

Why do Parties Cheat? Institutional Choice in Mexico after Democratization

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ABSTRACT: This paper examines Mexico's democracy since 1996 to understand the motivations of party leaders in creating and manipulating laws that shape competition and collusion. It finds that party leaders negotiated institutional outcomes that allowed them to cheat in the short-term and leave consequences of a non-cooperative strategy to future leaders. However, at each stage of the political game, leaders continue to follow the same strategy of non-compliance, which can ultimately lead to electoral disaster.

KEYWORDS: electoral reforms, political parties, short-term strategies.

¿Por qué los partidos hacen trampa? Cambios en las normas electorales en México después de la democratización

RESUMEN: Este artículo estudia la democracia mexicana desde 1996 para comprender las motivaciones de los líderes de partido al crear y manipular leyes que definen la competencia y la colusión electorales. Encuentra que los líderes de los tres principales partidos (PRI, PAN y PRD) negociaron resultados institucionales que les permitieron hacer trampa en el corto plazo, a la vez que dejar las consecuencias reputacionales de una estrategia que erosionaba al árbitro electoral a los futuros líderes. Sin embargo, la sistematización de esa estrategia de incumplimiento condujo en última instancia a un desastre electoral.

PALABRAS CLAVE: reforma electoral, partidos políticos, estrategias de corto plazo.

INTRODUCTION

In many newer democracies around the world, political parties or other political actors construct third-party enforcers, known as electoral management bodies (EMB), to manage elections, which allows them to take advantage of a longer time

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horizon and invest in their label without fear that other parties will commit fraud (IDEA, 2014). Parties may want to manipulate the electoral institutions for their own benefit, but they must forge rules that are seen as fair both by voters and other electoral actors so that electoral outcomes are accepted, even by losers. However, as Birch and Van Ham recognize (2017: 487), electoral management bodies are immersed in the political game they are supposed to regulate, and so, it is difficult to achieve “de facto independence from political influence...” This implies, then, a tension that has only begun to be recognized: just as parties create formally autonomous or semi-autonomous institutions to limit their actions for their own benefit—they also have strong incentives to cheat on these rules if possible and write laws so they can manipulate or weaken the EMB. This article examines a single electoral system—Mexico’s—to better understand party motivations of non-compliance. We find that leaders of political parties engage in two types of questionable behavior: first, they often collude among themselves to write laws that benefit themselves while harming other types of political actors, such as voters, potential party leaders and office seekers; and second, they ignore the negotiated rules and cheat against each other when compliance would help their long-term goals.

Party leaders often have two sets of interests when dealing with EMBS; one which they share with other parties; and one they do not.¹ Most party leaders and their counterparts want to shore up their ability to win seats through a variety of means such as procuring large public budgets, high barriers of entry for new parties, and control over their ambitious politicians via closed candidate selection.² So, even while party leaders seek to commit electoral fraud against their party rivals, they often cooperate with them to block other types of actors from participating more fully in the political arena. These dual interests can lead to the capture of the regulatory institution by the actors it is supposed to obligate to comply.

Because of the nature of repeated play implied in elections and in electoral rule making, the present paper emphasizes the “time frame problem”. Party leaders and candidates have strong incentives to bring home electoral victories by any means necessary, especially if they know the other party will cheat. If these leaders hold short time horizons in that post may resort to non-compliant behavior because electoral victories under their tenure promote their personal careers. However, if all party leaders continue the same strategy, then cheating and harassment of the electoral authority will prevail, leading to non-optimal outcomes, such as increasing

¹ Tsebelis (1990: 104) argued that electoral rules were “redistributive” institutions, because a seat awarded to one party cannot be awarded to another, making it a zero-sum game. This is not always the case, however, because parties in many electoral systems share at least some common interests.

² In this paper, the author does not distinguish among the parties in terms of their level of cheating. As will be clear below, all parties engage in duplicitous behavior, and while some parties cheat more than others, it is a question of relatively small differences.

voter rejection of parties. The fallout from duplicitous behavior may not affect the careers of the party leaders because the costs of non-compliance are paid in the future.³ Therefore, they hold strong interests to write rules they can manipulate in the present, and they are willing to forward the costs of their behavior because of the high probability they will not be leaders when negative consequences of their negotiations come to bear.

The literature on regulatory capture helps illuminate a central problem: industry players within a regulated sector are often able to capture the regulator and, in doing so, can raise the barriers to entry for new actors, allowing them to offer sub-standard “products” at higher costs. As a result, the customers—or voters in this case—often lose out. This work will show that the electoral regulatory agencies that make up the electoral management bodies have been—to a greater or lesser extent—captured by the parties that placed them, leaving them in a weak position against both parties and the executive branch.

One might ask why all nations do not exhibit captured electoral institutions and non-compliant parties. First, not every nation has a strong party system, especially not in newer democracies (Mainwaring and Scully, 1995) and so they lack powerful parties capable of harassing electoral authorities. Second, other political institutions may shore up a weaker electoral authority, as Birch and Van Ham (2017) suggest. The question remains, however, whether new democracies are able to bring to bear other institutions to protect elections. Many new or challenged democracies in Latin America, such as Nicaragua, Ecuador, Venezuela, Guatemala, and Honduras, share Mexico’s problematic informal behavior.⁴ It may well be that EMBS in developing democracies are weaker in practice than they appear due to general institutional debility.

Mexico is rightly famous for its pacific transition to democracy in 2000, and the important role that political parties and electoral reforms played in the defeat of the long-lived authoritarian PRI (Party of the Institutional Revolution) regime (Becerra *et al.*, 1997; Eisenstadt, 2004; Greene, 2007; Langston, 2017; Merino, 2004; Lujambio, 2000). The PRI, the center-right National Action Party (PAN), and center-left Party of the Democratic Revolution (PRD) were the cornerstones of the nation’s party system and dominated both votes and seats between 1991 and 2015. The PAN controlled the presidency from 2000 to 2006, and another PAN president governed from 2006-2012. The PRI roared back into the executive in 2012 under the leadership of Enrique Peña Nieto.⁵ However, in the concurrent elections of 2018, the

³ If party leaders stay in office for long periods of time, one should see different outcomes because they must endogenize the costs and benefits of their actions into the future.

⁴ See González-Ocanto *et al.* (2012: 206), for remarks on Nicaragua’s 2008 municipal elections. Also invaluable is Norris, Wynter and Cameron (2018).

⁵ Presidential terms in Mexico last six years and the president can never run for reelection to the post.

three traditional parties were routed by an outsider party (National Regeneration Movement or Morena), led by a charismatic politician. As of now, two of the three traditional parties may not survive the next election cycles, which could spell the end of the nation's current party system, underlining the serious outcomes of party tactics against their EMBS and other political actors.

This paper examines the process of electoral institution rulemaking and implementation during elections and at other moments during the transition years and into the first years of democracy (1996 through 2014) using official documentation, secondary literature, and newspaper accounts. I also interview several relevant actors to better capture party leader strategies over time: former leaders of the nation's two electoral authorities (known as the National Electoral Institute (INE or IFE) and the Federal Electoral Tribunal (Tribunal Electoral del Poder Judicial de la Federación, known as the Trife or TEPJF);⁶ former party leaders; and academic experts on the topic.

ELECTORAL INSTITUTIONS AND NON-COMPLIANT ACTORS

Generally speaking, institutions are rules that allow actors to gain greater benefits from cooperation by defining and limiting behavior (Knight and Sened, 1998; Miller, 2005; North, 1990). Institutions are outcomes of social decisions chosen by boundedly rational actors in negotiations with an aim of winning benefits for their group, while also allowing others to benefit. They solve the problem of collective action by creating credible sanctioning mechanisms and are meant to regulate behavior into the foreseeable future, although they are often modified. Even if an authoritarian group participates in negotiations while planning to ignore them in practice, the institutionalization of specific rules, the employment of large numbers of personnel, and the procurement of budgets allow actors to coordinate around rules which can compel all actors to comply over time.

We define efficient institutions as those that make actors better off through monitoring and sanctioning, often by creating a third-party enforcer that adjudicates, monitors, and applies punishment for cheating. Inefficient institutions, on the other hand, are those that make some actors worse off, either because it is difficult to coordinate or because stronger groups refuse to allow changes to rules. For example, an inefficient set of political institutions may fail to create strong property rights, allowing the executive to confiscate with relative impunity, which reduces future investment and economic growth (North, 1990). Inefficient rules can also lead to the eventual destruction of the system in which the actors are immersed, whether it be a specific market sector or a stable party system.

⁶ I treat both elements of the electoral authority, management and adjudication, as important but separate, as both come under intense pressure from the executive and parties.

Electoral institutions in a democracy are a type of political institution that grows out of group bargaining, whether it be in a single shot game or through incremental rule creation and change. Actors care about the present and the future; and to protect their benefits into the future, they use their political power in the present to assure their position, even though the future is inherently uncertain (Acemoglu, Johnson, and Robinson, 2005: 293). At the most basic level, the actors involved in electoral rulemaking usually try to protect their seat or vote count or enlarge it (Colomer, 2005).⁷

Party leaders normally modify electoral rules in reaction to external threats, such as franchise expansion, new parties, or voter preference change (Benoit, 2007; Rokkan, 1970). Electoral rules are made by parties, for parties, with the expectation that these same organizations will then comply with the rules they have created, because over the long-term, they benefit from them. However, it is clear that parties or other political actors in many nations cheat or manipulate the very rules they helped create. By far the greatest attention is paid to autocratic or electoral authoritarian regimes and their efforts to keep opposition parties from competing on a level playing field (Birch, 2008; Eisenstadt, 2004; Fortin-Rittberger, Harfst, and Dingler, 2017; Levitsky and Wey, 2009). However, far less is written about why parties in less consolidated democracies refuse to comply with rules they negotiated.⁸

The central actors in this case are those with control over the electoral system, especially party leaders, congressional leaders, and the chief executive. Their preferences are to win elections, take control of the government apparatus, and win more resources. The first two goals are winner-take-all in nature, so that parties compete over them: what one party wins, another party loses. However, party leaders often decide to build a cooperative electoral authority where all are better off because they cooperate in anticipation that the other will do so. This cooperative strategy is only possible if the actors believe the electoral authority is strong enough to oblige the other parties to do the same; otherwise, they must cheat to avoid the worst pay-off. Without a strong third-party enforcer, parties find themselves in a single shot prisoners' dilemma game in terms of competition at the ballot box. Even in this situation, parties still share interests, such as raising barriers to entry and controlling candidate selection, which allows them to cooperate in other areas.

⁷ Larger parties prefer more restrictive rules to minimize the participation of smaller rivals, while small parties want electoral systems that are more representative, so they can acquire seats in congress (Colomer, 2005).

⁸ As Katz (2005) argues, majoritarian parties (those with the largest seat shares) should only change electoral rules when it is to their benefit. What is not clear, however, is whether that benefit is in the future or present.

Estévez, Magar, and Rosas (2007) argue that relationship between Mexico's electoral authority and the parties it regulates can be understood as a principal-agent model. In their view, the EMB is not independent or autonomous from the parties because the latter retain their ability to hire and fire councilors and control the budget of the EMB. The parties are principals and select their agents to serve on the electoral authority, and then exercise external pressure during their tenures: the councilors either accede to the parties' demands or refuse to do so. If the councilors (or magistrates) refuse to follow their party sponsor's bidding, the principals have various instruments to sanction them. In anticipation of this, councilors and magistrates duly represent the interests of the party that sponsored them.

However, the metaphor of a principal-agent relation between parties and electoral authorities is not entirely felicitous. In the economic literature, the agent is not responsible for monitoring and sanctioning her principal, who placed her in the post and pays her to make decisions that are consonant with her demands. Logically, it is difficult, if not impossible, for the agent to restrain her boss. A better metaphor to illuminate the relations between parties and EMB is regulatory capture, in which the government creates a regulatory agency with the capacity to monitor and sanction companies in a certain sector. Regulatory capture is defined as when the agency's interests are more closely tied to those agents than they are to the public good (Stigler, 1971).

Regulatory authorities learn after repeated interactions with the companies that their external clients have a strong preference not to comply with certain rules, but rather, pursue ends that help their bottom line. In this case, as Stigler warned (1971), the agency no longer protects the public from industry abuse, but rather, helps erect barriers to protect them from competitive entry of other companies. By reducing the threat of external competition, sectoral companies can collude amongst themselves and raise prices, while not improving services. In the case of Mexican parties, the "industry" is made up of political parties, and their leaders are better informed than the voting public about how they pursue their goals, at the same time they are able to nominate and remove recalcitrant members of the regulatory agency qua electoral authority (Carrigan and Coglianese, 2011).

Mexico can be seen as a case of capture of the regulatory body in which the principal concern of the parties is to deny new entrants into the party system, to deny voters more party options, and to restrain party activists and office seekers in their efforts to capture more power from party leaders.

Three different types of models of authority have been discussed in terms of global electoral authorities; independent, governmental, and mixed (IDEA, 2014: 9-10). Mexico's model is clearly an example of the independent model, in that the EMB is not part of the executive, it holds responsibility for implementing the laws, and it can manage its own yearly budget (IDEA, 2014: 9-10). Yet, formal indepen-

dence does not make the EMB autonomous in practice, as the Mexican case demonstrates. The regulatory capture allowed the parties to cheat on the rules they negotiated and passed, which, over the long-term, led to a collective outcome that was worse for all.

On the other side of the electoral equation, one finds the leaders of the EMB, whose responsibilities are to create the conditions so that voters' preferences are accurately translated into electoral outcomes. However, electoral authorities often hold other preferences that are closer to those of the regulated: they want to maintain their well-paid posts while conserving the outward perception of autonomy and fairness of their institution. Yet many work diligently to follow the law as they interpret it. At times, regulators must antagonize the parties because of the latter's questionable behavior. If parties or the executive wish to weaken the EMB, they can do so through a series of maneuvers than run from simple pressure to outright malfeasance, such as placing close allies in the EMB's leadership councils, threatening to reduce budgets, removing councilors or magistrates without cause, pushing others to renounce their posts because of personal scandals, or promising the current electoral administrators and judges future access to political posts.

Lara (2017a: 158) argues that when parties and their representatives cannot participate in electoral management bodies, they may criticize and undermine the work of the authorities, causing all to be worse off. However, it is also the case that when representatives do participate in EMBS, they can and will undermine the electoral authority when it furthers their electoral goals. Thus, participation in the EMB does not preclude non-compliant strategies; in fact, it can make double-dealing even easier.

Alarcón (2016: 20-21) expresses what most specialists of Mexican electoral system argue: that the parties, in the course of trying to win elections, press the limits of the law, and in doing so, help reveal relatively important weaknesses or problems—thus, one sees that after criticisms of the 2009 election, the executive and later the three parties in congress opened up (somewhat) the party system to new actors via consecutive reelection and independent candidacies. The parties join together in congress to improve the laws so that these drawbacks are mitigated. A related argument is that the three largest Mexican parties used electoral reforms to shore up, pay back, or strengthen one of the three after each contested election. In this understanding, the reforms of the 1990s sought the incorporation of PAN and later the PRD; the 2007 reform was enacted to placate the PRD; and in 2014, the parties solidified the three-party political system. This broad explanation, however, does not uncover the incentives for continually weakening outsider political actors; nor does it capture why and how the parties undermined their third-party enforcer. What the following section will show, however, is that while party leaders correct large-scale problems for the large parties via negotiations, they also took advantage

of each reform to impose higher costs on participation for smaller parties, ambitious politicians, and voters. Party control over the negotiation of new electoral rules in Congress and the executive's desire to support his party helps explain these bi-polar outcomes, as does the short-sited nature of leaders' interests.

Finally, one could argue that party leaders are not double-dealing actors who only think of short-term gains. Another line of inquiry in the theories of transactions holds that boundedly rational actors often make mistakes when negotiating, and in doing so, make rules that later create unintended—and often negative—consequences (Williamson, 1984). It might be that boundedly rational actors change electoral laws to suit their immediate needs and do not properly calculate the future consequences. The complicated nature of party negotiation, the unknowable effects of different sets of rules, as well as the changes in electoral outcomes and technologies, can produce rules that have little relation with those that the parties set out to pass in congress. If this argument holds weight, then one should see corrections in later reforms to undo the self-inflicted damage.⁹ As this paper will show, intentional duplicity as well as bounded rationality under the stress of multi-party negotiations led to a series of problematic electoral rules.

MEXICO'S VOTED TRANSITION AND BEYOND

Mexico's transition to democracy from 1988 through 2000 was a clear example of a "voted transition" (Merino, 2004). In addition to political and economic crises, as well as an armed rebellion, the main drivers behind Mexico's transition were the three largest nation's parties, whose leaders negotiated a series of electoral reforms beginning in 1989 (which created the autonomous National Electoral Institute, or IFE) after the problematic victory of the PRI's candidate in 1988, which culminated in the transformative 1996 reform. The 1996 reform freed the electoral authority from the interference of the still-hegemonic PRI executive, instituted voting stations and counting procedures that were run by randomly selected citizens and gave opposition parties access to ample campaign resources and media time (Merino, 2004; Becerra *et al.*, 1997).

Yet, the three parties that led the nation through a relatively non-violent transition, and won the vast majority of seats and votes nationwide (allowing them to control the legislative and the presidency for almost two decades) are now fighting for the future of their organizations, in large part, because voters believe they are corrupt and ineffective. The PRI lost almost 81 per cent of its seats between 2009 and 2018; the PRD saw its seat count reduced by 48 per cent and the PAN by 45 per

⁹ A former IFE councilor gave an example: a party leader wished to reduce the number of RP slots in congress, but such a measure would have harmed the leader's party. Interview with Arturo Sánchez, March 13, 2019.

cent.¹⁰ This work does not assign all the blame for the decline of the traditional parties on their non-cooperative behavior in elections and their ability to throw up barriers to citizen participation. Corruption, low economic growth, and large-scale organized criminal activities are obviously important factors in the 2018 electoral crash. The ability of the parties to control representation blunted feedback from voters to party leaders and allowed these problems to fester (Langston, 2017). Negative citizen evaluations of the parties matter only if it is possible to “vote them out”. These barriers (along with many other factors, such as clientelism), made it difficult to punish parties when they did not deliver. Over time, this helped lead to a massive rejection of the nation’s three major parties in 2018.

The creation of Morena under the clear leadership of former PRD leader and two-time losing presidential candidate Andrés Manuel López Obrador allowed the voters to punish the traditional parties in his third attempt to win the presidency. As is clear, the PAN and the PRD suffered serious losses as well as the PRI, meaning the 2018 results were not just a rejection of the incumbent PRI; it was an acknowledgement that the parties were complicit in corruption, bad legislative management, and the growing takeover by criminal organizations of large swaths of the nation’s territory.

Before entering into the account of electoral reforms and malpractice, I present several broad assessments of what is present in the historical record. First, it is important to ask why one sees constant electoral reforming in Mexico. Molinar (1991) argued that in certain kinds of political contexts, the hegemonic PRI imposed electoral reforms that were more inclined to open the party system or render it more restrictive. Yet, since the onset of rising electoral competition, one sees that party leaders have written, negotiated, and passed in Congress all sorts of self-limiting rules, while, at the same time —*and in the same reform*— imposing duplicitous procedures on the electoral authority and other political actors, such as activists, ambitious partisans, and voters. This variation demonstrates that it cannot be that a specific political context leads to one type of outcome (self-limiting rules or strengthening the electoral authority) or another (rules that can be manipulated; or cheating during campaigns).

Second, parties in congress, or at least a majority coalition, negotiated these reforms together: that is, after 1986, there was no hegemonic imposition of an entire set of rules. If the PRI wanted support in a major policy program, it would negotiate an electoral reform with the second largest party, the PAN.¹¹ However, in almost all of

¹⁰ See www.diputados.gob.mx.

¹¹ President Carlos Salinas de Gortari (1988-1994) negotiated a series of reforms with the PAN in the early 1990s in exchange for PAN support in congress. President Ernesto Zedillo, in the midst of an economic crisis, negotiated with both the PAN and the PRD leading up to the groundbreaking 1996 reforms. In the 2014 reforms, the PRI needed the PAN’s support to pass a profound energy reform.

Mexico's post 1990 reforms, the PRD was involved, at least during the negotiations. This is an important point because it is not the case that incumbent parties make decisions over whether to cheat or not while the opposition must react to their decision, as some have argued (Chernykh and Svolik, 2015). Third, there has not been a single nation-wide election since perhaps 1982 without at least some complaints made by one party against another, and certainly these complaints have continued since democratization in 2000.¹² At this point, we do not know if this is because the parties cheat in every single election; because they think they can fool the electoral authority that the other parties are not complying with the electoral rules; or because they think they win some sort of benefit from extorting the winner (Hernández, 2019).

Fourth, just as parties claim their rivals cheated in each election, after the 2006 elections, one sees that at least one party (or candidate) demanded an electoral reform after each federal contest. In 2006, after a grueling presidential campaign carried out in television and radio, the losing candidate demanded new rules to control the media and undertake semi-automatic recounts. After complaints in the 2009 mid-term legislative elections, the parties allowed some opening of the party system, which led to an important transformation in 2014. After the 2012 presidential elections, the PAN demanded in the 2014 reforms (as part of the Pact for Mexico for which the PRI needed their support), that the IFE be strengthened to stop gubernatorial interference, among many other issues.¹³ However, it is also clear that party leaders collude to take advantage of these reform moments to act on their common benefits.

The evidence presented below is mixed and includes interviews, legal documents, and secondary literature. I chose the subjects based on lists of former party leaders, government actors, academics, and members of the EMBS. The interviews were semi-structured. In most cases, I asked directly why certain decisions over rules and implementation had been taken.

The secondary literature on the electoral laws in Spanish is quite abundant; although work on the reasons behind the decision making is not. Very few academic studies have studied the effects of the reforms over time. The electoral laws themselves are available online. I am limited by space from listing all the rules which the parties created and later ignored or manipulated; that must be left for another time. Still, in Table 1 many of the reforms are documented and allow us to capture both the variation and the questionable laws that are alluded to in each reform. Finally, instead of listing all the examples of party non-compliance with the formal institutions, I have included the value of the fines that were applied by the EMB on the parties.

¹² For examples in state elections, see Velasco and Herrera (2013).

¹³ Reportedly, the PAN demanded a centralization of authority away from the State Electoral Institutes, which were usually captured by the governors, reportedly leading to defeats of some PAN gubernatorial candidates.

TABLE 1. Different dimensions of electoral activities in Mexico*

		Before 1990	1996 Reform	2007 Reform	2014 Reform	Explanation
	Pre-election					
Electoral laws	<i>Unfair to smaller parties</i>	yes	no	yes	yes	<i>New parties only every six years 2007; 3% barrier 2014</i>
	Favor the governing party	yes	no	no	no	Reforms of 1990s
	<i>Restricted citizens' rights</i>	yes	yes	yes	yes	<i>No consecutive reelection; then restricted reelection; gender quotas manipulated; independent candidacies very difficult; cannot in practice be involved in candidate selection; difficult to form small parties</i>
Electoral procedures	Well managed elections	no	yes	yes	yes	Reforms of 1990s
	Info about voting procedures available	no	yes	yes	yes	Reforms of 1990s
Voter registration	Some not listed in register	yes	no	no	no	Reforms of 1990s
	Electoral list not accurate	yes	no	no	no	Reforms of 1990s
	Some ineligible were registered	yes	few	few	no	Reforms of 1990s
Party registration	<i>Some opposition candidates couldn't run</i>	no	no	no	yes	<i>Due to increasing narco involvement in politics</i>
	<i>Women had equal opportunities to run.**</i>	no	no	yes	yes	<i>Gender quotas slowly allowed women to be nominated</i>
	<i>Ethnic minorities could run</i>	no	no	no	no	<i>Legally, yes. In practice, difficult</i>
	<i>Only top party leaders selected candidates</i>	yes, except PAN	no	yes	yes	<i>Since 2007 reform, internal democracy is not well regulated by the EMB.</i>
	Some parties could not hold rallies	yes	no	no	no	Reforms of 1996 and democratization.

TABLE 1. Different dimensions of electoral activities in Mexico (continuation)

		Before 1990	1996 Reform	2007 Reform	2014 Reform	Explanation
	During campaign					
Campaign media	Newspapers were balanced	no	no	no	no	Certain newspapers have strong political slants
	TV news favored governing party	yes	somewhat	yes	yes	1990s reforms forced more openness. Government pays for positive coverage
	Parties had access to media advertising	not opposition parties	yes	yes	yes	Reforms of the 1990s
	Journalists provided fair coverage of elections	no	somewhat	somewhat	somewhat	Democratization
	Social media used to expose electoral fraud	n.a.	no	yes	yes	Photos; stories
Campaign finance	<i>Parties had fair access to public subsidies</i>	<i>no</i>	<i>yes</i>	<i>yes</i>	<i>no</i>	<i>Reform of 1996; smaller parties do; independent candidates still have problems.</i>
	<i>Parties had fair access to political donations</i>	<i>no</i>	<i>no</i>	<i>no</i>	<i>no</i>	<i>Reform of 1996; all have fair access, but some parties accept millions of pesos illegally.</i>
	<i>Parties publish transparent financial accounts</i>	<i>no</i>	<i>no</i>	<i>yes and no</i>	<i>yes and no</i>	<i>Reporting requirements have become far more rigorous; however, much of what they spend is not in the official accounts.</i>
	Rich can buy elections	no	no	no	no	
	Strengthening Accounting	no	no	yes	yes	The 2007 reform allowed the IFE to look at the parties' bank account information. In 2014, the entire system of accounting was overhauled.
	<i>Some state resources were improperly used for campaigning.</i>	<i>yes</i>	<i>yes</i>	<i>yes</i>	<i>yes</i>	<i>Governors spend on elections; governing party does as well.</i>
	Election day					
Voting process	<i>Some voters were threatened at polls</i>	<i>yes</i>	<i>fewer</i>	<i>some</i>	<i>some</i>	<i>Reforms of 1990s. But, since at least 2012,</i>

TABLE 1. Different dimensions of electoral activities in Mexico (continuation)

		Before 1990	1996 Reform	2007 Reform	2014 Reform	Explanation
						<i>Alianza Cívica has reported that 21% of polling places had violations of ballot secrecy. Reports of election day violence.</i>
	Some fraudulent votes were cast	yes	fewer	fewer	fewer	Reforms of 1990s
	Voting was easy	no	yes	yes	yes	Reforms of 1990s
	Genuine choice at ballot box	no	yes	yes	yes	Reforms of 1990s and democratization
	Postal ballots were available	no	no	no	no	
	Special facilities for disabled	no	no	no	no	
	Nations living abroad could vote	no	no	yes	yes	2005 reform
	Internet voting was available.	n.a.	no	no	no	
Post election						
Vote count	Ballot boxes were secure	no	yes	yes	yes	Reforms of 1990s
	Results announced quickly	no	yes	yes	yes	Except in 2006 presidential elections
	Votes counted fairly	no	yes	yes	yes	Reforms of 1990s; many arithmetic mistakes, but counting is done by citizens. <i>However, reports that casilla representatives are bought off, especially in poorer areas.</i>
	International election monitors were restricted	yes	no	no	no	Reforms of 1990s
	Domestic monitors were restricted	yes	no	no	no	Reforms of 1990s
Post election	<i>Parties challenged results.</i>	yes	no	yes	yes	<i>Almost all major election outcomes are contested; fewer in lower level races.</i>

TABLE 1. Different dimensions of electoral activities in Mexico (continuation)

		Before 1990	1996 Reform	2007 Reform	2014 Reform	Explanation
	<i>Election led to peaceful protests</i>	yes	no	yes	no	<i>Except in 2006, with an extremely close election outcome, and some gubernatorial elections. This rarely happens in legislative races, however.</i>
	Elections triggered violent protests	no	no	no	no	
	<i>Disputes resolved through legal channels</i>	no	yes	yes	yes	<i>However, there are many questions about the fairness of the Tribunal (2012; 2018).</i>
Electoral authorities	<i>Were impartial</i>	no	yes	somewhat	somewhat	Reforms of 1990s; Doubts about the IFE and Tribunal; Party quotas; hiring and firing.
	Distributed info to citizens	no	yes	yes	yes	Reforms of 1990s
	Allowed public scrutiny of their performance	no	somewhat	somewhat	somewhat	Reforms of 1990s
	<i>Performed well</i>	no	yes	somewhat	somewhat	<i>Fepade*** does not function fully; electoral authorities seem unwilling to fine the governing party in 2012 and 2018.</i>
Reversals	Professional Selection Criteria for IFE-INE		2014	2014 reforms complicated the process of INE councilor selection to reduce the possibility of party quotas.		
	Accounting unit		2014	In 2007, the accounting unit was removed from the General Counsel. It was returned in 2014.		
	Denigrating Institutions		2014	In 2007, the law changed so that candidates could not denigrate or slander other candidates or political institutions. In 2014, candidates could make negative comments about institutions.		

Source: Norris, Frank y Martínez i Coma (2013: 127). Answers for Mexico provided by author. *Birch (2012) divides electoral malpractice into different categories: manipulating rules, manipulating the will of the voter, and committing fraud on election day. The present work disaggregates non-compliance into three general categories: writing the rules so they can be manipulated in practice, cheating on the written rules, and weakening the electoral authorities. **The parties continued to manipulate their gender quotas until the Tribunal forced them to nominate at 40 per cent in 2012. Finally, parties are able to beat the 8 per cent over-representation rule for the Lower House using coalitions. ***Fepade is part of the judicial system and is charged with investigating criminal electoral fraud.

THE REFORMS OF ELECTORAL LAW IN MEXICO

Several legal bases for Mexico's transition to democracy can be traced back to the 1986 electoral reform—the last in which the hegemonic executive imposed its will on other parties—and the 1988 presidential elections.¹⁴ In the electoral reform of 1986, the executive changed the make-up of the electoral authority so it no longer required the coopted, satellite parties then active in the Mexican party system to form part of the majority on the Consejo de la Comisión Federal Electoral. When two PRI party leaders decided to leave the hegemonic PRI, the satellite parties offered the outcasts the use of their electoral registration so that one of these leaders—Cuauhtémoc Cárdenas—could run for president. Under the Frente Democrático, Cárdenas came close to bringing down the PRI's official candidate, Carlos Salinas; but, because of a computer glitch perpetrated by the Interior Ministry, Salinas won the election with slightly more than 50 per cent of the votes.

After this close call, the hegemonic PRI regime began almost a decade of negotiations over electoral reforms, first with the long-lived opposition PAN, and later including the new unified left Party of the Democratic Revolution, or PRD. The PRI and the opposition parties negotiated electoral reforms in 1989-1990, 1993, 1994, and finally, in 1996, *before* the PRI lost its majority in the Lower House of Congress in 1997 and the presidency in 2000. Thus, negotiating over electoral rules and elections played a crucial role in the end of authoritarian government in Mexico as each reform allowed for more transparency and fairness in election management, voting lists, voter identification, media openness, and financing, among many other issues.

The 1996 electoral reform

A second round of negotiations over Mexico's electoral rules began after January 1, 1994, due a series of blows to the government: first, the Zapatista Army rose up against the Mexican state and second, the PRI's presidential candidate was assassinated in March. Finally, an economic crisis erupted in December, leading to high inflation, rising interest rates, and a government bail-out of the banks. In part because of these pressures, the new president of Mexico, Ernesto Zedillo (1994-2000) made good on his campaign promise to negotiate yet another electoral reform with opposition party leaders that would make elections fair and force losers to accept their defeat. The constitutional changes in the reform were passed in 1996, ending 50 years of hegemonic control over Mexico's electoral authority when the Secretary of Government (still in the hands of the PRI) was taken off the General Council of the IFE, making the electoral management body far more autonomous of the government.

¹⁴ The liberalization of the Mexican political system began in 1977, with an electoral reform that instituted a mixed majority system, with guaranteed seats for opposition parties.

However, it was not a perfect democratic model, for a variety of reasons. First, as a former councilor of the IFE remarked, “the 1996 reform was a pact negotiated by an elite that did not want to lose its control over the electoral apparatus”. Although the new political elite now included leaders from opposition parties, none was ready to accept activist and outsider participation in activities other than voting. Therefore, although the different party leaders and the regime leadership fought over many elements of the electoral regime, they found they had many issues in common: public financing, control over ambitious office seekers; and control over candidate selection, among others. These common interests proved both beneficial and dangerous; beneficial because the parties could agree to write and rewrite rules and laws that supported their interests, but dangerous because, over time, their ability to close off the party system to other actors reduced representation and accountability of their elected officials.

Thanks to the 1996 reform, the executive no longer controlled the selection of the councilors of the General Council: they were now chosen by a super-majority in the lower house of congress, which allowed the parties, the subjects of regulation, to choose their regulators (as well as write the laws that regulated them). A super-majority vote in congress also encouraged cooperation among the parties to select the councilors. In 1996, the selection of the new set of councilors was a game of vetoes that the parties used against the propositions of other parties. That is, each party proposed at least two to three possible candidates for the Council, and the other parties could veto these proposals. The parties then chose the “best of the acceptable”.¹⁵ Most of those chosen to be the new councilors in 1996 were academics in various fields, such as law, political science, and public administration. Only a few had been bureaucrats within the IFE or were open supporters of one party over another.¹⁶

All parties were now allowed access to media outlets during campaigns, which would be monitored to promote less biased coverage. The General Council of the IFE was transformed into the head of a large and powerful bureaucracy: one that was responsible for overall electoral management of all federal elections through 2014—and since that date, its responsibilities have grown to include several activities at the municipal and state levels. Citizen councilors were designated to head the large bureaucracy of the IFE (which later became the INE in 2014 after another substantive reform). The IFE-INE¹⁷ is now responsible for renewing the voting rolls, printing the ballots, educating citizens about their right to vote, emitting a voting card that

¹⁵ Interview with former president of the PAN, Luis Felipe Bravo Mena, March 28, 2019.

¹⁶ See Estévez *et al.* (2007) for more on how the councilors in the first and part of the second General Council voted during their term in office.

¹⁷ The IFE’s name was changed due to yet another major reform in 2014 to the Instituto Nacional Electoral or INE.

acts as an official identification, distributing funds to parties, monitoring campaign spending, training the citizens who will manage the voting stations, printing the ballots, and setting up voting stations. It can sanction parties for a variety of offenses.

The Electoral Tribunal is a second, separate agency, which is responsible for adjudicating among the different actors and parties. In the reforms of the early 1990s, the Tribunal was placed within the judicial branch of government, giving it more power as it is able to determine legal precedent in electoral matters and it is the ultimate authority in all electoral disputes. Over the course of six to ten years, it grew in power and influence as it began to adjudicate matters relating to the internal decisions of the parties (Martín, 2012b).

The autonomy of the electoral authorities seemed assured thanks to the new rules: the councilors could not be removed without cause (originally, their period in office was seven years, which was later increased to nine)¹⁸ and they were not permitted to have been members of a party for at least three years prior to their appointment to assure their political independence. The bywords of the new, autonomous Council that grew out of the 1996 electoral reform were “impartiality, certainty, independence, and autonomy”.¹⁹ If the main goal of the reform was to procure formal autonomy of the two organizations (IFE and the Tribunal) from the executive, that goal was met. The selection of the IFE councilors was matched by the careful process of choosing the ministers of the Electoral Tribunal, and expanding their period in office, allowing them greater autonomy from the demands of the executive.

The 1997 mid-term congressional elections, the 2000 presidential elections, and the 2003 mid-terms were considered great democratic achievements for Mexico, not only for the victorious parties, but also for the autonomous electoral institutions that were created through negotiations among the three main parties throughout the 1990s and consolidated in 1996. After the 2000 elections, however, party leaders realized that their understanding of the relation between the electoral authority and themselves was incorrect: it appears the leaders of the party organizations believed they had put in councilors to protect their interests, while many of the councilors believed that —*even if a specific party had promoted their candidacy*— their duty was to treat each party equally and use the law to punish cheating. That is, most of the councilors would refuse to punish party A for spending more than the legal limit while allowing party B to do the same. In fact, after the transitional 2000 presidential race, in which the PRI lost the executive office for the first time since its creation, the councilors found serious breaches of spending regulations, both by the former hegemonic PRI and the newly installed party of the president, the PAN.

¹⁸ The President of the Council was placed for six years with the possibility of second period if re-elected.

¹⁹ Interview with Mauricio Merino, January 30, 2019.

Both parties were investigated, found to be guilty of accepting illicit sources of finances and overspending, and fined heavily. Both protested before the Electoral Tribunal and eventually lost their respective cases and were forced to pay. The fine for Pemexgate was approximately double for what Mexico's oil giant had transferred to the PRI's presidential campaign, leaving the PRI to pay more than a 1 billion pesos (US\$97 million) (Morris, 2009). After the loss of the presidency, this fine crippled the PRI until the 2003 mid-term elections. As for Amigos de Fox, the PAN was fined 498 million pesos, just over half as much, which came to about US\$50 million (*Nexos*, 2006).

The General Council of IFE made up of these members, which lasted from 1996-2003, was considered the most autonomous, independent, and fair of the all the IFE Councils to that date, but the main parties would not stand to be slapped with huge fines again.²⁰ In the next selection process of the next General Council of IFE in 2003, the two parties that had been penalized decided that placing even more closely matched councilors was a better way to defend their welfare, and if they could exclude the nominees of the party of the PRD, whose principal candidate was seen already as the front-runner for the 2006 presidential race, then all the better.²¹ Thus, the first Council was a success because its members were at times willing to vote against the party that had sponsored them. But this success later led to a backlash against the autonomy of the IFE that made this possible.²²

The crisis of EMB autonomy

Party leaders had both the means and common interests to manipulate or ignore electoral laws, and did so in several ways: first, leaders of the three major parties selected more closely matched agents in the IFE in 2003 and Electoral Tribunal in 2006. Second, after the disastrous 2006 elections, they made it clear they were willing to “fire” the councilors, pressure them to quit, or extend their terms during their period in power, which the PRI government did to the Tribunal magistrates.²³ Third, they wrote electoral laws and regulations that could be easily manipulated in practice. These actions were taken to bypass the campaign spending limits they imposed on themselves. Most parties continued to overspend on elections, while accepting money from other public functionaries and even more illicit sources.

²⁰ Interview with former councilor, Jacqueline Peschard, March 6, 2019.

²¹ Interviews with a former candidate for councilor José Antonio Crespo, March 2019, with Mauricio Merino a former councilor up to 2003, March 2019, with José Woldenberg, the leader of the CG through 2003, March 2019.

²² As Peschard explains, the parties did not want to be sanctioned for their wrongdoing; they did not appreciate the good that an independent third-party enforcer could provide. Interview, March 6, 2019.

²³ Party leaders in the Chamber of Deputies twice simply refused to vote on new members of the General Council of the IFE in 2007 and 2013, which left the EMB weaker (there are no sanctions for not voting in new councilors in the prescribed time).

Their strategy was to overspend and then pay the fine, which would never again be a true burden as it was due to the elections of 2000.

One should note that the party leaders were willing to accept IFE's work in a myriad of administrative and logistical tasks that do not affect their ability to spend or erect barriers to entry to the party system. As one can see in Table 1, entire areas of electoral authority activities that were set up during the 1990s continue to be acceptable to the parties, such as the voters' registry, voters' identification card, civic education, and managing citizens' participation in the voting stations on election day. The text in italics refers to rules that restrict entry to the party system or in some way imply duplicitous party behavior.

From Table 1, one can see how parties in congress together with different executives, negotiated important changes to the electoral rules, which they later ignored or manipulated. These changes lend credence to the argument that party leaders cooperate to exclude outside political actors, while they compete and cheat to win votes. One can also see that in the "reversal" section, that in certain instances, new party leaders had to revoke or rework recent reform measures because of their consequences.

Because the Council members placed in 2003 had no citizen councilors who were linked to the leftist PRD, it was regarded as an EMB without the necessary balance among the three major parties, and several of those appointed had little knowledge of electoral matters, or were open supporters of one party or another.²⁴ As a result, it was difficult to argue that the Council could work impartially to interpret and enforce the electoral laws, *even if it did in practice*. This simple fact would come back to haunt the IFE in 2006, with an extremely close outcome, the PRD could reasonably question the impartiality and fairness of every move made on the part of the Council because their party had not been able to place at least one councilor.

As one former electoral councilor stated, "the parties protected their interests by filling the Council with councilors who acted as "transmission belts" (*corredores de transmisión*)—that is, councilors who were expected to protect the interests of their specific party in the Council, rather than the institution or election integrity.²⁵ However, as the same councilor pointed out, many councilors did not behave in way—not all protected "their" party's interests. Still, a delicate balance between the Council and the parties was broken in 2003, and as a result of this and the backlash against the Council in 2006-2007, the parties were able to partially capture the IFE. Through hiring and firing practices, changing the length of tenure, threatening budget cuts, making constant changes to electoral law, the parties sent a clear message: do not

²⁴ Reportedly, the new president councilor, Luis Carlos Ugalde, had been a supporter of the PRI. Another councilor, Virgilio Andrade, accepted his PRI affiliation. The PAN, however, voted in favor of these new councilors.

²⁵ Interview with Jacqueline Peschard, March 6, 2019, Mexico City.

sanction us with the full force of the law even if we made the law; and even if we overspend or accept money from illicit sources. With such enormous quantities of both legal and illicit resources flowing through the parties' coffers, vote buying became more substantial over time (Hagene 2015; Greene and Simpser, 2020; Lawson, 2009).

The reforms of 2007-2008 were at least in part an answer to the difficult campaign and post-election period of the 2006 presidential elections. The PRD's Andrés Manuel López Obrador (AMLO) officially lost the election by a margin of 0.62 per cent of the national vote, but believed he had been robbed of certain victory because the PAN's candidate, Felipe Calderón, had placed spots asserting that López Obrador was a "danger for Mexico", because business groups had placed advertisements that criticized the left-wing candidate, and because the IFE refused a full recount. The PRD also complained that the media conglomerates had consistently charged them higher rates for advertising space than they did the PAN or the PRI.

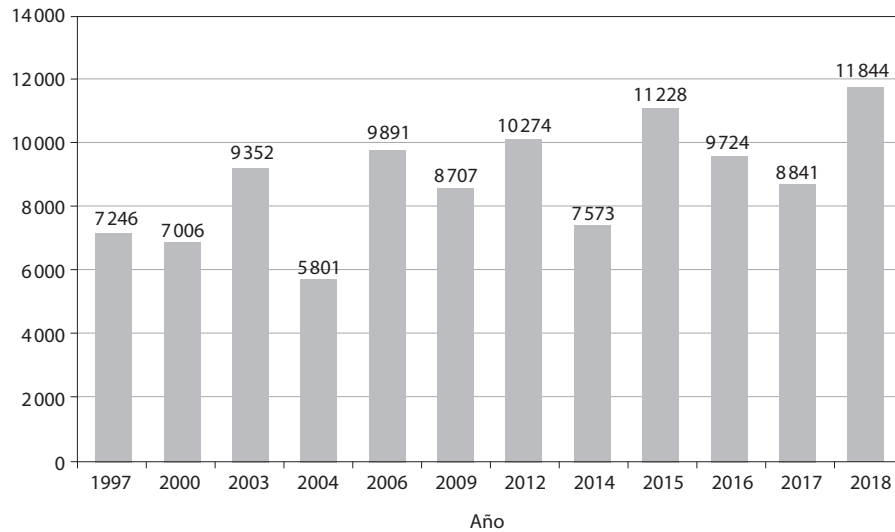
To keep the PRD and its firebrand leader within the bounds of the political system, the parties in congress negotiated a profound restructuring of how parties could accede to mass media during campaigns, particularly radio and television. The reform dictated that parties and candidates could no longer pay for campaign advertisements in federal elections. Instead, the electoral authority would manage the placement of all advertisements, and the television and radio companies were obligated to place them on the air as "public service announcements", that is, for free. This new plan was also supposed to lower the costs of campaigns, although it is not clear this actually occurred, as Figure 1 below demonstrates.

It is not clear that the party leaders understood the consequences this new rule would have on their ability to run modern, reactive campaigns using spots in television that do not annoy the average voter, which lends credibility to an explanation based on limited rationality and unforeseen consequences.²⁶ Based on this point, one must recognize while party leaders did work intentionally to close off competition in the party system in many instances, they also had to negotiate as humans with cognitive limitations.

The selection of councilors (as well as the magistrates of the Tribunal) was changed to a staggered calendar to afford better transitions between two CGs. At the same, however, leaders of the PRD demanded the removal of the president of IFE's General Council because of his perceived bias during the electoral process. As a result, several councilors, including the president of the council, either resigned or lost their posts. This was the clearest indication to that date that the party leaders were willing to break the autonomy of the electoral authority when they saw fit.

²⁶ Interview with then senator Roberto Gil of the PAN (March 2014), who complained bitterly about the changed and stilted nature of campaigning due to this new rule.

FIGURE 1. Public financing for parties in Mexico, 1997-2018, in tens of thousands of MX pesos



Source: Ugalde and Casar (2018).

The parties also decided to construct a new Accounting Unit (Unidad de Fiscalización) whose chief was decided by the president of the Council and voted in with a majority of the Council. The new Accounting unit took auditing powers away from the direct purview of the Council supposedly so its tasks could be carried out in a more professional and less politicized manner. It was meant to keep the thorny issues of financing from mixing with the other matters that the Council and the parties had to solve. But this autonomy from the Council caused problems in 2012 and the Unit was later returned to the Council in the 2014 reform. As one former council mentioned, once the Auditing Unit was brought back into the Council, INE was again able to place significant fines.²⁷ Again, we see that some decisions were not successful and were later reversed.

From Figure 1, above, it becomes clear how well financed the parties are, both during the campaign season and in those years without campaigns. The national parties received MX\$1 1844000000 in 2018, which is roughly \$90 million dollars divided unequally among the registered parties and coalitions. Though the parties receive such hefty sums of public financing, they still refuse to respect the spending limits, and are willing to paying fines placed by the electoral authority once the election is over and these fines never again approached \$1 billion pesos of 2000.

²⁷ Interview with Arturo Sánchez, March 13, 2019.

While most analysts see the 2007 as a response to the 2006 elections, the party leaders took advantage of the negotiations to punish smaller parties. On the new ballots, instead of a single option with all the coalition partners included, each party would have its own box and emblem for the voters to select, along with the name of the coalition. Before this reform, it was impossible to know how many votes each party in a coalition won because they were placed together on the ballot. Now, the big three would know how much of their coalition's overall vote share came from the smaller parties, and how much came from their own supporters, making it easier for the smaller electoral organizations to lose their registration.²⁸

Second, new parties could attempt to win registration only every six years, instead of every three, making it more difficult to gain access to funding and media time. This move clearly had a target: those citizens or political leaders who wished to compete under a different party label against the big three, which reduced entry into the party system. The parties passed another new rule which allowed the parties to claim that any candidate selection process was open and democratic, a rule that made it more difficult to challenge the parties' selection practices.

To sum up the effects of the 2007-2008 reform: first, many of its most important proposals were a reaction to the perceived failures of the elections of 2006; second, the party leadership took advantage of the reform to place many other, lesser known articles that in fact, reduced the ability of ambitious office seekers, new parties, and activists to participate in the party system. The leaders of the major three parties were willing to negotiate changes to the use of media in campaigns and prohibitions on free speech to appease one of their own. But they also used their congressional majorities to further their shared interests in blocking new entrants and reducing the number of players.

The Federal Electoral Tribunal is far less studied than its administrative counterpart,²⁹ the IFE-INE; yet, its judicial decisions are now the last word in all issues relating to elections. At first, the Tribunal was a court of appeals for some of the decisions made by the IFE-INE regarding elections. However, in a few short years, the magistrates of the Tribunal extended, via judicial action, the scope of their authority to all areas of electoral activity, in effect, overtaking the IFE-INE in its area of action and becoming the judge of last resort (Martin, 2007). With this, the parties realized that the IFE-INE was no longer the most important authority and began appealing the most important decisions to the Tribunal almost automatically. In the

²⁸ Woldenberg notes that this change lowered the costs of negotiation for the larger parties, March, 2019. Yet, after 2007 reform, the pot of public money no longer increased with the arrival of a new party, as it had before. Rather, the total amount remained the same and each registered party got a share of this total, giving the large parties strong incentives to close down the party system to smaller options.

²⁹ One of the few book length treatises in English on the Tribunal is Eisenstadt (2004).

early years, the Tribunal worked closely with IFE-INE, but over time, their relations became more antagonistic. The Tribunal began to send almost everything back to the IFE for review, so the parties would semi-automatically repeal the IFE's findings. Finally, the Tribunal began to revoke the rulings of the IFE-INE, not just return them to be improved, which gave the Tribunal more power to oppose the INE and to strategically assist certain parties over others, especially if a party were holding the executive.

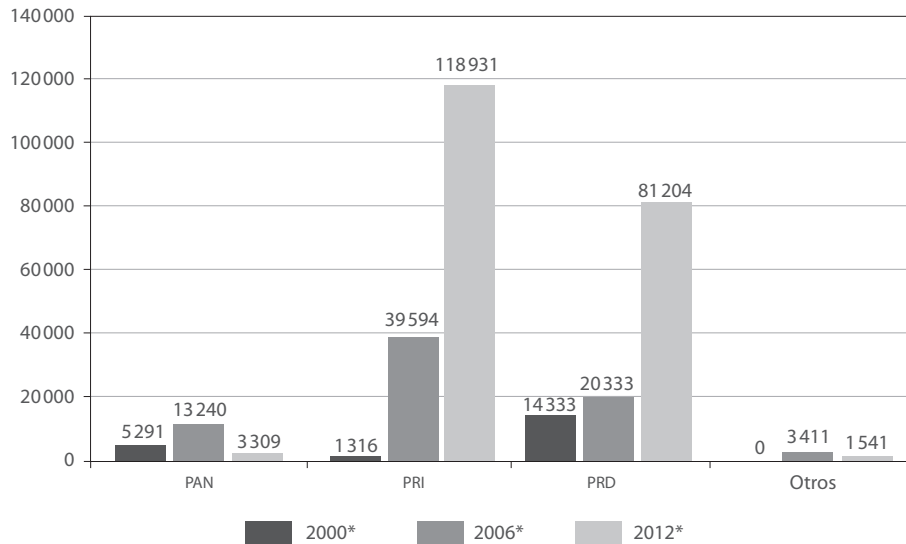
This, however, would eventually cause the Tribunal grave problems as the parties in 2006 chose their allies to become magistrates. The open jostling to place party allies in the Tribunal had two major effects—constant wrangling between the two agencies of the EMB and a greater deterioration of the independence of many of the decisions of the Trife. One of the most questionable decisions of the Tribunal was its authorization of Jaime Rodríguez Calderón's place on the 2018 presidential ballot at an independent candidate (supported by the PRI to draw off votes from other candidates), despite proof that he had gathered signatures illegally. On the same day, the Tribunal handed down a decision to prohibit Armando Ríos Piter from competing as an independent because he had not complied with these same rules. Pressure exerted by the parties and the executive eventually weakened the agency to such an extent that the president in 2019 was able to oblige the president of the Tribunal to relinquish her leadership post because she did not support the president in a decision. Newspaper attacks against supposed corrupt acts taken by magistrates in the Sala Superior became common; and enormous pressure to support the executive in questionable decisions.

It is interesting to note that the parties and the executive had more success at controlling many decisions of the Tribunal than they did in the INE signaling that the party leaders and the executive were not captured to the same degree. This fact made the work of the INE councilors more difficult, as decisions handed down by the IFE's Council could be challenged by the Electoral Tribunal, which became beholden to executive interests. Actual impeachment of the leaders of the two organizations turned out to be unnecessary—the pressure that congress (or the executive) brings to bear is normally enough to obligate an unmanageable councilor to step down from her post.

ELECTORAL REFORMS OF 2012 AND 2014

Once again, the changes to the electoral law in 2014 began with electoral problems in a previous race. In the mid-term federal elections of 2009, media elites and NGOs complained bitterly about the behavior of parties in power and during elections (Hernández, 2015: 126). The complaints became even stronger when several respected political commentators called for a null vote campaign to demonstrate to Mexico's party elite that it had to open up to new members and to end its collusive

FIGURE 2. Fines on parties set by IFE-INE, in thousands of MX constant 2000 pesos



Source: Cristalinas (2014, chp 11). *In coalitions. Constant 2000 MXP. *Note:* This figure does not include fines from Friends of Fox (498 million MXP) or Pemexgate (1 billion MXP) from 2000.

behavior.³⁰ To meet the criticisms of elite political commentators and several non-governmental groups, the presidency and party leaders at the end of the Calderón administration (2006–2012) negotiated several initiatives that were signed into law in April, 2012 that permitted independent candidacies, referendums, and consecutive reelection.³¹ A further and even more profound restructuring of the electoral authority was carried out in the 2014 electoral reforms and formed part of the *Pacto por México* under then-president Enrique Peña Nieto of the PRI.

The 2012 presidential elections brought to light one of the greatest problems of the Mexican electoral system—spending far more than the legal limit. This also created pressure to once again modify how parties are audited. The parties in Congress passed three new laws; a new party law, a new law that regulated electoral crimes; and the law that undergirded the activities of the new electoral authority—now called INE.

As can be seen from this figure, the PAN is by the far the least likely—if not to cheat—then to get caught over-spending, while the PRI and the PRD were the least trustworthy in terms of following spending rules. However, some interview subjects state that the PRD is less able to track its own spending. In the 2012 elections,

³⁰ Hernández (2015: 126) reports that the null vote campaign was successful. Almost two million null votes were cast in the mid-term elections of 2009 *versus* just under 850,000 in the mid-terms of 2003.

³¹ The enabling laws were not passed for federal elections, however, until 2014.

the PRI took money for its presidential campaign that had been incorrectly reported as spending for the federal legislators (senators and deputies) so Peña Nieto would not be charged with overspending. Furthermore, the candidate of the PRI and his campaign did not report roughly MX\$85 million pesos. So, in fact, the IFE did catch many offenses, but not all, or could not prove them all (Urrutia, 2013: 8).

One of the worst examples of illicit spending in 2012 was the PRI's massive scheme to distribute debit cards to its operators in certain districts in 2012 to be exchanged for votes, called the Caso Monex (*Aristegui Noticias*, 2012). It was discovered that the parties did not report what they disbursed on the day of the election for their representatives, and such spending would have breached the spending limits (Cristalinos, 2014: 222). If all parties were obligated to spend under a certain amount, then all would gain the benefits of perceived fairness, at the same time they would not have to spend so much money on campaigning. When asked about this, former party leaders who were interviewed responded that short term interests defeated long term benefits.³² However, it is important to note that the PRI was never found guilty of wrongdoing in this case, under the argument that it was not clear that the money was actually meant to buy votes.

Because of these recurrent problems with campaign spending, the parties once again sat down in 2014 to negotiate a way to both strengthen the INE by creating a new system of campaign accounting and councilor selection (Solís Acero, 2018). A new accounting platform allows campaign spending to be monitored in real time (Solís Acero, 2018: 62). Finally, election results can be thrown out if a campaign is found to have overspent in a close election by more than 5 per cent, among other activities. The problem is that actually revoking the election is ultimately a political decision on the part of the Tribunal.

In this same reform, the parties —led by the PAN— announced that they would centralize much of the power of the state electoral institutes to the national electoral authority. The goal behind this centralizing move was to weaken the PRI governors' hold over their state electoral authorities. A complete centralization was watered down, but the name, Instituto Federal Electoral, was changed to the Instituto Nacional Electoral (INE) and the Institute was assigned yet more tasks, such as selecting the councilors of the new State Electoral Organisms, now called the OPLES, and using the INE to track spending for all elections, instead of only federal races.³³

The 2014 reforms also opened the party system to new actors. These modifications were extensive and included independent candidacies (which had not been permitted since 1946), consecutive reelection for a variety of posts (prohibited at all

³² Interviews with Luis Felipe Bravo Mena, March, 2019, and Gustavo Madero, March, 2019, both former leaders of the PAN.

³³ The OPLES are still in charge of local elections, but if they ask for INE's help, certain tasks can be carried out by the national authority.

levels for all offices since 1933), and new quotas for women candidates. However, at least two of these reforms have been seriously weakened. For example, the new law requires that the candidates be re-nominated by the same party that selected them for their first term in office (unless they leave their party within a specific period before the next election). Independent candidates (those who do not hold party registration) are now allowed on the ballot and given public financing. However, in practice, the parties—especially in the state assemblies—wrote laws that they manipulated in both the national and subnational arenas, such that independent candidates are rarely on the ballot and are not able to compete successfully (Hernández, 2015). Finally, in the 2014 reforms, the parties actually raised the barrier to legislative representation from 2 to 3 per cent of the national vote, making it more difficult for the smaller parties to maintain their registry.³⁴

From the review of the electoral reforms and the implementation of the rules from 1996 onward, we know that party leaders and the executive have incentives to negotiate with other major parties to capture the regulator, to make laws they can later manipulate, and to ignore many of the rules they write to force themselves to comply. Over the past several years, Mexico's parties followed non-cooperative spending strategies in almost all elections because they knew they would not be fined as excessively as they had been for their 2000 activities. The changes to the 2003 IFE negotiations, the changes in the Tribunal, and the ability of the parties and the executive to place their favorites as regulators all led to this outcome. On the other hand, for topics that do not imply spending, the parties comply with the electoral authorities. Finally, as suggested above, the parties kept the party system closed to new entrants through their control over electoral laws, which the authorities were then forced to apply. Still, it is noteworthy that the parties also reversed some of their decisions that had unintended consequences (under new party leaders). Thus, these are not mutually exclusive causes: parties both intentionally limit, restrain, and weaken, while they also make mistakes and try to remedy them.

Party leaders and the executive have successfully weakened several of the bases of EMB autonomy. They were able to force out the sitting president of the Consejo of the IFE in 2007; they lengthened the tenure of the magistrates on the Tribunal after they had taken office. In 2018, the executive reportedly pressured the president of the Tribunal to relinquish her post (although she remains a magistrate). Together, these manipulations lead one to see how constant pressure and rule changes allowed the parties and executive to at least partially capture their enforcer.

Yet, the lack of representation and fair play had consequences for the parties and their candidates. The terrible cataclysm of the 2018 elections has perhaps altered

³⁴ See Hernández (2015) for an examination of the problems of independent candidates and consecutive reelection after the 2014 reforms.

the party system for good. This system-wide rejection of traditional parties was not only due to the relentless corruption and impunity of the Peña administration or the inability or unwillingness of the opposition parties to stop it. Rather, voters rejected most of the candidates of the three major parties and turned to López Obrador and Morena because of the mountain of political failures that piled up since 2000. Terrifying homicide rates; a lack of sufficient economic growth; and rising prices (together with stagnant wages) also damaged the reputations of the parties as did newspaper reports of their wrongdoing. The shorter-term gains of institutional change were overwhelmed by long-term losses when Morena used corruption debate as a central issue against the three major parties in 2018.


While at least part of the reason for Morena's wide-ranging victories in municipalities, states, and of course the federal legislature and the presidency was the traditional parties' lack of compliance with their own rules, the new administration of AMLO seems even less willing to strengthen the electoral authorities than its predecessors, in large part because it wants to continue to win races with huge margins to remain in power. For example, in 2019, the president's party in congress threatened to reduce the term in office of the president of the CG of the INE from nine to three years, which would be applied retroactively to the sitting president (*Animal Político*, 2019). If this type of institutional weakening continues, the EMB will be less likely to act against the president's interests, perhaps leading to worse outcomes.

CONCLUSIONS

Both the INE and the Tribunal are well-financed, professionalized bodies that help the nation carry out dozens to hundreds of elections each year. Ballots are printed, voting stations are set up, advertisements are placed, judgements are handed down, and resources are distributed and accounted for, among many other important duties of the two agencies. However, during more than 20 years, Mexico's major parties and the executives chose a mix of cooperative and non-compliant strategies, even when it became clear that this mixed strategy would eventually harm their own interests. This paper has delved into the issue of short-term gains, and the beliefs of the groups in power that they would be able to deny entry or at least minimize the risks of admitting other actors into the game of electoral politics. The dual nature of the relation among Mexican parties—competing with each other to win elections and control resources while at the same time colluding to rebuff the participation of new actors—created an environment in which it was far more beneficial to capture the regulatory agency and write exclusionary laws to block or weaken representation.

The parties in congress have constantly made constitution and legal changes to the electoral system. When the EMBS carry out the new laws, however, the parties often complain that the authorities are not performing fairly or completely, and that

they allow the other parties to overspend or carry out other duplicitous behavior. But it is difficult for the electoral authorities to limit non-compliant behaviors in part because of how parties select the councilors and in part because the councilors know the party leaders can punish them through new laws, budgetary restrictions, and attacks in the media. Another factor that is constant across time is that parties castigated certain groups: the activists and ambitious office seekers within their own parties; regular voters; and women, whom they were very reluctant to nominate to winning districts. The worst result is that even when outsider actors are benefited by new rules, in practice the parties found ways to reduce their participation and influence.

Party leaders miscalculated the willingness of the voters to permit the constant cheating at the same time they misread the growing power of the leader of today's largest party, Morena. It remains to be seen which among the three parties survives this latest test. However, the party in power continues to wreak havoc on the electoral rules and the authorities that are paid to implement them. Of course, many questions remain, mostly dealing with variation among parties, variation over time, and the different strategies parties would take in the same election or electoral reform to further their interests. 

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