

The Lessons of the Elections

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Germán Romero/Cuartascore

The Federal Electoral Institute General Council sessioning during the 2006 elections.

On July 2, 2006, the electoral authorities' worst nightmare came true: in a country fraught with poverty and inequality, the right-wing governing National Action Party won by a narrow margin of 0.56 percent of the vote, defeating a left coalition headed up by a charismatic candidate who had launched his campaign with an important advantage despite federal government attempts to stop him. This made it natural for the frustrated losers to seek refuge and consolation in irrational but fecund conspiracy theories.

It is true that, with time, the fraud hypothesis was not backed up by empirical evidence, but it is also true that the tone of the presidential campaigns, the meddling of businessmen and the president in the campaign (the former illegal and the latter illegitimate in Mexico), the well-founded hopes for a left victory and the photo finish at the polls awakened in many Mexicans their historical mistrust of electoral officials and institutions. This is why polling reported that about 30 percent of Mexican citizens think that there was electoral fraud.

In the following pages, I will propose some keys for interpreting what happened and suggest certain measures

to avoid a repeat performance. Of course, I am aware that uncertainty about outcomes is normal in any democratic system and that, for that very reason, close elections will always be on the horizon.

A PROBLEM CALLED PRESIDENTIALISM

Presidentialism has been very bad for Latin America. The problem is not new, but its effects have made themselves felt again during the transitions toward a democratic constitutional model: the personalization of politics paves the way toward a return to populism, not the consolidation of democracy. At least in this, it is a good idea to turn toward Euro-

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pe and forget the United States. After all, as Robert Dahl has taught, in matters of democracy and constitutionalism, the U.S. model is the old one and the new one is the post-war model that has flourished on the other side of the Atlantic. There, although personalities are important—just remember Silvio Berlusconi—the legislative branch is the axis around which politics turns. Here, even though there is a congress, the pivot of power has a first and last name: Hugo Chávez, Luiz Inácio “Lula” da Silva, Néstor Kirchner, Michèle Bachelet, Evo Morales, Felipe Calderón, etc. It is not by chance that candidates without a party—erroneously called independent—have emerged so often in these lands, nor that legislatures enjoy such low prestige.

The institutional design of presidentialism is the backdrop that explains a sizeable part of people’s dramatic reaction to the 2006 electoral results. The two frontrunners, Felipe Calderón and Andrés Manuel López Obrador, personified the aspirations, fears and frustrations of millions of Mexicans. For that reason, although neither got more than 35 percent of the vote, when the race got close, emotions boiled over. The almost 15 million voters who cast their ballots for each of them experienced the electoral outcome as an absolute victory/defeat. Those are the perverse results of the “winner-takes-all” arrangement: the loser, at least in the presidential race, is left with nothing. In a parliamentary system, by contrast, the defeated candidate is the leader of the opposition and—most importantly—operates from the legislature. For that reason, even though the left made its best showing in history by almost doubling its Senate seats and winning 150 additional deputyships compared to only six years

before, López Obrador’s followers experienced the federal election as a failure. In fact, the resounding defeat of the Institutional Revolutionary Party (PRI), the formerly hegemonic, authoritarian party that in only three years lost 27 Senate seats and 105 seats in the lower chamber, went practically unnoticed. The competition between the frontrunners obscured the merits of the democratic Olympics.

Strengthening the legislative branch, putting it at the center of national politics as a space for discussion, deliberation and decision-making is the most ambitious challenge suggested by the 2006 elections. Making politics par-

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liamentary through institutional reforms that would weaken the president and strengthen the legislature throughout Latin America is the only way to strengthen parties as opposed to caudillos, institutions as opposed to personalities. Real democratic governability lies on this road and not on the road that imposes a single will over collegiate pluralism, as Alberto Fujimori used to like or Hugo Chávez is attracted to. The reformer’s compass must lead us toward practices like reelection for the legislature or even a true parliamentary system and not, as some propose, toward strengthening the executive branch by instituting a second round of voting in

presidential elections, government by decree or weakening legislative pluralism by reducing the number of deputies and/or senators. In Mexico, for example, the transition to democracy included the creation of what were called “plurinominal” deputies, or so-called party-deputies (deputies elected by proportional representation), which allowed the opposition parties to gain representation in legislatures. Eliminating this would simply be a step backward toward the abyss. Supporting the democratic system means creating more democracy, not less. To reinforce the rule of law, it is necessary to advance toward a “government of laws” and not toward postmodern reformulations of “a government of men.”

PARADOXES OF THIS UNFORTUNATE REALM OF INEQUALITY

A real electoral reform, at least in Mexico, must include a radical change in the relationship between politics and the mass media, above all at election time. Current legislation allows for a perverse formula that can be summarized as follows: national political parties receive huge amounts of public monies which, every three years when there are midterm and or presidential elections, end up in the pockets of the big radio and television networks, that is, the pockets of two people.¹

Sad paradoxes of this unfortunate realm of inequality: at election time, government resources benefit the rich and alienate the poor. We should immediately point out that the problem is not in the decision to emphasize public monies over private monies for the parties. In fact, as electoral events of the last 10 years show, this system has favored

equality in the competition and hindered the transfer of “dirty” money into politics. The problem resides in the amounts and destination of the funds. And the best way to justify reducing these amounts is by restricting the parties’ options for spending them; concretely, in banning political ads in the broadcast media. I understand that this might seem an unjustified limitation on fundamental freedoms, but what is at stake are the institutions that make those freedoms possible, and therefore, apparently paradoxically, that limitation—which would also be directed at the holders of media licenses—is a precondition for democracy itself becoming viable.

The problem of the “media-ization” of political competition is not just a matter of money. As the 2006 Mexican presidential campaign eloquently demonstrated, electoral publicity in the mass media tends to simplify the message, trivialize public issues, and, in the extreme case, demonize all adversaries. Some might think that this is inevitable and even positive: politics, they will say, is confrontation, and in politics, like in love and war, everything goes. Nevertheless, there are those of us who accept only the first part of that reasoning: politics is confrontation, that is true, but for it to be democratic, it has to take place within certain perimeters and echo principles like tolerance, respect for pluralism, legality, etc. That is the logic of current Mexican legislation, which stipulates that parties must “abstain from any expression that implies a diatribe, slander, libel, affront, defamation or that denigrates the citizenry, public institutions or other political parties and their candidates, particularly during electoral campaigns and in political publicity materials used dur-

ing said campaigns,” as stated in Article 38 of the Federal Code of Electoral Institutions and Procedures (Cofipe). Otherwise, the fight for power continues to be *political*, but stops being *democratic* and threatens to go beyond institutional bounds. The 2006 experience offers a factual basis for this warning.

During the presidential campaign, advised by publicists and marketing specialists, most of Mexico’s political parties ignored this norm. Thus, during the campaigns, rancor, multiplied by the media, divided the supporters of the front-runners into the good guys and the bad guys, the honest and corrupt, the democrats and the fascists. These extremely

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offensive pairs of adjectives were simultaneously and indistinctly hurled back and forth from one side to the other. And, as we discovered, saddened and surprised, after the election, many Mexicans remained trapped in the friend/enemy logic reminiscent of Karl Schmitt. This adversarial climate undoubtedly increased the pressure and the intensity of the accusations flung at the electoral authorities. Given the intensity of the barrage, the arbiter seemed like a babe amidst a band of scoundrels.

This is why purchasing airtime for political ads should be banned definitively, like in some European countries. This does not imply that politics and

democratic discussion would be banned on radio and television, but it would put an end to paid ads in the media. Nevertheless, the media should be obligated to allow the dissemination of ideas and to broadcast programs by the different political forces in equal conditions, as well as to use government time slots to air proposals from parties and their candidates. This would, on the one hand, radically reduce campaign costs (and therefore, the amounts received by parties could be significantly cut back), and, on the other hand, in principle it would generate the incentives necessary to prioritize explaining ideas instead of insults, proposals instead of whims. And, along the way, to kill three birds with one stone, campaign length should also be shortened; today a presidential candidate’s campaign lasts 166 days (23 and a half weeks); senators’ campaigns, 91 days (13 weeks); and deputies’ campaigns, 70 days (10 weeks).

THE INFILTRATORS

In 2006, actors other than political parties and their candidates took a hand in electoral competition as never before, riding roughshod over the rules; and, obviously, when they could, they did it through the mass media. One example was President Vicente Fox, who illegitimately used public resources and drew his sword to strike left candidate Andrés Manuel López Obrador. Another example was, despite being explicitly banned by law, some businessmen, members of the Businessmen’s Coordinating Council (CCE) and certain interest groups expressing their preference for the winning candidate.

In some countries, this is considered normal and even desirable. In Mex-

ico, given the design of our legislation which, among other things bans reelection, and the hostility that finally marked the campaign, they fed the interpretation of those who saw the electoral outcome as the culmination of a plot against the candidate of the Coalition for the Good of All, López Obrador. To top it all off, in an act of profound, cynical irresponsibility, when the Electoral Tribunal, the legal body responsible for judging the election, denounced the offenses and excesses of both Fox and the CCE, they both ignored the judges and acted as though their actions had been legitimate. More fuel on the fire.

In the future, we have two choices: either legislation includes effective punishment for those who violate this kind of ban, or the restriction should be lifted and everyone should be allowed to intervene in the campaigns. The coming reform must be clear on this point. It is true that the Federal Electoral Institute (IFE) General Council could have tried more energetically to stop the “negative campaigns” and to prevent the continued broadcast of the spots paid for by the businessmen and the president’s office against López Obrador. But it is also true that they did not have the legal tools (legislation stipulating effective, timely sanctions that could actually be enforced) needed to put a definitive stop to them; and this was taken advantage of by those who are now demanding respect for the arbiter of the race. The president, parties and businessmen, knowing that the electoral authorities could not punish them effectively, lent a deaf ear to IFE accords, communiqués and calls to obey the law, and in doing so, were jointly responsible for the deterioration of its credibility.

These illegitimate and/or illegal interventions that have had such an important impact on the post-electoral ambiance in Mexico are an additional argument for definitively banning the sale of political ads by the media. In fact, in an apparent paradox, a legal restriction of this kind could be accompanied by a liberalization of citizens’ participation and the participation of their organizations in electoral campaigns. After all, in any self-respecting democracy, the door for expressing preferences and supporting political options must be open for all; what is not legitimate is using that opportunity to denigrate your adversary or taking advan-

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tage of privileged positions (political, economic or ideological power) to have an impact on the race. For this reason, and because of their cost and the interests involved, political ads in the media must be banned equally for everyone. What must be done is to design legislation that would allow the citizenry to openly express its political preferences but that, in addition to ensuring a quality debate, would also make certain that it is not only the voices of the politically and/or economically powerful that could be heard by banning their broadcast or publication in the mass media. This would be the best *signum prognosticum* for the future.

CONCLUSIONS

The IFE General Council made politically important, isolated errors that were its fault during the presidential election. Concretely, electoral counselors have been accused of

- a) not announcing voting trends on election night;
- b) being rather unconvincing when they explained the reasons for that omission; and
- c) clumsily and confusedly explaining the reasons that they had not included the votes from some tally sheets that were said to contain certain inconsistencies in a Program of Preliminary Electoral Results (PREP), which makes it possible to consult the election results on the Internet polling place by polling place, even if these results were not legally binding.

Although these decisions had been previously agreed upon by all the political parties, they were not reported to the public in a timely, precise manner. The mistake, in light of the election outcome, became enormously important, and, as Jeremy Bentham warned, a belated explanation does not always repair the damage of a first mistaken impression. When a project is not transparent, the public may harbor serious, sinister misgivings. This is the case, above all, when one of the contenders—in this case the Coalition for the Good of All—decides to take advantage of the authorities’ waffling to feed the spiral of mistrust. The negligent inexperience of some and the disloyalty to democracy of others put the electoral institutions in check.

But the electoral institution had a flaw from the beginning that cannot be attributed to the officials who were members of its decision-making body: the appointment of the president and electoral counselors in 2003 was the result of a disagreement, not a political compromise. Many of us predicted the evils that this flaw portended, above all if the final outcome turned out like the one we witnessed in the presidential elections, like a bad joke of fate. The lack of a political agreement to back up the arbiters' appointment contaminated the public's evaluation of their performance, very often unjustly, and undermined their political authority. The solution to this original sin is not—at least not neces-

sarily— replacing the members of the electoral body, but rather all the existing political forces, or at least the three most important ones, categorically showing confidence in the arbiter. And this has to be achieved before 2009. Respect for the arbiter's decisions is a political, not a legal, requirement for future elections. In this same sense, it would be a good idea to find, once and for all, a way to gradually renovate the administrative and judicial electoral authorities' decision-making bodies. As we have seen, it is worth it.

The only promising route forward for reforming the electoral institutions is compromise, agreement among the parties. As Hans Kelsen knew, compromise means postponing what sep-

arates partners in favor of what unites them. Every agreement, every pact, is a compromise, because compromise means mutual tolerance. That political pact must result from a deliberation and a broad, responsible negotiation because the idea is to agree on the “rules of the game” to be used to compete for political power. This is a competition that, as Karl Popper said, can only be peaceful when it manages to be democratic. **MM**

NOTES

- ¹ The author is referring to Emilio Azcárraga Jean, the owner of Televisa, and Ricardo Salinas Pliego, from Televisión Azteca, two of Mexico's most powerful businessmen. [Editor's Note.]



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