

CURRENT HISTORY

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Mexico’s Problematic Reforms

PAMELA K. STARR

President Enrique Peña Nieto’s first year in office (he was inaugurated in December 2012) was impressive, but also disappointing. The new administration’s legislative achievements, including a series of long-awaited economic reforms, were striking in both number and content. Yet these accomplishments were accompanied by severely compromised fiscal and political-electoral reforms, an absence of anticorruption legislation, a sharp economic downturn caused mainly by government missteps, and a lack of sustained policy attention to the country’s security situation. For the Mexican public, these last two failings weigh much more heavily on their everyday lives than the potential benefits from reforms approved by politicians who rarely seem to legislate with the citizenry in mind. Opinion polls show the lowest public support for any presidential administration in decades.

Mexico in 2013 unquestionably moved forward at a pace not seen in a generation. These successes came at a price, however, and it is unclear if they will actually lead to a more competitive and dynamic economy that benefits the entire nation. Mexico is no longer the “Aztec Kitten” of its recent past—a country with the promise of prowess but painfully slow to mature—yet it remains uncertain whether Peña Nieto can place the nation on the path to becoming the “Aztec Tiger” of its dreams.

A SURPRISING PACT

During its first 13 months in office, the Peña Nieto administration oversaw congressional authorization of a remarkable array of reforms in education, telecommunications, banking, taxation,

electoral rules, government transparency laws, and the energy sector. These achievements rested on four policy-making pillars: the so-called *Pacto por México* (Pact for Mexico), careful management of powerful interest groups, a packed legislative calendar, and a bit of good fortune. Together they enabled Peña Nieto to achieve what his far more popular predecessors failed to accomplish.

The Pacto was an agreement reached between the new administration and Mexico’s three main political parties, which had previously found it difficult to agree on much of significance: the president’s Institutional Revolutionary Party (PRI); the conservative National Action Party (PAN), the party of the two previous presidents, Vicente Fox and Felipe Calderón; and the left-leaning Democratic Revolutionary Party (PRD). Negotiated secretly during the presidential transition and signed publicly the day after Peña Nieto’s inauguration, the Pacto bound the signatories to work together to advance 95 legislative initiatives. These were grouped into five broad categories—economic growth, employment, and competitiveness; societal rights and liberties; justice and security; transparency, accountability, and combating corruption; and democratic governance. The agreement carefully balanced the core policy concerns of the president and the opposition.

Most analysts doubted the Pacto would survive long enough to address Mexico’s most pressing policy challenges, and its death was foretold many times during 2013. Its surprising survival and effectiveness reflected the president’s need for cooperation with the opposition and the political logic behind the parallel but autonomous decisions of the PAN and the PRD to propose a broad policy accord with the government. For Peña Nieto, the unexpectedly weak electoral performance of his party and his own candidacy in the July 2012 elections (he received just 38 percent of

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the vote) left him neither a strong popular mandate nor a majority in either house of Mexico's Congress. He could count on PRI legislators and their Green Party allies, but if he was to have any hope of fulfilling his main campaign promises—including several constitutional changes that had to be approved by two-thirds majorities—cooperation with the opposition was key.

STRONG INCENTIVES

Meanwhile, internal party politics motivated PAN and PRD leaders to opt for cooperation with the new president. Public dissatisfaction with the country's direction after 12 years of PAN leadership helps explain the poor electoral performance of that party's presidential candidate (Josefina Vázquez Mota, who received 25 percent of the vote). But PAN legislative candidates fared much better, and a party leadership that was not closely allied with Vázquez Mota or outgoing President Calderón did not see her loss as their loss. They were thus able to move quickly beyond this defeat and to focus on how to reposition the party for the future. They concluded that their opportunity lay in branding the PAN as the anti-PRI: Rather than replicate the obstructionist behavior of PRI legislators who repeatedly blocked reforms proposed by PAN presidents, the PAN would behave more cooperatively, operating as a loyal opposition. In the process, it would use its leverage in Congress to push forward key pieces of the PAN's legislative agenda, including pro-market economic reforms and political reforms to strengthen democracy.

In the PRD, a different calculation led to a similar conclusion. The party's relatively moderate leadership group was determined to not repeat the mistake the PRD had made when it squandered its significant legislative power won at the ballot box by refusing to negotiate with a president, Calderón, whose election victory it considered illegitimate. By instead operating as a democratic opposition in the legislature, the moderates expected to advance PRD policy goals and to exploit these achievements to strengthen their hold on the party leadership. They further hoped this would expand the PRD's political appeal beyond a traditional base still dominated by Andrés Manuel López Obrador, the party's defiant and uncompromising presidential candidate. Leading PRD politicians recognized Peña Nieto's victory even as López Obrador challenged the election result, and the party leadership soon entered the negotiations that would culminate in

the Pacto. This fortuitous setting fostered unexpectedly strong incentives among the president and the parties not only to create but to nurture and sustain the Pacto, despite a long history of deep political mistrust and even enmity.

The government's deft management of powerful interest groups and private sector actors that had weakened or blocked previous reform efforts further explains the Pacto's effectiveness. The business community and public sector unions, long accustomed to favorable federal policies, had traditionally used their economic and political clout to coerce the government into modifying legislation to meet their demands. The Peña Nieto team and PRI legislative leaders worked behind the scenes to earn the acquiescence of Mexico's telecom giants and to ensure that measures to democratize internal union politics were excluded from labor reform.

Most conspicuously, the government jailed the head of the teachers' union on corruption charges once it became evident that she would actively oppose the education reform approved as part of the Pacto. This legislation directly threatens union power by basing decisions on the hiring, tenure, and promotion of teachers on performance evaluations instead of union decisions, as was the previous practice. The message was not lost on other, equally corrupt, union leaders—particularly the head of the petroleum workers' union.

The final two elements of the Pacto's success were a legislative strategy designed to avoid the missteps of previous administrations and some good political fortune. The government's overriding legislative aim for 2013 was an energy reform plan sufficiently robust to attract significant private investment in a pivotal yet highly inefficient sector of the economy. If done well, this reform would augment economic competitiveness and counter perceptions of Mexico as an unsafe country forever constrained economically by legislative gridlock and nationalist sensibilities.

LINKING CONCESSIONS

The history of energy reform in democratic Mexico suggested that a sequenced approach—starting with initiatives based on strong agreement and building trust among historic adversaries before turning to more divisive issues—was insufficient. This was the Calderón strategy, and while it did build some policy momentum during his first year in office, it failed to culminate in the constitutional changes needed to attract private

investment. Although this was due to a number of factors, an unanticipated flaw in the sequencing strategy stands out: the parties' inability to make what political scientists call "inter-temporal commitments." These involve concessions made today in exchange for a promise to receive something in the future, and in the case of energy reform, linking compromises in one issue area to parallel concessions in another.

Calderón's energy reform proposal faced strong resistance, most notably to a provision permitting private investment in petroleum exploration and production undertaken by Pemex, Mexico's national oil company. This meant there were two ways this legislation could be approved: either by satisfying opposition demands on energy, which would inevitably result in a heavily watered-down reform; or by linking opposition concessions on energy with administration concessions on issues of great importance to the PRI and the PRD. The Calderón team hoped that the experience of working together to approve a significant (albeit limited) pension reform early in 2007 would generate the needed political trust, especially with the PRI, to enable an inter-temporal linking of political commitments.

In the highly polarized political setting of 2007, however, this strategy failed to convince PRI lawmakers that their votes for energy reform would be reciprocated later with promised concessions on fiscal policy. It was only after the PRI demanded that these two reforms be addressed at the same time, that any legislative agreement was possible—with the addition of an electoral reform demanded by the PRD. But by then the PRI was in the driver's seat, so the linking process took place on terms set by a party with a strong internal opposition—especially from the petroleum workers' union—to any reform that allowed private investment in Pemex, particularly in exploration and production.

The result was a significant dilution of Calderón's proposal, removing provisions authorizing risk-sharing contracts that could have allowed access to the capital, technology, and know-how Pemex needed to reverse a sharp decline in production and proven reserves. Also, the bruising and polarized debate over energy legislation undermined the limited trust that had developed between the president and the PRI, effectively blocking the rest of Calderón's legislative agenda.

Drawing on this experience, the Peña Nieto team adopted a modified sequencing strategy that operated within the context of the Pacto. By committing all signatories to advancing an entire set of policy initiatives whose basic content was agreed to before the signing ceremony, the negotiators were finally able to link concessions on different policy issues inter-temporally. Appreciating the enormous political value of the Pacto, and fully recognizing the fortuitous circumstances that had created this window for effective governing, the administration worked hard to strengthen and sustain the trust and collaboration it created. Like Calderón, Peña Nieto front-loaded the legislative calendar with issues on which there seemed to be broad, tri-partisan agreement—reforms of labor markets, education, and telecommunications—to generate quick successes and solidify trust among the party leaders.

Peña Nieto also worked hard to prevent July 2013 state and local elections, including a tight race between PRI and PAN candidates for governor of Baja California, from disrupting the Pacto. This effort included an agreement—arising from clear evidence that PRI politicians in Veracruz state were manipulating social programs for electoral gain—to fire some of the responsible officials and suspend all federal spending on social programs for three months before the elections. Also, the legislative calendar was adjusted to move political reform before energy reform. This forced the government to trust the PAN to keep its inter-temporal commitment, rather than vice versa.

*Self-inflicted wounds
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slide into recession.*

PACKED AGENDA

Again drawing on the Calderón experience, Peña Nieto then packed the fall 2013 legislative calendar. Under Calderón, the painful concessions required to get the votes for energy reform—and the polarizing debate that it generated—had poisoned the political atmosphere. It was best to get as much done as possible before turning to energy and the prickly problem of Pemex.

A full docket also made it easier for Peña Nieto concentrate into a single congressional term (tri-partisan trust still only went so far) the political trade-offs needed to win support for a more robust energy reform, one that would broaden the rules under which Pemex could sign production agreements with foreign oil firms. Keeping the PRD

from revolting would be particularly challenging given the vague wording of the Pacto regarding energy reform—as well as the party's origins and identity. The PRD was formed in the late 1980s in opposition to neoliberal reform, and since then it has seen itself as a nationalist bulwark against any changes to the constitutional prohibition of exploration and production contracts or concessions for foreign oil companies. One of the founders of the PRD, Cuauhtémoc Cardenas, is the son of the Mexican president who nationalized the petroleum industry in 1938.

To appease the PRD, Peña Nieto bowed to its fiscal policy demands—eliminating a proposed value-added tax on food and medicine that the PRD had long opposed, adding a larger increase in the top income tax rate (from 30 percent to 35 percent, instead of 32 percent), and slashing business tax deductions. The resulting fiscal legislation, approved late last year, infuriated the business community and the middle class by extending the 16 percent value-added tax to private-school tuition and to mortgages and rental payments, provoking a PAN boycott of the final vote. It also prompted sharp criticism from economists. They noted the legislation's lack of attention to informal enterprises and tax evasion, the two largest fiscal problems in Mexico, and complained that its hodgepodge of tax increases would weigh down an already stumbling economy.

Even so, PRD leaders celebrated a legislative victory at a time when they faced increasing criticism within the party for participating in a pact that helped the president without promoting the PRD's core policy agenda. They also faced external pressure from their former presidential candidate, López Obrador, who resigned from the PRD in September 2012 and has since dedicated much of his still formidable political resources to blocking legislation that permits any private investment in Mexico's energy sector, and especially in Pemex.

In a parallel process, the Peña Nieto administration fulfilled its commitment to the PAN to reform election laws before approving energy legislation, and acquiesced to core PAN demands for several “democratizing” reforms long opposed by the PRI. The political reform legislation allows the reelection of legislators and mayors to consecutive terms (albeit subject to term limits), and

it transforms the attorney general's office into an autonomous agency independent of the presidency. More contentiously, it requires a restructured Federal Electoral Institute to oversee state as well as federal elections, and expands the circumstances under which elections can be nullified.

Election scholars and former electoral officials have strongly condemned these latter two reforms for replacing the highly respected Federal Electoral Institute with a new, untested entity whose specific powers and responsibilities are poorly designed and in some cases poorly defined. The legislation also allows election results to be overturned for violations of campaign spending rules. In a country where electoral outcomes are regularly challenged for this reason, the new law could be a perfect recipe for increased postelection conflict.

THE PRICE OF REFORM

The questionable quality of the fiscal and electoral reforms enacted in late 2013 led many analysts to conclude that Peña Nieto either tried to do too much during the fall legislative session or gave away too much to hold the Pacto together. These arguments miss the point: Doing and giving away “too much” were both essential to the success of a legislative strategy designed to deliver meaningful energy reform.

In early September, tens of thousands of dissident teachers took to the streets of Mexico City in an unsuccessful attempt to prevent Congress from approving legislation that would implement the performance evaluations required by the education reform. Given the threat that the teachers could join with López Obrador to block energy reform, PRD support became an essential counterweight. In this context, a packed legislative calendar and the government's willingness to make big concessions before asking a still suspicious opposition to do the same were essential to making the inter-temporal linkages needed to advance energy reform, even the slightly watered-down bill that the president sent to Congress.

Peña Nieto's ability to suddenly embrace the much more ambitious energy reform the legislature approved in December owed as much to good fortune as to political strategy. Not only did the teachers refuse to support anti-energy reform protests, but the protests proved to be much smaller and less threatening than anticipated.

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Then in the first days of December, a heart attack sidelined the heart and soul of the protest movement, López Obrador.

The government immediately capitalized on this window of political opportunity and joined with the PAN to pass the robust energy reform it had long favored. The measure changes the constitution to authorize exploration and production contracts and “licenses” for private firms. While these licenses retain national ownership of the petroleum in the ground, they mimic the risk aspect of concessions by allowing foreign oil companies to own the petroleum the instant it comes out of the ground. This change is expected to promote significant investment in the sector.

An incensed PRD withdrew from the Pacto and dedicated itself to working to prevent this legislation from being implemented, but promised to do so only through all legal, democratic means possible. The streets have remained quiet.

CHALLENGES AHEAD

The Peña Nieto administration played an impressive game of three-dimensional chess to get to this point, but converting these legislative achievements into tangible gains for the country will require an equally impressive performance in 2014. Each reform requires implementing legislation that offers politicians and interest groups another opportunity to shape the measures more to their liking, and less to the benefit of the nation.

Implementing legislation requires only a simple majority vote in both houses of Congress (not the two-thirds required for the constitutional changes of 2013). Although the PRI can build a majority in the lower house with support from two small parties, there is no obvious way to assemble a majority in the Senate without turning to the PRD or the PAN. Yet the PRD's December defection from the Pacto following the government's “betrayal” on energy reform, as well as growing doubts within the PAN about the Pacto's political utility beyond 2013, suggest that the tri-partisan alliance has run its course—and with it the capacity for making inter-temporal commitments and linking different issue areas. Building legislative majorities in 2014 may prove as complex as building super-majorities in 2013.

Making things still more challenging, the electoral calendar effectively limits the time available for approving the implementing legislation to the first congressional session of 2014, running from February through April. By the September start of

the fall legislative session, politicians and parties will be starting to gear up for July 2015 midterm elections. During these three months, politicians will face strong interest group pressure—from big business, telecom companies, current and potential Pemex contractors, and unions.

Pressure to scale back the victories of 2013 is apt to be strong and often effective, as demonstrated by an apparent accord between the administration and the Mexican telecom giants, Televisa and Telmex, to ensure that the telecom reform did not threaten their core corporate interests. Also, late-summer street protests and blockades organized by dissident teachers appear to have blocked the implementation of education reform in a handful of states where the teachers are particularly strong. And Peña Nieto will have to protect his victories without strong popular support, either for himself or his government.

OVERSIGHTS AND MISSTEPS

Peña Nieto's headline-grabbing ability to advance economic reform legislation obscures a series of serious policy oversights and missteps. The administration's intense focus on energy legislation translated into highly problematic fiscal reform and profoundly flawed electoral reform. It also pushed aside legislation to create a national anticorruption commission, and it seemed to distract the administration from attending to broader economic management and the country's still-challenging security situation.

Faced with a crowded legislative calendar, the administration and its congressional allies never quite got to Peña Nieto's anticorruption proposal. This is no small matter for a president who hails from a party with a well-deserved reputation for tolerating corruption, leads a country where popular concern about graft has increased in recent years, and campaigned on the need to crack down. Progress against corruption also matters for energy reform. A vast majority of citizens believes that corruption and favoritism are inevitable in the upcoming contracting process, and that allowing private investment in Pemex will once again benefit the rich and well-connected at the nation's expense, as with the privatization of Telmex and the banking system during the 1990s. Although designing an effective anticorruption entity will be difficult at best, a sincere effort to do so is vital to creating a popular perception of fairness in the reform and confidence in the government implementing it.

Meanwhile, the performance of the economy under Peña Nieto has been disconcerting, to say the least. The administration inherited an economy growing at a combined average of 3.8 percent during 2011 and 2012, and promised 4 percent growth in 2013 on the way to 6 percent by 2018. Instead, the economy plunged into recession by the summer. This is partly explained by difficult international economic conditions and the normal drop in government spending that takes place during the first months of a new Mexican administration as presidential appointees settle deep into the bureaucratic hierarchy.

But the core cause is the government's own policy mistakes. Public spending plunged nearly 4 percent in 2013, raising questions about the ability of "super minister" Luis Videgaray to play a dual role of finance minister and informal presidential chief of staff. At the same time, an overdue but clumsily implemented change in federal housing policy cut government investment in public housing at a moment when Mexico's largest home-building firms were being crushed by a mountain of debt. The loss of federal investment pushed them to the brink of bankruptcy, eliminated most private investment, and contributed to a dramatic drop in construction activity. These self-inflicted wounds accelerated Mexico's slide into recession, raised questions about the new team's capacity to manage the economy, and help explain the nosedive in public approval for the president.

Potentially most problematic is the relatively limited attention Peña Nieto has given to security. The administration's decision to reverse Calderón's policy of actively publicizing successes in the battle against organized crime, combined with the formation of the Pacto and its impressive legislative advances, has kept the government's security policy efforts largely out of the headlines and thus somewhat hidden from public view. The administration has markedly increased security collaboration between states and the federal government, overseen the approval of a new penal

code, and increased policy attention to the social and economic causes of crime.

But that is where the good news ends. For every other significant advance on the security front there has been a countervailing setback. While the Zetas criminal organization was hit fairly hard in 2013, the Knights Templar grew stronger and effectively transformed Michoacán into a failed state. Crime has fallen precipitously in Ciudad Juárez and Monterrey, but has increased rapidly in Guadalajara and Morelia. While a decline in drug-related homicides that began in 2012 has continued, kidnapping and extortion have increased to unprecedented rates. Even as the government has increased Mexico's crime-fighting autonomy relative to the United States, it has been slow to develop national intelligence capabilities to replace US assistance. And while Peña Nieto has proposed the creation of a gendarmerie to reduce the military's role in the fight against organized crime, no clear steps have been taken to develop this agency. This has forced the administration to continue following Calderón's army-dependent playbook, as seen in a late 2013 military deployment in Michoacán.

SCORE: INCOMPLETE

Mexico's advances during 2013 were unlike anything seen in over two decades, yet it is too early to sing the praises of the new administration. Most of Peña Nieto's legislative achievements remain incomplete, and they have been accompanied by serious missteps that must be rectified and oversights that can no longer be ignored.

Much of what has been achieved, moreover, has relied on a return to Mexico's traditional presidentialism—the power of a president to hammer out deals with the opposition and powerful interest groups, leaving the general public silent and on the sidelines. This is good news for governability in Mexico, but once again it has come at the expense of core democratic practices. While 2013 was impressive, 2014 will be more a more telling year for Peña Nieto and Mexico's future. ■

From *Current History's* archives...

"Often the worst political scoundrels of Latin America have been most in need of our friendship to stay in power and have taken pains to cultivate it. They have provided costly, ultimately ruinous stability in return."

Carleton Beals "Latin American Social and Political Progress," August 1930

HISTORY IN THE MAKING
100
years
1914 - 2014