



# Progress, but to What End?

2007 Electoral Reform in Mexico

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**T**hroughout most of the 20th century, Mexico was known as an exceptional case of successful and continuous one-party rule in the Americas. That came to an end in 2000, when Vicente Fox took the presidency away from the Institutional Revolutionary Party (PRI), initiating the last phase of the transition to democracy. Competition ensued, and the 2006 election that led Felipe Calderón to the presidency—keeping the National Action Party (PAN) in power—was the most closely contested one in modern times. The race could be described in many ways, but equitable is an adjective that few would dare use.

Despite the almost psychotic claims of fraud by the losing candidate, Andrés Manuel López Obrador, it was clear by 2006 that the electoral rules had succeeded in fulfilling the task they were designed to accomplish: minimizing the possibility of fraud. Hence many concerns were raised about equity in the electoral competition, an issue that had always been present, but had rarely addressed head on. The aftermath of the election changed the situation, setting the stage for a widely—although not always deeply—discussed electoral reform. The changes resulted

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in amendments to the constitution and the refurbishing of the current electoral law. Though in Mexico, the newest electoral reform falls short of improving equity in any substantial form. Furthermore, the new rules are likely to weaken the already feeble electoral connection between voters and elected officials, thus making the latter even less accountable to the electorate.

## *A Long History of Electoral Reforms*

Elections have been regulated in one form or another in Mexico since before it was an independent nation. In 1963, the Federal Electoral Law was reformed to regulate

the existence of so-called party congressmen, allowing parties other than PRI to have representatives in Congress. The 1977 Federal Law for Electoral Organizations and Processes (LOPPE, its acronym in Spanish) formalized the random selection of citizens to serve at polling places and included representatives of political parties in the Federal Electoral Commission. The 1987 Federal Electoral Code (CFE) increased the representation of political parties in the Federal Electoral Commission and forced the results of each polling place to be made public as votes were counted *in situ*.

The 1990 Federal Code for Electoral Institutions and Procedures (COFIPE) was crafted in response to the suspected fraud in the 1988 presidential election. It created the Federal Electoral Institute (IFE) as a decentralized entity in charge of organizing federal elections, still coordinated by the Ministry of the Interior. COFIPE was reformed in 1992 to introduce an identification card with voter's photographs. It was subsequently reformed in 1993 to regulate the existence of electoral observers, and again in 1994 to increase the weight of citizen councilors on IFE's General Council. The subsequent 1996 reform granted IFE autonomy, making it an entity run by citizens, and created the Federal Electoral Court as a specialized branch of the judiciary. A reform in 2002 introduced gender quotas for candidacies; the 2005 reform gave Mexicans abroad the right to vote.

In a nutshell, the first generation of electoral reforms in contemporary times (1963-1987) sought to make the electoral system more inclusive and grant greater legitimacy to the electoral process and its outcomes. In contrast, the second generation (1990-1996) sought to eliminate electoral fraud and make elections more transparent. The third generation (2002-2005) contributed additions to the prevailing scheme, making electoral institutions more inclusive by forcibly incorporating those groups that had been excluded from candidacies and voting. With these achievements in place, the Mexican government must now guarantee equitable electoral competition.

## The 2006 Election

The 2006 federal election took place under electoral laws that successfully minimized the chances of mass fraud. As in recent elections in Mexico, the large-scale fraud and vote buying that had been characteristic of elections in the past was virtually impossible to carry out. Thousands of national and international observers, along with a

full-time special prosecutor, guaranteed that no massive vote-buying or coercion took place. Tampering with ballots was also virtually impossible, as votes were hand-counted before party representatives by randomly selected citizens who served as election officials. A print copy of the polling station tally was given to each party representative. These representatives could object to the count and accompanied the citizen-election officials to deposit the sealed ballot boxes in the electoral district office to be preserved in case it became necessary to re-count the votes. In sum, a fraud would require coordinating hundreds of thousands of Mexicans—among election officials, party representatives and randomly selected citizens—with clockwork precision. By all means, it would be an implausible feat.

The losing candidate, Andrés Manuel López Obrador—whose opinions were echoed by some sympathetic journalists—thought otherwise, claiming that widespread tampering had been orchestrated to prevent him from becoming president. The conspiracy, allegedly devised by former president Carlos Salinas de Gortari with the help of Mexican businessmen and President Fox, was characterized as both old-fashioned ballot stuffing at the polls and as cybernetic vote tampering. None of the stories on the alleged “fraud” has been substantiated beyond circumstantial conjectures, which constitutes a sufficient reason to discard fraud as a serious concern that must be addressed by electoral reform. After all, none of the international observers and party representatives that monitored the election can provide any evidence of the fraud that dominated López Obrador's imagination.

The real issue in 2006 was not fraud. Serious journalists and pundits were concerned instead about equity in the campaign. Most coherent arguments attempted



**Opposite:** Mexico's President, Felipe Calderón, holds up a newspaper announcing his victory. **Above:** Manuel López Obrador greets supporters in Mexico City before his eventual loss in the drawn-out and bitterly-contested presidential election.

to explain why López Obrador had lost the election—or why Calderón had won by such a tight margin—followed the lines of fair chances for campaigning. Four of them are worth revisiting for our purposes here. First, it was asserted that the election was lopsided because of a series of spots broadcasted in the months prior to the election that underscored the achievements of the Fox administration. These were followed by a series of statements by President Fox on the perils of “changing horses while crossing the river,” which was a clear allegory about the danger of not reelecting a party that had a good performance record. Second, it was argued that the voters that benefited most from government social programs, which handed out cash or tangible benefits, would inevitably be more inclined to favor the PAN candidate, thus truncating López Obrador’s chances before the election. A third argument was that the television spots broadcasted by the Calderón camp during the campaign, portraying López Obrador as a “peril to Mexico” and comparing him to Venezuela’s Hugo Chávez, provided an unfair advantage to the PAN candidate. Finally, there were concerns regarding the impact of a series of television ads sponsored by the Business Coordinating Council (CCE) chastising López Obrador in the days prior to the election (which he never responded to, though he could have). Only political parties, it was argued, should participate in the electoral process.

Despite being wrong about the fraud, López Obrador was right when he asserted that elections in Mexico are plagued with inequity. This imbalance favored him from 2001 through 2005 but ultimately hurt him in the 2006 election. In a peculiar interpretation of equity, López Obrador complained about inequity in the race due to President Fox’s activism, but only after his numbers started to shrink in the polls. He remained silent about the most prevalent sources of electoral inequity: money and airtime. Perhaps

this was because he had a share of public funds larger than any other candidate and had enjoyed more free airtime coverage than any other candidate. This trend dated back to 2001 when he was Mayor of Mexico City and constantly engaged in verbal skirmishes with President Fox as means to gain free airtime.

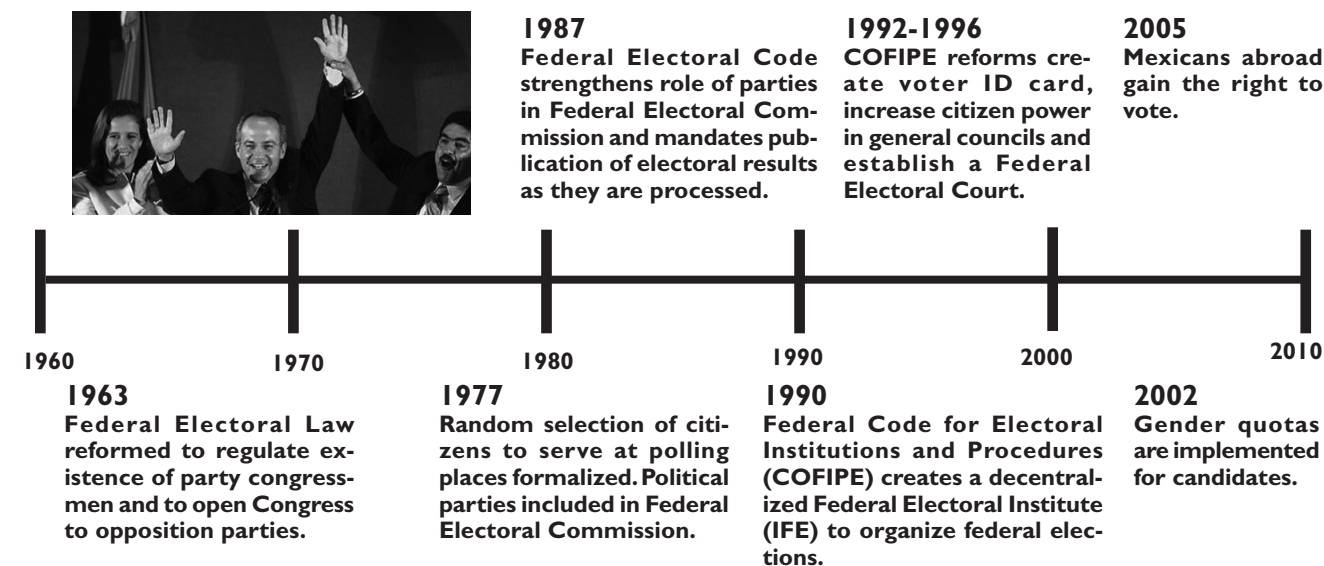
The concerns noted above should come as no surprise since the electoral system was created—and reformed—to minimize the possibility of electoral fraud, but never to reduce inequity among candidates.

### 2007: *The Right Steps in the Wrong Direction*

As the electoral system becomes more successful at minimizing chances of fraud and enhancing inclusiveness, it is only natural that inequity should begin to overshadow other concerns. The 2006 election and its aftermath provide some evidence for this. At least rhetorically, the 2007 constitutional reforms and subsequent modifications to COFIPE were aimed at reducing inequity in federal elections. Unfortunately, the reforms will hardly have such an effect.

We do not subscribe to the simplistic view that equity in an election means that all candidates should have the same probability of winning the election. Such a view is naïve and contrary to the principles that support liberal democracy. The definition of equity in electoral competition we adhere to is based on the distinction between the advantages that derive from the institutional setting (structural) and those that derive from performance while in office (behavioral). The first set of advantages result from holding office and the resources that come with it, such as higher public exposure, better access to media, and perhaps better access to financial resources. The second set of advantages result simply from being a competent elected official, submitting a good platform to the elector-

## Fixing the Vote



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ate, and being able to implement it effectively. Hence, an electoral reform that seeks to achieve equity should be one that downplays structural advantages and avoids disrupting the impact of behavioral advantages. That is the very essence of accountability and is a necessary condition for effective competition for office. The line that distinguishes both conditions is not always clear, but the principle involved is that an incumbent should not be punished for being in office, but rather for performing badly while in office. Similarly, rules should be such that incumbents are rewarded for their good performance, but not for incumbency itself. This framework would keep public officials accountable, while at the same time maintaining their interest in retaining office.

Accountability rests on the incentives provided by reelection: an elected official would be more likely to act according to the public will when doing so guarantees permanence in office. Unfortunately, the Mexican constitution prohibits the immediate reelection of all elected officials. For parties, accountability relies on their interest in having a good reputation as a means to retain office. A party's reputation would carry through for candidates running under the party's label, thus making the parties accountable. In essence, this alternative mechanism relies on the ability of incumbents to constantly show "what they have done lately for voters" and do so by linking their achievements to the party they belong to.

Hence, the electoral reform that was most feasible was not necessarily the best reform in terms of guaranteeing equity. Impeding incumbents from appearing on television advertisements, censoring all government publicity during campaigns, limiting the ability of political parties to directly purchase air time during campaigns and transferring its purchase to the electoral authority, as well as forbidding actors other than political parties to purchase election-related spots clearly fell short of the goal of generating equity.

Our point is not that the 2006 campaign was equitable, and thus reform was unnecessary. We argue that despite the acknowledgement of the need for equity in elections, the reform approved by Congress does little to make electoral competition more equitable. This outcome is, for the most part, the result of a flawed assumption that Mexican legislators and lawyers insist on relying upon: behavior is determined by the law. The logic behind such a premise is necessarily circular: people will abide by the law because the law states they should abide by it. Laws based on this assumption focus on outcomes, instead of causes. As a result, "thou-shalt-not" regulations are easy to circumvent by creatively avoiding the explicit prohibitions. Violation of the law is perhaps delayed, but seldom curbed.

The correct approach is much simpler and significantly less costly. We advocate a "men are no angels" view—elegantly exposed over two centuries ago by James Madison in Federalist Paper 51—and argue instead that behavior is influenced by incentives. To the extent that a political actor has to pay a cost for engaging in a particular action, the less likely he or she is to engage in it, provided that the cost is

sufficiently high. Translated to the problem at hand, the current reform fails to force political actors to internalize the costs of engaging in inequitable behavior. Therefore, most of the "innovations" of the electoral reform that have been praised by commentators and intellectuals clearly fall short of an ideal institutional setting that would allow candidates to compete more equitably. A few examples should suffice to make our point clear.

The reform in question states that all government propaganda should cease during electoral campaigns. Furthermore, it impedes elected officials from appearing on government communications: a worthwhile attempt to cope with inequity, but also a naïve one. López Obrador never needed to engage in an intense advertising campaign about the "segundo piso," a newly constructed elevated portion of the Mexico City beltway. All he needed to do was inaugurate it with a running race over it to generate news coverage that was effectively more intense than any air time he could have bought. The use of structural ad-

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vantages to promote behavioral ones is precisely the issue ignored by the reform.

Perhaps the most noxious effect of this provision is the freezing of the 2012 presidential race on today's frontrunners: Beltrones (PRI), Creel (PAN), and López Obrador (PRD). Under the new rules, it will be extremely difficult and immensely costly for any new candidate to gain recognition, since politicians cannot advertise as either candidates or public officials. Therefore, the cost of becoming a competitive candidate is effectively elevated to the point of being impossible to bear for the rest of presidential hopefuls. In plain words, the reform adds yet another restriction to new entrants.

The reform also states that political parties should abstain from emitting negative or defamatory messages about candidates and forbids citizens and organizations from broadcasting messages that favor or oppose candidates. This sounds like a morally correct decision, except for two caveats. First, the reform does not provide a definition to identify this type of behavior. Hence the definition is subjective, and more importantly, political, when interpreted by IFE's General Council and sanctioned by the Electoral Court. Second, we know little about the effects of negative campaigns, but among the few things we do know is that they enhance awareness about candidates. Citizens typically are indifferent about politics except when they have to vote. The reform limits the amount of information concerning

the performance of incumbent parties precisely when voters need it most and when it is crucial to keep the incumbent party accountable. By virtue of limiting all communications from public officials during the campaigns, the reform effectively minimizes the feeble incentive for accountability that single-term limits have imposed.

### *An Improved Proposal*

Could more equitable elections be achieved without sacrificing accountability? Certainly, through a scheme that balances media coverage and forces parties to internalize the costs of going public. The simpler alternative is regulating broadcasts so that all coverage of the incumbent is followed by a reaction from all parties. Similarly, any message from one party during a campaign should be followed by a reaction from all other parties. Under these circumstances, a candidate would think twice before spending valuable campaign time attacking another candidate, since that would de facto mean granting free air time to all candidates to retaliate perhaps with more bite than the initial attack. Similarly, incumbents would think twice before seeking free

One of the most important of these rules concerns funding and air time, which are distributed according to a formula whereby only 30 percent is given in equal shares to all parties, while the remaining 70 percent is given in proportion to the vote obtained in the previous federal election. This formula effectively levels the playing field among the larger parties at the cost of a substantial advantage to the incumbent, but also keeps small parties perennially underfunded and at a hard-to-justify disadvantage. Moreover, the incumbent party keeps an additional structural advantage that results not from performance in office, but simply from having won the previous election. This 30-70 rule was the best, and perhaps the only significant, attempt to reduce inequity dating back to the 1996 electoral reform. In an ideal world, all parties would have the same access to air time, regardless of their vote share, in order to enhance competition, as was suggested with the scheme detailed above. In an imperfect world, a rule that enhances incumbency advantages but fosters some competition is better than having no rule at all.

Campaigns are fundamentally mechanisms to select the “best” among available candidates competing in an election. When voters know little about most candidates, it is not surprising that they look at campaign style, proposals, or operation as signals to assess competence. Tampering with the ability of candidates to campaign competitively is a means of preserving inequitable races. That is precisely what the renewed de facto prohibitions on new parties and independent candidates, as well as the formulas to redistribute resources among parties, are doing. This is just an enhancement of a previous trend: no new parties with a real chance of winning a national election have appeared since the foundation of PRD in 1989.

Opening up the system to new parties and independent candidates is a necessary condition to have some incentive for elected officials to be accountable and responsible to their constituents. Absent immediate reelection, as is the case in Mexico, elected officials are overwhelmingly responsive to the parties that selected them into office. A more competitive electoral arena would reduce the power of parties and modestly tilt the balance of power toward voters, restoring some incentives of elected officials to be responsive and accountable to voters.

In sum, by attempting to patch up the law and making simplistic reforms based on a flawed logic, elections will remain inequitable. This is certainly an undesirable outcome for citizens seeking to enhance the democratic character of the political system.

If and when new parties and independent candidates are welcomed into the electoral arena, the immediate reelection of elected officials must be implemented to create the link of accountability between officials and voters that has been absent in modern Mexican politics. No democracy should insulate elected officials from voters or take away voters’ abilities to punish ineffective or unresponsive policymakers and their parties the next time around at the polls. ■



**A judicial official counts boxes of votes as part of the 2006 presidential election recount. Despite Obrador’s claims and protests, no evidence of systematic fraud was found.**

air time to promote themselves if they know that the other parties are also entitled to provide their position on the issue. The point is not that attacks will stop or incumbents will not promote themselves, but that they will only do so when the benefit exceeds the cost, such as providing voters with relevant information. As a result, this approach would be less costly and much more effective than the current one.

An additional structural source of inequity, preserved by the reform, resides in the rules about access to resources.