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MEI 715 Update 2

Electoral outlook in Mexico to January 1, 2007

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As we had predicted in our original report dated Aug. 18, 2006, the Federal Electoral Commission delayed the designation of Felipe de Jesús Calderón Hinojosa (his complete name) as President-elect until after the installation of the new Congress on September 1 (the date on which the President is required to deliver his annual address to the Congress).

The formal ceremony in which Calderón received notification of his designation took place in the late afternoon of September 6 (there were protesters outside who intended to disrupt the proceedings).

On Sept. 5-6 the international media all but celebrated the inevitable designation of Calderón as President-elect (Table 1). Articles and editorials gushed forth with platitudes about Mexico's "young democracy." President Bush, among other world leaders, congratulated Calderón for his victory.

Issues to be resolved by the Tribunal

The designation of Calderón as President-elect required that the Tribunal (TEPJF aka TRIFE) had to dispose of two broad issues:

1) The possibility that there were systematic irregularities in the counting of the votes to justify either a total recount or the nullification of the election.

This issue was addressed by a selective recount of voting districts equal to about 9% of the total districts. In this recount, both Calderón and López Obrador lost votes, but the balance still favored Calderón by some 240,000 votes.

2) The possibility that illegal or improper activity had so tainted the perception of voters that it was impossible to declare that the voting could be construed as the result of a fair election. There were three allegations by the PRD to the TRIFE:



a) That President Vicente Fox had abused the power of his office to favor the PAN candidate.

b) That the PAN, and Felipe Calderón as its candidate, had abused electoral codes in an intense program of negative advertising against López Obrador during the period March-June 2006. (The Tribunal in June had ordered that these ads, which compared Obrador to Hugo Chávez unfavorably, were improper and in violation of the requirement that candidates provide information of value in assessing programs and candidates.)

c) That business groups (led by the Business Coordinating Council [CCE]) violated campaign finance laws by improperly publishing ads as well as radio and TV spots against López Obrador.

In addition, the PRD made a complaint to the Interior Ministry about the improper conduct of the Catholic Church in relation to the campaigns, alleging that priests and church officials encouraged parishioners to vote against any candidate [read: López Obrador] whose views and conduct were at variance with church principles.

The Tribunal ruled that although there were incidents of improper conduct in these areas they were not "sufficiently grave" as to invalidate the results of the elections.

Hence, as Calderón was qualified to be president by birth, age and residence, and as the possible causes for nullification were insufficient, he therefore wins the election by virtue of having the largest number (a plurality) of votes.

Evaluating the "tainted election" hypothesis

It would be easy to show, statistically, that if the vote for president had been held in January or February, López Obrador would have won by at least 5% of the votes (and possibly as much as by 10%). That, on July 2, he should have lost by 0.5% of the votes, speaks to a striking decline in voter preferences.

The question before the Tribunal may be paraphrased to this: Was the change in voter preference the result of illegal activity on the part of authorities and private parties?

Tribunal's ruling: Obrador was right, but not by enough

A press article in the *Washington Post* on Sept. 6 summarized this issue:

Two of the magistrates announced that President Vicente Fox, the standard-bearer of Calderón's National Action Party, put the validity of the election at risk by making political comments during the course of the campaign. Mexican law prohibits the president from campaigning.



Magistrates also rebuked former Spanish Prime Minister José Maria Aznar for endorsing Calderón early in the campaign, a statement that violated prohibitions on foreign political figures campaigning in Mexican elections.

Still, the magistrates ultimately concluded that the interventions by Fox and Aznar -- as well as prohibited ad campaigns by business groups in favor of Calderón -- were not enough for them to overturn the results of the closest presidential election in modern Mexican history.

The *Houston Chronicle* in an editorial noted of Sept. 6 note that

The court declared that, as López Obrador complained, irregularities occurred during the vote. It also stated that wealthy Calderon supporters broke the law by funding attack ads, and that current President Vicente Fox improperly aided Calderon's campaign with public statements.

Nullification criteria?

On Aug. 30, Professor John Ackerman, an American legal scholar in the Institute of Legal Research at the National University (UNAM) who specializes in election law, responded to a visitor's question about the standards by which the Tribunal might nullify an election.

Dr. Ackerman explained that "in Mexico, and unlike the United States, political parties are regarded under the law as 'entities of public interest,' and their conduct and speech therefore needs to be in the public interest, as defined by the authorities."

In response to a question, he said that the Tribunal has criteria for nullifying elections, as evidenced by the four state and municipal elections that it had nullified in the previous ten years.

Observations

The ruling by the Tribunal that waived away the objections of the PRD was one that certainly was expected by all sides.

We doubt that the Tribunal has an empirical, statistically-based methodology for evaluating the effect to which voter perceptions were negatively affected by illegal and/or improper political advertising.

Such a methodology could easily be developed by statisticians and social scientists: if illegal behavior X were found to be responsible for a change in voter perceptions by an amount that equaled or exceeded the difference in votes between two or more candidates, the election would be declared invalid.



On September 2, a taxi driver in Mexico City told a passenger, in response to a listing of allegations of illegal and improper behavior by the PAN and its supporters, "All is fair in love and politics, wouldn't you agree?" The passenger replied, "But if the behavior was illegal? Isn't it true that the PAN's primary value is the rule of law?" [For having arrived at the airport, the conversation did not continue.]

Conclusions

A ruling to nullify the election could therefore have been reached on the grounds that the Tribunal lacked a specific method to establish--or refute--the allegation that the election had been tainted by illegal behavior.

The ruling was based on subjective, ad hoc criteria, for which reason there is room for fair disagreement with the finding. As James McKinley noted in the New York Times (Sept.7), the concept of fraud is broader in Mexico than it is in the United States. A decision that determines a presidential election without an established, empirical methodology to weigh the impact of illegal and improper activities in Mexico will understandably be regarded as fraud.

The decision by the Tribunal is final, however, so the matter of having an explicit methodology to evaluate improper manipulation of voter perceptions will have to be deferred to the Congress.

Meanwhile, as a Mexico City taxi driver wryly observed, "Fox was a good candidate, but a bad president; Calderón was a bad candidate, but may turn out to be a good president."

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Table 1

Selected press related to the validity and results of elections

Original and translated titles

Keyword: 715.2

Records found as of 9/8/2006

Title	Source	File
September		
Sep 08, 2006		
<1> The Temptation of Don Felipe	Wall Street Journal	13047
<2> Editorial: Mexico's President-Elect	Washington Post	13046
Sep 07, 2006		
<3> Obrador heads toward the abyss	ABC.es	13035
<4> Mexico's next president as bridge builder	Christian Science Monitor	13037
<5> Mexico's next president knows legislative politics	Houston Chronicle	13044
<6> Editorial: Going forward	Houston Chronicle	13045
<7> Ten reasons why Mexico is likely to remain stable	Miami Herald	13036
<8> Long History of Vote Fraud Lingers in the Mexican Psyche	New York Times	13043
Sep 06, 2006		
<9> Political unrest tough to tame as Mexico boils	Arizona Republic	13014
<10> Mexican tribunal certifies election	Chicago Tribune	13015
<11> At last, a victor in Mexico	Christian Science Monitor	13010
<12> Mexican Court Declares Calderón President-Elect	Christian Science Monitor	13016
<13> Calderón to take reins, tackle Mexico's divides	Dallas Morning News	13017
<14> López Obrador's party foresees short life for new government	El Pais	13023
<15> Calderón finally handed slender victory	Financial Times	13009
<16> Economy poses main test for Calderón	Financial Times	13025
<17> Lopez Obrador's continuing fight frustrates many	Houston Chronicle	13028
<18> With Calderon president, the real battle has begun	Houston Chronicle	13029
<19> Going forward	Houston Chronicle	13038
<20> Fox and Calderón meet to begin process of transition	La Jornada	13033
<21> Mexico Judges Name Calderon Winner of Vote	Los Angeles Times	13008
<22> Tribunal's Ruling Not Likely to End the Crisis	Los Angeles Times	13022
<23> Calderón's religious roots rare among Mexican presidents	Miami Herald	13021



Selected press related to the validity and results of elections

Records found as of 9/8/2006

Title	Source	File
<24> Calderón tricks opposition, arriving at Tribunal by back door	Milenio	13034
<25> Election Ruling in Mexico Goes to Conservative	New York Times	13012
<26> Felipe Calderón: A Politician at Birth	New York Times	13020
<27> Jorge G. Castañeda: A Way to Peace in Mexico	New York Times	13024
<28> Fox and Calderón anticipate a successful transition	Reforma	13030
<29> Police to guard formal delivery to Calderón of election result	Reforma	13031
<30> Opposition to block inauguration ceremony of Calderón	Reforma	13032
<31> Protesters defiant as conservative wins Mexico poll	The Guardian	13013
<32> Calderón Wins Mexico's Presidential Election	Wall Street Journal	13018
<33> Mexican Drama	Wall Street Journal	13019
August		
Aug 30, 2006		
<34> Mexico edges closer to presidential ruling	Christian Science Monitor	13011
May		
May 24, 2006		
<35> Tribunal cancels advertisting spots of PAN that denigrate López Obrador	La Jornada	13041