



**GREAT EXPECTATIONS: MEXICAN DEMOCRACY  
AND ITS DISCONTENTS\***

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## ABSTRACT

There is no doubt that democracy in Mexico has fallen short of expectations: it has not generated more social and economic equality; few people feel now that their participation in politics is more effective than before; the elected government often fails to respond to citizens' demands; and some parts of the country now seem to be under the control of violent drug cartels. These failings certainly fuel the discontent of citizens with their democratic regime. Yet my aim is to focus on other sources, less apparent, of intense political dissatisfaction. Mexicans are not satisfied with their democratic government not only because it has failed to provide them with the social goods that are usually expected, realistically or unrealistically, from democracy. They are also unhappy with the perceived gap between their idealized concept of democracy and the workings of the existing democratic institutions. I will argue that to some extent an ahistorical, peculiar image of democracy has been constructed. My basic claim is that the critical standard of democracy held by Mexicans is flawed. This ideological misconception, I will try to demonstrate, has had pernicious effects, because it has fed unreasonable expectations and has blinded Mexicans to feasible reforms. I analyze specifically the role played by the pursuit of equity (*equidad*) and the ban on negative campaigning.

## RESUMEN

No hay duda de que la democracia en México no ha producido los resultados esperados. No ha creado una mayor igualdad social o económica. Pocas personas creen que su participación en la política es ahora más efectiva que antes. Los gobiernos electos a menudo no responden a las exigencias de los ciudadanos y algunas regiones del país parecen estar bajo el control de violentos grupos criminales. Estos fracasos ciertamente abonan al descontento de los ciudadanos con su democracia. Sin embargo, mi propósito aquí es concentrarme en otros motivos, menos aparentes, del intenso malestar político. Los mexicanos están insatisfechos con su gobierno democrático no sólo porque no les ha provisto de los bienes sociales que, de manera realista o no, se esperan normalmente de la democracia. También se encuentran molestos por lo que perciben como una brecha entre su concepción idealizada de la democracia y la forma en que realmente funcionan las instituciones democráticas existentes. Arguyo que hasta cierto punto se ha construido una peculiar imagen ahistórica de la democracia. Mi principal argumento es que el parámetro crítico de la democracia que los mexicanos construyeron es defectuoso. Intentaré demostrar que este concepto erróneo ha tenido efectos perniciosos pues ha alentado expectativas no razonables y ha cegado a los mexicanos a reformas posibles. Analizo específicamente el papel desempeñado por la búsqueda de la *equidad* y la prohibición de las campañas negativas.



“...considerando a la democracia no solamente como una estructura jurídica y un régimen político, sino como un sistema de vida fundado en el constante mejoramiento económico, social y cultural del pueblo.”

*Constitución Política de los Estados Unidos Mexicanos*  
Article 3, Section 2, Subsection a

Transitions to democracy elicit great expectations everywhere in the world. Particularly in societies where democratic rule has been absent, citizens expect significant changes to occur in their newly reclaimed polities. Often authoritarian regimes suffer from a wide array of social ills: corruption, poverty, and injustice. As Adam Przeworski observed a decade ago: “to eat and to talk—to be free from hunger and from repression: these elementary values animate a worldwide quest for political democracy and economic rationality.”<sup>1</sup>

Mexico is no exception to this rule. In the aftermath of the 2000 elections much was expected from the end of the seventy-year rule of the hegemonic Institutional Revolutionary Party (Partido Revolucionario Institucional, PRI). Ten years later disappointment was widely spread across the political landscape. In 2012 a poll found that only 49 percent of Mexicans believed that democracy was preferable to any other form of government. Mexico ranked next to last in support for democracy in Latin America.<sup>2</sup> Only 27 percent of those polled were satisfied with democracy in their country. And Mexicans were the least satisfied with the economy (17 percent). Many of the more fervent promoters of democracy during the PRI era now downplay the importance of the transition. They argue that nothing significant has changed during the past two administrations. Many of the old problems of authoritarian rule persist today. This discontent with democracy is not unusual. Many new democracies experience it. The causes are varied. Some suffer from “low-intensity citizenship,” as Guillermo O’Donnell called those regions where the law and state institutions apply irregularly.

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<sup>1</sup> Adam Przeworski, *Democracy and the Market: Political and Economic Reforms in Eastern Europe and Latin America* (New York: Cambridge University Press, 1991), p. ix.

<sup>2</sup> Latinobarómetro, *Informe 2010*.

Likewise, elections do not necessarily put an end to corruption, social inequality, or cronyism.<sup>3</sup>

Yet, while the quality of democracy is very poor in many of these regimes it is also true that some of the original expectations about democracy were difficult to fulfill since the start. This is a problem that has plagued democratic rule since its inception. As Przeworski recently argued: “we tend to confuse the ideals of founders for a description of really existing institutions. This ideological veil deforms our understanding and our evaluations. It is politically pernicious because it simultaneously feeds unreasonable hopes, including quite a few hallucinatory projects, and blinds us to feasible reforms.”<sup>4</sup>

Democracy has recurrently confronted four challenges that continue to feed widespread and intense dissatisfaction today: the incapacity to generate equality in the socioeconomic realm, the incapacity to make people feel that their political participation is effective, the incapacity to ensure that governments do what they are supposed to do and not do what they are not mandated to do, and the incapacity to balance order and noninterference.<sup>5</sup> However, there are limits to what democracy can deliver. Key questions remain: “How much economic and social equality can democracy generate? How effectively can it equip government to act in the best interest of citizens and citizens to control governments? How well can it protect everyone simultaneously from each other and from the government? What should we expect of democracy? Which dreams are realistic and which futile?”<sup>6</sup>

Mexico is a good case to explore some answers to these and other related questions. There is no doubt that democracy in Mexico has fallen short of expectations: it has not generated more social and economic equality; few people now feel that their participation in politics is more effective than before; the elected government often fails to respond to citizens’ demands; and some parts of the country now seem to be under the

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<sup>3</sup> Frances Hagopian and Scott Mainwaring, eds., *The Third Wave of Democratization in Latin America: Advances and Setbacks* (Cambridge: Cambridge University Press, 2005); Guillermo O’Donnell, “On the State, Democratization and some Conceptual Problems,” Kellogg Institute, Working Paper, 192, April 1993.

<sup>4</sup> Adam Przeworski, *Democracy and the Limits of Self-Government* (New York: Cambridge University Press, 2010), p. 1.

<sup>5</sup> *Ibid.*, pp. 1–2.

<sup>6</sup> *Ibid.*

control of violent drug cartels. These failings certainly fuel the discontent of citizens with their democratic regime.<sup>7</sup>

Yet my aim here is to focus on *other* sources, less apparent, of intense political dissatisfaction. Mexicans are dissatisfied with their democratic government not only because it has failed to provide them with the social goods that are usually expected, realistically or unrealistically, from democracy. They are also unhappy with the perceived gap between their idealized concept of democracy and the workings of the existing democratic institutions. This dissatisfaction, I will argue, is different from the usual discontent aptly described by Przeworski. Some of the more intense discussions among the political class, intellectuals, and the media do not relate to the shortcomings mentioned above, or the founders ideals, but have to do with a different set of ideological expectations. These in turn depend on an ideal of democracy held by Mexicans.

What is this idealized image of “democracy”? While it shares many of the traits found in the usual descriptions of democracy, it bears some peculiar notions of its own. This idealization of democracy is not new. It has been present since the nineteenth century. It is, in words of Fernando Escalante, the longing for an imaginary “civic order.” At the time Mexicans believed that such order existed in more advanced countries, such as France and the United States. France represented enlightenment, refinement and courtesy. Mexican actors of all political persuasions believed in good faith that such imaginary order was possible. However, they did not know, or did not want to know, about the drawbacks of their chosen models: French authoritarianism or American corruption.<sup>8</sup>

I argue that to some extent something similar has happened since 2000 in Mexico. An ahistorical, distorted, image of democracy has been constructed. My basic claim is that the critical standard of democracy held by Mexicans is flawed. This ideological misconception, I will try to demonstrate, has had pernicious effects, because it has fed unreasonable expectations and has blinded Mexicans to feasible reforms. I make two related, but different, arguments. On the one hand, some of the goals proposed by this

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<sup>7</sup> Frances Hagopian, “Government Performance, Political Representation, and Public Perceptions of Contemporary Democracy in Latin America,” in Hagopian and Mainwaring, *Third Wave*, 319–63.

<sup>8</sup> Fernando Escalante, *Ciudadanos imaginarios* (Mexico: El Colegio de México, 1992), p. 18.

idealized version of democracy might have some merit but they are unrealistic (more gender equality in Congress, cleaner elections, etc.). Thus, failure to achieve them produces frustration and the perception that the political system as a whole is at fault. Support for democracy is weakened. A certain amount of flaws (non-massive vote buying, political clientelism, etc.) is probably unavoidable in underdeveloped and highly unequal countries such as Mexico. It would be a good thing to eliminate these defects completely, but it is unrealistic to expect their complete disappearance in a short span of time. Democrats, while not conforming to the status quo, must learn to live with the imperfections of their democracies while they strive to improve them. Polyarchies, as Dahl concedes, are political systems with warts. If discontent fuels feasible progressive reforms, then it is functional to democracy. If, however, it leads actors to question the overall legitimacy of the regime, then it undermines democracy. High expectations can have perverse effects.

On the other hand, some of the normative misconceptions that form part of this idealized version of democracy are not only historically flawed but are also unappealing in themselves (*equidad*, restrictions on basic rights, such as freedom of speech, etc.) The attempt to realize them brings about electoral over-regulation, an encroachment on basic liberties, and the curtailment of pluralism. I look at two related institutional aspects of the Mexican democratic regime where these flawed ideas are at play: the quest for *equidad* and the regulation of political campaigns, particularly the ban on negative campaigning. These aspects are important to explain the standards that electoral processes must meet in order for them to be considered legitimate by citizens.

In October 2012 we conducted a poll to explore the meaning and impact of equity in Mexico. We found that 74 percent of those polled believed that there was little or no equity at all in elections in Mexico.<sup>9</sup> We posed the following question: “In your opinion, how much does the lack of equity in the elections affect election results?” Of those polled

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<sup>9</sup> Parametría, “Equidad en las elecciones,” October, 2012. The poll was a national household survey, conducted between October 13 and 17, 2012. Only 9 percent believed there was a lot of *equidad*.



63 percent answered “a lot,” while only 18 percent responded “a little.”<sup>10</sup> Moreover, for a vast majority the existence of *equidad* in elections was indeed critical for democracy. Of those polled, 70 percent believed equity was very important for democracy. In contrast, only 11 percent did not consider it very important.<sup>11</sup> In a 2012 exit poll on the quality of elections, 39 percent of those polled disagreed with the statement: “elections are free, clean and equitable (*equitativas*) in my state.”<sup>12</sup> Another poll found that 40 percent of those polled believed that Mexico was *not* a democracy.<sup>13</sup>

On the effects of not achieving *equidad* I distinguish between a wider citizenry and the political elites. Clearly, there is some evidence that not achieving *equidad* is *one* of the sources of dissatisfaction with democracy among the general population. However, it is perhaps not possible to attribute a specific weight to this discontent. A perceived lack of *equidad* is conflated with other sources of dissatisfaction with democracy. The particular impact and political consequences of the discourse of *equidad* is difficult to establish. My claim here is only that it contributes to the wider malaise.

In contrast, the frustration of not having attained *equidad* has played a readily identifiable role in intra-elite conflict. Here the impact is significant. I argue that the unsuccessful pursuit of *equidad* has undermined democracy in Mexico by weakening the overall legitimacy of the electoral system. There is plenty of evidence of *equidad* figuring prominently among the arguments used by elites to challenge the results of elections. Claims of “*inequidad*” during and after campaigns have played a significant role in the discourse of recent electoral contestation. For example, in March 2012, at the beginning of the presidential campaign, Andrés Manuel López Obrador (AMLO), the leftist candidate, jokingly asserted that his only campaign slogan would be “¡*Viva la*

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<sup>10</sup> Ibid. “En su opinión, la falta de equidad en las elecciones, ¿afecta mucho, poco o nada los resultados de las elecciones?.” Answers were: “mucho,” 63 percent; “poco,” 18 percent; “nada,” 3 percent; “no sabe,” 16 percent. (Here and throughout all translations are the author’s.)

<sup>11</sup> Ibid. “En su opinión, ¿qué tan importante es para la democracia que haya equidad en las elecciones: mucho, poco o nada?” Answers were: “mucho,” 70 percent; “poco,” 11 percent; “nada,” 2 percent; “no sabe,” 17 percent.

<sup>12</sup> Parametría, Exit Poll, July 2012.

<sup>13</sup> Parametría, Poll, April 18 and 22, 2012. <http://www.parametria.com.mx/.detalleEstudio.php?E=4420>.

*Equidad!*”<sup>14</sup> Months later, when AMLO challenged the results of the election and demanded its annulment in a lawsuit, he explicitly claimed that the Federal Electoral Institute (Instituto Federal Electoral, IFE) had not taken sufficient actions to prevent biased news on radio and TV. IFE had not indicated to him what measures, if any, it would take to “safeguard *equidad* on this matter.” Likewise it had not informed him whether or not evaluation criteria of “electoral equity” existed.<sup>15</sup> The defeated candidate of the National Action Party (Partido Acción Nacional, PAN), Josefina Vázquez Mota, also complained of lack of *equidad* in the elections.<sup>16</sup>

The frustration of not achieving equity is not the whole story of discontent with democracy in Mexico, but it is certainly a part of it. Indeed, Mexicans not only believe that the impact of money in politics must be checked (an objective widely shared by other democracies), they also have faith in something broader, more demanding: *equidad*.

### THE INVENTION OF *EQUIDAD*

The vast majority of the Mexican political and intellectual classes believe that in normative terms, *equidad* is a key value of democracy in general. This consensus was evident in the parliamentary debates that led to the 2007 electoral reform. Representatives from all parties agreed in the value of *equidad* for democracy. As Senator Manlio Fabio Beltrones stated in favor of the proposed changes: “The [electoral] reform represents a radical change of the electoral model and reestablishes the principles of *equity*, proportionality and representation that rule the electoral system in an established

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<sup>14</sup> AMLO explained in an interview that back in 2006 he had been the victim of a “dirty war” staged against him by mercenary publicists. While his then contenders had two or three TV ads at the time, he was going to have one: “¡Viva la Equidad!” “Explicó que en 2006 fue víctima de la guerra sucia creada por publicistas que actuaban como mercenarios y criticó que, mientras Enrique Peña Nieto tiene tres spots y Josefina Vázquez Mota, dos, él sólo tendrá uno. ¡Viva la equidad!, ironizó.” Liliana Padilla, “Yo sólo tendré un spot. ‘¡Viva la Equidad!’: AMLO,” *Milenio*, March 18, 2012.

<sup>15</sup> The legal brief states that AMLO “...afirmó que el Instituto Federal Electoral no precisó lo siguiente: a) qué medidas se adoptan para evitar o prevenir los sesgos informativos en los noticieros de radio y televisión, b) cómo se salvaguarda el principio de equidad en los noticieros; c) qué hace el Instituto Federal Electoral para salvaguardar la equidad en esa materia... e) La existencia de criterios de evaluación de la equidad electoral.” Tribunal Electoral del Poder Judicial de la Federación, SUP–JIN–359/2012, *Recurso Madre*, p. 180.

<sup>16</sup> *La Crónica de Hoy*, “Inequidad afectó resultado de la elección: Josefina,” July 5, 2012.

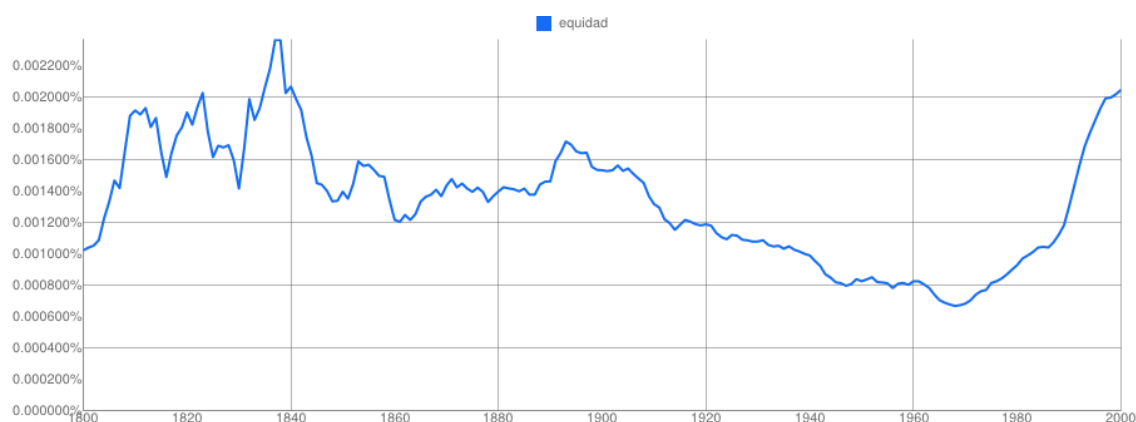
democracy.”<sup>17</sup> This belief is imprinted in the Constitution and the laws. Yet, proponents of this idea are oblivious of the fact that neither in the history of representative government nor in many contemporary democracies is equity considered a basic value.

According to the Real Academia Española’s *Diccionario de Autoridades*, “equidad” means “*igualdad de ánimo*” and something more troubling: “natural justice in opposition to a close rendering of positive law” (*justicia natural, por oposición a la letra de la ley positiva*). This idea is qualitatively different from “equality” and “justice.” It is worth looking at the way this word has been used in the past. According to Google’s Ngram viewer, between 1800 and 2000 “equidad” appeared in Spanish books most prominently in the pre-1840 period.<sup>18</sup>

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**GRAPH 1**

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Source: Google Ngram Viewer [http://books.google.com/ngrams/graph?content=equidad&year\\_start=1800&year\\_end=2000&corpus=10&smoothing=3](http://books.google.com/ngrams/graph?content=equidad&year_start=1800&year_end=2000&corpus=10&smoothing=3)

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This graph shows the number of times the word has appeared in a Google database of printed sources in Spanish from 1800 to 2000. Note that instances of “equidad” rise around the time of the publication of John Rawls’s seminal work *A Theory of Justice* (1971). In some countries, such as France, Rawls’s term “justice as fairness” was

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<sup>17</sup> “La reforma representa un cambio de raíz en el modelo electoral, y reestablece los principios de *equidad*, de proporcionalidad y representación, que en una democracia consolidada deben de normar el sistema electoral.” *Reforma constitucional en materia electoral (Proceso legislativo) (13 de noviembre 2007)* (Mexico: Secretaría de Servicios Parlamentarios. Centro de Documentación, Información y Análisis, 2008), p. 106. My emphasis.

<sup>18</sup> [http://books.google.com/ngrams/graph?content=equidad&year\\_start=1800&year\\_end=2000&corpus=10&smoothing=3](http://books.google.com/ngrams/graph?content=equidad&year_start=1800&year_end=2000&corpus=10&smoothing=3).

improperly translated as “justice as equity (*équité*).” Further research could explore whether there is any relationship between Rawls’s work and the use of “*equidad*.”

Its peak occurred sometime in the 1830s. From then on it steadily decreased until the 1980s, when it began to increase again. By 2000, the end of the period when many transitions to democracy took place in Latin America and elsewhere, the use of “*equidad*” had peaked once more. Such a pattern might be explained by the semantics of the word. Through time the term has had two different meanings in Spanish. According to the *Diccionario de Autoridades*, “*equidad*” literally means: “equality and rectitude.” However, in ordinary use this word has meant “temperance” (*templanza*) and a well-meaning, benevolent, predisposition (*bondad de ánimo bien intencionado*). It has also conveyed “moderation in the rigorous enforcement of the law” (*moderación en el rigor del uso de la ley*). Thus, *equidad* referred more to the intentions of the lawmaker than to the letter of the law itself.<sup>19</sup> This meaning is clearly based upon Aristotle’s classical conception of equity: “the essence of what is equitable is that it is an amendment of the law, in those points where it fails through the generality of its language.” While what is equitable is just, “it is not identical with, but a correction of, that which is just according to law.”<sup>20</sup> In *El Quijote* the word is used precisely in this sense: “When equity may and should be brought into play, press not the utmost rigour of the law against the guilty, for the reputation of the stern judge stands no higher than that of the compassionate.”<sup>21</sup>

The distribution of *equidad* through time seems to indicate that in the first half of the nineteenth century the word was widely used when referring to moral character, but that in the late twentieth century, when many new democracies began to emerge, *equidad* adopted its literal, (but not often used) meaning of “equality.” For the purposes of this essay I take *equidad* to mean: equality of opportunity to win electoral races.

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<sup>19</sup> “En lo literal vale igualdad y rectitud, pero en el uso más común se toma esta palabra por templanza y bondad de ánimo bien intencionado: por moderación en el rigor del uso de la ley: y en cierto modo por equivalencia e interpretación, que mira más a la intención del Legislador, que a la letra de la ley...” Real Academia Española, *Diccionario de Autoridades*, Vol. 3 (Madrid: RAE, 1963), pp. 539–40.

<sup>20</sup> Aristotle, *The Nichomachean Ethics* (London: Egan Paul, Trench, Truebner & Co., 1893), Book, V, ch. 10, “Of Equity.”

<sup>21</sup> Miguel de Cervantes Saavedra, *El Quijote de la Mancha*, chapter 42. Don Quixote. *The Ormsby Translation* (New York: Norton, 1981), p. 483.

What is the evidence that Mexicans in fact regard *equidad* as equality? In a closed-question national household poll we asked: “What do you think *equidad* is?” Of those polled, 51 percent choose “equality,” 7 percent “justice,” and 2 percent “moderation in the use of the law.” Quite remarkably, 35 percent ignored the meaning of the word.<sup>22</sup> Moreover, there is additional evidence that Mexicans consider equality as the most important value (followed by justice and solidarity).<sup>23</sup>

What about political elites? Do they share the same meaning of *equidad* with ordinary people? There is evidence that for the most part they do. For instance, in the parliamentary debates that led to the 2007 electoral reform the word “*equidad*” was mentioned eighty times. Most lawmakers used it as a synonym of equality. Indeed, small parties complained about the unequal distribution of air-time, which favored the major parties according to a rule that provided that spots would be allocated in part by taking into consideration the parties’ vote share in the past elections. For example, Senator José Luis Lobato (Convergencia) asked: “Why don’t we allow equity to come into existence, equity understood as equality...?”<sup>24</sup> Likewise, Senator Jorge Legorreta (Partido Verde) argued: “Why don’t we, my fellow lawmakers, establish laws of equity for all? Why don’t we play in a leveled-playing field? Why don’t we adopt, within the official air

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<sup>22</sup> “¿Qué cree usted que es la equidad?” “Igualdad,” 51 percent; “no sabe,” 35 percent; “justicia,” 7 percent; “moderación en el uso de la ley,” 2 percent; “other,” 5 percent. Parametría, “Equidad en las elecciones,” October, 2012.

<sup>23</sup> The 2010, *Encuesta Nacional de Valores* (ENVUD) posed the question: “In your opinion what is the most important value for Mexicans?” Of those polled 27 percent chose Equality, followed by 25 percent Justice, 24 percent Solidarity, and 22 percent Liberty. *Encuesta Nacional de Valores 2010*, Mexico: Banamex/Fundación Este País, 2010.

<sup>24</sup> “Porqué no permitir que haya una equidad, entendida la equidad como igualdad y a lo mejor rezan los ‘gramatólogos’ de que la equidad cuando se llega a la igualdad pierde todas las substancias. Pero cómo es posible que en tiempos no electorales, ah, todos vamos a tener el mismo tiempo en radio y en televisión, y en procesos electorales vamos a disminuirlo en función a los resultados anteriores.” *Reforma constitucional*, p. 114. Likewise, Senator Agundis (Partido Verde) argued: “La realidad es que todos estamos metidos en esto juntos, en esta realidad de un México trabajador pero con hambre, este México con fuerza pero con desconfianza, este México con ganas pero sin oportunidades, oportunidades que nunca llegarán si no empezamos a buscar la *equidad* entre nosotros. Todos buscamos aumentar la competitividad en nuestro país, buscamos una mejor distribución de la riqueza, buscamos reducir la brecha entre pobres y ricos, pero cómo lo vamos a lograr si lo que en realidad hacemos es aumentar la brecha de desigualdad entre los partidos políticos; partidos políticos a los cuales todos aquí pertenecemos. Cómo vamos a poder acercar más a la sociedad si nosotros buscamos alejarnos dando mayores beneficios a unos sobre los otros.” *Ibid.*, p. 101. My emphasis.

times in the media, the possibility of having equality and equity in terms of allocating spots to all political parties?”<sup>25</sup>

There is yet another meaning of *equidad*. In recent times the word has been used in some countries to depict an idea of justice that entails unequal treatment to unequal persons. In this sense it is not an egalitarian notion. It is used to support affirmative action policies.<sup>26</sup> Yet, it is quite telling that in Mexico the word “*equidad*” is used mostly in political contexts, where its meaning is more closely associated with the idea of equality.

### EQUITY AND REPRESENTATIVE GOVERNMENT

Although today we consider elections as the hallmark of democracy, for a long time lot was considered a typical feature of democracy. As Bernard Manin contends, “What is more, lot is described as *the* democratic selection method, while election is seen as more oligarchic or aristocratic.”<sup>27</sup> Herodotus and Xenophon believed that. According to Aristotle: “What I mean, is that it is regarded as democratic that magistracies should be assigned by lot, as oligarchic that they should be elective, as democratic that they should not depend on property qualifications, and as oligarchic that they should.”<sup>28</sup> While for Aristotle elections were not incompatible with democracy he believed that taken in isolation they were an oligarchic or aristocratic method, whereas lot was intrinsically

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<sup>25</sup> “Por qué no, compañeros legisladores, establecer reglas de equidad para todos. Por qué no jugar parejo. Por qué no establecer dentro de los tiempos oficiales del Estado, la posibilidad de tener igualdad y equidad dentro de los spots de todos los partidos en los medios de comunicación.” *Ibid.*, p. 132. Likewise, the party Convergencia argued in similar terms: “Nos pronunciamos en contra del inciso e) del Apartado A del artículo 41, porque dividir el 70 por ciento de los tiempos de radio y televisión de acuerdo a los resultados de la elección para diputados federales inmediata anterior, lejos de garantizar la *equidad* y paliar la desproporción mediática entre partidos políticos aumentaría la diferencia de privilegios a favor de los tres partidos mayoritarios.” *Ibid.*, p. 56. My emphasis.

<sup>26</sup> In some countries equity is exactly the opposite of “justice as impartiality” or equal treatment. The concept refers to the idea that it is unjust to treat equally those who are unequal. Others have favored *equidad* as a means to displace more traditional egalitarian demands for redistribution of resources.

<sup>27</sup> Bernard Manin, *The Principles of Representative Government* (Cambridge: Cambridge University Press, 1997), p. 27.

<sup>28</sup> Aristotle, *Politics* (Cambridge: Harvard University Press, 1932), IV, 9, 1294b 7–9.

democratic. Montesquieu and Rousseau held similar beliefs regarding the aristocratic nature of elections.<sup>29</sup>

Equity demands a level playing field not only in regard to money but also in many other respects. The desire to achieve equity fuels unrealistic expectations because it blatantly denies one of the critical aspects of representative government and modern liberal democracy: that the very method of choosing representatives through elections, rather than by lot, is based on the belief that all people are not equally qualified to rule. As Manin argues, the inegalitarian and aristocratic effects of election are due to four factors: 1) the unequal treatment of candidates by voters, 2) the distinction of candidates required by a situation of choice, 3) the cognitive advantage conferred by salience, and 4) the cost of disseminating information.<sup>30</sup>

Running for office among equal citizens is not subject to any restriction, “but the distribution procedure entails that candidates *may* be treated in an inegalitarian fashion. Of the candidates for public function, those who attain their goal are those individuals, identified by name, who are preferred over the rest. Positions are allocated not according to abstractly defined attributes or actions, in the light of which all are equal, but according to preferences held by the sovereign people for this or that particular individual.”<sup>31</sup> Indeed, “the elective procedure is not necessarily meritocratic and does not strictly guarantee what is today conceptualized as equality of opportunity.”<sup>32</sup> When electing, voters are not required to use impartial standards to discriminate among candidates. If the election is free, nothing can prevent voters from discriminating among candidates on the basis of individual characteristics. Thus, *free* elections cannot preclude

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<sup>29</sup> In the *Social Contract* Rousseau linked lottery with democracy and election with aristocracy: “Selection by lot is of the nature of democracy.” *Social Contract* (Cambridge: Cambridge University Press, 1997), Book IV, ch. 3. Montesquieu argued similarly in *Spirit of the Laws* (Cambridge: Cambridge University Press, 1989), Book II, ch. 2.

<sup>30</sup> Manin, *Principles of Representative Government*, p. 135.

<sup>31</sup> Manin elaborates: “We generally think that equality before the law is assured if a rule attaches obtaining a benefit (or suffering a penalty) to the possession of qualities or the performance of actions defined in abstract and anonymous way. But election considered as a way of distributing offices does not allocate public functions to anyone, whoever he or she happens to be, who presents feature X or performs action Y. When electing, voters are not required to use impartial standards to discriminate among candidates. They may decide to vote for whomever meets some general and abstract criteria (e.g., political orientation, competence, honesty), but they *may* also decide to elect someone just because they like this individual better than another.” *Ibid.*, p. 136.

<sup>32</sup> *Ibid.*, p. 137.

partiality in the treatment of candidates. Elections do not ensure that all those who desire to hold office have an equal chance, neither do they guarantee equality of opportunity among those aspiring to public functions. There are inherent reasons for this.

In a situation of choice, voters need at least one motive for preferring one candidate over another. If candidates are undistinguishable, voters will be indifferent, and thus unable to choose in the sense of preferring one to another. “To be chosen, therefore, a candidate must display at least one characteristic that is positively valued by his fellow-citizens and that the other candidates do not possess, or not to the same extent.” This distinction requirement is entirely structural: “It derives from the situation of choice in which voters are placed, and not from their psychology and attitudes. This situation constrains voters to elect candidates possessing uncommon (and positively valued) characteristics.”<sup>33</sup> If to be elected a candidate needs to attract the attention of the electorate, then election in itself favors individuals who are salient.

In a similar fashion, elections are about choosing known individuals. Thus, to be elected, a candidate needs to attract the attention of the electorate. However, cognitive psychology shows that attention “primarily focuses on *salient* items or individuals.”<sup>34</sup> To attract attention and elicit strong evaluative judgments, candidates have to stand out by virtue of positively valued characteristics. Thus, a non-salient candidate will pass unnoticed and have little chance of being elected. “Cognitive constraints produce an effect similar to that produced by the constraints of the situation of choice. In itself, election favors individuals who are salient (and therefore distinct and different) by virtue of an aspect that people judge favorably—in other words, individuals deemed superior to others.” Salience is a contextual property, considered universally, “any trait may make a person salient. Salience depends on the environment in which a person lives and from which his or her image needs to stand out.”<sup>35</sup> Salience acts as a constraint on both voters and candidates. It is worth noticing, Manin asserts, that election campaigns were instituted among other reasons to counteract the advantage that the elective procedure, considered in itself, confers on the particular form of eminence represented by

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<sup>33</sup> Ibid., p. 138.

<sup>34</sup> Ibid.

<sup>35</sup> Ibid., pp. 142–43.



notability.<sup>36</sup> But as he acknowledges, campaigns can never abolish this advantage entirely. Indeed, individuals who are salient in the course of their daily social relations are involved in a sort of “permanent election campaign, whereas the spotlight is not directed on the distinctive traits of the other candidates until the actual campaign opens.”

Finally, there is the cost of disseminating information. While disseminating information about candidates relaxes to some extent the constraints of prior eminence it is certainly expensive. This means that the dissemination of information tend to favor those able to mobilize greater economic resources. Unknown candidates need to make themselves known in order to compete. The cost of this undertaking is significant. As Manin states, “if candidates have to finance their election campaigns out of their own pockets, the advantage of the affluent classes of society assumes its most obvious and most immediate form: it is reflected in the social composition of the elected assembly.”<sup>37</sup> If a candidate appeals to the rich in order to finance her campaigns it is reasonable to expect that once elected, she will pay particular attention to the interest of those who contributed financially to her election. The conclusion of this reasoning is that the elective procedure favors the rich. But unlike the first three inegalitarian features of election (possible unequal treatment of candidates, the dynamics of choice, and cognitive constraints), this one could be eliminated entirely by having campaigns publicly financed and electoral expenses strictly regulated.<sup>38</sup>

Voters must be free to determine which qualities they value positively and choose “from among those qualities the one they regard as the proper criterion for political selection.”<sup>39</sup> It is true, as Manin argues, that freedom of choice regarding the content of the superiority is only imperfectly realized in contemporary representative governments.<sup>40</sup> However, the argument defended here does not amount to a justification of the status quo; rather it points to the direction of the reforms that would be required to

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<sup>36</sup> Ibid., p. 143.

<sup>37</sup> Ibid., p. 144.

<sup>38</sup> Ibid., p. 145.

<sup>39</sup> Ibid., p. 158. Indeed: “It is not against the principles of modern natural right that representatives belong mainly to certain categories of the population, so long as (and this is the essential condition) those categories are not objectively predetermined, but are freely chosen by the electorate.” Ibid., pp. 158–59.

<sup>40</sup> Ibid., p. 159.

bring election “into line with the normative principles that presided over its establishment.”

These reforms do not include the adoption of *equidad* but instead a less, albeit not small goal: the elimination of the effect of wealth on elections and *freedom of choice*. Indeed, as Manin asserts, “while the constraints of distinction and salience do not contravene the norms of modern political right, there is no doubt the constraint of wealth does. The reason is not, however, that there is something about wealth that makes it particularly unworthy to serve as a criterion for selecting rulers. It is, rather that, if the advantages enjoyed by wealthy candidates (or the wealthy classes which candidates are inclined to address principally in their appeals for funds) derives from the cost of disseminating information, then superiority in wealth confers power *by itself*, and not because voters chose it as the proper criterion of selection.”<sup>41</sup>

Yet, it must be noted that publicly financed campaigns, a ceiling on electoral expenses and a strict enforcement of that ceiling are not enough. Experience has shown that such arrangements present everywhere a number of technical problems, and “no representative government appears, not even in our own day, to have solved this problem in a satisfactory manner.”<sup>42</sup>

Even if the effect of wealth could be neutralized completely, elections would still be inegalitarian in character since the remaining three factors remain in play. These elements are *intrinsic* to the elective method and have structural inegalitarian consequences.<sup>43</sup> This is the reason why the expectation of achieving completely “equitable” electoral processes is not realistic. Indeed, equity, understood as equality of opportunity, does not form part of the history of representative government and modern

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<sup>41</sup> *Ibid.*, p. 159. However, note that “one can imagine a situation in which voters particularly value wealth and freely decide to adopt it as their selection criterion. They may believe that the rich are more likely to be good rulers than the poor, because, for example, there is a correlation between wealth and education. In that case, wealth being freely chosen as the appropriate superiority, the principles of modern natural right are not violated.”

<sup>42</sup> *Ibid.*

<sup>43</sup> Note, however, that according to Manin the elective method “does not guarantee that true *political* excellence gets selected.” Elections operate on the basis of a culturally relative perception of what constitutes a good ruler. Thus, “If citizens believe that oratorical skills, for example, offer a good criterion of political excellence, they will make their political choice on that basis. Clearly there is no guarantee that a gift for public speaking is a good proxy for capability to govern.” *Ibid.*, p. 146.

liberal democracy. As Manin asserts, “in an elective government the only possible question concerns the type of superiority that is to govern. But when asked ‘Who are the *aristoi* that should govern?’ the democrat turns to the people and lets them decide.”<sup>44</sup>

### GREAT EXPECTATIONS

What accounts for the appearance of *equidad* in Mexico and other countries is the idealization of democracy as a realm of absolute equality that goes beyond any existing model and that ignores the incentives in play in representative government. However, it is important to note that equality of opportunity, thus understood, is concerned with political parties and candidates, *not* ordinary citizens. In the case of Mexico the idealization is explained, in turn, by a long period of authoritarian rule during which democracy was an ideal to be pursued but little known in practice (and we can add, in theory). One party (PRI) ruled the country for more than seventy years. While periodical elections took place according to the Constitution, often those electoral processes were fraudulent. Also, the state used public funds to favor official candidates. The PRI enjoyed the open and covert support of the state to run its campaigns. The media colluded with the regime. This does not mean that electoral fraud alone accounted for the survival of that autocracy. Electoral fraud was only one of the instruments that the authoritarian regime had at its disposal. As Magaloni asserts: “The PRI was a collusive agreement that allowed ruling-party politicians to divide the rents of power among themselves while preventing any single individual from grabbing it all. To make this pact to share power effective, consecutive election took place with clockwork precision and presidents stepped down from office every six years.”<sup>45</sup> Unbalance and inequality between the hegemonic party and the opposition were prominent features of the *Ancien Régime* in Mexico.

The quest for *equidad* in Mexico can therefore be traced back to the unequal conditions for competition that prevailed during the PRI era. The initial steps towards establishing free and fair elections involved balancing off the unfair advantages that the

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<sup>44</sup> Ibid., p. 160.

<sup>45</sup> Beatriz Magaloni, *Voting for Autocracy: Hegemonic Party Survival and Its Demise in Mexico* (New York: Cambridge University Press, 2006), p. 8.

candidates of the PRI had enjoyed in the past. The concern was to prevent the government from tipping the scale in any way. Not only financially but also *symbolically*. Yet, changing political conditions and the advent of democracy have not altered assumptions that are no longer valid in Mexico today. Nothing in the last twelve years signals that politicians, observers, and journalists are willing to revise their beliefs. Not only is it forbidden for public officials to use taxpayers' money for partisan aims (and "alter the *equitable* conditions of the competition among the political parties"), but there is also a symbolic dimension to what these persons can and cannot say.<sup>46</sup> For example, most Mexicans consider it illegitimate for the president to publicly endorse the candidates of his own party.<sup>47</sup> Likewise, since in the past the media always supported the official candidates, any perceived bias in the news coverage is considered as proof of a lack of *equidad* among contenders.<sup>48</sup> The attempts to shield citizens from external influences can sometimes appear as unrealistic and comical. For instance, all government publicity in print or on radio and TV must carry a disclaimer, similar to the one usually carried by advertisements of alcohol and tobacco products: "This program is public, not related to any political party. It is forbidden to use it [*sic*] for goals other than social

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<sup>46</sup> Art. 134 "Los servidores públicos de la Federación, los Estados y los municipios, así como en el Distrito Federal y sus delegaciones, tienen en todo tiempo la obligación de aplicar con imparcialidad los recursos públicos que están bajo su responsabilidad, sin influir en la equidad de la competencia entre los partidos políticos." *Constitución Política de los Estados Unidos Mexicanos, Diario Oficial de la Federación*, August 9, 2012.

<sup>47</sup> In July 2012 an exit poll found that 34 percent of voters did not believe that the president had been impartial in the elections. Many thought that he had favored his own party. Parametría, Exit Poll, July, 2012. Likewise, election opposition candidates complained when President Calderón asserted in a private meeting with bankers that the PAN candidate, Josefina Vázquez Mota, was catching up in the polls with the lead candidate, Enrique Peña Nieto. Rosa Elvira Vargas and Georgina Saldierna, "Peña Nieto exige al michoacano actuar como jefe de estado, no de campaña," *La Jornada*, February 24, 2012.

<sup>48</sup> The liaisons between the TV duopoly (Televisa and TV Azteca) and political actors are highly contentious. While the government no longer commands the complicity of the broadcasters, they have diversified their portfolio and established alliances with various politicians from various parties. Some of these pacts are out in the open, while others take place behind closed doors. Often the financial and political terms of such agreements are unknown to the public. Such was allegedly the case with the governor of the State of Mexico, Enrique Peña Nieto. The virtually unknown governor became a household name due to the extensive coverage that Televisa made of his government years before the 2012 election. Such exposure could not be explained in terms of normal news coverage. Indeed, an exit poll found that 37 percent of voters considered that the TV had not been impartial in the election. Parametría, Exit Poll, July 2012.

development.”<sup>49</sup> This policy treats voters as minors, since it assumes that they are unable to discriminate among messages in the media.

In recent years the quest for *equidad* has come to the fore in Mexico in different forms. For instance, in the last two presidential elections (2006, 2012) a presumed lack of equity among the contending candidates was a major argument used by the loser to question the legitimacy of the electoral results. A significant proportion of the population agrees. Moreover, as a consequence of the highly disputed presidential election of 2006 the electoral system in Mexico underwent significant reforms in 2007. In the elections of that year Andrés Manuel López Obrador, who had lost by a very short margin, refused to accept defeat and challenged the results.<sup>50</sup>

After the elections the three major political parties (PRI, PAN, and the Party of the Democratic Revolution, PRD) agreed to amend the Constitution and reform the electoral code. To address the concerns of the defeated coalition, they agreed to build a new legal framework for elections. On November 2007 the constitution was amended and a new version of the electoral code (*Código Federal de Instituciones y Procesos Electorales*, COFIPE) was published in January 2008. The Constitution mandated “equitable” competition among political parties.<sup>51</sup>

Reformers added a ban on negative campaigning. While the prohibition had previously existed in the electoral code, now it was written directly in the Constitution. Political parties were to “abstain from using in their propaganda expressions that

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<sup>49</sup> “Este programa es público, ajeno a cualquier partido político. Queda prohibido el uso para fines distintos al desarrollo social.”

<sup>50</sup> The losing leftist alliance, Coalición por el Bien de Todos, accused the electoral authorities (IFE) of committing a fraud. The campaign had been plagued by accusations of foul play. While negative advertisements were widely used, politicians resented their prevalence, the intervention of President Fox on behalf of PAN candidates, and the TV ads of corporate interests that took a stand against the candidate of the Left. A significant amount of frustration followed TEPJF’s ruling that found the elections to be legitimate though not completely fair. On the 2006 presidential election see Andreas Schedler, “Inconsistencias contaminantes. Gobernación electoral y conflicto poselectoral en las elecciones presidenciales de 2006,” CIDE, Documento de Trabajo 212, Mexico, 2009.

<sup>51</sup> “La ley garantizará que los partidos políticos nacionales cuenten de manera *equitativa* con elementos para llevar a cabo sus actividades y señalará las reglas a las que se sujetará el financiamiento de los propios partidos y sus campañas electorales, debiendo garantizar que los recursos públicos prevalezcan sobre los de origen privado.” *Constitución Política*, Artículo 41–II. My emphasis.

denigrated institutions or the political parties themselves, or that slandered any person.”<sup>52</sup> This applied not only to TV and radio broadcasts but also to printed propaganda. Surprisingly for democratic theory, political parties and candidates were to abstain from criticizing institutions or other parties in terms that would “stain or sully” their reputation. The determination of what constituted “denigration” or “slander” was left to the electoral authorities (IFE) and the judiciary (the Electoral Tribunal, Tribunal Electoral del Poder Judicial de la Federación, TEPJF).

Also, in order to increase *equidad* among the contenders the Constitution mandated that all government propaganda would cease during electoral campaigns.<sup>53</sup> Not only that, political parties were banned from contracting TV and radio ads directly from broadcasters. The acquisition of mass media political advertising was reserved to IFE. While this was a sensible and welcomed restriction, lawmakers went further and banned any person or group from contracting TV or radio ads intended to “influence the electoral preferences of citizens.” Persons or groups were prohibited from making their case for or against any candidate in the mass media.<sup>54</sup> Broadcasters were liable if they aired any political propaganda, by groups or individuals, not provided by IFE, even if the broadcasts were free of charge.<sup>55</sup> In a similar manner, no polls were to be made public

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<sup>52</sup> “En la propaganda política o electoral que difundan los partidos deberán abstenerse de expresiones que *denigren a las instituciones y a los propios partidos, o que calumnien a las personas.*” *Constitución Política*, Article 41–II, apartado C. My emphasis.

<sup>53</sup> “Durante el tiempo que comprendan las campañas electorales federales y locales y hasta la conclusión de la respectiva jornada comicial, deberá suspenderse la difusión en los medios de comunicación social de toda propaganda gubernamental, tanto de los poderes federales y estatales, como de los municipios, órganos de gobierno del Distrito Federal, sus delegaciones y cualquier otro ente público. Las únicas excepciones a lo anterior serán las campañas de información de las autoridades electorales, las relativas a servicios educativos y de salud, o las necesarias para la protección civil en casos de emergencia.” *Constitución Política*, Article 41–II, apartado C.

<sup>54</sup> “Los partidos políticos en ningún momento podrán contratar o adquirir, por sí o por terceras personas, tiempos en cualquier modalidad de radio y televisión. Ninguna otra persona física o moral, sea a título propio o por cuenta de terceros, podrá contratar propaganda en radio y televisión dirigida a influir en las preferencias electorales de los ciudadanos, ni a favor o en contra de partidos políticos o de candidatos a cargos de elección popular.” *Constitución Política*, Article 41–II, apartado A, inciso g.

<sup>55</sup> Article 350 of COFIPE states: “1. Constituyen infracciones al presente Código de los concesionarios o permisionarios de radio y televisión... b) La difusión de propaganda política o electoral, pagada o *gratuita*, ordenada por personas distintas al Instituto Federal Electoral.” My emphasis.

three days before the election day.<sup>56</sup> Polls were not to “intrude” in the citizens’ decision-making process in the last track of the campaigns. As a result of the gap between most pre-electoral polls and the actual results of the 2012 elections, some actors have proposed further regulation of electoral polls.<sup>57</sup> The loser, López Obrador, claimed that pollsters had colluded with the PRI to rig their surveys. Yet, more regulation of polling runs counter to recent world trends. Most democracies tend to liberalize their regulations.<sup>58</sup> The restriction on the free flow of information is particularly relevant since there is some evidence that voters increasingly tend to decide their vote very late in the campaigns.

A group of intellectuals challenged the constitutional reform in the courts but to no avail. They filed a writ of *amparo* against the reform, claiming that the amendment curtailed their rights to free expression. This legal action came to be known as the “*amparo de los intelectuales*.”<sup>59</sup> Supporters of the constitutional reform also filed briefs with the Supreme Court. For instance, the Asociación Mexicana de Derecho a la Información (Mexican Association for the Right to Information, AMEDI) argued that the right of freedom of expression should be balanced by other cherished goals, such as *equidad* in electoral contests, a goal that was obtained “with much effort in our country.”<sup>60</sup> In 2011 the Supreme Court finally ruled against the plaintiffs. The constitutionality of constitutional reforms was not subject to review.

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<sup>56</sup> Article 237 of COFIPE states: “Durante los tres días previos a la elección y hasta la hora del cierre oficial de las casillas que se encuentren en las zonas de husos horarios más occidentales del territorio nacional, queda prohibido publicar o difundir por cualquier medio, los resultados de encuestas o sondeos de opinión que tengan por objeto dar a conocer las preferencias electorales de los ciudadanos, quedando sujetos quienes lo hicieren, a las penas aplicables a aquellos que incurran en alguno de los tipos previstos y sancionados en el artículo 403 del *Código Penal Federal*.” *Código Federal de Instituciones y Procesos Electorales*, 2008, *Diario Oficial de la Federación*, January 14, 2008.

<sup>57</sup> Blanca Estela Botello, “El PAN propone regular encuestas electorales,” *La Crónica de Hoy*, September 12, 2012.

<sup>58</sup> Foundation for Information, *Who’s Afraid of Election Polls?* (Amsterdam: ESOMAR, 2001); Foundation for Information, *The Freedom to Publish Opinion Poll Results: A Worldwide Update* (Amsterdam: WAPOR, 2003).

<sup>59</sup> Among the plaintiffs were: Héctor Aguilar Camín, Jorge Castañeda, Federico Reyes Heróles, Leo Zuckemann et al. Etcétera, “Improcedente amparo de intelectuales contra la reforma electoral de 2007: SCJN,” March 28, 2011.

<sup>60</sup> José Antonio Aguilar Rivera, *Igualdad democrática y medidas afirmativas. ¿Equidad y cuotas?* (Mexico: Tribunal Electoral del Poder Judicial de la Federación, 2011), p. 26.

The restriction of the right to free expression in democracies is troublesome in many ways. As Manin claims, “Since the end of the eighteenth century, representation has been accompanied by the freedom of the governed at all times to form and express political opinions outside the control of the government.”<sup>61</sup> The collective character of an expression affects its political weight: authorities can, without great risk, ignore the dispersed expression of individual opinions, but they cannot as easily disregard collective opinions. Yet, in Mexico, these expressions are seen as contrary to the achievement of *equidad*. The risk is that the voice of the people will not reach those who govern. Public expression of opinions has the effect not only of bringing popular opinions to the attention of those who govern but also of connecting the governed among themselves.

The pursuit of a distorted ideal of democracy has had many negative outcomes. One of them has been over-regulation. The excess of electoral regulation has often had perverse effects, as it has weakened not strengthened the electoral regime in Mexico. Thus, as a result of the 2007 electoral reform the autonomy of IFE was undermined by the appointment of a comptroller accountable solely to Congress. Also, several of IFE’s electoral citizen commissioners (among them the president) were fired before their legal term was up. Other negative effect of the reform was, as we have seen, the monopolization of political propaganda by political parties.<sup>62</sup> Thus parties were strengthened but ordinary citizens, entrepreneurs, NGOs, and other social actors were weakened. The quest for equity has blinded Mexicans to feasible reforms, such as the diversification of the media market to allow more, not fewer, opinions to be heard.

Since 2006 electoral processes and their outcomes are responsible for a significant part of the dissatisfaction of Mexicans with their democracy. A recent poll taken after the Electoral Tribunal (TEPJF) ruled on the validity of the 2012 election found that while a majority of those polled (55 percent) agreed with the court’s decision, almost 60 percent believed that the elections had not been clean, and 53 percent thought that they had not been equitable (*equitativas*) either. Half of them agreed that protests against the

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<sup>61</sup> Manin, *Principles*, p. 169.

<sup>62</sup> On the drawbacks of the 2007 electoral reform see Gilles Serra, “La reforma electoral en México: ¿un retroceso democrático?,” in Yanina Welp and Laurence Whitehead, comps., *Caleidoscopio de la innovación democrática en América Latina* (Mexico: FLACSO/Oxford: Centre for Research on Direct Democracy, 2011), pp. 75–97.



Tribunal's ruling would be justified. Overall, only 11 percent of those polled believed that democracy in Mexico was strong and consolidated. In contrast, 31 percent thought that there was "no democracy" in Mexico or considered that it suffered from "serious defects" (25 percent).<sup>63</sup>

Yet, while there were allegations of illegal funding of campaigns and vote buying, mostly against the PRI, it is likely that the elections of 2012 were not more dirty or corrupted than other non-contested elections in the recent past.<sup>64</sup> For example, in the widely celebrated election of 2000 that ended the decade-long era of PRI dominance, both the winning PAN and the PRI channeled illegal funds to their campaigns. The scandals, known as the *Pemexgate* and the *Amigos de Fox*, led to hefty fines imposed by IFE on both parties. Yet, the legitimacy of the election was not called into question. In spite of the widespread discontent of citizens with the elections, 63 percent of voters went to the polls, more than in the previous election and as many as in the 2000 historic contest.

### THE BAN ON NEGATIVE CAMPAIGNS

The prohibitionist strategy of having the state coercively ban negative campaigns overlooks the fact that the core democratic values of freedom and equality require the state to allow citizens to develop and affirm their own political views. To ban expressions is to deny information valuable for voters to attain this end. Underlying the ban is a paternalistic attitude towards citizens. According to lawmakers, voters are easily manipulable by negative campaigns, therefore they should be protected by the state. But there is something more. In Mexico, as in some other countries, political actors, citizens, and commentators alike believe that public debate must be sanitized from negative remarks between contenders for democracy's sake. This is a distorted view of politics. The political arena has always been a contentious realm. The sanitized image idealizes the political as a consensual space deprived of adversarial attitudes. This, in turn, shapes the expectations of political actors regarding their interactions. It can also be viewed, less

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<sup>63</sup> Alejandro Moreno and Rodrigo León, "Avalan decisión del Tribunal, pero..." *Reforma*, September 9, 2012.

<sup>64</sup> For an informed account of the 2012 elections see José Woldenberg, "Mi lectura de las elecciones," *Letras Libres*, 165 (September 2012). [http://www.letraslibres.com/revista x convivio/mi-lectura-de-las-elecciones](http://www.letraslibres.com/revista-x-convivio/mi-lectura-de-las-elecciones).

naively, as a collusion pact of protection among elite competitors. Parties collude to avoid the risk of being exposed to the citizenry.

As John Geer argues, “campaigns are not feel-good exercises; they are pitched battles for control of the government. The stakes are often high and the competition is usually fierce. The real issue should be whether or not candidates present the information that will be useful to voters during campaigns. The tone of that information should be a secondary issue, at best.”<sup>65</sup> Strong, often harsh, language is the bread and butter of politics. As John Stuart Mill argued, “truth...has to be made by the rough process of a struggle between combatants fighting under hostile banners.”<sup>66</sup>

Mexico is not the only country in which some people believe that attack advertising in campaigns is an undesirable political practice.<sup>67</sup> As Plasser and Plasser argue, there is a lower tolerance of negative campaigning in many parts of the world.<sup>68</sup> Yet, not many countries have moved to coercively ban it. Unlike hate speech, which many liberal democracies in the world prohibit, negative campaigning is allowed by the majority of countries.<sup>69</sup> While political advertisement on radio and TV tends to be regulated in some form or another in almost every democracy, only Romania, Israel, India, France, Nepal, South Africa, Finland, Italy, Japan, South Korea, and now Mexico ban negative advertisement.<sup>70</sup>

South Africa apparently shares many of the concerns of Mexicans regarding equity in elections. Therefore the Independent Media Commission Act of 1993 provided that the Commission “may impose such conditions upon a public broadcasting licensee

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<sup>65</sup> John Geer, *In Defense of Negativity: Attack Ads in Presidential Campaigns* (Chicago: University of Chicago Press, 2006), p. 3.

<sup>66</sup> John Stuart Mill, *On Liberty* (New York: J.M. Dent & Sons, 1972), p. 107.

<sup>67</sup> Geer, *In Defense of Negativity*, p. 1.

<sup>68</sup> Fritz Plasser and Gunda Plasser, *Global Political Campaigning. A Worldwide Analysis of Campaign Professionals and Their Practices* (Westport, CT: Praeger, 2002),

<sup>69</sup> For example, Canada, Australia, and the Netherlands ban hate speech. According to Corey Brettshneider, “most liberal democracies outside the United States prohibit not only the fascist ideology, but the expression of hateful or discriminatory viewpoints more generally. These prohibitionist laws go beyond banning threats against specific individuals, and outlaw speech that displays hatred or animus toward ethnic, racial or religious groups.” Corey Brettshneider, *When the State Speaks, What Should it Say?* (Princeton: Princeton University Press, 2012), p. 2.

<sup>70</sup> A complete list of all countries that prohibit negative campaigns is not readily available, but this is a good approximation. See Plasser and Plasser, *Global Political Campaigning*, and Lynda Kaid and Christina Holtz-Bacha, eds., *The SAGE Handbook of Political Advertising* (Thousand Oaks, CA: SAGE, 2006).

with respect to party election broadcasts as it deems fit, having due regard to the fundamental principle that all political parties are to be treated equitably.”<sup>71</sup>

South Korea moved to ban all online endorsements by Internet users. Thus, Article 93 of the South Korean Public Official Election Act prohibits “individual voters from distributing or displaying ‘an advertisement, letter of greeting, poster, photograph, document, drawing, printed matter, audio tape, video tape, or the like’ during the 180 days prior to election day if it contains an endorsement of or opposition to a candidate or a political party. The National Elections Commission has interpreted this article as also applying to blog posts, user comments on news websites, and user-generated content over advanced web applications.”<sup>72</sup>

The reasons for the ban in at least some of these countries are obvious. Negative advertisement is seen as dangerous in countries torn apart by religious or ethnic differences or where longstanding conflicts have pitted one group against another. This is the case of Israel, India, Nepal, and South Africa.<sup>73</sup> South Korea has an unresolved decades-long conflict with North Korea. In some cases these prudential reasons may be sound. Yet, unlike emerging democracies, just a handful of consolidated democracies ban

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<sup>71</sup> See South Africa Independent Media Commission Act (1993).

[http://www.saflii.org/za/legis/num\\_act/imca1993266.txt](http://www.saflii.org/za/legis/num_act/imca1993266.txt).

<sup>72</sup> Freedom House, “*South Korea*,” *Freedom on the Net 2011*.

[http://www.freedomhouse.org/sites/default/files/inline\\_images/South%20Korea\\_FOTN2011.pdf](http://www.freedomhouse.org/sites/default/files/inline_images/South%20Korea_FOTN2011.pdf).

<sup>73</sup> In Israel all political broadcasts must be reviewed and approved by the Central Election Committee prior to broadcasting and there are formal limitations on content. On Israel see Christina Holtz-Bacha and Lynda Lee Kaid, “Political Advertising in International Comparison,” in Kaid and Holtz-Bacha, SAGE Handbook, p. 12. In India the Election Commission must determine whether political advertisements are aired or not. A court ruling of 2004 upheld the Cable Television Network Act of 1995 which provided in Section 19 that “an authorized officer, if he thinks necessary or expedient so to do in the public interest, may, by order, prohibit any cable operator from transmitting or re-transmitting any advertisement which is not in conformity with the prescribed programme code and advertisement code and is likely to promote enmity on grounds of religion, race, language, caste or community or any other grounds whatsoever, disharmony or feelings of enmity, hatred or ill-will between different religion, racial, linguistic or regional groups or castes or communities or which is likely to disturb public tranquility.” The Government’s Cable Television Network rules of 1994 advertisements should not “offend morality, decency and religious susceptibilities of the subscribers.” Also, no advertisement “shall be permitted which derides any race, caste, colour, creed and nationality.”

[www.tobaccocontrolaws.org/files/live/India/India%20-%20CTNA.pdf](http://www.tobaccocontrolaws.org/files/live/India/India%20-%20CTNA.pdf). On Romania, see Plasser and Plasser, *Global Political Campaigning*, p. 150.

negative campaigns: Japan, France, Finland, and Italy.<sup>74</sup> France, with its prohibition against the “derision of candidates” seems to be the model of the Mexican legislation that also bans *denigración* of parties and institutions.<sup>75</sup>

However, negative campaigning thrives in many well-developed democracies, such as Denmark.<sup>76</sup> Answering the question of under what conditions candidates go negative in different countries around the world falls outside the scope of this paper.<sup>77</sup> Yet it is clear that the conditions that warrant a prohibition of negative advertising in other emerging democracies seem to be absent in Mexico, which is the only Latin American country that bans negative advertising. Indeed, as Plasser and Plasser state, “the legal framework of campaigning practices in Latin America can mostly be classified as moderately regulated.”<sup>78</sup>

According to Mexicans, campaigns should ideally be carried out in a highly structured and heavily regulated fashion. The aim is to construct a sterile *agora* where virtuous citizens can interact. However, the consequences of the ban on negative campaigns is that voters are less interested in and informed about electoral competitions. As Geer argues, when political candidates attack each other, raising doubts about each other’s views and qualifications, voters—and the democratic process—benefit. This

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<sup>74</sup> “Italy and Japan in general do not allow negative advertisement. In Finland...negative assessments of electoral candidates are not allowed.” Holtz-Bacha and Kaid, “Political Advertising,” p. 12.

<sup>75</sup> In France campaign broadcasts are severely regulated. As Kaid and Gagnère assert: “broadcasts cannot be filmed in public buildings, cannot make use of national or European emblems, and cannot use the music of the French national anthem. Additional restrictions include a prohibition *against derision of other candidates or their representative.*” Lynda Lee Kaid and Nathalie Gagnère, “Elections Broadcasts in France,” in Kaid and Holtz-Bacha, *SAGE Handbook*, p. 85. My emphasis.

<sup>76</sup> For a comparison between American and Danish negative campaigning styles, see Christian Elmelund-Praestekaer, “Beyond American Negativity: Toward a General Understanding of the Determinants of Negative Campaigning,” *European Political Science Review*, Vol. 2, No.1 (2010): 137–56.

<sup>77</sup> For a recent attempt at answering this question see Scott Desposato, “Going Negative in Comparative Perspective: Standings and Strategy in SMD Elections with an Empirical Application to Latin America,” unpublished manuscript, University of California San Diego, September, 2012.

<sup>78</sup> Plasser and Plasser, *Global Political Campaigning*, p. 156.

positive effect on the voters' degree of information and interest can be indirectly measured through polls.<sup>79</sup>

In Mexico the desire to artificially preserve civility has trumped the availability of public information regarding candidates. This choice undermines democracy. The Electoral Tribunal (TEPJF) has ruled that “a critique, even if it is supported by the academic literature, science or history, is to be banned if its overt purpose is to discredit a political oponent.”<sup>80</sup> Compare this ruling with the decision of the US Supreme Court in *New York Times Co. v. Sullivan* (1964). There Justice Brennan wrote: “We consider this case against the background of a profound national commitment to the principle that debate on public issues should be inhibited, robust, and wide open, and that it may well include vehement, caustic, and sometimes unpleasently sharp attacks on government and public officials.”<sup>81</sup> The logic behind the ruling is that the value of free debate trumps any possible damage to the reputations of public officials. Not in Mexico.<sup>82</sup>

Negativity can be defined (Geer) as “any criticism leveled by one candidate against another during a campaign.”<sup>83</sup> However, in Mexico a peculiar term was coined to refer to negative compaigns: *guerra sucia* (“dirty war”).<sup>84</sup> The term refers to the repressive actions of authoritarian governments in the 1970s against dissenters and opponents. Clearly, comparing illegal executions and kidnappings with negative advertising constitutes a gross and misleading exaggeration.

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<sup>79</sup> For instance, negative messages are remembered for some time and are also critically evaluated by voters. In a poll Parametría found that negative ads against Andrés Manuel López Obrador during the 2006 campaign were remembered by most voters in 2012 (62 percent). However, only a third (33 percent) of them considered those ads to be truthful. Parametría, “Carta Paramétrica. Las campañas electorales.” <http://www.parametria.com.mx/DetalleEstudio.php?E=4414>.

<sup>80</sup> See the TEPJF's ruling: SUP-RAP-81/2009 y acumulado, Tribunal Electoral del Poder Judicial de la Federación, May 6, 2009.

<sup>81</sup> Cited in Geer, *In Defense*, p. 11.

<sup>82</sup> Yet recent rulings by the Supreme Court have been more favorable to freedom of expression. Particularly *La Jornada v. Letras Libres* (2011), where the Court argued that a newspaper should have no recourse to the “defense of honor.” That newspapers have “honor” in Mexico is something that baffles observers.

<sup>83</sup> Geer, *In Defense*, p. 23.

<sup>84</sup> For example: “El Instituto Federal Electoral (IFE) debería estar pendiente de que no *haya guerra sucia* y que las elecciones sean limpias, libres y equitativas, pero no actúa, dijo ayer el candidato de la Izquierda a la presidencia, Andrés Manuel López Obrador.” Georgina Saldierna, “Ante la *guerra sucia* los consejeros del IFE están como si nada: AMLO,” *La Jornada*, June 7, 2012.

Yet, well-established effects of prohibitions on negative campaigns have barely entered the public debate in Mexico. Indeed, as Przeworski suggests, such bans favor incumbents. Thus, it is little wonder that President Putin had them enacted in Russia: “perhaps the most blatant example of manipulation is the law introduced by President Putin to prohibit ‘negative campaigning’, by which he meant any criticism of the government.”<sup>85</sup> In competitive elections the ban tends to favor the leading candidate.

The ban on negative campaigns has turned IFE into a unwilling censor and thus overburdened it with claims of wrongdoing by all parties. Not only has the workload of the electoral authority increased, but by the very nature of the adjudication process it has tended to alienate political actors. The party that is censored complains that its rights have been curtailed by IFE. If, on the other hand, the Institute resolves not to censor an advertisement, then the party that initiates the complaint is alienated.

In spite of the constitutional ban, in the 2012 presidential election some negative campaigning took place. This was possible because IFE’s Complaints Commission adopted a stringent criterion to define slander and “denigration.”<sup>86</sup> The Commission employed the strict criteria of penal law. This was possible because a majority of members favored a more expansive role of freedom of expression in the elections.<sup>87</sup> This position provoked complaints from all political parties, demanding stronger censorship from IFE.<sup>88</sup> Needless to say, had the composition of this Commission been different, the degree of freedom of expression in the political campaigns of that year would not have

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<sup>85</sup> Przeworski, *Democracy and Its Limits*, p. 119.

<sup>86</sup> Personal communication, IFE *consejero* Benito Nacif Hernández, September 23, 2012.

<sup>87</sup> The members *ex officio* of the Complaints Commission of IFE in 2012 were the *consejeros* Benito Nacif, Alfredo Figueroa, and Sergio García Ramírez. Both Nacif and Figueroa often voted to allow the maximum degree of freedom of expression within the restrictive limits of the law. To argue their decisions, they relied on recent rulings by the Supreme Court that upheld freedom of speech, such as *La Jornada v. Letras Libres* (2011). IFE’s decisions, however, are not final and can be appealed to the Electoral Tribunal. The record of the TJPJF on matters regarding the protection of freedom of expression is mixed at best. In 2009 it ruled to censor even printed propaganda (*Sopa de Letras*). SUP-RAP 81/2009. See Oscar Pérez de la Fuente, “Libertad de expresión, campañas electorales y denigración política,” in Luis Efrén Ríos Vega, ed., *Tópicos electorales. Un diálogo judicial entre América y Europa* (Mexico: Centro de Estudios Políticos y Constitucionales/Tribunal Electoral del Poder Judicial de la Federación, 2011), pp. 51–95.

<sup>88</sup> Francisco Nieto and Ricardo Gómez, “Pide AMLO al IFE vigile spots para impedir ‘guerra sucia’,” *El Universal*, June 6, 2012.

been the same. Thus, the provision of useful information for voters in campaigns is uncertain at best.

Some critical observers of the 2007 electoral reform have argued that the ban on negative campaigns affected not only political parties but the media as well.<sup>89</sup> According to Article 350 of COFIPE, broadcasters can be liable if they alter in any form the advertisements by parties in order to distort their “original meaning or to denigrate the institutions, political parties or to slander the candidates.”<sup>90</sup> Since 2009 there have been many instances of censorship in electoral contests. As Serra asserts, these actions diminish the quality and diversity of political messages.<sup>91</sup> Citizens are worse off because they are deprived of valuable information to help decide their vote.

The demonization of negative campaigns would seem to indicate that electoral politics in Mexico is a particularly nasty business. Yet, according to a pilot study of the Varieties of Democracy Project, ratings of Mexico for the variable “Respectful Debate” since 1995 are not significantly different from those of countries like Sweden and Switzerland, and debates in Mexico seem to be more respectful than in Egypt.<sup>92</sup>

### CONCLUSION: PURE AND UNTARNISHED DEMOCRACY

In 1989 Robert Dahl argued that we needed to understand not only why democracy was desirable but also what its limits and possibilities were: “if we overestimate the limits we shall fail to try, and if underestimate them we shall probably try—and fail.”<sup>93</sup> I believe Mexico illustrates not only a case of democratic idealization but also one of normative misrepresentation. Indeed, idealization is a common phenomenon in authoritarian societies. As Dahl asserts: “Typical of democrats who live in countries governed by

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<sup>89</sup> Serra, “La reforma electoral,” pp. 83–87.

<sup>90</sup> Article 350 of the COFIPE states: “1. Constituyen infracciones al presente Código de los concesionarios o permisionarios de radio y televisión...d) La manipulación o superposición de la propaganda electoral o los programas de los partidos políticos con el fin de alterar o distorsionar su sentido original o denigrar a las instituciones, a los propios partidos, o para calumniar a los candidatos.”

<sup>91</sup> Serra, “La reforma electoral,” pp. 83–87.

<sup>92</sup> Graph created with the Single Variable Line Graph Generator, Varieties of Democracy Project, 1900–2010. The countries graphed were Mexico, Sweden, Switzerland, and Egypt. <https://v-dem.net/>

<sup>93</sup> Robert Dahl, *Democracy and Its Critics* (New Haven: Yale University Press, 1989), p. 2.

authoritarian regimes is a fervent hope that their country will one day reach the threshold of polyarchy. Typical of democrats who live in countries long governed by polyarchy is a belief that polyarchy is insufficiently democratic and should be made more so. Yet, while democrats describe many different visions of what the next stage of democratization should be, so far no country has transcended polyarchy to a ‘higher’ stage of democracy.”<sup>94</sup> The ideal of polyarchy is indeed desirable to those who have not experienced it first hand in their own societies: “While intellectuals in democratic countries where polyarchy has existed without interruption for several generations or more often grow jaded with its institutions and contemptuous of their shortcomings, it is not hard to understand why democrats deprived of these institutions find them highly desirable, warts and all.” Indeed, polyarchy “provides a wide array of human rights and liberties that no actually existing real world alternative to it can match. Integral to polyarchy itself is a generous zone of freedom and control that cannot be deeply or persistently invaded without destroying polyarchy itself.”<sup>95</sup>

Yet, I think that Dahl’s characterization misses one possibility: that democrats in newly established democracies distort or misrepresent polyarchy. The normative background of its institutions, such as elections, is not always explicit. This sort of distortion is precisely what has happened with the pursuit of *equidad* in Mexico’s democratic regime. What we see there is not only the common demand that democracy should bring about more social equality or faster economic growth. It is an expectation that a peculiar goal be attained: complete equality of opportunity among *competing politicians*. What fuels unreasonable expectations is *not* the pursuit of a fully participatory democracy. In other words, democrats in Mexico are frustrated, not by the inability of citizens to participate in collective decisions, like democrats in well-established polyarchies, but by not attaining a completely level playing field for contending *political elites*.

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<sup>94</sup> Ibid., pp. 222–23. According to Dahl’s definition, polyarchy “is a political order distinguished at the most general level by two broad characteristics: citizenship is extended to a relatively high proportion of adults, and the rights of citizenship include the opportunity to oppose and vote out the highest officials in the government.” Ibid., p. 220.

<sup>95</sup> Ibid., p. 223.



Even if, as I have tried to prove, *equidad* is not part of the normative legacy of representative government and liberal democracy, is it an appealing ideal in itself? Is *equidad* part of a broader quest for social and political equality? Should we try to achieve it? Should we adopt it as a critical standard to measure existing institutions? Perhaps *equidad* is part of a deepening of the democratic process. Perhaps not.

I argue that *equidad* has little to do with a broad understanding of equality among citizens in a democracy. According to Dahl, the idea and practice of democracy “presupposes three kinds of equality: the intrinsic moral equality of all persons; the equality expressed by the presumption that adult persons are entitled to personal autonomy in determining what is best for themselves; and, following from these, political equality among citizens, as this is defined by the criteria for the democratic process.”<sup>96</sup> There is, indeed, a powerful moral connection between equality and democracy. If “freedom, self-development and the advancement of shared interests are good ends, and if persons are intrinsically equal in their moral worth, the opportunities for attaining these goods should be distributed equally to all persons.”<sup>97</sup> We should strive for a greater equalization of political resources and capacities among all citizens. This is the democratic ideal.

In spite of the fact that *equidad* is portrayed by its proponents as an egalitarian cause, it is not concerned with equality in any of these three senses. Equality pertains to all citizens, while *equidad* is mostly concerned with the equality of opportunity among those individuals who run for office. According to the “principle of distinction,” those persons are usually different from ordinary citizens.<sup>98</sup> In fact, proponents of *equidad* are often willing to make ordinary citizens *less* equal in order to advance their own goals. *Equidad* in this sense is compatible with *partyarchy*, a political system in which parties

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<sup>96</sup> Ibid., p. 311.

<sup>97</sup> Ibid., pp. 311–12.

<sup>98</sup> This is the idea introduced by representative government that the representatives be socially superior to those who elect them. “Elected representatives, it was firmly believed, should rank higher than most of their constituents in wealth, talent and virtue.... what counted was not only the social status of representatives defined in absolute terms, but also (and possibly more importantly), their status relative to that of their electors. Representative government was instituted in full awareness that elected representatives would and should be distinguished citizens, socially different from those who elected them.” Manin, *Principles of Representative Government*, p. 94.

control all nominations to public office and electoral laws limit citizens' choices.<sup>99</sup> Thus, the right of freedom of expression during political campaigns is curtailed for those citizens who do not belong to political parties. This restriction, they claim, allows for a more level playing field for contending *candidates*. As a result, citizens are not equally entitled to voice their political opinions in the mass media. Likewise, until the 2012 constitutional reform, independent candidacies were banned in Mexico. The electoral code has yet to be amended in order to make such candidacies a reality.<sup>100</sup>

*Equidad* is also troubling from a different perspective. As an ideal it is tainted by an ambiguous relationship with the rule of law. Its definition presupposes that what is important is not the letter of the law but the subjective intentions of the lawmaker. For new democracies *equidad* is an obstacle to the establishment of a democratic rule of law. A truly *democratic* rule of law ensures "political rights, civil liberties, and mechanisms of accountability which in turn affirm the political equality of all citizens and constrain potential abuses of state power."<sup>101</sup> In Mexico, by contrast, many citizens believe that they should observe the law only if they consider it fair.<sup>102</sup> An ideal that has an ambivalent relationship to the rule of law is a hindrance to democratic consolidation. This is why, in the end, *equidad* is not a democratic pursuit but rather an aristocratic gimmick.

In an analysis of the aftermath of the 2006 Mexican presidential election, Chappel Lawson argues that dysfunctional institutions could not explain why one of the best designed electoral systems of the world failed to produce a result that party leaders on the losing side would accept. Lawson asserts that political polarization in Mexico was a function of elite attitudes and interactions, rather than those of the mass public.<sup>103</sup> Indeed, the masses are not the source of polarization. There are public opinion data to back this

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<sup>99</sup> Michael Coppedge, *Strong Parties and Lame Ducks: Presidential Partyarchy and Factionalism in Venezuela* (Palo Alto: Stanford University Press, 1994), p. 19.

<sup>100</sup> *Excelsior*, "Diputados aprueban por mayoría candidaturas independientes," April 18, 2012. It took many years and a unfavorable ruling by the Inter-American Human Rights Commission to change the status quo in Mexico.

<sup>101</sup> Guillermo O'Donnell, "Why the Rule of Law Matters," *Journal of Democracy*, Vol. 14, No. 4 (2004): 32–46.

<sup>102</sup> For instance, in 2001 a poll found that 58 percent of those polled believed that "people can disobey an unjust law." And 71 percent of them disagreed with the statement: "people must always obey the laws even if they are unjust." Secretaría de Gobernación, *Encuesta Nacional sobre Cultura Política y Prácticas Ciudadanas* (ENCUP), (Mexico: SEGOB, 2001).

<sup>103</sup> Chappel Lawson, "How Did We Get Here? Mexican Democracy After the 2006 Elections," *PS: Political Science and Politics*, Vol. 40, No. 1 (January 2007): 45–48.

view. As we have seen, after the 2012 election many believed that the election had not been clean, but a majority (61 percent) also considered that peaceful civil protests staged by the losing candidate would hurt democracy by disrespecting its institutions.<sup>104</sup> Something similar occurred in the aftermath of the 2006 elections.<sup>105</sup> There was little support for López Obrador's continued protests, even among those who had voted for him.<sup>106</sup>

The way political elites interact plays a pivotal role in postelectoral conflicts. Since 2003, the strategies adopted by Mexican elites in their partisan disputes have proven more “tendentious and incendiary than analysts predicted.”<sup>107</sup> As Lawson argues, Mexico seems to support the view that political crises are the product of elite machinations rather than of mass preferences.<sup>108</sup> Yet, this does not explain why elite conflict has become so pronounced in Mexican politics. What accounts for this trait, he argues, is the pattern of party building: “During the period of one-party rule, the PRI's eclectic nature gave rise to a fragmented opposition. Because opposition politics promised few tangible rewards, it tended to draw more extreme or *ideologically purist* members of society, on both the Left and the Right.”<sup>109</sup> Leaderships in Mexico tend to be more extremists than their rank and file.

I believe this argument is partially correct. However, certain ideas transcend the conservative/progressive cleavage. There are among conservatives and leftists some ideological agreements that are seldom noticed. While it may be true that politicians from different parties have few common cultural reference points due to their different backgrounds, it is also true that they have been socialized in the same expectations about democracy. For instance, as evidenced in the parliamentary debates of the 2007 electoral

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<sup>104</sup> The wording of the question was: “López Obrador no aceptó la decisión del Tribunal que declaró válida la elección y llamó a la desobediencia civil pacífica. En su opinión, ¿lo que hace AMLO...? Daña la democracia por no respetar a las instituciones?” Moreno and León, “Avalan decisión del Tribunal, pero...”

<sup>105</sup> Kathleen Bruhn and Kenneth F. Green, “Elite Polarization Meets Mass Moderation in Mexico's 2006 Election,” *PS: Political Science and Politics*, Vol. 40, No. 1 (January 2007): 33–38.

<sup>106</sup> Mexico 2006 Panel Study, Wave 3 and accompanying cross-section, Consulta Mitofsky, *National Household Survey*, August 2006.

<sup>107</sup> Lawson, “How Did We Get Here?” p. 46.

<sup>108</sup> Nancy Bermeo, *Ordinary People in Extraordinary Times: The Citizenry and the Breakdown of Democracy* (Princeton: Princeton University Press, 2003).

<sup>109</sup> Lawson, “How Did We Get Here?” p. 47. My emphasis.

reform, politicians from Left, Right, and Center believe that *equidad* is a lynchpin of democracy. For Senator Pedro Joaquín Coldwell (PRI), if there was something distinctive about the electoral reform of that year it was precisely the advancement of *equidad* in political contests.<sup>110</sup> Politicians of all colors share a common frustration over not having achieved this ideal.<sup>111</sup> They all are willing to sacrifice certain liberties to attain it. Thus, after the 2006 elections politicians from the three major parties agreed to a constitutional reform that centered on the attainment of equity. There is a consensual misrepresentation of democracy.

I argue that the political acrimony among the elites is fueled in part by the frustration of unfulfilled expectations. While strategic decision-making is important in elite confrontation, the expectations of the democratic game are explained in turn by the normative beliefs about democracy. While the causes of discontent are not found only among elites, they are the critical variable here. If the democratic bar is placed out of reach, no electoral process will suffice. Frustration is sure to ensue. Thus, great expectations produce great disappointments.

As Dahl argues, a degree of dissatisfaction with real-world politics is indeed necessary and desirable to fuel democratic reform and improvement. Yet, if democracy is conceived of as a realm of perfect equity, untainted virtue, harmonious relations, and pure intentions, the contrast between this ideal and existing realities is likely to produce disillusion and frustration rather than a desire to improve things by sensible reforms. Thus the idealization of an imaginary democracy has perverse effects. If democratic legitimacy is impaired the political costs of not accepting the results of elections are diminished. Thus, not even the best institutions in the world will produce results that party leaders on the losing side will willingly accept.

Possibly the most troubling effect is that a perceived lack of *equidad* has led key political actors to call into question the overall legitimacy of electoral procedures.

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<sup>110</sup> “Y en la Comisión Permanente y en esta Cámara con frecuencia recibimos denuncias de muchísimas entidades federativas del país, donde se habla que falta equidad en las elecciones. Y si algo aporta esta reforma, es precisamente un mayor grado de equidad para la competencia política.” Pedro Joaquín Coldwell in *Reforma constitucional*, p. 134.

<sup>111</sup> Yet, they are also acutely aware that they benefit from a lax enforcement of laws concerning campaign financing. Thus, they have all decided to have post hoc audits of party expenses only. Offenders may be punished with hefty fines after the election has taken place, but preventing the winners from assuming office due to violations is out of the question.

Elections are not fair, they argue, because they are not equitable enough. A broader, more positive TV coverage for one candidate, for instance, constitutes evidence of *inequidad*. This becomes the justification for not accepting defeat at the polls. Also, a significant proportion of citizens come to consider elections as a sham. This lack of trust in the integrity of electoral processes sets the country back almost fifteen years. While the costs of widespread discontent among citizens are not as evident as the costs of elite frustration, they add up to a growing list of disappointments with democracy.

I propose that the failure to achieve *equidad* has brought about excessive regulation. This regulation, in turn, has not satisfied the expectations of political actors. For example, the introduction and later strengthening of gender quotas in the lists of congressional candidates has had some perverse effects. To comply with the law, parties nominate women in their tickets as candidates and men as the substitute candidates. However, once the legislature is seated, the women resign and the men take their seats.<sup>112</sup> The result is intense frustration and the call for more, tougher, regulation. Likewise, the ban on negative campaigning has also contributed to the trend of increasing judicial adjudication of politics and to the erosion of the legitimacy of electoral institutions in a newly established democracy.

There are many areas in which democracy in Mexico is still wanting: clientelism, poverty, lack of accountability of public officials, etc. Mexico's democratic regime is still very young. The corrupting effect of money, even after two major electoral reforms, is still a problem. Mexico, with its entrenched social and economic inequality, displays some of the features of a plutocracy. Yet, it is hard to argue that the actual state of electoral practices and institutions in Mexico corresponds with the dismal opinion that citizens have of their democracy. Something more, besides its obvious flaws, must account for this dissatisfaction. I have argued that what fuels the malaise affecting Mexicans is the construction and elevation of distorted thresholds of democratic legitimacy. Action can and must be taken to address deep dissatisfactions with the workings of democratic institutions. Yet, to achieve this realistic goal we must first leave behind a deformed

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<sup>112</sup> See Javier Aparicio, *Cuotas de género en México. Candidaturas y resultados electorales para diputados federales 2009* (Mexico: Tribunal Electoral del Poder Judicial de la Federación, 2011).

image of what democracy is. Otherwise, we will spend needed energy in the pursuit of a chimera.

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