

Mexico's Cancelled Or Delayed Political Reform Never Ending Story?

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INTRODUCTION

Revising the Mexican Constitution via amendments or reforms has been the traditional way of coping with an ever changing reality and of trying to bring normativity into normality. However, Mexico's political actors are facing charges of not being able to reach the agreements the country requires to foster economic, political, and social development. Analysts usually cite among the pending reforms the ones on energy, labor, taxes, and the political system. The political reform, by the way, is half-approved to the extent that it is not clear whether it has been cancelled or just delayed.



Deputies observing voting on the political reform bill.

POLITICAL REFORM

After Mexico's highly contested 2006 presidential elections, Congress passed a controversial constitutional amendment labeled as political reform, which was ratified by the majority of the state legislatures and published in the *Diario oficial de la federación* (Federal Official Gazette) November 13, 2007, and came into force the following day. This political reform can be characterized by its concentration of power in the political parties. Arguably, this concentration was required to face the increasing influence of the mass media. However, the empowerment of the citizenry continued to be postponed.

Actually, the political parties intended to explicitly prohibit independent candidacies; they failed to achieve this on a federal level in Article 41 of the Mexican Constitution, but apparently they succeeded in doing it at the state level in Article 116, thus reinforcing the prevailing view of a political system without citizens, *i.e.* a party-centered system or "partyocracy."¹

Moreover, in the 2009 midterm elections, a widespread electoral movement called on voters to cast intentionally annulled or defaced ballots as a protest against the prevailing state of affairs; the result was a very significant 5.41 percent of the total votes. Therefore, the call for a political reform centered on citizens was in order. This turnout was significant on its own since any political party is required to have and maintain 2 percent of the popular vote to retain its legal

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registration, and, especially if compared with a historical average of 2.85 percent of annulled votes in federal elections from 1994 to 2006, which it almost doubled.²

In fact, in this context, different political actors did introduce several political reform bills, including the one presented by the president on December 15, 2009, to empower the citizenry without diminishing the traditional representative institutions and to strengthen our political system as a whole. The different bills included diverse proposals. I will emphasize those I consider directly related to the demands of the electoral movement calling on voters to annul their ballots:³

- 1) Reorganizing Congress, including its reduction, or at least that of the Senate;
- 2) Reintroducing consecutive reelection of the members of Congress and other elected officials to multi-member bodies;
- 3) Reconsidering a two-round or double-ballot mechanism for presidential elections and other elected officials to one-person bodies;
- 4) Recognizing votes for independent and write-in candidates;
- 5) Recognizing annulled or defaced ballots and their direct or immediate effects;
- 6) Reintroducing mechanisms of direct or semi-direct democracy, such as the popular initiative, plebiscite, or referendum, and recall; and
- 7) Reconfiguring electoral bodies with “independent” councilors.

REORGANIZING CONGRESS

Several proposals did coincide in reducing the Chamber of Deputies from 500 representatives to 400 or 432, and the Senate from 128 to 96 seats. Although one proposal suggested a proportional representation system for the election of all

members of Congress, the rest emphasized a model combining the majority and proportional representation systems in the Chamber of Deputies (either 300 and 100 or 240 and 160), while eliminating the 32 Senate seats elected on a proportional basis, since they did not represent the states, but the political parties through their closed party lists.⁴

REINTRODUCING CONSECUTIVE REELECTION

Not surprisingly, all but one of the proposals agreed on reintroducing the reelection of members of Congress and other elected officials to multi-member bodies, such as representatives to the local assembly and even to city councils. It is worth mentioning that the 1917 Constitution was silent on this possibility, and hence did allow reelection until the constitutional amendment published in the *Diario oficial de la federación* (Federal Official Gazette) April 29, 1933 explicitly prohibited it for deputies and senators, in Article 59, and, for mayors and other city elected officials, as well as local deputies, in Article 115. Among the grounds to justify—and to maintain—this prohibition is commonly cited the need for the institutionalization of a party system and the renovation of political elites. Moreover, all the proposals expressly rejected the reelection of incumbents to one-person bodies and agreed not only to reintroduce the reelection of elected officials to multi-member bodies, but also to limit this possibility to 12, 9, or 6 consecutive years in the same post.⁵

RECONSIDERING TWO-ROUND OR DOUBLE BALLOTING

After a too-close-to-call 2006 presidential election with a difference of merely 243 934 votes between the first and second places in a country of more than 100 million, accusations of electoral fraud, without a complete recount, and, hence, questioned legitimacy, the president—elected, by the way, with a 35.89 percent popular support, in contrast to runner-up’s 35.31 percent—did include in his proposal the need to reconsider the two-round or double-ballot system for presidential elections. Objections to this mechanism frequently include the claim that it introduces a distortion not only between the real popular support won in the first round and the fictional support in the second round, which usually takes the form of a

ballotage or run-off between the two leading candidates, but also between the latter support and the corresponding force or political support of the political party in the legislature. To address this criticism, the proposal suggested that the second round of voting should take place on the same day as the election of the members of Congress.⁶ In my opinion, this mechanism can and must also be extended to the election of other officials to one-person bodies, such as governors.

RECOGNIZING VOTES FOR INDEPENDENT AND WRITE-IN CANDIDATES

Some proposals, considered major cornerstones from the point of the view of the citizenry, did reintroduce the possibility of registering independent candidates. The 1917 Constitution did permit independent candidates to be registered; in fact, originally, all candidates were independent, until the Federal Electoral Law, amended in January 7, 1946, excluded them, by suggesting that only political parties could register candidates. Moreover, since then, all ballots have included a box in which the voters could cast their ballots for a write-in candidate, but the problem was that if those ballots were questioned, they were counted as annulled.⁷

RECOGNIZING ANNULLED OR DEFACED BALLOTS

The electoral movement calling the voters to cast intentionally annulled or defaced ballots included at its core the recognition not only of the indirect and medium-term effects of annulled or defaced ballots themselves, but also of the direct and immediate ones. Thus, instead of merely adding the annulled or defaced ballots to the total votes cast and using them to determine the threshold required for political parties to gain—and even to maintain—their registration and entitlement to public campaign financing, the proposals included incorporating a box on the ballot representing the possibility of casting an annulled or defaced vote equivalent either to “None of the Above” (NOTA) or to “ReOpen Nominations” (RON), *i.e.*, in the case that the annulled or defaced ballots get the majority of votes cast, since they represent a vote for none of the above, it would be necessary to reopen nominations for another election in a second round and so on until a candidate wins by a majority.⁸

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REINTRODUCING MECHANISMS FOR DIRECT OR SEMI-DIRECT DEMOCRACY

The obvious reforms to be adopted in any proposal that takes the citizenry into account must include reintroducing mechanisms of direct or semi-direct democracy, as a complement not a substitute for representative democracy, such as the popular initiative, the plebiscite or referendum, and recall. Similarly to the case of reincorporating independent candidates, all of these require very thorough regulation and scrutiny to avoid the possibility of manipulation. For example, a popular initiative would require a 0.1 percent of support from the electorate and might gain preferential treatment; the plebiscite or referendum must be called for, among others, by 2 percent of the electorate, but for the result to be binding it would require more than 50 percent plus 1 of the electorate to participate; and, a recall must be called by 5 percent of voters, but for the result to be binding it would also require a participation of more than 50 percent plus 1 of the electorate.⁹

RECONFIGURING ELECTORAL BODIES

In recent years, after the 2000 presidential election, renewing the ranks of electoral councilors for the Federal Electoral Institute (IFE) and other electoral bodies has been very problematic: some have been designated with a mere majority support of the political parties and their representatives in the Chamber of Deputies, not unanimously or with at least a broad consensus; and, others have been selected as a quota of the major political parties regardless of their performance in the evaluations and interviews. What is more, in 2010, three vacancies should have been filled but the political parties came to no agreement. This omission is very problematic since the electoral body has been working with two-thirds of its councilors and its decisions may be questioned as lacking legitimacy. In any case, since the 2012 electoral process will start

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with the institute's first session this October, the three remaining councilors must be chosen by then or such infringement will add to the cry for annulling the election. As an alternative for the nomination of "independent" councilors, I want to emphasize the importance of avoiding political party quotas and guaranteeing councilors' independence from them, by pre-selecting, after the appropriate evaluations and interviews, those with proven capabilities in the search for those who could be unanimously supported by all the political parties. If several or none received such support, the decision could be reached by drawing lots.¹⁰

CONCLUSION

As is well known, the Senate did approve a partial political reform April 28, 2011, but so far the Chamber of Deputies has refused to pass it. The "half-approved" political reform includes, among other things:

- 1) Reintroduction of consecutive reelection of the members of Congress—senators and deputies with 12- and 9-year limits, respectively—and the possibility of state congresses allowing reelection not only of local deputies but also of mayors and other city authorities;
- 2) Reincorporation of independent candidacies, and
- 3) Reintroduction of mechanisms of direct or semi-direct democracy, such as the popular initiative and plebiscite or referendum, to be binding if over 40 percent of voters participate.

This overdue and postponed political reform may seem like a never ending story. But I am confident that sooner or later in Mexico, the citizenry and political actors will reach a comprehensive, broad national consensus not only for political reform, but also for the rebirth of the Mexican nation through a renewed Constitution for the twenty-first century. 

NOTES

¹ Imer B. Flores, "Heráclito *vis-à-vis* Parménides: Cambio y permanencia como la principal función del derecho en una democracia incipiente," Luis J. Molina Piñero, J. Fernando Ojesto Martínez Porcayo, and Fernando Serrano Migallón, eds., *Funciones del derecho en las democracias incipientes. El caso de México* (Mexico City: Porrúa, 2005), p. 159; and "Actores, procesos e instituciones democráticas: Hacia una verdadera democracia en México," Luis J. Molina Piñero, Fernando Serrano Migallón, and José Fernando Ojesto Martínez Porcayo, eds., *Instituciones, actores y procesos democráticos en México 2007* (Mexico City: Porrúa, 2008), pp. 338-339.

² Imer B. Flores, "Sobre los triunfos del proceso democratizador en México: A propósito del movimiento anulacionista y del voto nulo," Luis J. Molina Piñero, José Fernando Ojesto Martínez Porcayo, and Ruperto Patiño Manffer, eds., *Balance en el proceso democratizador de México 1988-2009* (Mexico City: Porrúa, 2010), pp. 759-763; and, "El problema del 'voto nulo' y del 'voto en blanco': A propósito del derecho a votar (*vis-à-vis* libertad de expresión) y del movimiento anulacionista," John M. Ackerman, ed., *Elecciones 2012: en busca de equidad y legalidad* (Mexico City: Instituto de Investigaciones Jurídicas, UNAM, 2011), pp. 159-164.

³ Imer B. Flores, "Democracia y participación: consideraciones sobre la representación política," J. Jesús Orozco Henríquez, ed., *Democracia y representación en el umbral del siglo XXI. Memoria del Tercer Congreso Internacional de Derecho Electoral* vol. 1 (Mexico City: Instituto de Investigaciones Jurídicas, UNAM, 1999), pp. 232-234; Imer B. Flores, "Gobernabilidad y representatividad: Hacia un sistema democrático electoral mayoritario y proporcional," Hugo A. Concha Cantú, ed., *Sistema representativo y democracia semidirecta. Memoria del VII Congreso Iberoamericano de Derecho Constitucional* (Mexico City: Instituto de Investigaciones Jurídicas, UNAM, 2002), pp. 233-236; "Actores, procesos e instituciones democráticas...", Molina Piñero, Serrano Migallón, and Ojesto Martínez Porcayo, eds., *Instituciones, actores y procesos democráticos*, pp. 333-340; "¿Es posible la democracia en México?" Luis J. Molina Piñero, José Fernández Ojesto Martínez Porcayo, and Ruperto Patiño Manffer, eds., *¿Polarización en las expectativas democráticas de México 2008-2009? Presidencialismo, Congreso de la Unión, órganos electorales, pluripartidismo y liderazgo* (Mexico City: Porrúa, 2009), pp. 493-495; "Sobre los triunfos del proceso democratizador en México...", Molina Piñero, Ojesto Martínez Porcayo, and Manffer, eds., *Balance en el proceso democratizador*, pp. 763-764; and "El problema del 'voto nulo' y del 'voto en blanco,'" Ackerman, ed., *Elecciones 2012*, pp. 165-168.

⁴ Flores, "El problema de la (eventual) reforma del Senado en México," Working Paper 151 (Mexico City: Instituto de Investigaciones Jurídicas, UNAM), January 2011.

⁵ Flores, "Gobernabilidad y representatividad...", Concha Cantú, ed., *Sistema representativo y democracia*, p. 235.

⁶ Flores, "El problema de la (eventual) reforma del Senado en México," op. cit., pp. 11-12.

⁷ Imer B. Flores, "El problema de las candidaturas a-partidistas, independientes o sin partido," John M. Ackerman, ed., *Nuevos escenarios del derecho electoral: Los retos de la reforma de 2007-2008* (Mexico City: Instituto de Investigaciones Jurídicas, UNAM, 2009), pp. 233-262.

⁸ Flores, "El problema del 'voto nulo' y del 'voto en blanco'...", op. cit., pp. 164-165.

⁹ Flores, "Democracia y participación", op. cit., p. 234; "Gobernabilidad y representatividad," op. cit., p. 235, and "El problema del 'voto nulo' y del 'voto en blanco,'" op. cit., p. 167.

¹⁰ Flores, "El problema del 'voto nulo' y del 'voto en blanco,'" op. cit., pp. 166-167, footnote 21.