

# **Mexico's Electoral Reform of 2007:**

## **A Case of De-Democratization and Partyarchy**

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### **Abstract<sup>2</sup>**

Following the 2006 post-electoral crisis, important changes were made to the Constitution and several secondary laws in Mexico. Unfortunately, this new legislation had at least three drawbacks: (1) A weakening of electoral institutions. (2) A strengthening of party leaders' dominance. And (3) a reduction in freedom of speech to protect the parties' image. This essay documents such problems based on a detailed reading of the new law. It also describes the challenges faced by the electoral institutions in implementing the new law during the 2009 midterm election. We argue that Mexico is following two trends recently seen in other regions of the world: democratic backsliding and partyarchy.

**Keywords:** constitutional reform, Mexico, backsliding, partyarchy, freedom of speech.

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**Introduction: Mexico as a case of  
partyarchy and democratic backsliding**

Following the controversial election of 2006, Mexico engaged in a reassessment of its electoral rules. The result was the most profound electoral reform the country has seen for a decade. This essay will argue, however, that certain aspects of that reform represent a reversal of Mexico's democratization process. This reversal illustrates that democratic gains can never be taken for granted. Indeed, as Charles Tilly pointed out, there is a history of regimes that have installed democratic institutions only to backtrack later:

“Contrary to the comforting image of democracy as a secure cave into which people can retreat forever from the buffeting of political storms, most regimes that have taken significant steps toward democracy over the last two centuries have later de-democratized at least temporarily.”  
(Tilly 2003)

Mexico is vulnerable to some de-democratization too, as can be seen with the legislation that was negotiated and approved throughout 2007 and 2008. The ambition and depth of that legislation were remarkable, and so were many of its achievements. Implicitly or explicitly, there were several goals in discussing the rules governing future elections. One goal was to heal the wounds and divisions left by the 2006 election. Another goal was to produce 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 reforms. 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. Based on a close reading of the law, our paper documents three problems. (1) *A weakening of electoral*

*institutions*: the autonomous and non-partisan nature of the main electoral organizations was infringed by the parties represented in Congress. (2) *A strengthening of party leaders' dominance*: the hegemony of party leaders over party militants was solidified to the detriment of intra-party democracy and accountability. And (3) *a reduction in freedom of speech to protect the parties' image*: the public debate was concentrated in the hands of party leaders by reducing citizen's access to the media. The goal of this essay is to document those problems and discuss their effects. There is particular value in doing so, given that such problems have not been properly pointed out in the literature. Unlike previous reforms in Mexico which have been extensively discussed among scholars of comparative politics, this last reform remains understudied.

The problems mentioned here are uncomfortably reminiscent of two trends observed in other regions: *democratic backsliding* and *partyarchy*. Both trends can provide us with a theoretical framework to understand the Mexican legislation. At the same time, the events in Mexico can serve to validate, refute or qualify some of the theoretical claims that have been made about those two trends.

The first trend, *democratic backsliding*, can be observed in several regions around the world. Scholars of eastern and central Europe, for example, have recently noted it.<sup>3</sup> Countries in that region abandoned decades of authoritarian rule by successfully democratizing in the 1990s; but in several of them, the levels of democracy subsequently receded. Fish (2001) identified nine such “backsliders”, namely countries whose level of democracy improved in the early 1990s but then

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<sup>3</sup> For a survey see Kopstein (2003).

worsened after 2000.<sup>4</sup> Events in several Latin American countries have prompted similar worries. Bolivia, Colombia and Venezuela are often mentioned as South American backsliders where democratic institutions might be deteriorating. The issue of democratic consolidation in Latin America has actually been a concern among scholars for a long time.<sup>5</sup> In this paper we argue that Mexico has started to experience some democratic backsliding as well.

But is the cause of Mexico's de-democratization the same as the cause of de-democratization in those other regions? Fish hypothesized that democracy in post-communist Europe was degraded by a constitutional system that concentrates excessive power on the president—what he calls “superpresidentialism” (see also Kopstein 2003, fn. 10). A similar hypothesis could be formulated by looking at the South American experience: the challenges to democracy in Bolivia, Colombia and Venezuela have come from strong presidents seeking reelection, or pushing the constitutional boundaries to increase their executive power. It is germane to investigate whether the same theory could be applied to Mexico, or whether an altogether different paradigm is needed.<sup>6</sup> Our qualitative analysis of the Mexican legislation sheds some light on this question. It strongly suggests that, contrary to Fish's theory, Mexico's troubles do not come from an excessive concentration of power on the executive. Actually, the Constitution and the secondary laws reveal that Mexico's presidency is relatively weak. So, if the analysis in this paper is correct, it

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<sup>4</sup> Those countries are Albania, Armenia, Belarus, Bulgaria, Croatia, Kazakhstan, Kyrgyzstan, Russia and Ukraine.

<sup>5</sup> See for example O'Donnell and Schmitter 1986, Linz and Stepan 1996, Mainwaring and Shugart 1997, Whitehead 2002.

<sup>6</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 (pp. 93-95)

highlights that existing theories of democratic backsliding are not readily generalizable across the globe. Fish's hypothesis of superpresidentialism might hold true in some regions, but it cannot be sustained as an explanation for the recent deterioration of electoral institutions in Mexico. Rather, what we find is an excessive concentration of power on political parties, not on the executive.

Which leads us to the second trend: *partyarchy*. Coppedge (1994) defines partyarchy as a regime in which political parties monopolize the formal political process and politicize society along party lines. Such monopolization of political processes was most clearly seen in Venezuela where two parties, AD and COPEI, used to be the sole agenda setters. According to one hypothesis, partyarchy is particularly detrimental to democracy when it appears in a presidential system (Coppedge 1994, pp. 157-162). Mexico provides an ideal case to test this hypothesis, being a presidential system with parties that are increasingly strong. According to Coppedge, partyarchy had a short-term and a long-term effect in Venezuela. In the short term, the centralization of decision-making in a handful of extremely disciplined parties had the positive effect of ensuring regime stability: such system was able to avert challenges by undemocratic forces more effectively than many of its neighbors in the region. But in the long-term, those monopolistic parties excluded many constituencies and ignored important issues, which generated disenchantment with the government and eroded the quality of democracy (see McCoy 1999 for a similar argument). As a consequence, the short-term stability of the regime eventually disappeared and the long-term trend has been a deterioration of democratic institutions. Importantly for our paper, the precariousness of the regime in Venezuela was accentuated by the presidency's weakness relative to the large parties. In this paper we suggest that Mexico is displaying several of those short-run and long-run

effects. We claim therefore that Coppedge's theory of partyarchy is being distinctly verified by Mexican events.

Such being our theoretical objectives, we proceed to describe our empirical approach. Our empirical data is the law itself. This paper is original in directly comparing all the relevant electoral laws, in their versions immediately before and immediately after the reform. Our hope is that an inspection of the primary source, down to the exact article, clause and paragraph, will expose the true goals of the legislators, even those goals intentionally buried in legalistic detail. The laws examined for this paper 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, we take advantage of the multiple reports and legal opinions that legislators themselves have produced. Those legal opinions are the best empirical source if we are to understand the "spirit of the law." They were found in several issues of the official publications issued by the Mexican Senate (*Gaceta del Senado*) and the Mexican Chamber of Deputies (*Gaceta Parlamentaria*). Context and background are also needed for an accurate interpretation of the causes and consequences of the reform. The empirical facts provided in this paper rely on expert interviews, our own observation of political events in Mexico, and a large number of newspaper and magazine articles. The newspapers consulted include *El Economista*, *El Financiero*, *El Universal*, *Excelsior*, *La Jornada*, *Los Tubos*, *Milenio*, and *Reforma*. The weekly and monthly magazines consulted included *Milenio Semanal*, *Nexos*, *Proceso*, *Reporte Índigo*, and *Voz y Voto*.

The paper starts by providing some background about the conditions under which the last reform was undertaken. Then we study the substance of the resulting legislation: we briefly summarize some of the positive aspects, and then analyze its problems in detail. Throughout the analysis we document the challenges, both foreseen and unforeseen, that were faced to implement the new law during the 2009 midterm election. To conclude, the paper evaluates whether the analysis supports or refutes the application to Mexico of two important paradigms in democratization theory: partyarchy and superpresidentialism.<sup>7</sup>

### **Chronology leading to the last reform**

#### ❖ The period of electoral manipulation

For most of the twentieth century, Mexican politics were dominated by one organization, the Institutional Revolutionary Party.<sup>8</sup> The president in turn was the ultimate decision-maker during the hegemonic PRI rule. As noted in Langston (2009a, chapter 3), not only did the president have a decisive influence in all branches of government, but he was also de-facto leader of his party. In particular, the president controlled all candidate nominations in the PRI.

As mandated by the Constitution, elections are held every six years to renovate the Presidency and the Senate, and every three years for the Chamber of Deputies. However, during most of the PRI's tenure which started in 1929, those elections were neither fair nor balanced. The government made heavy use of

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<sup>7</sup> A note about translations is in order. We have translated to English all the names of institutions, but acronyms are preserved in the original Spanish form. We have also translated to English all the laws and legal opinions quoted in the paper.

<sup>8</sup> See Diaz-Cayeros and Magaloni (2001) and Magaloni (2006) for detailed accounts of that period.

clientelism, patronage and control of the media to boost its nominees while hampering or blocking the opposition's candidates.<sup>9</sup> Election fraud was frequent at all levels. Evidence of ballot stuffing and vote-count alterations would surface recurrently. As a result, if opposition parties happened to win an election they had trouble upholding their victory. Often, their only option was to resort to street protests (Eisenstadt 2004).

❖ Democratic reforms of the 1990s

Electoral reform was scarce throughout the PRI's hegemonic period. A substantive law was passed in 1977 introducing proportional representation: the Law of Political Organizations and Electoral Processes (LOPPE). But further concessions were hard to obtain. During the nineties, however, large numbers of voters flocked to the opposition camp. As their share of seats in Congress increased, the opposition parties succeeded in pushing a series of laws to revamp and modernize Mexico's electoral institutions. Those reforms were given impetus by a growing popular disaffection with one-party rule. As explained in Magaloni (2006, chapter 8), popular restlessness compelled the PRI to embrace the reforms—and actually to make some additional democratizing proposals of its own. Ultimately, the reforms passed because the opposition parties were able to sustain a solid coalition in Congress.

As a result, a new electoral law was published in 1990, the Federal Code for Electoral Institutions and Procedures (COFIPE). The COFIPE dramatically leveled the playing field.<sup>10</sup> Further reforms were passed in 1993, 1994 and 1996. Each of those modifications made strides in ensuring that political competition would be *transparent*, meaning that vote-counting would not have irregularities, and *equitable*,

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<sup>9</sup> See Coppedge (1993).

<sup>10</sup> See Crespo (2004) for a detailed review of this period.

meaning that incumbency would not be an overwhelming factor in obtaining resources.

At the heart of those reforms was the creation of two institutions with the mandate to guarantee the legality and fairness of elections: the Federal Electoral Institute (IFE) and the Federal Electoral Tribunal of the Judicial Branch (TEPJF). The IFE is an autonomous agency in charge of organizing all national elections. Its responsibilities include registering candidates and parties, monitoring the campaigns, and auditing the parties' finances. It is also in charge of the delicate task of counting votes and declaring a winner.<sup>11</sup> The TEPJF 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 by the IFE.<sup>12</sup> As such, the TEPJF has the same hierarchy as the Supreme Court of Justice of the Nation (SCJN), which reviews all constitutional controversies except the electoral ones.

The profound effects of those reforms have been documented in much academic research. Scholars have found, for example, that party funding became more balanced (Ai Camp 2004), vote buying was made more difficult (Cornelius 2004), the list of registered voters was made accurate (Lawson and Klesner 2004), and electoral institutions became politically neutral and independent (Lawson 2000). As a result, the IFE and the TEPJF succeeded in organizing the first *transparent* election in 1994 and the first *transparent* and *equitable* election in 2000, as deemed by national and international observers. It was in the 2000 election when the PRI was unseated, and an

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<sup>11</sup> Article 41-V of the Constitution (2007a).

<sup>12</sup> Article 99 of the Constitution (2007a).

opposition candidate took office for the first time in more than seven decades. That candidate belong the National Action Party (PAN).

Highly competitive elections where voters are offered several viable choices are now commonplace throughout the country, at all levels of government. There is a stable party system consisting of three large parties with cohesive structures, distinct ideologies and nation-wide presence. The three big parties are the National Action Party (PAN), the Party of the Democratic Revolution (PRD) and the Institutional Revolutionary Party (PRI). Mexican elections routinely display several small parties as well. Mexico's reforms of the 1990s represent, therefore, a remarkable case of far-reaching and non-violent democratization. As Todd Eisenstadt puts it, "Mexicans were justifiably proud of their great success in converting one of the most fraudulent electoral systems in the world to one of the cleanest in less than a decade" (Eisenstadt 2007).

In spite of this remarkable transformation, Mexico's transition to democracy remained precarious. For example, television broadcasting remains concentrated in a powerful duopoly (Lawson 2007). And the large credibility of the IFE and the TEPJF was not matched by other political institutions. In 2005, for example, a public-opinion survey found that the IFE enjoyed high levels of trust (an average grade of 7.1 out of 10) compared to low levels of trust in deputies (4.5), senators (5.0) and political parties (5.1).<sup>13</sup> Those lingering weaknesses were vividly manifest in the contested election of 2006.

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<sup>13</sup> *Consulta Mitofsky*, "Índice de Confianza en Instituciones, Agosto 2006", August 2006.

❖ The 2006 election

The presidential and congressional election held in July 2006 posed an unprecedented challenge to Mexican institutions. The Presidency, the Senate and the Chamber of Deputies were all renewed that year. Three contenders had a realistic chance of winning the presidency, namely those belonging to the three large parties. There were other presidential candidates but their parties were dwarfed by the political machines of the three big ones. The campaigns were exceptionally heated, the election results were strikingly close, and the post-electoral crisis was deeply divisive. For space reasons we cannot give a detailed account of all the important events, which have, in any case, been extensively reviewed elsewhere.<sup>14</sup> Rather, we focus on the features that had a direct influence on the subsequent electoral reform, which is the topic of this paper.

A salient feature of the 2006 campaigns was their exceptionally negative tone. The three main parties made recurrent use of aggressive criticism. Negative advertisements were not only produced by candidates. The activism of business organizations was particularly controversial. Several business groups produced advertisements about the risks of “populist government.” Private-sector commercials on television repeatedly warned voters against the prospect of socialism and street violence after the election. The ads were careful not to mention specific names, and did not suggest who to vote for. However, it was evident that those messages were referring to the PRD candidate. Other wealthy organizations, such as labor unions,

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<sup>14</sup> For excellent accounts of the pre-electoral campaigns and post-electoral protests see Estrada and Poiré (2007), Klesner (2007), Magar and Romero (2007) and Schedler (2007). For an exhaustive account of Election Day, hour by hour, see Tello Díaz (2007).

campaigned against the PAN candidate. So both parties developed grievances during the election process.

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

The narrowness of that margin led the PRD to challenge the official results. Its candidate proclaimed himself the true winner, and forcefully denounced an election fraud intended to rob him of his legitimate victory. The party claimed that serious vote-rigging, of the kind that used to be committed when the PRI was in power, had occurred again under the PAN. On that basis, the PRD initiated a series of mass protests, accompanied by a verbal campaign against government institutions (Schedler 2007). The party also filed a lawsuit with the TEPJF challenging the IFE's tally.

After close examination of the file submitted by the PRD, the TEPJF decided to uphold the IFE's verdict: it declared the PAN winner of the presidential election, and it ruled that any irregularities were not significant enough to upset that result. The PAN candidate was sworn in office on December 1<sup>st</sup>, 2006, in the midst of intense protests.<sup>15</sup>

As a result of the continuous protests and accusations, several institutions lost some public support, especially the electoral ones. This hindered Mexican democracy. Public support is indeed crucial for democratic institutions to work effectively, as explained by Whitehead (2007): "In the case of Mexico's July 2006 presidential

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<sup>15</sup> For statistical analyses of the PRD's claims of fraud see Poiré and Estrada (2006), Pliego (2007), Crespo (2008) and Aparicio (2009).

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." Unfortunately, as we will see below, the IFE did not receive the required of support from social and political actors.

On the contrary, a set of interested politicians and organizations grabbed the opportunity to fill the void left by a weakening IFE. Chief among them were the three large political parties who, as we will show throughout the paper, saw many benefits in revamping the structure and the staff of 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 on. Negotiations among the parties in Congress were in full swing immediately after the new government was inaugurated. Given that no party had enough votes in Congress to reach the supermajority needed to change the Constitution, or even the simple majority to change the secondary laws, parties were forced to reach agreements.

All the political parties represented in parliament 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 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 even have full control of his own party, the PAN, whose members in Congress were quick to establish a

certain degree of independence. As a result, the large parties were repeatedly successful in extracting concessions from the President.<sup>16</sup>

The negotiations culminated with 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. Those changes affected eighteen secondary laws which needed to be updated for consistency. Two of those secondary laws were discussed and reformed on July 1, 2008,<sup>17</sup> and the rest remained pending.

❖ Substance of the reform

The virtues and improvements of the new legislation have been frequently pointed out, especially by the legislators themselves.<sup>18</sup> For space reasons we will only mention a few, the goal of this paper being to study the problems rather than the virtues. Some of the positive changes that are most frequently mentioned are: granting political parties with free airtime on radio and television; reducing the length of campaigns; tightening the control of private contributions to political parties; and regulating government advertisements, especially those from the executive branch.

Those measures had broad popular support and, not surprisingly, they were widely publicized by the authors and supporters of the legislation. We will argue,

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<sup>16</sup> See Freidenberg (2009) for a detailed account of those negotiations.

<sup>17</sup> The Organic Law of the Federal Judicial Power, and the General Law of the System of Means to Challenge in Electoral Matters.

<sup>18</sup> See for example the Opinion of the Governance Committee of the Chamber of Deputies (2007).

however, that other aspects of the reform were less fortunate. The rest of this essay studies several problems of the electoral reform, and their consequences.<sup>19</sup>

### **First problem: a weakening of electoral institutions**

The major political parties used to hold autonomy as a sacred feature of electoral institutions. They used to contend that keeping electoral institutions independent was fundamental for the credibility and legitimacy of elections. Opposition parties had espoused that view when they fought for the independence of the Federal Electoral Institute (IFE) and the Federal Electoral Tribunal of the Judicial Branch (TEPJF) during the reforms of 1990, 1993, 1994, and 1996 (Lawson 2007). As a result, each of those reforms succeeded in further stripping those institutions of partisan influences. To be specific, the management of elections was gradually purged from the influence of the executive branch, the legislative branch and the political parties. The goal was to enhance the civic nature of democratic processes. Mexicans came to know that process as “citizenizing” and “de-partying” the management of elections.<sup>20</sup>

Such mindset was reflected in the evolution of the IFE. Before 1990, the management of elections was the responsibility of the Home Secretary (*Secretaría de Gobernación*). Then the Federal Electoral Institute (IFE) was created by Congress as a separate body. It was mandated that several non-partisan “councilors” (*consejeros*) would participate in its decision-making process, but their role was initially small compared to the parties and the executive. With each subsequent reform, the role of councilors was significantly expanded, while the role of parties and the executive was

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<sup>19</sup> Other problems of the electoral reform that we do not study here have also been mentioned. See for example Serra (2009).

<sup>20</sup> Those two terms are my attempt to translate “*ciudadanización*” and “*despartidización*.”

rapidly reduced. By 1994, the executive branch ceased to have any representatives in the IFE. The parties also lost their position in decision making: political parties still have some representatives in the institute, but they do not have the right to vote.<sup>21</sup> The councilors became the highest authority of the IFE and the only voting members of its General Council (*Consejo General*). Out of those Councilors, one serves as head of the institute. The process of "citizenizing" and "de-partying" seemed to be irreversible. As a result, the institute is now run by a General Council with nine members with no other positions in parties or government; those nine members are called Electoral Councilors (*Consejeros Electorales*). Although designated by Congress, they are expected to be non-partisan.

However, several changes in the COFIPE and the Constitution made in 2007 seem to be reversing course and violating the spirit of the original reforms. The first element of the new reform that harmed the autonomy of the Federal Electoral Institute was the removal of several of the Electoral Councilors that formed its General Council. When the IFE was conceived, its councilors had been granted independence from the government. They 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 new Congress decided to sack the General Council before the end of its term. Reportedly, the goals were political and financial. Politically, parties wished to increase their influence in the institution in charge of supervising campaign behavior (Freidenberg 2009). Financially, parties wished to avoid the enormous fines that most of them were facing for violating the campaign-spending limits (Ugalde 2008). A vindictive reason also seemed to loom large, namely a

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<sup>21</sup> Articles 73-81 of the COFIPE (2006).

retribution for mishandling the 2006 election (Langston 2009b). Accordingly, the three major parties, for different reasons, agreed in their desire to fire the sitting members of IFE's General Council. In order to do so, however, Congress had to overturn the Constitution. For that purpose, the legislators wrote an interim constitutional article. That article forced the immediate substitution of the head of the Council and two other councilors in December 2007, and three other councilors in August of 2008. The three remaining councilors were allowed to stay in office until 2010.<sup>22</sup>

The removal of electoral councilors before they finished their original mandate, which violated the firm tenure granted to them by the Constitution, established an unfortunate precedent. The reputational effects will be long lasting: we can assume that future councilors, and actually any electoral official, will fear they can be removed if they offend the political parties.<sup>23</sup> As they just proved, parties only need to pass a new “interim” statute to remove these officials. The effects of such intimidation have actually started to be felt already. With a new Council in place, the IFE proceeded to close important investigations into the campaign expenses of parties during the 2006 election.<sup>24</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>25</sup>

The second feature that infringed upon the institute’s autonomy was the creation of a General Comptrollership of the IFE (*Contraloría General del IFE*). The

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<sup>22</sup> Interim Article 4 of the Constitution (2007b).

<sup>23</sup> *The New York Times*, “Editorial: Hobbling Mexico’s Democracy,” September 13, 2007.

<sup>24</sup> *Excelsior*, “El IFE le da la vuelta de hoja a los spots,” February 16, 2008.

<sup>25</sup> *La Jornada*, “El IFE optó por ocultar que en 2006 se rebasaron topes de gastos,” February 18, 2008.

new Comptrollership was given the mandate to audit and sanction the institute's civil servants. The law itself defines it as an "internal control unit." The responsibilities assigned to the Comptroller are numerous and of great weight in the conduction of the IFE. In fact, the new article describing the Comptrollership is one of the longest in the Electoral Code, with a list of assignments going from clause *a* to clause *v*. Its general mission is to investigate and monitor the use of all assets, funds, contracts and services.<sup>26</sup> Furthermore, the Comptrollership will have sanctioning powers, which will increase its influence within the organization. For instance, the Comptroller will be able "to directly assign indemnifications and pecuniary sanctions to those responsible of any infringements." In addition to pecuniary sanctions, the Comptroller will have the ability to remove employees from the institute.<sup>27</sup>

These broad powers are particularly worrisome because the Comptroller will be an agent of Congress. Indeed, the head of the Comptrollership is designated by the Chamber of Deputies. In addition, the Comptroller has the right to be reelected for a second term, which means he will have to earn the deputies' approval in order to stay in office. Moreover, the Comptroller can be removed by the Chamber of Deputies.<sup>28</sup> All this suggests that the Comptroller General will comply with the demands of the

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<sup>26</sup> Other prominent capacities of the Comptrollership include receiving and processing complaints about civil servants within the IFE, as well as evaluating the fulfillment of any goals and targets set for the institute. It has jurisdiction over all the areas and units of the organization (Article 391 of the COFIPE 2008).

<sup>27</sup> Excluding the Electoral Councilors and the secretary of the General Council (Article 391, Paragraph 1, Clause *o*, and Article 383, Paragraph 1, Clause *e* of the COFIPE (2008)).

<sup>28</sup> Article 388, Paragraph 3, Article 388, Paragraph 5, and Article 390, Paragraph 2 of the COFIPE (2008).

party delegations in Congress. In effect it gives parties a tool for punishment and retribution if they disagree with the institute's rulings.

In particular, this will obstruct the ongoing efforts to make parties finances more transparent. Given that a major role of the IFE is to supervise the parties' expenses, the Comptrollership creates the awkward situation where the parties' auditor is in turn audited by the parties. That can only hamper the IFE's efficacy. It should be noted that the IFE was already audited annually by the federal government, so mandating a different audit by an agent of Congress was actually redundant (Woldenberg 2008).

Subsequent events gave a taste of the influence that parties have acquired in the conduction of the IFE through their inside agent. The Comptroller General was appointed on April 30, 2008, with support from all the parties represented in Congress. Although the new Comptroller has not yet exercised his legal powers to their fullest capacity, he has already taken some muscular action. In particular, he has publicly admonished IFE officials for their "archaic" and "inefficient" administrative practices, and he has used the bully pulpit to criticize the electoral councilors on several occasions.<sup>29</sup> He also opposed emphatically the attempt to raise the wages of IFE officials.<sup>30</sup> Whatever their merits, the Comptroller's actions represent an external intervention in an institution that was supposed to be shielded from partisan pressures.

A third reversal was making it easier for partisan politicians to join the IFE's Council. So far, the councilors have tended to be well-known academics or respected public figures rather than career politicians. Such was the desire of the original legislators when they created the IFE. Their goal was to obtain a configuration of

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<sup>29</sup> *Reforma*, "Exhibe contralor 'lastres' del IFE," August 25, 2009.

<sup>30</sup> *El Universal*, "La misteriosa carta de un incremento," February 26, 2009.

Electoral Councilors that could inspire trust among all political actors and civil society. The objective was also to professionalize the management of elections. In other words, the selection of IFE's general council was supposed to uphold the “citizenizing” and “de-partying” principles. So, even though councilors had to be nominated by parties, a series of guarantees were established to ensure they were committed citizens without an overbearing ideological bias.

But the neutrality of future appointments is at risk, as some of these guarantees have been relaxed in the new reform. For example, the old COFIPE had a provision barring party leaders from becoming Electoral Councilors. The reasoning behind this provision was to keep individuals with such manifest partisanship from representing an institute that aspires to be neutral. The article said the following:

*The Electoral Councilors will have to meet the following requirements:  
(...) Neither to presently hold nor to have held in the past the position of President of the National Executive Committee, or its equivalent, within a political party. (Article 76, Paragraph 1, Clause g of the COFIPE 2006)*

This clause was eliminated from the new COFIPE altogether. The implication is that party officials and party chairs are now legally allowed to head the elections-management body at a later point.

A related finding comes out of reading the prerequisites to become an Electoral Councilor. It turns out that the electoral reform gave a different treatment to members of the legislative branch and members of the executive branch. If a member of the legislative branch wants to become an Electoral Councilor, she needs to wait a certain number of years after having been a candidate; the electoral reform of 2007

*reduced* the number of years from five to four.<sup>31</sup> If a member of the executive branch wants to become an electoral councilor, she needs to wait a certain number of years after leaving office; the electoral reform of 2007 *increased* the number of years from one to four.<sup>32</sup> Therefore the prerequisite for agents of the parties (such as legislators) was loosened whereas the prerequisite for agents of the executive (such as Secretaries) was tightened with respect to the previous legislation. This represents another instance where parties granted themselves more influence on electoral matters while decreasing the influence of the executive branch.

In sum, several reforms promoted by the major political parties have decreased the autonomy and independence of the IFE, and have weakened its non-partisan nature. In previous reforms the executive and the legislative branches had been purged from the electoral institutions, but now political parties are making their way back in. By doing so, they are reversing the course taken by those same parties when they originally created the institute more than a decade ago. It should be noted that these changes did not reveal any kind of “superpresidentialism” as defined by Fish (2001). On the contrary, they indicate that the executive’s influence on electoral matters is waning in favor of the legislative branch and the three big parties. As such, they are indicative of a nascent partyarchy.

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<sup>31</sup> Compare Article 76, Paragraph *h* of the COFIPE (2006) with Article 112, Paragraph *g* of the COFIPE (2008).

<sup>32</sup> Compare Article 76, Paragraph *j* of the COFIPE (2006) with Article 112, Paragraph *i* of the COFIPE (2008).

## **Second problem: a strengthening of party leaders' dominance**

One of the consequences of the last electoral reform in Mexico was to solidify the hegemony of party leaders. In particular, the dominant factions within each party acquired more leeway to impose their will upon other factions and upon rank-and-file militants. Two aspects of the new law are symptomatic in that respect. First, political parties were shielded against the scrutiny of government authorities regarding a large number of internal affairs. And second, the process to challenge a party's internal statutes and committees was rendered more difficult. We now document those aspects of the legislation.

To begin with, the new legislation protects political parties from external scrutiny of their internal life by the government. 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>33</sup> The list of matters that were placed outside of 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 the 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;*

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<sup>33</sup> The law does specify a few specific affairs where the authorities can intervene, for example the parties' finances. See Article 46, Paragraph 2 of the COFIPE 2008 and Article 116-IV-f of the Constitution (2007b).

*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.*

*(Article 46, Paragraph 3 of the COFIPE 2008)*

The protection against government oversight was reinforced in later months. It was included in the secondary laws on electoral matters when Congress began revising them for consistency with the constitutional revisions. A new clause read as follows:

*The electoral authorities must consider the preservation of the political parties' freedom of political decision making and their right to self-regulation whenever they are resolving any dispute regarding the parties' internal affairs. (Article 2, Paragraph 2 of the General Law on the System of Means to Challenge in Electoral Matters).*

It is interesting that this 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>34</sup> This suggests that such paragraph was an afterthought, and not really essential to the amendment concerned. The goal was to reiterate, once more, that parties should fall beyond the reach of the executive's authority.

Nevertheless, reducing the supervision and regulation of the internal life of parties can be considered a step back in the democratization of the electoral system. As other authors have argued, the autonomy of parties from the executive was taken

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<sup>34</sup> Compare the *Gaceta del Senado* No. 240 to the *Gaceta Parlamentaria* No. 2530-IV.

so far in Mexico that it hampered effective representation (Berrueto 2008). The legislators justified that 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>35</sup> But as we have seen, in Mexico when political parties are granted this “due respect” they tend to become hierarchical organizations dominated by a small elite. The classic example was the PRI when the president used to squelch any internal dissent (Langston 2002). A more recent example is the Ecological Green Party of Mexico, PVEM, where father and son used to make most decisions on behalf of all party affiliates.

A second related setback was to decrease the legal safeguards of party militants who are at odds with the ruling party faction. As we will see 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 TEPJF had traditionally been very active in supervising the internal life of parties, particularly in monitoring the legality of their internal processes. In fact, the majority of cases heard by the electoral tribunals have corresponded to party affiliates accusing their leaderships of abusing authority. For example, in 2006-2007, the complaints regarding candidate nominations and leadership selections accounted for 55% of the total number of lawsuits, according to the annual report of the TEPJF. Furthermore, complaints of parties violating the legal rights of their affiliates have increased 273% in the past five years. These numbers, along with many anecdotes of party bosses imposing their loyalist candidates in smoke-filled rooms, have led observers to claim that the three

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<sup>35</sup> Opinion of the Governance Committee of the Chamber of Deputies (2007).

large parties in Mexico are becoming less internally democratic (Berrueto 2008, Casar 2009).

This undemocratic trend was reinforced by the electoral reform, especially by some new clauses of the COFIPE. Concretely, several additions to the COFIPE make it more difficult for regular party members to defend their political rights. Before, if a party was believed to have broken a law during an internal process such as a candidate nomination or a leader selection, it was fairly straightforward to bring up the case to the government authorities. Now, three amendments were written to obstruct any such accusations. First, any complaint about the internal statutes of a party must be filed before a fixed deadline of fourteen days; after that deadline, the party charters cannot be challenged.<sup>36</sup> Second, such complaints can exclusively be filed by registered members of the party; ordinary citizens and government officials are no longer allowed to challenge the legality of a party's charter.<sup>37</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 bringing up the controversy to an external authority.<sup>38</sup>

By introducing those clauses, parties were intending to increase the central control of internal processes, especially candidate nominations and leader selections. It should be noted that centralized nominations were a central feature of partyarchy in Venezuela. Actually, Coppedge made them an integral part of his definition. In a partyarchy, he wrote, “parties control all nominations for public office, which limits eligibility to citizens who are considered reliable defenders of the parties’ interests.”

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<sup>36</sup> Article 47, Paragraph 2 of the COFIPE (2008).

<sup>37</sup> Article 47, Paragraph 2 of the COFIPE (2008).

<sup>38</sup> Article 46, Paragraph 4 of the COFIPE (2008).

This similarity with the Venezuelan experience is an additional sign that Mexico is increasingly conforming to the definition of a partyarchy.

The legislators' main argument to justify those changes was expressed in the following report about the electoral reform. The parties' discomfort with both internal challenges and external challenges is so surprisingly explicit that it is worth quoting.

*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. (Opinion of the United Committees of Governance and Legislative Studies 2007)*

This passage reflects the way party leaders, via their legislators in Congress, justified their new role in politics. Regarding challenges from below, they considered all 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 of the "State's sphere". In other words, the national committees of each party should be given leeway to conduct business within their parties. Behind that view lies a clear desire of the ruling factions within each party to entrench their dominance over other factions and foot-soldier activists.

In sum, the relationship between parties and government have run in the opposite direction to the kind of superpresidentialism mentioned by Fish (2001). Actually, on a large number of internal affairs, parties have literally come to think of themselves as being beyond the authority of the State. In addition, the internal

processes of parties, such as the selection of candidates and leaders, have become less transparent, legal, and fair to all party members. In other words, parties have de-democratized internally. These trends conform closely to the original definition of partyarchy given by Coppedge (1994).

**Third problem: a reduction in freedom of speech  
to protect the parties' image**

The reform included two new measures that affected the interaction of political actors with the media, especially with television and radio. One measure restricts negative campaigning and the criticism of candidates, and the other measure restricts citizens' ability to broadcast political advertisements. We analyze both measures next.

The first change of serious concern was the attempt to prevent negative campaigning. Negative comments and criticism of candidates are now punishable by law. In particular, one of the main articles of the new legislation prevents political parties from issuing any message that “denigrates” or “slanders” their opponents.<sup>39</sup> The language used in that 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 allowed for a large grey area between acceptable critiques and liable remarks. As subsequent events illustrated, such vagueness was a recipe for confusion and confrontation among the political class: they led to much litigation in the 2009 election.

The new statute reads as follows:

*The following are obligations of the national political parties:*

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<sup>39</sup> Article 38, Paragraph 1, Clause *p* of the COFIPE (2008).

*(...)To abstain, in their political or electoral advertisements of any expression that denigrates institutions or parties, or slanders individuals. (Article 38, Paragraph 1, Clause p of the COFIPE 2008.)*

A similar provision existed already in the previous law,<sup>40</sup> but the current COFIPE reinforced it by making it punishable,<sup>41</sup> and by adding the "right to respond" of the person who is being allegedly denigrated.<sup>42</sup> Moreover, the language prohibiting parties from slandering and denigrating was elevated to the constitutional level.<sup>43</sup> It should be noted, from another statute, that it is not only political parties who are prevented from making negative comments, but also the mass media. Indeed, a new article forbids radio and television broadcasters to denigrate or slander institutions and candidates; if they do so, they can be sanctioned.<sup>44</sup>

These measures were designed to protect the image and reputation of candidates and parties. They were largely a reaction to the negative tone of the previous election, where parties from all stripes leveled intense attacks on each other. The aggressive exchanges were unsettling to some citizens, which allowed legislators to justify the new regulations. Nevertheless, the regulations carry some detrimental consequences. First of all, political commentators might feel compelled to sanitize their comments, restricting them to platitudes or flattery. As Schedler (2007) 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,

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<sup>40</sup> Article 38, Paragraph 1, Clause *p* of the COFIPE (2006).

<sup>41</sup> Article 342, Paragraph 1, Clause *j* of the COFIPE (2008).

<sup>42</sup> Article 6 of the Constitution (2007b).

<sup>43</sup> Article 41-III section C of the Constitution (2007b).

<sup>44</sup> Article 350, Paragraph 1, Clause *d* of the COFIPE (2008).

election campaigns (...) will develop into baroque exercises of self-praise by candidates cut off from their critical faculties."

More importantly, the new measures deprive citizens of valuable information: What are the candidates' actual preferences and the parties' authentic ideologies? What can their past deeds reveal about their future decisions? Are they hiding, if anything? The critiques and accusations among parties and candidates, when truthful and well-documented, are 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 do (Geer 2006). This is especially important in a country where corruption and drug money are serious concerns. As it stands, the law makes it illegal for a candidate to accuse another candidate of being dishonest, having links with *narcos*, or having committed other sins. It is illegal to make such public accusations even if they can be proved with concrete evidence.

Recent elections provide several examples of how some valuable information might be muted by this new provision. During the gubernatorial contest of 2009 in Nuevo León, the candidate from the incumbent administration accused the previous administration of leaving the state finances in "ruins". He provided figures to back his claim. Yet, in accordance with the new law, the electoral authorities charged him a large fine for denigration and forced him to remove his "ruins" remark from all future advertisements.<sup>45</sup> On a separate incident, one of the candidates mocked the advanced age of another candidate. He wanted to publicize the fact that he was the youngest candidate in the race while his rival was much older. But he ended up being charged a large fine for denigrating his rival.<sup>46</sup> It can be argued, however, that those two

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<sup>45</sup> *Proceso*, "Sancionan a candidatos de PRI y PAN en Nuevo León," June 22, 2009.

<sup>46</sup> *Los Tubos – Noticias Monterrey*, "Crece la guerra sucia", June 23, 2009.

characteristics—the previous performance of parties and the age of candidates—should be fair play. Why deprive citizens of such critiques? Stifling the vigorous debates that Mexican elections had started to display can be considered a regressive feature of the reform.

This limitation is not only questionable on principle, but it also created implementation problems in practice. Parties took the 2009 election as a chance to test the boundaries of the new law and measure the resilience of the electoral authorities. As soon as the campaign season started, a series of negative adverts was launched. The PAN campaign stroke a particularly critical tone. It based its campaign on criticizing the PRI, reminding voters of the most obscure features commonly associated with the hegemonic period. For example, one of its advertisements displayed a word-search puzzle associating the PRI with negative words. Those negative associations included corruption, impunity, censorship, repression, backwardness and national debt. The PRI took offense. It publicly denounced those adverts as mudslinging, and took the PAN to court for slander and denigration. The IFE imposed a large fine on the PAN and ordered the party to retrieve the ads from all newspapers and magazines.<sup>47</sup> The PAN, however, objected to the IFE's verdict arguing that it infringed its freedom of speech. So it decided to appeal.<sup>48</sup> This process was repeated several times during the campaign as the PAN and other parties continued to level attacks on each other. In fact, the PRI was issuing negative adverts at the same time that it was denouncing the negative adverts against it. For example, in a very similar style as the PAN, the PRI published a scrabble game associating the PAN with negative words, such as unemployment, inflation and devaluation.

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<sup>47</sup> *El Economista*, "IFE ordena al PAN suspender 'sopa de letras' contra el PRI," April 3, 2009.

<sup>48</sup> *Proceso*, "Impugna el PAN ante el TEPJF el fallo del IFE por la sopa de letras," April 7, 2009.

Reversing their previous roles, the PAN took those adverts to court for slander and denigration, and the PRI defended them on the basis of freedom of speech.<sup>49</sup> This revealed, in the eyes of many voters, the hypocrisy of parties who were simultaneously using negative advertisement and filing lawsuits against other parties using negative advertisement. It also revealed the parties' lack of restraint and lack of discipline by systematically violating a brand new law. Such violations were particularly ironic given that it was the parties themselves who wrote the law, promoted it publicly, and passed it in Congress.

Hence, as can be seen, the new provision did not succeed in changing the aggressive tone of the campaigns. In fact, some polling data has found that a large majority of Mexicans (72%) considered the 2009 elections to have been *equally or more negative* than previous elections.<sup>50</sup> On the other hand, what the law did achieve is an increase in litigation. The IFE oversaw more lawsuits in the 2009 election (after the reform) than in the 2006 election (before the reform). The number of legal complaints increased from 779 to 893, making it the most litigious contest in modern Mexican history (Córdova Vianello 2009). The balance of results from that provision is therefore disappointing: a decrease in information for voters; a more negative tone; and an increase in litigation. It should therefore not come as a surprise that many academics and intellectuals have criticized the prohibition to "slander and denigrate" in elections.<sup>51</sup> Many of them, such as Casar (2009), have called for the provision to be eliminated altogether from the electoral law.

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<sup>49</sup> *Proceso*, "Multas el IFE al PRI con 54 mil pesos por 'Scrabble'," May 22, 2009.

<sup>50</sup> *GEA-ISA*, "Encuesta Nacional Simultánea a las Elecciones Federales del 5 de Julio de 2009," July, 2009.

<sup>51</sup> *Reforma*, "Anhelo académico campañas negras," June 10, 2009.

In sum, the principle of banning criticism during elections can be questioned as it imposes a severe limit on freedom of speech. It can this be labeled as de-democratization. Furthermore, this democratic reversal came from the big parties' desire to protect their image and that of their candidates in detriment of citizen's information. It can thus be interpreted as a partyarchy protecting itself.

The second change that ran against freedom of speech was the restriction on political advertisements. The legislators decided to prohibit the purchase of political ads on radio and television. The decision was justified by alluding to the controversial messages sponsored by private organizations during the 2006 campaigns, especially business corporations and well-funded interest groups. A significant section of the political elite argued that those messages had an excessive influence on the electorate. Furthermore, it has long been the case in Mexico that big corporations and wealthy groups have a disproportionate advantage in producing and broadcasting political ads. The influence of big money is compounded by the fact that Mexico's television industry is controlled by a powerful duopoly that charges prohibitive fees for any airtime. So 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 on radio and television with electoral content.

*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 to favor or oppose political parties or candidates running for elected office. (Article 49, Paragraph 4 of the COFIPE 2008)*

That article covers all individuals and groups, and therefore no one will be allowed to purchase airtime to promote their political views during elections.<sup>52</sup> Political opinion can still 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 from the Mexican radio and television all *paid* contracting of political advertising. As illustrated by subsequent events, this gave the two large TV networks a new opportunity to influence public opinion by choosing who to interview and who to ignore.<sup>53</sup> So the reform did not exactly succeed in decreasing the influence of the TV duopoly as intended.

It should be noted that political parties will still be able to broadcast their messages through a large allocation of *free* airtime.<sup>54</sup> Parties will not be covered by the article quoted above, because they will not be “contracting” their advertising; technically, the airtime will be given to them as a prerogative. In fact, as we will see below, Mexican viewers were bombarded with an unprecedented number of partisan ads during the 2009 campaigns. Therefore, it was civic organizations and common citizens who were actually left out of electoral advertising, not the parties.

Not surprisingly, this regulation has received strong criticism from civic organizations, media corporations and global NGOs like the International Association

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<sup>52</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 (article 41-II-A). The modification at the constitutional level also forbids the broadcast in national territory of political advertisements produced abroad.

<sup>53</sup> *Milenio*, "Rechaza Sodi haber pagado por entrevista en el partido Pumas-Puebla," 26 May, 2009.

<sup>54</sup> Articles 49 to 76 of the COFIPE 2008.

of Broadcasting. In fact, a large group of intellectuals, in conjunction with private-sector representatives, formally appealed to the Supreme Court for the new electoral law to be repealed.<sup>55</sup> To be sure, some of that criticism was exaggerated by the radio and television industry which had a financial stake in the matter: the reform implied the loss of a substantial source of income that used to come from selling airtime to politically motivated groups. But one aspect of those critiques deserves particular credence: citizens will likely be exposed to a narrower range of viewpoints on political matters. Many democracies, including the United States and most of Latin America, guarantee unrestricted access to the media during elections. Civic organizations are entitled to contract advertisements on radio and television in order to express their opinion and promote their views. Their paid commercials enliven the political debate by emphasizing issues that candidates tend to eschew. The Mexican law has now forbidden those commercials. The target was the wealthy elite and big business corporations. But the prohibition, as it is written now, will affect all civic organizations including the small ones that already had a difficult time getting their message across. As several political actors have pointed out, a wide array of opinions in Mexico will go unnoticed, and important issues will be suppressed by virtue of being left out of large-scale advertising (Ugalde 2008, pp. 408-412).

Even the supporters of this new regulation agreed that it would limit freedom of speech.<sup>56</sup> Those who supported this ban argued that it would decrease the influence of money in politics—in particular, it would prevent wealthy individuals and corporations from telecasting their political views. This was supposed to improve the

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<sup>55</sup> *El Financiero*, "Admite la Corte amparo de la IP contra COFIPE," July 10, 2008.

<sup>56</sup> See the debates in *Voz y Voto*, "La Reforma a Prueba. Mesa I: Modelo de Comunicación Política," No. 200, October 2009.

*equity* of political competition, as rich citizens and poor citizens would have the same access to political advertising (namely, no access at all). The supporters also pointed to other countries with that kind of regulation: the United Kingdom and much of continental Europe have similar laws. In Latin America, two countries have followed that path as well: Brazil and Chile (Zovatto 2003). Nevertheless, even the supporters of such regulation agree that it will restrict the ability of regular citizens to communicate their views. This sacrifice is believed to be worthwhile for the sake of equity (as argued for example by Woldenberg 2008). More importantly for the argument of our paper, it is clear that, whatever the merits of this norm, it allowed parties to monopolize the airwaves for political promotion in detriment of other voices in civic society.

In addition to strengthening the parties' influence in the public debate, this provision was draining for government institutions. Indeed, implementing the new prohibition during the 2009 election proved to be an enormous challenge for the IFE and the TEPJF. In particular, the electoral institutions had to face the ire of the television industry, who used every step of the process to stall the reform. For example, on several occasions the TV networks simply refused to broadcast the adverts that IFE had sent them. In flagrant violation of the law, they often refused to put IFE's messages on the air.<sup>57</sup> On one occasion, the networks actually coordinated to broadcast the spots in a way that most damaging to the IFE: they decided to air them in the middle of a popular soccer match, interrupting the televised game abruptly to insert IFE's requested messages. To make matters worse, those spots were preceded by carefully written captions stating that such abrupt interruption was necessary in

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<sup>57</sup> *Milenio*, "Tampoco gustó al IFE el fut sin spots," February 9, 2009.

order to comply with IFE's request.<sup>58</sup> The goal was to generate resentment towards the IFE, and repudiation of the electoral law, among millions of TV viewers. In the attempt to uphold the law, the IFE and the TEPJF found themselves in constant legal battles against the TV companies. Those corrosive battles proved to be a costly distraction. Furthermore, the instances where the nine councilmembers failed to apply strong sanctions were widely interpreted by the public as signs of weakness and trepidation. As a result, the authority of the IFE was undermined.

The political parties were unhelpful in this conflict. They failed to defend the electoral authorities against the TV networks, and by so doing, they failed to defend the law they had written themselves. Parties were simply unwilling to have any friction with the TV and radio industries during the election. So they failed to take responsibility for the relentless bullying that media corporations were subjecting the government institutions to.<sup>59</sup>

Not only did parties fail to defend the law banning paid advertisements, but some of them actually broke it. The most blatant case was the Green Ecological Party of Mexico (PVEM). That party recorded a TV ad where its legislators in Congress reported on the environmental laws they had promoted. The party then purchased commercial time from the TV networks to show the ad. IFE quickly took notice and ordered the ads to be taken off the air. The clips were aired in campaign season and featured PVEM logos prominently; thus they were considered to violate the new law forbidding anyone from paying TV and radio stations for political promotion.

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<sup>58</sup> *Milenio*, "Exigen partidos no cortar el fut por los spots," February 2, 2009.

<sup>59</sup> *Voz y Voto*, "La Reforma a Prueba. Mesa I: Modelo de Comunicación Política," No. 200, October 2009.

Accordingly, the PVEM was assigned a fine by the IFE.<sup>60</sup> To many observers, this seemed like the latest illustration of the political parties' contempt for the rule of law. The PVEM argued that it had the moral obligation to inform citizens about its legislative activities. However, doing so on television was now considered a violation of the spirit of the electoral reform.

In sum, the prohibition of paid advertisements on television and radio for campaign purposes had two collateral effects. First, it concentrated mass communication in the hands of political parties in detriment of civic society. As such, it cemented the state of partyarchy in the country. And second, it eroded the authority and efficacy of the electoral institutions, especially the IFE and the TEPJF. As such, it represented another instance of de-democratization.

**Discussion: has Mexico de-democratized, and if so,  
was it because of superpresidentialism or partyarchy?**

In contrast to the previous electoral reforms in Mexico, which have been extensively analyzed and documented, the one initiated in 2007 remains understudied in the academic literature. The goal of our essay was to identify and document its 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. We found several positive aspects for the functioning of Mexico's electoral system, such as the reduction of the cost and duration of campaigns, a tighter regulation of government advertisements, and a closer supervision of parties' finances. But the new law has serious problems too. We identified insufficiency in three areas: first, the strength of electoral institutions; second, freedom of speech; and

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<sup>60</sup> *La Jornada*, "IFE sanciona al PVEM con 10 MDP por espots y le ordena retirarlos," April 7, 2009

third, the internal democracy of parties. To an important degree, those insufficiencies represent a reversal of the country's successful democratization process.

To gain insight about democratization processes in general, we attempted to contrast events in Mexico with two important theories in the scholarly literature. One theory postulates that excessively strong parties in presidential regimes will tend to monopolize power (Coppedge 1994). Another theory predicts that unchecked executives in new democracies will tend to concentrate power in detriment of the other branches of government (Fish 2001). It is germane to ask if either of those two theories could be applied to Mexico.

On one hand, we argued that Mexico has indeed experienced many of the short-term and long-term effects that Coppedge (1994) observed about Venezuela's *partyarchy*. Coppedge argued that in the short-run partyarchies are stable and competitive, but in the long-run they will tend to block channels of participation, suppress issues from the political debate, and politicize civic organizations. The effects are worsened when the presidency is weak with respect to the parties. By analyzing the last electoral reform, we are led to conclude that such is the state of affairs in Mexico: the PAN, the PRD and the PRI show signs of becoming a partyarchy, monopolizing power in the hands of their leaders. Coppedge's claim that partyarchy and presidentialism are a detrimental combination for democracy appears to hold true in Mexico.

On the other hand, Mexico does not seem to be validating other theories of de-democratization, especially those based on an excessively strong executive. For example, Fish (2001) hypothesized that *superpresidentialism* might be one of the causes of democratic backsliding in post-communist Europe. Mainwaring and Shugart (1997) provided examples of excessively dominant presidencies in Latin America. A

similar hypothesis could be formulated by observing the recent developments in Bolivia, Colombia and Venezuela. However, in our analysis of the Mexican legislation we did not find evidence of superpresidentialism. On the contrary, we found that the executive's influence on electoral matters is quite reduced. That was accentuated by the last electoral reform, which weakened the electoral institute and the electoral tribunal in several regards.

This suggests an ambiguous conclusion. It might be true, as Tilly (2003) pointed out, that "de-democratization remains a possibility everywhere in the world." But we believe that such de-democratization might be executive-driven in some regions, while it might be party-driven in other regions.

Today, Mexico is at a crossroads in terms of its political reform. One possible path is to consolidate its citizen-run electoral institutions and continue to remove partisan interests from the management of elections. Reformers of the last two decades referred to that process as "citizenizing" and "de-partying". However, the reforms that were recently enacted by the Mexican Congress seem to indicate that the country has taken a very different path: cementing the hegemony of party elites in detriment of citizen representation. In other words, the regime is becoming a *partyarchy*. As a consequence, Mexico might be joining the group of countries that have recently suffered some degree of de-democratization. The literature calls them *backsliders*.

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