



CONSIDERATIONS ON THE CHALLENGES FACED BY BODIES IN CHARGE OF ELECTORAL ADMINISTRATION

I.- Introduction

Democratization processes starting at the beginning of last century's 80s decade in Latin America, relied substantially on electoral processes. Unlike other processes carried out around the world, the Latin American region prioritized conducting elections to promote democratic change.

This has an explanation which could be found within political culture, a historical past with ample coincidences (independence from Spain and Portugal), tradition of presidential regimes, *caudillismo*, the lack of citizen trust in the institutions of the State and the lack of credibility in elections due to electoral frauds perpetrated during the organization of elections.

With the authoritarian regimes' burnout of legitimacy, brought on by the grievances for political rights of modern and plural societies', among other actors, Latin American countries opened their political systems to a democratic change.

In this path to openness, the steps taken by Latin America relied on betting for a democratic-oriented electoral route. Elections were the main way to grant a legitimacy of origin to political representation; no longer basing representation on the decisions made by a political party, military junta, or the president. Most of the times, authoritarian regimes gained access to power through irregular elections which did not reflect the political will of the people; neither institutions nor electoral procedures guaranteed fair, free, and transparent elections to express the will of the people.

Even if the elected governments in the authoritarian era did not possess legitimacy of origin, they bet on gaining such trust through the exercise of power. They pursued legitimization through acts of public policy. However, economic crisis, the new social plurality grievances for political rights, and a new international context pressing on the celebration of free and transparent elections brought down these regimes.

The democratization process in the region was carried out through electoral processes, where election management bodies played a fundamental role. This impacted in the composition of institutions in the liberal-democratic State. Autonomous bodies surged to make public affairs in crucial aspects of public life more precise, professional, and impartial.

The core issue affronted by Latin American countries to transition into democracy was the absence of legitimate elections. Electoral fraud practices prevailed at different moments and forms.



A common denominator was the mistrust that lied upon those who organized elections and their procedures. Some differences where the modalities and the political culture of each country.

In such sense, recently created or newly adjusted in composition and operation electoral bodies constituted the foundations to move forward with democratic transition.

2.- The new identity of electoral bodies in democracy

- The existence of a liberal and democratic State rests upon five fundamental pillars: existence and guarantee of individual rights, people's sovereignty, political representation, separation of powers, and the Rule of Law.

Even if these pillars are part of the major components of the modern State, its structure and operation depend on various factors: each country's historical backgrounds, political culture, and power correlation disputed with the desired Nation's project.

The democratization processes that started and developed during the last third of the past century in Latin America and the world affected decisively the quality of the structure of the modern State.

The search for guarantees and freedom to wield societies political rights subverted in different manners the organization and operation of the State.

The guarantees to practice suffrage freely substantially transformed the principle of sovereignty and political representation. Sovereignty ceased to be a less formal concept and became a real one, since democratic elections created an authentic political representation as consequence of people's sovereignty.

In this new conception of sovereignty, the people choose their representatives whilst guaranteeing plurality and the existence of minorities and majorities. This created a new and authentic political representation where tolerance had to prevail within the new expressions of political and social diversity.

The State's legitimacy rests now on the representation of the sovereign people and for that divergencies of criteria and ideas within the majorities and minorities must socially coexist.



Democratization has also impacted in the traditional separation of powers. It surged from the genesis of the modern State to confront the tendency of personal power. This natural power hunger appears constrained when in the foundations of the political body coexistent powers are granted for them to be reciprocally balanced and achieve ponderation in the use of power.

- With democratization in process, important repercussions have impacted on the State.

The demands for reliable elections prompted the idea to create an electoral constitutional power, or autonomous bodies. Due to our historical backgrounds in the region, organizing elections should not be an attribution of the executive branch, nor of any other branches of the State.

Out of the 18 countries that integrate Latin America, 17 of them (except Argentina) have a constitutionally recognized electoral autonomous body. Thus, the autonomous bodies to organize elections were created, being independent from the other branches of power of the State and equal in rank (1: pg. 425).

- Another innovational trait of these new autonomous bodies is the structure of their executive bodies, where collegiality prevails. This means that several voices are heard when it comes to conducting elections rather than just one. In the end, the goal is to accomplish impartiality and integrity of the process given the delicate attributions of contributing to a real sovereignty of the people and political representation. Within the region, there are 16 electoral collegially integrated bodies in terms of the way in which their executive bodies are integrated. Only two have an electoral authority with an executive office resting upon an Electoral Chief Officer: Peru's National Electoral Processes Organization (ONPE, for its initials in Spanish), and Argentina's National Direction of Elections.

* Integrating impartially the electoral body, as well as its operation are directly related with another two principles: professionalism and the null political activism on behalf of officials in charge of electoral administration.

The legal and political rationale of autonomous bodies is found within the technical features of their performance. They must be aligned to the enforcement of the law under a rational scheme of their performance. The operation of the electoral management bodies will seek effectiveness in their functioning. Use of rationality must be present to produce results, having clear goals, and procedural control to obtain effective results.



This rational scheme for autonomous bodies, which was the product of democratization to guarantee free and transparent elections, maintains its distance from political proselytism when it comes to organizing elections.

Out of the 18 countries in Latin America, in only two of them political parties appoint electoral officials, Uruguay and El Salvador. The rest of the countries appoint their top tier electoral officials through State's powers: legislative, executive, and judiciary. The legislative, or at least one of its chambers is the most common one to appoint electoral officials in 9 out of 18 countries (2; pgs. 427-430).

The appointment goes to those with a professional and technical profile to carry out the delicate task to guarantee the sovereignty of the people as well as for a truthful political representation.

Given the electoral bodies' top hierarchy in the integration of the State, the officials who integrate the collegiate bodies can only be removed by the other powers of the State.

The tendency for professionalization versus the politization of electoral authorities is on the rise. There is a clear prohibition for political activism of its members in 16 countries of Latin America. Only two countries allow for this: Ecuador and El Salvador (3; 429-431). The sense embedded into the autonomous bodies specialized in elections is that of a rigorous technical performance. Political participation occurs through political parties. The historical background of irregular elections in the region portrays the adjustments that had to be considered to guarantee transparent elections.

3.- Attributions and responsibilities of electoral bodies-

The amplitude and scope of the electoral bodies' attributions and responsibilities are determined by at least four processes: transition towards democracy, democratic enhancement, political compromise, and technological modernization.

- Processes for transition towards democracy.

It is comprised by a series of activities and actions that guarantee free and transparent suffrage. This is the core political claim, which is why there is particular focus on topics of electoral infrastructure, such as voter registration, electoral materials, and documentation (certificates, ballots, ballot boxes, indelible ink, among other), integration of tables for scrutiny and tallying of votes, as well as for the publication of results. There is extra care in terms of security and surveillance on electoral management to avoid distortion of the will of the people (3; pgs. 434-437).



- Democratic enhancement processes.

In their path for democratic consolidation, countries require a series of actions that allow for a better and increased democracy in electoral processes.

In general terms, political forces agree upon improving their electoral democracy to strengthen fair competition, as well as to amplify safeguards for political actors and citizens, thus improving regulations to solve controversies.

Transition processes fix irregularities in electoral processes and their results. Improvement of institutions and electoral processes generates a progressive and positive result in building trust.

This allowed to move forward towards the reinforcement of electoral construction through reforms of electoral laws and for the deployment of a wide overview of electoral conditions and enhancement of rights. This process stands out substantially for a fair and transparent financing of political parties and candidates, as well as limiting public spending and government propaganda.

Topics of inclusion, voting from abroad, disabilities, gender parity, voting age, voting in hospitals, jails, and other facilities for senior citizens are equally considered.

These new series of attributions, which may contain multiple modalities, conveys new roles and responsibilities onto the electoral body. Its performance must be of high professionalization for the political demands on electoral management bodies require an elevated level of responsibility.

- Democratic enhancement through political compromise

The dimensions and extent of the electoral bodies' attributions and responsibilities not only depend on settlements to strengthen and enhance electoral democracy.

There are also agreements among political forces to present measures that may contain the strength of those political adversaries who obtained political victories at times. Modifications to the electoral laws and procedures to grant new attributions to electoral bodies may also go through containment



measures, but not necessarily in favor of democratic enhancement or development, but always making sure they are not regressive.

Mexico is considered an archetype, not entirely to be followed, in this process of electoral enhancement based on political agreements. Two reforms took place: one in 2007 and the other in 2013, which ended up modifying electoral management in a very relevant manner.

The backdrop lies in the absence of recognizing defeat by the losing candidate closer to the winner. The winning candidate is then in need of legitimacy of origin granted by the losing candidate to facilitate the tasks in the exercise of government. In this sense, in order to obtain legitimacy of origin by the losing party, the winning party settles an electoral reform to adapt those parts of the electoral process which the losing party deems fundamental for its defeat.

None of these two reforms had technical or scientific studies that justified the cause of the defeat. However, there were political agreements that barely contributed to the intended legitimacy but impacted substantially in the electoral legislation.

The electoral reform of 2007-2008, which resulted from the narrow results of the presidential election of 2006 between the winning PAN party and the losing PRD party, gave way to boost a greatly consequential electoral reform in terms of party access to mass media. The stance was that the winning party had had greater access to mass media than the losing party, arguing this situation impacted on the electoral results.

The reform built a model of political communication in which the electoral authority back then, the Federal Electoral Institute, would manage the allocation of all radio and television airtime for political campaigns. The prerogative to purchase private and political parties' airtime was prohibited. Access to all media was absorbed by the electoral body.

At the 2012, a similar situation took place. The PRI party won the elections against the PRD party, but the PRD did not recognize its opponents victory arguing financial disparities between both parties, deeming it an unequal contest. The electoral bodies were also held accountable, arguing omission in the oversight of resources.



There were also complaints about the role of the local electoral bodies arguing they were influenced by governors.

All of this derived in a new electoral reform in 2013-2014. It gave way to the creation of the now National Electoral Institute, which centralized all electoral functions in Mexico and narrowing down the participation of local powers in the conformation and conduction of elections in the 32 States of the country.

Additionally, an integrated oversight system was created to monitor rigorously almost all financial transactions made by political parties and candidates. Likewise, an important path opened for transparency and accountability for political stakeholders.

- Technological modernization process

The ways of doing politics have changed radically in the last 15 years. The campaign of Barack Obama when he contested as presidential candidate to the United States in 2008 may be considered a milestone in the modern ways of electoral campaigns financing and organization.

Campaigning in public spaces, through the press, radio, and television has been reduced due to the powerful arising of social media, namely via Twitter, Facebook, and other internet platforms.

We are facing one of the biggest challenges, not only for electoral bodies, but for democracy in the digital era. Maintaining equality and integrity in elections constitutes one of the largest challenges for electoral authorities, not only across the region, but around the world. This sets new functions and attributions for those responsible of organizing elections.

4.- Final considerations

- There are at least two structural matters for electoral management bodies to maintain electoral integrity. One of them is the permanent threat to diminish the autonomy of the electoral authority in the frame of power dispute. The other one lies within the enhancement of democratic processes and everything relative to the consolidating trust for electoral bodies in the Latin American region.

The autonomy of electoral bodies is permanently threatened either by political stakeholder or by some of the branches of government. This varies from one country to another, depending on the



circumstances. There are many paths to this aspect. I will only mention two of the most notorious of them: One is related to the budget assigned for electoral bodies. Some of them have the decision-making capacity within the legislative branch and others through the executive branch. But the pressure is always there upon the electoral bodies.

Another factor is the appointment of high-ranking electoral officers, which is a task carried by the executive or legislative branch in different combinations. There is still a long way to go when it comes to appointing electoral professional electoral officers while trying to keep electoral phobias and phobias on the sidelines.

Another pending topic for electoral bodies lies within the consolidation of institutional trust for its performance alongside democratization processes. Most of the electoral bodies have a common mistrust in their institutions and electoral procedures. The creation and consolidation of trust takes some time and requires professionalization and integrity of electoral officers that sustain it.

- An important challenge for the bodies in charge of electoral management is expanding their responsibilities and attributions, which generally generates an overload and is not usually accompanied with the necessary budget. However, democratization processes and those for strengthening the functions of the State will bring, in consequence, greater attributions.
- In the path to build trust and credibility, it will be necessary for electoral bodies to become an example of transparency and righteousness in their management of public resources. Opening new paths for accountability along highly professional independent auditing.
- Electoral bodies, as warrantors of the will of the people, could develop permanent approach and liaison with civic organizations, media outlets, and of particular interest in social media. Dealing with incumbent governments, the branches of State and political parties is by law the nature of the electoral body. However, interacting with organizations of the civic, academic, business, cultural, scientific, sports, students, workers, civil employees, and religious cults spheres, among others, must take place to face the temptations of attempting against the autonomy of the electoral bodies, by drawing force from the power of society.
- One of the main challenges faced by electoral authorities is the disenchantment with democracy. One of the biggest challenges faced by electoral authorities is the disillusionment with democracy. To this matter, there is at least a problem of conception and conceptualization, where there is a disappointment with democracy. The most frequent complaint is that electoral democracy does not solve the social problems and needs promised by political parties and candidates.



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SOBRE LA
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But elections solve a substantial aspect: legitimacy and legality of political representation. Those affairs it cannot solve, because they are not within its scope, are of economic and social sorts, and whose responsibility to address them lies upon the legally and democratically elected political representation. The great topic about administrative management lies upon the Executive Branch, for which it has other legal, budgetary, and administrative tools. Governance depends on the relation between the Executive and Legislative branches, which is entirely sustained by the Legislative branch. The electoral power has other tasks: organizing free, equal, and transparent elections that guarantee electoral integrity of electoral processes.

