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**Vote Buying with Illegal Resources:
Manifestation of a Weak Rule of Law in Mexico**



Importante

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Abstract

Mexico's consolidation strategy seems to be reaching a limit. The country's transition from authoritarianism was largely based on a series of electoral reforms leveling the playing field in elections. While this strategy was initially successful, it has failed to address several problems that are now preventing the country from moving forward, such as clientelism and political corruption. Concretely, this essay analyzes the prevalence of two problems, vote buying and illegal campaign finance, which are closely connected. I draw evidence from available accounts of the 2012 presidential election and subsequent contests in problematic states such as Tabasco. The outcomes of the midterm elections of June 2015 are also used to assess whether previous electoral reforms have provided effective solutions to the problems analyzed here. I suggest that no legal reform will be effective while these laws are only weakly enforced. A more comprehensive package of measures strengthening the rule of law would help the country transition from electoral democracy to liberal democracy.

Keywords: Liberal Democracy, Vote Buying, Corruption, Campaign Finance, Rule of Law, Elections

Resumen

La estrategia de consolidación en México parece estar llegando a su límite. La transición del país para salir del autoritarismo estuvo en gran medida basada en una serie de reformas electorales que emparejaron las reglas del juego en las elecciones. Si bien esta estrategia tuvo éxito inicialmente, no ha logrado resolver varios problemas, particularmente en la arena electoral. Este ensayo analiza la incidencia de dos problemas, la compra de votos y el financiamiento ilegal de campaña, los cuales están conectados. Me baso en la evidencia existente de los acontecimientos durante la campaña presidencial de 2012 así como de contiendas subsecuentes en estados problemáticos como Tabasco. También analizo los sucesos y los resultados de las elecciones intermedias de junio de 2015 para evaluar si las reformas electorales previas han proporcionado soluciones efectivas a los problemas estudiados aquí. Sugiero que ninguna reforma podrá ser efectiva mientras la aplicación de la ley siga siendo deficiente. Un paquete de medidas más comprensivo para reforzar el estado de derecho ayudaría a que México transite de una democracia electoral a una liberal.

Palabras clave: Democracia liberal, Compra de votos, Corrupción, Financiamiento de campaña, Estado de Derecho, Elecciones

Introduction: Illegal campaign practices, signs of a merely electoral democracy

What role does the law play in democratization? There has long been agreement that proper laws protecting citizen rights are a prerequisite to call a regime democratic (Dahl, 1989). But a critical distinction has also been made between the mere existence of certain laws on paper, and their actual enforcement in practice. It may be that a plethora of political freedoms and democratic processes are written into law during the initial stages of a transition – but without a proper implementation of such laws, this transition will not reach its last stages of consolidation. Indeed, a lot may be missing from a regime where properly functioning institutions exist only *de jure* but not necessarily *de facto*. To underscore the difference, we can appeal to the frequently used distinction between *electoral democracy* and *liberal democracy*. While both criteria pertain to regimes having abandoned autocracy in favor of multiparty competition, the former refers to a lower level of political development than the latter (Schedler, 2013). The difference between the two concepts has been spelled out in several useful definitions. For example, Haber, Klein, Maurer and Middlebrook consider a democracy to be liberal if it displays the following features that are often missing from electoral democracies. The rule of law should be universally enforced, in particular regarding property rights; citizens should have sanctioning mechanisms to keep their public officials accountable; and institutions should keep each other in check to limit their discretion and preserve their integrity (Haber *et al*, 2008, chapter 1). Emphasis on the rule of law, as in the previous definition, is particularly pertinent for the purpose of this research. Among other classic ingredients for a democracy to be called “liberal” instead of merely “electoral”, a strict observation of legality is usually considered indispensable. Failure in this regard should be enough to categorize a country’s democratic transition as incomplete, as in the case of Mexico which is the focus of this essay.

Following the third wave of democratization, many countries became electoral democracies but not all of them were able to consolidate into liberal ones. According to Diamond (2002: 26), 16.1% of the regimes in the world were classified as the former while 38% were classified as the latter. The division was particularly sharp in Latin America and the Caribbean, where the author classified seventeen countries as liberal democracies¹ while ten were electoral ones,² and six were classified as non-democracies.³ Mexico, for example, according to Freedom House’s measures, has never been solidly classified as a liberal democracy since it started being monitored.⁴

¹ Bahamas, Barbados, Belize, Bolivia, Chile, Costa Rica, Dominica, Dominican Republic, Grenada, Guyana, Panama, Peru, St. Kitts & Nevis, St. Lucia, St. Vincent & the Grenadines, Suriname, Uruguay.

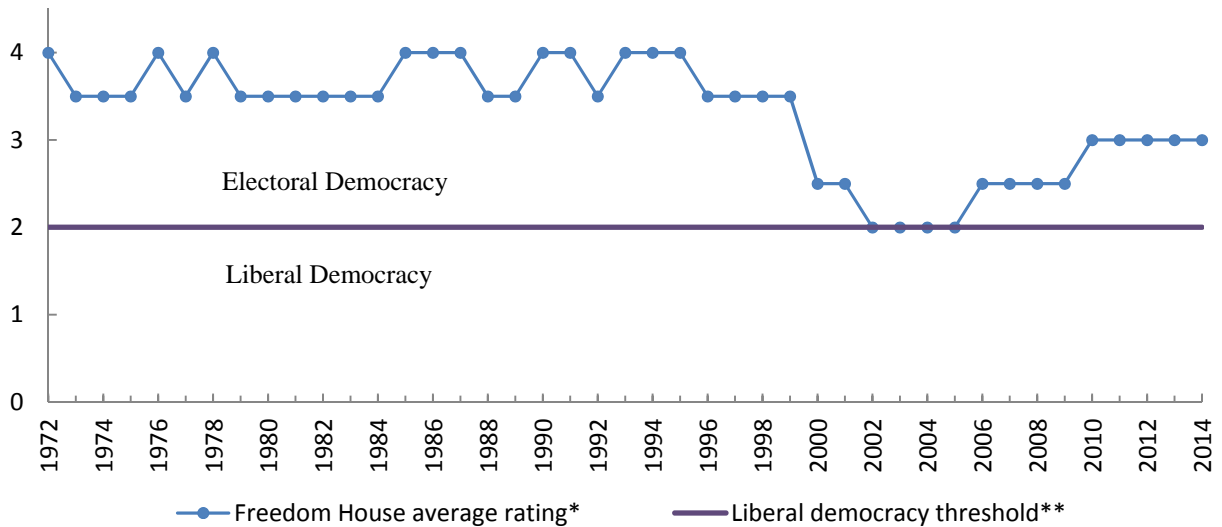
² Argentina, Brazil, Ecuador, El Salvador, Guatemala, Honduras, Jamaica, Mexico, Nicaragua, Trinidad & Tobago.

³ Antigua & Barbuda, Colombia, Cuba, Haiti, Paraguay, Venezuela.

⁴ For this discussion, I follow Larry Diamond’s criterion that a country should be considered a liberal democracy instead of an electoral democracy if the average of its two seven-point ratings from Freedom House, *Political Rights* and *Civil Liberties*, reaches

This can be seen in the figure below which plots Mexico's democracy ratings for all available years (note that lower numbers indicate higher levels of democracy). As the figure indicates, the country's score improved steadily since 1995 but only barely did it reach the threshold to be considered a liberal democracy in the years 2002-2005. Its rating has subsequently regressed into the electoral democracy category since 2006.

FIGURE I. MEXICO'S DEMOCRACY RATINGS, 1972-2014



* Calculated by averaging the two seven-point ratings, *Political Rights* and *Civil Liberties*, from Freedom House. Lower scores indicate more rights and liberties.
 ** Following Diamond's criterion, a democracy is considered liberal if its average Freedom House rating is 2.0 or lower.

It is increasingly clear that countries having initiated their transitions from authoritarianism can get stuck for a long time at intermediate levels of political development. This is unfortunate because having flawed democratic processes such as, say, unfair elections, can lead to serious failures of representation and accountability in these countries. What concrete challenges does an electoral democracy face in striving to become a liberal one? This essay will specifically focus on two challenges that can frequently be observed in elections across the developing world: *illegal campaign finance* and *vote buying*. In the scholarly literature, illegal finance⁵ and vote buying⁶ are not always studied together.⁷ But I suggest there are good reasons for doing so more often

or falls below 2.0. Diamond did not provide an equally specific threshold for a country to be considered an electoral democracy instead of a non-democracy.

⁵ For two detailed overviews of political corruption, including illegal campaign finance, see Gingerich (2013) and Whitehead (2002).

⁶ For some recent literature on clientelistic practices, including vote buying, see Hilgers (2011); Stokes, Dunning, Nazareno and Brusco (2013); Nichter (2014) and Szwarcberg (2015).

⁷ For several exceptions studying the links between political corruption and clientelism see De la O (2015) and the citations therein.

given how frequently these two problems arise jointly —the cases studied in the following sections will suggest a symbiosis between illegal campaign resources and vote buying—. Indeed, if a political organization wishes to buy votes, which is an unlawful activity under a well specified electoral law, it needs to operate in secret, hence needing to acquire resources that are unlawful too. On the other hand, if a certain campaign has raised funds illegally, it would need to spend those funds illegally as well to avoid exposure, for instance by buying votes. This dual relationship can be expressed with an economics metaphor. If a political party is shopping for clientelistic support, illicit funds would represent its *budget* while vote buying would represent its *consumption*. As long as these two problems continue to plague elections, a regime can hardly claim to have transitioned from an electoral democracy to a liberal one.

A first goal of this essay is to demonstrate the tight relationship between illegal campaign finance and vote buying with concrete examples from Mexican politics. Unfortunately, instances of these two problems abound in Mexico, especially at the subnational level. As I document later, local governments still redistribute illegally-diverted resources through clientelistic networks, which can be attributed to a weak oversight of political actors. A second goal is to assess whether consolidation can come from yet more electoral legislation. For decades, Mexico's transition has relied on enacting a long sequence of election laws aimed at leveling the playing field in electoral contests. But the returns on writing new formal rules seem to be reaching a limit, given today's political context where those rules are not really enforced. Instead, I suggest that Mexico needs more holistic changes broadly construed as "strengthening the rule of law." More generally, a third goal of this analysis is to shed some light on the important challenges facing electoral democracies, along with possible solutions as they strive to become liberal ones.

Next section will discuss the laws that already exist in Mexico to combat manipulative practices in elections, showing these laws are quite complete and detailed already. I focus especially on the electoral reforms of 2014, which included new provisions against illegal financing and vote buying. Nevertheless, the subsequent three sections will demonstrate that electoral malpractice has still occurred in recent elections up to 2015 —evidence of illegal campaign finance on one hand, and vote buying on the other, can still be found. In consequence, as I argue in the last section, such problems do not come from a lack of laws but rather from a lax enforcement of such laws—. I conclude that strengthening the rule of law in several ways is the most reasonable path towards finally becoming a liberal democracy.

Abundant laws but scarce enforcement: The numerous electoral reforms up to 2014

There is no scarcity of laws regulating elections in Mexico. Since 1929, combining democratic and undemocratic campaign procedures, virtually all the political contests for all offices used to be won by a dominant party, the Institutional Revolutionary Party (PRI). But a quarter century ago, the country initiated a gradual transformation from one-party hegemony to vigorous multiparty competition (McCann, 2012). The regime's successful and orderly democratization was largely based on several cycles of legal reforms. In effect, to allow for a peaceful transition, the political class consciously adopted the strategy of writing a series of laws in Congress. Many of the negotiations with the incumbent PRI were carried out by two perseverant opposition parties, the left-wing Party of the Democratic Revolution (PRD) and the right-wing National Action Party (PAN).

One of the early instances of Mexico's particular transition strategy was the law of 1977, which included sanctions for a wide array of undemocratic practices, such as creating false voting cards, stealing ballot boxes, destroying tally sheets, and voting more than once. Later, as their share of seats in Congress increased, opposition parties succeeded in pushing new legislation to further clean up the election process. In particular, a landmark norm was passed in 1990 creating an independent electoral management body along with a powerful tribunal for electoral matters (Ugues and Medina Vidal, 2015). Together, these institutions ensured for the first time that vote counts would be accurate and transparent, which succeeded in largely eradicating ballot rigging. The subsequent reforms of 1993, 1994 and 1996 were so profound that they can be said to have transformed Mexico from a soft dictatorship into a functioning democracy.⁸

Electoral reform has continued at a relentless pace in the twenty-first century. The 2007 reforms included several controversial measures that were critiqued by scholars and pundits, but they also included praiseworthy provisions aimed at restricting campaign expenditures and reducing incumbency advantage (Serra, 2009). The legislative endeavor in 2014 was also ambitious. A number of Constitutional amendments were enacted in February, while ordinary laws (called "secondary laws" in Mexico) were discussed in the spring, leading to hefty new legislation in the summer of 2014. The old electoral code⁹ was replaced by two separate laws regulating elections¹⁰ and political parties¹¹ respectively; and a brand new law was created to compile and expand the regulation of electoral crimes.¹² This last round of legislation encompassed a wide range of topics such as centralizing the management of subnational elections into a single organization called the National Electoral Institute (INE). Creating the INE

⁸ For an account of these political reforms, see chapter 8 in Camp (2014).

⁹ The Federal Code for Electoral Institutions and Procedures (COFIPE).

¹⁰ The General Law for Electoral Institutions and Procedures (LEGIPE).

¹¹ The General Law for Political Parties (LGPP).

¹² The General Law on the Matter of Electoral Crimes (LGMDE).

had profound consequences for conducting elections, especially at the subnational level as has been analyzed elsewhere (Serra, 2015). This essay highlights a different set of profound changes related to vote buying and illegal campaign funding.

As in past reforms, there was a particularly vigorous effort to regulate party finance and campaign expenses in 2014. Detailed provisions already existed: there is a precise cap on overall campaign spending, and there are firm restrictions on campaign donations. The new laws endeavored to make these restrictions more binding—in fact, the reform took them to a radical new level. The legislators in Congress decided to make the adherence to these restrictions a requisite for the results of the election to be valid. In other words, if a victorious candidate is found to have violated finance rules, such as exceeding the spending cap or obtaining illegal funding, the corresponding election must be annulled and a new contest must be organized. To make this outcome even more ominous, the winning candidate will not be allowed to compete in an eventual new election—. ¹³ To be concrete, in any close election with a victory margin lower than 5%, the losing candidate is allowed to file a lawsuit against the winning candidate for violating finance rules, hoping to invalidate the election to compete in a new one without the former victor. Many pundits thought these strict punishments were unlikely to ever be carried out; but as I mention later, against all expectations, they were successfully enforced in at least one prominent case in 2015.

Legislative efforts to deter clientelism have also been admirably perseverant. Vote buying has been classified as a crime at least since the electoral law of 1977. Its regulation became stricter and more detailed with the reform of 1990, when this infraction made it to the Federal Penal Code. The statutes against inducing voters were reinforced further in 2014, when the new laws extended the aggravating circumstances and the accompanying sanctions. As an example of how sophisticated the law has become, a new statute endeavored to cover the cheating possibilities from new technologies. Indeed, a recent practice to buy votes has surfaced whereby political brokers are asking voters to take a picture of their ballots using a cell phone – upon showing the picture, the brokers proceed to give voters their payment. With this infraction in mind, the reform of 2014 stipulates fines and prison terms to whomever solicits “evidence of the vote cast by a citizen”, or somehow violates the “right of a citizen to cast a secret ballot,” which are considered direct references to cell phone pictures. ¹⁴

Taken together, the series of political reforms in Mexico has resulted in world-class legislation against electoral manipulation. Most of the dubious tactics from the past are now in square violation of the norms. Therefore, if laws were effectively observed in Mexico, we would expect such undemocratic behavior to have gradually vanished. The initial stages of democratization were indeed able to virtually eliminate vote fraud on Election Day, such as ballot rigging during the vote count. But electoral malpractice of other kinds has endured, as I will document in the following sections. In particular, vote buying with illegal resources can still be observed during campaigns.

¹³ Article 41, base VI, of the Mexican Constitution.

¹⁴ Article 7, fraction VIII, of the LGMDE.

Perhaps for this reason, measures of democracy seem to be at a standstill as can be observed in Figure 1 above. There are even signs that Mexico is backsliding on some important aspects (Serra, 2009). Hence one may ask whether the same strategies that allowed a transition from autocracy can now enable a continued path toward consolidation. Will more legal reforms be able to transform Mexico from an electoral democracy into a liberal one? Or would an altogether different approach be needed? It seems disappointing that serious foul play has survived in spite of unrelenting electoral legislation in the past three decades.

Regrettably, while the Mexican legislation looks promising in theory, its effectiveness is diluted in practice. All too often, party bosses and other powerful stakeholders have been able to co-opt or intimidate the electoral authorities to ensure a soft application of the law instead of its faithful observance. Therefore, as with so many other laws in country, the electoral ones are often ignored or weakly enforced. As will be illustrated in the next two sections, the result is a persistence of undemocratic campaign practices such as illegal campaign finance and vote buying. I will thus argue that no amount of legal reform will have a deep enough impact as long as its enforcement continues to be weak.

Illegal campaign finance: Capturing government resources

Political corruption is a widespread affliction in new democracies, and Mexico is no exception. One type of corruption, consisting on the abuse of public office for personal gain, tends to grab most public attention. The current administration has been embattled by media reports causing national and international outrage: high-ranking members, including the President, have been accused of owning several expensive properties that were cheaply sold to them by constructors who were previously benefited with juicy public contracts.¹⁵ Indeed, many observers suspect this government of granting infrastructure projects to personal friends in detriment of other bidders.¹⁶ Corruption scandals in Mexico have not been limited to the Federal Executive: legislators have been accused of accepting bribes from interest groups; and several governors are alleged to own the companies they are giving public contracts to. Some academics have even conjectured the existence of an implicit pact among all political actors to turn a blind eye on each other's murky business (Casar, 2014a). Being complicit in corrupt practices might explain why other politicians, even from opposition parties, have refrained from requesting an investigation of the irregular properties of top administration officials (Casar, 2014b).

While this type of corruption clearly causes wide indignation, in this essay I will instead focus on a different type that is arguably even more damaging for democracy: the abuse of public resources for political campaigns. Indeed, in studying Latin America,

¹⁵ *Reforma*, "Conocía Peña a su vendedor", January 22, 2015.

¹⁶ *Reforma*, "Hangar Presidencial", April 6, 2015.

Laurence Whitehead noted that corruption is not necessarily undertaken for purposes of personal enrichment, but rather it is often aimed at buying political support in elections. He provided detailed illustrations of recent administrations acquiring illicit funds to win elections in Argentina, Brazil, Colombia, Mexico, Peru and Venezuela, reaching the general conclusion that electoral democracies generate their own distinctive incentives for abuse of office, which may have more to do with political survival than with private appropriation (Whitehead, 2002, chap. 5). The focus of this section is this latter type of political corruption, aimed at increasing electoral support rather than individual wealth. This might be a larger problem than is commonly assumed: Freidenberg and Levitsky (2006) found that in Latin America, legal sources of campaign finance are often “dwarfed” by illicit sources coming from patronage, kickbacks, extralegal donations and the embezzlement of money from state agencies.

Today in Mexico, public officials still have an undue influence in elections by abusing the resources they have at hand.¹⁷ This is especially true in subnational politics: while oversight has significantly improved at the national level (i.e. the federal government), it is still lacking at the regional level (i.e. the state governments) and even more so at the local level (i.e. the municipalities). In their states, governors can often deliver pivotal support at election time, both because their budgets have increased in recent years, and because state spending is not subject to the same scrutiny as the federal budget (Diaz-Cayeros, 2004). Resources can be diverted in municipalities too, as the mayor’s office frequently enjoys significant discretion to redirect social programs for political benefit. Such intervention has long been considered unlawful by the electoral regulation, but enforcement has continued to be lax. In short, inadequate oversight of public expenses has remained a serious vulnerability in elections, as candidates from the incumbent party may potentially be enjoying a decisive advantage over their rivals who do not have access to such government resources.

Many fingers are pointing to the PRI. Upon winning the presidential election in 2012, its candidate was accused of having benefited from abundant capital funneled by co-partisan governors. Other candidates pointed out that a majority of states, including some of the most politically backward ones, were governed by the PRI when the 2012 election was taking place. Of course, there exist a number of legitimate explanations for the copious vote in favor the PRI. In fact, tribunals could not find any conclusive evidence to invalidate the election’s results.¹⁸ But many analysts and academics believe that, one way or another, Peña Nieto’s victory did owe much to his party’s expansive territorial structure and its nineteen sitting governors (Wuhs, 2013; Serra, 2014). According to these authors, a major underlying factor explaining the PRI’s victory was its disproportionate ability to leverage resources at the local level for patronage jobs, money for its agents, and advertising funds.

Suspicion of illegal campaign funding by the PRI has also been fueled by recent corruption scandals among its governors. One of the most notorious cases involved the former governor of Tabasco, Andrés Granier Melo, who was arrested in June 2013

¹⁷ See for example Faughnan, Hiskey and Revey (2014).

¹⁸ Possible explanations for the PRI’s victory in 2012 are discussed in McCann (2015) and Serra (2013).

for allegedly embezzling over a hundred million dollars. Several of his former aides in the Finance Department and the Health Department are also facing federal and state prosecution.¹⁹ News outlets focused mostly on reporting the outrageous personal expenses incurred by the governor and his family during his administration, which included lavish clothes, trips and properties.²⁰ But one should also wonder the degree to which these resources were used to benefit his party. As I describe in the next section, there is evidence that some of these missing funds were used for electoral purposes, making its way to candidates' campaigns.

Another scandal surfaced in 2013 during local elections in the state of Veracruz while having a PRI governor. A series of incriminating audios and videos were leaked to the press with conversations among state officials and party leaders discussing the misappropriation of government resources.²¹ At meetings that were supposed to be secret, the Finance Secretary of Veracruz laid out plans to use the largest federal antipoverty program, called *Oportunidades*, to benefit his party in the upcoming elections. His exceptional bluntness is worth quoting:

Fortunately, thanks to the change in power, thanks to the PRI's arrival to the federal government, we now control the state delegation of the Department of Social Development. [...] I want to tell you that there are plenty of 'opportunities' to take advantage off, precisely because I am referring to the *Oportunidades* program. I invited the program administrators who are here with us today; they are the acting managers of *Oportunidades* in this area. The message I wish to tell you is that such an important program cannot be the sole responsibility of its staff. [...] We quickly need our operatives to seize control of the program in their respective zones. (Finance Secretary of the State of Veracruz, author's translation.)

Other government officials at the confidential meetings took turns describing strategies to control a range of social programs, which they referred to as "solid gold." Government personnel, public infrastructure, even hospitals were alleged to be at the party's disposal. An immediate question that can come to mind is how these resources would be used once those officials secured control over them. As it turns out, the conversations were equally explicit in revealing the intended misuse of those programs to the PRI's advantage in the election, as I document in the next section.

It is worth pointing out that the PRI is not the only party suspected of using illicit resources for campaigns. In fact, in the 2012 presidential elections, all the large parties had to be investigated by the authorities for illegal financing. A visible scandal involved the PRD, when the press uncovered a secret fundraiser on behalf of its presidential candidate, Andrés Manuel López Obrador.²² Some of his closest aides

¹⁹ *The New York Times*, "Official Corruption in Mexico, Once Rarely Exposed, Is Starting to Come to Light", June 23, 2013.

²⁰ *Forbes*, "The 10 Most Corrupt Mexicans of 2013", December 16, 2013.

²¹ The main video leaked to the press can be found at <http://aristeguinoticias.com/1804/mexico/video-que-presento-el-pan-para-denunciar-la-red-electoral-del-pri-en-veracruz/>

²² *El Universal*, "Primo de Creel pasa 'charola' por AMLO", Wednesday May 30, 2012.

were caught organizing a closed-door dinner with prominent Mexican entrepreneurs asking them for six million dollars each in undisclosed campaign donations.²³

The third large party, the Party of National Action (PAN), managed to stay fairly clear of fiscal controversies of this magnitude in 2012, having received only a few fines for small spending offences. Nevertheless, the following year it got embroiled in a large corruption scandal involving its federal legislators. It is alleged that the PAN's caucus in the Chamber of Deputies, which has discretionary control over millions of dollars from the federal budget, began asking for favors and money from several mayors in exchange for assigning federal transfers to their municipalities.²⁴ The monetary request consisted on asking mayors for a percentage of the federal transfer. In Mexico, grabbing a chunk of someone else's windfall is colloquially called a "moche"; so this scandal came to be known popularly as the PAN's "moches". The money and other favors requested from the mayors would reportedly be used to support the political campaign of the PAN's president, Gustavo Madero, who was seeking to be re-elected at the head of his party.²⁵

Unfortunately, the prosecution of campaign-finance infractions has proved ineffective. A main shortcoming has been the lack of determination from the electoral authorities, which have been unwilling to apply the law to its full extent, often condoning or reducing the sanctions earned by candidates and parties (Serra, 2009). As a result, spending limits have been systematically violated: the spending cap for a presidential campaign is officially 336 million pesos (19 million dollars), but it is widely believed that all frontrunners exceed this limit. Recognizing its urgent need of attention, a substantial part of the 2014 reforms was devoted to campaign finance. The new sanctions are severe; but as I argued in the previous section, their severity in theory is often diluted by a soft implementation in practice. In an environment where all political elites condone unlawfulness, the authorities have difficulties enforcing the rule of law. This is also true about the flip-side of this problem, namely the use of these acquired resources to buy votes.

Vote buying: Using captured resources

The manipulation of voters using *clientelistic* methods is common throughout Latin America (Szwarcberg, 2015). Clientelism remains a relatively vague concept that is used somewhat differently by different scholars. But as an umbrella term, it usually includes a menu of practices to distort vote intentions improperly using economic resources (Hilgers, 2011; Nichter, 2014). Hence clientelism is commonly considered a hurdle in democratic transitions, especially where large fractions of the population are in poverty. Here, I focus on one such practice, *vote buying*, which I will understand as

²³ *El Universal*, "Polemizan por 'pase de charola'", Thursday May 31, 2012.

²⁴ *Reforma*, "Desvían diputados adonde hay 'moche'", November 18, 2013.

²⁵ *A.M. de León*, "Exhiben a Villarreal por nuevos moches", March 18, 2014.

the explicit exchange of gifts or favors to induce individuals to vote a certain way. In a sense, this practice corresponds to the flip-side of another problem analyzed in the previous section: illegal financing. Indeed, as illicit resources are suspected to be captured by political parties for their campaigns, we must wonder what those resources are used for. It is likely that upon breaking the law a first time to acquire extra funds, parties will break the law a second time to spend such funds to purchase electoral support.

Vote buying did not disappear with Mexico's transition to democracy. In its hegemonic period, the PRI is known to have employed a variety of techniques for obtaining votes undemocratically (Lean, 2010). Political brokers still carry out this operation in several ways: while the vote is secret in Mexico because we use the Australian ballot, a few means to monitor the voter's decision have been devised. In the past, it was common to ask a child hired by the broker to accompany the adult voter into the booth to corroborate his mark on the ballot. Nowadays it is more common to simply ask the voter to take a picture of his ballot with a cell phone, which needs to be shown to the broker before payment of the promised benefit. As mentioned above, this practice was explicitly forbidden in 2014; but there is evidence that it still occurred the following year (Elizondo, 2015).

The concept of vote buying did make it into Mexican law during democratization. In particular, since 1990, the Federal Penal Code established a large fine and six months to three years in prison for whoever "solicits votes in exchange for payment, gifts, rewards or the promise thereof."²⁶ But enforcing this prohibition has been very patchy, with precious few accusations leading to a conviction. For instance, impunity seems to have prevailed in one of the cases studied in this essay, Tabasco.

The previous section documented that in the state of Tabasco during the period 2007-2013, a significant fraction of the state's budget was allegedly diverted by Governor Andrés Granier. As it turns out, beyond showering himself and his family with luxurious goods, some evidence surfaced that he used part of the bounty for electoral purposes. There were in fact reports of a parallel operation in charge of reinforcing political clienteles for the PRI in the state: upon moving to his official residence as governor, a large mansion, Granier reportedly set up an office in the backyard for family members to run non-official business. From this back office, the governor's son was building political coalitions on behalf of his father. In spite of not having any position in government, in the area it was locally known that "Granier junior" was "helping" with governing duties.²⁷ More precisely, he was using government resources at his disposal in exchange for political support: he pardoned traffic tickets, he condoned tax payments, he gave away driving licenses for free, and he granted permits to bars, discotheques and *cantinas*. He also assigned government jobs to friends and allies who asked for them. And more in line with a classic understanding of

²⁶ Article 403, fractions VI and XI, of the Federal Penal Code.

²⁷ *La Verdad del Sureste*, "Fabián Granier: un 'ministro sin cartera'", October 18, 2011.

vote buying, to secure their sympathy, he handed loads of money to community leaders and social activists commanding blocs of votes.²⁸

The dual relationship between illicit financing and vote buying is also illustrated by scandals in Veracruz involving its PRI governor. The previous section relayed conversations that were recently disclosed between government officials and PRI leaders in the state about capturing substantive government resources. As it turns out, the conversations leaked to the media also reveal that such misappropriated resources were indeed intended for vote buying, which confirms a premise in this essay. In preparation for local elections in 2013, the Treasury Secretary of Veracruz gave instructions that all benefits from the well-known antipoverty program *Oportunidades* should actually be delivered by party representatives instead of nonpartisan government employees.²⁹ *Oportunidades* is federally funded, but he gave orders to clearly tell the four thousand recipients that benefits came from local PRI candidates in exchange for their support in the election. At a party meeting, he explained his rationale the following way:

If our operators delivering the benefits are at the same time keeping tabs on the good behavior of the recipients of *Oportunidades*, if we commit to that, I am sure those recipients will be on our side. [...] At the end of the day, we are handing out scholarships for kids, but we could also call them salaries, couldn't we? Imagine having four thousand people on our payroll, it is enormous! [...] This is how the network gets started." (Finance Secretary of the State of Veracruz, author's translation.)

These shocking words confirmed the public perception that many political actors are guided by cynicism. Among the established Mexican parties, the PRI is generally considered the most adept at illegal or borderline-legal practices of the kind described above. Yet, one should not believe that other parties are exempt from abusing public resources for electoral profit. PRD officials are particularly often mentioned as misusing their budgets in Mexico City. During fieldwork in PRD bastions, Tina Hilgers documented the resources that local governments commonly use to procure the support of specific groups of citizens having electoral strength. Some PRD factions were particularly successful at inducing the political participation of senior citizens: in several municipalities, these factions organized gatherings at government community halls to provide baskets of basic food items to the elderly. However, according to the author, only those senior citizens whose signatures figured in attendance lists to party meetings and rallies were given the food. Seniors who chose not to involve themselves with the party went empty-handed (Hilgers, 2008).

The PAN is also suspected of engaging in clientelism, though to a lesser degree. Nichter and Palmer-Rubin (2015) suggested that the PAN prefers not to engage in vote buying for fear of turning off its base of middle-class voters who are less amenable

²⁸ *Proceso*, "Los Granier, despilfarros a costa del erario", January 30, 2013.

²⁹ The video with these conversations can be seen at <http://aristeguinoticias.com/1804/mexico/video-que-presento-el-pan-para-denunciar-la-red-electoral-del-pri-en-veracruz/>

to clientelist offers. Yet several accusations have recently come to light. The phone conversations of the regional head of *Oportunidades* in the state of Veracruz (right before the scandals by PRI members mentioned above) were secretly taped at the beginning of 2012 to be leaked to the media. The discussions from the program's regional director, a member of the PAN designated by the PAN's federal administration, seem to suggest an attempt to manipulate the program: we can hear him offering to hire party sympathizers as program operatives. The recordings do not state an explicit goal, but it is presumed that such operatives served as party brokers while delivering the program's benefits.³⁰

To be sure, these examples are probably part of a pervasive pattern across regions in Mexico rather than just being isolated cases. It can actually be shown that localities that are prone to corruption will also be prone to clientelism. To be more precise, De la O (2015) has shown statistically that vote buying can be expected to be higher in communities where public officials are highly corrupt. Using several measures of government corruption at the state level (including data from the Mexican branch of *Transparency International*), the author finds that an increase in such measures will cause an increase in vote buying (as measured by survey responses from the *Mexico 2012 Panel Study*). De la O's research therefore provides clean evidence of the close link that I am emphasizing between illegal campaign finance and clientelism. Regrettably, these two problems are not showing any signs of subsiding in recent elections.

The 2015 elections: More vote buying with illegal resources

Illegal campaign finance and vote buying were also patent in the midterm elections of 2015. On June 7th, the Chamber of Deputies, which is the lower house of Congress, was fully renovated. Concurrently, there were elections for governors in nine states, and seven additional states renovated their state legislatures. It was the first contest to be held under supposedly stricter rules for parties and candidates based on the 2014 reforms. A normative evaluation of this democratic process must be mixed. The national electoral institutions were again successful at conducting a timely, clean and transparent tally of the votes. However, the weeks and months before Election Day were full of accusations of illegal campaign funding³¹ and vote buying³² on behalf of parties and candidates, which seem to suggest that such problems did not diminish at all. In fact, in these campaigns, more legal complaints were filed to the electoral tribunals than ever before (Casar, 2015).

Overall, these midterm elections provide evidence in favor of my main argument here, namely that problems persist in Mexico not from a scarcity of electoral laws, but rather from a lax implementation of these laws. This concern was epitomized

³⁰ *Animal Político*, "PRI le revira al PAN: También compraron votos con 'Oportunidades'", 23 April, 2013.

³¹ *El Economista*, "PAN acusa a Robles de desvío de recursos", April 16, 2015.

³² *La Jornada*, "Acusan a PRD de compra de votos en Venustiano Carranza", June 1, 2015.

by the recent actions of the Green Ecological Party of Mexico (PVEM). This ambitious medium-size party was able to increase its vote share with an aggressive campaign that overtly infringed upon many regulations (Aparicio, 2015). The party exceeded the legal deadlines by starting its campaign advertisements too early and ending them too late. It violated rules against vote buying by distributing expensive paraphernalia among low-income voters, such as backpacks and wrist watches with the party logo. And it broke the restriction on television airtime by negotiating favorable coverage with one of the large TV networks.³³ Money for these extralegal activities is presumed to have come from the southern state of Chiapas, which has a governor from the PVEM (Raphael 2015). Sadly, the authorities' response to these blatant affronts was slow and tepid. The INE took weeks to decide on punitive actions against the Green Party; and when it finally gave it large fines, these fines were eliminated or reduced by the electoral tribunal. Such hesitation on behalf of the electoral authorities was interpreted as a feeble commitment to enforcing the law – which shapes the type of conclusions we can draw about improving the quality of Mexican democracy.

To their credit, it must be noted that the electoral authorities did enforce the new laws in some key instances. Notably, in a spectacular ruling on October 22nd, the electoral tribunal annulled the gubernatorial election in the state of Colima, citing the new sanctions on violating campaign-spending regulations described at the beginning of this essay.³⁴ This event should convey that Mexican laws can be effective on those occasions when they are properly applied.

³³ *Milenio*, “Tribunal multa al PVEM y a TV Azteca por reportaje”, June 17th, 2015.

³⁴ *CNN en Español*, “TEPJF ‘echa abajo’ triunfo del PRI en Colima y ordena nuevas elecciones”, 22 October, 2015.

Conclusions: Beyond electoral reform, finishing the transition via de rule of law

Can legal reform alone transform an electoral democracy into a liberal one? With the third wave of democratization, many regimes abandoned autocracy only to achieve barely minimal standards of electoral competition. In Mexico, for example, this meant abandoning the most egregious manipulation practices such as stuffing ballot boxes, harassing candidates, and suppressing opposition parties. These were notable achievements but other obstacles have remained. The nature of the remaining obstacles in these new democracies is so different from the initial ones, that an altogether different strategy might be needed to finish the transition that was previously started. In particular, becoming a full *polyarchy* requires citizens' rights and freedoms to be "effectively enforced," which entails imposing the rule of law (Dahl, 1989).

Today, illegal campaign finance and vote buying represent two serious obstacles to the consolidation of many new democracies. These problems should be thought of as two sides of the same coin: if a political broker is in the market for political support, he is likely to break the law a first time to acquire illicit funds exactly *because* he wishes to break the law a second time to purchase votes. Illegal funding and vote buying are not usually analyzed jointly in academic research, but this essay attempted to articulate the value in doing so: these two phenomena reinforce each other to become considerable challenges in young democracies with unfinished transitions.³⁵ The Mexican case illustrates that exclusively writing election laws is an insufficient solution. As pointed out by Haber *et al.* (2008), voting rules can be erased "with the stroke of a pen," but corrupt practices by rent-seekers cannot.

Qualitative evidence from subnational regions in the country provides support for these claims. One of the states that I focused on, Tabasco, is considered to have a "low democratic development" as it still suffers from serious structural and institutional insufficiencies.³⁶ After Granier had left government and a different party, the PRD, came to power, the government of Tabasco was still being accused of overspending and lacking transparency. Granier, from the PRI, had increased the state's debt to historical levels; but in 2013, his successor from the PRD, placed Tabasco again as the state acquiring most new debt in the country. That same year, the PRD government decreased the government's accountability by passing a law restricting the disclosure of legislature's expenditures, which allowed legislators to preserve the confidentiality of their expenses for a period of two extra years. This law, it should be noted, fell below the national standards of transparency (Somuano and Ortega, 2014).

³⁵ A similar argument calling for a unified analysis of corruption and clientelism was made by Gingerich (2013).

³⁶ According to the *Index of Democratic Development in Mexico (IDD-Mex)* available at <http://idd-mex.org>.

Such evidence confirms that problems in many Mexican states are profoundly structural rather than simply electoral.

Solutions should thus focus on changing the legal culture. The long series of electoral reforms until 2014 seem to fall short in this regard. Instead of continually writing new laws, Mexico should find ways to properly enforce the existing ones. For this purpose, checks and balances should be reinforced by a real separation of powers between governors and their state legislatures. Local judiciaries should be granted more independence from the incumbent officials who are currently controlling them. The newly created Office of the Attorney General³⁷ should take electoral crimes more seriously than its predecessor.³⁸ And the federal anti-corruption agency currently being discussed in Congress should be given strong enough teeth. In broad terms, Mexico must find the means for a more rigorous observation of the rule of law by all political actors.

These remarks are consistent with the conclusions of Haber, Klein, Maurer and Middlebrook, who blame a weak rule of law for Mexico's lack of consolidation. They lament the country's "incomplete" transition the following way:

Why has electoral democracy not produced rule of law? [...] Mexico has become more democratic in terms of electoral competition. [...] However, as the country's post-2000 experience clearly shows, electoral democratization has not automatically strengthened the rule of law or brought about other changes required to consolidate liberal democracy. In fact, many legacies of Mexico's authoritarian past continue to weigh heavily on the country. (Haber *et al.*, 2008)

Prescribing a stronger rule of law is not only germane to Mexico, but might be applicable more broadly to other electoral democracies that are also placing their hopes on a continual stream of legal reforms. The Mexican experience illustrates that electoral legislation can indeed have remarkable success in dismantling a state apparatus for vote fraud. But the extra steps toward liberal democracy seem to require an effective implementation of the existing laws rather than continually creating new ones. Indeed, the initial strategy of writing campaign rules will necessarily reach a limit once the legal framework is sophisticated enough. In many regards, the remarkable Mexican laws would be sufficient if only the political class found the courage to enforce them.

³⁷ *Fiscalía General de la República*, created on paper as part of the 2014 reforms.

³⁸ *Procuraduría General de la República (PGR)*, still in place as of 2016.

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