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CHAPTER 10

On the Engineerability of Political Parties: Evidence from Mexico

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Introduction

As the contributions to this volume make clear, laws regulating political parties have become increasingly common in new democracies. In this context, Mexico stands out with regard to the depth and breadth of party regulation as well as the frequency of reforms. Over the course of the last four decades, particularly since 1977, party regulation has grown steadily. Detailed legal provisions now govern all aspects of party behaviour, including the organizational structure of parties, finances, and electoral campaigns. The number of articles in the electoral code alone has quintupled, from 115 in 1954, to 394 in 2007, and most recently to an excess of 600 articles across the three electoral laws that replaced the electoral code as of May 2014.[1] Parties are recognized by the constitution, which explicitly defines them as "entities of public interest" (*entidades de interés público*, Art.41). During Mexico's gradual transition to democracy, changes in the regulation of party competition were one of the major dimensions along which the democratization of the regime took place. Substantial changes to electoral laws occurred frequently in the last three decades of the authoritarian regime (1970s-1990s), and have continued into the democratic era. With each new reform, additional aspects of party life came under the umbrella of legislation.

The Federal Electoral Institute (IFE) – an autonomous monitoring body established in 1990 (and replaced, as of 2014, by the National Electoral Institute (INE) – is credited with cleaning up the electoral process in a country where electoral fraud and vote rigging were commonplace. Yet, after initial enthusiasm about democratic progress the

sense that democracy was incomplete remained widespread. In the public debate about the nature of Mexican democracy, this stagnation was at least partially attributed to insufficient regulation of party behaviour since the perception was that inadequate laws left room for parties to violate democratic norms. Thus, even after a major reform in 2007 – the fifth major reform of its kind in 30 years – there were increasing calls for yet another round of reforms, which then took place in 2014.

Both the depth of party regulation and rate of change over time make Mexico a compelling case in the study of the regulation of parties. The success of the IFE in organizing clean elections meant that the institute became a model for electoral institutions. Representatives from the IFE were frequent guests in the capitals of other democratizing countries. Yet, even though changes in public law have been associated with progress towards democracy, the Mexican case also illustrates forcefully that even extensive and detailed regulation is insufficient to guarantee responsible party government. It therefore provides a note of caution to the debate about the "engineerability of political parties" and the hope that all-encompassing and "good" regulation by itself can induce parties to behave as responsible democratic actors. The debate about party regulation in Mexico is often characterized by an enduring formalist faith that all will be well if we can just "get the laws right".

This excessively formal, technical approach to party regulation stands in sharp contrast to the political motivations that have underpinned regulatory reforms in Mexico over the past decades. During first the consolidation and later the democratization of the authoritarian regime, the regulation of political parties in public law has been an important arena of political struggle. For instance, in the earlier hegemonic era, the Institutional Revolutionary Party (PRI, by its Spanish initials) used public law to safeguard its position against outside challengers, but also to maintain party discipline and internal cohesion. Legal provisions rendered defection from the PRI extremely costly. Rather than outright repression of dissent, the PRI shaped the formal rules so as to limit political opportunities for independent actors, especially parties. What is noteworthy about the Mexican case is the extent to which the PRI succeeded in stifling opposition by codifying specific normative ideals of what a party should look like. Regional antagonisms during the Mexican Revolution, which led to considerable bloodshed, were used, for instance, to justify the notion that parties wishing to compete in elections should have a nationwide support base. In practice, however, high spatial

registration requirements were an effective means to exclude potential challengers.

This chapter examines how provisions in public law regarding political parties have changed over time, and how the extent of regulation has grown from the consolidation of the authoritarian regime to the present day. More specifically, while we provide an overview of changes in the regulation of parties since the 1950s, we focus on legal barriers to party formation and how they have been employed by political actors. In the historical sketch we highlight the dual motivation underlying the growth in regulation, i.e., the political motivations of elites and the technical desire to 'fix' past abuses through increasingly detailed regulation. Looking ahead, we show that party regulation has increased steadily since the 1950s and that it has had mixed effects on contestation, cleaning up elections while simultaneously generating an electoral landscape that is markedly unfair and tilted in favour of major parties. We close by highlighting successes of party regulation, remaining challenges, and possibilities for future research, including research that examines the still undetermined consequences of the most recent set of reforms in 2014, some of which are not scheduled to become effective until after 2018.

From Authoritarianism to Democracy: The Development of Party Regulation

Any exploration of party politics in Mexico has to begin with an acknowledgement of the extraordinary position of the PRI, the long-term 'goliath' of Mexican politics (Bruhn 1997). The PRI was forged in the aftermath of the Mexican Revolution (1910-1929) with the explicit goal of holding power. In fact "from the time it was founded as the National Revolutionary Party (PNR) in 1929 until 1988, the PRI had never lost a presidential, gubernatorial, or federal senatorial race it contested" (Klesner 2005: 105). This is all the more remarkable in light of the constitutional ban on consecutive re-election, one of the legacies of the Revolution, which essentially eliminated all candidate-specific advantages of incumbency.[2] The PRI dominated all levels of government, and its organization extended even into the remote corners of the country. How did the PRI manage to establish and maintain its hegemonic position? Why did challengers find it so difficult to take on the PRI at the polls? A closer look at party regulation and specifically at the rules governing party formation can help to answer these questions. The PRI skillfully

employed public law to promote internal discipline and to prevent the formation of viable opposition parties. The PRI thus used public law to serve its organizational needs. During the process of democratization, major opposition parties also found that they stood to benefit from maintaining some of these provisions. This section traces the development of the regulation of parties through public law.

During the early years of the hegemonic party the organizational imperative was the consolidation of centralized one-party rule. Presidential succession was a particularly difficult time for the revolutionary party, as there was always the threat that those who considered themselves *presidenciables*, but who were not chosen as the party's nominees, would break away and go it alone. The post-revolutionary electoral law did not deter this kind of behaviour. It allowed for independent candidacies, and the bar for registering new political parties was low. Under the Federal Electoral Law of 1918, parties merely had to have the support of 100 citizens and publish governing rules in order to appear on the ballot (Edmonds-Poli & Shirk 2009: 168–170). The main restriction imposed by the law was a ban on parties that had a religious or racial denomination (Molinar Horcasitas 1991: 27).

After a few tumultuous years, the electoral law of 1946 reduced the space for electoral challenges to the PRI through stricter ballot access requirements. The new law banned independent candidacies and raised the bar for parties wishing to appear on the ballot. Only legally registered parties were now eligible to compete in federal elections. The authorities also enshrined a particular normative ideal of what constitutes a political party into law. To obtain the required registration aspiring parties had to demonstrate that they were national political parties and, as such, that they possessed broad and territorially dispersed membership bases. Specifically, only parties able to prove a minimum of 30,000 members and at least 1,000 members in two-thirds of Mexico's federal entities could register (Story 1986: 46). However, even parties that could meet these requirements were not necessarily guaranteed a place on the ballot. The 1946 law had also centralized the organization of electoral processes in the hands of the powerful and PRI-controlled Ministry of the Interior (*Secretaría de Gobernación*). The recognition of registration was, therefore, in the hands of the PRI.

Registration requirements became even more stringent in 1951, when aspiring parties had to demonstrate 30,000 supporters, and then again in 1954, when parties had to demonstrate 75,000 supporters nationwide, and a minimum of 2,500 members in at least two-thirds of Mexico's states

and territories (Navarro 2010: 225, n. 118; Edmonds-Poli & Shirk 2009: 168–170; Ley Electoral Federal 1955, art. 33).[3] These measures stifled the development of opposition parties. They also limited the exit options for disgruntled *priístas* because there were no viable electoral alternatives (Ward et al. 1999: 31; Langston 2006b: 151). While the requirements of nationwide organization and national orientation were normatively justified as a way to overcome the territorial divisions of the Revolution, they clearly served the needs of the hegemonic party by preventing challenges at the ballot box. The PRI thus found a way to exclude opposition groups because they fell short of a specific normative ideal.

During the hegemonic period the PRI, with its supermajorities at all levels and in all branches of government, controlled the rules of the game. Yet in using electoral law as an instrument to define the terms of competition, it had to strike a delicate balance (Crespo 2004). On the one hand, the cohesion of the party depended on its monopoly on power and access to the resources of the state. This ensured that all political career ambitions were focused on the hegemonic party. Party recalcitrants were discouraged from defecting because there was essentially no political life outside the party – at least, not for an ambitious politician hoping to win office. The PRI's access to public resources meant that the playing field was biased against opposition parties, even those that had been able to meet the high registration requirements. Mizrahi (2003) aptly described the motivation of the early opposition leaders organized in the National Action Party (*Partido Acción Nacional*, PAN) as a form of martyrdom. They had few illusions about their political career prospects, but stayed in the game for programmatic and ideological reasons.

On the other hand, to maintain the legitimacy of the regime, it was crucial that "the opposition neither leave the field nor perish in electoral terms, thereby turning the regime into a single-party system and depriving it of internal and international legitimacy" (Crespo 2004: 59). The opposition thus had to have sufficient incentives to participate, but could not be successful enough to launch a credible threat against the PRI. Electoral legislation was designed with this dual goal in mind: "When there was a danger of their disappearance or withdrawal, the electoral system would be opened up sufficiently to provide oxygen to the opposition; when it appeared that opposition forces might become strong or unite, the electoral system was closed off in order to weaken or contain them" (Crespo 2004: 64).

Given the high registration requirements, only the best-organized opposition parties, or those with help from the regime, were able to

overcome the hurdles and obtain party registration. To maintain a semblance of political pluralism, the PRI propped up certain opposition parties, such as the Socialist Popular Party (*Partido Popular Socialista*, PPS) and the Authentic Party of the Mexican Revolution (*Partido Auténtico de la Revolución Mexicana*, PARM). These parties have been described as "PRI satellites" because they were financially and organizationally linked to the PRI.[4] During the presidency of Carlos Salinas de Gortari (1988–1994), the PRI also appears to have supported the foundation of the Worker's Party (*Partido del Trabajo*, PT). To critical questions about the young party's remarkable resource base, its leader, Alberto Anaya, nonchalantly replied: "In this country, the government pays for everything – even to be criticized" (Oppenheimer 1996: 142).

The PAN was the main independent opposition party and jealously guarded its autonomy from the regime. From its foundation in 1939, the party's founding fathers emphasized strong organization as the basis for the advancement of their conservative doctrine (Shirk 2005). The PAN started fielding candidates for municipal office in 1940 and ran its first gubernatorial candidate in 1944 in the state of Aguascalientes. By 1977 the PAN was nominating candidates for federal deputies in all 300 electoral districts (Lujambio 2001).

Yet even though the territorial extent of the opposition grew, it remained weak electorally. The opposition may have been able to register and field candidates, but they generally did not win. Through the introduction of "party deputies" in 1963 the PRI sought to revive its ailing opponents. The reform was the first of a series of measures that introduced elements of proportional representation (PR) into what had previously been a purely majoritarian system. It granted parties that won at least 2.5 but less than 25 per cent of the national vote special seats in the Chamber of Deputies.[5] That these reforms were first and foremost an attempt to revive the opposition in order to ensure the legitimacy of the hegemonic system is underlined by the fact that the PRI was slightly underrepresented in three of the five legislative periods between 1964 and 1976. Even though the PRI controlled virtually all seats in the Chamber, due to the introduction of party deputies it had fewer seats than it would have been entitled to under pure PR (Díaz-Cayeros & Magaloni 2001: 283–285).

While the introduction of proportional elements lowered entry barriers, it did not solve the PRI's legitimacy problems. In 1976, due to internal differences, the PAN failed to nominate a presidential candidate. As the satellite parties PPS and PARM generally supported the official party's candidate, the PRI contender José López Portillo ran unopposed. This was

a painful embarrassment for a regime trying to maintain the appearance of competitiveness. One of the first legislative projects undertaken by the new president was, therefore, the constitutional reform of 1977 and the introduction of the Federal Law of Political Organizations and Electoral Processes (LOPPE). LOPPE constituted yet another expansion of regulatory detail, as illustrated by the number of articles in the law. While the 1954 electoral law had 115 articles, this had increased to 151 in 1970, 204 in 1973, and 250 in 1977.

In addition, this reform granted parties a privileged place in the political system by recognizing them as "entities of public interest" (*entidades de interés público*). With this reform, the trend towards increasingly restrictive registration requirements for political parties was reversed and, for the first time in decades, obtaining legal registration became easier for opposition parties. Under the new law, organizations now had two avenues available for party registration: conditional and permanent (*condicional* and *definitivo*). First, those organizations able to demonstrate four years of continuous political activity could appear on the ballot with conditional registration. If they then won at least 1.5 percent of the national vote, they would qualify for permanent registration (Edmonds-Poli & Shirk 2009: 168–170). Second, the signatures requirement for permanent registration was adjusted. Previously, aspiring parties had been required to collect a minimum of 2,000 signatures in each of two-thirds (20) of the states, and in no case could the total number of signatures be lower than 65,000 (LFE 1973, art. 23(I)). However, the 1977 LOPPE opened the political space for parties by reducing this barrier to 3,000 signatures in each of only half (15) of the states, adding the alternative of 300 signatures from each of half of the electoral districts (150). Thus, the 1977 law increased the required number of signatures in each state from 2,000 to 3,000, but reduced the spatial distribution requirement – dramatically reducing the burden of geographical extension throughout the country – by reducing the total number of states in which aspiring parties needed to collect signatures from two-thirds to half.

The 1977 reform also marks (a) the expansion of proportional representation, and (b) the introduction of direct public funding to political parties. First, the "party deputies" of 1963 were replaced with a true proportional system. Specifically, the Chamber of Deputies would now be composed of 300 deputies elected by majoritarian, first-past-the-post rules, and up to an additional 100 deputies elected based on PR rules. These PR seats would be filled by members on regional party lists

according to the percentage of votes received in those regions (LOPPE 1977, art. 3).

The introduction of public funding is another illustration of how the PRI used public law for its own needs. Normatively, the new availability of public funding can be seen as an attempt to acknowledge the inequality of the playing field.[6] However, access to public resources – in the form of direct public funding and free television time – was supposed to offer opposition parties incentives for continued participation in elections.[7] The PRI itself, which had almost monopolistic access to the resources of the state, was not dependent on party financing at this time. Even though hard evidence is difficult to come by, it was widely understood that PRI-controlled executives at all levels of government made use of government resources to shore up electoral support for the hegemonic party (see, e.g., Greene 2007).

The 1983 reform was yet another initiative to breathe life into the struggling opposition, as it opened up possibilities for the introduction of PR seats in state legislatures (González Casanova 1995: 593). In Mexico's federal system, the 31 states and the federal district have their own legal framework for elections. The process of political democratization thus extended over multiple levels of government to include the subnational level. In 1987 the PR component of the federal electoral system was also strengthened by increasing the number of PR seats from 100 to 200, while the 300 single-member districts were maintained (Código Federal Electoral 1987, art. 14).[8] While the electoral system moved closer to a mixed system, the reform discouraged the unification of opposition forces against the PRI. It determined that voters were to cast only one vote in the single-member district race, which would automatically be counted for the allocation of PR seats. Voters were therefore unable to split their ballot, which rendered the coordination of opposition parties against the PRI in district races extremely costly (Díaz-Cayeros and Magaloni 2001).[9] Moreover, the reform of the ballot also made the PRI eligible for PR seats.

In the run-up to the 1988 presidential election, one of the PRI's worst nightmares came true. For decades, the hegemonic party had succeeded in resolving the contentious issue of presidential succession internally. In 1987, amidst controversy about the party's economic course, the so-called Democratic Current (*Corriente Democrática*, CD) and its leader, Cuauhtémoc Cárdenas, broke away from the PRI after an unsuccessful attempt to challenge the presidential nomination.[10] Cross-party endorsements, which had benefited the PRI when its satellites backed the official party's candidate, facilitated the formation of a broad

electoral alliance of small left-wing parties to support Cárdenas's bid for the presidency. In this sense, this episode highlights one of the elements of the transition era, namely that even carefully crafted laws are likely to have unintended consequences.

After early vote counts on election night showed the challenger in the lead, the computer system tabulating the vote mysteriously "collapsed", and when it was started up again, the PRI was ahead. This episode is known in Mexico as the *caída del sistema* or "breakdown of the system". Whether the PRI "stole" the election from Cárdenas, or if his initial lead was just due to an urban bias in early counting, is a subject that still provokes heated debate in Mexico. In any case, it was clear that the incoming president, Carlos Salinas de Gortari, would have to restore confidence in the regime in order to gain legitimacy. As his predecessors did before him, Salinas drew on the time tested tool of revising public law. The reform of 1990, which took place during his presidency, brought the number of articles in the electoral code to an all-time high of 410.

In the aftermath of the 1988 presidential elections the PRI reached out to the PAN. The two parties shared an interest in curbing the rise of the new leftist party formed by Cárdenas, the Party of the Democratic Revolution (PRD, by its Spanish initials). The PAN and the PRI cooperated in the elaboration of yet another electoral reform, which raised the bar for cross-party presidential candidates such as Cárdenas. Under the new law, parties nominating a common candidate for the presidential elections were required to coordinate candidacies for all congressional races taking place at the same time. This had to be done prior to the official start of the campaign, which created substantial transaction costs and therefore impeded the coordination of the anti-PRI opposition (Díaz-Cayeros & Magaloni 2001).

The two parties arrived at an agreement which stipulated that the PAN's cooperation with the regime would be rewarded with the recognition of subnational electoral victories (Haber et al. 2008: 133–134). During the state elections of Baja California, the PRI made good its promise and the *panista* Ernesto Ruffo became the first opposition candidate to compete successfully for gubernatorial office. The willingness of the PAN elite to cooperate with the PRI should also be seen in light of the experience of the 1986 gubernatorial election in Chihuahua, where a strong electoral showing of the PAN had been met with fraud and repression by the PRI. The PAN elite came to realize that the recognition of electoral victories required the goodwill of the upper echelons of the PRI hierarchy, at least until meaningful electoral reform could be achieved. Thus, while the

Salinas presidency showed the first signs of electoral democratization at the subnational level, conditions continued to be less than democratic. Electoral victories were awarded directly by the president, rather than by autonomous electoral institutions. It was the will of the president, rather than the will of voters, that determined electoral outcomes (Lujambio 2001: 70). In his efforts to reach out to the PAN, in some controversial instances Salinas went so far as to force apparently victorious PRI candidates to resign and yield to challengers from the PAN (Haber et al. 2008: 134). The informal and extra-institutional arrangements between the PRI and the PAN surrounding these elections are known as *concertacesión*.[11]

As pressure on the PRI to democratize the political system mounted, the ruling party was forced to make more and more concessions. During this period, the goal of party legislation gradually shifted. While the primary objective of legislation had been to safeguard PRI hegemony, the legitimacy crisis faced by the regime now forced the PRI to agree to reforms aimed at promoting a level playing field. Winning rigged elections was no longer sufficient. The PRI – still aiming to hold on to power – revised the rules to reduce outright procedural bias against the opposition.

The opposition had two main grievances. First, the highly unequal access to resources made it difficult for the opposition to compete successfully when the PRI, with access to the resources of the state, had so much to offer to voters. Second, electoral fraud became a focus of criticism and there was substantial pressure for more transparency in electoral processes. In both of these fields, the Federal Electoral Institute (IFE), created in 1990 by the adoption of the new federal electoral law known by its Spanish acronym COFIPE (*Código Federal de Instituciones y Procedimientos Electorales*), came to play a key role. In addition to the IFE, the 1990 reform also established the Federal Electoral Tribunal (Tribunal Electoral del Poder Judicial de la Federación, TEPJF). The TEPJF, frequently referred to as TRIFE, was created as an autonomous body to resolve electoral disputes and to certify electoral results.

In the direct aftermath of the 1988 presidential elections, opposition parties were primarily interested in putting in place mechanisms to prevent bias in the electoral institutions. This, therefore, was the aspect that received the most attention in the 1990 reform. A follow-up reform in 1993 strengthened the IFE's autonomy vis-à-vis party influence. Since the IFE was responsible for registering new parties, the process was removed from PRI-controlled authorities. The barriers for new parties, however, remained relatively high. To register as a political party an organization needed at least 65,000 members. As in previous legislation, party membership had

to be geographically dispersed, with either 3,000 members in half of the states or 300 members in half of the country's electoral districts (Art. 24). The continuation of the high registration requirements is not surprising. The opposition parties that sat at the negotiation table had managed to obtain their registration despite high barriers. They had no interest in opening the field to additional challengers.

The IFE played an important part in ensuring that the presidential elections of 1994 were free and clean. Even though the election was won by the PRI, the process itself was commended for its transparency, and President Zedillo was widely perceived as the legitimate winner. Yet Zedillo himself acknowledged that the election had been clean but highly inequitable (Lujambio 2003: 382). The analysis of campaign finance reports showed that the playing field continued to be tilted in favour of the PRI, even in the absence of large-scale rigging of votes. Of all campaign resources reported to the IFE, 78.3 per cent had been spent by the PRI. The PRI had outspent the runner-up 4:1 (Iturriaga Acevedo 2007: 24).[12] Creating a more equitable distribution of financial resources between parties, therefore, became a key issue on the political and legal agenda.

The 1996 constitutional reform, which was negotiated against this background, was one of the milestones in the development of the federal public funding system. The new Article 41 explicitly states that, due to their role as entities of public interest, registered national parties are entitled to public funding, and that the distribution of such funds should be guided by the principle of equality. The COFIPE recognizes five legitimate sources of party income: 1) public funding, 2) funding provided by party members, 3) funding provided by party sympathizers, 4) income obtained from fundraising activities such as conferences, and 5) income obtained from financial investments. It also requires parties to submit income and expenditure reports on an annual basis.[13] The PRI had a stake in the new system because the lavish supply of government funds for the party had started to dry up, as the Finance Ministry was increasingly unable and unwilling to foot the bill for the party's financial needs. In the run-up to the 1994 election, the PRI's efforts to solicit financial support from business tycoons who owed their burgeoning fortunes to the privatization of state-owned corporations had landed the party in a fully fledged party-finance scandal (see Oppenheimer 1996: Ch. 5). The PRI thus shared with its competitors an interest in ensuring a stable and predictable flow of funds to the party.

While the constitutional reform of 1977 had already defined parties as entities of public interest, the electoral reform of 1996 strengthened this

notion by stipulating that public funding had to account for the majority of party income. Formally, this reduced the scope for parties to raise revenue from society, even from members. While private funding accounted for about three-quarters of total party income in 1994, its share dropped to less than 10 per cent over the next three years (Lujambio 2003: 383). These federal funds were delivered directly to the central party, which had to justify the use of these funds in its annual audit reports. In case of violations, IFE could impose severe fines on parties, and it has exercised this authority to sanction several parties (Crespo 2004).

Another notable aspect of the 1996 reform was a strengthening of the Federal Electoral Tribunal (TRIFE) in terms of autonomy from political actors and in terms of authority, i.e., an increase in its responsibilities. The court was established as an important institution not only in charge of certifying federal electoral results, but also authorized to resolve complaints about federal electoral matters and competent to evaluate the constitutionality of actions taken by subnational electoral institutions. The law also puts the court in charge of protecting the political-electoral rights of citizens (*derechos político-electorales*). This rather broad formulation became important, because the court interpreted this responsibility to mean that it was competent to receive complaints about intra-party disputes. Conflicts regarding internal leadership elections and candidate selection procedures frequently ended up before the high electoral court, a development unintended by reformers and resented by party elites as judicial meddling in internal organizational matters.

Reforms during the 1990s thus played an important role in strengthening electoral institutions. Advances in the fairness of elections did not come cheap, however, and Mexico has invested massively in the development of its electoral bureaucracy. During the election years of the 1990s, funding for the IFE and TRIFE exceeded the combined cost of the legislative and judicial branches of government (Eisenstadt & Poiré 2005: 5). Nonetheless, Mexicans were "justifiably proud of their great success in converting one of the most fraudulent electoral systems in the world to one of the cleanest in less than a decade" (Eisenstadt 2007: 42). When the presidential elections of 2000 brought to office the first opposition president, many observers considered this as the final step in Mexico's transition to democracy. Yet, while the election of Vicente Fox (PAN) was certainly a milestone, the gradual nature of the transition meant that parties would remain subject to the same legal framework.

Party Regulation after 2000

The pattern of frequent electoral reforms characteristic of the transition period continued after 2000. Ironically, however, reforms during the new democratic period did not always lead to more political openness. While the trend towards increasingly detailed regulation continued, the effect of reforms on the responsiveness and responsibility of parties as organizations has been mixed at best.

This general pattern is perhaps most obvious with regard to party registration requirements. Even though there had been considerable progress in reducing bias against already registered opposition parties vis-à-vis the PRI, barriers for new political groups remained so high as effectively to deny them entry to the electoral arena. Furthermore, with the 2003 reform, the first after the election of Vicente Fox, barriers for new groups even increased. Specifically, the reform established a narrow window of time in which aspiring parties had to notify the IFE of their intention to seek formal registration. Previous laws, including the first COFIPE in 1990, required this notification as part of the registration process, but never set any specific dates or limitations on when this notification could be made. As of January 1, 2004, however, aspiring parties were restricted to a seven-month window from January 1 to July 31 following any federal election to make this notification to the IFE (COFIPE 2006, art. 28). Groups that missed the July 31 deadline would have to wait at least three more years before starting the registration process. Further, the 2003 reform increased the number of signatures required for the party formation process. With this reform the bar to the entry of new parties was raised again for the first time since 1977, as it returned to the 1973 standard of requiring signatures from two-thirds of states (20) or electoral districts (200), rather than from half. Perhaps more importantly, the 2003 law increased the minimum requirement for the total number of signatures from 65,000 to 0.26% of the list of eligible voters (*padron electoral*) used in the prior federal election. This small fraction of a percentage point may seem very low, but it amounted to approximately 200,000 people in 2011, which constitutes a 300% increase in required signatures compared with the 1990 standard. Even in the post-transition era, barriers to new entrants thus remained high and even increased, tilting the electoral landscape so as to favour the existing major parties.

Just as increased openness of the electoral arena failed to materialize, the elections of 2006 also shattered public confidence in electoral institutions, one of the major accomplishments of the democratization period. On

Sunday, July 2, 2006, after a fiercely contested campaign, the presidential election in Mexico closed without a clear winner. Adding to the unease, the two leading candidates – Felipe Calderon (PAN) and Andres Manuel Lopez Obrador (PRD) – both claimed victory (McKinley 2006). Indeed, it took the IFE five days to reach a final vote tally, declaring Calderon the winner by a margin of less than one percentage point (0.58%). That tally was immediately challenged by the PRD before the nation's high electoral court, leading to a partial recount. Two months later, after recounting 9 per cent of the votes, the court acknowledged some irregularities in the electoral process yet still affirmed the result and rejected a full recount (McKinley 2006b; 2006c). Lopez Obrador continued to lead large protests that paralysed parts of Mexico City's centre for several months, and Calderon eventually took office in early December in a highly polarized context. During the election and in its immediate aftermath, Mexico's political institutions seemed newly unstable and vulnerable, and its electoral institutions – principally the previously unimpeachable IFE – suffered from new criticisms.

Concerns in the aftermath of the 2006 elections were twofold. For one, the electoral institutions were criticized for falling short in upholding existing electoral law and regulations, specifically for failing to (a) rein in the intervention of sitting President Vicente Fox in favour of Calderon, and (b) deliver a clear and timely result. In addition, however, the run-up to the election also witnessed a high volume of attack advertisements and negative campaigning, revealing what many perceived as gaps in the regulatory capacity of electoral laws. A new reform process began as an immediate consequence of the 2006 electoral crisis. The main thrust of the reform aimed to address perceived weaknesses that generated or exacerbated the 2006 crisis, including uneven access to the media, negative campaigning, and the process of making (and resolving) legal challenges during the electoral process.

After legislative approval in the closing months of 2007, the new COFIPE was published on January 14, 2008, taking effect the following day (COFIPE 2008, Transitorio Primero). The new law kept many of the earlier features of electoral regulation, but made several notable modification or additions. The revised COFIPE continued the trend of increasingly detailed regulation, bringing new aspects of party behaviour and competition under the umbrella of the law, and even elevating several provisions to constitutional status. Particularly noteworthy in this regard were the further regulation of electoral campaigns and of the internal life

of parties. Yet, the democratizing effect of the reform was mixed at best (see also Serra 2009 for a critical reading of the reform).

The first area of concern was the regulation of electoral campaigns. The new law responded to some of the perceived problems of 2006 by reducing the official campaign season, regulating campaigning during the process of candidate selection (so-called "pre-campaigns"), and restricting electoral propaganda distributed by the sitting government. In light of a tradition of using social programmes to drum up support for the incumbent party these changes may well be justified and seen as pro-democracy measures. However, the reform regulated electoral campaigns to the point of undermining the quality of public debate leading up to and during elections. This negative influence took two forms: (1) constraints on who can participate in this public debate, and (2) a sweeping prohibition against negative campaigns. First, only political parties could produce political advertisements, and they could do that for *free* – funded and supervised by the IFE. The advantage of organizing advertisement purchases through the IFE was that such control reduces the power of commercial radio and television networks and their ability to favour certain parties by selling airtime at discounted rates (see also Serra 2009). However, beyond curbing the disproportionate influence of commercial networks, the reform undermined the ability of ordinary citizens, businesses, or civic organizations to participate in the public debate, as they were barred entirely from political speech (art. 49). In short, the range of actors able to participate in the public debate regarding political issues narrowed dramatically. Moreover, given that parties still received extraordinary sums of public funding but no longer had to pay for political advertising, the free advertisements acted as a kind of informal subsidy beyond the official funding. Thus, it is unclear why such generous public financing of campaigns was necessary, how exactly the formal campaign funding was being used, or what this money was buying. Second, all negative speech was forbidden (art. 38). Parties were prohibited from "denigrating" (*denigrar*) or "slandering" (*calumniar*), even if the negative information they were communicating was true! Further, this prohibition was elevated to constitutional status (art. 41).

A second area where the new law was controversial was in its effect on the internal life of parties. On the one hand, the new law placed high burdens on existing parties. There was new regulation regarding duties of parties, including transparency and the publication of a wide range of information regarding their organization, functioning, and funding. Indeed, entirely new sections in articles 41 to 44 outlined a series of

responsibilities regarding transparency. This again illustrated the degree to which parties in Mexico had ceased to be private institutions, or were moving substantially towards the public end of the public-private continuum. While the extraordinary level of public support for political parties arguably justifies far-reaching oversight to track how public funds are used and ensure accountability, it becomes harder and harder to conceive of parties as civic organizations within society. Even more than in other countries, Mexican parties have essentially become part of the state.

Yet, even though the law further regulated the internal life of parties, it also afforded considerable protection to party elites by determining that any challenges relating to internal party matters must first be addressed to review bodies within the party itself (art. 46). Further, this protection was constitutionalized (art. 116). Previously, as explained above, the high electoral court, Tribunal Electoral del Poder Judicial de la Federación (TEPJF, frequently referred to as "TRIFE"), had exceptional authority to intervene in internal party matters. While the regulation of disputes regarding the "internal life of parties" is highly unusual in comparative perspective, in Mexico it provided an effective brake on the power of party elites and therefore a way to democratize the internal life of parties. The need for an alternative is illustrated by the increasing number of challenges brought before the court. While in 1999 only four intra-party conflicts were received by the TRIFE, this number increased to 292 in 2003 and 1,100 in 2006.[14] Thus, while formally aligning with comparative standards, in the Mexican context the reform further defers to de facto authorities at the top of existing hierarchies within parties by restricting the opportunity for any challenges that may arise. Challenges must first be made to an adjudicatory mechanism inside the party. Further, party statutes can be challenged only within 14 days of the time they are first presented before the electoral authority for registration (Art. 47.2). The statute of limitations (SOL) poses an additional barrier to disputes relating to internal party life. Normally, a clock related to a SOL like this would begin to run (a) from the moment these documents are published (if abstract review is allowed) or (b) from the time an actual harm results from enforcing the provisions in these documents (in the case of concrete review). The fact that all challenges are barred beyond a very early window of time makes these documents virtually unchallengeable. Lastly, only party members can initiate these challenges. Previously, the COFIPE allowed other citizens and organizations to challenge party documents,

but the standing to initiate these kinds of challenges was dramatically reduced in 2007 (see also Sáenz 2007).

As noted above, several new provisions were elevated to constitutional status. Indeed, beyond the prohibition on negative speech and the protection of internal party matters, other provisions that were constitutionalized included (a) media use by parties, (b) the funding of parties, and (c) the oversight of party funding. The constitutionalization of so much detail regarding electoral matters is highly unusual comparatively (see IFES 2009), and offers opportunities for constitutional challenges. The kind of detail seen in these provisions is usually left to ordinary legislation, which is easier to amend and adjust over time, a process that will probably be necessary. Thus, the constitutionalization of so much electoral regulation means that these regulations may lead to high-profile and resource-intensive constitutional challenges, and they will be that much harder to undo in the future.

Finally, barriers to entry for new parties, which were already high in Mexico, especially after the 2003 changes noted above, were raised even further by the 2007 reform. Prior to 2003, aspiring parties could notify electoral authorities at any stage of their intention to register. After 2003, they had a seven-month window every three years to notify the IFE of this intention. Now, under the new law, aspiring parties have only a *one-month window every six years* to make this notification. Specifically, they must notify the IFE no later than January 31 in the year following a presidential election (COFIPE 2007, art. 28). For instance, if a party wanted to register to compete in the 2018 elections, it had to notify IFE no later than January 31, 2013, more than five years ahead of time.

Reflections on Party Regulation and the Nature of Democracy in Mexico

As mentioned at the outset, Mexico stands out comparatively because of the scope of party regulation through public law and the frequency with which electoral laws have been reformed. Over the past decades, the number of areas of party behaviour legally constrained and regulated has grown steadily. The *scope of regulation* has, at least in part, been legitimized by making reference to the "engineerability of political parties", i.e., the hope that all-encompassing and "good" regulation can induce parties to behave as responsible democratic actors. Indeed, this formalist faith in the engineerability of organizations extends to other institutions in

Mexico, illustrated by the frantic pace of police reform, reforming and then re-reforming public safety agencies – especially at the federal level – for at least three decades (e.g., Sabet 2010). A specific concern regarding parties, however, is that reforms have to be agreed upon by the subjects of regulation – political parties themselves – and are therefore necessarily political. The process is unavoidably self-interested, so creating "good" regulation is only one among many motivations for reform, and in many instances not the most important one.

The explanation for the speed of reform is twofold: (1) following each election, there is a realization that the existing regulation was insufficient to promote responsible party behaviour and clean campaigns; and (2) the balance of power among the major players has shifted, allowing actors to pursue their own agendas. Both of these factors highlight the importance of the electoral calendar or cycles. Elections illuminate lacunae, and as majorities change after elections, each incoming party brings with it a new agenda for regulatory reform. The frequency of elections therefore helps to explain the frequency of regulatory reform. Against this background, the elevation of many of the controversial provisions in the 2007 reform to constitutional status may be interpreted as an attempt to anchor these provisions in public law by constraining future reformers. In the remainder of this chapter, we review the successes and achievements of party regulation in promoting democracy, as well as some of the challenges that remain.

First among the successes, parties in Mexico are well institutionalized with strong organizations. This is true especially compared to other new democracies, and is therefore no small achievement. The strength of parties is due in part no doubt to the resource-rich environment for parties since 1990, as well as the organizational legal-technical tutelage provided by the IFE and electoral courts. Yet, the financial burden on public coffers is considerable. In 2008, which was not a federal election year, the budgets of the IFE and TRIFE amounted to €588 million. The lion's share of this went to the IFE, which passed €168 million of public funding on to registered political parties and spent €330 million on its own activities, such as maintaining the voter register and auditing party finances. The TRIFE's operating budget was lower than the IFE's but still consisted of €90 million. Compared to other democracies, Mexico thus invested heavily in monitoring compliance with party regulation. Overall, the cost of funding political parties and of maintaining the IFE and TRIFE in 2008 was €8.90 per registered voter.[15] This amount is outrageously high when compared to other democracies in the region. The cost of party

funding alone was 18 times the regional average.[16] This makes Mexico the most expensive democracy in Latin America (IFES 2009).

Second, the IFE (now INE) has succeeded in preventing electoral fraud. Acknowledging that no system is perfectly clean, overall the IFE had an excellent record on this account, despite the criticisms levied during the 2006 election. Nevertheless, a crucial distinction exists between establishing "clean" elections (i.e., absence of fraud) and guaranteeing "fair" elections (i.e., a level playing field), and the former is easier than the latter. Stated differently, the IFE has generally succeeded in preventing the outright stealing of votes or stuffing of ballot boxes (the infamous *urnas embarazadas*, or "pregnant urns"), but there continue to be wide disparities in the effective power and influence of different parties in the electoral landscape.

Outstanding challenges include levelling the playing field to correct for this unfairness. Even though the system has become more open over the past two decades, it still works in favour of the major parties, which limits the options available to voters. This is evident in, among other areas, the way funding is apportioned according to vote returns. Moreover, with the 2008 round of reforms, the balance of power within parties has been tilted more heavily towards party elites. Overall, party elites have been strengthened, while legal resources available to ordinary party members and citizens have weakened. A second challenge involves the extremely high cost of parties and the electoral apparatus, including the IFE (INE), a cost that undermines support for the system. An associated concern relates to the fact that, given the high levels of funding and the fact that parties can now broadcast their political advertisements for free via the IFE, it is increasingly unclear what parties are doing with their money, raising serious questions about accountability.

Third, public confidence in electoral institutions must be rebuilt. After 2006, there was widespread dissatisfaction with parties, official candidates, and electoral institutions, leading to the "voto nulo" campaign in the 2009 mid-term elections (e.g., write-in candidates like *Esperanza Marchita*, or "Hope Dashed"). The IFE itself has suffered in public opinion polls, though perhaps this is not much of a concern since it continues to enjoy – along with the military and the TEPJF – some of the highest levels of public confidence among Mexican institutions (LAPOP 2010). Still, confidence in the IFE has been steadily dropping since the 2007 reform, from 68% of the population reporting some level of positive opinion and only 18% reporting any negative opinion in 2006, to 59% positive and 25% negative in 2008, to 53% positive and 31% negative in 2010.[17] From

2006 to 2008 alone, the IFE suffered a 10-point drop, and public opinion has continued to slide. These are not good signs after more than 30 years of substantial electoral reforms.

Symptomatic of the fetish with re-designing formal institutions described here, Mexico reformed its electoral laws once again in 2014, with a constitutional reform in January of that year followed by implementing legislation in May. The legislation passed May included three federal electoral laws (see note 1), which replaced the single electoral code that had been reformed only in 2007. Further, the states were mandated to make similar, harmonizing reforms to their local electoral codes. Principal changes in the latest federal reform included the following: (1) the IFE was reformed and renamed the INE, as noted in the introduction; (2) state electoral institutions acquired greater autonomy from state legislatures; (3) for the first time in Mexico, re-election is allowed, though it will be phased in differently across different posts; senators can hold up to two consecutive terms, federal deputies can hold up to four consecutive terms, and, as long as state constitutions allow it, mayors and other municipal officials can hold up to four consecutive terms (Constitution, arts. 59, 115); and (4) the threshold of votes required to retain party registration at the national level was increased from 2% to 3%. The consequences of these and other provisions of the 2014 reform are yet to be determined, and many provisions are not set to take effect until much later. For instance, the rules regarding re-election of federal senators and deputies do not take effect until 2015 and 2018, respectively, so the real impact on the re-election of those officials will not be felt unless and until they run for their second term, which will not be until 2018 and 2024, respectively. For now, the 2014 reform is yet another example of re-engineering the electoral rules in Mexico, suggesting we can anticipate still more major formal transformations to come.

Lastly, the same process of engineering electoral codes that is at work at the federal level is filtering through the 32 territorial units at the subnational level (Harbers and Ingram 2014). Indeed, as noted above, the 2014 federal reform in Mexico requires all subnational units to re-adjust their electoral laws. Each of the federal units has its own local electoral code, electoral institute, and electoral court, and change and performance are highly uneven. This leads to great diversity in party regulation within the political system, with variation within states over time, across states, and across levels of government. This electoral federalism is perhaps one of the most exciting areas of research on public law and political parties, not just in Mexico but in other large, federal systems, including the other two

such systems in Latin America – Argentina and Brazil. Future research that examines the longitudinal, spatial, and cross-level variation in party regulation identified here, along with the other challenges outlined above, should contribute important insights to our understanding of political institutions in old and new democracies alike.

Notes

1 *Ley General de Instituciones y Procedimientos Penales* (LEGIPE; 493 articles), *Ley General de Partidos Pol*íticos (97 articles), and *Ley General en Materia de Delitos Electorales* (26 articles) (all published May 23, 2014, and effective May 24, 2014).

2 Yet the multitude of offices controlled by the PRI meant that there were ample opportunities for career politicians to move between positions. Voters were, therefore, often familiar with candidates because of their previous political offices.

3 The 1946 membership requirement equals 1.2 per cent of all registered voters and 0.3 per cent of the national voting age population. The 1954 reform required support from 0.6 per cent of the voting age population. Data on the number of voters have been obtained from the website of the Institute for Democracy and Electoral Assistance (www.idea.int).

4 The PPS was established under the label *Partido Popular* in 1948. The PARM was officially registered in 1957. That the electoral authorities were favourable to some parties while discriminating against others is illustrated by the fact that they recognized the PARM while simultaneously withholding the legal registration of the much better organized Communist Party (Scott 1964: 148), or rejecting the registration of the outspokenly anti-PRI *Partido de la Revolució*n (see Navarro 2010: 224-25).

5 Parties were to receive one seat for each 0.5 per cent of the vote they obtained. The maximum number of seats that could be obtained in this way was 20. The formula for the allocation of party deputy seats was revised in 1973, when the threshold for receiving PR seats was lowered to 1.5 per cent and the cap expanded to 25 seats (Edmonds-Poli & Shirk 2009: 168–170).

6 Prior to 1977 there had been indirect financing for opposition parties, in the form of tax exemptions (since 1963) and access to electronic media (since 1973). Even though the 1977 reform of the electoral law formally introduced direct party financing, it did not specify the total amount of public funding or how resources were to be distributed between parties, which rendered the

process highly discretionary. A concrete framework for the allocation of state subsidies was not established until 1987.

7 The PAN, wary of the PRI's efforts to undermine the independence of the opposition, initially refused to accept public monies. The party's position on the issue changed only in 1989 after a change in the party leadership (Wuhs 2008: 83).

8 This reform also established the controversial "governability clause", which grants the largest party an automatic majority of seats as long as it obtains at least 35 per cent of the vote. The "governability clause" survived a series of constitutional reforms. Yet it was not applied in practice because the PRI was able to win a sufficiently large share of the vote (Díaz-Cayeros & Magaloni 2001). The 1996 reform finally capped the seat share of the majority party in the Chamber at 300 (out of 500), which meant that the largest party would lack the two-thirds majority required to amend the Constitution.

9 Note that this differs from the German system, which grants voters two votes, one for the district's direct candidate and another for the preferred party.

10 The last challenge to the party's presidential nomination had occurred in 1952, when General Henríquez Guzmán broke away only to lose by a 5:1 margin to the PRI candidate, Adolfo Ruiz Cortines. Henríquez Guzmán's attempt to face up to the PRI ended with his inglorious retirement from public life. The registration of the party that had supported him was revoked by the electoral authorities because of an alleged illegal resort to force (Scott 1964: 151).

11 The term *concertacesión* draws on the Spanish words for arrangement (*concertación*) and cession (*cesión*) (Prud'homme 1997: 1).

12 "Informe y Dictamen que rinde la Comisión de Consejeros constituida para la revisión de los informes financieros de campaña presentados por los partidos políticos", IFE, April 7, 1995. Unofficial reports suggest an even more extreme spending imbalance during the presidential race, with the PRI's campaign chest containing $700 million, compared to the PAN's $5 million and the PRD's $3 million (Oppenheimer 1996: 110).

13 During the initial years of public financing, parties had received state resources without any oversight. It is therefore unclear how much money parties received and how they spent it. The notion that parties have to justify their use of public funds was first contemplated in the 1987 reform (Art. 61VIII, *Código Federal Electoral*), and then developed further in the reform of 1993. The 1993 reform also prohibited donations from municipal, state, or federal authorities to political parties. As the electoral authorities lacked the auditing capacity to control and verify party reports, however, financial oversight was essentially a paper tiger until the reform of 1996, which granted

the IFE authority to check party bank accounts and impose sanctions in cases of violation. The reform also called for the establishment of a permanent auditing committee, rather than the temporary *ad hoc* committees that had existed previously (Lujambio 2003; Peschard 2006).

14 Data provided by the Coordinación de Jurisprudencia y Estadística Judicial, Dirección de Estadística Judicial, Tribunal Electoral del Poder Judicial de la Federación.

15 Per voter amounts are calculated on the basis of voting age population statistics, which include all citizens above the legal voting age. This information is available through the website of the International Institute for Democracy and Electoral Assistance (www.idea.int, last accessed October 19th, 20112). The exchange rate between the Mexican Peso and the Euro was 16 to 1 in January 2008.

16 The average was US$ 0.94 per vote cast in 13 Latin American countries compared to US$ 17.24 in Mexico during the 2003 mid-term election (IFES 2009: 69). Calculations are based on election years for all countries.

17 The LAPOP surveys ask respondents for scores on a scale of 1-7. Percentages are calculated by aggregating scores from 1-3 for negative opinion and 5-7 for positive opinion. Alternately, public confidence in the IFE has been dropping from a mean of 5.04 in 2006, 4.76 in 2008, and 4.44 in 2010. The AmericasBarometer by the Latin American Public Opinion Project (LAPOP), www.LapopSurveys.org.

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