamiento de licencias financieras para

ampliar los servicios de los participantes o abrir el mercado a nuevos entrantes. En estas áreas la CNBV necesita de la aprobación del Banxico y de la SHCP. A su vez, para darle operatividad a estas facultades compartidas, existen comités de trabajo con representación de estas tres instituciones que son establecidos para coordinar la toma de decisiones en materia de sanciones y autorizaciones. Otro espacio de interacción entre la CNBV y la SHCP se da en el seno del Consejo de Estabilidad del Sistema Financiero, ahí la agencia da a conocer sus actividades e informa sobre posibles riesgos (Entrevista 3). En suma, la mayor parte de los entrevistados coinciden en que la principal relación formal en dirección ascendente se da a través de la Junta de Gobierno y de los comités o comisiones mencionados desde los cuales el Ejecutivo participa activamente en la formulación de la regulación del sector (Entrevistas 1, 2, 3, 4).

A la par de estos mecanismos formales, existen canales informales permanentemente abiertos (Entrevista 4) entre la CNBV y la SHCP. En este ámbito uno de los funcionarios entrevistados nos comentó "…pasando al plano informal, hay una relación directa, continua, con algunas instancias de la Secretaría de Hacienda, en la cual hay mucha coordinación, hay mucha comunicación para ver algunos temas, incluso en la misma Junta de Gobierno. Se trata de una relación cotidiana principalmente con la Subsecretaría de Hacienda y Crédito Público, y todavía más estrecha con la Unidad de Banca y Ahorro" (Entrevista 2). Por su parte un exfuncionario de la agencia coincidió con la idea de que aunque existan mecanismos informales estos se dan en la misma lógica de los formales, esto es, en una relación de horizontalidad y de coordinación más que de control y supervisión

del trabajo de la CNBV (Entrevista 9).

B) La CNBV y el Congreso

Por otro parte, existen varios mecanismos formales de rendición de cuentas de la CNBV hacia el Congreso. Se pueden distinguir entre estos mecanismos las comparecencias obligatorias y coyunturales, así como la presentación de informes a la Auditoría Superior de la Federación que auxilia en la revisión de la cuenta pública a la Cámara de Diputados. Con relación a las comparecencias obligatorias, "a partir de la reforma financiera, el presidente de la Comisión tiene que ir al Congreso, junto con el Gobernador del Banco de México, a comparecer tres veces al año en la materia de redes de medios de disposición. Se trata de una regulación específica que publicamos a partir de la reforma financiera, respecto de la regulación en el mercado de disposición de dinero a través de medios, como cajeros automáticos, puntos de venta, tarjetas, móviles, etc." (Entrevista 1). Sin embargo, las comparecencias quedaron establecidas solamente como un mecanismo transitorio durante el periodo de formulación e implementación de esa regulación.

Por otra parte, existen comparecencias coyunturales que el Congreso le solicita a la CNBV a propósito de crisis puntuales (Entrevistas 1, 2 y 4). Sumadas ambas, el presidente de la CNBV, entre 2014 y 2015 asistió 6 veces al Congreso por casos como FICREA[31],

[31] Punto de acuerdo en el que la Comisión Permanente del Congreso de la Unión solicita información y comparecencia a la CNBV por el caso FICREA:

Oceanografía[32] y por mandato de la Ley de Transparencia y Ordenamiento de los Servicios Financieros (Entrevista 1). Por otro lado, otro espacio de interacción con el Congreso se da a partir de puntos de acuerdo. De esta forma los legisladores "solicitan información, donde nos hacen algunas puntualizaciones sobre nuestro trabajo" (Entrevista 1). Otro caso de interacción se da cuando "se instrumenta alguna nueva ley hay discusiones sobre la misma, como fue el caso ahora con la Ley del Crédito Popular" o el de la reforma financiera en el que la CNBV junto a la SHCP participó en las negociaciones de la legislación de su competencia (Entrevistas 1, 2, 4 y 9).

De acuerdo con la mayor parte de los entrevistados, la relación es continua y normalmente se da a través de mecanismos formales que se suelen concentrar en la Presidencia de la CNBV (Entrevista 3). A nivel informal es difícil identificar mecanismos específicos y

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http://gaceta.diputados.gob.mx/Gaceta/62/2015/ene/20150107-VI.html#Proposicion33

[32] Informe de actividades (2015) de la Comisión Especial para la atención y Seguimiento del caso Oceanografía del Senado de la Republica en el que se da cuenta de las solicitudes de información a la CNBV y comparecencias del Presidente de la comisión Jaime González Aguadé. En total se hicieron 4 solicitudes de información a la agencia entre el 2014 y 2015 y el Presidente de la agencia compareció ante la comisión especial el 9 de julio de 2014. http://www.senado.gob.mx/comisiones/oceanografia/docs/Informe.pdf

permanentes en los que se relacionan la agencia y el Congreso. Si acaso, uno que tener una dimensión informal es en el diseño y negociación de la legislación financiera.

4.1.2 Mecanismos de rendición de cuentas horizontal

La interacción de la CNBV con otras instituciones es objeto de la Ley de la CNBV que estipula que la agencia establecerá mecanismos de cooperación con la SHCP, el Instituto para la Protección al Ahorro Bancario (IPAB), el Banco de México y la Comisión Nacional para la Protección y Defensa de los Usuarios de Servicios Financieros (CONDUSEF). Así como algunas agencias del sector financiero participan en la Junta de Gobierno de la CNBV, la CNBV a su vez participa en la Junta de Gobierno de aquellas agencias. Este aspecto es interesante porque habla de una permanente coordinación entre las diferentes agencias que participan en la gobernanza del sistema financiero. Haciendo una escala en la frecuencia de la relación con las agencias del sector, un funcionario nos mencionó que la mayor frecuencia se concentra en la relación con el Banco de México, después hay una relación frecuente con la CONDUSEF y la CONSAR y en una menor medida con la CNSF (Entrevistas 2 y 9). Sobre la relación con el Banco de México, un ex funcionario de la CNBV que ahora es funcionario del Banco de México nos da una idea de la frecuencia con la que ambas agencias coordinan sus tareas, “en promedio, semanalmente tenemos una reunión telefónica o en oficina. Cada viernes nos sentamos a ver los temas regulatorios que tenemos pendientes” (Entrevista 10).

Por otra parte, fuera de las relaciones con agencias del sector financiero, existe también una relación y mecanismo horizontal con

la Procuraduría General de la Republica (PGR) en materia de lavado de dinero y actividades financieras ilícitas para la cual ambas agencias firmaron un convenio de coordinación (Entrevista 1). En este mismo canal horizontal la CNBV participa a través de la Procuraduría Fiscal con opiniones técnicas sobre delitos financieros que se ponen a disposición de la PGR (Entrevista 1). La CNBV también establece relaciones frecuentes con la COFEMER a través de los anteproyectos sujetos a manifestaciones de impacto regulatorio y con el INAI a través de las solicitudes de información.

En el plano internacional, la CNBV mantiene un abundante número de contactos con agencias de distintos foros internacionales. La CNBV forma parte del Comité Regional Interamericano (IARC), del Consejo de Reguladores de Valores de las Américas (COSRA) y de la Asociación de Supervisores de Bancos de las Américas (ASBA). También forma parte de la Organización Internacional de Comisiones de Valores (IOSCO), el Consejo de Estabilidad Financiera (FSB), es miembro del Comité de Basilea de Supervisión Bancaria (BCBS) y del Grupo de Acción Financiera (GAFI) (CNBV 2015). En estos foros, uno de los entrevistados con experiencia en las relaciones internacionales de la agencia nos comentó: “se tiene una comunicación bastante directa con organismos internacionales para ver los temas de reformas, indicadores, legislación, la estructura de los mercados en México, en esos casos hay una comunicación yo diría diaria…” (Entrevista 9). En este mismo sentido, uno de los temas más importantes en los que ha participado la CNBV es el de Basilea III. De acuerdo con uno de los entrevistados dos de las regulaciones que allí se definieron se trajeron directamente a la

legislación nacional, específicamente lo que tiene que ver con requerimientos de capital y los planes de recuperación y de resolución (Entrevista 9). Y aunque en principio estas relaciones no son formalmente espacios de rendición de cuentas, como veremos más adelante, estas relaciones transnacionales tienen la potencialidad de impulsar procesos de rendición de cuentas.

Se puede decir que en el plano horizontal, tanto nacional como internacional, se puede observar, un alto grado de formalización en las relaciones entre las agencias que participan en el foro de la CNBV. Una relación horizontal que, sin embargo, prácticamente pasó desapercibida por los entrevistados y de la que tampoco se encontró más información en las fuentes documentales es el de la CNBV con la Comisión Federal de Competencia (COFECE) (Entrevista 4). El tema es importante destacarlo porque es conocido el alto nivel de concentración que existe en el mercado financiero mexicano y porque formalmente existe un mecanismo horizontal en materia de fusión de entidades financieras en el que participan ambas agencias.

4.1.3 Mecanismos de rendición de cuentas descendente

Es interesante que en las entrevistas el mecanismo de mejora regulatoria que, en principio, funciona como un mecanismo horizontal, fuera identificado en casi todos los casos como uno descendente de rendición de cuentas. La razón es fácil de explicar: más allá de la valoración que haga la COFEMER en términos de costos de cumplimiento de la regulación de la CNBV, las manifestaciones de impacto regulatorio incluyen consultas públicas en los que participan los interesados, en este caso industria y usuarios de los servicios financieros. A partir de las entrevistas fue posible

establecer con claridad la relación entre el mecanismo formal que se establece a través las consultas públicas que coordina COFEMER y un mecanismo informal que la agencia tiene establecido desde hace tiempo (Entrevistas 1, 2, 3, 4, 5, 6, 8, 9 y 11). En palabras de un alto funcionario de la CNBV: “

> Hay también canales formales e informales. A lo mejor se me olvidó poner el tema de COFEMER en la parte de rendición de cuentas. Todas nuestras regulaciones nuevas tienen que informarse a la COFEMER para ser conocidas por el público…. Ahí se reciben comentarios y se pueden hacer cambios posteriormente. Pero también lo hacemos de forma informal, *cuando vamos a sacar una regulación lo platicamos con la industria*, vemos sus puntos de vista… tenemos reuniones mensuales con las organizaciones que aglomeran a diferentes intermediarios. Por ejemplo, con la Asociación de Bancos Mexicanos, nos reunimos cada mes. (Entrevista, 1)**.**

Otro de los entrevistados, señaló que existen dos tipos de reuniones entre la CNBV y la ABM. Una reunión de alto nivel del presidente y los vicepresidentes de la CNBV con el presidente y los vicepresidentes de la ABM cada semestre (Entrevista 6) y otras se dan conforme se necesitan entre los diferentes comités de la asociación y los vicepresidentes de la agencia (Entrevista 6). Luego existen otras reuniones más informales entre funcionarios de bancos o representantes de la ABM con funcionarios de la CNBV (Entrevista 6).

En este mismo sentido funcionarios de la ABM nos confirmaron un mecanismo informal de consulta de la regulación: “en general *no hay regulación que no se platique*. Nos escuchan nuestros argumentos,

nos explican sus razones" (Entrevista, 6)**.** Por su parte un funcionario de uno de los bancos regulados por la CNBV y ex funcionario de la misma agencia, también nos confirmó la importancia de este mecanismo informal: "se privilegia más este dialogo que el marco de consultas de COFEMER. Cuando hay inconformidad se usan las consultas de COFEMER para manifestar puntos de vista que no hayan logrado ser tomados en cuenta en los foros" (Entrevista 5)**.** En el mismo sentido, un funcionario de COFEMER reconoció que la CNBV suele "socializar" sus proyectos de regulación, lo que genera menos controversias entre las partes interesadas y la agencia en las consultas públicas (Entrevista 8). Este intercambio informal de la CNBV con la industria, no solamente se da con la ABM, también se tiene una relación estrecha, aunque menos frecuente, con la Asociación Mexicana de Instituciones Bursátiles (AMIB) y la Confederación de Cooperativas de Ahorro y Préstamo de México (CONCAMEX). De hecho, es interesante señalar que la legislación de sociedades cooperativas de préstamos sí establezca como un mecanismo formal, la obligación para que los anteproyectos se hagan del conocimiento directo de la industria, mientras que en el resto de los casos, más bien se trata de mecanismos voluntarios (Entrevista 4).

La proximidad entre la agencia y la industria contrasta con la lejanía que mantiene la CNBV con los usuarios. La explicación que dio uno de los funcionarios tiene que ver con que formalmente quien tiene la función de atender los casos de usuarios es la CONDUSEF, sin embargo, en casos puntuales y relevantes la agencia también atiende a usuarios como fue con el caso FICREA (Entrevista 1, 2, 3, 4, 9).

Formalmente, los usuarios también tienen posibilidad de participar en el proceso de mejora regulatoria, sin embargo, funcionarios de la CNBV confirmaron que las opiniones que se presentan en las consultas públicas normalmente provienen de la misma industria (Entrevista 3). Por otra parte, tampoco se identificó algún consejo consultivo que involucre y formalice la relación con organizaciones académicas, expertos y, en general, organizaciones de la sociedad civil.

La relación entre la CNBV y el INAI podría también ser considerado como un mecanismo descendente. Esto se debe a que cualquier contacto entre el INAI y la CNBV se activa a partir de solicitudes de información de los ciudadanos. Este proceso se establece en la Ley Federal de Transparencia y Acceso a la Información Pública (LFTAIP), que estipula que cualquier entidad pública debe poner a disposición cualquier documento relativo a su función y proporcionar un amplio acceso público a los mismos (artículo 2, 3 6, 121, 122 y 123 LFTAIP). Es interesante que siendo uno de los mecanismos formales más importantes de interacción entre la sociedad y el gobierno, en el caso de la CNBV no apareciera en las entrevistas como un mecanismo que se resaltara en la actividad cotidiana de la agencia. La agencia suele destacar la cantidad de información que provee a los usuarios y a la industria en su página de internet (informes anuales de actividades, boletines trimestrales con la regulación emitida, comunicados de prensa y cierta actividad en medios de comunicación) (Entrevistas 1, 2 y 4), pero se percibe un uso cauteloso de la información que provee vía solicitudes de información que gestiona el INAI. De acuerdo con el mismo INAI

(2016), efectivamente la CNBV forma parte de las 20 entidades del gobierno federal que más consultas recibe, con un total de 788,342 que abarcan el periodo de octubre 2015 a septiembre de 2016, en su portal de obligaciones de transparencia.

Cuadro 2. Mecanismos de rendición de cuentas de la CNBV

Mecanismos ascendentes		Mecanismos horizontales		Mecanismos descendentes	
Formal	Informal	Formal	Informal	Formal	Informal
-Informes a la Junta de Gobierno - Comparecencias e informes ante la Cámara de Diputados en materia de redes de disposición (formalizados en 2014) -Informe Presidencial al Congreso a través de la SHCP -Exhortos o	- Reuniones coyunturales con comisiones del Senado y Diputados	Nacionales: - Coordinación a partir del marco regulatorio -Convenios de colaboración Transnacionales: - Coordinación a partir de obligaciones del marco regulatorio y acuerdos de cooperación	- Reuniones, seminarios, opiniones y reportes	- Consultas publicas - Solicitudes de información -Informes anuales de actividades -Informes trimestrales de regulaciones y supervisión - Comunica	- Diferentes mecanismos de consulta con las asociaciones de entidades financieras (reuniones mensuales y reuniones técnicas para discusión de regulaciones)

puntos de acuerdo				dos de prensa	-No existen mecanismos informales de consulta con los usuarios de los servicios financieros.

4.1.4 Dinámicas de rendición de cuentas: el caso de la publicación de sanciones

Ahora revisaremos algunas dinámicas de rendición de cuentas que ejemplifican el flujo que adelantábamos en el Cuadro 1 entre mecanismos formales e informales en la interacción de las agencias y su foro.

Durante el período estudiado, hemos encontrado muy pocas noticias que vinculen directamente a la CNBV con cuestiones de transparencia o rendición de cuentas. No obstante, un caso interesante es el de la publicidad de sanciones a las entidades financieras. Este caso muestra la dinámica de prácticas de rendición de cuentas en las que las reglas formales e informales se superponen y enfatizan la relación de temporalidad que existe entre éstas. Hasta la reciente reforma financiera de 2014[33], la CNBV no estaba obligada a publicar

[33] Un extracto de los diferentes aspectos de la reforma financiera puede verse en:

la relación de entidades financieras sancionadas por malas prácticas. La práctica de la CNBV era publicar únicamente los montos de las sanciones por el tipo de entidades cuando éstas quedaban firmes ante los tribunales –lo que podía llevar hasta 7 años- o cuando los mismos regulados aceptaban su responsabilidad y acataban la sanción (Entrevista 1, 2 y 6). De esta manera el efecto disuasivo (*credible deterrence*) de las sanciones quedaba por completo diluido (Entrevista, 1, entrevista, 9).

Un caso de sanciones que por no ser divulgadas afectaron la credibilidad de la CNBV, se dio en un caso que involucró a HSBC. Entre 2007 y 2008 la CNBV identificó que la filial de HSBC México no cumplió con regulaciones prudenciales y de lavado de dinero.[34] Aunque la actuación de la CNBV inició de manera oportuna el proceso para sancionar esas operaciones, esta no fue publicada y la opinión pública en México se enteró de esta noticia sólo cuando intervinieron las autoridades de regulación financiera en Estados Unidos e Inglaterra, debido a que el asunto se había convertido ya en un escándalo internacional (Entrevista, 1).[35]

Un segundo evento vinculado a la publicación de las sanciones impuestas por la CNBV se vinculó a solicitudes de acceso de información pública a cargo de la ponencia de la comisionada del entonces IFAI, Jacqueline Peschard. A partir de recursos de revisión,

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http://reformas.gob.mx/wpcontent/uploads/2014/06/Explicacion_ampliada_de_la_Reforma_Financiera.pdf

[34] Ver: http://archivo.eluniversal.com.mx/notas/860827.html

[35] Ver: https://www.theguardian.com/business/2012/dec/11/hsbc-bank-us-money-laundering

modificó la clasificación como información reservada de la CNBV. Así, el IFAI obligó a la CNBV a dar a conocer la versión pública de 141 casos de sanciones de entidades financieras que incumplieron la regulación de prevención de lavado de dinero durante el período de 1997 a 2012. Se trataba en este caso de sanciones que ya habían agotado sus procesos jurisdiccionales, con lo cual no cabía la justificación de evitar su publicación por razones de protección de datos o vulneración de la integridad de los regulados.[36] Ambos eventos tuvieron efectos negativos sobre el prestigio y la credibilidad de la agencia. Como consecuencia, se estableció en la reforma financiera del año 2014 la obligación a la CNBV de publicar sus sanciones (art. 5 Bis 2). A raíz de estos casos "afortunadamente pudimos cambiar la ley en ese sentido, ahora cada quince de mes publicamos todas las sanciones de todo el sector financiero en la página de Internet, allí puedes verlas y en qué situación se encuentran los procesos de sanciones" (entrevista 1).[37]

El evento muestra con elocuencia las implicaciones de déficits de rendición de cuentas para la credibilidad de las agencias ante sus audiencias, incluyendo la dimensión internacional.

4.2. Comisión Federal para la Protección de los Riesgos Sanitarios

[36] Ver: http://archivo.eluniversal.com.mx/notas/912590.html

[37] Aquí se pueden consultar una relación histórica de las sanciones antes y después de la entrada en vigor de la obligación de su publicación: http://www.cnbv.gob.mx/PRENSA/Paginas/Sanciones-Historico.aspx

La COFEPRIS fue creada en 2001 durante el primer gobierno de alternancia de Vicente Fox. La actual COFEPRIS es producto de una reorganización administrativa de la Secretaría de Salud. La Subsecretaría se integraba por las Direcciones de Fármacos y Salud, Tecnologías, Control Sanitario de Productos y Servicios, Salud Ambiental, el Laboratorio Nacional de Salud Pública y el Departamento de Control de Publicidad. Sin embargo, dentro del proceso de agencificación y modernización administrativa de la administración pública federal, se consideró el establecimiento de una comisión reguladora que incorporara las funciones de la estructura administrativa de estas direcciones.

La agencia fue creada con autonomía técnica, administrativa y operativa, responsable del ejercicio de los poderes de regulación, control y promoción de la salud, en los términos de la Ley General de Salud (LGS). Posteriormente, una reforma importante en el desarrollo y fortalecimiento institucional de la COFEPRIS fue la relativa al 30 de junio de 2003, en la que los legisladores dotaron a la agencia en la LGS de un estatus legislativo como organismo regulador. No obstante, los legisladores mantuvieron la delegación de las funciones regulatorias de la COFEPRIS dentro de la estructura administrativa de la Secretaría de Salud, como organismo desconcentrado con autonomía administrativa, técnica y operativa (art. 17 bis, LGS).

La agencia cuenta con diversas fuentes de financiamiento. La misma reforma de 2003 incluyó sus fuentes de financiamiento. Su presupuesto se compone de las asignaciones que establezca la Ley de Ingresos y el Presupuesto de Egresos de la Federación, los que le sean

reasignados y del financiamiento que obtenga de donaciones nacionales e internacionales, fuentes de seguros de rescate y otros ingresos excepcionales que recupere la agencia, existe la posibilidad que sean incorporados como fuentes de financiamiento para su operación (art. 17 bis 1, LGS).

Por otro lado, la agencia es dirigida por un Comisionado Federal nombrado por el presidente de la República a propuesta del Secretario de Salud (art. 17 bis 2, LGS). Y Actualmente, para el ejercicio de sus funciones y competencias, la COFEPRIS está compuesta por ocho unidades administrativas y cuatro órganos de consulta y opinión (COFEMER, 2011).

Para poner en perspectiva la importancia económica de las funciones regulatorias que realiza COFEPRIS, hay que destacar que su supervisión abarca 15 grandes industrias del país[38], así como productos y establecimientos con un valor económico equivalente al 9.8% del PIB[39], que va desde laboratorios farmacéuticos, playas, restaurantes, hasta supermercados y farmacias, actividades en las que

[38] Dentro de las que encuentran: alimentos y bebidas, insumos para la salud, servicios de salud, otros productos de uso y consumo (cosméticos), plaguicidas, nutrientes vegetales y sustancias tóxicas, emergencias, salud laboral y riesgos ambientales

[39] Calculados con datos del censo económico de INEGI los productos regulados por la COFEPRIS equivaldrían a 1 billón 186 mil 399 millones de pesos que representan el 9. 8 % del PIB nacional. Esta información se puede consultar en el informe: COFEPRIS: Gestión de la salud pública en México, (2015): http://www.cofepris.gob.mx/Documents/NotasPrincipales/08012015.pdf

En este mismo sentido puede consultarse: Arriola, Mikel (25 de junio, 2011): http://archivo.eluniversal.com.mx/editoriales/53434.html

participan cerca de 6000 verificadores (entrevista, 1) que forman parte del Sistema Sanitario Federal (Arriola, 2011). [40]

4.2.1Mecanismos de rendición de cuentas ascendente

A) COFEPRIS y el Ejecutivo

La principal relación de COFEPRIS a nivel ascendente es con la Secretaría de Salud (SS). Como órgano desconcentrado de la SS se encuentra sujeta a la formulación de políticas públicas que define la SS (entrevistas 1, 2, 3, 4, 9 y 11). COFEPRIS provee informes periódicos a la SS (entrevista 4) pero no existe una obligación formal ni se publican. Como nos lo señaló un ex Comisionado Federal que en el momento de la entrevista se mantenía en funciones: "La rectoría de la COFEPRIS la tiene la Secretaría. Yo acuerdo con la SS de manera permanente, y la SS es el emisor de las políticas públicas que ejecuta la propia COFEPRIS. Esa es la forma por la cual no se pierde el control administrativo, sino que solamente se tiene una desconcentración" (entrevista 1), que otro funcionario confirmó diciendo que tienen "una gran dependencia administrativa de la Secretaría de Salud" (entrevista 3). Aunque, de acuerdo con otro de los entrevistados, "al final la Secretaría no incide en qué se aprueba y que no se aprueba" (entrevista 9). En ningún momento se mencionó el Consejo Interno -establecido en el Reglamento de la COFEPRIS-

[40] El Sistema Federal Sanitario con relación a la protección de riesgos sanitarios funciona a través del establecimiento de acuerdos entre las entidades federativas y la COFEPRIS, mismos que se denominan como "acuerdos específicos de coordinación para el ejercicio de facultades en materia de control y fomento sanitario". Ver la página Web de la agencia: http://www.cofepris.gob.mx/cofepris/Paginas/Historia.aspx

como un mecanismo que funcione de hecho para formalizar la relación con la SS y otras entidades del sector salud con las tareas de la agencia (art. 6).

Por otra parte, la COFEPRIS mantiene una relación que es relevante en términos de autonomía presupuestaria. En palabras de uno de los ex Comisionado Federales entrevistados: "también la Secretaría de Hacienda y Crédito Público tiene intervención, ya que administra los derechos que pagan los usuarios de la regulación por los servicios de COFEPRIS" (entrevista 9). Esta relación a partir de la Ley Federal de Derechos con la Subsecretaría de Ingresos de la SHCP es interesante no solamente por la importancia que tenga para el presupuesto de la agencia, sino también porque de esta relación surgió el nombramiento de Mikel Arriola como Comisionado Federal de COFEPRIS.

B) COFEPRIS y el Congreso

Formalmente, la información que el Congreso recibe de la COFEPRIS se proporciona a través de la SS y la Secretaria de Gobernación (entrevistas 1, 2, 4 y 9). Al ser el presupuesto de la COFEPRIS parte del presupuesto público federal, este está sujeto a su revisión por parte de la Auditoría Superior de la Federación (ASF). Por otro lado, la ASF también elabora auditorias de desempeño a los organismos que forman parte de la administración pública federal. El otro mecanismo formal, de nuevo en este caso indirecto, con el Congreso, es la información que anualmente Presidencia recaba de la situación de la administración pública federal como parte del Informe Presidencial que entrega anualmente al Congreso (entrevista 1).

Directamente, la relación entre el Congreso y la COFEPRIS puede

darse de manera casuística, a partir de solicitudes de información y comparecencias de funcionarios de la agencia (entrevista 1, 4 y 9). Por otro lado, tratándose de iniciativas de reforma a las secciones de la Ley General de Salud que se relacionan directamente con el funcionamiento de la agencia, la agencia tiene que procesar sus propuestas legislativas a través de la SS (entrevistas 1 y 4), sin embargo, un ex Comisionado Federal nos comentó que "en la práctica lo que sucedía es que yo me reunía con los diputados y ellos presentaban las iniciativas directamente" (entrevista, 9). En un plano informal, también se dan interacciones en las que legisladores buscan a la agencia para intervenir en procesos de autorización de registros sanitarios (entrevista 9).

En suma, aunque no existen obligaciones puntuales en las que la agencia deba de informar directamente al Congreso sobre sus actividades y desempeño, hay algunos canales formales (indirectos) e informales (directos) de interacción para la presentación de iniciativas legislativas y la definición del presupuesto de la agencia. En lo general, los entrevistados coinciden en que la relación se encuentra muy subordinada administrativamente a la SS.

4.2.2 Mecanismos de rendición de cuentas horizontal

Horizontalmente, la COFEPRIS tiene que establecer una amplia gama de interacciones con otros organismos, no solamente en materia farmacéutica, sino también en áreas como alimentación, medio ambiente, comercio exterior y protección del consumidor (entrevista 1, 3, 4, 8 y 9). En el caso de la seguridad alimentaria, el Sistema Nacional de Inocuidad Agroalimentaria se articula a través de la Secretaría de Agricultura, Ganadería, Desarrollo Rural, Pesca y

Alimentación (SAGARPA) y la SS. Las agencias que coordinan esa relación son la COFEPRIS y el Servicio Nacional de Sanidad Inocuidad y Calidad Agroalimentaria (SENASICA) (Entrevista 1).

En este mismo tenor, se establece otra relación horizontal con la Secretaría de Economía (SE) y la Secretaría de Hacienda y Crédito Público (SHCP) para coordinar las inspecciones de la seguridad alimentaria y farmacéutica en las aduanas de todo el país (entrevista 1 y 4). Asimismo, en el espacio administrativo de la SE, cuando se modifica alguna norma interna, la COFEPRIS coordina con la Comisión de Comercio Exterior la actualización de las partidas arancelarias (entrevista 4). Otra relación horizontal con las agencias de la SE, en este caso relacionada con el sector farmacéutico, es con el Instituto Mexicano de la Propiedad Intelectual (IMPI) donde, por ejemplo, cuando la agencia autorice cualquier genérico, tiene la obligación de consultar al IMPI (entrevista 1).

Otro vínculo es con las agencias del sector ambiental y de recursos naturales. La COFEPRIS regula y supervisa la calidad del agua de las playas y cualquier masa de agua (ríos, lagos, etc.). En esta área su tarea es verificar la calidad del agua para consumo humano y actuar de manera directa y en coordinación con la Secretaría de Medio Ambiente y Recursos Naturales (SEMARNAT), la Comisión Nacional del Agua (CONAGUA), y con la Procuraduría Federal de Ambiente Protección (PROFECO) (entrevista 1).

En materia de protección de los consumidores, la COFEPRIS también comparte con PROFECO algunas responsabilidades. Un ejemplo típico es el caso de publicidad engañosa de productos terapéuticos, en el que se activan mecanismos de vigilancia y eventualmente se

sanciona cualquier posible infracción del marco normativo (entrevista 1, 4 y 8). Relacionado también con la publicidad engañosa, la COFEPRIS se relaciona con el IFT para el monitoreo de los anuncios de radiodifusión que contienen este tipo de publicidad. Aquí la relación es, fundamentalmente, de intercambio de información.

Con todas las agencias mencionadas se dan relaciones formales también a través de los canales en los que se elaboran Normas Oficiales Mexicanas (NOMS) en las que concurren competencias de las agencias. Este mecanismo está vinculado a su vez con el proceso de mejora regulatoria a través del cual se establecen mecanismos horizontales entre la Comisión de Mejora Regulación (COFEMER) y la COFEPRIS. Un funcionario de COFEMER señaló que la revisión de la regulación de COFEPRIS ocupa entre un 40-50% de la actividad normativa de la agencia (entrevista 12). El otro mecanismo es la transparencia y la protección de datos a través del cual COFEPRIS se relaciona con el INAI. Sobre estos profundizaremos en la siguiente sección.

Otros mecanismos horizontales que han ampliado el foro de interacciones de la COFEPRIS se da en el ámbito internacional. En 2012, la COFEPRIS obtuvo la certificación[41] como agencia sanitaria con autoridad reguladora regional en materia de dispositivos médicos, medicamentos y vacunas (entrevistas 1, 4 y 6). A partir de esta certificación la COFEPRIS ha promovido la firma de convenios de reconocimiento de registros mexicanos e intercambio de personal para capacitación en la aprobación de insumos para la salud con

[41] Ver: http://www.cofepris.gob.mx/Documents/NotasPrincipales/cert_ops.pdf

agencias de países como Ecuador, Costa Rica, Panamá, el Salvador, Chile, entre otros (entrevista 1). Por otro lado, las relaciones con la Organización Mundial de la Salud (OMS) también son permanentes en materia de cooperación sanitaria y en políticas concretas como fue el caso de una herramienta de certificación en dispositivos médicos, medicamentos y vacunas (entrevista 1).

En general, se puede decir que las relaciones horizontales de la agencia son muy amplias y parecieran llevarse con mecanismos formales de rendición de cuentas.

4.2.3 Mecanismos de rendición de cuentas descendente

COFEPRIS utiliza numerosos mecanismos de diálogo con la industria y los usuarios de los servicios de salud. Algunos de ellos están formalizados, otros se dan a través de interacciones más informales entre la agencia y las partes interesadas. Los foros nacionales de diálogo sobre políticas son en su mayoría informales. Si bien es cierto que el reglamento de COFEPRIS contempla un Consejo Consultivo Mixto, este mecanismo pareciera tener poco uso (entrevista 6). Tampoco pareciera ser un mecanismo relevante de vinculación con la industria y usuarios para los entrevistados (1,4, 5, 8 y9) ni existe en la página web de la agencia información al respecto. El otro mecanismo que facilita el dialogo entre la industria, usuarios y agencia es el proceso de mejora regulatoria, aunque si bien se cumple formalmente (entrevista 1, 4 y 9), este canal es poco utilizado por las organizaciones de la industria farmacéutica, que privilegian mecanismos informales de consulta y negociación de la regulación (entrevista 6). Un funcionario de COFEMER señala que COFEPRIS suele informar sobre sus regulaciones a la industria, pero hay

casos en los que se suscitan batallas entre la agencia y su foro (entrevista 12)

La COFEPRIS interactúa regularmente con asociaciones de la industria, se tienen relaciones con más de 100 cámaras empresariales (entrevista 1). En el caso de la industria farmacéutica mantienen una estrecha relación con la Cámara de la Industria Farmacéutica Nacional (CANAFARMA) y la Asociación Nacional de Fabricantes de Medicamentos (ANAFAM) (entrevista 1). Por otra parte, también se privilegian mecanismos informales con la industria porque la COFEPRIS busca en alguno de estos casos su apoyo técnico para diseñar regulaciones (entrevista 5). Así, uno de los entrevistados, funcionario de una asociación de farmacéuticas, señala que:

> … esas limitaciones llevan a la agencia a pedirnos que hagamos como industria propuestas de regulación y así empezamos a trabajar con el equipo del Comisionado y los funcionarios de la COFEPRIS. Así, se conforman grupos de trabajo, se llega a un consenso. Y evitamos entrar en divergencias cuando pasa a la COFEMER, ya no la criticamos para que salga más rápido. (entrevista 5).

Hemos mencionado antes que el mecanismo horizontal de rendición de cuentas entre la COFEPRIS y el INAI también podría considerarse un mecanismo descendente. Sobre este mecanismo es interesante destacar que, en el caso de la industria, por lo general, este no sea un mecanismo usado (entrevista 5 y 6). Existen mecanismos informales entre las cámaras y la agencia para compartir información, por un lado, a través de reuniones periódicas entre el Comisionado y la industria, y por el otro, entre funcionarios de las cámaras y de la COFEPRIS (entrevista 6). También existe un mecanismo llamado

"citas técnicas" donde interesados en el sector pueden solicitar aclaraciones sobre las regulaciones y la actuación de COFEPRIS (entrevistas 6, 7 y 11). No obstante, la COFEPRIS aparece en la lista de 20 entidades del sector público con mayores solicitudes de acceso a la información pública (INAI 2016).

La agencia también tiene mecanismos voluntarios de publicación de información en su página de internet y se promueven por otros medios según su impacto a la salud (entrevista 1). Entre estos se destacan: 1) listas de los establecimientos médicos que han sido clausurados por malas prácticas y 2) comunicados con alertas de fallas en medicamentos y 3) la publicación de los productos que entran al mercado. No obstante, una crítica que hizo uno de los entrevistados es que en materia de inspección y vigilancia hace falta que COFEPRIS desarrolle mecanismos de transparencia hacia los prestadores de servicios de salud (entrevista 8).

En suma, encontramos evidencia que indica que en las relaciones que establece la agencia en dirección descendente se traslapan mecanismos formales e informales. Esto lo confirma no solamente los mecanismos informales que hemos identificado sino también la percepción que existe en el foro sobre la incertidumbre que enfrenta la industria y los usuarios frente a cambios en el gobierno y la agencia, quedando a expensas de las relaciones interpersonales que sean capaces de establecer con la agencia y la importancia que le dé quien ocupe el cargo de Comisionado Federal al dialogo y a los mecanismos de rendición de cuentas (entrevistas 5, 6, 7 y 11).

Cuadro 3. Mecanismos de rendición de cuentas de la COFEPRIS

Mecanismos ascendentes		Mecanismos horizontales		Mecanismos descendentes	
Formal	Informal	Formal	Informal	Formal	Informal
-Consejo Interno -Informe Presidencial al Congreso a través de la SS -Puntos de acuerdo legislativos y comparecencias	-Informes y reuniones con diferentes niveles de la SS - Reuniones coyunturales con comisiones del Senado y Diputados y con legisladores interesados en el sector	Nacionales: - Coordinación a partir del marco regulatorio -Convenios de colaboración Transnacionales: - Coordinación a partir de del marco regulatorio - Certificación de procesos y convenios de reconocimiento	- Reuniones, seminarios, opiniones y reportes	-Consejo consultivo mixto -Consultas publicas - Solicitudes de información - Comunicados de prensa	- Diferentes mecanismos de consulta con las asociaciones del sector (reuniones y grupos de trabajo técnico para elaboración de regulaciones) -No existen mecanismos informales de consulta con los usuarios de los

					servicios de salud

4.2.4 Dinámicas estratégicas de rendición de cuentas: el estilo de los Comisionados Federales

Ahora revisaremos algunas dinámicas de rendición de cuentas que ejemplifican el flujo que adelantábamos en el Cuadro 1 entre mecanismos formales e informales en la interacción de las agencias y su foro.

La cobertura periodística de COFEPRIS con implicaciones en materia de rendición de cuentas y transparencia durante el periodo de estudio es escaza.[42] Hay, sin embargo, entre 2008 y 2010 cierta

[42] El análisis se basa en un análisis de prensa que se llevó a cabo utilizando el motor de búsqueda de Lexis-Nexis. El término de búsqueda utilizado fue "Comisión Federal para la Protección de los Riesgos Sanitarios Y transparencia O rendición de cuentas" y el período establecido desde el 1 de enero de 2008 al 1 de junio de 2016. Como resultado de esta búsqueda, se encontraron solamente 25 artículos relacionados con la cuestión, de los cuales se encontraron

difusión de eventos que se relacionan con la cuestión cuando Miguel Toscano fungía como Comisionado Federal de COFEPRIS. Al iniciar su gestión, Toscano anunció "acciones nunca vistas"[43] en la regulación del sector. Durante este período, muy pronto escalaron algunos conflictos entre los regulados y la agencia (entrevistas 5, 6 y 7) que muestran dinámicas de relaciones formales e informales.

Los desencuentros se pueden observar a partir de tres eventos: 1) acusaciones de prácticas ilegales entre la agencia y la industria; 2) la emisión de regulación y sanciones para productos "milagro" y 3) la dimisión de Miguel Toscano como Comisionado Federal de COFEPRIS.

En el primer frente, el 29 de agosto de 2008, durante una participación en el Simposio Estratégico de la Industria Farmacéutica 2008-2012[44], organizado por la CANIFARMA, Miguel Toscano informó al auditorio que el viernes anterior se había identificado una red de corrupción que operaba dentro de la COFEPRIS. De acuerdo con la información que presentó en la reunión, un funcionario, con nivel de Jefe de Departamento y tres de sus colaboradores, favorecieron a un laboratorio farmacéutico. Allí Toscano les dijo abiertamente: "Cambiaron los papeles y dictaminaron a favor de un registro sanitario para la comercialización de un medicamento…

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repeticiones en algunos artículos, con lo cual el análisis se redujo a 18 noticias de las cuales se destacan las de mayor importancia.

[43] http://expansion.mx/actualidad/2008/07/19/201cesperen-acciones-nunca-vistas201d

[44] Ver: http://archivo.eluniversal.com.mx/cultura/57222.html

cuando aún no concluía el trámite".[45] El mismo comisionado señaló que el laboratorio debía presentar una explicación por ese acto de corrupción y en el mismo evento, el representante de CANIFARMA, Carlos Abelleyra, pidió reglas claras y transparentes para el sector, un trato igualitario entre laboratorios y privilegiar el dialogo.

El segundo evento, se da en 2011, durante la segunda semana de febrero, la COFEPRIS anunció que abriría el proceso de consulta sobre un nuevo proyecto de reglamento dedicado a combatir la publicidad engañosa de los llamados productos "milagro". Entre el 14 y el 20 de febrero, el Comisario Toscano realizó varias entrevistas para informar al público sobre los argumentos de la iniciativa. Entonces los senadores del PAN pidieron a Toscano que aumentara las penas por el anuncio de los llamados productos "milagros". Reconociendo la determinación de retirar del mercado 250 de estos productos, los senadores del PAN Ernesto Saro, entonces presidente de la Comisión de Salud, y Guillermo Tamborrel, entonces presidente de la Comisión de Atención a los Grupos Vulnerables, consideraron que las sanciones no eran suficientes y pidieron a Toscano evaluarlas y aplicar sanciones más severas. Tamborrel reconoció que es un tema difícil, afirmó: "tocan muchos intereses y los felicito porque ustedes defienden los de la salud de los mexicanos, estos productos significan

[45] Ver: http://archivo.eluniversal.com.mx/cultura/57222.html

un fraude que daña el bolsillo de las familias mexicanas".[46] Después de días muy intensos de disputa en los medios de comunicación entre la industria afectada -incluyendo las corporaciones de televisión con vínculos o intereses en esta industria- y el comisionado, el 22 de febrero Toscano dimitió.

Con la renuncia de Toscano se designó a un nuevo Comisionado Federal, Mikel Arriola. Arriola provenía de la SHCP en la que tuvo relación con la COFEPRIS como responsable de la gestión de los derechos que pagan los regulados por los servicios de la agencia (entrevista 1). Durante su mandato, continúa algunas de las iniciativas de Toscano, pero la forma de interacción con la industria se modifica y se establece un estilo de interacción más consensual (entrevistas 5, 6 y 7). Los niveles de tensión fueron considerablemente reducidos y, por lo tanto, se encuentran menos eventos mediáticos y politización entre la agencia y la industria. Arriola, estableció una agenda con más enfoque en la modernización y profesionalización de la agencia. Con esto en mente, emprendió la homologación de los procesos regulatorios con los estándares de la OPS y la OMS. En un editorial de El Universal[47], Mikel Arriola definió el papel de la COFEPRIS de la siguiente manera:

El papel de una agencia reguladora debe conducir a buscar mejores

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[46] Ver:
http://eleconomista.com.mx/sociedad/2011/02/21/pan-pide-mas-sanciones-contra-productos-milagro

[47] Ver:
http://archivo.eluniversal.com.mx/editoriales/53434.html

> condiciones para regular el mercado, evitando distorsiones e intervenciones cuando surgen, y facilitando la interacción entre agentes económicos a través de regulaciones claras y eficientes que no generen litigios ni costos de transacción (...) Al mismo tiempo, no hemos dejado caer la guardia y hemos seguido luchando contra los fármacos falsos, la publicidad de productos "milagros" que amenazan a la industria formal y el tabaco.

Aunque su posición mantiene una cierta continuidad con el comisionado anterior, la editorial en la que fija la agenda de COFEPRIS omite hablar de rendición de cuentas, transparencia y corrupción, y en cambio enfatiza una agenda en términos de efectividad, eficiencia y modernización de las prácticas de la agencia. No encontramos en este análisis de prensa temas relacionados con la transparencia o la rendición de cuentas durante el mandato de Arriola como Comisionado Federal de COFEPRIS. Una de pocas noticias que relacionan a la agencia con eventos de transparencia o rendición de cuentas durante el mandato de Mikel Arriola -que se inició en febrero de 2011 y concluyó en febrero de 2016- es un acto formal en el que la COFEPRIS firmó un acuerdo de coordinación y colaboración con el INAI.

4.3 De la COFETEL al IFT

La COFETEL surge de una primera ola de agencificación de la regulación económica en el contexto de la firma del TLCAN y la implementación del programa de reforma regulatoria que amalgamó privatizaciones, liberalización, desregulación, creación de agencias reguladoras que se encargaron de la re-regulación de sus sectores (Barrera 1995, Jordana 2011; OECD 2012). El surgimiento de la COFETEL, como lo ha demostrado Ballinas (2011), enfrentó a

distintos grupos dentro del gobierno del PRI: la tecnocracia reformista y los sectores que defendían la preservación del monopolio estatal. En realidad, durante esta nueva época de regulación de las telecomunicaciones, se facilitaron condiciones regulatorias favorables para la consolidación de un mercado dominado por Telmex y América Móvil como campeón nacional (Mariscal y Rivera, 2007), pero fueron creciendo las presiones políticas por abrir el sector y se produjeron recurrentes diferendos por la reforma regulatoria entre la COFETEL, la SCT, el Congreso y los operadores.

Los cambios políticos que enfrentaba el país llevaran a un complejo proceso de democratización que posibilitó la alternancia en las elecciones presidenciales del año 2000. A partir de este cambio político, se abrió un espacio que le dio un mayor peso a los partidos de la oposición y los intereses creados a través de canales legislativos que permearon la disputa por la regulación de las telecomunicaciones. Quedó claro que, en esta nueva etapa política, la participación del Congreso sería cada vez más relevante en el proceso regulatorio (Jordana, 2010). En particular, el Congreso, a través del Senado de la Republica, ganó influencia en dos tareas principales: la selección de comisionados y en el desarrollo de la regulación, que en el periodo presidencialista tenía un mayor desarrollo a nivel reglamentario y que ahora empezaba a adquirir mayor importancia a nivel legislativo. Ambos mecanismos fueron la clave para influir en la agenda y las reformas en el sector. Por ejemplo, las reformas en pleno proceso electoral del 2006 a la Ley Federal de Radio y Televisión y de Telecomunicaciones, mejor conocida como “Ley

Televisa" o "Ley de Medios", muestra cómo los intereses de los partidos representados en el congreso se cruzaban con los intereses de las empresas del sector que empujaban su propia agenda.

Esta reforma llegó a través de la acción de inconstitucionalidad 26/2006[48] promovida por el Senado de República ante la Suprema Corte de Justicia de la Nación (SCJN). La SCJN[49] declaró inconstitucional algunas secciones de la reforma que trastocaban algunos principios constitucionales, y que fueron identificados por la opinión pública y una parte de la oposición como parte de la agenda de la industria de la radiodifusión, que pretendía fortalecer a la COFETEL como un espacio de mayor resonancia para sus intereses (Madrazo y Zambrano 2007). En cualquier caso, la reforma terminó por confirmar a COFETEL como el regulador económico del sector de radiodifusión. A partir de ese momento COFETEL se convirtió en el espacio de intereses encontrados entre las radiodifusoras, el operador de telecomunicaciones dominante y los operadores minoritarios, los que a su vez se intersectaban con las diferencias entre la visión del regulador, durante una época la SCT, Presidencia y el Senado. Este conflicto llevó a un período de alta politización nacional al que se sumaron nuevos actores de la sociedad civil organizada. Sólo en 2013, en un intento por mejorar las anomalías estructurales de algunas agencias reguladoras que habían sido cuestionadas por su debilidad institucional para regular sus sectores (CEEY 2009; COFEMER 2011; Faya 2010; OECD 2012), se plantea

[48] La acción de constitucionalidad se puede consultar aquí: <http://207.249.17.176/Transparencia/sentencias/AI_26_2006_PL.pdf>.

[49] Lo sentencia de la SCJN puede ser consultada en: http://dof.gob.mx/nota_detalle.php?codigo=4996806&fecha=20/08/2007.

una reforma constitucional, que formó parte de la reforma regulatoria del Pacto por México, en la cual se creó y otorgó al IFT estatus de órgano constitucional autónomo. Se trató de una ampliación substancial en sus poderes y capacidades de regulación y competencia respecto de los poderes que dispuso la COFETEL (Faya 2013, OCDE 2017).

Brevemente, este repaso muestra cual importante es el caso de las telecomunicaciones para el estudio de la rendición de cuentas y la regulación en México. Como veremos, se trata de un caso paradigmático de la forma en la que un regulador surge en un momento de escaso desarrollo institucional de rendición de cuentas, pero en los años 2000 poco a poco se transforma y adapta gradualmente a un contexto de mayores presiones y exigencias de rendición de cuentas, arribando a un nuevo diseño institucional que institucionaliza un amplio e innovador menú de prácticas de rendición de cuentas que no tenían precedente en la todavía breve historia del Estado regulador mexicano.

A partir de este breve recuento de la trasformación de la COFETEL a la creación del IFT, pasemos a contrastar algunas de estas diferencias en las relaciones y mecanismos de rendición de cuentas que establecía la COFETEL con su foro *vis a vis* los del actual regulador.

4.3.1 Mecanismos de rendición de cuentas ascendente

A) COFETEL, IFT y el Ejecutivo

La COFETEL inició como un órgano técnico y consultivo en materia de regulación de telecomunicaciones de la SCT. Con el tiempo fue ganando competencias, particularmente en radiodifusión y

posteriormente en la determinación de tarifas de interconexión, pero en materia de telecomunicaciones el trabajo de COFETEL se mantuvo siempre bajo la revisión de SCT (entrevista 8).

La relación entre COFETEL y la SCT tuvo altos niveles de tensión. Desde su creación, se sugirió eliminar la Subsecretaría de Comunicaciones para evitar que compitiera con la agencia por la regulación del sector, se buscaba que de esta manera la delegación de la SCT a la COFETEL fuese completa en materia de telecomunicaciones (entrevista 1). Pese a ello, la SCT decidió mantener la Subsecretaría de Comunicaciones y, con ello, desde la primera COFETEL de Carlos Casasús se abrieron dos canales para el foro de las telecomunicaciones que fue conocido en el sector coloquialmente como la "doble ventanilla". Esto es importante porque el canal entre la SCT y la COFETEL era precisamente a través de la Subsecretaría de Comunicaciones. De hecho, los tres primeros presidentes de la agencia fueron previamente subsecretarios que revisaban el trabajo de COFETEL, ya que esta tenía más visibilidad y más medios que la propia Subsecretaria (entrevista 1).

Algunos de los entrevistados coinciden en que la relación entre la SCT y la COFETEL era primordialmente informal (entrevista 2 y 8). De acuerdo con un expresidente de la agencia la relación dependía del vínculo personal con el secretario y mantuvo relaciones "radicalmente distintas con cada uno de estos" (entrevista 8). Un ejemplo de esto es que incluso uno de los últimos secretarios decidió no designar subsecretario de comunicaciones para evitar la confrontación con COFETEL (entrevista 8). En la época de COFETEL otra relación igualmente importante era la de la agencia

con la Presidencia, la cual se daba también fundamentalmente por canales informales. Si la agencia llegaba a un acuerdo con los operadores de telecomunicaciones podía pasar que al poco tiempo Presidencia llegara a un acuerdo distinto con los operadores y se le pidiera a la agencia sustituir el acuerdo previo (entrevista 8). Igualmente, importante eran las relaciones con la SHCP en la negociación de las licitaciones y derechos por el uso de espectro que frecuentemente les enfrentaban por la búsqueda de diferentes objetivos públicos.

Con la reforma de telecomunicaciones la relación entre la agencia, la SCT y el Ejecutivo se modificó sustancialmente. Actualmente los entrevistados coinciden en que se trata de una relación de coordinación, en términos de mecanismos de rendición de cuentas se ha formalizado y se entiende como una relación horizontal (entrevista 6, 7 y 9).

B) COFETEL, IFT y el Congreso

La relación entre el Congreso y la COFETEL se dio, fundamentalmente, a través del Senado de la Republica. El Senado participaba en el proceso de nombramientos de comisionados de la agencia. A partir de este vínculo el Senado ejerció un peso muy importante en la composición de la agencia, al grado que durante la última época de COFETEL se empezó a hablar de la "partidización" de la agencia (entrevista 1). P ara uno de los ex presidentes de la COFETEL, la relación con el Senado también se daba a partir de mecanismos informales. En su periodo compareció en 11 ocasiones ante las comisiones de comunicaciones y transportes, y de radiodifusión del Senado. En su opinión las comparecencias al

Senado se solicitaban, fundamentalmente, cuando COFETEL afectaba dos tipos de intereses: 1) los de radiodifusión, en particular los vinculados a Televisa y 2) los de telecomunicaciones, en particular los vinculados a América Móvil. Además de los nombramientos, estas comparecencias eran el otro canal de interacción entre la agencia y el Senado. Las comparecencias, le servían, entonces, al Senado para mantener desenfocado al regulador "de su tarea cotidiana, mantener un regulador distraído, agazapado, paralizado" (entrevista 8). Por otro lado, un exfuncionario de COFETEL que participó en un número importante de estas comparecencias, en particular de la última etapa, señaló que observaba una importante asimetría de información entre el regulador y los legisladores, con lo cual el regulador al final de día tenía siempre más información y argumentos para esquivar las críticas de los legisladores.

Actualmente, la principal relación del IFT con el Congreso sigue siendo a través del Senado de la República. El Senado define a los comisionados que integran el pleno del IFT y presidente de la agencia, para el que se ocupan el voto de dos tercios de los miembros presentes en el Senado (art. 28 constitucional). El Senado mantiene también la potestad de destituir los nombramientos de los comisionados en supuestos de faltas graves a la constitución (arts. 31 y 32 de la LFTR).

Adicionalmente, el IFT debe presentar su informe anual de actividades y resultados (art. 15 II LFTR) del cual se deriva una comparecencia anual obligatoria a ambas cámaras del Congreso de la Unión (artículo 28 VIII constitucional). Asimismo, debe presentar un

informe trimestral de actividades al mismo Senado (art. 20 XI LFTR) que ha servido para dar seguimiento a la agenda de la reforma de telecomunicaciones (entrevista 3). Todos estos informes son públicos y pueden ser consultados abiertamente. Hasta la fecha este mecanismo formal ha sido atendido por la agencia y de hecho a partir de estos informes se han mantenido reuniones con las comisiones de comunicaciones y transportes, de radiodifusión y estudios legislativos (entrevistas 4, 5, 6, 9 y 10).

Por otra parte, se mantienen los canales de comparecencias y exhortos que suele usar el Senado en casos de interés para los legisladores. Este mecanismo ha sido usado recientemente en asuntos como la definición de regulación de la portabilidad y la transición analógica-digital. Por otro parte, cuando la agencia y el Senado han tenido desencuentros sobre ámbitos competenciales de la regulación se han usado los canales institucionales para dirimir los conflictos, esto es, a través del poder judicial, específicamente por la vía de controversias constitucionales que resuelve la Suprema Corte de Justicia de la Nación (entrevista 7).

El IFT también mantiene contactos con la Cámara de Diputados. En particular el énfasis en la relación se da a partir de la negociación del presupuesto de la agencia y la revisión de la cuenta pública que es competencia exclusiva de los diputados. En la estructura del IFT se contempla un contralor que es designado por los diputados (arts. 37 y 38 LFTR) y que, pese a que se encuentre dentro de la estructura del IFT, en realidad responde directamente ante la Cámara de Diputados. Este mecanismo se encuentra formalizado en el artículo 35 de la LFTR 2014. De aquí se derivan otras obligaciones de

información hacia el Congreso, en este caso la contraloría del IFT debe presentar informes directamente a la Cámara de Diputados (art. 35 XIX LFTR). El IFT es independiente en cuanto a la formulación y ejercicio de su presupuesto, pero lo otorga y revisa la Cámara de Diputados (Art. 28 II constitucional). Es interesante que, no obstante, en la reforma de telecomunicaciones quedara claramente formalizada esta relación, hasta la fecha de las entrevistas la Cámara de Diputados no había designado al contralor del IFT.

Finalmente, si un legislador tiene algún interés particular con la agencia, sea como representante de la industria o regulado, la reforma también incluyó una regla que formaliza cualquier contacto que establezca el foro con la agencia, a este mecanismo se le llama regla de contacto (entrevistas 4,5 y 6).

Puede decirse que se percibe una clara transformación entre la relación que mantenía con el Congreso la COFETEL respecto a las relaciones que establece actualmente el IFT, con una mayor formalización de todos los mecanismos de rendición de cuentas, aunque no por ello han desaparecido tensiones en algunos temas entre ambos.

4.3.2 Mecanismos de rendición de cuentas horizontal

Horizontalmente la COFETEL estableció relaciones con diversas agencias, pero de nuevo el acento en estas relaciones parecía estar basado más en relaciones interpersonales entre la agencia y sus pares (entrevista 2 y 8). En todo caso, fueron cuatro las relaciones más continuas y estables las que estableció la COFETEL con otras agencias. En materia de competencia económica con la COFECO, en materia de protección al consumidor con la PROFECO, en materia

de mejora regulatoria con la COFEMER y en materia de derechos por el uso y aprovechamiento de espectro con la SHCP. En el último periodo de COFETEL estas relaciones fueron cercanas, excepto con la SHCP, con la que existieron tensiones recurrentes en las negociaciones de procesos de licitación (entrevista 8). No parece que haya sido significativa la relación con otras agencias como COFEPRIS, el IFAI o el IFE con los que, en principio, también existían intersecciones competenciales.

Un caso interesante de relación horizontal que resulto muy cooperativa en el último tramo de COFETEL es la establecida con la PROFECO, fundamentalmente, a partir de dos iniciativas comunes. La primera fue el sitio Mi COFETEL, que buscaba que los usuarios concentraran en una misma página de internet sus quejas por las fallas en los servicios de telecomunicaciones que, por mandato de ley, necesariamente debían atender en coordinación PROFECO Y COFETEL (entrevista 8, 11, 12). Esta iniciativa ayudaba a ambas agencias a facilitar información para posteriormente emitir sanciones contra los operadores que tuvieran fallas en la prestación del servicio. Otra iniciativa en la que ambas agencias hicieron mancuerna fue la norma oficial mexicana 184. En esta norma COFETEL y PROFECO crearon una obligación a los regulados para que registraran e hicieran públicos sus contratos de adhesión, de manera que se pudieran detectar las disparidades entre los contratos en términos de plazos forzosos, portabilidad, entre otros (entrevista 11 Y 12). PROFECO se encargaba de hacer accionable esa parte de la norma y COFETEL se encargaba de estimar el resarcimiento del daño.

Finalmente, incluso en relaciones con agencias internacionales la

relación también fue bastante informal (entrevista 6 y 8). Mucho más cercana con OECD y más lejana con la Organización Internacional de las Telecomunicaciones (OIT) (entrevista 8), dados sus vínculos más directos con la Subsecretaria. En buena medida la diferencia en el tratamiento con organismos internacionales se debía a que funcionarios de la agencia detectaban intereses de la industria nacional en algunos de estos casos (entrevista 8).

Actualmente, las relaciones horizontales se han modificado de manera importante. La interacción del IFT con otra institución es objeto de un artículo de la LFTR. El artículo 53 establece la posibilidad de que la agencia participe junto a otros poderes, órganos y dependencias a través de acuerdos de colaboración. Así, de manera específica, la misma ley establece los mecanismos a través de los cuales la agencia se relaciona con la COFECE, la SS, la Secretaria de Gobernación, la misma SCT, SHCP, entre otros

El caso de COFECE es interesante. Anteriormente se trataba de una relación clave en las tareas de la COFETEL en tanto compartían responsabilidades en materia del proceso de competencia económica en las telecomunicaciones. Ahora, el IFT absorbió esas competencias y la relación con la COFECE se redujo tanto al grado que ahora existen algunas lagunas normativas en la relación (entrevista 4). De cualquier forma, existe una relación que se formalizo a través de un convenio de colaboración, que sirve para activar mecanismos de dialogo cuando existe una zona gris en la legislación y dar seguimiento a asuntos que atendían la COFECO y COFETEL (entrevista 4, 6 y 9).

En este proceso de cambio institucional, la relación con COFEMER

también se ha transformado de manera importante. El IFT, como órgano constitucional autónomo, define su propia política de mejora regulatoria y cuenta con un área encargada de la realización de los estudios de impacto regulatorio y de las consultas públicas. La mejoría también en este mecanismo es notoria (OCDE 2017). No obstante, sigue manteniendo alguna relación con COFEMER para intercambiar información en torno a metodologías, y en lo que concierne a la relación con OECD que suele ser un canal permanente con la agencia de mejora regulatoria (entrevista 3).

Una relación que sigue manteniendo la agencia es con SEGOB. La relación se da a propósito del uso ilegal del espectro y regulación de contenidos y de protección infantil. Una comisionada nos comentó que esta es una de las relaciones horizontales que están sujetas a mayores tensiones (entrevista 6). Por otro lado, con el INAI se establecen contactos en el marco de la LFTAIP (entrevista 5).

También se mantiene la relación de coordinación con la PROFECO. La nueva LFTR aclaró la relación y coordinación de competencias entre ambas agencias en la protección de los usuarios de telecomunicaciones (OCDE 2017) basándose en los mecanismos que desarrolló la última COFETEL con PROFECO. Y existe un convenio de colaboración en el que se definen con claridad las responsabilidades de cada agencia (entrevista 6). Se creó una herramienta similar a Mi COFETEL, de nombre Soy Usuario. En esta plataforma los usuarios presentan su queja y la reciben ambas instituciones, en cuanto a la calidad del servicio actúa el IFT, lo relacionado con el contrato de servicio lo ve PROFECO (entrevista 6).

El IFT también ha tenido una mejora en cuanto a la organización y difusión de su información estadística (entrevista 10). Ya en 2017 completó el diseño de su Banco de Información de Telecomunicaciones (BIT) (OCDE 2017). Una innovación importante para la gestión y difusión de información estadística de las ARI en México.

Finalmente, la relación con organismos internacionales actualmente pareciera más simétrica. Algunos comisionados participan en los foros de la OIT, otros en los de la OECD y otros más en mesas regionales de reguladores (entrevista 5 y 6). Sin embargo en materia de gobernanza regulatoria la OCDE es la organización internacional con mayor incidencia en este sector (entrevista 5).

4.3.3 Mecanismos de rendición de cuentas descendente

Desde mediados de los noventa, la COFETEL se fue desarrollando a la par que se construyeron mecanismos formales de rendición de cuentas descendientes en la institucionalidad mexicana, que fueron los principales canales de acceso para que las audiencias entrasen en contacto con las agencias. Fue el caso del acceso a la información pública a través de las solicitudes de información que gestionó el entonces IFAI y las consultas públicas que coordinó COFEMER.

Varios entrevistados reconocen que si bien, durante el último periodo que va de 2010 a 2012, las consultas públicas se empezaron a usar con mayor frecuencia, como nunca antes en la historia de COFETEL (OECD 2012; entrevista 2, 3, 7 y 8), no siempre se encontraban las condiciones políticas para tratar los proyectos de la agencia vía consultas públicas (entrevista 8). Predominaban, entonces, reuniones directas con los regulados en las que participaban varios operadores

y se redactaban minutas de las reuniones (entrevista 8). También existían relaciones de regulador a regulado y hasta cafés en la esquina (entrevista 8). El presidente de COFETEL incluso usaba estas reuniones para verificar lo que hacían distintas áreas de la agencia que, históricamente, habían mostrada una alta porosidad frente a los regulados. También se usaban estas reuniones para "socializar" la regulación y conocer las opiniones de los regulados. Era, pues, frecuente el uso de estas vías informales (entrevista 8). Estas relaciones también variaban según la forma de hacer negocios de los regulados, contrastaba interesantemente la de Telcel y Telmex, que provenían del mismo grupo empresarial, aunque divergían en su forma de interactuar con la agencia (entrevista 8).

En materia de transparencia, en particular de solicitudes de acceso a la información, la COFETEL también tuvo cuestionamientos. En 2010, el IFAI, ordenó la divulgación de los acuerdos de interconexión de Telmex-Telnor.[50] Posteriormente en 2013 la agencia reservó la información en un caso de sanciones a operadores en el que también le revocó la reserva y pidió se entregara la información a los solicitantes de esta.[51] La interacción entre los usuarios de solicitudes de información, el IFAI y la COFETEL, como se puede ver, fue problemática, pero al mismo tiempo el propio IFAI reconoció, en el último tramo que va de 2010 a 2013, mejorías en el desempeño de COFETEL en su política de transparencia.[52]

[50] Ver: http://archivo.eluniversal.com.mx/notas/889989.html

[51] Ver: http://archivo.eluniversal.com.mx/finanzas/99728.html

[52] Ver: http://archivo.eluniversal.com.mx/finanzas/101339.html

Un mecanismo adicional que activó COFETEL en sus últimos años, en particular durante la gestión de Mony de Swaan, fue el de la conformación de un consejo consultivo con representantes del foro (OECD 2012). Si bien la legislación ya pedía a la agencia conformar este consejo, no fue sino hasta la gestión de de Swaan que se conformó. Este consejo se integró por 30 representantes designados directamente por el presidente de la agencia. No obstante, el consejo no tuvo suficiente eco en el pleno ni en las áreas encargadas de las tareas regulatorias de la agencia (entrevista 8).

Por último, en el caso de COFETEL, a nivel informal la relación entre la agencia y los intereses de los regulados se dio de manera muy intensa a través de la prensa. Tanto la agencia como los operadores de los servicios de telecomunicaciones y radiodifusión frecuentemente para avanzar sus agendas de regulación establecían estrategias de comunicación y cabildeo a través de los mismos medios de comunicación (entrevista 1 y 8). Este mismo fenómeno llevo a que la agencia, al enfrentar restricciones presupuestarias para su comunicación, empezara a utilizar una comunicación más agresiva en redes sociales y a fortalecer organizaciones no gubernamentales que defendieran los intereses de los usuarios frente a las empresas que ejercían su poder mediático para favorecer sus posiciones en el sector (entrevista 8).

En este ámbito también la reforma de telecomunicaciones tuvo importantes implicaciones. En primer lugar, el IFT, aunque no se encuentra sujeto al proceso de mejora regulatoria que establece la Ley del Procedimiento Administrativo, reforzó su estrategia de mejora regulatoria y consultas públicas a través de la creación interna de una

Coordinación que se especializa en la gestión de estos procesos. Los entrevistados coinciden en que se trata de un mecanismo que ha ganado mayor aceptación entre los operadores, los mismos funcionarios de la agencia y el conjunto del foro (entrevistas 3, 7, 8 y 9). De hecho, la participación de asociaciones de usuarios y de integrantes del nuevo Consejo Consultivo son algunos de sus usuarios más recurrentes (entrevista 7 y 9).

La agencia también continúa siendo sujeto obligado de la LFTAIP. Para atender las solicitudes de los usuarios la agencia cuenta con un Consejo de Transparencia que revisa en particular los recursos de revisión de solicitudes que, por alguna razón, han sido rechazadas (entrevista 6). En este ámbito, la agencia esta notoriamente avanzando en una política proactiva de transparencia con la que busca transitar hacia una política de gobierno abierto y datos abiertos con un enfoque hacia el usuario (entrevista 6 y 10).

Un mecanismo más que ha alcanzado un alto nivel de formalización son las reuniones entre funcionarios de la agencia y su foro. Actualmente todas las reuniones se tienen que dar bajo los parámetros de la regla de contacto, la que implica que se tiene que publicar la agenda de los comisionados y funcionarios de la agencia (entrevistas 4 y 6). Esta regla obliga a los funcionarios a publicar la información de sus reuniones: la fecha, los nombres de quienes solicitan la reunión, la representación que ostentan, el tema a tratar y todas están reuniones se gravan, aunque las grabaciones no se hagan públicas, se guarda el registro que, en caso de anomalías, puede ser escrutado por el Senado de la Republica. La regla de contacto puede entenderse como una respuesta a la porosidad que caracterizó la historia de las

relaciones de COFETEL con la industria y las frecuentes dudas de captura de aquel regulador.

Por último, un mecanismo que se ha consolidado con la reforma de telecomunicaciones es el del Consejo Consultivo. La LFTR establece en su artículo 34 la integración 15 miembros honorarios que deberán ser especialistas de reconocido prestigio en el sector, de los cuales se garantiza, cuando menos, un asiento para un integrante que tenga experiencia en concesiones de uso social. Los integrantes del consejo son nombrados por el pleno y pueden durar en su encargo un año, sujeto a refrendarse por periodos similares indefinidamente. Un integrante del IFT participara como secretario del Consejo Consultivo. Las opiniones del consejo no son vinculantes, pero deberán ser comunicadas al pleno. Hasta el momento en el que se realizaron las entrevistas, la participación del Consejo Consultivo ha sido activo, sin embargo, uno de sus miembros sugirió que la relación con el pleno sigue siendo insuficiente en la medida en la que las opiniones del consejo no terminan de construir un dialogo regulatorio con la agencia (entrevista 6). Al mismo tiempo, los integrantes del consejo suelen participar en las consultas públicas cuando el consejo consultivo no alcanza una mayoría para opinar sobre ciertas decisiones del regulador.

En suma, la importancia que han adquirido los mecanismos descendentes en el tránsito de COFETEL a IFT es notoria, surgiendo una articulación de la rendición de cuentas mucho más reforzada y articulada institucionalmente después del cambio. A continuación, resumimos en los cuadros 3 y 4 los principales mecanismos de rendición de cuentas que identificados en el foro de la COFETEL e

IFT.

Cuadro 3. Mecanismos de rendición de cuentas de la COFETEL

Ascendentes		Horizontales		Descendentes	
Formal	Informal	Formal	Informal	Formal	Informal
-Informe Presidencial al Congreso a través de la SCT -Exhortos o puntos de acuerdo legislativos con requerimientos de información	- Reuniones coyunturales con comisiones del Senado y Diputados	Nacionales: - Coordinación a partir del marco regulatorio -Convenios de colaboración Transnacionales: -No se identificaron	- Reuniones, seminarios, opiniones y reportes	- Consultas publicas - Solicitudes de información - Informes anuales de actividades - - Consejo Consultivo	- Diferentes mecanismos de consulta directa con operadores (reuniones y grupos de trabajo técnico) -Diálogos con organizaciones de defensa de interés público. - Publicaciones en la prensa y medios de comunicación

Cuadro 4. Mecanismos de rendición de cuentas del IFT

Ascendentes		Horizontales		Descendentes	
Formal	Informal	Formal	Informal	Formal	Informal
-Informe anual de actividades y comparecencias (formalizado en 2014) -Exhortos o puntos de acuerdo legislativos con requerimientos de información	- Reuniones coyunturales con comisiones del Senado y Diputados	Nacionales: - Informe anual de actividades a SEGOB y la SCT. Coordinación en competencias concurrentes -Convenios de colaboración Transnacionales: - Coordinación a partir de obligaciones del marco regulatorio y acuerdos de cooperación - Procedimie	-Foros y seminarios	-Consultas públicas -Solicitudes de información -Consejo Consultivo -Consejo de Transparencia -Informe anual de actividades -Informes trimestrales de actividades y estadísticos -Banco de Información de Telecomunicaciones -Comunicados de prensa - Procedimiento de reuniones (regla de contacto)	- Publicaciones en la prensa y medios de comunicación -Foros, convenciones y seminarios

		nto de reuniones (regla de contacto)			

4.3.4 De las resoluciones de la COFETEL a las del IFT

Ahora revisaremos algunas dinámicas de rendición de cuentas que ejemplifican el flujo que adelantábamos en el Cuadro 1 entre mecanismos formales e informales en la interacción de las agencias y su foro.

Cuando se observan las diferencias entre las estrategias y mecanismos de rendición de cuentas entre la COFETEL y el IFT, se puede apreciar con cierta claridad el contraste entre un regulador que surgió y creció en un ambiente institucional reticente a desarrollar prácticas de rendición de cuentas, frente a uno que se estableció después de la institucionalización de los mecanismos de redición de cuenta, en un sector que sufrió fuertes tensiones políticas y resistencias a transparentar la regulación. Con el paso del tiempo, conforme los mecanismos de rendición de cuentas en la administración pública se fueron asentando, COFETEL entró en un periodo en el que dependía, en buena medida, de la voluntad y capacidad del presidente de la agencia llevar a la práctica los mecanismos que ya formaban parte del andamiaje institucional del sector público en general. Poco a poco en la agencia empezaron a percibir las posibilidades de usar mecanismos de transparencia como vehículo para fortalecerse, ejercer su independencia (entrevista 6).

Existe consenso en que el aprendizaje sobre este uso de mecanismos de rendición de cuentas, ayudo a contrarrestar resistencias durante los

últimos tres años de la existencia de COFETEL. Poco a poco la agencia fue construyendo relaciones cada vez más próximas a la lógica de la rendición de cuentas, lo que le fortaleció frente a la industria y otros actores del gobierno que solían dinamitar el ejercicio de su autonomía para mantener o ampliar intereses en el sector (entrevistas 1, 2, 6 y 8). Este consenso es todavía más amplio cuando se trata de valorar la diferencia en el régimen de rendición de cuentas en el que se despliegan las relaciones del IFT con su foro *vis a vis* con el que gobernó el sector la COFETEL (entrevistas 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11 y 12).

Para ilustrar esta transición vale la pena detenerse brevemente a comparar el caso de las resoluciones del pleno de la COFETEL frente a las del IFT. En las resoluciones de COFETEL era muy difícil identificar el sentido en el que votaban los comisionados (entrevista 9). De hecho, durante más de diez años no hubo decisiones por mayoría ni con voto de calidad, esto es, las decisiones se tomaban hasta que se lograba un consenso entre todos los comisionados (entrevista 1). Esta práctica perduro hasta la última etapa en la que se empezaron a tomar decisiones sin consenso, incluso en algunos casos el presidente de la agencia empezó a tomar decisiones con el voto de calidad que le concedía la legislación en los casos de impases (entrevista 1). Más aun, en la página web de COFETEL era muy complicado encontrar las resoluciones del pleno a partir de criterios claros de búsqueda, lo que limitaba la posibilidad del foro de dar seguimiento a las decisiones del regulador (entrevista 4).

Frente a estos antecedentes de la COFETEL, las prácticas en materia de resoluciones del IFT son contrastantes y, en definitiva, van más

allá del legado de los últimos años del extinto regulador. Primero, siguiendo la tendencia de la última etapa de COFETEL, las decisiones colegiadas ya no se dan por consenso. Segundo, los comisionados publican sus votos particulares (entrevista 4). Tercero, se publica la versión estenográfica de las sesiones del pleno. Cuarto, si es necesario algunos comisionados salen a la opinión pública a promover algunas de las posturas que defienden en el pleno.[53] No obstante, existió un debate en torno a la interpretación de la publicidad que las sesiones del pleno y resoluciones del IFT deberían tener.[54] Por un lado, de acuerdo a la reforma y la LFTR (y recientemente en la LFTAIP) las sesiones del pleno deben ser públicas, bajo este argumento expertos y asociaciones del sector pidieron al IFT que abriera las sesiones del pleno a la sociedad y que se divulgaran las sesiones por medios electrónicos tal como lo hacen la SCJN, el INE, el INAI e incluso los tribunales especializados en competencia y telecomunicaciones (entrevista 6). La justificación del IFT para defender que las sesiones no se hicieran abiertas al público se basó en que las sesiones incorporan información confidencial o

[53] Un caso relevante fue el voto minoritario de las ex comisionadas Adriana Labardini y María Elena Estavillo, quienes, a pesar de perder la votación en el pleno sobre la posibilidad de presentar una controversia constitucional contra el Congreso de la Unión, defendieron activamente en la opinión pública esta posición. La entrevista con mayor impacto la dieron en el programa de radio de la periodista Carmen Aristegui, ver: https://www.youtube.com/watch?v=pPeBuvH-KVc

[54] Ver: http://archivo.eluniversal.com.mx/finanzas-cartera/2014/ift-sesiones-1040736.html

reservada.[55] Pese a ello, se le criticó que en la mayoría de los casos la agencia no discute en el pleno asuntos que tengan ese carácter de información reservada y que, por tanto, se podría haber buscado un mecanismo para solamente omitir de la apertura de las sesiones aquellos casos en los que, efectivamente, exista esa restricción (entrevista 6).[56] La agencia respondió a las críticas publicando en su sitio web las grabaciones de las sesiones y las versiones estenográficas, frente a lo que se le criticó que de esta forma se afectaba la oportunidad con las que se publica la información. En términos generales, es claro que existe un avance importante que incluso en un reciente informe -sobre avances y nuevos retos de la reforma de telecomunicaciones- de la OCDE (2017: p. 32) reconoce en los procesos de toma de decisiones del IFT.

5. Comparando los mecanismos y estrategias de rendición de cuentas de la CNBV, COFEPRIS y COFETEL/IFT

En esta sección comparamos los principales hallazgos analizando el uso de mecanismos formales e informales de rendición cuentas en las prácticas de cada una de las agencias.

En primer lugar, en un plano general, fue posible identificar la relevancia que para las agencias y algunas audiencias tienen los mecanismos formales de rendición de cuentas creados como parte de la reforma administrativa del Estado mexicano. Por otra parte, encontramos una cierta convergencia en los mecanismos y prácticas

[55]Ver: http://archivo.eluniversal.com.mx/nacion-mexico/2014/impreso/condicionan-banxico-e-ift-abrir-informacion-219021.html

[56] Ver: https://lasillarota.com/opinion/columnas/la-opacidad-del-ift/62270

formales de las agencias (y, en alguna medida, en algunas de las practicas informales), lo que merece ser discutido detalladamente.

En el ámbito de los mecanismos ascendentes, las agencias muestran algunas diferencias importantes en el plano formal e informal tanto con el ejecutivo como con el congreso. A raíz de la reforma financiera, se formalizó por primera vez en su historia, que la CNBV tiene la obligación de informar y comparecer ante el Congreso. COFEPRIS nunca ha tenido mecanismos formales para informar de sus actividades y decisiones de manera directa al Congreso. COFETEL tampoco los tuvo. En cambio, para el IFT existe la obligación de presentar anualmente sus actividades y comparecer ante el Senado. Informalmente las agencias tienen patrones comunes, tanto la CNBV como la COFEPRIS y la COFETEL, mantuvieron relaciones con los legisladores, especialmente con las comisiones de sus sectores, de manera casuística, a propósito de crisis puntuales, durante eventos que tuvieron impacto en la opinión pública.

Con las secretarías de sus sectores, tanto COFEPRIS como COFETEL, mantuvieron lazos fundamentalmente informales y sujetos al tipo de relaciones que fueron capaces de establecer con los secretarios y subsecretarios. La CNBV tiene una Junta de Gobierno que facilita el mantenimiento de una relación formal y estable con la SHCP y el sector financiero. Mientras que el IFT, al haber obtenido autonomía constitucional, dejo de mantener relaciones ascendentes con la SCT. No obstante, es interesante que en este nuevo contexto entrega su informe anual de actividades también a la SCT y a la SEGOB.

A nivel de mecanismos horizontales, la CNBV muestra un alto grado

de formalización cuando interactúa con otras agencias. En buena medida ello se debe a la participación de éstas en la Junta de Gobierno de la agencia. La COFEPRIS también muestra un grado importante de formalización de sus relaciones horizontales. COFETEL en cambio parecía depender más de relaciones informales con otras agencias, aunque hubo casos como el de PROFECO en el que a partir de ciertas iniciativas logró desarrollar mecanismos formales. Mientras que el IFT muestra un alto grado de formalización en sus mecanismos horizontales.

El plano con mayores contrastes es probablemente el de los mecanismos descendentes. La CNBV, si bien hace uso de las consultas públicas formales en el marco del proceso de mejora regulatoria, tiene un mecanismo informal de consulta e intercambio permanente de opiniones con la ABM y, con menos frecuencia, con otros participantes del sector. De hecho, para la industria el mecanismo formal pareciera ser secundario. En cambio, la CNBV no tiene ningún mecanismo formal ni informal de interacción con los usuarios de los servicios financieros, a pesar de tener distintos formatos abiertos sobre sus actividades para informar al conjunto del foro. Con COFEPRIS pasa algo similar. La industria tiene un mecanismo informal de consulta, aunque este pareciera menos estable que el de la CNBV, por lo que se observa una mayor dependencia de la relación personal entre el Comisionado Federal y la industria. COFETEL también hizo uso de las consultas públicas del proceso de mejora regulatoria, aunque su uso dependió de la importancia y las condiciones que encontrara la agencia frente al sector. En cambio, tuvo un mayor uso de mecanismos informales en

los que consultaba en distintos formatos a los operadores del sector. En el último tramo de su existencia, también estableció un consejo consultivo que, sin embargo, no logró consolidarse como un foro de interacción para los actores del sector. En la historia de COFETEL, la participación de los actores en la prensa, radio y televisión, fueron un espacio clave para la interacción del foro en el proceso regulatorio. No obstante, con el IFT, la relación con los operadores se formalizó de manera importante. El uso de la regla de contacto, mediante la cual las reuniones con interesados del sector se publican en el sitio web y solamente puede realizarse en las oficinas de la agencia, ha sido muy importante para evitar la porosidad que caracterizó la relación de la COFETEL con la industria. Al mismo tiempo el IFT ha implementado diversos mecanismos de transparencia para facilitar en su sitio web información de sus actividades a los usuarios del sector. El IFT tiene un proceso de mejora regulatoria y consultas públicas propias, con lo cual abandonó este mecanismo a cargo de COFEMER. Y finalmente tiene un consejo consultivo que a su vez hace un seguimiento importante de las consultas públicas.

Siguiendo el esquema del Cuadro 2 puede observarse una síntesis de estas prácticas y mecanismos formales e informales entre la agencia y su foro en las tres direcciones analizadas: ascendente, horizontal y descendente. Cuando se habla de estrategias de rendición de cuentas, la relación entre los mecanismos en las tres direcciones, si bien se pueden distinguir y tienen una vida institucional propia, en realidad no es posible separarlos en la práctica, porque es ahí donde su interacción permite a los actores diversas posibilidades estratégicas en el proceso regulatorio.

A través de la comparación realizada es posible identificar qué estrategias concretas fueron escogidas en cada caso y cada momento histórico, incluyendo la posibilidad de estrategias frente a la ampliación de mecanismos (obligatorios y voluntarios) de rendición de cuentas. Asimismo, también podemos discutir hasta qué punto fueron algunos grupos de las audiencias los que, utilizando la disponibilidad de mecanismos generales de rendición de cuentas en los años 2000, impulsaron a las agencias a realizar un mayor esfuerzo en sus prácticas y estrategias de rendición de cuentas.

Las agencias usan mecanismos formales e informales en la negociación de la regulación en función de las presiones que encuentran en su foro para lograr sus agendas. En los extremos de estas estrategias de rendición de cuentas podemos ubicar a la COFETEL/IFT y la COFEPRIS. Mientras que la estrategia de la última COFETEL fue incorporar un mayor número de prácticas de rendición de cuentas que fortalecieran su presencia frente a su foro, la COFEPRIS no activó algunos de los mecanismos formales e informales que tenía a su disposición para desarrollar estrategias de rendición de cuentas que le dieran posibilidades de fortalecer su agenda y posición dentro del panorama institucional mexicano. En cambio, COFETEL y el IFT representan un caso de innovaciones y uso estratégico de sus prácticas de rendición de cuentas que van más allá de las reglas formales del régimen general de rendición de cuentas federal. Dicha experiencia institucional claramente fue incorporada por los legisladores y el nuevo regulador al régimen de regulación de las telecomunicaciones.

En medio de este espectro tenemos a la CNBV, la agencia con la

trayectoria institucional más prolongada. La CNBV mostró cierta proactividad cuando necesitó cuidar su reputación frente a su foro, especialmente con el caso de publicación de sanciones que la expuso a presiones en distintos circuitos nacionales y transnacionales de opinión pública y rendición de cuentas. A partir de aquí, se involucró en la innovación de nuevos mecanismos que fortalecieran las prácticas de transparencia de su régimen sancionador. Sin embargo, no se observó esa misma proactividad para innovar y crear mecanismos de rendición de cuentas en su relación con audiencias como los usuarios de los servicios financieros.

Las estrategias de rendición de cuentas que establecieron las agencias muestran que un uso apropiado de prácticas formales e informales en contextos de relaciones jerárquicas y horizontales puede reforzar el poder de las agencias y su legitimidad política para gobernar sus sectores. En cambio, un uso inadecuado y poco estratégico de prácticas de rendición de cuentas puede producir efectos contraproducentes para la consolidación de las agencias y configurar espacios de decisión y actuación con mayores condicionamientos institucionales formales e informales.

En este sentido la transición de la COFETEL al IFT es paradigmática para el caso mexicano. Frente a las grandes presiones que sufrió el regulador constreñido a un diseño institucional sumamente débil y sujetado por actores con más recursos de poder formal e informal, este logró emprender estrategias en las que utilizó mecanismos formales e informales de rendición de cuentas para cultivar mejores relaciones con su foro y ganar peso en la opinión pública como el árbitro idóneo para conducir las disputas regulatorias del sector.

Además, fue parte activa de la construcción de condiciones favorables para hacer una reforma regulatoria postergada durante décadas que consolidó un régimen de regulación que la dotó de amplios poderes regulatorios que fueron constitucionalizados.

En algunos casos, y en relación con ciertos momentos concretos, los tres casos parecieran mostrarnos con elocuencia el despliegue de estrategias de rendición de rendición de cuentas que incorporan una mezcla de mecanismos generales formalizados en el ordenamiento jurídico de observancia para toda la administración pública federal, junto al desarrollo de prácticas propias, que se transforman en innovaciones institucionales con las que procuran legitimidad política y reputación profesional frente a sus foros.

Cuadro 4. Comparación de estrategias de rendición de cuentas

Estrategias de rendición de cuentas	Incorporación de mecanismos generales	Desarrollo de prácticas propias	Innovaciones institucionales de rendición de cuentas
CNBV	Sí	Principalmente con la industria	A partir de crisis o necesidades coyunturales
COFEPRIS	Sí	Principalmente con la industria	No se identificaron en su relación con las audiencias
COFETEL/IFT	Gradualmente por resistencias de su foro	Tanto con la industria como con organizaciones de la sociedad civil, los usuarios y en	Diferentes prácticas para compensar sus deficiencias estructurales y ampliar sus poderes

		general la opinión pública.	regulatorios

En suma, la relación entre rendición de cuentas y ARI se encuentra fuertemente determinada no solamente por las reglas formales que forman parte de las reformas que ha experimentado el país en las últimas dos décadas, sino también por las orientaciones estratégicas de las prácticas que impulsan las agencias para impulsar sus agendas y robustecer su gestión. Además, a ello habría que añadir el tipo de relaciones que las audiencias logran establecer con la agencia. Cuando las agencias necesitan fortalecer sus posiciones para la regulación del sector o cuidar su reputación, buscan diversos tipos de apoyos de forma activa a través de mecanismos formales e informales de rendición de cuentas, que les permiten cultivar vínculos para promover sus agendas y ganar respaldos entre las audiencias. Este uso estratégico les da la posibilidad de consolidar su posición, legitimidad y reputación en la constelación de instituciones regulatorias.

Consideraciones finales

Nuestra atención se centró en explorar en qué medida las agencias impulsaron agendas propias de rendición de cuentas que fueron más allá de las obligaciones formales a las que les sujetaba el marco institucional, desarrollando mecanismos propios, tanto formales como informales, para avanzar en sus estrategias y su agenda regulatoria. En este sentido, la razón de nuestro interés reside en el propósito de conocer mejor cómo las agencias reguladoras mexicanas consiguieron asentarse institucionalmente -si realmente lo lograron-, y en qué medida la rendición de cuentas constituyó realmente un

aspecto clave en el tránsito hacia su consolidación institucional.

Hemos intentado demostrar la utilidad de ampliar el análisis de la rendición de cuentas en las agencias reguladoras observando el contraste entre el uso de los mecanismos formales e informales desplegados como parte de estrategias para responder o articular a sus foros. A través de este enfoque, puede constatarse que sus prácticas no solo han evolucionado a la par del mayor o menor desarrollo de la rendición de cuentas en México. De hecho, algunas permanecen ancladas a los mecanismos informales que habían establecido previamente con su foro para intercambiar información y opiniones. Puesto así, la juridificación claramente no es garantía de que los mecanismos formales abarquen e institucionalicen las relaciones de las agencias y sus audiencias. Esto demuestra que las agencias se mueven en el péndulo de las reglas y los acuerdos. En todo caso, tanto las agencias como sus foros ganan nuevas herramientas para participar en el proceso regulatorio y establecen estrategias que combinan los mecanismos formales e informales en su interacción cotidiana.

Por otro lado, se observa que el periodo en el que se crean las agencias pareciera un indicador importante de la amplitud de formalización que pueden adquirir los mecanismos de rendición de cuentas en sus regímenes de regulación, como lo demuestra el claro contraste entre el surgimiento de la COFETEL y la creación posterior del IFT en un momento en el que el régimen de rendición de cuentas en el país ya se encontraba consolidada. Esta idea la refuerza el hecho de que, aunque la CNBV y la COFEPRIS surgieron en dos momentos donde la importancia política de la rendición de cuentas contrastaba:

una en 1995 en la última época de gobiernos unificados, la otra en 2001, en pleno auge de la alternancia y bajo nuevas dinámicas de gobiernos divididos, en ninguno de los dos momentos se había institucionalizado el régimen de rendición de cuentas federal. Puede decirse que la CNBV, COFEPRIS y la COFETEL, convergen en cuanto a que surgen antes de que se desarrollen mecanismos formales de rendición de cuentas y a partir de ahí toman distintos caminos para ajustar paulatinamente sus prácticas y adaptar estrategias al régimen de rendición de cuentas que fue emergiendo. El IFT, en cambio, surge en un momento de maduración del régimen de rendición de cuentas y de una etapa prolongada de experimentación e innovación de sus prácticas en la gestión de la regulación del sector.

Las estrategias de la CNBV, COFEPRIS y COFETEL/IFT tienen como marco de referencia la infraestructura institucional del régimen de rendición de cuentas general que el país fue desarrollando y que se introdujo e intersectó con sus regímenes de regulación. Pero este marco de referencia se despliega a partir de la mediación de los agentes que participan en la política de regulación, determinando sus posibilidades, necesidades estratégicas y alcances. A partir de aquí podemos identificar tres estrategias puntuales. Una primera estrategia se apoya en mecanismos de rendición de cuentas formales y no desarrolla nuevas prácticas en el tiempo. Se trata de una estrategia complaciente donde las audiencias tienen demandas reducidas de rendición de cuentas, privilegian mecanismos informales y la agencia responde con prácticas informales que no se institucionalizan como innovaciones de rendición de cuentas en su marco regulatorio. En una segunda estrategia, la agencia enfrenta demandas coyunturales de

rendición de cuentas frente al foro. Cuando estas demandas activan amenazas que podrían dañar su reputación profesional, la agencia se moviliza y hace uso estratégico de sus mecanismos formales e informales para realizar ajustes e innovaciones institucionales a sus prácticas de rendición de cuentas. Un tercer tipo de estrategia se despliega en un contexto de deficiencias estructurales en su diseño institucional de la agencia que enfrenta altas expectativas y demandas del foro para lograr una regulación eficaz. La agencia se ve en la necesidad de emprender estrategias proactivas para desarrollar vínculos con su foro que le permitan construir un mayor respaldo, y así obtener mayores poderes regulatorios y establecerse como el actor institucional hegemónico del sector.

Los tres casos abordados, indican que aquella preocupación normativa por una rendición de cuentas que erosiona las posibilidades de efectividad del modelo de gobernanza regulatoria a través de las ARI, como se observó en estos casos, tiene poco sustento empírico. Por el contrario, un buen uso de los mecanismos de rendición de cuentas puede favorecer la toma de decisiones de los reguladores y consolidar su rol estratégico en la gobernanza de la regulación. Los casos también muestran con cierta elocuencia que la transición a elecciones competitivas, alternancias y creación de un régimen de rendición de cuentas es una condición necesaria para consolidar las prácticas de rendición de cuentas de las agencias. Pero si las agencias y su foro han de consolidar el desarrollo institucional de su régimen de regulación, necesitan construir relaciones de rendición de cuentas a partir de estrategias propias que vayan más allá de los mecanismos generales que paulatinamente van

incorporando conforme se amplía el régimen general de rendición de cuentas durante procesos de democratización.

Cabe, sin embargo, una advertencia. Si bien los casos muestran cierta diversidad sectorial y de arreglos institucionales que representan una parte importante del universo de ARIs en México, somos conscientes que apenas nos permiten una primera aproximación temporal limitada a un número de casos que es previsible denoten patrones que no representan la diversidad de estrategias y de prácticas de rendición de cuentas de las agencias mexicanas. Más aun, podría haber importantes divergencias con algunos sectores regulados que no han pasado por procesos de agencificación y siguen anclados al modelo administrativo previo. A pesar de esta limitación, creemos que con este análisis se pueden mostrar algunas regularidades y patrones que quizá se observan también en otras partes del conjunto del Estado regulador mexicano y en otros países.

Bibliografía

Ackerman, John. 2007. *Organismos autónomos y democracia: El caso de México*. México: Siglo XXI-Instituto de Investigaciones Jurídicas, UNAM.

Ballinas Valdés, Christopher. 2011. Political Struggles and the Forging of Autonomous Government Agencies. Palgrave Macmillan.

Barrera, Eduardo. 1995. "State Intervention & Telecommunications in Mexico". *Journal of Communication*, vol. 45, pp. 55-70.

Becerra, Ricardo; Salazar Ugarte, Pedro; Woldenberg, José. 2005. La Mecánica del cambio político en México: elecciones, partidos y reformas. Cal y Arena. Tercera edición.

Black, Julia. 2007**.** "Tensions in the Regulatory State", Public Law,

pp. 58-73.

_____. 2008. “Constructing and Contesting Legitimacy and Accountability in Polycentric Regulatory Regimes.” *Regulation and Governance* **2**: 1–28.

_____(2012). “Calling Regulators to Account: Challenges, Capacities and Prospects”, LSE Law, Society and Economy Working Papers, 15/2012.

Bianculli A.C., Fernández-i-Marín X., Jordana J. (eds) *Accountability and Regulatory Governance*. Executive Politics and Governance Series. London: Palgrave Macmillan.

Bovens, M. (2007) Analysing and Assessing Accountability: A Conceptual Frame- work. *European Law Journal,* 13, 447–468.

Bovens, M. 2010. “Two Concepts of Accountability: Accountability as a Virtue and as a Mechanism”, West European Politics, V. 33, I. 5, 946-967.

Bovens, M., y Schillemans, T. 2014. "Meaningful Accountability". En Bovens, M.; Goodin, Robert E. y Shillemans, Thomas, *The Oxford Handbook of Public Accountability*. Oxford: Oxford University Press.

Braithwaite, John. 2008. “The Regulatory State?” En Binder, Sarah A. *et al* (eds.) *The Oxford Handbook of Political Institutions*. Oxford: Oxford University Press.

Busuioc, E. Madalina. 2013. *European Agencies: Law and Practices of Accountability*. Oxford, UK: Oxford University Press.

Busuioc, E. M., & Lodge, M. 2015. The reputational basis of public accountability. *Governance*, **29**(2), 247–263.

Calderon Martinez, Pablo. (2014). Internationalisation as a

Democratic Tool: Revisiting Mexico's Double Transition: Internationalisation as a Democratic Tool. *Bulletin of Latin American research*. Vol. 33, Núm. 2.

Cejudo, Guillermo y del Carmen Pardo, María. 2016. *Trayectorias de Reformas Administrativas en México: Legados y Conexiones.* México: Colegio de México.

Cejudo, Guillermo, Lopez-Ayllon, Sergio y Ríos Cázarez, Alejandra. 2012. *La política de transparencia en México. Instituciones, logros y desafíos*. Coyuntura y Ensayo. México: CIDE.

Centro de Estudios Espinosa Iglesias. 2005. *Evaluación del Desempeño de Órganos Reguladores*. México.

Comisión Federal de Mejora Regulatoria. 2012. Fortaleza Institucional de las Agencias reguladoras en México. México: COFEMER.

Culebro Moreno, Jorge E. 1998. "Autonomía administrativa: El caso de la Comisión Nacional Bancaria y de Valores". Documento de Trabajo, núm. 74.

Culebro Moreno, Jorge E. y Larrañaga, Pablo. 2013. Development of Regulatory State in Mexico: From the Political Economical Reform to the Institucional Failure. Jerusalem Papers on Regulation and Governance. Paper No. 42. July.

Dubash, Navroz K. y Morgan, Bronwen (eds). 2013. *The Rise of the Regulatory State of the South. Infrastructure and Development in Emerging Economies*. Oxford: Oxford University Press.

Faya, Alejandro. 2010. *Fortalecer a los reguladores. Cambiando las reglas del juego*. México: CIDAC.

García Juanatey, Ana; Jordana, Jacint; Sancho, David. 2017.

"Administrative Innovations and Accountability Failures: The Termination of the Spanish Telecommunications Agency". *South European Society and Politic,* pp. 1-20.

Gilardi, Fabrizio. 2005. "The Institutional Foundations of Regulatory Capitalism: The Difussion of Independent Regulatory Agencies en Western Europe", en *The Rise of the Regulatory Capitalism: The Global Difussion of a New Order*, Annals of the American Academy of Political and Social Science, Sage, Vol. 598, marzo, 2005.

Harber, Stephen. 2005. "Mexico's experiments with bank privatization and liberalization, 1991-2003", *Journal of Banking & Finance*, Num. 29

Helmke, Gretchen y Levitsky, Steven. 2006. *Informal Institutions and Democracy: Lessons from Latin America.* Baltimore: The John Hopkins University Press.

Jordana, Jacint. 2010. "Autonomous Regulatory Agencies in Democratic Mexico", *Law and Business Review of the Americas*, Vol. 16.

_____. 2011. "The Institutional Development of the Latin American Regulatory State", in D. Levi-Faur (ed.) *Handbook on the Politics of Regulation.* Edwar Elgar: Cheltenham.

Jordana, Jacint, Levi-Faur, David y Fernández i Marín, Xavier. 2011. "The Global Diffusion of Regulatory Agencies", *Comparative Political Studies*, Vol 44, Issue 10, pp. 1343-1369.

Larrañaga, Pablo. 2008. "La política pública del principio de transparencia. Panorama para una agenda pendiente", pp.149-177, en Salazar Ugarte, Pedro (ed.), *El derecho de acceso a la información en la Constitución mexicana: razones, significados y consecuencias*.

México: IIJ-UNAM/IFAI.

Levi-Faur, David y Jordana, Jacint. 2006. "Toward a Latin American Regulatory State? The Diffusion of Autonomous Regulatory Agencies Across Countries and Sectors", *International Journal of Public Administration*, Vol. 29, Issue 4-6.

Levi, Faur, David. 2013. 'The Odyssey of the Regulatory State: From a "Thin" Monomorphic Concept to a "Thick" and Polymorphic Concept', *Law & Policy*, Vol. 35, Num. 1-2, January-April.

Lodge, M. 2004. "Accountability and Transparency in Regulation: Critiques, Doctrines and Instruments", in J. Jordana and D. Levi-Faur (eds.) *The Politics of Regulation. Institutions and Regulatory Reforms for the Age of Governance,* (Cheltenham: Edward Elgar Publishing) pp. 124–144.

López Ayllón, Sergio y Haddou Ruíz, Ali. 2007. "Rendición de cuentas y diseño institucional de los órganos reguladores en México". *Gestión y Política Pública*. Vol. XVI, núm. 1, I semestre, pp. 101-145. México: Centro de Investigación y Docencia Económica.

Lustig, Nora. 1998. Mexico: The Remaking of an Economy. Brookings Institution Press. Segunda edición.

Madrazo Lajous, Alejandro and Zambrano Porras, José Luis. 2007. "La ley de Televisa ante la Suprema Corte". *Isonomía*. N.26, pp.71-100.

Magaloni, B. 2005. "The Demise of Mexico's One Party Dominant Regime: Elite Choices and the Masses in the Establishment of Democracy" in F. Hagopian and S. P. Mainwaring (eds.) *The Third Wave of Democratisation in Latin America: Advances and Setbacks*. Cambridge University Press: New York, 121–146.

Maggeti, Martino, 2011. "Legitimacy and Accountability of Independent Regulatory Agencies: A Critical Review", *Living Reviews in Democracy*, Vol 2.

Majone, Giandomenico. 1994. 'The Rise of the Regulatory State in Europe', *West European Politics,* 14:3, 77–101.

_____. 1997. "From the Positive State to the Regulatory State: Causes and Consequences of Changes in the Mode of Governance*"*, *Journal of Public Policy*, Vol. 17, No.2, May-Aug.

_____. 2000. "The Regulatory State and its Legitimacy Problems", *West European Politics*, Vol. 22.

_____. 2014. "From Regulatory State to a Democratic Default", *Journal of Common Market Studies*. Vol. 52, issue 6 pp: 1216-1223

Mariscal, Judith y Rivera, Eugenio. 2007. "Regulación y competencia en las telecomunicaciones mexicanas", en *Serie Estudios y Perspectivas*, núm. 83. México: CEPAL.

Mendez, José Luis. 2017. "Presidents' Strategic Action and Policy Change in Mexico: A Comparison of the Hydrocarbon Policy Reforms of Enrique Peña and Felipe Calderon", Journal of Comparative Policy Analysis: Research and Practice, DOI: 10.1080/13876988.2017.1301086

Merino, Mauricio, López Ayllón, Sergio y Cejudo, Guillermo (coords.). 2010. La estructura de la rendición de cuentas en México. México: Instituto de Investigaciones Jurídicas.

Moran, Michael. 2003. The British Regulatory State. High Modernism and Hyper-Innovation. Oxdford: Oxford University Press.

Mulgan, R. 2000. 'Accountability': An Ever-Expanding Concept? *Public Administration*, 78: 555–573.

_____ **(**2011). 'Accountability' in B. Badie, B. Berg-Schlosser and L. Morlino (eds.) *International Encyclopedia of Political Science*, (Los Angeles, London: SAGE Publications), pp. 1–13.

Nacif, Benito. 2004. "Las relaciones entre los poderes ejecutivo y legislativo tras el fin del presidencialismo en México". *Política y gobierno*. Vol. XI. Núm 1.

Norman, Wayne y Ancell, Aaron. 2016. "Business Ethics, Democratic Theory, and the Regulatory State: Merriment & Diversion when Regulators and the Regulated Meet?". Presented in the Conference: *Normative Ethics and Welfare Economics*. Harvard Business School 21-22 October.

O'Donnell, Guillermo. 2006. "On Informal Institutions, Once Again". En: Gretchen Helmke & Steven Levitsky (eds) *Informal Institutions and Democracy: Lessons from Latin America*.

OECD. 1999. *Regulatory Reform in Mexico*. *OECD Reviews of Regulatory Reform.* París: OECD Publishing.

--------- 2002. *Regulatory Policies in OECD Countries. From Interventionism to Regulatory Governance*. *OECD Reviews of Regulatory Reform.* París: OECD Publishing.

-------- 2004. *Progress in Implementing Regulatory Reform*. *OECD Reviews of Regulatory Reform in Mexico.* París: OECD Publishing.

-------- 2012. *OECD Review of Telecommunication Policy and Regulation in Mexico*. París: OECD Publishing.

-------- 2017. *OECD Review of Telecommunication and*

Broadcasting Review in Mexico. París: OECD Publishing.

Pardo, María del Carmen. 2010. "Los mecanismos de rendición de cuentas en el ámbito ejecutivo de gobierno", en Mauricio Merino *et al.*, (coords.), *La Estructura de la Rendición de Cuentas en México*, México: Instituto de Investigaciones Jurídicas UNAM/CIDE.

---------- 2012. "El Estado mexicano: ¿de la intervención a la regulación?", en Soledad Loaeza y Jean Francois Prud´homme (coords.), Los Grandes Probles de México, Instituciones y Procesos Políticos, tomo XIV. México: El Colegio de México.

Petersen Cortés, German. 2016. "Instituciones, agentes y reformas estructurales. Las reformas energéticas de 2008 y 2013". *Foro Internacional*, vol. 56, núm. 3, pp. 657-683. México: Colegio de México.

Roldan Xopa, José. 2016. "De la desconcentración administrativa a la autonomía constitucional. Los órganos reguladores en su nuevo escenario", en *Trayectorias de reformas administrativas en México: Legados y Conexiones*, María del Carmen Pardo y Guillermo Cejudo. México: Colegio de México.

Romzek, B. S. 2015. "Living accountability: hot rhetoric, cool theory, and uneven practice", *PS: Political Science & Politics*, vol. 48, no. 1, pp. 27–34.

Salazar Ugarte, Pedro. 2008. "*Nota introductoria*", en Salazar Ugarte, Pedro (ed.) *El derecho de acceso a la información en la Constitución Mexicana: razones, significados y consecuencias*. México: IIJ/IFAI.

Scott, C. 2000. 'Accountability in the regulatory state', *Journal of*

Law and Society, vol. 27, no. 1, pp. 38–60.
Sigmond B., Karen. (2010)**.** "Banking regulation in Mexico: Lessons from financial crises", *Mexican Law Review*, vol. IV, núm. 1, p. 17.

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Ley de la Comisión Nacional Bancaria y de Valores
Ley de Crédito Popular
Ley del Procedimiento Administrativo
Ley Federal de Transparencia y Acceso a la Información Pública
Ley Federal de Radio y Televisión
Ley General de Salud
Ley Federal de Telecomunicaciones
Ley Federal de Telecomunicaciones y Radiodifusión
Ley de Transparencia y Ordenamiento de los Servicios Financieros
Reglamento de la COFEPRIS

INFORMES

INAI. *Informe de labores*. 2016. México: Instituto Nacional de Transparencia, Acceso a la Información y Protección de Datos Personales.
CNBV. Informe anual. 2016. México: Comisión Nacional Bancaria y de Valores.
COFEPRIS. 2015. *Gestión de la salud pública en México*. México: Comisión Federal de Protección a los Riegos Sanitarios.
Senado de la República. 2015. *Informe de actividades de la Comisión Especial para la atención y Seguimiento del caso Oceanografía*.

2015. México: Senado de la República.

LISTA DE ENTREVISTAS

CNBV

1. Entrevista con ex presidente de la CNBV
2. Entrevista con vicepresidente de la CNBV
3. Entrevista con director general de la ABM
4. Entrevista con director general de la CNBV
5. Entrevista con funcionario de *compliance* HSBC
6. Entrevista con vicepresidenta de la CNBV
7. Entrevista con ex funcionario de la CNBV.
8. Entrevista con ex funcionario de la CNBV y BBVA
9. Entrevista con funcionario de la COFEMER
10. Entrevista con ex funcionario de la CNBV
11. Entrevista con director general del Banco de México

COFEPRIS

1. Entrevista con ex presidente de la COFEPRIS
2. Entrevista con funcionario del Órgano Interno de Control de la Secretaría de la Función Pública
3. Entrevista con oficial mayor de la COFEPRIS
4. Entrevista con comisionado de operación sanitaria de la COFEPRIS
5. Entrevista con directora ejecutiva de ANAFAM
6. Entrevista con agencia "tercero autorizado" para protección y vigilancia sanitaria

7. Entrevista con agencia “tercero autorizado” para protección y vigilancia sanitaria
8. Entrevista con ex coordinador de asesores del procurador federal del consumidor
9. Entrevista con ex presidente de COFEPRIS y ex diputado federal
10. Entrevista con director ejecutivo de un laboratorio de medicamentos
11. Entrevista con consultora en regulación sanitaria
12. Entrevista con funcionario de COFEMER

COFETEL/IFT

1. Entrevista con vicepresidente de regulación de NEXTEL
2. Entrevista con ex comisionada del IFT
3. Entrevista con funcionario IFT
4. Entrevista con funcionario de IFT
5. Entrevista con ex comisionada de COFETEL e integrante del consejo consultivo de IFT
6. Entrevista con ex comisionada de IFT
7. Entrevista con funcionario de COFEMER
8. Entrevista con ex presidente de COFETEL
9. Entrevista con consultor en competencia y telecomunicaciones y ex funcionario de COFETEL
10. Entrevista con funcionario de IFT
11. Entrevista con ex funcionario de PROFECO
12. Entrevista con ex funcionario de COFETEL

CONCLUSION

Debates about the regulatory state have been useful in identifying new patterns of institutional change in a context of numerous state transformations. However, the idea that the developmental state was being replaced wholesale in these processes was soon revealed to be limited in helping us understand the phenomena of change in contexts that did not have deep-rooted state traditions of regulatory governance. If the legacy of the regulatory state in these new institutional contexts were to be consolidated, it would have to go through a slow and difficult process of adaptation to political and legal orders that tend to be hostile to regulatory modernization.

With this in mind, I have argued that most studies in regulation and, specifically, the regulatory state, take for granted the idea that with the rise of regulation, the role of the state would be monomorphic in an era of global expansion of regulatory institutions that, along with markets, have conquered new territories across diverse societies. In this setting, the possibility of developing a more robust theoretical interpretation of the processes of regulatory change was, as I have shown, limited.

Incidentally, this shortcomings of the monomorphic perspective are not only reflected in the regulatory literature but are also common to studies of other types of state, such as the developmental state.

This binary approach to state theory falls short by limiting itself to the use of ideal types as an analytical lens, restricting its value to heuristic studies. Fortunately, more recently, scholars like Levi-Faur (2013a, 2013b) have called for the field of regulation studies to take state theory more seriously. In a more empirical fashion, Dubash and Morgan's (2013) analysis regulatory dynamics in cases drawn from the global south and Jordana's (2011a, 2011b) studies of historical trajectories in the Latin American context are an important starting point to inspire the ideas and concepts through which the study of the regulatory state in general, and the Mexican state in particular, has been approached in this thesis.

Hence, the first chapter took seriously the idea of incorporating the tools of state theory into the analysis of regulation, proposing an interpretative framework that places state activity in a broader perspective and helps us to understand the complexity of the relationships between the institutional arrangements of the regulatory and

developmental state. Of course, the polymorphous perspective of the state is a working theory that emerged from macro-sociological approaches to the state, like that of Michael Mann (1986) and, more recently, in the works of Bob Jessop (2016). More development is needed of this theory in order to improve its potential as a more reliable portrayal of the varieties of forms through which state activity takes place and through which policy regimes are shaped and linked.

Nonetheless, building on these theoretical and interpretative grounds it has been possible to, in turn, develop hypotheses informed by brief case-studies that illustrate interactions between the regulatory state and the structures of the developmental state taken from countries in the global North and South. The need for a dialogue between both developmental and regulatory perspectives shows the potential of a theoretical bridge between different state types and their ideals. This seems an important dialogue to foster as, at the end of the day, their institutions are interrelated and embedded across policy regimes. In this sense, the examples of South Korea, Chile and Brazil were illustratively useful.

Thus, to advance the polymorphous state approach, it was necessary to develop an analytical framework through which to observe empirically the dynamics of regulatory change and developmental reproduction and to compare them at the meso-level between and within sectors. This was the step taken in the second paper: here I reviewed at the empirical level the plausibility and validity of the hypotheses developed in the interpretative framework. In order to reinforce them at the analytical level, I integrated insights from institutional analysis. Thus, the temporal analysis of the developmental state and the regulatory state made it possible to identify, sequentially, the trajectory of regulatory change and the persistence or reproduction of developmental institutional arrangements.

In this regard, the telecommunications sector is of particular interest. After experiencing a more radical and comparatively short period of regulatory change, meaning that the governance model of the regulatory state was consolidated within a couple of decades, the last phase of telecommunications reforms saw a return of developmental policies that - at least on paper - could be said to reactivate institutional arrangements from the developmental state. In the electricity sector, however, it was precisely the

persistence of the developmentalist model that allowed this process of positive feedback, facilitating a reproduction within the electricity sector and later diffusion to the telecommunications regime. These results confirm the idea that different iterations of the state, such as the regulatory and developmental state, can not only coexist within countries but also across and within policy regimes.

Thus, in the second paper the analysis focused on structures, though nevertheless dynamic structures as opposed to static ones. i.e. the emphasis was on dynamism: the dynamics of path dependence and the mechanics that allowed for the reproduction of arrangements from the developmental state; the way in which regulatory change evolved over time and across sectors. The third paper, however, turned its focus to the possibility that the influence of regulatory agencies can go beyond their institutional structures, i.e. the capacity of regulocrats to use accountability regimes to strength their agendas.

Accordingly, since regulatory agencies are lacking in democratic legitimacy, it is especially important that they develop capacities for accountability. This has been one of the most important areas of study in the field of regulatory governance over the past decade or so. The third chapter

showed how, as part of the democratizing reforms that Mexico implemented at the beginning of this century, regulatory agencies were able to go well beyond the administrative reform that incorporated a panoply of formal accountability mechanisms. Consequently, two major trends of reform inspired by state models intersected: the regulatory state and the democratic state. At the intersection of these two institutional structures, regulatory agencies and audiences meet through the regulatory process, where accountability mechanisms are implemented. Regulators find not only formal, but also informal mechanisms for strengthening their institutional position in the policy regime, and for increasing their leverage to channel regulatory agendas and deploy different strategies. Thus, this paper is also linked to the idea of a polymorphous state in which the interactions of the regulatory state and the democratic state shape the institutional possibilities of facing up to the democratic deficits of the regulatory agencies. Paper three also links to the second chapter at the empirical level, insofar as it allows for the exploration of institutional trajectories coming from different processes of institutional change and addresses these intersections with a broader series of

observations between formal and informal accountability institutions.

Together, the three articles allow for the interpretation and analysis of the emergence of the regulatory state alongside the functioning of other long-standing institutional processes. It seems to me that observing in detail how regulatory reforms develop in relation to previous institutional arrangements (the developmental state) or subsequent ones (accountability regimes) allows us to highlight the adaptive capacity of regulatory institutions and their plasticity in interacting with other political ideologies and institutional dynamics. The latter were more evident in the cases that explored their interactions with processes of development and accountability, but in the second and third papers, a similar phenomenon was observed in relation to processes driven by human rights. Of course, it would be wrong to assume that this is just an endogenous property of regulatory institutions; on the contrary, it seems to be part of the very nature of the polymorphic state.

It is, as yet, difficult to say whether these results can necessarily be replicated beyond Mexico. I believe, however, that the conditions identified in the case of

Mexico are similar to other countries and sectors in Latin America and elsewhere, as indicated in the first chapter. The analysis here does, however, provide the opportunity to approach the study of the regulatory and developmental state in a more systematic way, including the relationship between agencies and accountability regimes. Furthermore, the results of this research are made more robust by the fact that they are based on a high number of cases and observations, using comparisons across sectors, even though they only explore the situation in Mexico. In any case, it is clear that research designs that incorporate comparisons between countries and sectors have the potential to broaden the horizon in the study of the cohabitation dynamics of the regulatory and developmental state and to confirm the replicability of these dissertation results. In the meantime, it is well known that a reduced number of cases has

References

Dubash, N. K., & Morgan , B. (2013). *The Rise of the Regulatory State of the South* . Cambridge: Cambridge University Press.

Jessop, B. (2015). *The State: Past, Present, Future.* Cambridge: Polity Press.

Jordana, J. (2011). Institutional Development of the Latin American Regulatory State . En D. (. Levi-Faur, *Handbook on the Politics of Regulation* . Cheltenham : Edward Elgar Publishing Inc. .

Jordana, J. (2016). Las Agencias Reguladoras en América Latina: Una Perspectiva Institucional. En H. Alviar García, & E. Lamprea. Bogotá: Universidad de los Andes. Facultad de Derecho.

Levi-Faur, D. (2013). The Odyssey of the Regulatory State: From a "Thin" Mnomorphic Concept to a "Thick" and Polymorphic Concept. *Law and Policy, 35*(1-2).

Levi-Faur, D. (2013). The Regulatory State and the Developmental State. En N. K. Dubash, & B. Morgan, *The Rise of the Regulatory State of the South.* Oxford : Oxford University Press.

Mann, M. (1986). *The Sources of Social Power* (Vol. 1: A History of Power from the Beginning to AD 1760). Cambridge: Cambridge University Press.