

**Legitimacy of the second round of elections****Legitimidad de la segunda vuelta electoral**

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Received July 25, 2022; Accepted December 30, 2022

**Abstract**

Despite the various initiatives to incorporate the second round or ballotage as a valid electoral system for presidential elections, it is still not used in Mexico. Therefore, the purpose of this paper is to analyze what the second electoral round consists of and its relationship with the term legitimacy. To achieve this, the concepts of electoral system, the three families in which the electoral systems are grouped, as well as the scenarios in which the second electoral round can be carried out and the concept of legitimacy, understood as the acceptance of the people towards the rulers allowing a greater governability and political stability, are developed. Likewise, as background, some initiatives are presented by deputies of political parties such as PRI or PRD in which they propose the incorporation of the second round of elections and under what conditions.

**Legitimacy, Ballotage, System, Electoral, Government****Resumen**

A pesar de las diversas iniciativas para incorporar la segunda vuelta o ballotage como un sistema electoral válido para las elecciones presidenciales, aún no se utiliza en México. Por ello, el propósito de este trabajo es analizar en qué consiste la segunda vuelta electoral y su relación con el término legitimidad. Para ello, se desarrollan los conceptos de sistema electoral, las tres familias en las que se agrupan los sistemas electorales, así como los escenarios en los que se puede llevar a cabo la segunda vuelta electoral y el concepto de legitimidad, entendido como la aceptación del pueblo hacia los gobernantes permitiendo una mayor gobernabilidad y estabilidad política. Asimismo, como antecedentes, se presentan algunas iniciativas de diputados de partidos políticos como PRI o PRD en las que proponen la incorporación de la segunda vuelta electoral y bajo qué condiciones.

**Legitimidad, Ballotage, Sistema, Electoral, Gobierno**

**Citation:** QUEVEDO, Noé & VALENCIA, Gerardo. Legitimacy of the second round of elections. Journal of Law Applications. 2022. 6-16:26-34.

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## Introduction

This paper addresses the issue of the second round or ballottage as a majority electoral system and the relevance of its application in elections for president of the Mexican Republic. The second round of elections not only strengthens democracy but also the legitimacy of those in power, that is, the people's acceptance of those who govern them.

The concept of electoral system will be developed, as well as the types of electoral systems that exist and which one is applied in the Mexican Republic. Likewise, the second round of elections and the term legitimacy will be analysed in order to establish a relationship between the two. This relationship is also explained with the examples of previous elections for President of the Republic, as well as the various initiatives that have been presented before the Chamber of Deputies for a second round of elections. Finally, the scenarios in which this electoral system could be implemented and under what conditions are studied.

The relevance of the topic is that a second round of elections can increase the levels of legitimacy of the elected rulers and thus lead to a strengthening of governments, which in turn can lead to citizens becoming active members of their democratic activity. This system is presented as a possibility to solve the problems of political nonconformity that have arisen in the country in recent years.

## Relationship between run-off elections and legitimacy

In order to strengthen a government, there are different ways of exercising democracy, based on the idea that electoral systems also take into account aspects such as the culture, language, religion and customs of each country and, therefore, they become concrete in the representation of the social will. The term legitimacy becomes relevant when it is understood as greater acceptance by the people, with the aim not only of being closer to the people it represents, but also of a more efficient government, with greater governability and political stability.

In order to achieve this, different forms of citizen elections or electoral systems have been implemented, which consolidate the form of government, the number of political parties, the composition of congresses, assemblies or chambers of deputies and senators. In other words, electoral systems are strategies or decisions preferred by the political parties in power - of congresses, assemblies or chambers of representatives and the governments in power in turn - as they allow them to consolidate and maintain political power. However, electoral systems are expected to consolidate and reinforce existing political party configurations, as well as to generate new party systems or political outcomes in their own right (M. Colomer, 2004, pp. 25-26). Josep. M. Colomer explains that parties' decisions on electoral systems follow what can be called the micro-mega rule; that in this context, large political parties prefer small institutions that exclude others from the competition and, on the other hand, small parties prefer large institutions in which they can be included. In general, it all comes down to the fact that an electoral system makes it possible to elect representatives and rulers, and in the same way, the formulas for the allocation of seats, which are translated into organs of popular representation or organs of government, are realised.

The electoral system is a legal figure, that is, a set of rules that govern the procedure of electoral preferences of voters, these preferences are translated into votes and these into positions of authority that are distributed among the various parties and candidates competing in the elections.

Three main families into which electoral systems can be grouped are proposed: plurality or majority systems, proportional systems and mixed systems. As a first point, proportional systems are those that seek to give representation to each political party in proportion to the votes obtained, in other words, they seek to establish a relationship of proportionality between votes and seats. Depending on the number of votes obtained is the number of seats that correspond to them. Proportional systems are opposed to majority systems, in an attempt to solve the problems of under- and over-representation.

They also seek to make room for minorities. It is important to note that these systems only apply to electing large political bodies such as the legislative chambers, not nominal posts such as the president of the Republic or state governors, since only the natural person holds the office.

On the other hand, the mixed electoral system is one that combines elements of both the majority and proportional systems. It should be noted that, for many political experts, the mixed electoral system responds to the search for a balanced system of representation, where all citizens are represented and, in addition, have active participation in the democratic exercise. This is why it is said that these systems try to be as democratic as possible, avoiding the excesses of the majority representation system and, at the same time, the discrepancies of proportional representation. The political scientist Dieter Nohlen distinguishes three trends in these electoral systems: majority-dominant, proportional-dominant and balanced systems.

Finally, majoritarian systems are those where candidates are elected by winning a majority of the votes, either an absolute majority or a relative majority. An absolute majority is given with fifty percent of the votes plus one, while in a relative majority, the winner is the one who wins the majority of the votes, but the elected candidate has less than fifty percent of the votes. Relative majority is most common in countries with multi-party systems with a high fragmentation of the vote, as is the case in Mexico. Arturo Núñez Jiménez points out that absolute majority gives priority to determining clearly and unequivocally who won the election, which is why this principle is said to favour the ability to decide rather than representativeness (Orozco Henríquez, 1999, p. 38).

The legitimacy of a candidate is based on the principle that he or she obtains the greatest possible number of votes in relation to the other electoral candidates, so that an absolute majority offers greater support to the elected president at the moment of governing.

The second round, also called ballotage or double round, is a system of electing representatives with an absolute majority, i.e., where the candidate obtains fifty percent plus one of the votes - there are some scenarios in which a second round is possible, which are developed below - so that the elected candidate has greater citizen support. This is usually achieved through a second ballot between the top two candidates from the first ballot, given that in the initial ballot none of the candidates achieved an absolute majority.

With the above, it is possible to establish a relationship between the term legitimacy and the second round of elections, where if the first round is understood as the greater acceptance of the people, then the second round is correlated by reaffirming the greater preference for electoral representation of the voting public. In short, the greater the consensus, the greater the legitimacy, which guarantees a democracy with high levels of acceptance, making it more consolidated and more participatory. Robert Dahl, in *Democracy: A Citizen's Guide*, argues that only a unified, organised and independent group of people living together under a logic of equality is needed for them to be able to make decisions on an equal basis (2006, p. 16). This principle summarises that in a group of people who need to delegate responsibilities and with several qualified members, it is plausible that consensus will not be reached on the first occasion and the exercise will have to be carried out again. Democracy is thus a cyclical process of revivals.

Another point where legitimacy and the second round correlate is the dichotomy between citizen participation and abstentionism. Understanding that if the democratic exercise is legitimised and the electoral system is given credibility and trust, citizen participation will be active and abstentionism will decrease, since society will agree on how it is represented.

On the other hand, greater citizen participation in electoral processes will avoid future post-electoral conflicts that arise in very close elections, as was the case in the 2006 presidential elections, where the National Action Party (PAN) candidate, Felipe de Jesús Calderón Hinojosa, won by a margin of less than 1% over the second place Andrés Manuel López Obrador of the Democratic Revolution Party (PRD), Labour Party (PT) and Convergence coalition. This triggered one of the most difficult political crises ever known in modern Mexico. In this context, if the second round were part of our Mexican electoral system, it would have avoided these conflicts.

The above situation is evidence of the relative majority system used in Mexico, i.e., the winner is defined by a majority of votes, regardless of whether he or she does not reach an absolute majority, simply the one who obtains the most votes. Various scholars of political-electoral law argue that, in the case of vote fragmentation, the winner actually represents a minority, which delegitimises the function of the public servant, as was the case in the 2006 presidential elections. It is important to note that this electoral system is used in most democratic countries.

It should be noted that in Mexico, and according to the current electoral legislation, the two traditional formulas are used for the integration of the bodies of popular representation at the national level: the principle of relative majority voting and the principle of proportional representation, through the system of regional lists; but in the case of the Chamber of Senators, the principle of first minority is also added to the two previous ones.

By the principle of relative majority, the President of the United Mexican States, 300 of the 500 deputies and 64 of the 128 senators are elected. And in accordance with the principle of proportional representation, the positions are distributed among the registered candidates according to the number of votes obtained by each political party with respect to the total votes cast in the corresponding election; in other words, 200 of the 500 members of the Chamber of Deputies and 32 of the 128 senators are elected by this principle.

Likewise, by the principle of first minority, one position is assigned in the Senate for each of the 32 states; this principle of first minority corresponds to the fact that a position is assigned to the candidate or candidate formula of the political party that comes second in terms of the number of votes obtained.

### **Second round of elections in Mexico**

There are precedents in our country where the implementation of the ballotage or second round of elections has been sought. In 2002, the Party of the Democratic Revolution (PRD), through Deputy Luis Miguel Barbosa Juerta, proposed a second round of elections for president, deputies and senators. In his initiative, it was established that elections are subject to two elements that condition their outcome: the first point is that the patterns of political participation depend on the attitudes of socially conditioned voters, in other words, the orientation towards abstentionism is a consequence of historical fears, perceptions of the uselessness of the electoral process or a generalised distrust; this is an attitude that tends to delegitimise the democratic political system itself. The second element is that the adoption of certain instruments that together constitute electoral systems and that have the potential to contribute to governability - one of these instruments being the two-round electoral system - is a way of delegitimising the democratic political system itself.—<sup>7</sup>

This ballotage mechanism seeks to ensure that those who are elected have a quota of legitimacy guaranteed by the favourable vote of an absolute majority of voters. The aforementioned initiative seeks to introduce the legal-electoral figure of ballotage in a more classic variant of a double round that requires an absolute majority to win the first election, since unlike other Latin American countries that have adopted this system, the proposal is that it should not only be limited to the executive branch, but also for the elections of certain members of the chambers of the General Congress, specifically the Chamber of Deputies and the Senate.

<sup>7</sup> See Parliamentary Gazette of 22 August 2002.

The aim is to reach a consensus that is as equivalent as possible in the two political branches of government and to promote the formation of pacts or strategic alliances to win the second round, which would then be reflected at the parliamentary level.

In 2005, Deputy Jesús Martínez Álvarez of the Convergencia party - now called Partido Movimiento Ciudadano - presented an initiative for a second round of elections to the Chamber of Deputies. Among the conditions of the initiative is to create legal and political conditions so that the candidates with the greatest public acceptance establish a system of alliance, not only in elections; also that the president of the Republic not only has a legislative majority, but also has greater social and political support. In the proposal of Dip. Jesús Martínez, the second round would motivate agreements and national political alliances, would favour better conditions of governability, with a stable majority and a coalition government with co-responsibilities; in the same way, conditions would be created so that the president-elect could have a parliamentary majority that would allow him to promote his government programme.<sup>8</sup>

On the other hand, in 2006, the Parliamentary Group of the Party of the Democratic Revolution (PRD), through Deputy Cristina Portillo Ayala, presented a legislative initiative so that the second round of elections would not only be limited to the election of the head of the executive branch, but also for elections of certain members of the chambers of the Congress of the Union, since both deputies and senators are elected by relative majority vote. In addition to the previous initiative, in the same year, the Institutional Revolutionary Party (PRI), through Deputy Francisco Luis Monárrez Rincón, introduced a second round of elections for President of the Republic.

Despite these examples, ballottage is not yet applied in Mexico, but it is in several Latin American countries such as: Argentina, Chile, Venezuela, Puerto Rico, Cuba, Spain, Colombia, Ecuador, Guatemala, Costa Rica, Dominican Republic, to mention a few. It is worth noting that the most important quality of this electoral system is to provide the winner with a legitimate majority mandate; however, critics point out that the second round is inherent to over- and/or under-representation in legislative elections. This implies that there is no perfect democracy, but that between relative and absolute majority, the latter is the most relevant. To achieve the legitimacy that an absolute majority confers, it is clear that, if two candidates are admitted to a second ballot, it is highly likely that one of them will win by an absolute majority. In other words, the mechanism of the second round of elections makes it possible to achieve an absolute majority between the two contestants in the second ballot or, at least, a relative majority or plurality among the participants and thus guarantee greater governability and/or greater legitimacy of those who are elected.

Because its main feature is the possibility of a second ballot for voters - unlike other electoral systems - it gives voters the opportunity to reflect on their decision. In any case the first ballot is a selection rather than a proper election, unless one candidate wins by an absolute majority immediately. Thus, its function is to select rather than elect the most preferred candidates and have them contest a second ballot to be held one or two weeks later.

The term legitimacy -already mentioned and of great relevance in this paper- is closely linked to the concept of representative democracy, which leads to the implementation of a second round system, because it is an electoral system with elements and characteristics that demand greater citizen support. Therefore, the most relevant advantage of the second round is that it provides greater legitimacy.

<sup>8</sup> Gaceta Parlamentaria, *op. cit.*, p. 30.

Martínez-Sicluna argues that "it cannot be reduced, as positivism does, to the formula that identifies legality as synonymous with legitimacy, since the latter concept implies a valuational content that may or may not comprise the legal norm" (1991, p.10); in other words, legitimacy is a concept that "cannot be reduced, as positivism does, to the formula that identifies legality as synonymous with legitimacy, since the latter concept implies a valuational content that may or may not comprise the legal norm" (1991, p.10). In other words, legitimacy implies a subjective judgement about who has the right to rule, and this judgement can be based on compliance with the law (legality) or on reasoning based on morality, social values, philosophical conceptions or other diverse reasoning.

For his part, Germán Bidart Campos (1986) establishes that legitimacy should be understood in three senses: just, sociological and legalised. In electoral processes, ideally, it would be necessary for society to consider as legitimate "only the power arising from electoral participation" (Bidart, 1986, p. 9), that is, sociological legitimacy; as well as in the form in which it is enshrined in the corresponding electoral systems, that is, legalised legitimacy; and that it is judged "that there is sufficient reason to consider as legitimate the power emanating from electoral participation" (p. 9), corresponding to philosophical legitimacy.

The sociological, legal and philosophical elements as a whole are idyllic, but reality shows that legitimacy and legality can be opposed to each other, in a scenario where the outcome of the election is seen by society as unjust, even if it is based on the ruling legal system. This brings us back to the aforementioned example of the 2006 presidential election, mentioned above.

With the above, it is established that the second round of elections allows to have rulers with high levels of legitimacy, since the support and consensus of the citizens would increase, since the winner will have -then yes- a majority of votes and, with this, there will be a strengthening of the governments; as well as a strengthening of the figure of the president of the country.

Consequently, citizen participation rates will also increase, as the voting population will be motivated to go to the polls to cast their vote. The aforementioned allows arguing that the alternative of ballotage benefits to lower the levels of abstentionism in Mexico, which undoubtedly plays an important role in almost all elections that have taken place in modern Mexico, in which a large number of voters have not gone to the polls to cast their vote.

Dip. Mario Enrique del Toro - in a proposal presented by himself and the PRD in 2007 - commented that it is necessary to establish clear rules, strengthen electoral mechanisms and institutions to give legal certainty to political actors, and predicted that elections are and will be increasingly competitive. This was the case in the 2012 presidential elections, and although it was thought that the 2018 elections could be exempt - given that the first place winner won more than fifty percent of the total number of voters, not of the nominal list - the abstention rate was also very high. The deputy also said that the lack of certainty and credibility in local and federal electoral institutions and processes will continue to generate confrontation between the contenders, their supporters and militants in the context of close election results. In addition to this, the inertia of electoral fraud, the distrust between the contenders and the participation of federal, state and municipal governments in the promotion of a candidate-party, among others, make the electoral contest disqualifying. It is therefore advisable for citizens to be aware of different electoral options and offers, to participate with passion, because it is worrying, as demonstrated by the country's electoral history, that a method that builds a clear majority to obtain electoral victory and that, naturally, becomes a legitimate and legitimised government is not considered.

Of course, some researchers of electoral systems speak of possible disadvantages of the double round, which are in contrast to the advantages mentioned above. One of them is that this electoral system can only work in countries with a consolidated democracy, as shown by the examples of countries such as France, Portugal, Austria, Finland, among others; this is not the case in Latin America, where the second round has generated governance crises and political instability, resulting in social and political polarisation with the creation of divided governments and a series of post-electoral conflicts.

However, there are divided opinions: on the one hand, José López in "Una alternativa de gobernabilidad", states that the second round should be implemented in countries with a consolidated democracy, with good political and social stability; if this is not the case, the effects would be counterproductive, such as the collapse of governance, the increase of discontent leading to the ungovernability of municipalities, states or the country (n.d., p. 95). On the other hand, Juan Liz in "The Two Faces of Democracy" comments that a second ballot would avoid this type of problem, since the first round allows the parties to observe the limits of their strength and allows the two main candidates to recognise which alliances they need to form in order to win. This reduces the degree of uncertainty and allows for more intelligent decision-making not only by voters, but also by candidates (n.d., p. 81).

It is true that it is precisely the increase in abstentionism and the lack of a real commitment between the governors and the governed, as well as the lack of political and democratic culture on the part of the electoral bodies, which are some of the factors that represent the main problem to be overcome by the countries - both Latin American and European - that have incorporated the implementation of the second round of elections into their constitutions in their legal-electoral systems.

Even so, the double round is considered a symptom of progress in Mexican democracy, given that both the citizenry and the electorate share a generalised feeling of a lack of legitimacy in the results of some electoral processes, in which a candidate wins over the second place with less than five percent and regularly with a percentage of less than forty percent of the total vote cast, which is the accepted international standard. This is why the second round is supported by the country's citizens.

However, the fact that this model is approved does not mean that in every election a second round of voting is sent to a second ballot, for which different scenarios are proposed in which the second round is viable or not:

The main one is that in ordinary or extraordinary elections for President of the Republic, none of the contenders obtains an absolute majority. Although this, as has been pointed out, corresponds to fifty percent plus one, the reality denotes the criterion of a minimum of forty percent of voters, but with a difference between first and second place of five or more percentage points, because the total number of voters does not correspond equally to the total number of voters on the electoral roll. Therefore, the two highest percentages of the valid vote cast will be called for the political parties that nominated the first two candidates for president of the Republic or the formulas of candidates for senators or deputies.

If none of the second-place candidates declines for the second ballot, the National Electoral Institute shall consider them to be legally registered. And in the event of their withdrawal, the National Electoral Institute shall declare the candidate or candidate formula that obtained the highest number of votes in the first ballot to be elected.

On the other hand, a second ballot shall not be called when:

More than fifty percent of the voters registered on the respective nominal list have voted in the country.

None of the candidates for President of the Republic or of the contending formulas for senator or deputy have obtained at least forty percent of the valid vote cast, but the difference in votes is greater than ten percentage points between first and second place.

For the purposes of this paper, the second round of elections is a system that aims to consolidate the democratic regime, generate a greater degree of legitimacy for candidates or popular representatives, generate higher levels of governability for governments, as well as give greater strength to the head of the executive branch, allowing him or her to overcome the problems that arise when the elected president is elected by a minority plurality. In addition to promoting the construction of governing majorities, avoiding post-electoral conflicts, strengthening the political party system and motivating citizen participation at the polls in order to reduce abstentionism.

The participatory dimension of citizenship is fundamental to democracy for two reasons: political mobility, i.e. that a person can rise to positions of government or representation through participation; and the influence of citizens on decision-makers. Therefore, a system with low participation theoretically has a negative impact on the accountability of those who govern.

Citizen participation in electoral processes and in the exercise of democracy is related to legitimacy, since - according to various theorists - citizen participation is evidence of a well-functioning democracy, thus legitimising the political system. Only through this exercise can citizens reflect on their own interests and develop a better understanding of the political, social and economic needs of others. This is why the case of Mexico is worrying, as abstentionism goes hand in hand with a progressive discrediting of political institutions, in particular, the decline in citizens' trust in political parties.

In the 2006 presidential elections, there was a high percentage of abstentionism, 29 583 051 out of 71 374 373 of the nominal list (41.45 per cent abstention rate); and in the 2012 elections, 29 348 670 citizens did not vote out of 79 492 286 of the nominal list (36.92 per cent abstention rate). As for the 2018 elections for president of the Republic, abstentionism was 32 649 100 out of 89 250 974 of the nominal list (36.58 per cent abstention rate).

This panorama raises questions such as: what goes through the minds of citizens who do not want to vote in elections; how much legitimacy or citizen support do the rulers have to govern us; without this citizen support, do the rulers manage to govern during their term of office? It is necessary to work on the levels of citizen confidence in political representatives, as well as to analyse the failings of our electoral system and to rethink a new proposal such as the second round of elections and the issues that this entails, since it cannot only be proposed for the president of the Republic, but the possibility and relevance for governors and the Congress of the Union should also be studied. And finally, and importantly, whether the second round will give greater legitimacy to those in power.

### **Conclusions**

Although some scholars argue that the second round does not help to confer genuine legitimacy on the winning candidates, in other words, that the support they receive during the electoral process is the product of bargaining. Or that this double round creates an artificial legitimacy, where the candidate elected with the approval of the majority will also have a great deal of opposition from sectors of society and the defeated political party (Pachano, 1997, p. 229). The reality of the last presidential elections in Mexico indicates a social and political inconformity due to the minimal differences between the winner and the loser; the answer lies in a second ballot that gives greater certainty and confidence by allowing citizens to reflect on their vote.



With the radical change of the double round in terms of the legal and cultural aspects, the level of legitimacy would increase, with the understanding that the greater the number of citizens who vote for a specific representative - not only in a first, but also in a second ballot - the greater the support and certainty that the winner will have over the other contenders. This is how governments can be strengthened by intelligently using the political alliances that are accentuated in the elections to support the elected governor in his or her work plan. Also, by encouraging the population to go out and vote in a more active way and with the knowledge that they will have the opportunity to secure their vote for the candidate of their interest, abstentionism, one of Mexico's biggest problems, will decrease.

It is concluded that the second round is an alternative with different benefits and with clear examples from other countries with more advanced democracies, and that it can offer the country a solution to one of its major problems, which is the distrust of political representatives; this translates into a lack of legitimacy, to the evaluation or social judgement that the governed give to the entity that is going to exercise power, where the double round will be able to consolidate a more efficient government.

### Acknowledgements

The research for this work developed by Noé Quevedo was carried out through the support for the promotion of research PROFAPI 2022 of the Autonomous University of Sinaloa under the project number PRO\_A6\_068.

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