The Mexican Elections: Legality vs. Legitimacy

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ABSTRACT: We study the discourse in Mexico from July to September 2006 with respect to the Mexican elections, focusing on viewpoints expressed in the discussion on whether the election was legal or fraudulent. We take into account the social dynamics of argumentation: the ‘topology’ of positions (Faye 1976); the political conjuncture; the relation of each viewpoint with the whole hidden iceberg of the social actors’ positions (Gilbert 1997); and the eristic dialogues (Kotarbinski 1963; Walton 1998; and Reygadas 2005).

Key words: argumentative topology, legality, legitimacy, position.

The July 2006 Mexican election provides the perfect opportunity to study eristic argumentation. Our investigation focuses on those viewpoints which discuss the election’s legality and legitimacy.

We borrow from Discourse Analyses the notion of ‘topology’ of positions (Faye 1976) to avoid the difficulties presented in the classical model which centers only on the Argument vs. Counter-argument perspective. We associate each point of view with the whole hidden iceberg of the social actors’ positions (Gilbert 1997).

To better understand the debate, we will recapitulate the history of the Mexican electoral system, and will describe the topology of positions before analyzing some of the main claims, arguments and positions in the eristic dispute.


The Communist Party was created in the early 1920s, and the party antecedent to the Institutional Revolutionary Party (Partido Revolucionario Institucional: PRI), in 1929. The National Action Party (Partido Acción Nacional: PAN), classified as Catholic and right-wing, was founded in 1938. Two years later, the electoral system began stumbling along. In 1940 and 1952, the elections were especially controversial and their legitimacy was severely questioned. Because of the end of the so-called ‘Mexican Miracle’ and the exhaustion of the system, during the late 1960’s and the early 1970’s various guerrilla movements developed in Mexico, and millions of people decided not to vote. In 1976,
while the Communist Party was in practice prohibited and left-wing movements were frequently working clandestinely, President José López Portillo was elected without any opposition whatsoever. The event was nothing to celebrate; it was merely the beginning of the end of the single ruling state party (the PRI) and the first stage of the contemporary electoral system.

In 1976-77 the Mexican electoral system began to be reformed. A multiparty system was encouraged: what resists, supports, said his creator Jesús Reyes Heroles. But, as in the Gatopardo case, the more things change, the more they remain the same. In 1988, the electoral system was challenged again, nearly putting an end to the way it had been operating since 1977. After several lengthy discussions, in October 1990, the Federal Electoral Institute (IFE) and the new electoral law were created -- the latter goes by the name of COFIPE (Federal Code of Electoral Institutions and Procedures).

For a large part of the population, the leader of the opposition movement, Cuauhtémoc Cárdenas, won the 1988 election. Under Cárdenas’ leadership, the Party of the Democratic Revolution (Partido de la Revolución Democrática (the PRD, a combination of a transformed Communist Party, other leftist movements, PRI dissidents and some leftist members of the PAN) was created. The PRD did not incur in any violence, and yet, more than 500 of its members and of other leftist movements were killed under Carlos Salinas de Gortari’s administration. Then, in 1994, the Chiapas uprising erupted. The Zapatista Army, surprisingly, was not against the elections, but declared the war against:

The Mexican federal army, the basic column of the dictatorship we suffer, monopolized by the party in power and headed by the federal executive that today is represented by its maximum and illegitimate chief: Carlos Salinas de Gortari (Ejército Zapatista de Liberación Nacional 1993).

The President’s illegitimacy was directly equated to a dictatorship.

In 1994 and 2000, the electoral processes, the use of computers, and the dirty war in the media against Cuauhtémoc Cárdenas, the PRD candidate, cast a deep shadow of doubt over the legitimacy of the elections. Nonetheless, the Federal Electoral Institute was in place, and in 2000, the PRI was defeated for the first time since the Mexican Revolution was institutionalized. President Vicente Fox, his friends and the PAN won the 2000 election.

After Fox was elected, José Woldenberg, the first and legitimate president of the IFE, came to the end of his term. Luis Carlos Ugalde was appointed to replace him (a small anecdote is worth mentioning: Felipe Calderón attended his wedding). The PRD criticized this change, but they and other leftist sympathizers lost practically all the important positions they had held at the IFE; for many the IFE had ceased being impartial.

In 2005 a ferocious campaign was launched against Mexico City Mayor and PRD presidential candidate Andrés Manuel López Obrador (AMLO); its aim was to strip him of his immunity in order to submit him to trial. President Vicente Fox led the initiative. The campaign’s aim was to force AMLO to abandon his candidacy. A majority in Congress voted against AMLO, but as a result, a mass movement developed in favor of AMLO, which concluded in a rally supported by about one and a half million people in downtown Mexico City.
AMLO continued as the leading candidate to the Presidency, supported by two other parties: the Labor Party (PT) and the Party for Convergence to Democracy (PCD), constituting the Coalition for the Good of Everyone. The other candidates were Felipe Calderón Hinojosa (FCH, PAN), Patricia Mercado (Social Democratic Alternative Party: PA), Roberto Madrazo (PRI and Green Party –PV–), and Roberto Campa (New Alliance Party: the PANAL, created by Elba Esther Gordillo).

Just before the July 6 election many things happened. The IFE hired a company belonging to Hildebrando, Felipe Calderón’s brother-in-law, to program the IFE’s computers. The most virulent and dirty media campaign began, particularly, although not only, against AMLO; some of the advertisements were later withdrawn, but not without already having caused some damage. Before the election, President Fox and top business representatives interfered in the electoral process on numerous occasions. The PAN hired foreign experts to change the social perception of Andrés Manuel López Obrador as the winner. And Spanish advisers helped set up a strategy against AMLO. As a result of the huge sums of money used, the influences exerted, and AMLO’s own mistakes (such as deciding to not participate in the presidential candidates’ first debate), some media created the perception that the PRD leader’s prestige was in decline in the last months prior to the election; near election day, preferences seemed to be evenly divided. At the same time, the conflict in the state of Oaxaca exploded, due to the formation of the Popular Assembly of the Oaxacan People (APPO) and their ongoing demand for the destitution of Governor Ulises Ruiz.

The PRD, partly because of the mistakes perpetrated by AMLO’s team, was unable to have representatives at all the electoral sites, leaving the field open to the opponents’ maneuvering. In addition, Elba Esther Gordillo, leader of the school teachers’ union (the biggest in Latin America) led the union in support of her party (PANAL) and FCH.

On Election Day, both the PAN and PRD candidates declared themselves the winners. Official results showed a very small difference between the two leading candidates. By the end of the day, the experts and the IFE decided not to announce a final result. This led to a long two-month legal process and an argumentative dispute that has still not come to an end.

To summarize: since 1940 many Mexican elections have been considered illegitimate because of fraud or lack of participation; to legitimize the elections, major changes took place both in 1976-77 and in 1990. As a result we have an electoral system consisting mainly of three parties (PRI, PAN, and PRD), a referee (the IFE), an electoral tribunal (TEPJF) and an electoral law (COFIPE).

Because of increasing electoral competition, 70% of voters cast their vote on July 2, 2006. The vote was to be counted by a computer program (PREP) while preliminary results were to be given on the very same day.

2. THE ARGUMENTATIVE TOPOLOGY AND THE IDEOLOGICAL ARGUMENTATIVE POSITIONS.

To better understand the different viewpoints, we need to first clarify some concepts: the notion of position; the topology of positions; the political discursive formation; the
political conjuncture; and the argumentative steps in eristic dialogues and their possible results.

An argumentative position is not only a point of view or the assertion of a claim. Indeed, “claims are icons for positions that are actually much richer and deeper” (...). “Positions are related to a matrix of beliefs, attitudes, emotions, insights, and values connected to a claim” (Gilbert 1997, p. 105). They link us to ideologies, and to the history of experiences and interactions. And, consequently, we may not adopt a viewpoint because it is not easy for us to change a position that supports it, nor a whole system of beliefs and appreciation of our whole life experience. And, in our case, we do not easily cease to defend our political candidate and his electoral victory.

The political-electoral discursive formation presupposes various elements: argumentation, polemics (controversy and even adversariality –Govier, 1999–), fight for power, strategic maneuvering related to axiology (and agents, and means), and performative action (including compromise and effects of the narratives). It also supposes a legal frame: the COFIPE, the TEJPF and the IFE. Opponents compete to make their cause (or their interest) win at all costs. But still, they are supposed to argue, follow the law, and maintain themselves within the political-electoral field. This discursive formation is these days highly contaminated by the advertising discursive formation: the promotion of candidates as trademarks, as objects to be accepted and presented in an encomiastic form (while presenting others in the worst possible way). So, we are spectators of a triple struggle: electoral, judicial, and in the media.

The political conjuncture is expressed in terms of arguments in different stages. They are not too different from the dialectic dialogue, as Schopenhauer (1997) already stated in the 19th century. We may say that a question appears as a matter of controversy. Each party states its point of view following even the pragma-dialectic model or something similar to the following steps (Puig 1991): 1) presentation of the claim, 2) invalidation of the claim, 3) justification of the invalidation, 4) conclusion and, 5) justification of the conclusion, iterating, interrupting or complicating some steps, or not.

The eristic discussion is reshaped until, for example, there is a winner, or the discussion continues in one or several of the following ways: 1) Conciliation, 2) Contract, 3) Collusion, 4) Antagonism, 5) Polemics or, 6) Discord (Greimas & Fontanille 1994).

An argumentative topology (Faye 1976) is always related to the social conditions of a viewpoint’s acceptability; it is a matter of reception and circulation of the arguments. It expresses how, in the symbolic contest, when there is a dispute, we usually have ‘a horse-shoe form’ of positions in the discursive space: 1) two polar and opposed positions, 2) an array of intermediate positions closer or more distant to those poles, and 3) a ‘semantic-argumentative oscillator’. This oscillator enables the establishment of a dialogue, and, if it is to function impartially, it must ‘discharge’ the oppositional languages. In our case, the oscillator was instantiated by a referee (the IFE) and a judge (the electoral tribunal: TEPJF).

The topology is fluid, it may move all along a political conjuncture, as is the case in the 2006 elections. It may be defined as the ‘over-determination’ of the contradictions to the political level, in a temporality in which a certain point is at stake in the relations of force between social groups. This point was, in our case, the Presidency.

The question was: Who won the election? At the beginning, AMLO, lifting his left hand in victory, said he won with an advantage of 500,000 votes. FCH, lifting his
right hand, also said “We won.” The first recount was partially in favor of FCH. With 95.12% of the votes counted, the IFE delayed the decision (indeed, it never decided), and many intermediate or extreme positions expressed themselves to fill in the void. IFE did a second and total count. The decision then passed on to the tribunal (TEPJF), but to solve the question, a new question emerged: shall we recount the votes totally or partially? AMLO and the argumentative positions closer to him said let’s recount “vote by vote”; FCH considered the recount of just a few ballot packages, because, in fact, the citizens had already counted during the election; and the TEPJF chose this last option, slightly expanding the sample FCH and the PAN wanted. After the sample revision, the TEPJF considered that the vote remained more or less the same, and did not consider valid a series of legal controversies presented by AMLO and his party calling for the annulment the elections. The IFE proclaimed FCH the winner.

The conjuncture’s main stages were as follows: 1) surprise caused by the PREP’s almost even results; 2) responses to the situation: the declaration of both main candidates as winners, and IFE’s suspension of judgment (with some irregularities, as the suspension of data flux for a few hours on Election Day, inadequate language, etc.); 3) final results of IFE’s total count; 4) reactions and demands against IFE’s results; 5) the tribunal’s ruling on the adequacy of opening part of the ballot boxes or all of them; 6) opposition to the decision to open only some boxes; 7) opening some of the ballot boxes; 8) results of the partial recount still in favor of FCH; 9) opposition to the partial recount; 10) the tribunal’s ruling on the demands and the final decision made on September 5; 11) opposition to the decision; 12) and considering the establishment of a parallel government.

The main actors in the dispute were: the parties (mainly PAN, PRI, and PRD, the last two forming alliances) and their candidates; the IFE; the TEPJF; personalities such as Woldenberg (first IFE president), Cuauhtémoc Cárdenas (previous PRD leader and PRD presidential candidate for three elections) and Jaime Cárdenas (a well-known lawyer and previous IFE councilor); President Vicente Fox; social and political figures and organizations such as Sub-commander Marcos, and the APPO, which were developing their political actions all throughout the conjuncture, the first traveling around the country promoting the anti-capitalist movement of the so-called ‘Other Campaign’, and the second one fighting against the ‘illegitimate’ Oaxaca governor Ulises Ruiz.

We believe this was the positions’ ‘horse-shoe’:

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<thead>
<tr>
<th>THE ELECTION AS ILLEGITIMATE</th>
<th>THE ELECTION AS LEGITIMATE</th>
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<tbody>
<tr>
<td>Position +1:</td>
<td>Position -1:</td>
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<tr>
<td>Sub-commander Marcos</td>
<td>President Fox, PAN</td>
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<tr>
<td>Position +2:</td>
<td>Position -2:</td>
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<tr>
<td>Intellectuals</td>
<td>FCH</td>
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<td>Position +3:</td>
<td>Position -3:</td>
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<td>APPO</td>
<td>PANAL</td>
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<td>Position +4:</td>
<td>Position -4:</td>
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<tr>
<td>AMLO</td>
<td>IFE, TEPJF, C. Cárdenas</td>
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<tr>
<td>Position +5:</td>
<td>Position -5:</td>
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<tr>
<td>PT, PC</td>
<td>Woldenberg</td>
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<td>PRI-PV, PA</td>
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As we can see, IFE and TEPJF are not in an intermediate position, they are inclined towards FCH. Fox and the PAN defended FCH at all costs. The PANAL benefited by supporting FCH, coming closer to the team in power. And the PRI, and the PA benefited by having a pseudo-critical opposition: In July 2, the PRI charged that there was “a war of supposed recounts favoring virtual triumphs” and presented itself as “a factor of stability, governance and political conduction of the country”; on July 3, the PRI tacitly recognized FCH as the winner. Cuauhtémoc Cárdenas and some liberal intellectuals are paying the cost of having been too close to the right wing.

On the left, the ‘Other Campaign,’ which had been accused of being against AMLO, in fact declared its position against the alleged fraud, similar to other non-electoral movements that didn’t support AMLO but did support the right to a clean election, justice and respect for the vote. APPO finally lost (at least temporarily), in part because the recognition of it would have set a precedent to recognize AMLO’s fight against the presidential election’s results. And the PRD had to preserve its position in Congress, the most important since 1988. The division among the left is shown in another horse-shoe of positions:

**THE SOCIAL WAY**
**THE ELECTIONS’ WAY**

**TO POWER**
TO POWER

Sub-commander Marcos
PRD
and the Other Campaign
Cuauhtémoc Cárdenas
AMLO

APPO

Sub-commander Marcos and the Other Campaign are against capitalism and the party system. APPO is against the uncritical acceptance of the electoral decisions in the case of Oaxaca and in favor of a social organization. AMLO is against the institutions and the IFE, but he and his party, in any case, follow the electoral system rules. And Cuauhtémoc Cárdenas follows the rules and believes there was no proof of fraud, the same as Woldenberg or the famous writer Carlos Fuentes.

3. THE MAIN CLAIMS

The main dispute had three stages. The first one was associated to the vote itself, but divided in two sub-stages: preliminary results, and final results. From the very first moment, AMLO argued that he won, as did FCH.

The main positions assumed by FCH’s supporters were: 1) from the start, FCH was on top; 2) the vote was already given; 3) all matters would be conducted in accordance with the electoral law (COIFIPE) and the institutions (IFE and TEPJF); and 4) the election was correct and the citizens who had been selected by ballot had supervised the election. These data, beliefs and attitudes make part of the iceberg of the right wing position.

The initial evidences that AMLO’s supporters had and which stated their position were their own party’s fast count, and the results’ certificates in their power. After the election, as part of their global position, AMLO’s supporters believed that: 1) there was
an ‘ant-like fraud’, which consisted of stealing small amounts of votes in many cases, 2) the vote was manipulated: the final documents did not reflect the real votes, and there were too many inconsistencies: a) between numbers and written numbers in the results’ certificates, b) between the voting and the results’ certificates, c) between the results’ certificates the parties had and the results’ certificates at the polls, like reversions (150 votes for FCH and 30 votes for AMLO, instead of 150 for AMLO and 30 for FCH); 3) 827,617 votes were eliminated, representing a very high average; 4) there was cheating from the beginning in the count program (PREP); 5) about three million votes were lost in the initial count, supposedly in places where the PRD was leading; 6) an algorithm to change the vote (the so-called ‘Hildebrando’s program’) fed the IFE’s computer to guarantee FCH’s triumph; 7) Elba Esther Gordillo’s operators and other PAN’s activists cheated and the PRD was unable to cover all polls, especially in Guanajuato (‘the vote barn’), Jalisco, Morelos, and most northern states; 8) the special voting polls didn’t function properly (for voters who were outside their place of residence); 9) elderly people in Mexico City (supposedly in favor of AMLO, because of the aid given to them each month) were eliminated from the list; 10) the flux of data at IFE was changed and suspended momentarily with no valid reason; and 11) electoral ballots were found in Xochiaca’s dung-yard.

The initial operation of the Electoral Preliminary Results Program (PREP) needs to be explained further. The first PREP data were clearly in favor of FCH, and then began to go down. Conversely, AMLO’s numbers began at its lowest rate, then constantly grew, which was unusual, and then, when there was an 85% recount, they went down again, very slowly, in a way that cannot be explained as a normal process, according to AMLO’s supporters. This led millions of people to believe the election’s results were manipulated.

The IFE stated that the PREP’s data flux was suspended momentarily because of technical problems, that no algorithm or cheating existed, that everything that took place was normal, and that the ‘lost’ votes had to do with a prior agreement between them and all the competing parties. These last votes were in the file of ‘inconsistencies’ and ‘illegible’ result certificates, and did not add up to 3 million votes, but only 2,581,626. As a product of the count of these votes, FCH’s advantage on July 4 diminished to 0.65% (still not the final count).

On July 9, the arguments of those responsible for PREP differed from Ugalde’s: According to them, initially, the votes’ first count favored FCH because the data processed came from the north, due to “greater access to means of communication” and “cultural reasons” -- the processing in the north “is always faster”.

Indeed, the first PREP count was eliminated and a second count was done days after the election. Again, something that was not considered normal happened: this time AMLO began winning and, at a certain point, the votes for him began to go down constantly, until he lost the election.

Opponents determined that an algorithm was at work at IFE’s computers because of Hildebrando’s program. Its aim was to always maintain results in favor of FCH through the equation \(Y = 1.17879X - 2050727\): the \(Y\) represents FCH votes; the \(X\) represents AMLO’s votes, that are multiplied by 1.17879 and diminished by 2 050 727 to obtain votes for FCH.
The second major stage in the dispute was the vote recount. Only some of the positions on the right side of the horse-shoe topology defended a minimum review. Liberal and leftist sympathizers demanded a major recount.

On July 4, the PAN ordered its committees to block the opening of the ballot boxes. The reason was that the vote had already been given. AMLO’s coalition demanded a “vote by vote” recount, because of irregularities. IFE President Luis Carlos Ugalde said the votes had already been counted, and that the process was “beyond any doubt.”

On July 6, the total final results were given: FCH had an advantage of just 0.58% of the voting, representing 243,934 votes. FCH got 15,000,284 votes (35.89%), and AMLO 14,756,350 (35.31%).

Ugalde said, going beyond IFE’s responsibilities that FCH had won, something that, due to the circumstances, only the electoral tribunal could declare. He literally argued: “The candidate that obtained the biggest percentage of the presidential voting is Felipe Calderón, of the PAN. The golden rule of democracy establishes that the winning candidate is the one who has more votes” --an expression he later regretted when he was interviewed in 2007. The electoral institution was no longer impartial, due to the controversy it had managed to stir.

Sub-commander Marcos simply said AMLO won, that the Zapatista army was not with him, but that he had won. FCH used the rhetorical eulogy to support his triumph: the election was “the cleanest and most democratic in Mexico”. AMLO’s supporters organized a first massive meeting of half a million people on July 8, in order to convince the tribunal of the “vote by vote” recount. This can be seen as an *ad baculum* and *ad populum* real, persuasive and eristic argument, which became increasingly intense, until it produced the most massive protest rally in Mexico’s history at the end of the political-electoral conjuncture.

Woldenberg, former president of the IFE, believed that all should be resolved by the institutional process and handed over to the electoral tribunal. The question then was: Can we open all the ballot boxes? When the case was sent to the electoral tribunal (TEPJF), it rejected the total revision. It opted, negotiator-like, for a double gesture, meant to mainly satisfy the PAN but at the same time wink at the opponents’ coalition: 9% of the ballot boxes (12,000) were opened; it was a partial recount, but it did not allow the public to really know what the real vote was. It constituted only 16% of the alleged 72,000 irregularities.

Jaime Cárdenas (Ph.D. in Law, former councilor at IFE, and researcher at the Juridical Research Institute of the National Autonomous University of Mexico, or UNAM) argued that the judges:

> Only attended the principle of juridical certainty of the Federal Code of Electoral Institutions and Procedures (COFIPE), but not the Constitution. They only considered the certainty of law, but they cut off the Constitution and the general sense of the impugnation presented by the Coalition for the Good of Everyone.

This position clarifies the main point of the dispute’s second stage. Fox, FCH, the PAN and the tribunal argued based on the electoral code (the COFIPE). AMLO and his supporters argued based on the Constitution, saying it is the highest law of the nation. Consequently, Jaime Cárdenas says: “The criteria of the Constitution imply maximization of the principles, among them one of certainty”. There is a double intention here: arguing
Diego Valadés, Director of the Juridical Research Institute of the National Autonomous University of Mexico (UNAM) considered that all the ballot boxes should have been opened. The IFE was misinterpreting, and not understanding Article 247 of the electoral law (COFIPE), because “democracy is a transparent system”, and “nobody can look for interpretations restricting citizens’ liberties” and liberty of election. All doubts should be eliminated, while rights must be guaranteed. “The decision must be beyond any reasonable doubt”, he said.

Certainty, respect for the vote and transparency were the main arguments in favor of the vote by vote recount. European Union observers argued also in favor of maximum transparency on July 7. Nonetheless, Canada, the United States and Spain directly and immediately supported Calderón.

The main dispute’s third stage was the tribunal’s decision in favor of FCH on September 5. This third stage was less precise. TRIFE considered that the partial vote recount didn’t reveal a substantial change. Even if Judge Eloy Cerda considered that, in principle, the election could be annulled, for the tribunal the demands made by the Coalition for the Good of Everyone seeking the election’s annulment were not sustainable. TEPJF simply made some recommendations against the Businessmen’s Coordination Council (Consejo Coordinador Empresarial). And said that “the declarations of Vicente Fox, President of the Republic, put the election’s validity at risk,” but not in a decisive way because of co-occurring causes. Irregularities were not proven to be determinant. The so-called ‘negative propaganda’, considered the tribunal, “goes against the freedom of the vote”, but turned out to be inconclusive. On September 6 the newspaper La Jornada paraphrased the situation with a sarcastic title: “TPEJF: the election was not clean, but it works”. The tribunal did not give a counter-argument for every important argument, but it just followed a formal dialectic procedure, considered the global position as invalid and advanced some arguments in support of the final decision.

The final and official vote was 35.71% for FCH, 35.15% for AMLO, and a difference of only 0.56% (233,831 votes). FCH said “Mexicans can think differently but are not enemies.” AMLO didn’t recognize Calderón as chief of the nation arguing that “he does not have a legitimate and democratic representation” and announced “a revolution of consciousness and mentality”. The situation was at its end: for the opponents to FCH there was an official legal President of Mexico, but not a legitimate one. Journalist Julio Hernández, in an argument by categorization, called FCH ‘Ejected President’, that is, one who was installed by an automatic mechanism, instead of ‘Elected President’.

On a rainy day, during the popular protest rally held on September 5, Rosario Ibarra, who for years has fought for the presentation of persons missing because of political causes, read the “Declaration for Dignity, Democracy and the Re-Establishment of the Constitutional Order”. She announced a civil resistance movement until the re-establishment of the Constitution. On the 16th of September, 1,025,724 delegates proclaimed AMLO the ‘Legitimate President’. The hole of the iceberg was seen again:
the vote was related to the constitutional principle of certainty and to the left-wing fight for a new constitution, closer to the Mexican people’s interest.

Once the TRIFE officially recognized FCH as the Mexican President, one of the main arguments against that decision was again given by Jaime Cárdenas. He developed “The TEPJF’s eleven juridical absurdities” (considering an argument by categorization again: the tribunal decisions were ‘absurd’). We will extract the ones constituting a real process of counter-argumentation of the main tribunal claims and procedures:

1. Violation of the 17th constitutional article, due to incompleteness, partiality, and failure in considering the process’ stages. The mentioned article refers to impartiality and completeness in the tribunal’s judgments.

2. The resolution excludes certain regulations, especially the General Law of Impugnation of the Media’s System in Electoral Matters, article 9, fraction f (a regulation forcing the tribunal to ask for the presentation of evidence). The tribunal does not apply the suppletory complaint, does not resolve with plain jurisdictionality and does not accord on ways to better provide evidence. And the judgment does not clarify under what circumstances irregularities could have been considered grave.

3. The tribunal does not take into account the quality of the campaigns and the electoral process, arguing that everybody did wrong, including the opposition. This means that if everybody acted wrong, because of negative advertising and other failures, the right decision would have been to annul the election. And there were many incomplete analyses, including, for example, that AMLO had more negative publicity against him in radio and TV.

4. There is no global analysis of the irregularities. Consequently, Jaime Cárdenas argues that the tribunal committed a fallacy, because of its decision to divide instead of considering the properties of the whole.

5. The opposition’s demands were contentious in character, though the tribunal is wrong in saying that the ‘qualification’ of the election was not contradictory.

6. The approval of the ruling was not open to the public, leading to a lack of transparency and information.

4. OTHER ARGUMENTS IN CONFLICT

We will methodologically present some of the conflicting arguments during the conjuncture. They were associated to the positions and not necessarily to the main claims. First we will present those facts or arguments closely linked to the functioning of eristics (Kotarbinski).

1. The Surprise. The situation in July 2006 was very similar to that of 1988 but this time the PRD was better organized, the EZLN was present, as were the APPO conflict and IFE’s and TEPJF’s procedures. So the system could not react properly, and made many mistakes, such as suspending the flux of votes during Election Day, and unfortunate statements made by Luis Carlos Ugalde.

2. The Menace. There was a constant threat of breaking the 1976 electoral pact, not in real terms, but in discourse rhetoric. For example, AMLO said: “Al diablo con sus instituciones” (To hell with their institutions) and still reaffirmed on November 20: “¡To hell with the ruins of the institutions they want to impose on us, after having vilified and dismantled them!”
3. The burden of proof. The burden of proof was demanded from the opposition’s Coalition, when in fact the tribunal was supposed to provide evidence due to the non-contentious character of the election qualification. This worked against AMLO’s supporters, because we know it is almost always better to ask for the burden of proof from the opponent.

4. The attacker’s position. AMLO held this position, which gave him a lot of political dividends.

5. The nullification of the opponent’s arguments. Here the main problem in the conjuncture was that FCH and the tribunal did not nullify the arguments presented by AMLO’s supporters on what they considered the illegitimacy of the election, because to do so they would have had to recount the votes. And there is no doubt that AMLO’s supporters were not at all able to prove fraud. The institutions and the right wing defended the electoral discursive formation and the strictly formal procedure against a broader constitutional interpretation.

6. The refuter’s place. It was partially occupied by AMLO’s supporters, but also by the tribunal, which was privileged, since its decision could not be appealed.

This eristic dispute had to recur to many argumentative schemes, like those cited above. Many others were exhibited during the post-electoral contest.

Disqualifications:
1. Personal attacks. They were launched with violence, even if symbolic, by practically all positions, exacerbating the political ambiance (for example, Felipe Calderón was called FECAL, and AMLO was the constant victim of aggression).

2. Disqualification of the thesis and the arguments. Due to the high degree of controversy in the political discourse, almost any of the opponents’ theses or arguments were not only opposed but disqualified.

Imputations:
1. Attacks against implicit assumptions. These were very important in the debate against the tribunal’s decisions, as we have already shown.

2. Distortion of the opponents’ arguments or pretensions. This was a rule during the entire post-electoral conflict.

Refutations:
1. Arguments on authority. They worked in favor of the tribunal and FCH. Nonetheless, the opposition appealed to them when asking for respect of constitutional principles and the correct application of some articles included in the electoral laws.

2. Arguments through contradiction and factual arguments were also made, but they were not accepted in the main controversy.

5. CONCLUSION

After the tribunal gave its ruling, the adversariality remained because the social leftist movement considered, like the historian Gustavo Gilly, “the arguments in the tribunal should have led to a recount of the votes or to the election’s annulment”. At the end, the opposition called for the Presidency, or at least for a new election --only for president, not for Congress.
The final result was: FCH’s official triumph by only 0.56% of the vote; practically nothing changed in the initial opposing positions; AMLO’s rejection of the institutions and a double presidency: one called legitimate, of Andrés Manuel López Obrador, who ‘took power’ in the Mexico City Zócalo on the 97th anniversary of the Mexican Revolution (November 20); and one recognized by the IFE and the TEPJF, taking power in a five-minute ceremony, protected by armed guards, in the middle of a tremendous fight, cries (‘Mexico!, Mexico!’ against ‘Spurious!, Spurious!’) and whistles in Congress, on December 1st, 2006. AMLO represented the National Democratic Convention and the so-called Broad Progressive Front (Frente Amplio Progresista) that extended the electoral alliance between three parties.

The arguments revealed an electoral system unable to provide an adequate response to those arguing against the results’ validity, and failing in its justification of the tribunal’s conclusion. Nonetheless, the social argumentative process created a change in four dimensions:

1. An epiphany (Walton, 1998), revealing a series of issues: The people’s vote was divided; the north was mainly with the PAN and the south with the PRD; the left wing had won more positions in Congress than ever before, and there was a division among the leftist forces (AMLO, Cuauhtémoc Cárdenas, and Sub-commander Marcos).

2. Maintenance and change of beliefs: The six months of national argumentative exchange did not move the points of view regarding the election, but beliefs did change, as did positions.

3. A refutation. Due to the arguments, the IFE, the TEPJF and the Mexican state recognized some irregularities, inconsistencies and inadequacies of the electoral system.

4. A political impact: The process changed, especially, IFE’s situation as referee, from legitimate to partially illegitimate. And the Zapatista’s ‘Other Campaign’ (Otra Campaña) defined itself against the electoral system and for the fight against capitalism. The new disequilibrium in the positions will forcibly lead to new changes, altering the electoral system which was created in 1976 and reformed in 1990.

Many errors committed by the IFE, and its limitations were exposed. The different contending positions were stated clearly. The legal-electoral system must become more reflexive, while pluralism was strengthened by a major vote for the PRD and the new defeat of the PRI.

The final result is really complex. There was a partial conciliation and contract between the PRD and other parties to continue fighting for power through electoral means, since from the start they accepted the election’s results for the PRD in Congress, that is, for their representatives in the Senate and the Chamber of Deputies. All parties and institutions colluded to support the system against AMLO. The PRD and non-electoral social forces (especially the Zapatista army, EZLN, and its so-called ‘Other Campaign’) remained as antagonists of FCH. The controversy and the discord among parties still continue.

Gustavo Gilly, a left-wing intellectual, believes we are in a situation of “fragmentation and absence of legitimacy”. And that the right wing could be seduced by violence, and the already evident increase in police and military control.

We can say that the Mexican political, judicial and electoral system acted legally, but questionably. There was no real judicial legitimacy, because the authorities acted in such a way as to put pressure on the tribunal regarding its decision. The decision made by
IFE and TEPJF was valid but unjust: it did not meet what a large of the population believed was a good decision. It was effective in the short term, because in the end the voters didn’t block Calderon’s Presidency. But in the long term, there is a fracture.

There was no political legitimacy, because the executive branch was installed using some violence (the monopoly of violence), both in the problem of Oaxaca and in Congress. Power was only partially obeyed. For many voters and non-voters, the requisites to rule were not totally fulfilled. The PAN and FCH have to convince that their access to power complied with the requisites to rule, or they will be obliged to use force or to step down.

FCH’s victory claim was invalidated by the coalition. The tribunal invalidated the coalition’s claim through its authority. It justified this invalidation, but reached its conclusion unsatisfactorily. By not having provided a fully satisfactory answer, the tribunal seemed to go against the principles of certainty, legality and respect for the vote included in the Constitution, in fact placing the electoral code over the Constitution.

Because the situations are so different in Mexico and the United States, the consequences of the electoral frauds that put Bush and Calderón in the presidency will have very different consequences in both countries. Most Mexicans have rejected going to war but insurrection is highly probable in the future. It is also clear that a movement will grow to push for change in the Constitution and guarantee a better functioning of the IFE.

In the argumentative analysis we can conclude that in cases like this, the provision of exhaustive arguments has major value, while the argument’s mere claim and reasons in support of them are not enough to understand how reason works in the public sphere. We are forced to consider the whole of each main participant’s position, and the relation of subjects and positions in the sociopolitical topology. We may also conclude that an important part of the eristic argumentation is the manipulation of beliefs and perceptions, enabling, for example, the support of FCH through the initial electoral and official results.

REFERENCES


