

## **The Risk of Partyarchy and Democratic Backsliding Mexico's 2007 Electoral Reform**

*Gilles Serra*

### **Abstract**

Following the 2006 post-electoral crisis, important changes were made to the Constitution and several ordinary laws in Mexico. Authorities touted that electoral reform as a major triumph for the country's democracy. However, this essay documents at least four serious drawbacks: (1) weakened electoral institutions, (2) solidified hegemony of party bosses within their parties, (3) reduced freedom of speech during campaigns to protect the parties' reputations, and (4) monopolized political communication in the hands of parties. These problems are analyzed, based on a detailed reading of the new law, scrutiny of legislative opinions, a review of the public debate, and interviews with top officials in charge of implementation. The essay argues that Mexico illustrates two risks that other third-wave democracies may be facing, too: democratic backsliding and partyarchy.<sup>1</sup>

**Key words:** Partyarchy, backsliding, elections, reform, Mexico.

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### **Introduction: Mexico as a Possible Case of Partyarchy and Democratic Backsliding**

Democratic gains should never be taken for granted. Following the contentious election of 2006, Mexico engaged in a reassessment of the way it conducted elections. Throughout 2007, the election law was deeply revised in Congress. The result was the most profound electoral reform the country had seen for a decade. The leaders of all major political parties, along with the Mexican president, touted the reform as a major triumph. This essay argues, however,

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**Gilles Serra** is Assistant Professor at the Center for Economics Research and Teaching (CIDE), Mexico City, Mexico. <gilles.serra@cide.edu>

<sup>1</sup> This essay was presented at the annual meetings of the American Political Science Association, the Midwest Political Science Association, and the Latin American Studies Association, and at seminars at the University of Oxford and the Instituto Universitario de Investigación Ortega y Gasset.

that important aspects of the new law represent a reversal of Mexico's democratization process.

The election law reform illustrates how precarious democratic institutions can be, especially in third-wave democracies. Such vulnerability becomes apparent by studying the legislation that was recently negotiated and approved in Mexico. The ambition and depth of that legislation were remarkable, as were some of its achievements. A comprehensive review of the electoral system initially seemed like a good idea; indeed, other new democracies have used controversial elections as an opportunity to strengthen their institutions.<sup>2</sup> The disputed 2006 election appeared to justify such an exercise in Mexico. There were at least two worthwhile goals in discussing the rules governing future elections: healing the wounds and divisions left by the 2006 election, and producing a new legal framework that could avoid such conflicts in the future. The former seems to have been achieved, as all the major political parties succeeded in reaching a joint endorsement of the reform. The latter was not quite achieved, however, since the new laws do not fully dispel the risk of future conflicts.

Furthermore, new problems were created by the reform. Based on a close reading of the law, I will document four significant problems. First, electoral institutions were weakened. The parties represented in Congress infringed upon the autonomous and independent nature of the main electoral organizations. Second, the hegemony of party bosses within their parties was solidified. The dominance of party elites over party militants was reinforced to the detriment of intra-party democracy and accountability. Third, freedom of speech during campaigns was reduced to protect the parties' reputations. Public debate has become impoverished by the censorship of criticism of parties and their candidates. And fourth, political communication was monopolized by the parties. Civil society and common citizens are now banned from broadcasting political advertisements on television and radio.

The goal of this essay is to document the above problems and discuss their effects. This endeavor has particular value, given that these problems have not been addressed in the existing literature. Unlike previous reforms in Mexico, which have been discussed extensively among scholars of comparative politics, the electoral reform of 2007 remains scarcely studied. In fact, this essay is original in documenting the above four concerns by explicitly comparing the relevant laws before and after the reform.

The problems mentioned above are uncomfortably reminiscent of two trends observed in other regions: *democratic backsliding* and *partyarchy*. Both trends can provide a theoretical framework for the recent events analyzed in this essay. The rest of this introduction describes the two trends, and, throughout

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<sup>2</sup> As described by Laurence Whitehead in "Closely Fought Elections and the Institutionalization of Democracy," *Taiwan Journal of Democracy* 2, no. 1 (2006): 6.

the essay, I analyze whether they are actually occurring in Mexico.

The first trend, *democratic backsliding*, refers to the reversal of a recent democratic transition. It can be observed in several regions around the world. For example, scholars of Eastern and Central Europe have recently noted it.<sup>3</sup> Countries in these regions abandoned decades of authoritarian rule by successfully democratizing in the 1990s. However, in several countries, the pattern of democracy followed an inverse U-shape: it improved in the early 1990s but worsened after 2000. Steven Fish identified nine backsliders in Eastern and Central Europe.<sup>4</sup>

Events in several Latin American countries have prompted similar worries. Bolivia, Colombia, Ecuador, and Venezuela are often mentioned as possible backsliders whose democratic institutions are deteriorating. In addition to these recent examples, the issue of democratic consolidation in Latin America has been a concern among scholars for a long time.<sup>5</sup> My analysis shows that Mexico's consolidation is precarious as well.

But is the cause of Mexico's backsliding the same as the cause of backsliding in other regions? Fish hypothesized that democracy in post-communist Europe was degraded by constitutional systems that conferred excessive power to the executive branch.<sup>6</sup> Recent presidents in the relevant East European countries have concentrated authority on the executive to the detriment of other branches of government and civic organizations. Fish called such regimes "superpresidentialism."

A similar hypothesis could be formulated by examining South and Central America: the challenges to democracy have come from the executive branch. In Bolivia, President Evo Morales politicized the justice system by appointing loyal supporters as judges and prosecutors. In Colombia, President Álvaro Uribe changed the Constitution to permit his second term, and subsequently attempted to change it again to allow his third term. In Ecuador, President Rafael Correa promoted a referendum to dissolve Congress and increase his power over

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<sup>3</sup> For a survey, see Jeffrey Kopstein, "Postcommunist Democracy: Legacies and Outcomes," review article, *Comparative Politics* 35, no. 2 (2003): 231-250.

<sup>4</sup> These countries are Albania, Armenia, Belarus, Bulgaria, Croatia, Kazakhstan, Kyrgyzstan, Russia, and Ukraine. See M. Steven Fish, "The Dynamics of Democratic Erosion," in *Postcommunism and the Theory of Democracy*, ed. Richard D. Anderson Jr., M. Steven Fish, Stephen E. Hanson, and Philip G. Roeder (Princeton, NJ: Princeton University Press, 2001), 54-95.

<sup>5</sup> See, for example, Guillermo A. O'Donnell and Philippe C. Schmitter, *Transitions from Authoritarianism: Tentative Conclusions and Uncertain Democracies* (Baltimore, MD: Johns Hopkins University Press, 1986); Juan J. Linz and Alfred C. Stepan, *Problems of Democratic Transition and Consolidation: Southern Europe, South America, and Post-Communist Europe* (Baltimore, MD: Johns Hopkins University Press, 1996); and Laurence Whitehead, *Democratization: Theory and Experience* (Oxford: Oxford University Press, 2002).

<sup>6</sup> Fish, "The Dynamics of Democratic Erosion." For a similar view, see Kopstein, "Postcommunist Democracy," footnote 10.

lawmaking. In Venezuela, President Hugo Chávez did all of the above. Each of these presidents stifled freedom of speech by threatening political opponents and media outlets in one way or another. They exemplify how democracy is at risk of deteriorating when a regime becomes “superpresidential.”

It is germane to investigate whether the same theory could be applied to Mexico.<sup>7</sup> To be sure, Mexico has not yet seen the kind of backsliding observed in the regions mentioned above. Nevertheless, this essay documents that some undemocratic measures have been implemented already. Was superpresidentialism the cause? Or is an altogether different explanation needed? Studying the Mexican legislation sheds light on this question. Contrary to Fish’s theory, my analysis suggests that Mexico’s troubles do not come from an excessive concentration of power in the executive. In fact, the Constitution establishes a relatively weak presidency. So, if the analysis in this essay is correct, it highlights that existing theories of democratic backsliding cannot be generalized across the globe. Fish’s hypothesis of superpresidentialism might hold true in some regions, but it does not apply to Mexico. Rather, Mexico presently experiences an excessive concentration of power in political parties, not in the executive branch of government.

This leads us to the second trend: *partyarchy*. Michael Coppedge defines it as a regime in which parties monopolize the formal political process and politicize society along party lines.<sup>8</sup> Such monopolization was most clearly seen in Venezuela, where two parties, Democratic Action (AD) and the Social Christian Party (COPEI), used to be the sole agenda setters in politics. The centralization of decision-making in a handful of extremely disciplined parties led to the deterioration of democratic institutions. Those monopolistic parties excluded many constituencies and societal groups from the public debate. They also ignored important policy issues, which generated disenchantment among citizens.

Coppedge hypothesizes that partyarchy is particularly detrimental when it appears in a presidential system.<sup>9</sup> In fact, problems in Venezuela were accentuated by the presidency’s weakness relative to the political parties. Mexico provides an ideal case to test Coppedge’s hypothesis, having a presidential system in which parties are becoming increasingly dominant.<sup>10</sup>

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<sup>7</sup> Fish himself suggested that his theory could be generalized to other regions, and he gave postcolonial Africa as an example of excessively strong executives leading to democratic degradation. See Fish, “The Dynamics of Democratic Erosion,” 93-95.

<sup>8</sup> Michael Coppedge, *Strong Parties and Lame Ducks: Presidential Partyarchy and Factionalism in Venezuela* (Stanford, CA: Stanford University Press, 1994).

<sup>9</sup> *Ibid.*, 157-162.

<sup>10</sup> Another country that might be moving toward partyarchy is Nicaragua, where Congress has endeavored to constrain the executive branch and weaken presidential powers.

Indeed, I argue that Mexico has begun to display several of the characteristics mentioned by Coppedge. In particular, we are starting to see three political parties, the Institutional Revolutionary Party (PRI), the National Action Party (PAN), and the Party of the Democratic Revolution (PRD), which are gradually monopolizing the public debate, excluding smaller parties from the decision process, silencing critiques from civil society, challenging the president's leadership, and accentuating the vertical hierarchy between party leaders and militants. As documented below, the electoral reform of 2007 has reinforced these trends.

To be clear, we do not yet observe the levels of dominance that AD and COPEI enjoyed in Venezuela's political life. In particular, Coppedge describes a society that had been penetrated by party organizations at all levels, such that virtually all civic groups were politicized along party lines. Mexico's society has not been penetrated yet by parties to that degree, but the analysis in this essay suggests that the process has begun.

Succinctly, this essay attempts to evaluate the following three conjectures. First, did Mexico suffer some degree of backsliding with its latest electoral reform? The answer provided by this analysis is positive. Second, did such backsliding come from an excessively powerful executive branch? The answer is negative. Third, did it come from three large parties coalescing into an incipient partyarchy? The answer again is positive. These findings lead us to draw a lesson for democratic theory. As elaborated upon in the conclusions, different sources of backsliding clearly exist. I argue that instability may come from the president or from political parties, depending on the circumstances of each region.

## **Analyzing Mexico's Election Law**

Such being the theoretical goals of the essay, I proceed to describe my empirical approach. The empirical data for this research is the law itself. This essay is original in directly comparing all the relevant electoral laws in Mexico in their versions immediately before and immediately after the 2007 reform. An inspection of the primary sources, down to the exact articles and clauses, can help expose the true goals of the legislators, even the goals intentionally buried in legalistic detail. The laws examined for this essay include the Constitution, the Federal Code for Electoral Institutions and Procedures (COFIPE), the Federal Law on Radio and Television (LFRT), the General Law on the System of Means to Challenge in Electoral Matters (LGSMIME), the Law of Political Organizations and Electoral Processes (LOPPE), and the Organic Law of the Federal Judicial Power (LOPJF).

In order to interpret the law and acquire more insight into the legislators' thinking, I take advantage of the multiple reports and legal opinions that legislators themselves have produced. These legal opinions are the best

empirical source for understanding the “spirit of the law.” They were found in several issues of the official publications issued by the Mexican Senate and the Mexican Chamber of Deputies.<sup>11</sup>

Context and background are needed for an accurate interpretation of the 2007 reform and a detailed understanding of its causes and consequences. The events and episodes described in this essay are based on my observations of political events in Mexico as well as on a large number of newspaper and magazine articles.<sup>12</sup>

Such a complex legal reform is bound to have unforeseen consequences. To identify the more subtle effects of the reform, I interviewed a number of public officials who are directly in charge of its implementation. These interviews were with current and former high-ranking members of the Federal Electoral Institute (IFE)<sup>13</sup> and the Federal Electoral Tribunal of the Judicial Branch (TRIFE).<sup>14</sup> These officials have a different perspective than legislators because they were not in charge of *writing* the law. Rather, they are now responsible of *interpreting* and *implementing* it.

My analysis of the new law is based on the mentioned sources. The essay proceeds by providing some background about the conditions under which the 2007 reform was undertaken. Next, the substance of the resulting legislation is analyzed, particularly the four problems identified above. The analysis addresses the foreseen and unforeseen challenges that were faced in implementing the new law during the 2009 midterm election, which was the first contest under the new rules. The conclusion assesses the degree to which Mexico is actually experiencing some backsliding and beginning to turn into a partyarchy. The essay ends by drawing some implications for the theory of democratic consolidation.<sup>15</sup>

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<sup>11</sup> The *Gaceta del Senado* [Senate Gazette] and the *Gaceta Parlamentaria* [Parliamentary Gazette], respectively.

<sup>12</sup> The newspapers consulted included *El Economista* [The Economist], *El Financiero* [The Financier], *El Universal* [The Universal], *Excelsior* [Excelsior], *La Jornada* [The Working Day], *Los Tubos* [The Tubes], *Milenio* [Millenium], and *Reforma* [Reform]. The weekly and monthly magazines consulted included *Milenio Semanal* [Weekly Millenium], *Nexos* [Links], *Proceso* [Process], *Reporte Índigo* [Indigo Report], and *Voz y Voto* [Voice and Vote].

<sup>13</sup> Interviews at IFE were conducted with Luis Carlos Ugalde, President from 2003 to 2007; Mauricio Merino, an Electoral Councilor from 1996 to 2003; and Benito Nacif, an Electoral Councilor since 2008.

<sup>14</sup> Interviews at TRIFE were conducted with Roberto Martínez Espinosa (a Justice since 2008), and Arturo Espinosa Silis (Secretary of Study, in charge of writing sentences since 2011).

<sup>15</sup> A note about translations is in order. I have translated into English all names of institutions, but acronyms have been preserved in the original Spanish form. I also have translated into English all the passages from laws and legal opinions quoted in the paper. Following the editor's guidelines, on first mention, I have translated into English the names of newspapers, magazines, and journals.

## Institutional and Political Background

### *The COFIPE, the IFE and the TRIFE*

Throughout most of the twentieth century, the president of Mexico enjoyed unmatched influence in all public affairs. The overwhelming power of the president was based on the support of the political party that dominated Mexican politics at all levels, the Institutional Revolutionary Party (PRI). As the hegemonic period of one-party rule started to wane, political power gradually shifted from the executive branch toward Congress and other branches of government.<sup>16</sup> Legislators played an increasingly assertive role in politics, in particular, those from the two major opposition parties, the National Action Party (PAN) and the Party of the Democratic Revolution (PRD). Accordingly, a number of democratizing bills were initiated by legislators in the late 1980s.

After much negotiation between the incumbent and opposition parties, a new electoral law was finally approved and published in 1990. The new law, called the Federal Code for Electoral Institutions and Procedures, commonly referenced as COFIPE, considerably leveled the playing field. The COFIPE has provided the legal framework for all federal elections since its enactment. Further reforms were passed throughout the 1990s, each of them ensuring that political competition would be more *transparent*, meaning that vote-counting would not have irregularities, and more *equitable*, meaning that incumbency would not be an overwhelming factor in obtaining resources.<sup>17</sup>

At the heart of the reforms was the creation of two institutions with the mandate to guarantee the legality and fairness of elections: the Federal Electoral Institute and the Federal Electoral Tribunal of the Judicial Branch, IFE and TRIFE, respectively.<sup>18</sup> The IFE is an autonomous agency in charge of organizing all national elections. Its responsibilities include registering candidates and parties, monitoring campaigns, and auditing the finances of political parties. It is also in charge of the delicate task of counting votes and declaring a winner.<sup>19</sup> The TRIFE was created to solve legal disputes during elections, and is the *court of last resort* on all electoral matters. It is also the *high court* in charge of validating or revoking the election results announced

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<sup>16</sup> For excellent accounts of the PRI's decline, see Beatriz Magaloni, *Voting for Autocracy: Hegemonic Party Survival and Its Demise in Mexico* (New York: Cambridge University Press, 2006), and Kenneth F. Greene, *Why Dominant Parties Lose: Mexico's Democratization in Comparative Perspective* (New York: Cambridge University Press, 2007).

<sup>17</sup> For a detailed account of this period, see James A. McCann, "Changing Dimensions of National Elections in Mexico," in *The Oxford University Handbook of Mexican Politics*, ed. Roderic Ai Camp (New York: Oxford University Press, 2011).

<sup>18</sup> The official acronym for the Federal Electoral Tribunal of the Judicial Branch is actually TEPJF, but TRIFE is most commonly used in academic writing and political commentary.

<sup>19</sup> Mexican Constitution (Constitución Política de los Estados Unidos Mexicanos), art. 41-V, *Diario Oficial de la Federación* [Official Journal of the Federation], June 19, 2007.

by the IFE.<sup>20</sup> As such, the TRIFE has the same hierarchy as the Supreme Court of Justice of the Nation (SCJN), which reviews all constitutional controversies, except electoral ones.

The profound effects of the reforms of the 1990s have been documented in much academic research. Scholars have found, for example, that party funding became more balanced,<sup>21</sup> vote buying became more difficult,<sup>22</sup> the accuracy of the list of registered voters improved,<sup>23</sup> and electoral institutions became more neutral and independent.<sup>24</sup> As a result, elections gradually became more transparent and equitable. Since the late 1990s, national and international observers have routinely praised the trustworthiness of results. In the 2000 election, the PRI was finally unseated, and an opposition candidate took office for the first time in more than seven decades. That candidate was Vicente Fox of the National Action Party, or PAN.

In spite of this remarkable transformation, Mexico's transition to democracy has remained precarious. Most civic organizations are still underdeveloped and underfunded. And most public organizations do not yet share the widespread credibility of the IFE and the TRIFE. In 2004, for example, a public-opinion survey found that the IFE enjoyed high levels of trust (an average grade of 6.7 out of 10) compared to deputies who suffered low levels of trust (4.2), as well as senators (4.7).<sup>25</sup> These lingering weaknesses were vividly manifest in the contested election of 2006.

### ***The 2006 Election***

The presidential and congressional elections held in July 2006 posed an unprecedented challenge to Mexican institutions. The campaigns were exceptionally heated, the election results were strikingly close, and the post-electoral crisis was deeply divisive. For space reasons, this essay cannot provide a detailed account of all the important events, which, in any case,

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<sup>20</sup> Mexican Constitution, art. 99, *Diario Oficial de la Federación*, June 19, 2007.

<sup>21</sup> Roderic Ai Camp, "Citizen Attitudes toward Democracy and Vicente Fox's Victory in 2000," in *Mexico's Pivotal Democratic Election*, ed. Jorge I. Domínguez and Chappell Lawson (Stanford, CA: Stanford University Press and Center for U.S.-Mexican Studies, UCSD, 2004), 25-46.

<sup>22</sup> Wayne A. Cornelius, "Mobilized Voting in the 2000 Elections: The Changing Efficacy of Vote Buying and Coercion in Mexican Electoral Politics," in *Mexico's Pivotal Democratic Election*, ed. Jorge I. Domínguez and Chappell Lawson (Stanford, CA: Stanford University Press and Center for U.S.-Mexican Studies, UCSD, 2004), 47-66.

<sup>23</sup> Chappell Lawson and Joseph L. Klesner, "Political Reform, Electoral Participation, and the Campaign of 2000," in *Mexico's Pivotal Democratic Election*, ed. Jorge I. Domínguez and Chappell Lawson (Stanford, CA: Stanford University Press and Center for U.S.-Mexican Studies, UCSD, 2004), 67-90.

<sup>24</sup> Chappell Lawson, "Mexico's Unfinished Transition: Democratization and Authoritarian Enclaves in Mexico," *Mexican Studies/Estudios Mexicanos* 16, no. 2 (2000): 267-287.

<sup>25</sup> Consulta Mitofsky, "Índice de confianza en instituciones" [Index of trust in institutions], annual bulletin, April 2004.



have been extensively reviewed elsewhere.<sup>26</sup> Rather, attention is given to the features that had a direct influence on the subsequent electoral reform, which is the topic of this essay.

A salient feature of the 2006 campaigns was their negative tone. The three main parties made recurrent use of criticism. Negative advertisements were produced not only by candidates; the activism of business organizations was particularly controversial. Several business groups produced television commercials warning voters of the prospect of a Chávez-like candidate winning the presidency. To avoid breaking the existing electoral law, the advertisements were careful not to mention specific names and did not suggest for whom to vote. However, it was evident that those messages referred to the PRD candidate. Other wealthy organizations, such as labor unions, campaigned against the PAN. Consequently, both parties developed grievances during the election process.

The election resulted in a breathtakingly narrow margin of victory. According to the IFE's tally, the PAN candidate had won the highest vote share, 36.7 percent, closely followed by the PRD with 36.1 percent, while the PRI placed third with 22.7 percent. Therefore, the official tally yielded a difference of barely 0.6 percent between the first-place and second-place candidates.

Upon learning the results, the PRD chose to challenge them. Andrés Manuel López Obrador, the PRD candidate, proclaimed himself the true winner and forcefully argued that fraud had (allegedly) robbed him of his victory. On that basis, López Obrador initiated a series of mass protests to delegitimize the results. He also launched aggressive rhetoric against government institutions.<sup>27</sup> Concurrently, his party filed a lawsuit with the TRIFE, accusing the IFE of massive vote-rigging.<sup>28</sup>

Following due process, the TRIFE accepted the file submitted by the PRD. After close examination of the evidence, the TRIFE decided to uphold the IFE's verdict: it ruled that the actual irregularities did not amount to fraud and

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<sup>26</sup> For excellent accounts of the pre-electoral campaigns and post-electoral protests, see Luis Estrada and Alejandro Poiré, "Taught to Protest, Learning to Lose," *Journal of Democracy* 18, no. 1 (2007): 73-87; Eric Magar and Vidal Romero, "México: La accidentada consolidación democrática" [Mexico: The rough democratic consolidation], *Revista de Ciencia Política* [Review of Political Science], special volume (2007): 183-204; and Andreas Schedler, "The Mobilization of Distrust," *Journal of Democracy* 18, no. 1 (2007): 88-102.

<sup>27</sup> Schedler, "The Mobilization of Distrust."

<sup>28</sup> For statistical analyses of the PRD's claims, see Alejandro Poiré and Luis Estrada, "Allegations of Fraud in Mexico's 2006 Presidential Election," paper presented at the annual meeting of the American Political Science Association, Philadelphia, September 2006; José A. Crespo, 2006: *Hablan las actas* [2006: The vote tallies speak] (Mexico City: Random House Mondadori, Debate, May 2008); and Javier Aparicio, "Análisis estadístico de la elección presidencial de 2006 ¿Fraude o errores aleatorios?" [Statistical analysis of the 2006 presidential election: Fraud or random errors?], *Política y Gobierno* [Politics and Government], thematic volume—Elections in Mexico (2009): 225-243.

were not significant enough to upset the result.<sup>29</sup> The PAN was declared winner of the presidential election and its candidate, Felipe Calderón, was sworn into office on December 1, 2006, in the midst of intense protests.

As a result of the continual protests and accusations, several institutions lost public support, especially the electoral ones. As suggested by Laurence Whitehead, this hindered Mexican democracy, as public support is crucial for democratic institutions to work effectively. He explained:

In the case of Mexico's July 2006 presidential election, it remains to be seen whether the country's institutions will prevail ... . The IFE's effectiveness depends only in part on its own internal structure and legal powers. It needs to be buttressed and reinforced by the media, academia, external supporters, and ultimately and above all by the Mexican electorate at large.<sup>30</sup>

Unfortunately, the IFE did not receive enough support from political actors. On the contrary, a set of interested politicians and organizations saw benefits in weakening the IFE. Chief among them were Mexico's three largest political parties, which, as I describe throughout the essay, endeavored to revamp the electoral institutions. The accusations of fraud were often used to justify those changes.

### ***Negotiations Leading to the Electoral Reform***

Talks to reform the electoral code and to overhaul the IFE started early. Negotiations among the major political actors were in full swing immediately after the new government was inaugurated. I do not narrate those negotiations in detail, given that my goal is to evaluate the end result, meaning the electoral law. Indeed, the focus of this essay is the legislation itself rather than the legislative process. In any case, insightful narrations of that process can be found elsewhere.<sup>31</sup> I do remark, however, on the most influential players in the negotiations.

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<sup>29</sup> All the statistical studies mentioned above agreed that evidence of fraud cannot be found. The international observers also concurred that the election had been clean and well organized. It is thus feasible that the fraud accusations were part of a post-election strategy, and hence do not directly reflect a failing of Mexico's electoral institutions on election day.

<sup>30</sup> Laurence Whitehead, "The Challenge of Closely Fought Elections," *Journal of Democracy* 18, no. 2 (April 2007): 14-28.

<sup>31</sup> Flavia Freidenberg, "Oportunistas, idealistas y adversarios en el proceso de reforma electoral en México (2007/2008)" [Opportunists, idealists and adversaries in the electoral reform process in Mexico (2007/2008)], in *México, el nuevo escenario político ante el bicentenario* [Mexico, the new political scene upon the bicentenary], ed. Manuel Alcántara Sáez and Ernesto Hernández Norzagaray (Salamanca, Spain: Ediciones Universidad Salamanca, 2009), 269-306.

All the political parties represented in Congress had a seat at the negotiation table, but not all carried equal weight. The small parties had little success in asserting their interests. Only the three large parties—PRI, PAN, and PRD—were significantly influential. The executive branch was also involved, but it was in a position of weakness. Indeed, the bargaining power of the Chief Executive was compromised by the relentless claims of fraud that questioned his legitimacy. President Calderón did not have full control even of his own party, whose members in Congress were quick to establish a certain distance. As a result, the large parties were repeatedly successful in extracting concessions from the President.

The President did play an integral role in developing the proposal, but he failed to defend it when some powerful legislators began to add partisan amendments. As narrated by the former head of the IFE in his memoirs, Felipe Calderón was intrinsically inclined to respect the electoral institutions, but he eventually yielded to those who wished to undermine their independence.<sup>32</sup> Manlio Fabio Beltrones, a prominent member of the PRI and leader of the Senate, was *de facto* in control of the legislative agenda.

The negotiations culminated in a number of bills that were passed with the votes of the three major parties. Most of the smaller parties voted against them. The reforms to the Constitution were published on November 13, 2007, and a new version of the COFIPE was published on January 14, 2008. These changes affected eighteen secondary laws, which needed to be updated for consistency. Two of these secondary laws<sup>33</sup> were discussed and reformed on July 1, 2008, and the rest remained pending.

Such being the political and institutional context behind the reform, let us now proceed to analyze its content. The reform included both positive and negative changes. Indeed, a mixture of virtues and problems can be found by reading the law, observing its implementation, and interviewing experts. However, this essay focuses only on the problems rather than on the virtues, because the goal is to assess the possibility of backsliding in Mexico. A description of the positive virtues of the reform can be found in previous academic work,<sup>34</sup> and, of course, in the writings of the legislators

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<sup>32</sup> Luis Carlos Ugalde, *Así lo viví: Testimonio de la elección presidencial de 2006, la más competida en la historia moderna de México* [This is how I lived it: Testimony about the presidential election of 2006, the most contested one in modern history] (Mexico City: Grijalbo, Random House Mondadori, 2008).

<sup>33</sup> The Organic Law of the Federal Judicial Power (LOPJF) and the General Law of the System of Means to Challenge in Electoral Matters (LGSMIME).

<sup>34</sup> See, for example, Gilles Serra, “La reforma electoral en México: ¿un retroceso democrático?” [The electoral reform in Mexico: A democratic reversal?], in *Caleidoscopio de la innovación democrática en América Latina* [Kaleidoscope of democratic innovation in Latin America], ed. Yanina Welp and Laurence Whitehead (Mexico City: FLACSO, 2011), 75-95.

themselves.<sup>35</sup> Accordingly, I proceed to analyze the four problems mentioned in the introduction.<sup>36</sup>

### **First Problem: Weakening Electoral Institutions**

Given that the IFE is one of the pillars of Mexican democracy, weakening its independence would be a sign of backsliding. There is, indeed, a consensus among scholars that preserving the autonomy of electoral institutions is crucial to the credibility and legitimacy of elections.<sup>37</sup> In Mexico, this view has been shared not only by scholars but also by most political actors. Opposition leaders had espoused this view when they fought for the independence of the IFE and the TRIFE during reforms in the 1990s.

As a result, each new reform succeeded in further stripping electoral institutions of external influences, especially from the executive branch, the legislative branch, and the political parties. The goal was to delegate the management of elections to civil society. In accordance with that goal, today the IFE is headed by nine citizens without formal party affiliations or other government positions. Those nine citizens are called Electoral Councilors and they are ultimately responsible for managing all the logistical aspects of elections. Before 2007, their autonomy was guaranteed *de jure* and respected *de facto*.

The law was designed not only to safeguard the autonomy of electoral institutions, but also their impartiality. The IFE is especially expected to be a neutral umpire of political competition. To be sure, each Electoral Councilor is bound to have a political preference. His or her allegiance is publicly known from the selection process: Electoral Councilors are selected by Congress, and it is always clear which party is sponsoring them. Partisan sponsorship of candidates to head the IFE was particularly blatant after 2003. But even then, the political preferences of Electoral Councilors did not significantly determine their decisions. Proof is provided by Estévez, Magar, and Rosas, who analyzed their voting records.<sup>38</sup> The authors did find some partisan voting, but actually

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<sup>35</sup> See, for example, the “Opinion of the Governance Committee of the Chamber of Deputies,” *Gaceta Parlamentaria*, no. 2401-V (December 11, 2007).

<sup>36</sup> I analyze only the problems that are most indicative of possible partyarchy and backsliding in Mexico, as these are the main concerns of the essay. Yet, it should be noted that other problems exist, which I do not analyze here. For additional concerns, see Gilles Serra, “Una lectura crítica de la reforma electoral en México a raíz del 2006” [A critical reading of the electoral reform in Mexico as a result of the 2006 election], *Política y Gobierno* 16, no. 2, Semester II (2009): 411-427.

<sup>37</sup> Eric Magar and Vidal Romero, “México: Reformas pese a un gobierno dividido” [Mexico: Reforms in spite of divided government], *Revista de Ciencia Política* 28, no. 1 (2008): 265-285.

<sup>38</sup> Federico Estévez, Eric Magar, and Guillermo Rosas, “Partisanship in Non-partisan Electoral Agencies and Democratic Compliance: Evidence from Mexico’s Federal Electoral Institute,” *Electoral Studies* 27 (2008): 257-271.

the bulk of the IFE's decisions was taken by consensus or even unanimously. This implies that all Electoral Councilors generally have agreed on pardoning or sanctioning an accused party. Hence, for the most part, they have voted their consciences instead of yielding to party pressure. According to Estévez, Magar, and Rosas, this independence was partly explained by a secure tenure.

However, the autonomy and impartiality of electoral institutions were compromised with the electoral reform of 2007. One of the features that violated the IFE's autonomy was the removal of several Electoral Councilors. When the IFE was conceived, its councilors were supposed to be "irremovable," akin to a judge of the Supreme Court. They were designated for seven years, and the Constitution protected their tenure in office until the end of their terms. Nevertheless, the newly elected Congress decided to sack the General Council. In order to do so, Congress had to overturn the Constitution. For that purpose, the legislators of all major parties wrote an interim constitutional article forcing the immediate substitution of three councilors in February 2008 (including the president of the IFE), and three other councilors a few months later in August 2008. Only three of the nine councilors were allowed to finish the remainder of their terms until 2010.<sup>39</sup>

Reportedly, the goals for sacking the senior staff at the IFE were political, financial, and personal. Politically, parties wished to increase their influence in the institution in charge of supervising campaign behavior.<sup>40</sup> Financially, parties sought to avoid the enormous fines that most of them faced for violating the campaign-spending limits.<sup>41</sup> And personally, a vindictive reason also loomed large, namely retribution for mishandling the 2006 election.<sup>42</sup> Hence, the three major parties, for different reasons, agreed in their desire to fire the sitting members of the IFE's General Council.

It should be noted that parties were expedient at removing the old Electoral Councilors, but were sluggish at appointing new ones. They were in no rush. Parties seemed oblivious to the dangers of a partially headless IFE, including the possible mismanagement of the ongoing elections. The final batch of Electoral Councilors was not chosen until December 15, 2011, more than one year after the supposed deadline established by the Constitution.<sup>43</sup>

The removal of councilors before they finished their original mandate, which violated the tenure firmly granted to them by the Constitution, established an unfortunate precedent. The reputational effects will be long lasting. As national

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<sup>39</sup> Mexican Constitution, interim art. 4, *Diario Oficial de la Federación*, November 13, 2007.

<sup>40</sup> Freidenberg, "Oportunistas, idealistas y adversarios."

<sup>41</sup> Ugalde, *Así lo viví*.

<sup>42</sup> Joy Langston, "Las reformas al COFIPE, 2007" [The reforms to the COFIPE], *Política y Gobierno*, thematic volume—Elections in Mexico (2009): 245-272.

<sup>43</sup> "Rinden protesta los tres nuevos consejeros ante el IFE" [The three new councilors take oath at the IFE], *Excélsior*, December 16, 2011.

and international observers have pointed out, future councilors will now fear that they can be removed if they offend the political class.<sup>44</sup> Parties only need to pass a new “interim” statute to remove these officials. The shockwaves of this overhaul were felt even beyond the IFE. Now, given this precedent, the fear of a premature removal by Congress also looms large in the minds of Justices at the TEPJF.<sup>45</sup>

Not surprisingly, the new Electoral Councilors, although professional and experienced, were suspected of being more lenient than previous cohorts. Evidence of leniency was quick to surface: one of their first actions was to pardon the large parties for significant violations of the party-finance laws. The newly staffed IFE proceeded to close important investigations of campaign expenses during the 2006 election.<sup>46</sup> As a result, the new councilors allowed the PRD, the PAN, the PRI, and several smaller parties to save millions of pesos in fines that should have been paid for exceeding spending caps.<sup>47</sup>

In sum, political parties jeopardized the autonomy and independence of the IFE by revamping its General Council.<sup>48</sup> By doing so, they reversed the course taken by those same parties when they originally created the institute more than a decade before. They are thus responsible for some democratic backsliding in Mexico. While the executive branch has remained firmly excluded from the IFE’s General Council, political parties have increased their influence, which is symptomatic of a nascent partyarchy.

## **Second Problem: Solidifying the Hegemony of Party Bosses within Their Parties**

The PRI used to be hierarchical and centralized to an extreme that has rarely been seen in other parties around the world. Nominations, for example, used to be ultimately decided by one person only, namely the president of the country, who directly appointed candidates to all offices. The PAN was also a centralized party in which party affiliation was restricted. However, beginning in the late 1990s, party life in Mexico significantly opened and internal processes democratized. Primary elections became popular in all parties, especially the three largest ones, and party affiliation increased, especially in

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<sup>44</sup> “Hobbling Mexico’s Democracy,” editorial, *New York Times*, September 13, 2007.

<sup>45</sup> Interview with a high-ranking official of the TEPJF.

<sup>46</sup> “El IFE le da la vuelta de hoja a los spots” [The IFE turns the page regarding the spots], *Excelsior*, February 16, 2008.

<sup>47</sup> “El IFE optó por ocultar que en 2006 se rebasaron topes de gastos” [The IFE opted to hide that campaign spending limits were violated in 2006], *La Jornada*, February 18, 2008.

<sup>48</sup> Other measures not described in this essay also decreased the IFE’s autonomy from political parties, such as the creation of an Internal Comptroller to selectively sanction IFE officials (see Serra, “Una lectura crítica de la reforma electoral”).

the PAN.<sup>49</sup> Unfortunately, the electoral reform of 2007 has placed some of that party democratization at risk. Two aspects of the new law are symptomatic in this respect. First, political parties have become shielded against the scrutiny of government authorities regarding a large number of internal affairs. Second, the process to challenge a party's internal decisions has become more difficult. I document these two features of the legislation now.

Indeed, the new law states that “the electoral, administrative and jurisdictional authorities” will not be able to intervene in the “internal affairs” of the parties.<sup>50</sup> The list of matters that were placed outside the government's jurisdiction is almost exhaustive. Most crucially, it includes the nomination of candidates and the selection of leaders. This is what legislators included in their definition of internal affairs:

The following constitute internal affairs of the political parties:

- a) The development and modification of its basic documents;
- b) The requirements and mechanisms for the free and voluntary affiliation of citizens to the party;
- c) The selection of members for its committees;
- d) The procedures and requirements for the selection of its precandidates and candidates for elected office; and
- e) The deliberations to define its political and electoral strategies and, more generally, the decision-making processes of its committees and membership organizations.<sup>51</sup>

In addition to the COFIPE and the Constitution, the protection against government oversight was reiterated in other laws. It was included in the secondary laws on electoral matters, when Congress began revising them a few months later. A new clause reads as follows:

The electoral authorities must consider the preservation of the political parties' freedom of political decision-making and

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<sup>49</sup> Kathleen Bruhn, “Electing Extremists? Party Primaries and Legislative Candidates in Mexico,” unpublished manuscript (2012).

<sup>50</sup> The law does allow for a few specific affairs in which the authorities can intervene, for example, the parties' finances. See art. 46, par. 2 of the COFIPE, *Diario Oficial de la Federación*, January 14, 2008, and art. 116-IV-f of the Mexican Constitution, *Diario Oficial de la Federación*, November 13, 2000.

<sup>51</sup> COFIPE, art. 46, par. 3, *Diario Oficial de la Federación*, January 14, 2008.

their right to self-regulation whenever they are resolving any dispute regarding the parties' internal affairs.<sup>52</sup>

It is interesting that the above paragraph did not exist in the original proposal made by the Senate in April 2008, but was added a few weeks later by the Chamber of Deputies as part of its observations.<sup>53</sup> This suggests that the paragraph was an afterthought rather than an essential part of the amendment concerned. The goal was to reiterate, once more, that parties should fall beyond the reach of the executive's authority.

The legislators justified the change by arguing that political parties have "the right to organize themselves according to their aims." Therefore, they concluded, the law should uphold "the due respect that the electoral authorities, both administrative and jurisdictional, must keep with respect to the internal decisions of parties."<sup>54</sup> Relaxing the supervision of political parties can have serious drawbacks, however, such as hampering the representation of party members within their parties. In the past, when political parties have been granted this so-called "due respect," they have tended to become vertical organizations dominated by a small elite. A classic example was the PRI, whose president used to squelch any internal dissent.<sup>55</sup> A more recent example is the Ecological Green Party of Mexico (PVEM), whose party founders, a father and his son, used to make most decisions, bypassing party affiliates. These examples illustrate how the autonomy of political parties, when taken too far, in fact can solidify the hegemony of a small party elite.

A second related setback was to decrease the legal safeguards of party militants when they are at odds with party bosses. As described below, the changes tend to leave the party's rank and file unprotected vis-à-vis their leaders.

As background, it should be noted that the IFE and the TRIFE traditionally had been fairly active in supervising the internal life of parties. When they were created, the electoral institutions were legally mandated to hear any cases of party officials in dispute with their foot soldiers. As it turns out, these cases are increasingly frequent: in 2006-2007, they reached 55 percent of all electoral complaints, according to the TRIFE's annual report. Electoral tribunals are saturated with stories of party bosses anointing their loyalist nominees in smoke-filled rooms, rather than holding transparent nominations as mandated by law. This has led observers to claim that the three largest parties in Mexico

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<sup>52</sup> LGSMIME, art. 2, par. 2, *Diario Oficial de la Federación*, July 1, 2008.

<sup>53</sup> Compare the *Gaceta del Senado*, no. 232 (April 21, 2008), to the *Gaceta Parlamentaria*, no. 2530-IV (June 19, 2008).

<sup>54</sup> Opinion of the Governance Committee of the Chamber of Deputies, *Gaceta Parlamentaria*, no. 2530-IV (June 19, 2008).

<sup>55</sup> Joy Langston, *The Dinosaur That Did Not Die: Mexico's PRI*, unpublished book manuscript.



are becoming less democratic internally over time.<sup>56</sup>

This undemocratic trend was reinforced by some new clauses of the COFIPE. Concretely, several amendments make it more difficult for regular party members to defend their political rights. Previously, if a party was believed to have broken a law during an internal process such as the nomination of a candidate or the selection of a leader, it was fairly straightforward to raise the case to government authorities. Now, three amendments obstruct such accusations. First, a complaint about the internal statutes of a party must be filed before a fixed deadline of fourteen days; after that deadline, a party charter cannot be challenged.<sup>57</sup> Second, such complaints can be filed exclusively by registered members of a party; ordinary citizens and government officials are no longer permitted to challenge the legality of a party's charter.<sup>58</sup> And third, any party militant wishing to complain about his or her party's internal affairs must exhaust all the official party channels before raising the controversy before an external authority.<sup>59</sup> By introducing these clauses, party elites intended to increase central control over their organizations. Their main justification comes in the following report, which is worth quoting. As can be seen, the parties' discomfort with any outside intervention is surprisingly explicit.

The increasing number of judicial controversies regarding the parties' internal lives in the past several years is an undesirable phenomenon; we assert that it is a negative phenomenon because it contradicts the view of parties as groups of citizens united by a same ideology, a same program, and rules agreed on by all. While it is true that parties are, according to the Constitution, public entities, they are not and should not be made into public bodies within the State's sphere.<sup>60</sup>

The above passage reflects the way party leaders justify the autonomy they granted to themselves. Regarding challenges from below, they considered the judicial challenges promoted by their affiliates to be "undesirable" and "negative." Regarding challenges from above, they have called for parties to be considered outside the "state's sphere." In other words, the national committees of each party should be given leeway to conduct business as they see fit. In particular, they should be allowed to centralize nominations and other internal processes.

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<sup>56</sup> María Amparo Casar, "Anatomía de una reforma electoral" [Anatomy of an electoral reform], *Nexos* (August 2009): 68-73.

<sup>57</sup> COFIPE, art. 47, par. 2, *Diario Oficial de la Federación*, January 14, 2008.

<sup>58</sup> *Ibid.*

<sup>59</sup> COFIPE, art. 46, par. 4, *Diario Oficial de la Federación*, January 14, 2008.

<sup>60</sup> Opinion of the United Committees of Governance and Legislative Studies, *Gaceta del Senado*, no. 170 (December 5, 2007).

It must be noted that centralized nominations were a basic feature of partyarchy in Venezuela. In fact, Coppedge makes them an integral part of his definition. In a partyarchy, he writes, “Parties control all nominations for public office, which limits eligibility to citizens who are considered reliable defenders of the parties’ interests.”<sup>61</sup> The similarity with the Venezuelan experience is an additional sign that Mexico is increasingly conforming to the definition of a partyarchy.

In sum, the new law hampers the government’s ability to monitor parties’ internal processes, and reinforces the dominance of party elites over party adherents. In other words, parties have suffered some internal backsliding. Moreover, this reversal has not come from an overreaching executive branch. It certainly does not indicate the kind of superpresidentialism described by Fish.<sup>62</sup> On the contrary, this backsliding can be attributed to the autonomy from the law that parties have granted to themselves. In fact, as shown by their public statements, parties have come to think of themselves as literally being beyond the authority of the state. This trend is thus indicative of an incipient partyarchy. A centralization of party processes of the kind we are observing in Mexico is part of the original definition given by Coppedge.

### **Third Problem: Reducing Freedom of Speech during Campaigns to Protect the Parties’ Reputations**

During the PRI’s hegemonic period, political commentary was stifled by self-censorship and government control. With democratization, came the freedom to criticize politicians at all levels: the public debate in Mexico became exceptionally open, and political parties turned extremely vocal during election campaigns. Unfortunately, some of that newfound freedom was lost with the 2007 electoral reform.

One change is of major concern: the attempt to prohibit negative campaigning. Criticizing the opponent is now punishable by law. Indeed, one of the main articles of the new legislation prevents candidates from issuing any message that “denigrates” or “slanders” their rivals.<sup>63</sup> The language used in this article is regrettably vague. For example, it does not define “slander” precisely enough, and does not specify the criteria to distinguish “denigration” from other types of criticism. So, the law allows for a large gray area between acceptable critiques and liable remarks. As illustrated by events subsequent to enactment, such vagueness has been a recipe for confusion and litigation. The law’s ambiguity can be appreciated by quoting the statute exactly:

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<sup>61</sup> Coppedge, *Strong Parties and Lame Ducks*, 20-22.

<sup>62</sup> Fish, “The Dynamics of Democratic Erosion.”

<sup>63</sup> COFIPE, art. 38, par. 1, cl. p, *Diario Oficial de la Federación*, January 14, 2008.

The following are obligations of the national political parties:  
... . To abstain, in their political or electoral advertisements,  
from any expression that denigrates institutions or parties, or  
slanders individuals.<sup>64</sup>

A similar provision existed in the previous law,<sup>65</sup> but the current COFIPE reinforced it by making it punishable,<sup>66</sup> and by adding the “right to respond” of the person who allegedly is being denigrated.<sup>67</sup> Moreover, the language prohibiting parties from slandering and denigrating was elevated to the constitutional level.<sup>68</sup> The official justification for these measures was the aggressive tone of the 2006 election, during which parties of all stripes leveled intense attacks against each other. Those negative exchanges were unsettling to many citizens, giving legislators the perfect excuse to create a new regulation. The actual goal, however, probably was to protect the images and reputations of candidates and their parties—another sign of party leaders’ collusion to protect themselves from outside criticism.

Moreover, this essays claims that the regulations have carried several detrimental consequences. First, they have compelled politicians to sanitize their comments, restricting them to platitudes or flattery. As Schedler stated in his call to reaffirm the principle of free speech in Mexican elections: “If the current trend toward regulating and censoring the content of campaign messages persists, election campaigns...will develop into baroque exercises of self-praise by candidates cut off from their critical faculties.”<sup>69</sup>

Second, the new measures deprive citizens of valuable information. Given their ambiguous language, authorities can interpret the new law as banning all types of accusations, even truthful and documented ones. And, indeed, the TEPJF has tended to interpret the law in such a broad way.<sup>70</sup> Yet, critiques and accusations among parties and candidates, when true and well-documented, should be considered a public good. As previous academic research has argued, negative advertisements are valuable in a democracy. They actually provide more information to voters than positive advertisements.<sup>71</sup> This is especially important in a country where corruption and drug money are serious concerns in elections. As it stands, the law makes it illegal for a candidate to accuse another candidate of being dishonest, having links with *narcos*, or

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<sup>64</sup> Ibid.

<sup>65</sup> COFIPE, art. 38, par. 1, cl. p, *Diario Oficial de la Federación*, April 24, 2006.

<sup>66</sup> COFIPE, art. 342, par. 1, cl. j, *Diario Oficial de la Federación*, January 14, 2008.

<sup>67</sup> Mexican Constitution, art. 6, *Diario Oficial de la Federación*, November 13, 2007.

<sup>68</sup> Ibid., art. 41-III, sec. C.

<sup>69</sup> Schedler, “The Mobilization of Distrust,” 100.

<sup>70</sup> Interview with a high-ranking official at the TEPJF.

<sup>71</sup> John Geer, *In Defense of Negativity* (Chicago, IL: University of Chicago Press, 2006).

having committed a crime. It is illegal to make such public accusations, even if they can be documented with concrete evidence. Consequently, it has now become harder to learn about the personal histories, past deeds, and actual allegiances of candidates.

Recent elections provide several examples of how some valuable information might be muted by the new provision. During the gubernatorial contest of 2009 in Nuevo León, a candidate accused the previous administration of leaving the state's finances in "ruins." He provided figures to back his claim. The referenced party reacted by complaining to the electoral authorities that such words were degrading. In accordance with the new law, the electoral authorities imposed a large fine on the candidate for denigration, and forced him to remove his "ruins" remark from all future advertisements.<sup>72</sup>

In a separate incident, one of the candidates used elderly masks and costumes to mock the advanced age of another candidate. He wanted to publicize that he was the youngest candidate in the race while his rival was much older, but he was promptly charged a large fine for denigrating his rival.<sup>73</sup> It can be argued, however, that the previous performance of parties and the age of candidates should be fair game. Citizens can benefit from watching candidates debate such issues. However, to some degree, the new reform is stifling the vigorous debates that had started to characterize Mexican elections. Thus, restriction on negative campaigning can be considered a regressive feature.

Such restriction is not only questionable in principle, but also it has created implementation problems in practice. It has overburdened the IFE and the TRIFE, which must now enforce a much more complex law, as demonstrated by the 2009 campaigns. The PRI was the first to file a complaint against the PAN for slander and denigration. Accordingly, the IFE imposed a large fine on the PAN and ordered it to retrieve its negative advertisements from all newspapers and magazines.<sup>74</sup> The PAN, however, objected to the IFE's verdict, arguing that it infringed upon its freedom of speech. So, it decided to appeal the verdict to the TRIFE.<sup>75</sup> This process was later repeated in reverse. The PAN took the PRI to court for slander and denigration, while the PRI defended its negative advertisements on the basis of freedom of speech.<sup>76</sup> Clearly, parties were either defending or condemning the rules at their convenience. In the eyes of many

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<sup>72</sup> "Sancionan a candidatos de PRI y PAN en Nuevo León" [Candidates of the PRI and PAN are sanctioned in Nuevo León], *Proceso*, June 22, 2009.

<sup>73</sup> "Crece la guerra sucia" [The dirty war intensifies], *Los Tubos*, June 23, 2009.

<sup>74</sup> "IFE ordena al PAN suspender 'sopa de letras' contra el PRI" [IFE orders the PAN to withdraw its "word search puzzle" against the PRI], *El Economista*, April 3, 2009.

<sup>75</sup> "Impugna el PAN ante el TEPJF el fallo del IFE por la sopa de letras" [The PAN challenges the TEPEJ's verdict regarding the word search puzzle], *Proceso*, April 7, 2009.

<sup>76</sup> "Multo el IFE al PRI con 54 mil pesos por 'scrabble'" [The IFE levies a fine of 54 thousand for "scrabble"], *Proceso*, May 22, 2009.

voters, this revealed the contempt that parties have for the law, including a law that they themselves wrote, promoted, and passed in Congress.<sup>77</sup>

On balance, the results from the provision against negative advertising are disappointing: a decrease in information for voters and an increase in litigation. Moreover, the provision has diminished the competitiveness of elections. By restraining political discourse, the strong candidates are more secure, while underdogs have greater difficulty catching up.<sup>78</sup> It therefore should not come as a surprise that many academics and intellectuals have criticized the prohibition to “slander and denigrate” in elections. Many of them have even called for the provision to be eliminated altogether from the law.<sup>79</sup>

In sum, the ban on negative advertising during elections can be considered undemocratic, as it constrains freedom of speech.<sup>80</sup> Furthermore, this democratic reversal came from the big parties’ desire to protect their images and reputations to the detriment of the citizens’ right to be informed. It thus may be indicative of a nascent partyarchy protecting itself.

#### **Fourth Problem: Monopolizing Political Communication in the Hands of Parties**

Another change that has fortified parties to the detriment of citizens is the restriction on political advertisements. The 2007 reform prohibits citizens from purchasing political ads on radio and television, as explained in detail below. The decision was justified by alluding to the controversial messages sponsored by private organizations during the 2006 campaigns. As I mentioned before, in 2006, business corporations and trade unions produced several attack ads against both the left-wing and right-wing candidates. Many reformers argued that those messages had an undue influence on the electorate. There was a general feeling that some sort of regulation was needed. The legislators’ response, however, was unexpectedly radical: they banned paid messages altogether. In a new article, the COFIPE prohibits the purchase of spots with electoral content on radio and television:

No person or entity, on his own right or on behalf of others, will be allowed to contract advertising on radio or television geared to influence the electoral preferences of citizens, or

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<sup>77</sup> More details about the negative ads by the PAN and the PRI can be found in Serra, “La reforma electoral en México: ¿un retroceso democrático?”

<sup>78</sup> Interview with a high-ranking IFE official.

<sup>79</sup> “Anhelan académicos campañas negras” [Academics wish black campaigning], *Reforma*, June 10, 2009.

<sup>80</sup> It must be noted, of course, that in non-electoral contexts, freedom of speech remains very strong in Mexico.

to favor or oppose political parties or candidates running for elected office.<sup>81</sup>

This article covers all individuals and all organizations, and thus no one is allowed to purchase airtime to promote individual political views during elections.<sup>82</sup> Political opinion still can be disseminated on TV and radio, but not if the media outlets receive payment for it. To give a clarifying example: a common citizen can freely express her opinion if a TV network interviews her, but she is not allowed to pay that TV network to broadcast an advertisement expressing that same opinion. In effect, the article eliminates all *paid* contracting of political advertising from Mexican radio and television.

Political parties still are able to broadcast their messages through a large allocation of *free* airtime.<sup>83</sup> Parties are not covered by the article quoted above, because they do not “contract” their advertising; technically, the airtime is given to them as a prerogative. In fact, Mexican viewers were bombarded with an unprecedented amount of party propaganda during the 2009 campaigns. Clearly, it was civic organizations and common citizens who were excluded from electoral advertising, not the parties.

Unsurprisingly, the regulation restricting paid advertising has received strong criticism from civic organizations, media corporations, and global NGOs such as the International Association of Broadcasting. Many academics have interpreted it as an affront to freedom of speech.<sup>84</sup> In fact, a large group of intellectuals, in conjunction with private-sector representatives, formally appealed to the Supreme Court for repeal of the new electoral law.<sup>85</sup>

Even supporters of the regulation against paid spots agreed that it would limit the freedom of speech of regular citizens. Those who supported the ban argued that this sacrifice was worthwhile, as it would decrease the influence of money in politics. In particular, it would prevent wealthy individuals and corporations from telecasting their political views.<sup>86</sup> This was expected to improve the equity of political competition, as rich citizens and poor citizens would have the same access to political advertising (namely, no access at all).

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<sup>81</sup> COFIPE, art. 49, par. 4, *Diario Oficial de la Federación*, January 14, 2008.

<sup>82</sup> In addition to the COFIPE, the Constitution was also changed for this purpose. A new article forbids any type of contract with radio and television companies for political advertising (art. 41-II-A). The modification at the constitutional level also forbids the broadcast in national territory of political advertisements produced abroad.

<sup>83</sup> COFIPE, arts. 49 to 76, *Diario Oficial de la Federación*, January 14, 2008.

<sup>84</sup> Such as Magar and Romero, “México: Reformas pese a un gobierno dividido.”

<sup>85</sup> “Admite la corte amparo de la IP contra COFIPE” [The Supreme Court accepts the case of the private sector against the COFIPE], *El Financiero*, July 10, 2008.

<sup>86</sup> “La reforma a prueba. Mesa I: Modelo de comunicación política” [A test for the reform. Roundtable I: The model of political communication], *Voz y Voto*, no. 200, October 2009, 5-17.

The supporters also pointed to other countries with similar laws, including the United Kingdom and much of continental Europe. In Latin America, two countries have followed this path as well: Brazil and Chile.<sup>87</sup> The theoretical argument in favor of the ban was to sacrifice some freedom in favor of more equity.<sup>88</sup>

As of today, it is unclear whether the gains in equity have been enough to compensate for the loss in freedom of expression. But that is secondary to the main argument in this essay. The point emphasized is that parties granted themselves the exclusive right to political advertisement, while taking that right away from civic organizations and regular citizens. Whatever the merits in other regards, the new law undeniably shifted the balance of power from civil society to political parties. As a result, the law prohibiting citizens to pay for political spot ads represents another step toward creating a partyarchy.

In addition to strengthening the dominance of parties and weakening the voice of civil society, the new law also has hampered the efficacy of electoral institutions. Indeed, implementing the new prohibitions during the 2009 election proved to be an enormous challenge for the IFE and the TRIFE. Above all, they had to face the ire of radio and television stations, which resented losing millions of dollars from lost advertisements. Indeed, the reform resulted in the loss of a substantial source of income that used to come from selling spots to politically motivated groups. This led some media corporations to search for ways to circumvent the law, such as illicitly selling airtime without written contracts, or receiving under-the-table payments for favorable interviews.<sup>89</sup> In turn, these new surreptitious practices forced the IFE and the TRIFE to monitor media coverage much more closely. In 2009, they spent a significant amount of time and effort investigating any coverage that somehow might have been purchased for political communication.

Consequently, in their attempt to uphold the law, the IFE and the TEPJF found themselves in constant legal battles against media companies.<sup>90</sup> Those corrosive battles proved to be a costly distraction. Furthermore, the instances in which the nine Electoral Councilors decided not to apply strong sanctions were widely interpreted by the public as signs of weakness and trepidation. In

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<sup>87</sup> Daniel Zovatto, "América Latina" [Latin America], in *Dinero y contienda político-electoral* [Money and the political electoral contest], ed. Manuel Carrillo, Alonso Lujambio, Carlos Navarro, and Daniel Zovatto (Mexico City: Fondo de Cultura Económica, 2003), 33-96.

<sup>88</sup> As argued, for example, by José Woldenberg, "Estampas de la reforma" [Reform stamps], in *Estudios sobre la reforma electoral 2007: Hacia un nuevo modelo* [Studies about the electoral reform of 2007: Toward a new model], ed. Lorenzo Córdova Vianello and Pedro Salazar (Mexico City: Tribunal Electoral del Poder Judicial de la Federación, November 2008), 25-43.

<sup>89</sup> "Rechaza Sodi haber pagado por entrevista en el partido Pumas-Puebla" [Sodi denies having paid for his interview during the Puebla-Pumas soccer match], *Milenio*, May 26, 2009.

<sup>90</sup> For details of these confrontations with TV companies, see Serra, "La reforma electoral en México: ¿un retroceso democrático?"

short, the electoral authorities were criticized both for being too strict (by TV companies) and for being too lax (by political pundits). Their authority was undermined on both fronts.

Political parties were unhelpful in the conflict. They failed to defend the electoral authorities against the TV networks, for example, by publicly supporting the IFE and the TRIFE, while admonishing the television duopoly. Parties were simply unwilling to have any friction with the TV and radio industries during the election. Once again, they refused to take responsibility for upholding the law they had just written and passed in Congress.

In sum, the prohibition against paid advertisements on television and radio for campaign purposes has had two collateral effects. First, it has concentrated mass communication in the hands of political parties to the detriment of civil society, and cemented the state of partyarchy in the country. Second, it has eroded the authority and efficacy of electoral institutions, creating another instance of democratic backsliding.

### **Discussion: Is Mexico Backsliding and Is It Becoming a Partyarchy?**

In contrast to the previous electoral reforms in Mexico, which have been extensively analyzed and documented, the reform initiated in 2007 remains understudied in the academic literature. This essay endeavored to identify and document some of the reform's most consequential aspects, both in terms of substance and implementation. The analysis was based on a close examination of the law and the extensive public debate surrounding it. To help us understand recent events in Mexico, they were compared with two trends observed in other regions: democratic backsliding and partyarchy. The theories developed to explain these two trends proved useful in shedding light on Mexican politics.

Research found some indication of democratic backsliding in the electoral law of 2007. The essay identified problems in four areas: the strength of electoral institutions; the internal democracy of parties; freedom of speech; and political communications. Recent legislation in these areas represents a concern for the consolidation of the country's successful democratization process of previous decades.

Yet, some of the most frequently mentioned theories of democratic backsliding do not seem to apply to Mexico. To be specific, Mexico does not validate the conjecture of an excessively strong executive. Fish hypothesized that superpresidentialism might be one of the causes of democratic backsliding in post-communist Europe.<sup>91</sup> A similar hypothesis could be formulated by observing recent developments in Bolivia, Colombia, and Venezuela. Mainwaring and Shugart provided more examples of excessively dominant

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<sup>91</sup> Fish, "The Dynamics of Democratic Erosion."



presidencies in Latin America.<sup>92</sup> However, in the analysis of relevant Mexican legislation, there is no evidence of superpresidentialism. On the contrary, the bargaining power of the Chief Executive has been diminished. In contrast, Mexico's three largest parties enjoyed a dominant role in rewriting the electoral code. As a result, party delegations in Congress succeeded in including many advantageous amendments for their leaders.

Hence, a different theory of backsliding seems appropriate. This essay argues that Mexico has started to experience several of the effects that Coppedge observed in Venezuela as it became a partyarchy.<sup>93</sup> Coppedge maintains that partyarchies will tend to block channels of participation, purge issues from the political debate, and politicize civic organizations. The effects are worsened when the presidency is weak in contrast to the power of political parties. Analysis of the last electoral reform suggests that such is progressively becoming the state of affairs in Mexico: the PAN, the PRD, and the PRI show signs of gradually becoming a partyarchy, monopolizing politics in the hands of their leaders, while presidential power wanes. Coppedge's claim that partyarchy and presidentialism are a detrimental combination for democracy appears to hold true in Mexico.

The observations of this essay carry broad implications for the consolidation of new democracies. Specifically, they help us test two important theories of democratic backsliding. The first theory predicts that unchecked executives in new democracies will tend to concentrate power on themselves to the detriment of other branches of government.<sup>94</sup> It was developed for Eastern and Central Europe, and seems plausible for some South American and Central American nations, but it does not explain recent events in Mexico. The second theory postulates that excessively strong parties in presidential regimes will tend to monopolize power.<sup>95</sup> This theory was developed for Venezuela, and seems plausible for Nicaragua. Moreover, it explains events in Mexico. This suggests caution when trying to generalize theories of consolidation. It may be true that backsliding remains a possibility around the world—regions in the third wave of democratization are especially vulnerable. Nevertheless, the source of instability may vary across countries. My analysis indicates that such backsliding might be executive-driven in some regions, while party-driven in other regions. Thus, both potential risks ought to be monitored.

In terms of Mexico's future, the country seems to be at a crossroads. One possible path is to strengthen civil society and the civic organizations that

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<sup>92</sup> Scott Mainwaring and Matthew S. Shugart, *Presidentialism and Democracy in Latin America* (Baltimore, MD: Johns Hopkins University Press, 1997).

<sup>93</sup> Coppedge, *Strong Parties and Lame Ducks*.

<sup>94</sup> Fish, "The Dynamics of Democratic Erosion."

<sup>95</sup> Coppedge, *Strong Parties and Lame Ducks*.

already have been involved in the democratization process.<sup>96</sup> This includes consolidating the civic character of electoral institutions and continuing to remove partisan interests from the management of elections. However, the reforms that were recently enacted by Congress seem to indicate that Mexico has taken a very different path, namely cementing the hegemony of party elites to the detriment of citizen representation. In other words, the regime is at risk of becoming a partyarchy. As a consequence, Mexico might be joining the group of countries that recently has suffered democratic reversal. The literature calls these countries backsliders.

<sup>96</sup> Sharon F. Lean, "Democracy Assistance to Domestic Election Monitoring Organizations: Conditions for Success," *Democratization* 14, no.2 (April 2007): 289–312.