

THE RENEWED FEDERALISM AND ITS EFFECTS ON THE REPRESENTATION OF WOMEN IN MEXICO

By Dr Fernanda Vidal

REPRESENTATION, both in presence and in ideas is still a matter of utmost need in countries where sometimes women's participation in politics is still questioned or limited. In the case of Mexico, both women's presence and women's interest are being limited, among other issues, by the institutional design. Two key situations are directly affecting women's political participation in Mexico: the inequalities that have emerged in a rejuvenated federalism and the continual use of legal loopholes for the political benefit of the ruling elites. Each state has the legal right to select its own rules, including electoral ones. In this sense, different requirements, obligations and rights are placed for the citizens and the political parties to benefit from and comply with. This has resulted in different playing fields in which women's representation is encouraged or detracted. The variety of laws and the constant changes to these has resulted in a number of legal loopholes, which both actors and parties have used to evade the application of tougher laws that boost the representation of women.

Representation is an essential part of a democratic regime and if representation is to be

considered an intrinsic element of democracy, no system can claim to be democratic if it does not recognise the need for popular control and political equality. In Mexico, it would seem that in the representation of women has advanced in the past decade. In the last federal election process (July 2012), women advanced in the conquest of political spaces. The number of women elected to the Chamber of Deputies and the Senate exceeded what was achieved in previous processes. In the Chamber of Deputies 36.8% of the seats are occupied by women while in the Senate women have 34.67% of the seats. Previously women held 26.2% of the available seats (2009: 26.2%) while in 2006 there were only 112 women (22.4%). Nonetheless, the same optimistic scenario is yet to be observed homogeneously at the state level. In some states, women have lower percentages of representation in Congress. In Aguascalientes (7%), Queretaro (4%) and Estado de Mexico (15%) women are still a minority group among elected deputies (Camara de Diputados, 2012). On the opposite site, women in Veracruz hold 28% of the local legislature seats and in Distrito Federal 27.3%. Additionally, women have been denied the





opportunity to work in traditional “masculine” areas, such as Treasury, Defence or Constitutional Reforms across the states and in the federal government. In fact, the higher the position is within the government’s organisation pyramid at the state level, the less number of women are elected. There are 32.63% of women councillors but 11.34% of women deputies and within the 31 states and the Federal District, only one female governor (data available at INMUJERES).

Largely the observed results at the federal level may have been a consequence of the legal amendment approved in November 2011 by the Federal Judicial Electoral Court (TEPJF). In the ruling SUP-JDC-12624/2011 additional criteria for the registration of candidates for various elected positions were established at the federal level (TEPJF, 2011). These actions along with the observed differences between the levels of government are clear examples of the key situations affecting women's political participation mentioned before.

The purpose of this article is to initiate a series of debates about the political consequences that the

federal arrangement has generated in Mexico and the relationship this has to the existing legal framework that is affecting women. First, the article argues that electoral reforms have been used as the primary sources for democratic transformation, altering the institutional design in which women’s representation operates. This is followed by the discussion of the renewed federalism and its consequences over the opportunities or obstacles women have for accessing elected mandates. Examples of the existing differences and legal loopholes are highlighted. Finally, the article establishes which are the areas future debates should consider for advancing the representation of women in Mexico.

USING THE ELECTORAL SYSTEM FOR DEMOCRATISING THE COUNTRY

IN THE MEXICAN CASE, there has been a long process of political reform. First, political liberalisation was observed and, second, the beginning of democratic transformations. Electoral reforms undoubtedly played a vital role as it was – and remains - the primary mechanism for constructing and controlling new political





opportunities for widening democratic participation. The amendments made to the electoral system were used to shape the democratic structural scaffolding of the country. These electoral reforms initially affected the circumstances in which the elections were held. Free, fair and contested elections were the main aims underpinning the opposition's demands. The 1977, 1986, 1988 and 1994 reforms designed a number of institutions, including the Federal Electoral Institute (IFE) and the TEPJF, whose main role was to provide certainty, legality, and impartiality in the elections. The objectives of the electoral reforms changed progressively. The newer electoral reforms, introduced between

1997 and 2011 sought to improve political representation and participation as well as mechanisms for financial accountability and parties' prerogatives. Between the 2000 and the 2012 elections, five electoral reforms were approved. The first and the last reforms concerned women's participation and representation in politics.

In 2002 with the modification to the Federal Electoral Procedures and Institutions Code (COFIPE), Mexico joined 73 other countries that at the time had gender quotas. Initially the law established a 30% quota. In 2008, the percentage was modified again and by 2012, at the Federal



level, the COFIPE in its article 219 establishes that, of the total number of nominations, including both deputies and senators, at least 40% have to be of a different gender. Additionally, the law specifies that the proportional representation lists have to be integrated in segments of five nominations from which at least two have to be of a different gender and zipping is required.

A wave of change that started at the national level seemed to have reached state-level partisan politics. With the gradual deterioration of the PRI's internal discipline and the on-going acquisition of power by the opposition, the practices within the system started to change. As soon as the elections began to seem more competitive, the political pressure to adapt the rules according to the local and state contexts amplified. Increased electoral competition coupled with the implementation of a federal government system where state and local politics were becoming more relevant pushed political parties to adopt a more women-friendly electoral platform in certain states.

FEDERALISM: A DOUBLE-EDGED SWORD

IN MEXICO, the relationship between democracy and federalism can be traced to the transition process, which resulted in the decentralisation of decision-making power to the states. Democratisation resulted in the dissolution of power centralised in the almost authoritarian presidential figure. In other words, federalism shaped Mexico's transition to democracy, including the institutions for political representation. In doing so, it has also transformed the opportunities for women in becoming politically engaged. Federalism in Mexico pluralised competition in sub-national legislatures and gave space for opposition parties to raise and gain political opportunity against the hegemonic party. At the same time, federalism has allowed the existence of different rules, creating states with leading-edge and progressive legislation in terms of women's presence and ideas and states with more conservative or no schemes at all.

The design features of the federal arrangement inform the process of state gender crafting. Federalism, as 'a set of institutions – the division

of public authority between two or more constitutionally defines order of government – and a set of ideas which underpin such institutions' (Simeon & Swinton, 1995: 3) is capable of transforming the design and implementation of policies. In Mexico specifically, it has created different spaces that women can use in their advantage but that could also undermine women's issues. Local political actors pushed for the advancement of institutional reforms that granted them more power to influence policies and government. The speed of the changes varied among the states resulting in variations in the legal institutions controlling the process.

For example, differences can be observed in the design of the gender quotas, including the quota percentage, the existence of zipping or even the enforcement of any mechanism that aims to advance the representation of women in state congresses. Furthermore, in some of the states and in the federal government there are two types of candidates called *propietario* and *suplente*. The latter takes the seat if the former is unable to or if the deputy has to take a leave of absence once in office. In some states, the quota has to apply to both, while in some others the quota only applies to the *propietario* nominations. In some other states there is no specific ruling.

The differences observed are resulting in diverse advantages and obstacles across states. For example, states with clear enforcing rules include Aguascalientes, Yucatan and Zacatecas while Queretaro and Estado de Mexico are states with relaxed regulations. The existence of different legal frameworks is causing loopholes that have been used by certain groups within political parties in order to avoid the implementation of measures that seek to advance the representation of women, such as gender quotas. Among these loopholes two can be highlighted: the "Juanitas" case or the nomination of *propietario* and *suplente* and the possibility of dual nominations.

As mentioned before, on November 2011 the TEPJF took action to prevent the possibility of the so-called "Juanitas". The "Juanitas" were 10 federal deputies, eight of them women, who, just after two days of taking office, requested leave of



absence, making way for the *suplentes* candidates, who were men. Women were pressured, through loyalty and career expectancy arguments, to resign and leave their seats to their joint ticket partners. According to Milenio newspaper, husbands, brothers, relatives and political patrons displaced 13 women from their seats (Tellez, 2010). The TEPJF established the criteria to ensure the presence of 40% women nominees. To close the door to the so-called “*Juanitas*”, the TEPJF established that the nomination of women as *suplentes* would have to be of the same sex in order to prevent substitutions by male representatives. The effects of this change were visible in the difficult and intricate candidate selection process of the federal 2012 election. However, this ruling has had no consequences for the state nominations process yet.

The required application of gender quotas in the candidate and the alternate due to this recent ruling seem to have generated the need to find other loopholes through which the application of the quota can avoid. This is the case of the Institutional Revolutionary Party, PRI. This political institute announced in March 2012 its lists of candidates by majority and proportional representation for the federal elections of July 2012. They nominated the same group of women on both tiers. The party was said to be affecting the participation of women. With this, the focus is now been placed in the legal concept and use of dual nominations.



Coat of arms

The importance of the dual candidacies for the implementation of the gender quota was questioned because of the nominations during the 2012 federal election. However, the application of the dual nominations is something that has been happening at the state level in recent years. Of the thirty-two states, 17 of them allow its application. The enforcement of this type of features varies significantly between states. In some the number of dual candidacies is minimal in relation to the total nominations each party presents, as in the case of the Estado de Mexico. In orders, the state electoral code does not place any restrictions, as in Zacatecas.

On the other hand, federalism has allowed for more advanced legislation to be implemented. States do not have the legal obligation to standardise the existing laws to the federal ones (the Supreme Court ruled this in early 2002). States can have less advanced legislation but can also exceed the parameters set by the federal law and not only in terms of electoral law, but in many other areas of governance. For instance, in Mexico abortion is criminalized throughout the country except in Mexico City since the change to law in 2007.

Federalism has created the basis for the gender representation differences in terms of design and implementation, since the institutions have allowed states to regulate upon such matters. The heterogenic institutional design has come along with differences in the experiencing of citizenship. Low marginalised groups in some states have been struggling for full citizenship. The rejuvenated federalism has changed the power relations between the centre and the periphery providing congresses a real capacity for legislating. The impact of the new structures in the multilevel governance opened up a set of new opportunities for political engagement. The differences across institutional design and the enforcement of policies have resulted in women experiencing different circumstances in their search for political representation.

THE FUTURE: FROM FEDERAL ARRANGEMENTS TO LEGAL LOOPHOLES

THE DEMOCRATIC TRANSFORMATION has come along with differences in the experiencing of citizenship.



Women have experienced different circumstances created by different institutional design within the country. Federalism has opened up the possibility of having multiple institutions that in turn are affecting the representation of women. The use of electoral reforms for producing democratic change remains constant. At the same time, in the renewed federalism, local political groups have advanced the decentralisation of power. In doing so, women have gained new opportunities but have also been blocked by local elite groups.

Future debates surrounding electoral transformations will surely involve the emanating consequences of the rejuvenated federalism and the redistribution of power between the centre and the periphery. Within these future discussions, the debate should include the predicament between the decentralisation of power and the inequality in the opportunities that women have for accessing office because of the different institutional designs. At the same time, the debate should be aware of the importance of decentralising power in a country with a previously centralised and almost authoritarian regime. According to the former President of the Gender Commission of the Senate, Senator Judith Diaz, the new challenge is the standardisation of laws setting higher parameters but protecting local faculty to regulate.

In essence, federalism should be considered important for studying the representation of women in Mexico because it is creating different dynamics, providing multiple sites and points for accessing government (situations that could act as an enhancer or inhibitor of women's representation), and is resulting in widely different levels of gender equality. But not only the institutional design matters. There are plenty of other issues that are intertwined and help undermining the possibility of advancing women's representation. The existing cultural beliefs that organise social interactions are based on a male oriented and controlled system. The existence of *machismo* and biased practices has remained constant. In fact, the resulted entrenched local political actors strengthened the male oriented model. As in many other countries, in Mexico wage differentials, access to education and health clinics, preconceptions and stereotypes that feed

the division of gender and socially constructed roles and women's exclusion (either explicit or implicit) are still barriers that undermine women's access to politics. Any future advance is subject to the reduction or annihilation of these obstacles.

NOTE:

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