

#2 The Origins and Rationality of the "Legal versus Legitimate" Dichotomy Invoked in Mexico's 2006 Post-Electoral Conflict

Months after Mexico's independent electoral institute had validated the July 2, 2006, presidential elections, and weeks after the autonomous electoral court had certified National Action Party (PAN) candidate Felipe Calderón as president, runner-up Andrés Manuel López Obrador continued to cry foul. Days before the court's final September 5 ruling, López Obrador (known widely as "AMLO"), representing the Party of the Democratic Revolution (PRD) and the Coalition for the Good of All, decided to disband the mobilizations blocking some of Mexico City's main transportation arteries, but to continue protesting indefinitely, and to name a "shadow cabinet," to press Calderón. López Obrador lost the election by a hair (a mere 233,831 votes, out of over 41,700,000 cast—the final certified number after electoral court rulings), but he did lose, and in a "free and fair" contest¹ organized by one of the world's more respected electoral institutions.

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What rational explanations might justify López Obrador's continued intransigence? What does it say about the state of democracy in Mexico, where "loser consent," a critical standard of democratic elections, as famously claimed by Adam Przeworski (1991) and others (Nadeau and Blais 1993; Anderson et al. 2005), did not apply? This article argues that López Obrador's continued contestation, first by mobilizing hundreds of thousands of supporters, and more recently through non-recognition of President-elect Calderón, is rational, but only when viewed through the lens of post-electoral conflicts prevalent during the thousands of local elections that constituted Mexico's protracted and centripetal democratization in the 1980s and 1990s.

Losing at the Polls While Winning in the Smoke-Filled Rooms: The Logic of *Concertación* Post-Electoral Bargaining

During Mexico's protracted transition to democracy, scores of post-electoral conflicts were settled via informally negotiated *concertaciones*, or "gentleman's agreements." Invoked

in nearly a dozen national high-profile cases—and scores of lesser ones—during the 1990s, these informal bargaining tables became the principal arena of negotiation between the long-ruling Institutional Revolutionary Party (PRI) and its oldest opponent, the right-of-center PAN. The PAN—and in a few cases, the PRD—usually lost in the PRI-state's famously corrupt elections, but got something back—an interim mayorship or at the very least a proportional representation city-council seat—in exchange for continued participation. The electorate's preferences were put aside, as mayors- and governors-elect resigned, under pressure from the PRI, to make way for negotiated "interim" executives from the deals struck.

Concertaciones (referred to as the *segunda vuelta* or "second time around," by the PRD)² operated at the margins of—and in lieu of—formal institutions designed to resolve electoral disputes (see Eisenstadt 2006, 237 for table with examples of some major *concertaciones*). The demand for informal post-electoral bargaining tables was driven by the poor reputations of formal electoral and judicial institutions (deserved in most cases), as well as by PRI and PAN leaders' recognition that informal institutions offered them flexibility to tailor electoral outcomes to the parties' mutual needs. Once the PRI and PAN learned of the discretion afforded them by the informal institutions, without any of the inflexible legalism or transparency required by formal institutions, *concertaciones* supplanted formal electoral institutions for a decade. At a time when electoral courts were still widely viewed with suspicion, they provided politicians with temporary solutions flexible enough to accommodate national and local circumstances. Over a thousand post-electoral conflicts occurred between 1989 and 2000, although they have diminished markedly in the twenty-first century, except in the still-conflictive state of Oaxaca.³

The PRI and the PAN shared these implicit agreements between about 1989 and 1996, but they left out the PRD. While the PRD and other left-wing parties were involved in hundreds of post-electoral conflicts during Mexico's democratic transition,⁴ the PRI, whose strategy was to co-opt the conservative PAN and repress the left, utterly refused to engage PRD national leadership (although

in Tabasco by riots led by local PRI leaders. This "Rebellion of the PRI" threatened widespread violence and Zedillo rescinded the forced resignation of Governor-elect Roberto Madrazo, who had been offered a cabinet position in exchange for his sacrifice (Eisenstadt 1999, 285-7). The episode marks the beginning of the end of PRI hegemony, as Zedillo proved unable to control the PRI's Tabasco minions; it was an influential moment in López Obrador's career.

The Tabasco 1994 post-electoral conflict, although thwarted, helped propel AMLO to the national presidency of the PRD, moving the social movement leader/politician to Mexico City in 1996, where he was elected mayor in 2000, after a mobilization of supporters helped his campaign circumvent eligibility restrictions. His mayoral term was also marked by mobilizations for desired policies, sometimes beyond the limits of the law. In his populist turn as Mexico City mayor, AMLO conducted over a half dozen plebiscites (Grayson 2006a, 211) and implemented over a dozen targeted welfare programs (Grayson 2006a, 212-3), some with electoral purposes clearly in mind. Still, it bears mention that AMLO's accomplishments as mayor were considerable, the corruption taint in his administration never reached the top, and AMLO left office as perhaps Mexico City's most beloved mayor in some time.

In addition to implementing popular measures, López Obrador also helped bolster his political future through continued mobilization of his supporters. With his 2006 candidacy jeopardized in 2005 by lawsuits over his mayoral administration's expropriation of land without due process to construct a hospital access road, AMLO countered federal investigations with mass mobilizations. Indeed, the Fox administration's effort to depict López Obrador as a lawbreaking radical in this controversy backfired, as AMLO again adopted the comfortable underdog role. AMLO's earlier challenges of "kangaroo" electoral courts in Tabasco and the blatantly politicized federal allegations during his Mexico City mayoral election and administration were validated by the obvious lack of credibility of the legal channel institutions available. However, Mexico's federal electoral institutions had been given independence and fortitude, removing such doubts about their legitimacy in 2006, although AMLO made similar claims.

How AMLO Framed the 2006 Election

While most observers argue that the Federal Electoral Institute's (IFE) collective decision-making and professionalized bureaucracy and structure are conducive to administering free and fair elections, the PRD leadership and the López Obrador campaign repeatedly alleged otherwise—months before the election. The PRD leadership continued to complain that the nine IFE ombudsmen citizen counselors were selected in 2003 without PRD support, which was a break from the past, when the IFE policymakers had been selected consensually by the three largest parties. Yet, a systematic study of IFE General Council votes for a decade ending just prior to the 2006 election (including several years of votes by the "new" IFE) found no partisan bias (see Rosas, Estévez, and Magar 2005).

The IFE's "sin of origin," as the PRD refers to its exclusion from the process, was cited well in advance of the election as justification for contesting the entire electoral process in the

event of a narrow PRD loss. PRD President Leonel Cota's retention of the Mexican office of the Brazilian Institute of Public Opinion and Statistics (IBOPE) to systematically document all parties' national television advertising spots was seen as an indication that the party was gathering evidence of a non-level playing field. In another controversy, AMLO's Coalition complained last spring that Calderón's ads were impugning his character with outright lies, and although in a divided decision the IFE originally took a more moderate stance to avoid censoring campaign advertising, the electoral court forced the IFE to remove objectionable PAN ads. This prompted the IFE to intervene and censor spots both from the PRD and the PAN for "smearing" competitors without evidence.

In contesting the 2006 presidency, AMLO ignored Fox's dismantling of the *concertación* bargaining tables in 2000 and 2001. Possessing a razor-thin margin of defeat, the first prerequisite for a *concertación*-stimulating post-electoral conflict, López Obrador harkened back to this practice, and to the rhetoric accompanying it. However, he erroneously generalized from the regime's historical moment of the 1980s and 1990s to conclude that such deals could be negotiated at high levels by opposition parties besides the PAN, and with a ruling party that was not the authoritarian PRI. Recall that *concertaciones* were rarely extended to the PRD, but that López Obrador had been an exception after the fraudulent 1991 and 1994 Tabasco elections, until, in 1994, PRI state legislators disobeyed President Zedillo and refused to sacrifice Roberto Madrazo's governorship for a cabinet secretariat.

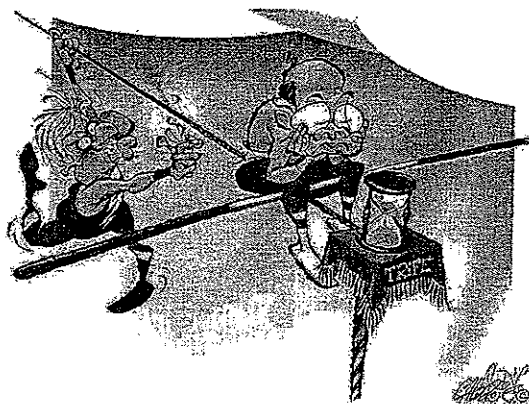
AMLO framed the 2006 controversy in historic proportions, recalling the historical injustices of 1988, and—in a conceptual

stretch—the 1910 Mexican Revolution itself. By lumping the 2006 contest with pre-1997 refusals by the then-authoritarian Mexican government to recognize the left's electoral victories, and especially the documented 1988 massive fraud against Cuauhtémoc Cárdenas, López Obrador tried to recapture the rampant citizen suspicion of that earlier era. Invoking that era's conspiracy theory (justified then, but ungrounded in the post-1996 era of free and competitive elections and autonomous electoral institutions), AMLO threatened to renew the cycle of fraudulent elections-leading-to-rebellion characterizing Mexico's pre-Mexican Revolution history if his victory went unrecognized. Brandishing an inconclusive, out-of-context video as proof of fraud, he chastised opponents and

doubters. His successful agitations for political opening in Tabasco occurred in the 1990s, a time when street demonstrations had much more effect than legal petitions; these tactics were out of date in 2006.

The 2006 Challenges to Mexico's Credible Electoral Institutions

In 1996, constitutional reforms further bolstered the autonomy of the IFE and gave the federal electoral court jurisdiction over appeals of local electoral disputes; in 2000, Mexico was lauded internationally for its smooth and peaceful transition to its first non-PRI president since well before World War II. The country's Election Management Bodies (EMBs) were roundly



At a crossroads, wistful candidate Calderón waits endlessly for the electoral court (TRIFE) hourglass to empty while an acrobatic López Obrador tries to light a fire under the soon-to-be president-elect's tightrope of support. Courtesy of Paco Calderón and *Reforma* Newspaper.

Notes

1. Most domestic observer groups viewed the election as "free and fair," as did delegations of international observers from the United Nations Development Program and the European Union. Critics of the process, such as several scholars at the renowned Institute for Judicial Research at Mexico's National Autonomous University, based at least important portions of their critiques on normative claims that recounting all ballots would dispel doubts about the outcome, rather than on concrete legal arguments that violations had occurred to invalidate any stage of the highly codified process (see Ackerman and Sandoval 2006, for example). Poiré and Estrada (2006) debunk AMLO's arguments systematically, as does the Mexican electoral court's 340-page final verdict, accessed on October 12, 2006, at www.trife.org.mx/acuerdo/dictamen.pdf.
2. The term "*concertación*" (originating in a Mexican slang combination of the words for "concertation" and "concession") gained such cachet as a concept of Mexican political culture as to merit inclusion in the country's most important electoral dictionary (Martínez Silva and Salcedo Aquino 2002, 99).
3. Post-electoral conflicts have increased in Oaxaca since the mid-1990s, probably due to particularities in the conduct of local elections there in accordance with traditional customary law (see Eisenstadt 2007 forthcoming).
4. Between 1989 and 2000, the PRD staged 750 post-electoral conflicts, while the PAN staged some 200 (and the PRI and smaller opposition parties staged a few hundred more). See Eisenstadt 2004, 141.

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The 2006 Mexican Election and Its Aftermath

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