

Actors, Institutions & Trustworthiness in Contemporary Mexico

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Panel 1: “Certainties, Doubts and Lessons from the 2006 Elections”

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I. Actors & Institutions

The dominant view of the 2006 Mexican elections focuses on Andrés Manuel López Obrador's apparently "irresponsible" response to his razor thin loss this past July 2nd. Instead of silently accepting defeat and bowing to the electoral authorities he engaged in aggressive scorched earth tactics in an attempt to pressure them to decide in his favor. Hundreds of thousands of people flocked to Mexico's central square to hear him speak on various occasions, he closed off the equivalent of 5th Avenue for weeks and eventually his followers proclaimed him Mexico's "legitimate president" on November 20th, Mexico's Revolution Day.

The easiest counter example is Al Gore's response to the highly questionable Supreme Court decision after the 2000 presidential elections. Gore did not hesitate to accept defeat and quickly disappeared from the political scene. This strategy apparently pays off in the long run. Gore has now emerged out of the ashes as a global hero in the defense of the environment and as a possible frontrunner for the 2008 elections.

The emerging academic literature in English on the 2006 Mexican elections closely follows this dominant perspective :

"No amount of institutional engineering can substitute for the requisite 'public spiritedness' and 'collective sense of responsibility' by all involved. Ultimately, it is actors, not institutions, who produce and conserve the public good of institutionalized elections"¹.

"Choice and leadership have more to do with today's situation than do formal institutions. In the case of post-electoral protests, for instance, other men in the same situation would have made different decisions than did López Obrador...Had Calderón lost the election, there is no doubt that he would have accepted the result or challenged it through strictly constitutional channels. The problem, then, lies less in how Mexico's president was elected than in how elites reacted to his election"².

"The considerable success of Mexico's electoral institutions in channeling—and ultimately difusing—López Obrador's challenges has helped unite two related concepts—"legal" and "legitimate". As a result of the electoral institutions' endurance of stringent post-electoral tests in 2006, these terms in 2012 should be mutually-reinforcing rather than dichotomous"³ (Eisenstadt, 2007: 42).

Such points of view entirely misinterpret the Mexican case. Schedler, Lawson, Eisenstadt and many others portray the events of 2006 as a heroic battle between two entirely separate entities: "actors" and "institutions". The "actors", and López Obrador in particular, were responsible for the temporary legitimacy crisis, but the "institutions" won out in the end, apparently proving the strength of Mexico's democracy.

¹ Andreas Schedler, "The Mobilization of Distrust," *Journal of Democracy*, Volume 18, No.1, January 2007, pp.88-102.

² Chappell Lawson, "How Did We Get Here? Mexican Democracy after the 2006 Elections," *PS: Political Science & Politics*, Vol. XL, No.1, January 2007, pp.45-48.

³ Todd Eisenstadt, "The Origins and Rationality of the 'Legal versus Legitimate' Dichotomy Invoked in Mexico's 2006 Post-Electoral Conflict," *PS: Political Science & Politics*, Vol. XL, No.1, January 2007, pp. 39-43.

The problem is that the distinction between actors and institutions, or between “structure” and “agency”, is not always so clean cut in reality. How would we categorize, for instance, the nine electoral councilors and seven electoral judges who decided the election? They obviously occupy an “institutional” position, but by no means can their decisions be automatically labeled “institutional”. We don’t need to go very far in Mexican history to find great numbers of public officials who have done their best to undermine the strength and legitimacy of the very institutions they lead.

The individuals in charge of institutions are actors. And as actors they also are under the obligation to behave “responsibly”, show “public spiritedness” and demonstrate a “collective sense of responsibility”. Unfortunately, during 2006 these individuals performed far below expectations, leading to a full blown *institutional* failure which set the fire of distrust, discontent and popular mobilization.

II. Institutional Performance & Trustworthiness

Let us begin by remembering a crucial fact which all too frequently is left out of accounts of the 2006 elections. Eight of the nine electoral councilors owe their jobs to political forces which were allied with Felipe Calderón during the 2006 elections. Unlike in past occasions, in 2003 the parties used a pure quota system to choose the sitting councilors. Fox and Calderon’s Party of National Action (PAN) placed four, the historic Party of the Institutional Revolution (PRI) placed an additional four, and the misnamed “Green” Party placed the ninth councilor, Marco Antonio Gómez.

At the time, PRI chieftan Elba Esther Gordillo was the leader of the PRI’s legislative group in the Chamber of Deputies and was directly in charge of deciding the PRI councilors. Gordillo broke from the PRI and allied with Calderón long before the elections, bringing with her a significant following and network of alliances. López Obrador’s Party of the Democratic Revolution (PRD) was entirely left out of the negotiations and did not place a single electoral councilor on the Federal Electoral Institute (IFE).

This makeup of the General Council of the IFE is in stark contrast to that during 1996-2003, when the IFE reached international fame for its central role in ushering in free and fair elections in Mexico. During those years the General Council was composed of four councilors nominated by the PRI, two by the PAN, two by the PRD, and one by the small left leaning Workers Party (PT). In addition, instead of using a quota system, the parties implemented a consensus-veto system which allowed parties to reject candidates whom they felt would be unduly slanted against them. The result was a highly dynamic, plural General Council which quickly set the standard for institutional performance in Mexico and beyond⁴.

Coming into the 2006 elections the IFE was not automatically “trustworthy”. As Russell Hardin and Susan Stokes have so astutely reminded us, this is the really important factor,

⁴ See John Ackerman, *Organismos Autónomos y Democracia: El Caso de México*, Siglo XXI Editores/Instituto de Investigaciones Jurídicas, UNAM, Mexico City, 2007.

much more important than the level of citizen “trust” in institutions⁵. Indeed, one of the most dangerous situations for democracy may be one in which citizens blindly trust institutions which are in fact not trustworthy. This would create incentives for widespread violations of the rule of law as a duped citizenry passively stood by and ignored open violations of their fundamental rights.

The IFE was under the obligation to send a clear public message that it did not have partisan leanings and was ready to defend the rule of law at any cost. Unfortunately, its behavior before, during and after the elections only increased suspicions. There are numerous examples of this, including its tolerance of the flagrant violation of Mexico’s electoral law by corporate donors to Calderon’s campaign, its failure to adequately inform about the initial electoral results, its refusal to conduct or request a broader recount, and the massive display of quasi-fascist propaganda immediately after the elections.

But the most scandalous behavior by far was its negative response to the FOIA request by various media sources to have access to the ballots used in the past elections⁶. The IFE has claimed that national security and “public order” are at stake.

This fundamental right (of access to information), as in any democratic state, is subject to restrictions, which not only have the purpose of protecting the intimacy of people, but also of guaranteeing public order, social interest, as well as primordial operations of the Mexican state, including, for instance, national security...In this way, and by way of example, one can mention the fact that the Fundamental Law of Bonn and the German Constitutional Court recognize the concept of “militant democracy”, which restricts the freedom of expression or information when their exercise threatens certain public values which are of fundamental importance for the collectivity, including all of the procedures for deciding upon the makeup of the institutions of government⁷.

The IFE here suggests that the request for access to the ballots used in the past presidential elections is an “attack against fundamental public values” equivalent to openly supporting a fascist takeover of government. The Fundamental Law of Bonn and the decisions of the German Constitutional Court cited by the IFE refer to norms designed to prevent the resurgence of Nazism or other extremist political movements in the country. German institutions have decided that it is acceptable for the government to silence such violent and

⁵ See Russell Hardin, *Trust and Trustworthiness*, Russell Sage Foundation, New York, 2002. “Whatever might be the importance of citizens’ trust for the functioning of government, *it is surely more important that government be trustworthy than that it be trusted*” (152, emphasis in original); and later in the same text, “Declining faith in religion has historically followed increased understanding of the nature of the world. Declining faith in government, its agents, and various others may similarly be the result of increased understanding or, more likely, increased knowledge of the nature of government” (159); and finally, “the decline of supposed trust in government might be merely a decline in the disposition to trust without first giving serious thought to assessing the trustworthiness of the other” (161). In *Democracy and the Culture of Skepticism: Personalism and Institutionalism in Argentina and Mexico* (Russell Sage, New York, 2006) Mathew Cleary and Susan Stokes elaborate on this argument for the cases of Mexico and Argentina.

⁶ See John M. Ackerman, “The Limits of Transparency: The Case of Mexico’s Electoral Ballots,” *Mexican Law Review*, No.8, July-December, 2007.

⁷ “Acuerdo de la Comisión del Consejo para la Transparencia y el Acceso a la Información, correspondiente al día catorce de diciembre del año dos mil seis. Vistas para resolver las constancias del Recurso de Revisión identificado con el número de expediente CCTAI-REV-14/06. Recurrente: C. José Daniel Lizárraga Méndez,” pp.52-53, my translation.

anti-democratic expressions even though this implies the violation of basic civil rights like freedom of speech and expression. In parallel fashion, the IFE argues that the journalists who have requested access to the ballots threaten the very foundations of democratic politics and should have their basic civil rights stripped from them.

With this decision, the IFE has sealed the case for distrust. Indeed, such a leap of logic actually amounts to an implicit confession that something might be seriously wrong with the way in which the votes were counted during the past presidential elections. If everything were in order, an independent review of the ballots would only strengthen Calderón's legitimacy and ratify the IFE's defense of the cleanliness of the elections. The supposed threat to "public order" could only raise its head if the study revealed that the elections were indeed a mess and López Obrador might in fact have been the victor.

III. The Facts

But all of this is just smoke and mirrors if there isn't in fact a reasonable doubt about the electoral results. Was there fraud? We don't know. Was the election a mess? Definitely. Might Mexico's political actors have been intelligent and experienced enough to take advantage of this situation to manipulate the electoral results? Quite likely. Can we be absolutely certain that Felipe Calderón received more votes than López Obrador on election day? Definitely not⁸.

Even scholars who defend the behavior of the electoral authorities admit that at least 46.7% of the tally sheets from the presidential election had some sort of counting error⁹. López Obrador's *Coalición por el Bien de Todos* (CBT) claims that there were irregularities in 72,197 of the total of 130,477 ballot boxes, or 62 percent of the total¹⁰. Independent reviews have brought this number down to about 61,192 of the boxes, almost 50% of the total¹¹. But this is still an enormous number.

Many of these mistakes are apparently minor, with one or two extra or missing ballots per box. But we should remember that the difference between Calderón and López Obrador was only 233,000 out of a total of more than 41 million votes. Only 0.58 percentage points separated first and second place, amounting to approximately 1.8 votes per ballot box. To

⁸ For a more extensive discussion see John Ackerman, "The Limits of Transparency: The Case of Mexico's Electoral Ballots," *Mexican Law Review*, July-December, 2007.

⁹ Javier Aparicio, "Fraud or human error in Mexico's presidential election?," *Voices of Mexico*, UNAM, No.77, Oct.-Dec., 2006; Andreas Schedler, "The Mobilization of Distrust," *Journal of Democracy*, Vol. 18, No.1, 2007, pp.88-102; Alejandro Poiré and Luis M. Estrada, "Allegations of Fraud in Mexico's 2006 Presidential Election," paper delivered at the 102nd annual meeting of the American Political Science Association, Philadelphia, September, 2006.

¹⁰ Coalición por el Bien de Todos, "El recuento parcial del tribunal prueba plenamente el fraude electoral," August, 2006. Available at: http://www.lupaciudadana.com.mx/SACS/Xstatic/diarios_campana/docs/espanol/desplegadoalcoaliciontrife.doc; Coalición por el Bien de Todos, "Evidencias del fraude durante la elección y los cómputos que justifican la demanda de recuento," July 2006. Available at: <http://mx.geocities.com/redjalte/pruebasdelfraude.pdf>.

¹¹ Mark Weisbrot, Luis Sandoval and Carla Paredes-Drouet, "An Analysis of Discrepancies in the Mexican Presidential Election Results," Center for Economic and Policy Research, Washington, D.C., 2006.

alter the results it would have been enough for a single ballot to be changed incorrectly from the López Obrador column to the Calderón column.

The total amount of change in votes in the initial recount ordered by the IFE (over 27,000) is a worrisome number given that only 2,864 of the 117,287 boxes (less than 2.2%) were actually reviewed by the IFE. If the same number of irregularities were present in the other 97.8% of the ballot boxes the total amount of irregular votes would amount to 1,200,272 votes, more than five times the difference between the first and the second place candidates. But most importantly, the fact that the IFE to date has not released a ballot box by ballot box summary of the results of this recount only raises suspicion as to the micro-foundations of the vote changes that occurred.

On August 5th, the Federal Electoral Tribunal ordered a second partial recount in 11,839 ballot boxes, approximately 9% of the total¹². In this decision the Tribunal applied questionable legal reasoning to categorically rejected the possibility of a full recount. The decision states that:

...each voting center is unique, made up of different actors, located in a different place and surrounded by a different context, (for that reason) the events and occurrences which take place in one, do not have interconnection with the others, in particular if the irregularities are due to the citizens who form part of the tables for the reception of the vote (SUP-JIN-212/2006-Inc.1, *my translation*).

The justices here state that each voting booth is a totally isolated universe without any “interconnection” with the other booths or universes. According to this logic, it is never valid to interpret a specific piece of information as *representative* of a larger phenomenon. The Tribunal therefore decided to order a recount only in those specific booths where according to its own strict criteria the irregularities in the acts were sufficiently large so as to merit recounting. Importantly, to date the Tribunal has failed to make public the specific criteria it used to decide which boxes to open and which ones to leave untouched.

This “interconnection thesis” breaks with centuries of research on social phenomenon, bringing us back to a radical empiricism which not even the positivists of the Vienna Circle would have dared to defend. Any social scientist who knows the first thing about statistical sampling knows that a small sample is enough to gain trustworthy information about a much larger universe. This is particularly true in the case of social phenomenon like the organization of elections where the poll watchers for each one of the electoral booths had been trained by the very same government institution and subject to the same political, social and media pressures.

If the Tribunal had ordered a recount in a statistical sample of the voting booths this would have significantly strengthened the results of its partial recount. Otherwise, we are left with an entirely slanted sample which cannot say much about the rest of the voting boxes. Some analysts have argued that since the boxes which were opened in this partial recount were the ones which had been challenged by López Obrador, the rest of them must have fewer

¹² Incidente I, Sobre la petición de realizar nuevo escrutinio y cómputo de la votación total recibida en la elección presidencial, expediente SUP-JIN-212/2006, August 5, 2006.

irregularities than the ones which were opened. But this does not necessarily follow. The very point of sampling is to discover hidden patterns which are not necessarily evident to the naked eye. In the absence of a scientific sample, judgments about the content of the unopened boxes are grounded in pure speculation.

The Tribunal's partial recount also fed suspicions that something might be wrong with the election results. After the recount was completed the CBT released its own analysis of the results¹³. According to the López Obrador camp the recount revealed that 3,873, or 33%, of the recounted booths had extra votes and 3,659, or 31%, had missing votes. In total, 7,532 voting booths, or 65%, presented irregularities which amounted to a total of 119,744 altered votes (including both extra and missing ballots). In addition, the CBT claimed that in "practically all of the districts where the recount took place there were tens of thousands of boxes without seals and hundreds of thousands of envelopes which contain the electoral votes with violated seals and without signatures and even missing electoral boxes"¹⁴.

Calderon's Party of National Action (PAN) downplayed these supposed irregularities. It pointed out that the recount had been ordered precisely to correct for the problem of extra and missing votes and that the voting boxes and envelopes had been opened previously by an explicit judicial order¹⁵. The PAN has also emphasized that the recount apparently led to a minimal change in the difference between Calderón and López Obrador. A comparison between the final numbers presented by the Tribunal on September 5th and the original IFE numbers from the July 5th district count reveals that Calderón lost at least 2,756 votes and López Obrador gained at least 2,101 votes as a result of the Tribunal's recount, a total change of almost 5,000 votes¹⁶

But given the widespread prevalence of inconsistencies, it is by no means out of the question that a total recount could have given the victory to López Obrador. The problem is that, just as with the IFE's partial recount, to this day the Electoral Tribunal has still not released a final ballot box by ballot box account of the results of its own recount. In its final decision issued on September 5th, 2006¹⁷ the Tribunal offered the vote totals for each one of the country's 300 voting districts but did not provide any information at the voting booth level nor any information on how the vote had changed through the two partial recounts. One can wade through thousands of pages of legal documents which lay out the Tribunal's previous decisions, but even then one does not get the entire picture. For instance, while some of the Tribunal's August 28th decisions with regard to the annulment

¹³ Coalición por el Bien de Todos, *supra. note 5*.

¹⁴ *Ibid.*

¹⁵ Sergio Javier Jiménez, "Critican cifras de recuento de la coalición," *El Universal*, August 14, 2006; Armando Reyes Viguera, "El único fraude es la denuncia del fraude," *La Nación*, August, 2006. Available at: <http://www.pan.org.mx/?P=182&ArtOrder=ReadArt&Article=206249>.

¹⁶ Marco Zavala, "Cuándo cuenta un voto," *Revista Nexos*, October, 2006, pp.10-13; Center for Economic and Policy Research, "CEPR adds up available recount data, finds significant vote reduction for Calderon. Result could explain authorities' reluctance to release recount data," Center for Economic and Policy Research, Washington, D.C., September 2, 2006.

¹⁷ "Dictamen relativo al cómputo final de la elección de Presidente de los Estados Unidos Mexicanos, declaración de validez de la elección y de Presidente electo", Tribunal Electoral del Poder Judicial de la Federación, September 5, 2006.

or no of hundreds of ballot boxes include specific information on the recount, others simply do not.

The electoral authorities have not provided enough information for outsiders to independently verify the final vote count. In the face of this ignorance, the independent observer is left with a stark choice: trust or scepticism. Perhaps if elections had been clean in Mexico throughout the entire 20th century and there were absolutely no questions about the independence of the electoral officials we could blindly trust the results. But the fact is that Mexico is known internationally for its expertise in electoral fraud and all of the sitting IFE councilors were nominated and appointed by political forces (PAN, plus a fraction of the PRI) who are now aligned with Felipe Calderón. A healthy dose of skepticism is therefore the best service we can pay to democracy.

IV) ¿Democratic Consolidation or Authoritarian Resurgence?

Even according to the most minimalist definitions of “democratic consolidation”, Mexico does not pass the test. Przeworski’s definition of democracy as “the only game in town” is a classic example:

Democracy is consolidated when under given political and economic conditions a particular system of institutions becomes the only game in town, when no one can imagine acting outside the democratic institutions, when all the losers want to do is to try again within the same institutions under which they have just lost¹⁸.

López Obrador’s strident call “To the devil with the institutions!” makes it clear that the “loser” in this case wants to do much more than to simply “try again within the same institutions”. And López Obrador is not alone. Over 30% of the population continues to have serious doubts about whether Calderón actually received more votes than his closest contender¹⁹. Trust in the Federal Electoral Institute, the Federal Electoral Tribunal and the Special Attorney General for Electoral Violations has also suffered an important hit.

Most analysts blame López Obrador for this legitimacy crisis. He has apparently manipulated the masses to distrust the electoral authorities when in fact they performed at the top of their game. But this perspective is both contradictory and dangerous. It is contradictory because these same analysts typically support the Electoral Tribunal’s position that Calderón’s series of illegal advertisements could not have possibly affected the electoral outcome. Why are Mexico’s voters so autonomous and independent when it comes to Calderon’s messages but malleable and weak when it comes to López Obrador’s?

It is dangerous because it reflects a profound lack of respect for the intelligence of Mexico’s people. The fact is that the electoral authorities were not up to the task in 2006. They left many of us with reasonable doubts about who was the real winner of the election and they have shown remarkable disdain for citizen demands for greater certainty and

¹⁸Adam Przeworski, *Democracy and the Market: Political and Economic Reforms in Eastern Europe and Latin America*, New York, Cambridge University Press, 1991, pp. 26.

¹⁹Mitofsky, 2006; Reforma, 2007.

transparency. Many citizens perceive this and therefore question the authorities and support López Obrador.

Nevertheless, the parties which supported López Obrador's candidacy, and most importantly his Party of the Democratic Revolution (PRD), also have demonstrated a great respect for the country's institutions since the elections. They have taken up their seats in the Senate and the Chamber of Deputies, are in constant talks with the other political parties and have participated in a series of important multipartisan decisions, including the appointment of six new electoral justices and the approval of the 2007 budget.

In addition, neither López Obrador nor any of his followers have called for the violent overthrow of the sitting government. His "legitimate government" has focused on producing legislative bills, making public declarations and touring the country. Strictly speaking, Mexico's left continues to be a "loyal opposition" solidly grounded in the democratic "game". It appears that Mexico's democracy is stronger than its electoral institutions. Perhaps this is the real test of the extent of Mexico's democratic consolidation.

Mexico therefore finds itself in a contradictory situation. Elections and party politics are still generally accepted as the only way of achieving government power. But authoritarianism endures. Putting the claims of fraud to one side for a moment, the behavior of the Federal Electoral Institute and the Federal Electoral Tribunal during 2006 were reminiscent of the worst periods of authoritarian politics in Mexico. Instead of reaching out to the population and explaining their actions, they hid behind a veil of opacity, launched massive publicity campaigns and simply demanded that their actions be trusted without providing sufficient information. A profound faith in Machiavelli's "reason of state" continues to prevail among Mexico's governing class.

This rejection of accountability and transparency is highly dangerous for the maintenance of democracy. The Mexican case reveals that Guillermo O'Donnell is right when he urges us to go beyond regime based thinking to conceptualize democracy as something that adheres to states, not governments²⁰. The struggle for accountability does not take place in addition to and after the struggle for democracy. They are one and the same. As the case of Mexico's electoral authorities shows us, lack of progress in the realm of state accountability can directly impact the effectiveness of elections. Free and fair elections depend on the democratic management of power and authority.

Instead of asking whether electoral democracy is consolidated or not in Mexico, we need to examine whether the authoritarian practices of the past have been dismantled or not. The lesson from Mexico 2006 is a definitive "no".

²⁰John, Ackerman. "Democratización: pasado, presente y futuro," *Perfiles Latinoamericanos*, No. 28, Julio Diciembre, pp. 117-157, 2006.