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0521820014 - Courting Democracy in Mexico: Party Strategies and Electoral Institutions

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I

Electoral Courts and Actor Compliance: Opposition-Authoritarian Relations and Protracted Transitions

Indeed, you won the elections, but I won the count.

attributed to Nicaraguan dictator Anastasio Somoza (1896–1956)¹

Before citizens in authoritarian regimes can hand-cast free ballots in fair elections, they often must vote with their feet. In pre-2000 Mexico, disgruntled opposition activists contested fraudulent elections by launching street mobilizations and building occupations. Before they entrusted their grievances to electoral commissions and courts, they took to the streets. This book documents the rise of Mexico's opposition party activists and how they gradually channeled their postelectoral contestation off the streets and into the courtrooms. Mexico's protracted transition from the longest reigning one-party authoritarian regime in the world to a multiparty democracy culminated in 2000 with Mexico's first executive branch alternation since 1929.

This is a book about the quarter century of national and local elections preceding the 2000 watershed. However, unlike most work on elections, it considers social movements surrounding elections as much as the contests themselves. Courting democracy in Mexico was hardly a straightforward story about the translation of preferences into votes and votes into seats. Rather, it was a “stop and go” process through which opposition parties *did* negotiate increasing spaces of participation, but rarely at the ballot box. Elections, especially local elections, served largely as preliminary summations of forces – starting points for the postelectoral negotiation of opposition party participation in public administration subordinate to

¹ Cited in *The Guardian*, June 17, 1977 (referenced in *Microsoft Bookshelf* 98).

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the ruling Party of the Institutional Revolution (PRI) authoritarians, the longest continuous one-party state in the world. The PRI-state's electoral stranglehold was finally broken due to the patience of opposition parties on the right and the left, and these parties' willingness to challenge the PRI through informal institutions (bargaining tables), instead of or in addition to the formal institutions (electoral commissions and courts) established by the PRI-state to mediate disputes. The gradual replacement of these seemingly anomalous informal institutions by formal legal institutions – those usually associated with democratization and the advent of “free and fair” elections – is the subject of this book.

I argue that most of the groundwork for Mexico's watershed 2000 national elections, won by the National Action Party (PAN), the country's consistent opposition party since 1939, was laid locally, through a series of postelection power struggles by which the PAN and other opposition party losers contested races at bargaining tables where they extracted concessions from the PRI-state for demobilizing quietly. Through most of Mexico's democratic transition (1977–2000), the PAN and the more recent leftist Party of the Democratic Revolution (PRD) were rarely allowed to win on an electoral playing field skewed by the PRI-state. But these persistent regime opponents did make small inroads – forcing the PRI-state to accept a PRD town council member here, or an interim PAN governor there. The most important manifestations of this democratization from the regions to the center were visible at the federal level, where the opposition party–negotiated autonomous electoral institutions allowed increasingly competitive parties (and especially the PAN) to actually be pronounced as winners in elections where they garnered the most votes.

After thousands of postelectoral conflicts claiming hundreds of lives, outgoing President Ernesto Zedillo's controversial but bold decision to publicly congratulate the PAN's Vicente Fox on election night in July 2000 helped ensure a serene postelectoral environment, where no real challenges, legal nor extralegal, were launched against the legitimacy of President-elect Fox. For the first time ever, Fox's victory was ratified by the Electoral Tribunal of the Judicial Power of the Federation (TEPJF) rather than by the horse-trading Electoral College of newly elected congressional members who for decades had ratified their own elections.

In contrast, Mexico's 1988 presidential race was fraught with so much controversy that even as President Carlos Salinas assumed office, doubts persisted about whether he had actually won the election. Oversight of that election was conducted by an electoral commission headed by

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the PRI-state's Interior Secretary and irregularities abounded, including burned ballots floating in rivers by the hundreds, and a blackout of the vote-tallying computer. The politically driven Electoral College (the incoming congress that certified its own elections) cut deals, granting "victories" to five opposition vote total runner-ups (after withholding certification of thirteen PRI victories to negotiate outcomes) and obstructing scrutiny of dubious presidential results (Gómez Tagle 1994, 93, 137). Runner-up Cuauhtémoc Cárdenas launched weeks of postelectoral mobilizations that threatened to unite the conservative PAN with his left-ist movement and teetered on the brink of violence. For several days in July 1988, the future of the regime hung in the balance.

This book offers a comprehensive treatment of how the authoritarian PRI-state after 1988 deftly walked the line between allowing opposition inroads, but not too many, and constructing independent electoral institutions on demand from the PAN and from international critics, but without really using them, at least initially. This work seeks to provide a "window" on the battles between the PRI-state and two growing opposition parties from the localities on up, and to demonstrate how the opposition parties – particularly the PAN – benefited in the long term from exploiting formal electoral institutions as part of a range of options that also included resolving postelectoral conflicts using informal institution bargaining tables. Mexico's first electoral courts in the early 1990s, however powerful they were on paper, accustomed their users to the norm of electoral justice while allowing them to fall back on old habits of negotiating postelectoral conflict spoils in exchange for the compliance of electoral losers from the PAN or the PRD. By a new taxonomy of informal institutions in the developing world, these bargaining tables were substitutive informal institutions (Helmke and Levitsky 2002), competing directly with formal institutions.

Because some of the weakest courts in practice had been constituted on paper as the strongest, no discernible pattern existed from which a new institutionalist could readily determine which courts would be used and which would be abused. Meanwhile, throughout the period of this study, opposition party competitiveness grew and disputes between the PRI-state and growing opposition over notoriously fraudulent elections continued to be resolved in the streets and in the courtrooms, simultaneously. Post-electoral conflicts usually involved "sit ins" outside municipal buildings or the buildings' outright occupation, and often included violent confrontations lasting weeks or even months, prompting efforts by the PRI-state – often "sweetened" by offers of side payments – to persuade them to

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desist. In the most conflictive states, postelectoral conflicts could absorb more than a quarter of a state legislature's business, and "waste" much of a governor's term arbitrating postelectoral disputes rather than setting more transcendent policies.² Local elections were not for determining who would govern. This decision was made with the selection of the PRI's internal candidate for a given office. However, local elections were for the opposition to register dissent, size up their forces in a manner threatening to the authoritarians, and gather information about PRI-state forces.

Parting from this idea that elections in transitional Mexico were for much more than counting votes, this book has three broad aims. First, it specifies the role of postelectoral conflicts and their accompanying informal bargaining tables in advancing Mexico's electoral opening even before the advent of formal electoral courts. Second, it argues that contrary to the pacted democratization model, protracted transitions to democracy occur under special conditions, and it proposes late twentieth century Mexico as an exemplar protracted transition. Third, it demonstrates that even when credible formal institutions (here electoral courts) are created, political parties respond more to long-standing political grievances than to the codification of formal electoral institutions. That is, the causes of postelectoral conflicts occurring in nearly 15 percent of Mexico's local races over a twelve-year statistical sample (1989–2000) run much deeper than just elections. The "electoralist fallacy" described by Schmitter and Karl (1991), whereby observers consider nations to have democratized solely on the basis of having staged apparently free and fair elections, must be applied in "electoral authoritarian" regimes as well as in democracies. The implications of this last finding, that historical grievances matter more than electoral laws, are important for scholars of democratization and specialists in economic and political development alike.

² The legislative effort dedicated to resolving municipal postelectoral conflicts is measured as the percentage of the legislature's total decree "output" (including laws) addressing transfer of municipal power. For example, during the Chiapas 1991 legislative calendar, 23 percent of the total of 69 decrees pertained to municipal power transfers (Chiapas State Legislature 1995, 59–71), while in 1992 Oaxaca, an astounding 48 percent of the 116 decrees issued addressed composition of new municipal governments (Oaxaca State Legislature Decree Record Book, *passim*). The mention of a governor "wasting" his first year in a six-year administration on postelectoral conflicts comes from Oaxaca, where State Electoral Institute President Cipriano Flóres Cruz (interview) said he was hired to channel conflicts so the sitting governor would not lose the first year of his term to the mediation of postelectoral conflicts.

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THE THREE OBJECTIVES OF THIS BOOK

With regard to the first objective, by documenting the gap between the construction of “parchment” formal institutions and their acquisition of credibility, I offer an important rejoinder to theories of institutional design that often take actor consent for granted, especially in the literature on democratic transitions. I argue that formal institutions cannot replace informal ones (the bargaining tables); that is the “training wheels” cannot come off, freeing institutions to perform as their designers intended, until a critical mass of relevant political actors decide to comply with these institutions. The central tenet of this book, that even well-designed formal institutions may actually be subverted by actors’ political discretion until unconditional actor consent is granted to them, is illustrated through the novel method of simultaneously considering legal and extra-legal focal points – the informal and formal institutions – for resolving post-electoral disputes. I argue that fortifying Mexico’s electoral institutions alone was necessary but far from sufficient for guaranteeing acceptance of election results, both by a PRI-state that prized discretion over hand-tying legal institutions and by the opposition, which often benefited, at least in the short term, from PRI-state discretion in postelectoral deal making, and that refused to vest their electoral fates with paper tigers. In pitting ill-studied informal institutions against better-documented formal ones, this work joins a growing body of literature seeking to apply tenets of the new institutionalism to less codified but empirically verifiable patterns of behavior (Carey 2000, Ellickson 1991, Helmke 2002), and to integrating structure- and agency-driven explanations of institutional development (Jones Luong 2000, Knight 1992, Knill and Lenschow 2001).

The key to empirically specifying the gap between the creation of institutions and their acquisition of credibility is to suspend the assumption, pervasive in much of the literature on democratic transitions, that actors automatically comply with governing institutions once overarching pacts have been reached on the new regime’s rules. Rigorous inquiry of when institutions do not work, rather than just considering when they do, conduces to new interpretations of microinstitution building, even in circumstances of great uncertainty, such as Mexico’s regime transition. A statistical model of the causes of local postelectoral conflicts presented in Chapter 5 underscores a derivative finding, that actor consent is granted to electoral institutions as a function of broader political strategies. My analysis shows that while the PAN follows the logic of a disciplined party amenable to short-term, patronage-seeking arrangements with the

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PRI-state, the PRD adheres to no such logic. Rather, local PRD activists act mostly on their own, with postelectoral conflicts resulting as much from a general community-wide recent history of broader social conflicts as from specific concerns about election fraud. Contrary to the pragmatic PAN seeking to maximize elected offices through whatever combination of legal and extralegal tactics appears most effective, the more rural and less educated *PRDístas* tended to mobilize first and ask legal questions later, if at all.

Identification of such differences in party strategies over their acceptance of Mexico's new institutions of electoral justice leads to the second objective of this book, specifying the incentives of individual opposition parties in determining compliance with the authoritarians' legal order. In establishing patterns of opposition party/PRI-state relations, I categorize PRD postelectoral behavior as varying between "antiregime" and "transition-seeking," while the PAN's varies between "patronage-seeking" and "transition-seeking." Among the *PRDístas*, I found severe and even lethal postelectoral conflicts common, yielding few concessions from the authoritarians, while PAN supporters staged few postelectoral conflicts, over major cities only, and nearly always directed by national headquarters. The PAN's national leadership traded support for PRI-state federal legislative initiatives and received interim mayorships and governorships. The PAN's tactic was so pervasive in the early and mid-1990s that it comprised the basic frame of reference for a generation of Mexico's most powerful politicians from President Vicente Fox (2000–6) on down.³ And as this book argues based on extensive qualitative evidence, the PRI-state's eagerness to trade posts for PAN cooperation, and local PRI electoral activists' poor reactions to being "sold out" by their national leaders, was the biggest catalyst of the rupture between the PRI and the Mexican state, culminating in electoral defeat.

This strategy of "dueling focal points" – concurrent bargaining in formal and informal institutions to resolve postelectoral conflicts – was most

³ Fox lost the Guanajuato 1991 governor's race but fellow *PANísta* Carlos Medina Plascencia (who later headed the PAN Chamber of Deputies faction) was named interim governor when the PRI's victor mysteriously resigned. Fox Interior Secretary Santiago Creel was a citizen councilor of the Federal Electoral Institute (IFE) in 1994 when now-Mayor Andrés Manuel López Obrador of Mexico City, then the PRD's candidate to Tabasco's governorship, was denied his apparent victory in favor of former PRI governor and current PRI national party president Roberto Madrazo. Current PAN Senate Caucus Chair Diego Fernández de Cevallos was his party's "clutch" negotiator with the PRI-state during much of the early 1990s.

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evident in gubernatorial and mayoral races, where it was not uncommon for local ruling PRI winners to abruptly resign under pressure from the national PRI-state. Compromise candidates, plural councils, and even opposition interim mayors and governors were named, in a logic of perverse federalism by which PAN activists decried federal intervention in local elections and then complained directly to federal authorities upon losing a race. Before returning to the plan of this book for explaining the microlevel “gap” between when electoral courts were created and when they were infused with credibility, I turn briefly to the macrolevel objective of this book, exposing distinctive patterns in how the authoritarian incumbents and their opponents incrementally negotiate opening using the electoral arena.

AN EDDY IN THE THIRD WAVE: CONTEXTUALIZING MEXICO’S PROTRACTED TRANSITION

Most work on democratization has addressed the internal division of the hardliners from the soft-liners in the authoritarian coalition, but without systematically considering the role of the opposition or the international community. Furthermore, earlier studies have not focused extensively on self-binding through electoral reforms to enable the soft-liners to control the retrograde hard-liners, who in the Mexican case continued to view the commission of electoral fraud as their patriotic duty, even into the 1990s.⁴ Prior to the mid-1990s, the PRI-state behaved ambivalently toward the new electoral institutions the three constituencies had forced the regime to construct. When possible, the federal executive bypassed electoral institutions, choosing instead to negotiate extralegal resolutions to conflicts at informal bargaining tables, even though exorbitant sums have been spent since the early 1990s to give the regime the appearance of clean elections. In fact, measured as cost per registered voter, Mexico’s 2000 Federal Electoral Commission budget – some \$15 per voter – was among the highest of any large country in the world.⁵ In 2000, and every year

⁴ The idea of “patriotic fraud,” thought to have been coined by leaders of the PRI’s corporatist bases, is affirmed by former national PRI leader José Francisco Ruiz Maseu who acknowledged in 1994 that: “In most states we are living in the Stone Age. Patriotic fraud is seen as an honorable practice (Oppenheimer 1996, 193).”

⁵ The 2000 elections cost well over a billion dollars. These costs per registered voter are as much as ten times the per capita cost of elections in established democracies like the United States, Germany, the Netherlands, and Sweden. In fact, among López-Pintor’s (2000) estimates in forty-nine countries during the 1990s, only two were more expensive

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since 1991 (including non electoral years!), the federal government has spent more on electoral institutions than on the entire legislative branch, and in election years, electoral institutions receive more than the legislative and judicial branches *combined*, or well over 1 percent of the federal government's programmable budget (Treasury Secretariat). Why would the PRI-state spend so much on these institutions only to disregard them at critical moments? The answer is that the authoritarians sought, quite reasonably, to placate the three constituencies by building the institutions but without planning to actually use them.

Constraining notorious electoral fraud by the most retrograde elements of the PRI-state was indeed more readily possible if electoral reforms bound everyone's hands within the authoritarian coalition. However, fulfillment of such commitments produced the unintended consequence of dividing ruling party interests and those of the governing bureaucracies in long-reigning electoral authoritarian states such as Brazil (1964–88), Mexico (1929–2000), South Korea (1972–87), and Taiwan (1949–2000).⁶ Such schisms occur because authoritarian elites loyal to the party continue seeking to maximize electoral victories, while those loyal to the government favor regime stability over party electoral victories, even if they must placate opposition leaders by conceding elections. Such separation between state and party in one-party (or military rule through political party) systems is a necessary but not sufficient condition of democratization. In other words, as the interests of local machine bosses and those of federal technocrats diverge, the discipline of the party-state unravels, and the strength of the opposition parties' positions increases.

In the Mexican case, PRI-state officials wished to open electoral competition in a selective and partial manner only, to update information about opposition strength and placate international critics. Opposition parties "scared" the regime into granting more concessions (i.e., making the

per eligible voter than Mexico 1997 (which was slightly less expensive than 2000): Angola 1992 (\$22 per eligible voter) and Cambodia 1993 (\$45 per eligible voter). These were small countries undertaking postconflict elections with extensive international support. While figures for Angola's later elections are not included, López-Pintor documents a reduction in Cambodia's 1998 election, to \$4.7 per eligible voter (López-Pintor 2000, 73–6).

⁶ There are acknowledged classification trade-offs in considering these regimes "one-party" systems. For example, Brazil and South Korea may be considered military regimes consolidated through a party, while the other two were civilian one-party systems. At the state and local levels, direct elections were not held in Taiwan during much of the "one-party" periods. Nonetheless, these regimes share more similarities than differences.

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regime's hitherto unfulfilled commitments more credible) through strong shows of coalition strength within their limited openings, and by colluding with international actors pressing for domestic liberalization. Whether opposition forces the party-state to completely and uniformly bind its own hands determines whether electoral liberalization proceeds to full-scale democratization. Where such credible commitments are not made by the state, opposition parties continue resorting to extralegal means (i.e., bargaining outside of formal electoral institutions) in order to resolve post-electoral conflicts, rather than recurring to the institutions created by the authoritarians, presumably to tie their own hands. This process is much more evident in protracted transitions like Mexico's than in the abrupt transitions that characterized most of Eastern Europe and South America in the late 1980s. In stylized characterizations of those pacted transition cases, antiregime social and political movements brought down the *ancien régime* in a single collapse, allowing new elites to replace the old, and to set terms of participation in the new regime in one major negotiation. Protracted transitions like Mexico's differ in that the PRI-state did not collapse, but rather withered away slowly, and through a series of post-electoral bargaining episodes in which the authoritarians underestimated opposition persistence and resourcefulness.

What of the opposition forces that manage to overcome internal factionalism, resource constraints, and collective action problems to "outlast" the authoritarians and "decompress" the incumbents right out of office? Recent scholarship has managed to shift the focus of "transitology" (Przeworski's 1996 term) from intraelite bargaining back to the negotiations between authoritarian elites and their opponents, at least in part. Bermeo, in debunking the "myth of moderation" (that extreme opposition demonstrations and strikes do not produce enduring transitions), argues that in various Third Wave transitions – namely Peru, the Philippines, Portugal, South Korea, and Spain – violence and mobilization were conducive to durable transitions. However, Bermeo reached these conclusions by filtering their effects through the perspectives of pivotal elites (those whose actions directly affected the transition). Whether these pivotal elites would accept democracy depended on whether they predicted extremist or moderate opposition forces would gain control of the transition (Bermeo 1997, 315–18). Outside of the social movements literature, all research on democratic transitions seems to emphasize the role of elites, even if indirectly, as in Bermeo.

Some democratization scholars have considered the importance of the opposition in transitions. For example, Huntington (1991, 113), Share and

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Mainwaring (1986, 177–9), and Munck and Skalnik Leff (1999, 195–210) considered authoritarian/opposition bargaining dynamics in constructing typologies of transitions. The issue has even been cleverly phrased in terms of opposition incentives by Przeworski (1991, 18): “If one accepts, as I do, that not all conflicts can be resolved by deliberation and that therefore democracy generates winners and losers, can one ever expect the losers to comply with the verdict of democratically processed conflicts?” However, the particular mechanisms of obtaining loser compliance have been underspecified, except in the most dramatic Eastern European and South American cases where authoritarian walls literally fell, Round Table Talks were launched, and militaries were sent back to the barracks. Protracted democratizations like those in Mexico and Taiwan largely passed undetected until 2000 power alternations in each country sent analysts looking for clues.⁷

Current tendencies to filter the effects of pretransition oppositions through authoritarian elite perceptions extends back at least to Dahl’s classic formulation that the likelihood of a government’s toleration of opposition varied inversely with the costs of toleration and directly with the costs of suppression (Dahl 1971, 16). Certainly these elite formulations are crucial in deciding whether to allow elections in authoritarian regimes. If an independent regime opposition exists, its course of action will obviously be constrained by incumbent authoritarian decision making. But the opposition’s actions will also be shaped by its own interests. And while opposition parties do not become relevant actors in regime transitions until authoritarians grant some role to elections, these parties have by that time usually consolidated themselves for years or decades. While their identities and fates are inexorably intertwined with the decisions of pivotal authoritarian elites, the interests of these parties must be considered apart from those of the incumbents, as they are a significant part of the explanation of regime transition. Transition is not just an insiders’ quarrel between the hardliners and the moderates in the authoritarian coalition. There are also hard-line (radical) and moderate oppositions, and they must be more fully modeled, because without them, there is no transition either.

⁷ In a separate project, McFaul (1999) discusses Russia’s “protracted transition” as a stalemate among actors in which electoral democracy has been reached, but entrenched interests preclude the consolidation of liberal democracy. Contrary to the success of Mexico’s actors in using electoral democracy to launch “social” or “liberal” democracy, McFaul questions the linear advance of Russia’s path, as does Malley (2000) in his study of Indonesia.