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Decentralisation and Budget Accountability in the twilight of Mexican Presidentialism

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Para Jimena

Cerramos un capítulo y abrimos otros, de un libro muy feliz que vamos escribiendo juntos.

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DECLARATION

I declare that this thesis is the result of my own work and includes nothing which is the outcome of work done in collaboration except where specifically indicated in the text.

Juan E. Pardinás

Date:

ABSTRACT

This dissertation is an attempt to understand how Mexico's democratisation process transformed budget accountability and the relationship between the federal, state and municipal governments. With the decline of presidentialism, two major changes occurred: the federal Congress became a more powerful regulator of public expenditure; and a large share of the budget was decentralised to subnational governments. The research objective is to produce an empirical analysis of how it came about that the president lost control over a major share of discretionary budgetary spending while state and municipal authorities increased their financial capacities without strong local systems of checks and balances. The work then evaluates the unintended consequences of the process including uneven mechanisms of accountability among different levels of government. The dissertation uses original survey material in order to do this.

This is a piece of empirical research that aims to fill a gap in the literature on the budgetary process in contemporary Mexico. This work contributes to the literature about decentralisation in both Mexico and the rest of Latin America. In particular, it is part of a new wave of studies that look at processes of institutional change related to democratisation and decentralisation within the region.

The dissertation is based on the assumption that the congressional election of 1997 was the threshold of democratic change in Mexico. The results of that election changed the political conditions that permitted the existence of Mexico's presidentialism. The emergence of an opposition majority in the Chamber of Deputies triggered the transformation from a *metaconstitutional* to a *constitutional* presidency. In this transformation, an Executive with unwritten and overreaching powers evolved into a presidency bound by written laws and the institutions in charge of enforcing them. The active presence of opposition parties inside the Chamber of Deputies triggered several reforms that forced the President to the unprecedented practice of rendering accounts.

As these changes were occurring at federal level, subnational politics were transformed through an unprecedented combination of political and financial autonomy for state governors and municipal presidents. On December 2002, a Mexican newspaper reported that the Municipal President of Tultitlán, a municipality with 432,000 inhabitants, had a higher salary than the then British Prime Minister, Tony Blair. According to the secret payroll of the municipal government, the Mayor received at least US\$213,000 a year. That newspaper

report triggered the question that inspired this empirical research: which *de jure* and *de facto* institutional mechanisms allowed a mayor from a small Mexican town earn a higher wage than head of government from a G-8?

The dissertation is focused on two reforms related to budgetary policy: 1) The creation of a new Supreme Audit Institution (SAI) at federal level; and 2) The decentralisation of federal spending to states and municipalities. The creation of a new SAI, the *Auditoría Superior de la Federación* (ASF), improved the political autonomy and technical capability of the congressional bureau in charge of *ex post* budgetary oversight. Through the ASF, the Congress improved its capability to demand an accountable presidency.

The second reform was the decentralisation of an important share of government expenditure to state and municipal authorities. This implied the creation of clear norms and transparent formulas for the distribution of public resources among the three levels of government. In the former political system, the President had the unwritten prerogative to decide the geographical allocation of public expenditure, according to unaccountable criteria. The federal Executive had deep pockets and full political power to determine the fiscal surplus or financial bankruptcy of a subnational government. The decentralisation process created rules that forced the President to render financial accounts to subnational governments. For the first time, the Federal Executive had to follow transparent and stable criteria for the transfer of resources to states and municipalities. The decentralisation process rested on the premise that local authorities would allocate public expenditure more efficiently and would maximise social welfare.

The decentralisation of public expenditure increased the accountability of the federal government to states and municipalities. However, a central claim in my thesis is that an unforeseen consequence of this process was a lack of accountability of political leaders at subnational levels. With the dusk of presidentialism and the decentralisation of expenditure, governors and municipal presidents gained ample margins of political and financial power.

Thorough a census of state SAIs and an Index of Budget Information, the thesis will provide empirical evidence on the importance of accountability institutions in the transfer of spending responsibilities to subnational governments. With weak accountability mechanisms at the local level, there are no guarantees that decentralisation will deliver its theoretical expectations of efficiency and welfare.

This is not a dissertation against the general premises of decentralisation. However, through the analysis of Mexico's case study, the research offers a word of caution about the consequences of a mechanical application of the decentralisation policy, with disregard of the political context and *accountability infrastructure* of subnational governments.

This thesis consists of 92,497 words (excluding references).

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INTRODUCTION

The 1997 legislative election ended the 68-year congressional monopoly of the *Partido Revolucionario Institucional* (PRI). For the first time in modern history, the Executive had to face a divided Congress. A unified government, with the ruling party controlling both houses of the Legislative Branch, had been one of the pillars of Mexico's *presidentialism*.

The essential purpose of this dissertation is to offer an empirical analysis of both the changes and consequences of the reform in budgetary law during the first decade (1997-2007) of democratic government in Mexico. The research uses the emergence of a divided Congress as the independent variable, which explains the series of reforms that transformed the Mexican presidency into an accountable institution. The Congress, with no control from a single party, was the political catalyst of both decentralisation and increased budget accountability. A new Supreme Audit Institution (SAI) created the basis for budget accountability from the Executive to the Legislature. The decentralisation process fostered the accountability of the Executive towards the lower levels of government. However, this accountability did not always extend to local office holders

The dissertation sets out some significant new evidence about the complex relationship between the transition to democracy, the decline of presidentialism and the emergence of a new breed of powerful local office-holders with weak accountability: state governors and municipal presidents. The interaction of democratisation and decentralisation, within the context of declining presidential power, has brought about unprecedented political and financial autonomy for subnational authorities. The dissertation ends with an analysis of the 2007 constitutional amendment that authorises the Federal Congress to legislate over the homogenisation and transparency of state and municipal budgets. This Constitutional

amendment implied the re-centralisation of federal authority, to dictate the financial disclosure criterion of subnational accounts.

The research belongs to the 'second generation' literature on decentralisation, which focuses on the accountability and incentives of government officials (Bardhan and Mookherjee, 2005:4). The 'first generation' literature on decentralisation was conceived within the context of developed countries, with functional accountability environments and longstanding democratic traditions. The thesis also contributes to the literature on transition to democracy and the challenges for institutional reform within a political system in state of flux.

The case study indicates that we need to go beyond the existing literature on accountability to consider further questions. The dissertation tests the limits of the concept of Horizontal Accountability coined by Guillermo O'Donnell. For the study of Mexico's decentralisation, Horizontal Accountability has to take into consideration the variations in local political systems. Mexican states offer a diversity of political contexts that produce a wide range of accountability outcomes. In several cases, the informal practices of the local political system determine the success or failure of institutions for Horizontal Accountability. A research limited to the formal sphere of the Horizontal Accountability is in itself incomplete. The enforcement of Horizontal Accountability is constrained by *de jure* and *de facto* realms.

The thesis makes eight central claims:

1. Democratisation has largely undermined the arbitrary financial power of Mexican Presidentialism. It has reduced discretionary criteria in the allocation of the federal budget and improved expenditure accountability (See chapter 2).
2. With the creation of a more effective Supreme Audit Institution and a new legal framework for the approval of the federal budget, the Executive was forced to render

accounts to an empowered Legislative Branch. Through decentralisation, the federal Executive was forced to render accounts to subnational authorities (See chapters 2 and 3).

3. The unintended result of decentralisation was to make additional financial resources available to state and municipal office holders, who did not have effective institutional mechanisms to enforce budget accountability (See chapters 3, 4 and 5).

4. The centralisation of tax collecting responsibilities in the federal government reflected the uneven economic development and institutional asymmetries of Mexico's regions. However, the decentralisation of spending treated all Mexican states as legal equivalents, despite their deep disparities in administrative and accountability infrastructures (See chapters 3 and 5).

5. The modernisation of accountability institutions at the federal level did not, in general, trickle down to subnational governments during the first decade (1997-2007) of a divided Congress in Mexico (See chapters 2 and 5).

6. The performance of Mexico's subnational governments provides empirical evidence that the presence of a credible and functioning electoral system does not guarantee the existence of governmental accountability (See chapter 5).

7. Without adequate institutions for financial accountability at the local level, the decentralisation process may not have led to the improved expenditure efficiency at these levels of government (See chapter 4).

8. The concept of Horizontal Accountability has to take into account the importance of informal political practices on the behaviour of accountability institutions (See chapter 5).

I. The emergence of a constitutional presidency in Mexico

During almost all of the 20th century, the President was the central figure of Mexico's political system, and presidential power the main source of political stability. Under a single party system, disputes within the political arena were resolved through a general acknowledgment of the president's overreaching authority. Presidential pronouncements served as the guiding light in deciding the professional future of politicians, and the last word on conflict resolution.

Weldon (1997:227) sets out the four conditions that allowed the existence of Mexican presidentialism: "1) a presidentialist system based in the Constitution; 2) unified government where the ruling party controls the presidency and both houses of Congress; 3) discipline within the ruling party; 4) a President who is the acknowledged leader of the ruling party." Two additional conditions could be added: Until 1989, the President controlled the 31 state governors¹ who ruled over the subnational political machines of the *Partido Revolucionario Institucional* (PRI); and, until 1999, the President had the unwritten authority to appoint his successor.

For Weldon (1997:227), the constitutional "authority granted to the President was insufficient in creating stability and efficiency through centralisation." It was the risk of political instability that legitimised the *metaconstitutional authority* (Carpizo, 1977:190) of the president. One of the main sources of this *metaconstitutional authority* was that the President was accountable to almost no one, apart from himself and the historians who would record his legacy. "There is virtually no constitutional check on the power of the Mexican president" (Philip, 1992:167). Since the Constitution of 1917, Mexican presidents have been allowed to remain in power only

¹ Governors acted as local filters to prevent regional political conflicts from escalating to the national agenda.

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for a single six year term. Through the “no re-election” clause, the only obvious limitation to his power was time.²

The premises that linked presidential authority and political stability began to erode with the emergence of a competitive party system. In the mid-1980s, the PRI monopoly over electoral outcomes began to crack as opposition parties gained a significant presence through the polls. As a result of the elections, a new political class emerged to question the metaconstitutional and unaccountable authority of the Executive. The new breed of politicians was outside the sphere of influence of the President and the PRI.

In striking contrast with other democratic transitions in Latin America or Eastern Europe, Mexico’s path to democracy did not fracture its political institutions. There was no sudden collapse of the previous regime, nor was there a collective demand for a new constitutional framework. Moreover, the legal basis of presidentialism was never challenged by any serious propositions for alternative models, such as parliamentarianism (Lujambio, 1995:11-12).

The main criticisms of the previous regime concerned the unwritten powers of the President and the lack of credibility of the electoral system. The critics made a simple demand: democracy through a President bound by law and institutions, plus fair and free suffrage. The constitutional structure of the ancient regime would provide the foundations for the new era. A quasi-single party system with almost absolute control over election results evolved into a competitive multiparty structure with legitimate electoral institutions. This change in the political system transformed *metaconstitutional presidentialism* into a new political order, where the Executive is accountable to the state institutions, the law and its citizens. Most academic research on political change in Mexico has directed its attention to the development of a multiparty political system. My research is framed on the post-transition democracy

² The role of *Amparo* as a limit to presidential authority will be discussed in chapter 1.

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period, after the 1997 congressional election³. The dissertation will examine the characteristics of budget accountability and decentralisation in the aftermath of presidentialism.

The birth and death of Mexico's overreaching presidentialism can be represented by two speeches. In 1928, Plutarco Elías Calles announced that Mexico would have to evolve from a country of *caudillos* (strongmen) to a country of *institutions*. To meet such a challenge in the aftermath of the revolutionary wars, there was a need for a central figure to hold all the reins of political power. In 1936, when President Lázaro Cárdenas (1934-1940) used the instruments of the Executive Office to dismiss Plutarco Elías Calles, then-boss of the party, the office of the presidency gained control over the entire political system. Sixty years later, in his 1996 State of the Union address, President Ernesto Zedillo (1994-2000) claimed "I will only use the powers of my office that are given by the law (Zedillo, 1996:23)."

An Executive limited by the restrictions stated in the law meant the end of presidentialism as we knew it. In an interview for the dissertation, Roque Villanueva, leader of the PRI majority in the Chamber of Deputies (1994-1996) and National leader of the PRI (1996-1997), explained that "Ernesto Zedillo marked the end of presidentialism for two fundamental reasons: first, he was not a man with ambitions for power, in the conventional terms of Mexico's political system. In second place, the fact that the PRI did not obtain an absolute majority in the 1997 election, forced him to negotiate with Congress under very different circumstances from the other presidents in Mexican history" (Villanueva, 2008).

³ There is open debate over the date when Mexico completed its transition to democracy. For some observers, the transition to democracy was completed in the year 2000, when Vicente Fox, member of the Partido Acción Nacional (PAN), became the first non-PRI president in 7 decades (Vargas Llosa, 2000; Bartra, 2000; Calderon Hinojosa, 2000; Lagos, 2006.). I assume that the end of the transition and the beginning of a democratic regime began in 1997, when the PRI lost control of the Chamber of Deputies. The main institutional features of the new political order were already functioning by the 1997 election.

DECENTRALISATION AND BUDGET ACCOUNTABILITY IN THE TWILIGHT OF MEXICAN PRESIDENTIALISM

Every area and state entity that had previously been overshadowed by the president's meta-authority needed to forge institutional mechanisms to replace the decision-making processes embedded in the old political regime. The new plural Congress promoted reforms of an entire institutional structure that was accustomed to follow presidential orders. The country of the *presidential-caudillo* was forced to evolve in a few years into a country of institutions.

The discretionary powers of the President had formed the basis of political stability. The challenge of Mexico's new plural political system was to create the foundation for stability without these discretionary powers. Political stability now had to be based on rules accepted by all political actors. The institutions charged with enforcing these rules needed the collective acquiescence of diverse political interests. These new institutions shared a common source of legitimacy: political autonomy from the presidential sphere of influence.

During the 1990s, Mexico embarked on an intensive process of institutional reform in several arenas of public life. Regarding the economy, in 1993-94 the President granted the right to the Central Bank to set interest rates, the Mexican currency was allowed to float freely, and the Executive lost its capability to influence the exchange rate. In 1994 the Supreme Court was restructured under the premise of gaining independence from political pressures from the president's office (Domingo, 2000). Most of the institutional reforms that marked the transition to a constitutional presidency required major reforms through secondary legislation, and several Constitutional changes. In the electoral arena, in 1996 the Instituto Federal Electoral⁴ (IFE) and the electoral courts also gained political leverage and independence from the Executive (Becerra & Woldenberg, 2000). At state level, most local conflicts came to be resolved through institutional channels instead of via the ousting of governors through presidential

⁴ For a detailed study of Mexico's transition to democracy through the construction of credible electoral institutions, see José Woldenberg, and Becerra (2000), *La mecánica del cambio político en México*.

pressures⁵. Results of local elections were respected, and the PRI was allowed to select candidates who had not been appointed directly by the president's inner circle.

This study analyses two reforms that adapted the presidential powers to the context of a polyarchy (Dahl, 1971) with dispersed centres of power: the emergence of stronger budget accountability at the federal level, and the decentralisation of spending to state and municipal governments. One of the key sources of previous presidential power had been its control over a large share of the federal budget that was transferred to subnational authorities without either formal rules or predictable criteria. With the docile consent of the Federal Congress, the President had the ability to 'make or break' the equilibrium of state and municipal treasuries.

The plurality of political forces in Congress transformed its formal rubberstamp function into a real check and balance of presidential power. In the states, governors from all political parties, including the PRI, were unwilling to quietly accept the presidential prerogatives of discretionary budgets. The transition to democracy created a new political establishment that was willing and able to ask uncomfortable questions from the President about the way that public expenditure was being geographically distributed. "Political decentralisation then generated incentives for subnational political leaders to push for fiscal decentralisation (Beer, 2004:191)." The pressure from Congress and the State Governors ultimately led the President to relinquish a large share of federal expenditures, along with his unwritten prerogative to allocate the budget according to his preferences.

In 1997, Congress created formulas to clarify the transfer of resources from the federal budget to states and municipalities. At the beginning of the 1990s, close to 70% of all public spending had been under the control of the federal government. With decentralisation, that pattern changed radically: By 2007, this had reduced to 39%,

⁵ An analysis of the ousting of governors during the presidency of Carlos Salinas (1988-994) can be found in Amezcua and Pardinas (1997), *Todos los gobernadores del Presidente*.

with 61% of public expenditure under the control of either state or municipal governments.

Finkel (2005:108) argues that in the case of the 1994 judicial reform, the President consented to give more independence to the Supreme Court as an “insurance policy” to hedge against the risk of losing office and the PRI becoming an opposition party. It is impossible to be completely certain about the prime motivation that drove the institutional reforms of the 1990s, be they the redesign of the Supreme Court, the decentralisation of spending, or the powers of the new Supreme Audit Institution⁶ (SAI). However, the insurance policy hypothesis reflects a long-term concern over an uncertain electoral outcome. The risk of political instability due to budget disputes within the Congress and an open conflict between state governors and the federal government was not just a possibility on the horizon, but a clear and present danger for the Zedillo administration.

Decentralisation thus became a mechanism for political survival (Cox & Rodríguez, 1999:53). The theoretical benefits of decentralisation were aligned with the political need to resolve the political and financial dispute between the central government and state governors. The decentralisation reforms promised to deliver better governance of budget resources and to ease the tensions with subnational authorities, as they would reduce their financial dependence to their relationship with the President.

In addition to decentralisation, budget accountability became attractive to actors across the political spectrum: everybody got a share of the fiscal pie and everybody knew the portion of their neighbours. With presidential power shrunk to constitutional size, budget accountability became not only a prerequisite for good governance but one of the foundations of the new political stability. To emphasise the role of overseeing Executive finances, the Chamber of Deputies redesigned the congressional supporting agency in charge of ex post budget accountability. The *Auditoria Superior*

⁶ SAI is a generic term that covers audit agencies in all countries, and each nation coins its own specific name for its respective organisation.

de la Federación (ASF), Mexico's SAI, launched its activities in January 2000. As will be explained in chapter 2, the reform strengthened the organisational and operative autonomy of the ASF. However, these institutional improvements did not spill over in a homogeneous way to the subnational level. One of the main issues motivating this research is that although the spending capabilities of state governments and municipalities have been substantially strengthened, their financial accountability has not.

Each of the 31 state congresses, and the Legislative Assembly of Mexico City, has a technical bureau dedicated to supervising the financial accountability of the three branches of government and the municipalities. The audit institutions do their oversight work at the end of the budget cycle, once public money has been spent. These institutions are the last link in the accountability chain of public expenditure. The SAI has to corroborate the work of the government internal audit and, in the process, review "the completeness, accuracy and validity of transactions which when aggregated, make up the financial statements" (Power, 1997:24). The diversity of political environments at the subnational level in Mexico has produced an equivalent institutional range of congressional supporting agencies in charge of budget accountability. This diversity reflects the variable nature of the capacity and will of policy makers to deal with the common challenge of budget accountability at the local level.

The interaction between the decline of presidentialism and financial decentralisation has triggered a new dynamic of subnational politics in Mexico: Political autonomy, increasing financial capabilities, and relatively weak systems of checks and balances have bolstered the power of state governors and municipal presidents. The academic research of the post-transition political system in Mexico must include the study of these new players who were formerly ignored by the field of political science.

II. Purpose of the Research

The President's untrammelled powers were not compatible with Mexico's new political system. The present research starts with the observation that accountability and decentralisation interacted with other factors to create a new basis of political stability for an emerging multiparty political system. Free and fair local elections produced a new breed of regional leaders who owed their political triumphs not to their relationship with the Federal Executive, but to their success at the polls. Decentralisation of expenditure acknowledged the political power of state governors who were not subordinated to the President's will. This research will demonstrate how, why, and with what results budget accountability and expenditure decentralisation were both institutional consequences of Mexico's transition to democracy.

As a result of expenditure decentralisation and a President with limited powers, state governors emerged as new central actors in the political arena. In some cases, state governors reproduced the unaccountable powers of the former presidentialism. Weak budget accountability at subnational level was an unforeseen consequence of Mexico's transition to democracy.

III. The research in the context of the political science literature

Studies of the transition to democracy represent the point of departure for this dissertation. Here I will present a general review on the most relevant references in the study of Mexico's transition to democracy, which is a strong body of literature. Pablo González Casanova (1965), *La democracia en México* is an outdated monographic study of the former political system, but is one the founding studies of political science in Mexico.

For the study of the presidency from a constitutional and political view, the key reference is Jorge Carpizo (1977), *El Presidencialismo Mexicano*. Carpizo was the first to use the term *metaconstitutional capabilities of the President*. His research framed the analysis and created the basic semantic definitions for studying the Mexican Executive. For a biographical perspective of the Mexican Presidency from 1940 to 2000, Enrique Krauze (1997), *La Presidencia Imperial* gave one of the few accounts of the lives of the men who had occupied the presidency. Jorge G. Castañeda (1999), *La Herencia* gives a first hand account of the *Tapado* (the covered-one), the unwritten prerogative of Mexican president's to appoint (and uncover) his heir. George Philip (1992) *The Presidency in Mexican Politics* provides an institutional framework to study the central figure of the Mexican Political System. Jeffrey Weldon (1997), *Political Sources of Presidentialism in Mexico* presents a relevant analysis of the relationship between the presidency and the PRI.

As the listing in the previous paragraph suggests, the towering presence of the presidency within the political system was mirrored by the attention and interest of political scientists in Mexico. The Congress and state powers were seen as merely supporting actors within the political system, and therefore the attention given to them was a collateral result of the interest in the Mexican presidency. The first generation of research on these institutions emerged only a few years ago.

In the study of the Mexican Congress from a perspective of political science, the work of Alonso Lujambio (1995), *Federalismo y Congreso en el cambio político de México* opened a new field of research on the Legislative Branch. Lujambio highlighted the need to broaden the field of political science studies beyond the presidency. Ugalde (2000:2) stated in his literature review of the Mexican Congress that, with the exception of "legal and historical analyses, bibliography on the topic was almost nonexistent." For Lujambio (1995), there was a "systematic neglect" of the study of the legislative branch at the state and federal level. The title of Ugalde's book *The Mexican Congress: Old Player, New Power* reflected succinctly the novel condition of the

legislative branch in Mexico. Ugalde's book did for the Mexican Congress what Jorge Carpizo had accomplished twenty years earlier with his categorisation of *Presidencialismo Mexicano*. Ugalde's research is a comprehensive study of the evolving role of the Mexican legislature, from a passive accomplice of the presidency to the centre of power in Mexican politics.

However, Ugalde's book was published in 2000, just a few months before the enactment of the law that restructured the Supreme Audit Institution as an agency of the Chamber of Deputies. The creation of the *Auditoría Superior de la Federación* has strengthened the audit capacity of the Congress over the Executive. This thesis follows up on Ugalde's research into the new oversight capabilities of the legislative branch, focusing on the new role of the ASF. A comparative study of the Ministry in charge of the internal audit of the Executive and the ASF shows how some of the institutional designs of the former regime survived the transition to a new political system (chapter 2).

Within the field of political science, the study of state executives suffered the same fate as studies of other institutions, apart from that of the presidency. Research that takes state governors as its subject of study is rare indeed. In the words of Díaz Cayeros (2003:1) "most of a half-century's research on Mexico suggested that all politics was national." If state executives were overlooked by political scientists, local congresses met with even greater neglect. A recent exception to this rule is *El Poder Legislativo Estatal en México* (State's Legislative Power in Mexico), edited by Robert Balkin (2004), the first broad institutional analysis of state congresses in Mexico. I wrote the accountability chapter of Balkin's book *La rendición de cuentas a nivel local* (Accountability at local level), based on findings and ideas from the study reported here. This dissertation focuses on federal and state institutions that thus far had eluded political research in Mexico. Decentralisation and accountability provide excellent lenses through which to study the interaction of the constitutional President with a divided Congress and state governors. Decentralisation was the result of a

diverse combination of forces, upon which the dual pressure exerted by the Congress and the state governors played a relevant role.

The study of budget accountability offers a platform from which to analyse the legal and institutional diversity of subnational political systems in Mexico. In his study of the methodology of subnational comparative analysis, Snyder (2001:94) affirms: "Processes such as democratisation and economic reform often have varied effects across the territorially-defined subunits of a political system (...) the subnational comparative method makes it easier to see this within-nation variation, it contributes to a more adequate description of complex processes of change." Through the study of budget accountability, this dissertation provides a case study to support Snyder's claims on the varied effects of democratisation across the territorially-defined subunits of a country or a political system. The institutional diversity of Mexico subnational SAs shows the varied effects of democratisation on subnational accountability. If the weaknesses and strengths of budget accountability are a by-product of the democratisation process, this research reveals the unevenness (O'Donnell, 1999:139) of democratic change in Mexico.

The difficulty of obtaining homogeneous data from the 31 states and the Federal District has limited the sample of subnational comparative studies in Mexico. There are several studies that apply subnational comparative methods to analyse the impact of fiscal decentralisation, although the sample is restricted to a limited number of states. Martinez (2003:236) used a sample of 12 states to review the powers of local congresses over municipal governments. Cabrero and Carrera (2000) used three anonymous states to measure the institutional capacities of fiscal authorities at subnational level.

The results of the surveys (chapter 5) are the first academic effort to measure the institutional capabilities and the legal design of budget and accountability institutions in Mexico. Although decentralisation increased the financial relevance of subnational

governments, budget procedures and legislative audit offices at state level were absolutely ignored by previous political science analysis.

Each Mexican state has its own criteria for disclosure or concealment of budget information. As late as August 2008, there were no statutory guidelines to determine the minimum level of transparency and data that ought to be included in the budget decrees. As an example, the budget decree of the state of Baja California Sur for 2008 contains one single Article, which establishes the total pool of state resources, with no disaggregated data to explain how the public money is distributed among various expenditures. From reading the budget, it is impossible to know basic expenditure information, like the amount of resources allocated to the three branches of government, to state pensions, or public debt. In contrast, the state of Aguascalientes offers a budget with a totally different legal structure and disclosure policy. In 104 Articles, the state budget provides detailed financial information of each of the government ministries, subsidies and expenditure programs. Naturally, a budget with more Articles is not necessarily a more transparent or informative document. However, the structure of the two state budgets mentioned above exemplifies the heterogeneous composition of state budgets in Mexico.

In order to analyse the diversity of budget information at state level, the thesis introduced a Budget Heterogeneity and Transparency Index (BII) for Mexican states. The Index presented in chapter 5 is based on an analysis of the actual content of state budget documents. The BII provides evidence that each state government has its own methodology and unique standard of classification on how and by whom public money is spent. The present study examined the contents of the budgets approved by the 31 state congresses and the Legislative Assembly of Mexico City for the fiscal year of 2008.

O'Donnell defined *Horizontal Accountability* (HA) (1999:38) as the existence of institutions "that are legally enabled and empowered, and factually willing and able, to

take actions that span from routine oversight to criminal sanctions... in relation to actions and omissions by other (State) agents or agencies.” O’Donnell argues that weak HA is one of the possible characteristics of young or unstable democracies. Following this line of argument, a case study of HA can be framed as post-democratic transition research. The SAIs survey and the BII present original evidence to analyse how the local peculiarities of political systems could determine the outcomes of Horizontal Accountability institutions in Mexico, specifically in audit and budget matters.

The federal status of the Mexican Constitution has been a crucial factor in the outcome of the decentralisation process. Shah (1998) and Proud’homme (1995) have underlined the risk of a decentralisation process without strong accountability mechanisms. Through the BII and the survey of Mexico’s subnational SAIs, the research provides empirical evidence to support Shah and Proud’homme’s claim that weak financial accountability could derail the original purposes of a decentralisation process.

There is a large academic literature on the issue of decentralisation in Mexico. Alberto Diaz Cayeros has worked for over ten years on the issues of democratisation, federalism and decentralisation. His three chapters in the book *Achievements and Challenges of Fiscal Decentralisation: Lessons from Mexico*, edited by The World Bank, give an historical framework to the evolution of Mexico’s fiscal federalism. Díaz Cayeros and Martínez (2003) offer a wide range of studies of the fiscal, political and public policy impacts of decentralisation at the state and municipal level.

Cabrero *et. al.* (2000) offer a general view of the institutional constraints on fiscal decentralisation. Rodríguez (1997, 1999) provides a political history of decentralisation from the *sexenio*⁷ of Miguel de la Madrid (1982-1988) to the first half of Ernesto’s Zedillo’s government (1994-2000). For the political implications of decentralisation during the *sexenio* of Carlos Salinas, the best starting point is Merino (1996). For a

⁷ *Sexenio* is the six-year presidential term.

comparative analysis of political determinants of decentralisation in Latin America, there are the studies of Haggard (1999), Haggard *et. al.* (1999) and Rojas (1999).

Despite the robust body of academic literature about the process of decentralisation, there is no academic research on the institutions in charge of the audit and oversight of federalised funds in states and municipalities. Most studies have focused on the tax revenue implications of the process for the three levels of government. However, there are no empirical or theoretical analyses that have used budget accountability as one of the factors influencing the success of decentralisation in Mexico.

IV. Budget Information Index and the research method

Academic research on budget information and accountability in Mexico is a novel exercise. The secrecy of budget data was one of the unwritten prerogatives of the President. The lack or non-existence of disaggregated data over government expenditure was additional evidence of the preeminence of the Executive over the Legislative branch. Budget information was inaccessible not only to citizens and academic researchers, but also to members of the opposition in the Congress. Until 1997, when the PRI was defeated in the Chamber of Deputies elections, the Executive did not have any legal or political incentives to disclose budget information. As other democratic deficiencies of Mexico's political system, the absence of budget transparency at federal level spilled over to state and municipal authorities.

Until a few years ago, it was impossible to construct a budget transparency index at national or subnational level, because there was not enough information to design the ranking. The emergence of multiparty representation in federal and state congresses promoted different degrees of openness in budget transparency, which allowed the first steps of research on the topic.

One of the pioneer studies was the 2002 Latin American Budget Transparency Index (LABII) (Hoffbauer & Guerrero), which focused on national government budgets in five

countries of the region (Argentina, Brazil, Chile, Mexico, and Peru). The initiative studied the opportunities for citizen participation, ensuring adequate accountability and offering accessible and timely information to the public. The 2002 LABII was divided into two parts: a survey that was conducted in the five countries and a study of the legal framework for the budget processes in each country. The 78 questions of the survey were distributed among 792 continental experts and key users of budget information, with 320 of them responding. The survey asked about the expert's perception of budget transparency in his country. Then the sample of experts gave a grade to measure the budget transparency on a scale from 0 to 100. One of the shortcomings of the Index is that the methodology is not based on the original sources, which are the budget decrees, but on the opinions of consumers of budget information. The LABII had the merit of highlighting the problem of the absence of budget information, but it is a perception index and not a measurement of the actual contents of budget documents.

The lack of access to state information made it difficult to further research the budgets of Mexico's subnational authorities. However, by 2001, most of the states had their budget decrees for that fiscal year on the Internet sites of the local Congress or the state government. This unprecedented accessibility to budget information allowed me to make the first effort to create a benchmark for budget heterogeneity and transparency at state level in Mexico. To measure the diversity of the information provided in state budgets, I designed the Budget Information Index (BII).

For the construction of the BII, a survey was applied to each state budget. The survey was based on the best transparency practices of the 32 budgets. Each state budget was read twice. The first reading focused on finding the best disclosure practices of state budgets. If a state budget decree presented more detailed information or a better breakdown of the financial data, these aspects were used as a benchmark to measure the other state budgets. For example, if a state provided detailed information about the public resources allocated to finance political parties, that became a

criterion to measure the rest of the states. The first reading of the state budgets allowed me to create a 43 question survey (See chapter 5). Then through the second reading, the survey was applied to all subnational budgets for the year 2008.

The questionnaire was divided into ten sections: 1) Legislative and Judicial Branches, 2) Autonomous State Institutions, 3) Executive Branch, 4) Subsidies and transfers of State Governments, 5) Budget Management, 6) Public Debt, 7) Government employment, 8) Municipal governments, 9) Federal transfers and 10) Internet Availability.

In Mexico, state budgets are constructed with varying methodologies. The BII was designed to highlight the different disclosure criteria in each state. The states with the higher marks were those that presented clearer and more accessible budget information according to the 43 question survey.

In addition, chapter 5 includes the first academic effort to measure the institutional capabilities and the legal design of subnational Supreme Audit Institutions in Mexico. Although decentralisation increased the financial relevance of subnational governments, legislative audit offices at state level were absolutely ignored by political science analysis. Before this dissertation, there was no known academic research on local accountability institutions in Mexico. The research is based on a 16 questions census applied to the 32 subnational legislative audit offices in Mexico. I designed the census (See chapter 5) as a tool for assessing the institutional capabilities and performance of each SAI. The census is divided into four sections: 1) Budget; 2) Human Resources; 3) Audits; 4) Sampling. The census was completed in October 2003.

Despite the fact that institutions in charge of budget accountability in states and municipalities were not accustomed to rendering accounts of their performance to academic or journalistic research, the questionnaire was answered by 27 out of 32 subnational SAIs. Additional information about the institutional design of the SAIs was obtained through a review of the legal framework of each audit supporting agency of

the state congresses. The 2003 census is complemented by a new questionnaire sent to all SAIs in October 2007 (Pardinas & Ríos Cazares, 2008). This new census helped to see the evolution of these congressional supporting agencies in the last five years. The 2007-08 census was based in a 40 question instrument, divided in four sections, and was answered by 20 of the 32 state SAIs.

As an additional research tool, 27 interviews were performed with subnational and federal public servants. Two former governors, as well as municipal presidents, state legislators and public servants of state governments gave their testimony about the life of public officials during Mexico's presidentialism. Current and former members of the Congress were interviewed about the decisions that led to the creation of the new SAI and the decentralisation process. Two former ministers of Finance and three high ranking employees of the federal Executive Branch in charge decentralisation and budgeting also shared their testimony for this dissertation (See Bibliography for details).

V. Structure of the dissertation

The dissertation is divided into five chapters. Chapter 1 focuses on the definition of the concept of *accountability*, with special emphasis in the horizontal and vertical accountability concepts coined by Guillermo O'Donnell. The chapter then discusses the concepts of *good governance* and *transparency*. Every political system, without regard to whether or not it is a democracy, has some mechanism where the agents render accounts to the principal. In its final part, the chapter then analyses the relationship between corruption and two recurring concepts in the dissertation: audit and decentralisation. The policy embodiment of concepts like *decentralisation* or *accountability* has to be analysed in the specific context of Mexico. The meanings and implications of these concepts do not travel easily from one country to the other. Their significance and purpose are often lost or diffused either in the translation or geographical transposition. The conclusion of the chapter highlights the importance of using these concepts under a context-specific framework delimited by time and place.

Chapter 2 is a comparative analysis of the institutions in charge of budget accountability at each of the three stages of the spending cycle: *prior*, *concurrent* and *ex-post*. The comparative analysis goes beyond an historical perspective of audit bureaus, to encompass the current legal frameworks and resources available to achieve their oversight mission. The chapter explains how the presidential system neglected the development of autonomous audit organisations that would reduce its margins of financial discretion. The chapter provides arguments that support the claim that the new SAI and the increased congressional capability to oversee the federal budget undermined the financial basis of Mexican presidentialism.

Chapter 3 will explain the role of financial decentralisation in the transition to a constitutional presidentialism. The first part of the chapter presents the former institutional and non-institutional mechanisms used by the Mexican President to impose his authority over elected officials at state and municipal level. Discretionary management of budget transfers was a critical instrument in bending the autonomy of subnational governments to the President's will. The emergence of highly competitive local elections and the presence of authorities from parties other than the PRI changed the power relationship between the President and these subnational authorities. This new relationship between levels of government needed a new framework for the distribution of financial transfers to states and municipalities. The new rules to decentralise federal funds required increased accountability concerning the amounts, timing and conditions of such transfers. The decentralisation of expenditure forced the federal Executive to render "accounts" to subnational governments.

Democratisation and decentralisation led to the unprecedented political and financial sovereignty of states and municipal governments. For the first time, governors owed their political power to the polls and not to their personal relationship to the president. Moreover, the financial stability of state treasuries did not depend on the

political will of the federal government. With these changes, state governors began to pursue their own political agendas without regard to presidential priorities.

Chapter 4 will analyse how the increased transfers of funds to states and municipalities fostered a decentralisation of clientelism. In the former political system, the President had the authority and the purse to mobilise clientele at national level. Stronger mechanisms of horizontal and vertical accountability over the presidential role limited its patronage over multiple clientele. As the constitutional presidency decentralised the resources that founded its patronage, governors and municipal presidents took political advantage of this change, creating new local versions of political clientelism.

After the end of presidentialism, the areas in the Executive's absolute control had to be replaced by institutional mechanisms of decision. In chapter 4, the conflicts over the budget negotiation during the presidency of Vicente Fox (2000-2006) showed that the absence of institutional replacements for the decision making process became a *casus belli* between the government and the opposition. An analysis of the state spending behaviour in infrastructure and bureaucracy payroll will support the claim that without adequate institutions for financial accountability at local level, the decentralisation process does not necessarily lead to efficiency gains in public expenditure.

A comparative analysis of Mexico's fiscal framework shows a contrast between the centralisation of taxation responsibilities in the federal government and the decentralisation of expenditure controlled by state and municipal authorities. Although the decentralisation process treated all Mexican states as legal equivalents, there were wide disparities in administrative infrastructure and institutions to ensure accountability. A survey of the capacities and design of subnational Supreme Audit Institutions, with an 85% rate of response, provided empirical evidence to show the unevenness of Horizontal Accountability institutions in Mexican States. An Index of

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State Budget decrees will provide further elements to show the heterogeneous nature of subnational financial accounts.

In chapter 5, the SAI survey and the BII aim to provide evidence showing that the modernisation of accountability institutions at the federal level has not trickled down homogeneously to subnational governments. The chapter finishes with an explanation of a recent trend to re-centralise the capability to homogenise budget procedures at subnational level, through new legislation promulgated by the federal Congress. Decentralisation and financial accountability gave political stability to Mexico's emerging multiparty political system. This new normative structure created an institutional replacement for the unwritten rules that gave the President centralised and uncontrolled powers. However, this created new challenges at subnational level. Some states and municipalities are working democracies, with free and fair elections, but with no Horizontal Accountability to check the power of governors and municipal presidents.

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CHAPTER 1

Democracy and Accountability

CHAPTER 1 DEMOCRACY AND ACCOUNTABILITY

By pushing to its utmost extent the accountability of governments to the people, you indeed take away from them the power of prosecuting their own interests at the expense of the people by force, but you leave to them the whole range and compass of fraud.

John Stuart Mill, *Dissertations and Discussions*,
Volume 1, Appendix, p. 467.
Originally published in the *London Review*,
July and October 1835.

The first chapter presents the theoretical and semantical debate regarding the definition of three vague concepts, which are used throughout the dissertation: accountability, good governance and transparency. In this chapter I will emphasise that the use of these three concepts should be framed into a context determined by geographical location and a specific point in time, as their meanings can change from country to country and from one historical period to another. The semantic definition of accountability becomes relevant due to the risk of being lost in translation, as the concept has multiple meanings in Spanish.

The chapter proceeds to the analysis of the concept of Horizontal Accountability coined by Guillermo O'Donnell. As the dissertation studies the evolution of the institutions for budget accountability in Mexico, O'Donnell's term provides a point of reference. In further chapters, I argue that the concept of Horizontal Accountability has to take into account the *de facto* practices of the political system that might produce wide variations in the enforcement of accountability rules. O'Donnell acknowledges that the understanding of political dynamics of a new democracy requires "keen awareness of both the formal and the informal codes" (1999:3).

The second part of the chapter explores the interaction between accountability and decentralisation as two components of the boarder notion of good governance. The legitimacy of the decentralisation process in Mexico was grounded on the premise that it promotes

efficiency gains in the allocation of public expenditure. The disenchantment with previous centralised modes of governance, like Mexico's presidentialism, drove the tendency toward greater decentralisation. Along the dissertation, I contend that in Mexico's case, decentralisation brought its own disenchantments. Bardhan and Mookherjee (2005:5) argue that the political context has a strong influence in the outcome of decentralisation. The context of subnational politics in Mexico, with dysfunctional mechanisms for checks and balances, created a new breed of unaccountable authorities in the figure of state governors. Mexico provides evidence that efficiency gains on public expenditure could be hampered, by both excessive centralisation during presidentialism and by decentralisation with fragile institutions for Horizontal Accountability.

1.1 Defining Accountability

Accountability is a word with no exact translation in Spanish. In a glossary of terms from a World Bank (2002:17) document¹ *accountability* is translated as accounting. At a conference in Mexico on corruption, one presenter defined the concept as *responsabilidad* (responsibility), while the next speaker preferred the term *rendición de cuentas* (rendering of accounts).² The concept is so foreign to the language and the culture itself that two out of the three most influential dictionaries of political science published in Spanish do not have an entry for it.³ This is not unique to Spanish. Dubnick (1998:68-69) concluded that several of the Romance languages (French, Spanish, Italian and Portuguese) lack an exact translation of the term. Japanese and Hebrew simply adopted the word *accountability* directly from the English, because a direct translation is lacking.

¹ World Bank, Committee On Payment And Settlement Systems (CPSS), *Glosario de Términos Utilizados en los Sistemas de Pagos y Liquidaciones*, (2002:17).

² Conference: "El Combate a la Corrupción En México: ¿Imperativo Ético-Jurídico o Persecución Política?" through Internet: http://www.cddiputados.gob.mx/POLEMEX/cpl/publicaciones/mem_cpl.pdf, consulted August 1st 2005.

³ There is a reference to the term accountability in A, Serra-Rojas, *Diccionario de ciencia política*, (México: UNAM-FCE 1998). However neither, Bobbio, N. and Matteucci, N., *Diccionario de política*, (México: Siglo XXI, 2000), nor Baca-Olamendi, L., *Léxico de la política*, (México: FLACSO-FCE, 2000) have an entry for the term.

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Few political concepts are subject to such confusion (Uhr, 1998:50). In the English language, there is a robust and expansive academic literature that seeks to frame a practical and theoretical definition of this “chameleon word.”⁴ The task is not easy, as Schedler (1999:13) shows: “(D)o we know what (accountability) means? Are we clear about its semantic boundaries and do we comprehend its internal structure? Not surprisingly, my answer is no: due to its relative novelty, accountability represents an unexplored concept whose meaning remains elusive, whose boundaries are fuzzy and whose internal structure is confusing.”

One of the sources of the confusion is that the concept has a long list of imperfect synonyms. In academia and politics, accountability may be used to mean financial accountability (Bardach & Lesser, 1996:1), ethics (Kearns, 1996) or responsibility (Day & Klein, 1987:1). Answerability (Schedler, 1999:14; Starling, 1986:123) and punishment (Behn, 2001:3) are the two most often-cited characteristics of this ambiguous term. As Schedler (1999:14) explains, accountability is distinguished by a double meaning: *answerability*, or the obligation of public officials to inform and explain what they are doing; and *enforcement*, or the capacity of accountability agencies to impose sanctions on the holders of power who violate their public duties.

1.1.1 Accountability as Answerability

Accountability is an “agreed *language* or *currency of discourse* about conduct, performance and the criteria that should be used in assessing them” (Day & Klein, 1987:2). This language can be classified in three categories 1) the right to address questions; 2) the obligation to give answers that explain and justify the conduct and/or results; and 3) the expectations of behaviour based on norms and habits of what constitutes an acceptable performance. Schedler (1999:15) distinguishes two kinds of *currencies of discourse* (Day & Klein, 1987:2) to structure the *answers* provided by the government: 1) data or hard facts (the informational dimension) and 2) justifications for “the validity and reason to take a certain course of action” (the argumentative dimension). As an example of the informational dimension, *financial accounts* are presented

⁴ Day and Klein (1987:1) were the first to use this analogy with the animal kingdom.

according to pre-established expectations or standards of disclosure, professional accuracy and classification. The argumentative dimension of accountability is constructed through narrative accounts that explain and aim to legitimise the course taken by decision-makers. For Schedler (1999:14) the “notion of answerability indicates that being accountable to somebody implies the obligation to respond to nasty questions and vice versa, that holding someone accountable implies the opportunity to ask uncomfortable questions.” *Responsiveness* is a consequence of the accountability interaction between institutional structures (Ferejohn, 1999:131). Responsiveness, as a capacity to answer questions, is a measure of how much accountability an institution allows. In government, accountability is a process that asserts a form of control over departments and agencies, causing them to give an answer for their actions (Dye & Stapenhurst, 2000:1).

Day and Klein (1987:34) distinguish between *accountability* and *answerability*, with the former implying an authority-subordinate relationship and the latter assuming a vaguer and less hierarchic connection. To illustrate their point, they use the example of British civil servants who are accountable to the ministers, but are not required to answer directly to the Parliament. The House of Commons can directly punish ministers, but cannot do the same to civil servants. Accountability implies a hierarchical relationship where the subordinate might be subject to a certain degree of punishment.

1.1.2 Accountability as Risk of Punishment

In an accountability relationship, the *principal* has the option of punishing the *agent*. Academic literature on democratic accountability has been influenced by the agency model (Ferejohn, 1999:134). The very meaning of accountability suggests that an agent has done what he has been told to do, whether well or badly (Mansfield, 1982:61). Accountability means that those results of the agent that do not match the expectations of the principal will lead to the imposition of sanctions (Behn, 2001:3-4; March & Olson, 1995:165). Accountability actors do

not simply ask questions but also punish improper behaviour. The wrong answers bring the possibility of sanctions (Schedler, 1999:19), yet in a democracy, punishment can vary from public humiliation to impeachment or electoral defeat. When the agent is politically accountable, the principal might hold him responsible for past performance and in consequence offer him the reward or punishment of the electorate. In this case, the principals are the voters and the agents are their elected officials.

1.1.3 Empirical Definitions of Accountability

The academic literature reviewed above aims to construct a semantic definition of accountability, but other authors have searched for its meaning based on its practical applications in the design and performance of private and government institutions. Dubnick and Romzek (1998:6) established the existence of “at least” four accountability systems, depending on the different types of performance expectations:

- 1) *Hierarchical Accountability* emphasises the performance expectations of a higher official over the tasks and achievements of a subordinate. Bureaucrats are responsible for following the rules with regard to their office. Internal enforcement is embedded in the hierarchical structure and the bureaucratic procedures within the organisation. Here, the accountability relationship occurs without the intervention of external actors.
- 2) *Legal Accountability* is the respect of the legal frameworks that confine the actions of officials. The enforcement of legal accountability is imposed by institutions outside of the monitored agency.
- 3) *Political Accountability* consists of the expectations placed upon elected officials and public servants by citizens, pressure groups or market forces. In this sense, elections are an accountability test for the elected officials and their political parties.
- 4) *Professional Accountability* emphasises the individual responsibility of the administrator or manager who has some degree of discretion to perform his or her tasks. A set of professional norms should guide and limit the alternatives and decisions taken by managers.⁵

⁵ For Day and Klein (1987:19), professions are a type of QUANGO (Quasi Non-Governmental Organisation) “which are collectively granted the monopoly rights of practice in return for policing the competence of its members.”

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While Dubnick and Romzek created categories to define the relationships between accountability *holders* (principals) and accountability *holdees*⁶ (agents) in terms of performance expectations, Robert Behn analysed the concept according to the aims of the oversight process.

Behn (2001:6) distinguishes three different kinds of accountability objectives:

- 1) *Financial accountability* is the most elemental form of accountability: Who spends the public's money? How is it spent? What is the objective of the expenditure? These have been the questions asked in financial audits since the times of Ancient Greece.
- 2) *Accountability for fairness* refers to the expectation that the behaviour of public officials must follow ethical patterns. These assumptions of fairness are transformed into laws and norms that regulate the conduct of elected officials and bureaucrats. Behn's *accountability for fairness* is almost identical to the *legal* category coined by Dubnick and Romzek (1998:6). According to Behn, this legal framework sets the standards that each democratic society expects from its authorities. Kearns (1996:69) adds that standards of legal accountability are formally codified and enforced. The enforcement is usually carried out by an outside oversight agency with the power to impose sanctions for non-compliance on the lower organisation. The enforcement of certain pre-established expectations of behaviour, codified in statutes and procedures, is a preventative measure against the abuse of power.
- 3) *Accountability for performance* audits the results of the government's actions, asking *how* it achieves these results and *what* the outcomes of its decisions are. This type of accountability also attributes those outcomes to the actions or omissions of particular individuals and institutions. *Accountability for performance* combines the oversight of financial costs and the actions taken to achieve a given result in order to assess the government's outputs.

In *The Audit Society*, Michael Power (1997:50) characterises four possible *operationalisations* of accountability in accordance to an identical number of audit objectives:

- 1) Fiscal regularity in the sense of accountability for the properly legal stewardship of inputs.
- 2) Economy as accountability for obtaining the best possible terms under which resources are acquired.
- 3) Efficiency as accountability for ensuring that maximum output is obtained from the resources employed or that minimum resources are used to achieve a given level of output/service.

⁶ Both terms were coined by Behn (2001:2).

- 4) Effectiveness as accountability for ensuring that outcomes conform to intentions as defined in programs.

1.2 The Paradigm of Horizontal Accountability

Contemporary academic literature on the concept of accountability has been strongly influenced by two terms coined by Guillermo O'Donnell:

- 1) Vertical accountability (VA) is exercised by social actors upon state actors (Kenney, 2000:3). Its essence is the notion that the governed have the right to choose and remove the people in charge of government. The notion of vertical accountability is not limited to electoral procedures, but extends to the controls and oversight exercised by other non-state actors such as the press and Civil Society Organisations (CSOs).
- 2) Horizontal accountability (HA) is applied within the state sphere by a network of "relatively autonomous" state institutions that can call into question and enforce punishment upon other state actors. In O'Donnell's words (1999:38) HA implies the existence of institutions "that are legally enabled and empowered, and factually willing and able, to take actions that span from routine oversight to criminal sanctions or impeachment in relation to actions and omissions by other agents or agencies of the state that might be qualified as unlawful." HA refers to relationships among state agents with unequal powers, but also a degree of mutual autonomy (Schedler, 1999:26).

The Cartesian model of vertical and Horizontal Accountability overlaps with the concept of the accountability environment, defined by Kearns (1996:29) as a "constellation of forces — legal, political, sociocultural and economic — that place pressure on organisations and the people who work in them to engage in certain activities and refrain from engaging in others."

Free and fair elections, the crucial component of VA, occur only from time to time (O'Donnell, 1999:30). Peters (2001:1) maintains that after elections are over, there must be other

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mechanisms for holding the government accountable for its actions on a regular basis. Citizen suffrage alone is not a guarantee for limiting the power of the government actors. Przeworski and Stokes (1999:41) state that retrospective voting, which is based on information of the incumbent's past performance, is not enough to induce governments to act responsively. In new and well-established democracies, the demands for government accountability share a basic assumption: even competitive, free and fair elections are "themselves too weak to guarantee a decent government."

John Ferejohn (1999:132) adds three restrictions to the accountability of democratic rule:

- 1) Elected officials in majoritarian institutions might not be accountable to unprivileged minorities.⁷
- 2) Institutions of accountability (courts, audit bureaus) operate with different time cycles from electoral politics, so officials have the opportunity to avoid the consequences of accountability at the polls.⁸
- 3) Elected officials enjoy a considerable information advantage over the voters, an asymmetric relationship between principal and agent that makes the latter unaccountable. In consequence, the capability of voters to punish the behaviour of the agent is limited.

Elections are indispensable but not sufficient to keep state powers under control (Diamond, Plattner, et.al., 1999:2). In several third-wave democracies (Huntington, 1994) electoral accountability is diminishing its own effectiveness in restricting government actors. In O'Donnell's terms, regimes where elections are held but enforcement of HA is weak are defined as *delegative democracies*.⁹ This kind of regime rests "on the premise that whoever wins election to the presidency is thereby entitled to govern as he or she sees fit, constrained only by the hard facts of existing power relations and by a constitutionally limited term of office. The president is taken to be the embodiment of the nation and the main custodian and definer of its

⁷ For Robert B. Reich (1990:76) "public servants are accountable not only to the majority of voters but also to the minority, and to those who do not vote: children (and) the generations yet unborn." March and Olsen do not limit accountability of government to the group of high ranking officials who lead the Executive branch, but also include public servants and bureaucrats who give management and policy advice to the government.

⁸ As is detailed in chapter 3, in Mexico there is no immediate re-election to any elected post. The constitutional prohibition of re-election impedes the possibility of individual accountability of elected officials. Only through electing a different political party can the voters "punish" incumbents.

⁹ The concept shares the meaning of the "elective dictatorship" used by Lord Hailsham (1976).

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interests” (1999:164). Other state actors like courts and legislatures are “nuisances” and sheer impediments to the delegated authority of the Executive.

Zakaria (2003:19-20) expresses similar conclusions in different words: “Across the globe, democratically elected regimes, often ones that have been re-elected or reaffirmed through referenda, are routinely ignoring constitutional limits on their power and depriving their citizens of basic rights.” What Zakaria calls *illiberal democracies* characterised by a weak constitutional liberalism resemble O’Donnell’s *delegative democracies* defined by a lack of Horizontal Accountability.¹⁰

O’Donnell finds that the fragility of HA stems from weak components of the republican and liberal traditions in young democracies: “The newer polyarchies... have looked to transplanted laws and constitutions to serve as engines of political and economic modernity, sparking persistent and often heated debates over the gap thus created between the *pays légal* and the *pays réel*” (1999a:33). Successful polyarchies (Dahl, 1971:7) are a product, not of the importation of constitutional models, but of three historical currents: democracy, liberalism and republicanism. The liberal component refers to the idea that there are some rights that should be respected even by the state power. The republican component holds that public duty “is an ennobling activity that demands careful subjection to the law and the public interest” (O’Donnell, 1999a:31).

For O’Donnell, the effectiveness of HA requires the action of state agencies that are authorised and willing to control, correct and punish the unlawful actions of other state actors. The institutional instruments of HA ought to have legal authority and also ample political autonomy from the accountable authorities (O’Donnell, 1999:38). As the following chapters will show, the case study of this dissertation underlines the need to consider variations in subnational conditions in the study of HA. In Mexican states, equivalent legislations and HA institutions can

¹⁰ Zakaria (2003) places more emphasis on the concept of individual liberties and checks and balances, rather than on accountability systems.

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produce very different results due to the characteristics of each local political system. The informal practices of the political system determine the performance of the institutional network that constitutes the HA structure. Institutions for HA rarely operate in isolation and for O'Donnell, their ultimate effectiveness depends on court rulings.¹¹ This dissertation claims that the results of HA institutions are constrained by both *de jure* and *de facto* mechanisms.

From the *de jure* perspective, modern democratic constitutionalism requires elected officials, state institutions and even the sovereign citizenry to agree to a chain of "self-binding" mechanisms (Diamond, Plattner, et.al., 1999:1) that are implemented through the courts. Effective HA is the result of agency networks that include the active commitment of courts to enforce accountability. In this sense the decisions of state agents must comply with the law and be settled under the constitutional boundaries (O'Donnell, 1999:39). The same set of norms that gives these agents political power may also work to punish them.

According to Day and Klein (1987:24), accountability understood as answerability to the courts for the lawfulness of government actors has two components: First, it is a means of performing audits to verify that officials do not surpass their legal authority and that their decision-making process respects the rule of law. Second, it makes political power accountable for its respect of individual rights. For O'Donnell, achieving a significant degree of accountability requires the coordination of several agencies, each of them subject to "divide and conquer" strategies. The network of several strong powers, which partially intrude on each other, enhances the autonomy of each.

In the horizontal power relationship, the judicial branch is in charge of legal and constitutional accountability and the legislative control process audits the means and actions of the Executive (Uhr, 1998:181). Modern democracies have two mechanisms for overseeing the people who hold government positions: One is through the criminal law system in which rulers and public

¹¹ Chapter 2 will analyse how the actions of the *Auditoría Superior de la Federación*, Mexico's SAI, have been revoked by the decisions of the Supreme Court.

officials are held and can be prosecuted under explicit rules governing the powers they exercise; the other is through the actions of the legislative branch.

In a democratic country, the three basic functions of a legislature are 1) the representation of the people's will, 2) the faculty to create, amend, approve, and reject government laws and 3) the oversight function with the aim to guarantee that governments execute policies according to the consensus of the legislature (Pelizzo & Staphenurst, 2007:380). The budget cycle, from its approval to its oversight, encompasses the three basic functions of the legislature. As I will explain in further chapters, one of the main roles of the Mexican Congress in the transition from a metaconstitutional presidency was the creation of Horizontal Accountability mechanisms over the budget cycle. This dissertation claims that the aim to promote good governance through decentralised decision-making must consider the importance of institutions for Horizontal Accountability to oversee local governments.

1.3 Defining Good Governance

Referring to the concepts of accountability and democracy, March and Olson (1995:1) maintained that both terms have acquired such legitimacy, and have been used so indiscriminately, that their meaning has been compromised. The same could be said of the concept of governance. Accountability is considered to be a specific component of the broader notion of governance. For Daniel Kaufmann (2003) from the World Bank Institute, *external accountability* is one of the six components of a measure of governance¹². According to Schiavo-Campo (2007:54), "*good governance rests on four pillars: accountability, transparency, predictability, and participation.*"

¹² The other five components of governance according to Kaufmann (2003) are: (2) political stability and lack of violence, crime, and terrorism; (3) government effectiveness; (4) lack of regulatory burden; (5) rule of law; and (6) control of corruption.

According to the OED, the word *governance* in English was recorded for the first time in 1380, almost two centuries earlier than the term *government*.¹³ However, the word became uncommon for several centuries, until the last decades of the 20th century when the concept of *governance* was transformed into a global buzzword in the language of public policy. In 1989, the World Bank acknowledged that the promotion of development required a reform in the system of government: "Although sound macroeconomic policies and an efficient infrastructure are essential for the productive use of resources, they alone are not sufficient to transform the structure of African economies. At the same time major efforts are needed to produce a better trained, more healthy population and to greatly strengthen the institutional framework within which development can take place" (World Bank, 1989:XII).¹⁴ The statute of the Bank prohibited it to "take political elements into consideration," although the bank started to use the term *good governance* (Fierro, 2003:128) to encompass issues of public administration where it was possible to get involved.

The academic efforts to define the word *governance* emphasise the lack of a precise meaning. For Landell-Mills and Serageldin (1992:304) it "*is not a word that has been used extensively in the past by political scientists, but its recent appearance in popular usage has not been very rigorous. It has become in many ways both an all-embracing and a vague concept.*" For Doornbos (2004:3) "*there has hardly been a consensus as to its core meaning and less and less a common idea as to how it should be applied more concretely.* Rhodes (1996:652) categorises the term as *popular but imprecise.*

A limited definition of the term should consider the contrast between governance and government. Governance encompasses "the activity of controlling and steering organisations of all kinds," government is applied to "denote the executive of a state" (Hood, 2006:3). The challenge of constructing a common ground definition has been complicated by the fact that

¹³ The OED states that the first use of the term *governance* as *the action or manner of governing* occurred in 1380. The use of the word *government* as *the action of ruling* was first recorded in 1566.

¹⁴ *Sub-Saharan Africa: From Crisis to Sustainable Growth. A Long-Term Perspective Study*, World Bank, Washington D.C., USA, 1989 p. xii.

the use of the concept has been “appropriated” by different professional communities: politicians (Stoker, 1998:2), employees of multilateral organisations (Williams & Young, 1994; World Bank, 1992) and scholars¹⁵. Definitions of governance have filtered from academic research and World Bank papers to the speeches of government leaders and professional politicians. With frequent use in the language of private corporations, Civil Society Organisations (CSO) and government, the concept begs for a plural meaning that transcends a single institutional context.

Doornbos (2004:3) emphasised the need of a contextual reference point, in the search for a definition of governance: “*What exactly was it supposed to mean? Does it represent a universal concept or does it vary from context to context and from one perspective to another? The challenge to define the concept of governance is determined by time and geography. The governance agenda for Mexico in the 1980s was different from its current governance agenda. The policies to promote “good governance” in an African country are potentially different from the course of action followed to achieve the same goal in a former Soviet Republic. Therefore this other “chameleon word”¹⁶ is defined in good measure by a multilayer context determined by factors like institutional realm, historical period and country.*

The imprecise idea of *good governance* allowed multilateral institutions to promote a broader agenda in the client countries. According to Doornbos (2004:4), the conceptual ambiguity of the term *governance* might have served a specific purpose. The lack of a clear and precise definition helped the World Bank to have a broad list of loan conditions under the vague category of “good governance” goals: “an efficient public service, an independent judicial system and legal framework to enforce contracts; the accountable administration of public funds; an independent public auditor, responsible to a representative legislature; respect for the law and human rights at all levels of government; a pluralistic institutional structure, and a free press”

¹⁵ Since January 1988, the peer-reviewed journal *Governance*, which has content on public policy and administration, has borne the title of this elusive concept.

¹⁶ As mentioned in previous pages, the metaphor was borrowed from Day and Klein definition of accountability (1987:1).

(Leftwich, 1993:610). According to this definition, *governance* is a catalogue of *policy objectives*, more than a set of specific policies. Following this argument, *good governance* is a wish-list of policy outcomes.

During the economic crises of the 1980s in Latin America, multilateral institutions promoted a limited agenda focused on economic reform: balanced budgets, privatisation and a contraction of state expenditure. These measures helped to gain financial stability, but were not enough to promote economic growth or development. Williams and Young (2004) analysed the transformation of the World Bank's narrow economic agenda into a wider span of issues, encompassed under the umbrella of *good governance*. The buzzword was a key to broaden the scope of issues promoted by the World Bank.

The effort to translate the term *governance* into Spanish is similar to the translation of the word *accountability*. The word *gobernanza* has existed in Spanish since medieval times,¹⁷ but when related to public policy, *gobernanza* appeared in the *Diccionario de la Real Academia de la Lengua Española*¹⁸ only in the 2001 edition. Despite its listing in the dictionary, there is still no agreement on the meaning of the word or even its correct spelling.¹⁹ The official bulletin of the Spanish translators in the European Union warns that the UN *Commission on Global Governance*, created in 1992, was translated with at least four different meanings.²⁰

¹⁷ Solá Amadeu, Punto y Coma nº 65/septiembre/octubre de 2000, through the Internet: <http://ec.europa.eu/translation/bulletins/puntoycoma/65/index.htm>, consulted February 20th 2008.

¹⁸ The equivalent of the OED for the Spanish language, *Diccionario de la Real Academia de la Lengua Española* defines *governance* as: "Art or manner of governing that has the objective of achieving economic, social and institutional development, and promoting a healthy equilibrium between the state, civil society and the market." Translation by the author.

¹⁹ A linguistic organisation with the aim of defending the correct use of the Spanish language urged the spelling *gobernanza* as being the most general. In striking contrast with the English language, the correct spelling of a word in Spanish is the same in both shores of the Atlantic Ocean. The Real Academia de la Lengua Española sets a common standard for Spanish speakers around the world.

²⁰ The four variations translated back to English were: 1) Commission on Global Governance. 2) Commission on Global Governability. 3) Commission on Global Government. 4) Commission on Global Good Government. Solá Amadeu (2000).

The emergence of the term as a multi-lingual concept occurred in parallel with a change of perception over the role of corruption in the objectives of the World Bank. In the 1996 Annual Meetings of the International Monetary Fund (IMF) and the World Bank, James Wolfensohn placed corruption as a central obstacle to economic development (Kaufmann, 2003:3). During Wolfensohn's tenure as World Bank President (1995-2005), corruption in government became one of the explanations for the failure of structural adjustment policies (Mallaby, 2004:5). In this change of focus within the World Bank, *good governance* became a by-word for anti-corruption policies.

Given its imprecise content and meaning, what is the use of the term *governance* in academic language? Stoker (1998:2) provides an answer, acknowledging the value of the concept of *governance*, not as a normative theory but as "framework to understand the changing process of governing... (which) provides a language and a frame of reference (that leads) to ask questions that might not otherwise occur." For Doornbos (2004:385), good governance, transparency and accountability pose as "*synonymous bullet points with particular reference to financial management. It seems quite possible therefore that if in due course broader notions of 'good governance' will evaporate, their exit may well coincide with increased emphasis on the more tangible issues of financial accountability...*" Regarding this dissertation, the idea of *governance* triggers questions about the evolving process of budget accountability and decentralisation under the transformation of Mexico's changing political system.

1.4 Good Governance and Decentralisation in the Mexican Context

For Shah (1998:86), "a strong, responsible and accountable government at the national level is critical to the success of decentralisation policies." In the decade when the process of decentralisation gathered momentum in Mexico (1988-98), accountability was an attribute foreign to the political system. The argument around the country's democratisation concentrated on the creation of institutions that guarantee free and fair elections. If the issue of

accountability was ignored by the democratisation debates, it is not strange that the decentralisation process also disregarded it.

The legitimacy of the decentralisation process in Mexico was grounded on the premise that it promotes good governance and efficiency gains in the allocation of public expenditure. The disenchantment with previous centralised modes of governance, like Mexico's presidentialism, drove the tendency toward greater decentralisation. A 1994 study published by the World Bank established that out of 75 developing and transitional countries with populations greater than 5 million, 63 "were embarked on some form of transfer of political power to local units of government... The decentralisation now occurring is not a carefully designed sequence of reforms aimed at improving the efficiency of public service delivery; it appears to be a reluctant and disorderly series of concessions by central governments attempting to maintain political stability" (Dillinger, 1994:1).

There are conflicting academic responses to the claim that decentralisation promotes *good governance* and serves as a deterrent to corruption. "Some observers view decentralisation as a good way to reduce corruption, because it... enhances efficiency in public spending, delivery of public services, and welfare by bringing governments closer to the people. However, sceptics point to the negative effects of decentralisation on growth and the high incidence of corruption in local governments (Bagchi, 2007:106)." For Mixin Pei, "Decentralisation may exacerbate corruption if it occurs in the context of weak government. When the political authority of the government is weak across the board, decentralisation can create independent monopolists who have every incentive to maximise the collection of bribery at the local level (2008:38)."

Both optimists and sceptics can find an abundance of specific country studies²¹ that might support or contradict their claims over the benefits or ills of decentralisation. Bardhan and

²¹ Jin, Qian and Weingast (1999) maintain that decentralisation contributed to economic growth in modern China. Wade (1996) relates decentralisation to the performance improvement of irrigation services in Korea. On the other hand, Tapales (2001) addresses the risk that decentralisation can expand the opportunities for corruption.

Mookherjee made a comprehensive literature review of different case studies and concluded that “decentralisation seems to have different effects in different countries (2005:5).” They claim that the outcomes of decentralisation may be highly context-specific. The discussion in chapter 6 of this dissertation will claim that the effects of decentralisation can have uneven governance outcomes in different regions within a single country.

Decentralisation cannot be reduced to a list of management techniques and policies, because “its origins, form and outcomes are powerfully shaped by the political context in which it is put into practice” (Rhodes, 2001:157). In academic literature, the concept of decentralisation is applied to a wide range of decisions to redistribute revenue and expenditure responsibilities among different tiers of government. For the purposes of this dissertation, the concept of decentralisation is based on the case of Mexico during the last two decades of the twentieth century. Academic literature on Mexico’s decentralisation comprises three different topics of research:

- 1) Where decentralisation is understood as a *politically-induced* process, in which the President and the federal authorities are considered to promote a financial and administrative redistribution of government responsibilities among the different tiers of government, in order to preserve the stability of the political system (Rodriguez, 1997; Ward & Rodriguez, 1999).
- 2) Díaz Cayeros (1995, 2003, 2004) has been the leading scholar in the study Mexico’s *fiscal decentralisation* in the context of constitutional federalism. This path of research focuses on the evolving fiscal relationship between the federal and subnational governments, with regard to taxing and spending responsibilities. Cayeros’ work has focused on the process whereby subnational governments delegated their taxing authority, creating an increasing dependence on financial transfers from the federal authorities.

Klitgaard, *et. al.* (2000) found that Japanese provincial governments have 15 times the number of corruption cases than the national government.

- 3) *Administrative decentralisation* analyses the transfer of responsibility of delivering public services in areas of education and health from the federal to subnational governments (G. Merino, 2003; V. Llerenas, 2004).

These three branches of research on Mexico's decentralisation focused more on the formal relationship between federal and subnational levels of government, without a further exploration of the accountability infrastructure or administrative capacities of local governments. This dissertation will explore a fourth line of research, or in Bardhan and Mookherjee's (2005:4) words, it belongs to a 'second generation' literature on federalism, which centres its attention on government accountability as a determining factor on the effects of decentralisation. The research will use both the *political* and *fiscal* approaches to explain the interrelation between decentralisation and budget accountability in the emergence of Mexico's new political order. National and subnational institutions in charge of Horizontal Accountability will be shown to have a crucial role in both the outcome of the decentralisation process and the financial demotion of the central figure of the former political system: the Mexican President.

The backlash against a centralistic and monolithic government has been partly motivated by the perception that this concentration of power bred "high levels of rent-seeking, corruption and lack of accountability of government officials" (Bardhan & Mookherjee, 2005:1). As stated by Oates (1998:97), the issue is not decentralisation vs. centralisation. If the decision to transfer funds and responsibilities to subnational governments is made for political reasons, the question is not "how much to decentralise?" but "how to do it?" (Prud'homme, 1995:24). There is a need for sequential reforms and institutional designs that align the expected efficiency of decentralisation with the political incentives of subnational authorities. If properly designed, decentralisation can produce welfare gains through improved efficiency and increased accountability in the provision of public services. If planned and applied poorly, the decentralisation process can produce undesirable outcomes such as the growth of bureaucratic spending, increased developmental gaps within a national territory, macroeconomic imbalances and low quality of public services (Giugale, Webb *et.al.*, 2000:1).

Mexico's recent experience provides evidence that efficiency gains on public investment have been hampered, both by excessive centralisation of resources during the times of presidentialism and by decentralisation with weak mechanisms for Horizontal Accountability. For decades, the federal budget was used as a political tool of the President. Now, the decentralisation of public expenditure has become a mechanism to appease regional political actors.

Further research in the following chapters will contend that one of the flaws in Mexico's decentralisation process was the ceding of equivalent responsibilities to states and municipalities with asymmetric administrative infrastructures and uneven institutional capabilities. The federal nature of Mexico's Constitution imposed a rigid legal structure on the decentralisation process. Because the Constitution treats states as equal legal entities, it would have been almost impossible to push for a decentralisation process that varies in speed according to the level of development of the various states. To temporarily withhold the benefits of decentralisation from some states on the grounds of their weak institutional structure might have been constitutionally contestable and politically unsound, despite the potential efficiency gains.

As will be detailed in chapter 3, Mexico's policy makers acknowledged the differences between the revenue collecting capacities of states and municipalities. As there are wide disparities among Mexico's subnational governments, the federal authority absorbed the administration and collection of the most important tax revenues. However, in regard to expenditure, the decentralisation process treated all states and municipalities as if they had equivalent capacities for the management and accountability of public spending. Since the decentralisation process was instigated more for political reasons than for efficiency gains, the federal government did not acknowledge Mexico's internal diversity in terms of contrasting accountability and budget capacities. The admission of institutional disparities among legally equivalent levels of

government would have added some caution to the speed and intensity of the decentralisation process.

As with any other policy instrument, the level of success of decentralisation depends on its planning and execution. The incentives inherent in the institutional design of the decentralisation process have an impact on the achievement of its policy objectives (North, 1990:135). The governance gains of decentralisation also depend on the relationship between the policy aims and the political objectives of the entire process. Referring to decentralisation from a general perspective, Shah has stated (1998:93):

Traditional administrative capacity matters, but it should not be considered an impediment to decentralisation. The administrative capacity to develop and maintain modern organisational practices such as budgeting, auditing and accounting systems is no doubt important. But its absence should not be considered a barrier to decentralisation, provided citizen participation and transparency in decision-making are ensured. Technical capacity can be borrowed from supportive central governments.

In the case of Mexico, transparency and citizen participation cannot be taken for granted as common virtues among the distinct political cultures of each state.²² During the earlier phases of Mexico's decentralisation, the federal institutions were in no condition to provide either an example or guidance on how to create organisations to ensure budget accountability. The legal framework of the budget approval and the creation of technical bureaus for auditing and accounting were left to the governors' initiative. Some state executives and congresses were willing to learn and adapt the technical capacities of the federal government, while others did not invest in building their budgetary and accountability institutions. Tanzi (2000:9-10) suggested that decentralisation increases the chances of success if there are functional institutions for budget management, tax policies and revenue administration.

²² Chapter 5 will concentrate on the wide disparities in institutional capacities to perform budgeting and auditing practices at the state level.

There is a scarcity of academic research on the different institutional capacities between governments with equivalent constitutional status in Mexico (Cabrero, 2000:2). My research contributes to filling this gap, since it analyses the institutional capacities of Mexican states regarding two areas of the budget accountability process: the specificity of budget decrees and the institutional capacities of subnational Supreme Audit Institutions.

1.5 Corruption and Good Governance

Corruption is frequently assumed to be the nemesis of good governance, accountability and transparency. The global NGO Transparency International has institutionalised the term *transparency* as an antonym for corruption. Shaw defines corruption as a symptom of “failed governance” (2007:234). Corruption is defined as the abuse of public office for private gain (Shah & Schacter, 2004:41). In Robert Klitgaard’s formula (1988:75), corruption is equal to the sum of monopoly plus discretion minus accountability.

The central focus of this dissertation is not corruption itself. This research focuses on two topics (budget accountability and decentralisation) that influence the institutional context that can curb or nourish corruption. Financial audits performed by Supreme Audit Institutions are a component of budget accountability. The following paragraphs will analyse the relationship between corruption and the audit process.

1.5.1 Audit and Corruption

Audit is a general and flexible term that can be used for a massive and detailed inspection of financial transactions, or a simple and procedural accounting revision. An audit is a process that verifies that financial transactions are executed under certain normative criteria. Michael Power (1997:18) differentiates the *scope* (how many transactions need to be tested?) and *depth* (what kinds of tests must be performed on the transactions selected?) of audit procedures. Regardless of the *scope* and *depth* of the execution, the term audit is used to define the examination of financial records. In *The Audit Society*, Michael Power (1997:15) pointed out that the action of

financial auditing raises demands and expectations over its capacity to expose acts of corruption. There is a preconceived idea that audits, and the institutions which practice them, work as tools to detect fraud and reduce the impunity of corruption practices.

Power (1997:21) states that the first objective of an audit is to provide an opinion about the financial statements, while fraud detection is a secondary objective of the auditors. "The detection of management fraud is neither ruled out of the audit process, because this would lower expectations to the point where audit might lose its value, nor clearly ruled in, since this would unfairly burden the auditor and would make audits much more expensive" (Power, 1997:25). In the same line of argument, Shah discusses "the difficulty of detecting corruption through financial audits" (2007:249). For Dye "the process of corruption is so invisible that it leaves little documentary evidence. Despite knowledge of the fact that there is widespread corruption in government departments, state audit has not played any effective role to forestall it... It is easier to prevent fraud and corruption than to detect it. (2007:304-306)."

The idea that financial *audits* are a powerful cure against the evils of fraud and corruption is a persistent perception of Mexico's media and political system. After the transition to democracy, the presence of multiple political parties in Congress and the creation of a new Supreme Audit Institution produced the expectation that independent audits would put an end to unpunished acts of corruption. When there is a corruption scandal in modern Mexico, the demand for "a special audit investigation²³" is requested as a magic antidote to restore confidence and eliminate impunity. Despite the evidence in recent cases, the word *audit* still creates the perception that corruption can be tamed with an able army of certified accountants.

²³ Recent examples are the Pemex-gate scandal of diverted funds from the state owned oil company into the PRI presidential campaign of 2000, the presumptive inexplicable enrichment of the step-sons of President Fox (2005-08) or the potential conflict of interest when Juan Camilo Mouriño, Minister of Interior in the government of Felipe Calderón Mouriño signed a contract as legal representative of his family firm with Pemex, while he was Undersecretary of Energy.

At the end of presidentialism, during the Zedillo administration, there was a lack of trust between the traditional PRI establishment and emerging political actors in the opposition parties. The existence of the new SAI helped to reduce the political mistrust and the asymmetry of budget information between the Executive and the Legislative Branch. SAIs play a major role in auditing government accounts and operations and promoting sound financial management in their governments (INTOSAI:2003). These institutions serve to oversee the credibility of the financial information reported by the government (Dye & Stapenhurst, 2000:281). In order to create a certain level of assurance over budget accountability, the new political order created its own institution in charge of these “rituals of financial verification” (Power, 1997:123). It was not clear if the SAI would help to prosecute fraudulent practices of the ancient regime, but it brought a sense of trust to a plural Congress, which represented the axis of the new political order. Schedler (1999:15) distinguishes two kinds of *currencies of discourse* (Day & Klein, 1987:2) to structure the *answers* provided by an accountable government: 1) data or hard facts (the informational dimension) and 2) justifications for “the validity and reason to take a certain course of action” (the argumentative dimension). *Financial accounts* are an example of the informational dimension. The new SAI had the mission of validating the accuracy of the financial data that represented the *informational dimension* of the Executive answerability. Each legislative assembly demands that the *informational dimension* ought to be presented according to pre-established expectations or standards of disclosure, accuracy and classification. The new SAI helped to create a more stable environment inside a Legislative Branch, threatened by the unprecedented experience of a divided Congress. However, the *Auditoría Superior de la Federación* suffered from an *expectation gap* over the objective and reach of its constitutional task.

Michael Power (1994, 1997) argues that audits create an expectation gap over their capacity to prevent fraud. Dye uses similar wording and extends the argument to Supreme Audit Institutions (2007:311): “There is a gap between stakeholder expectations and audit mandates for SAIs. Traditionally, SAIs have agreed that the primary responsibility for preventing and detecting corruption rests with the administrative authorities, such as the police or

anticorruption agencies. SAIs have not seen fraud and corruption busting as their main goal; the approach has been to prevent corruption in the field rather than detecting illegal activities. The public, however, believes that SAIs seek to detect fraud and corruption.”

The existence of a well functioning SAI is not a mechanism to prosecute fraud in public administration. The purpose of financial audits is to give assurance that the financial statements are not misleading and certify that economic transactions occurred in accordance with an accounting framework (Dye, 2007:312). However, an able and strong SAI promotes an accountability environment that can be conducive to reducing corrupt practices. Shah & Schacter (2004:41) identify ineffective *institutions for accountability* as one of the main determinants that foster corruption. Audit institutions are one of the mechanisms of Horizontal Accountability (Kaufmann & Dininio, 2006:21) and help to promote budget accountability through the verification of the quality and credibility of a government’s financial records. Despite the fact that SAIs are far from being a silver bullet to prosecute and prevent corruption, their role in the accountability infrastructure make them a relevant topic of research from the perspective of Political Science and Public Administration.

1.6 Democracy, Accountability and Presidentialism in Mexico

One of the key features of Mexico’s presidentialism was the unaccountable privileges of the presidential figure over the whole political system. However, as in other non-democratic systems, Mexico under presidentialism had its own peculiar mechanisms for accountability. As stated by Philip (1992:4): “The principle of presidential authority extends the benefits of non-accountability to far more junior figures than the president himself. The main thing that these juniors have to fear is the wrath of the future president.” Even elected officials at the sub-national level, who according to law were sovereign representatives of the people of states and municipalities, rendered accounts to the President. Under the unwritten norms of Mexico’s political system, the Federal Executive was the *accountability holder* and the rest of the members of the political system were the *accountability holdees*. Enrique Krauze (1997) titled his biographical analysis of Mexican presidents from 1940 to 2000 *The Imperial Presidency*. His

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choice of words reflects the premise of the book: During the 20th century, the lack of accountability of the Mexican presidency was closer to the impunity of an emperor than to the answerability of a democratically elected leader. Day and Klein (1987:9) defined *power* with words that could be used to explain the capacities of Mexican presidentialism: the ability to demand accounts, to exercise control over performance, whilst at the same time to remain unaccountable.

Mexico's judicial branch exercised the protection of individual rights through the *Amparo*, a mechanism to protect constitutional guarantees, based on the premise that citizens ought to be defended from the excesses of local and federal authorities, including the president himself. In practice, the courts were able to enact *Amparos* against the bureaus within the structure of the Executive Branch, as long as these verdicts did not contravene the president's will or affect his interests in a direct way. Fix Fierro (1998:2-3) states: "The President of the Republic (enjoyed almost absolute dominance) over the two other branches of government and the political system as a whole... Thus constrained, it is not surprising the Supreme Court and the Federal Judiciary occupied a relatively weak position in the Mexican political arena. Although they certainly managed to prevent and correct many violations of citizens' rights by the public authorities, at other times, they were unnecessarily deferential to those authorities. In any case, the Supreme Court was prevented from fully playing its role as a countervailing power and as the ultimate defender of the Constitution."

In addition to political factors, the application of the *Amparo* has also been constrained by judicial technicalities. The percentage of *Amparos* dismissed by federal district courts, typically on the grounds of hyper-technical standards of review or procedural deficiencies (*improcedencia* or *sobreseimiento*) increased from 54% in 1940 to 73% in 1993 (Kossick, 2004:29). Furthermore, the *Amparo* suit has been excluded from protecting citizen rights in politically sensitive areas: election results and land distribution through agrarian reform have been excluded at one time or another (Fix Fierro, 1998:2).

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In an interview for this dissertation, Jorge Carpizo (2008), the author of *El presidencialismo Mexicano* and former Justice of Mexico's Supreme Court, stated: "The *Amparo* was highly effective and was the only mechanism to protect citizens from the abuse of state governors. However, when the Mexican President was very interested in a case, not in a Juan Pérez (John Doe) case, but in a case like some taxing regulation, then there were pressures or lobbying by the *Secretario de Hacienda* (Finance Minister) with the judges. Generally the lobbying of the *Secretario de Hacienda* achieved its purpose."

1.6.1 The Congress during Presidentialism

As in the case of the Judicial Power, there were no functional checks and balances in Congress. For 70 years, the most relevant bills approved by the Congress were drafted in the presidential offices, budgets were approved overnight without further comment and year-end accounts were not subject to proper audit review. In an interview, Antonio Gershenson, deputy from the former *Partido Socialista Unificado de México* (Unified Socialist Party of Mexico, PSUM) from 1982-1985 stated: *"The President did not influence the Congress, the President decided in the Congress. High ranking officials of the Executive came to the Chamber of Deputies to determine the course of things"* (Gershenson, 2008).

O'Donnell distinguishes two main directions in which Horizontal Accountability can be violated: the first one consists in the unlawful encroachment by one state agency upon the proper authority of another; the second consists of unlawful advantages that public officials obtain for themselves and their associates (1999:30). Using O'Donnell's definition, Mexico during the 20th Century is a good example of one Power, the presidency, which encroaches on the authority of the whole state structure.

In modern democracies, accountability is in most cases a mediated relationship. The government officials who implement the policies are not accountable directly to the citizens, but to their representatives in Congress.²⁴ The representatives are accountable to voters to a greater or lesser extent, depending on the properties of the electoral system and the state of the electoral competition (Laver & Shepsle, 1999:294). In Mexico during the times of the presidentialism, electoral competition was extremely limited. The no-reelection clause²⁵ of the members of the Congress created an incentive where the professional future of the PRI

²⁴ For March and Olson, (1995:153) in a modern democracy, the challenges of accountability extend beyond the control of bureaucrats by public officials and the control of officials by citizens. Organised groups that exercise a certain degree of power (financial markets, unions and NGOs) are also subject to certain degree of accountability. These groups have procedures for accountability outside the political structure and the formal system of governance.

²⁵ Please refer to chapter 3 for additional information on the no-re-election clause.

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legislators depended on their capacity to represent the interests of the party and the President. There were no political incentives to effectively mediate the accountability relationship between the people and the government.

In a democratic system, it is the people who serve as the *principal*, or holder of accountability, while the agents are the diverse networks of state agencies, bureaucracies and elected officials. In the accountability systems of authoritarian regimes, the agents are the same, but it is the head of government who has the right to ask accountability questions. As in the case of Mexico's presidentialism, the expectations of accountability in a non-democratic regime are not always established in the law, but may derive solely from the preferences of the ruler. Poor performance or obscure financial accounts can lead to punishment or pardon, depending on the outcome that maximises the preferences of non-democratic leaders.

One of the central differences of accountability systems in democratic and non democratic regimes are the expectations of transparency. This concept "denotes government according to fixed and published rules, on the basis of information and procedures that are accessible to the public, and (in some usages) within clearly demarcated fields of activity" (Hood, 2001:863). Hood (2006:222) also states that "transparency is closely linked to democratic principles, in that democracy is tied to the ability to give public justifications for policies and operations, given the bias that can result when decisions are taken for undisclosed reasons."

The concept of transparency is so intertwined with the idea of accountability that often they are taken as synonyms (Power, 1994:18). However not all accountability systems are meant to be transparent. In a non-democratic regime, the justifications for budget decisions and their outcomes are not necessarily exposed to the scrutiny of the public eye. Mexico's presidentialism is an example of non-transparent accountability, where the rendering of accounts occurred behind closed doors.

Rolando Cordera, deputy for the left-leaning PSUM from 1982 to 1985, affirmed in an interview: “The Final Draft of the Budget Bill was an exclusive task not of the Budget Commission but of the President of the Commission, (the PRI, deputy) Manuel Cavazos. I have the perception that, just by himself, with the help of the Finance Ministry, he drafted the Budget Bill without the help of any other member of the Chamber Deputies. Then the draft was sent to the Chamber floor (for the final vote), where the PRI had an assured and disciplined majority... Cavazos was the man of Carlos Salinas de Gortari (Budget Minister from 1982-1987) in the Chamber, and Cavazos said what was need to be done in budget matters” (Cordera, 2008).

The attribute of transparency has been dogmatically revered (Collins, 2007; Knorre, 2008) in the debates about governance. Its quasi-religious significance created an uncritical acceptance over the term and its practical applications (Hood, 2006:4). However, the critique of the concept should take into consideration the *habits and traditions of disclosure*²⁶ in each political system. As stated by David Heald (2006:59): “at very low levels of transparency, more transparency is likely to be beneficial. The trade-offs are most apparent when transparency is already high, in which circumstance the direction and variety, not just the amount, of the incremental transparency will strongly influence the relationship between benefits and costs.”

Following Heald’s line of argument, the instrumental benefits of transparency could be determined by the starting point of an incremental policy of disclosure. In a long-established democracy, with a strong tradition of government accountability, additional demands of transparency could lead to frivolous or irrational expectations over what should and what should not be observed by the public eye.²⁷ In a political system that has recently transited from a non-democratic regime, with high levels opacity, the advancement in transparency is a positive step. The context of the political system could determine the point when the benefits of

²⁶ Disclosure is another English word that does not have an easy translation into Spanish. In some dictionaries, it is translated as *revelación* (revelation) or *apertura* (openness). However, both translations lack the specificity of the word as used in the English language of accounting and corporate governance.

²⁷ The architectural blueprint of a high security jail, a nuclear plant or the private address of an elected official are often mentioned as examples of information that should be considered confidential. See Hood and Heald (2006) for a detailed analysis of the doctrine and operationalisation of the idea of transparency.

transparency might curve into diminishing returns. During Mexico's presidentialism, the rule was to treat government information as confidential and transparency was the rare exception.

The documentation proving the official results of 45% of the polls in the 1988 presidential election was never made public (Aziz & Molinar, 1990:165). The exam results of the Mexican students who had participated in a global test on math and science were treated as confidential²⁸. The official reserves of the Central Bank were published randomly²⁹. In an Interview, Sergio Aguayo, civil advocate for government transparency, remembers the first struggles to promote government transparency: (In the Salinas' government) "I requested an organisational chart of the president's office, but the request was refused and the information was treated as confidential... It was impossible to get hold of a complete version of the Federal Budget, the opposition parties just received a concentrated version which censored most of the government's financial information (Aguayo, 2008)."

Regarding budget accountability during the times of presidentialism, there was an *information asymmetry* (Akerlof, 1970) between the State Branches. The Executive had the discretion of sharing or withholding financial information with the Congress and the subnational governments. The first demands for increased transparency in financial matters came not from the citizenry or NGOs, but from deputies and governors who wanted to know the amounts apportioned to certain budget lines.

²⁸ In 1995 the international organisation Association for the Evaluation of Educational Achievement (IEA) evaluated the Mexican educational system among forty other countries. Mexico was the worst in four categories and the next to last in another two. After the results, the Mexican authorities of education asked to the IEA not to publish the results, Mexico was the only country appearing as participant without any place in the ranking. Nevertheless the newspaper *Reforma* got the results in 2001 and made them public (*Reforma*, 15-X-2001). In a press interview, Miguel Limón, Minister of Education during the Zedillo administration, argued that the results were not disclosed in order not to discourage Mexican teachers (*Reforma*, 16-X-2001).

²⁹ One of the requirements of the credit given to Mexico by the US government after the "Tequila Crisis" was to publish regularly the international reserves of the Central Bank. This requisite was of especial interest to the donor because one of the causes of the crisis was that basic macroeconomic information was obscure and secret. Especially, the hidden information of the international reserves veiled the real capacity of the Mexican government to support the pegged exchange rate. Before the agreement, *Banxico* published this information only three times a year: at the beginning of the year, during its annual report (in April) and for the State of Union address. Since 1995 the Central Bank reserves have been disclosed on a weekly basis.

Some of the institutional changes in the budgetary process were aimed at a reduction of the information asymmetry between the Executive and the Congress. With limited access to financial data and information by the Legislative Power, the budgeting checks and balances were just hollow and formal procedures. Accountability aims to increase transparency through demanding answers that provide information and justifications of governmental actions (Schedler, 1999:14).

Accountability requires institutions in charge to ask specialised questions (Normanton, 1966), because the very essence of accountability requires that the initiative must be taken by the questioners (March and Olsen, 1995:150). The legislature is the institution with the main responsibility of questioning the government. Without the right to ask uncomfortable questions or minimum access to government information, the Mexican Congress was not able to enforce its role as an institution for Horizontal Accountability.

1.7 Conclusion

The present chapter focuses on three concepts: *accountability*, *good governance* and *transparency*. Each of the three concepts shares the lack of an unequivocal meaning that would end all debate about its semantic definition and theoretical content. Hood asks (2006:19): "What was it that made '*transparency*' apparently so attractive as a ruling idea across so many domains of governance in the late twentieth century and what explains its diffusion to saturation point as an international catchword over the past twenty years or so?" If we take the word '*transparency*' from Hood's question and replace it with the term '*accountability*,' the inquiry will remain as compelling. One possible answer to the transcendence of those concepts across policy domains and international boundaries is their *adaptability* to multiple circumstances determined by functionality, time and space. This capacity to morph in various political, ideological and national contexts could also explain the difficulty of finding a definitive meaning for these trans-national concepts.

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The use of terms like *accountability*, *good governance* and *transparency* should come with a contextual warning label. The words can travel from one continent to the other; however their meanings change along with the country, the historical period or the political regime. In his in-depth study of the “*audit explosion in Britain*,” Michael Power highlights the importance of framing accountability analysis in specific national contexts: “...it must be borne in mind that the institutional landscape of public sector auditing has a long and diverse history in different countries, as long as preoccupations with political accountability itself. Indeed, it is this admixture of administrative and political themes which makes the conception and the practice of public sector audit so varied and which locates the construction of an agreed language of performance for auditing within distinctive national contexts (1997:45).”

The meaning of accountability is not the same in a developed liberal democracy as in a young democratic system. What is perceived and punished as corruption in *country A* may be perfectly legal and morally permissible in *country B* (O’Donnell, 1999:43), and what counts as accountability in one country might mean opacity in another. In countries with strong federal systems or large territories, the practice and enforcement of accountability can change from one region to the next. The practices of accountability differ among contemporary political systems that are diverse in terms of their norms and institutional designs. The present research will focus on the Mexican institutions in charge of budget accountability at the national and sub-national level to answer the question of what accountability looks like at a particular period of time (1997-2007).

The title of a book by Day and Klein (1987), *Accountabilities*, suggests that accountability manifests itself in multiple forms. Through a study of public services performance in Britain during the 1980s, the authors tried to clarify the concept by exploring its “perception and practice in a variety of settings.” In this sense, the theoretical framing of the concept is supported by an “empirical context.” Day and Klein aimed to translate the concept of accountability “in its various meanings, into effective reality... limited in its geographical setting,

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at one point in time.” (1987:2). The present research has a similar intent — namely, to define budget accountability in the context of a political system in times of flux.

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CHAPTER 2

Federal Institutions for Accountability in Mexico

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*“Some officials handle large sums of money:
it is therefore necessary to have other officials to receive and examine the accounts.
These inspectors must administer no funds themselves.
Different cities call them examiners, auditors, scrutinizers and public advocates.”*
Aristotle, quoted by Day and Klein (1987:9)

*“The anti-corruption institutions in Mexico punish the fools who ignore the bureaucratic technicalities,
but not the crooks that use the positions for personal gain.”*
Ministry of Finance Official

One of the pillars of Mexico’s political system, during the 20th Century was a Congress subservient to the Executive. The President’s rule over the PRI reinforced his command over the will of deputies and senators. When the PRI lost its majority in the Chamber of Deputies in 1997, a new political system emerged from the ballot box. Each political order creates mechanisms to control the behaviour of civil servants (Hood & Peters, 2004:130). The emerging political system demanded new accountability mechanisms for the President and the whole structure of the Federal Government.

The accountability outcomes of the 1997 election undermined the arbitrary financial power of Mexican presidentialism. The Congress adopted its new role as an enforcer of budget accountability. The new accountability mechanisms reduced the President’s ability to allocate the federal budget according to discretionary criteria. The plural Congress demanded a new Supreme Audit Institution (SAI) with the support of the multiple political forces. The creation of a modern SAI was one step of an unprecedented political experience: the rendering of accounts of the President and the whole Executive structure to an empowered Legislative Branch. However, some institutions of the previous political order manage to adapt to the new circumstances of a young democracy. The new SAI had to coexist with the *Secretaría de la*

Función Pública, the internal comptroller and the bureaucratic watchdog at the service of the President.

Chapter 2 provides an historical analysis of the institutions in charge of internal and external budget oversight in Mexico. These institutions evolved as a consequence of the changes in the political system. The chapter analyses the transformation of accountability institutions before and after the hegemony of presidentialism. The decline of presidentialism produced a series of changes in the budget cycle that lead to increase accountability of the Executive towards the Legislative Branch.

2.1 Accountability in times of political change

The emergence of a Congress with real capability for checking and balancing transformed Mexico's political system. One of the consequences of this transformation was a redesign of the budget cycle, from its approval to the ex post audit of funds performed by the *Auditoría Superior de la Federación*. Accountability systems can be seen as a set of relationships among state institutions. In this sense, the temporal, geographical and political contexts change the relationship among state institutions, and in consequence affect the whole accountability process.

After seven decades of single party rule, the decline of trust in political leadership demanded greater accountability of Mexico's Federal Executive. In the former political system, the President was the *accountability holder*; while the subnational authorities, the federal bureaucracy, the Congress and other state powers were the *accountability holdees*. The following pages will explain how the Congress became an *accountability holder* of Presidential powers. The trigger to this change was the emerging force of political opposition in the Chamber Deputies in the aftermath of the 1997 mid-term election. Once the Chamber of Deputies had a plural composition, with no single party in control of the majority, there was a move to strengthen the audit functions over the budget process.

2.2 Secretaría de la Función Pública (SFP)

In the era of Mexican presidentialism, the President's interest marked a discretionary distinction between the *freedom of action* and the *degree of personal privilege*. The SFP is the institution inside the structure of the federal government in charge of drawing the line between the actions and privileges of public servants. However, the SFP is the result of an historical evolution of the internal audit of the Executive Branch.

2.2.1 History of the Internal Audit Function

Michael Power (1994:19) accurately describes an "expectation gap" as "the difference between how financial auditors are perceived (responsible for the detection of fraud) and how they see themselves (primarily responsible for forming a professional opinion on the financial statements)." Most of the historical and academic literature (Lanz, 1987; Vázquez Alfaro, 1996; López Presa, 1998) focused on Mexico's internal audit shows that the country suffers from the expectation gap. The historical analysis of the internal audit emphasises the view that the major aim of this institution is to prosecute unlawful financial transactions inside the government structure. However, the literature on the topic is so scarce that these studies that fall into the "expectation gap" are unavoidable references in the historical review of government internal audit in Mexico.

Parallel to the birth of Mexico as an independent nation, internal control of the Executive began in 1824 with the creation of the *Departamento de Cuenta y Razón* (Department of Accounts and Reason) under the structure of the Finance Ministry. The *Departamento* was in charge of controlling the use of public funds, including the drafting of the laws of income and expenditure that constitute the two parts of the federal budget. In 1831, the *Departamento de Cuenta y Razón* was replaced by the *Dirección General de Rentas* (General Directorate of Income). The responsibilities of the new office went beyond audit and accounting to include the collection of income and distribution of expenditures.

This institutional design for the administration and oversight of government finances lasted for the entire nineteenth century. In the last months of its 30-year regime, Porfirio Díaz created the *Dirección de Contabilidad y Glosa* (Directorate of Accounting and Audit) in 1910. This new bureau focused on the audit and supervision of government finances, but was relieved of the functions of administering the government's revenue and expenditure.

The Ministry of Finance controlled the use and audit of public funds through the *Dirección de Contabilidad* (Accounting Directorate) and the *Tesoro Federal* (Federal Treasury), both of which were directly accountable to the Finance Minister (Vázquez Alfaro, 1996:136). In 1917, according to the *Ley Orgánica de las Secretarías de Estado* (Internal Law¹ of the Executive Ministries), the administrative structure of the Mexican government was reorganised into seven secretariats and five departments, one of which was the *Departamento de la Contraloría* (Department of the Comptroller). These bureaus were created to “promote the ethical behaviour of public servants and to oversee the use of public funds” (López Presa, 1998:155). The Comptroller acted as internal auditor and established a working relationship with the *Contaduría Mayor de Hacienda* (CMH), the then auditing supporting agency of the Chamber of Deputies.

In theory, the CMH and the Department of the Comptroller coordinated homogeneous audit and accounting systems for the government's financial records. The creation of the Department was a response to the need for an internal audit institution with independence from the Ministry of Finance. The *Departamento de la Contraloría* acted to balance the power of the Finance Minister. According to Vázquez Alfaro (1996:137), the new Department helped to solve the shortcomings of the CMH in preventing corruption and the misuse of public money. Some optimistic commentators of the time affirmed:

¹ In Mexican Spanish jargon, “*Ley Orgánica*,” has a different meaning from the literal translation in English “Organic Law”. In Mexico's public administration, a *ley organica* is a secondary norm that regulates the internal organisation of a government office or state body. In English an Organic Law is a Constitution or system of laws, written or unwritten, that gives legal foundation to a state or a nation (Black's Law Dictionary, 1990, p. 1099).

With the establishment of the (*Departamento de la Contraloría*, Mexico is at the same level as England, Germany, France or the United States with their “Comptroller of the Treasury,” because now there is an office in charge of the control of the expenditure and accounts.²

At the head of the Department was the *Contralor General de la Nación* (General Comptroller), appointed and dismissed directly by the President. In 1932, President Pascual Ortiz Rubio introduced an initiative that did away with the Comptroller’s Department and returned its responsibilities to the Ministry of Finance. This scheme lasted for fourteen years until 1947, when the *Secretaría de Bienes Nacionales e Inspección Administrativa* (Ministry of National Goods and Administrative Oversight) was created to take over the supervision of national industries and public works. The *Secretaría de Hacienda* (Finance Ministry) lost some of its functions but retained oversight of the budget process and continued to serve as the institutional bridge with Congress and its CMH.

From 1959 to 1976, there was a triangular system of control and financial oversight, with the involvement of three separate secretariats: *Hacienda, Presidencia* and *Patrimonio Nacional* (Finance, Presidency and National Wealth) (López Presa, 1998:156; Vázquez Alfaro, 1996:136). The *Secretaría de la Presidencia* (SP) centralised the drafting of the budget and the investment in public projects. The SP gave the President direct control over government expenditure. La *Secretaría de Patrimonio* was in charge of the administration and oversight of goods and companies owned by the state. From 1976 to 1982, under the government of José López Portillo, the *Secretaría de Programación y Presupuesto* (SPP) assumed the main responsibilities of the *Secretaría de la Presidencia*. SPP controlled the drafting and overseeing of the budget procedures.

² Hajar y Haro “Manual de la Contraloría,” *Revista Mexicana de Administración Pública* (INAP), num. 54, 1983 quoted by Vázquez Alfaro, 1996:137.

2.2.2 *Secretaría de la Contraloría: Corruption watchdog or bureaucratic police?*

In 1982, after the corruption scandals of the López Portillo government, the new President Miguel de la Madrid based his campaign on the promise to promote a “moral renovation of society.” The creation of the *Secretaría de la Contraloría General de la Federación* (Ministry of the Comptroller General of the Federation, *Secogef*) was a regulatory and institutional reaction to the corruption cases that tainted the public administration during the previous years. With the creation of the *Secogef*, Power’s “expectation gap” acquired institutional form and a place in the Presidential cabinet. An institution for internal audit was perceived as a policy response to combat government fraud and defined as a “moral instrument to improve society” (Lanz, 1993:548). The public perception of congenital corruption inside the government needed not just minor adjustments in the administrative structure, but an institutional statement: a new Ministry that would be recognised as a corruption watchdog.

As happened in the United States after Watergate, anticorruption initiatives were implemented for “political cover” after a scandal, or as an answer to the pressure of the media and society (Anechiarico & Jacobs, 1996:2). *Secogef* was directly answerable to the President and was created as a centralised office to supervise the internal audit and administrative procedures of the Executive, functions that had previously been dispersed in other government agencies.

Despite its Ministry rank, *Secogef* had fewer powers than its institutional predecessors. The *Secretaría de Hacienda y Crédito Público* (Finance Ministry, SHCP) maintained control and administration over the budget, expenditure, national debt and customs. Article 32 of the *Ley Orgánica de la Administración Pública Federal* (Internal Law of the Federal Public Administration, LOAPF), locates *Secogef* as a subsidiary to the SHCP, because the Finance Ministry can request the Comptroller to perform an audit on any government office (Lanz, 1987:534). *Secogef* was given the authority to appoint the external auditors for publicly owned companies, as well as “give its opinion or request the dismissal” of the heads of nearly 230

Órganos de Control Interno (Internal Control Bureaus, ICB) inside ministries, government agencies and state-owned companies. The Internal Control Bureaus are the internal audit offices that oversee the financial transactions and expenditure procedures of their respective institutions.

The institutional design of the ICB network is similar to the French tradition in oversight, where every ministry and state service must have its own *inspections générales* (Hood, 2004:19). The ICB network was also influenced by the Inspectors-General structure put in place by the Carter administration in the USA (Peters, 2004:141). The striking difference between Mexico's ICB and the USA Inspectors-General was that the latter had the autonomy to report directly to Congress. Under the administrative structure of Mexico's presidentialism, it would have been hard to conceive a network of offices with direct relationship with the Legislative Branch. The USA Inspectors-General presented annual reports of their activities; in contrast, Mexico's ICB did not make reports or publish any kind of public record about their activities.

Secodam issued rules to standardize the ICB practice of public audits. However, the definition of audit criteria was the only area where *Secogef* acted as an authority over the network of ICBs. The law weakened the *Secogef*, considering that its "opinions" on the performance of the internal auditors could be ignored without any legal consequence. Along with the ICB, the *Secogef* performed the concurrent and ex post financial and administrative audits of the public administration.

According to Article 92 of the Constitution, the President has the freedom to appoint and discharge the heads of all his Ministries,³ including the *Secogef*, and Congress has no legal authority to intervene in the process. Like the rest of the members of the Presidential cabinet, the *Secretario de la Contraloría* is an agent who has to implement the decisions made by the President.

³ The appointment of the head of the *Procuraduría General de la República* (Justice Ministry) must be ratified by the Senate.

To answer the question, who watches the watchdog? Article 12 of the *Ley de Responsabilidades de los Servidores Públicos* establishes the post of Interior Comptroller of *Secogef*, who acts as the internal supervisor of the *Secretario de la Contraloría*. The Interior Comptroller is directly responsible to the President and is also appointed by him.

With *Secogef*, the government gave priority to the internal administrative audit over the external oversight of Congress. The Presidential grip over the *Contraloría* limited the autonomy to decide how, when and where the audit reviews should be performed. The *Contraloría* acted more as a surveillance than an audit institution, in the sense used by Power (1997:128-129), in which “surveillance tends to take the human individual as its primary object rather than the organisation and its sub-systems of control.” *Secogef* created a *Panopticon* (Bentham, 1791) surveillance infrastructure, not as prison building or a military school, but as an administrative structure where the whole federal bureaucracy⁴ was exposed to oversight from a central point: the President’s office. The power of *seeing without being seen* was applied as a rule of public management but without the emphasis in transparency and publicity. Government officials were monitored by the bureaucratic watchdog and the network of 230 ICBs, but there was no public disclosure of the audit results. Since the President had direct access to the auditors' files, this *Panopticon* structure over government employees and professional politicians was an additional source of power and political extortion.⁵

Porfirio Muñoz Ledo (2008), former leader of both PRI and the leftist *Partido de la Revolución Democrática* (Democratic Revolutionary Party, PRD), stated: “(*Secogef* was) a control method based on intimidation, as the old saying goes: ‘justice and grace to the friend, plain justice to the

⁴ As analysed in the following paragraphs of the chapter, the members of Congress and the Judicial branch were also exposed to the *panopticon* oversight of the President from 1982 to 1992.

⁵ Every September 1st, the President gave an *Informe de Gobierno*, a State of the Union Speech, where he reported the health of his administration. All government offices under the umbrella of the Executive had to feed data and information to an annual publication known as the *Anexos del Informe* (State of the Union Annexes), which was the only source of official government information.

enemy.' The control and supervision of the budget became another instrument of political control."

2.2.3 Accountability of Public Officials under the Presidential Regime

One of the institutional consequences of Mexican presidentialism was the weakness of autonomous institutions formally placed outside the legal influence of the Executive. One of the most striking examples of subordination of autonomous powers to the authority of the President was Article 80 of the *Ley de Responsabilidades de los Servidores Públicos* (Law of Responsibilities of Public Servants). The clause stated that *Secogef* had the authority to collect and process the *personal assets statement* (*declaración patrimonial*), not only of public servants and high-ranking officials of the Executive Branch, but also of members of the Congress and the Judicial Power. The *personal asset statement* is a questionnaire that each public servant has to fill with a detailed declaration of their bank accounts, financial investments, real estate property and other means of accumulating wealth.

The *personal asset statement* also had to include the asset information of the members of the immediate family of the public servants. Through the information contained in the *Secogef* archives, the President had the opportunity of pressuring and blackmailing deputies, senators and even judges of the Supreme Court. By way of *Secogef*, members of the Congress and the Supreme Court were directly accountable to the President. Deputies, senators and judges were obliged to answer and explain their personal financial situation to the accountability agent of the Executive. The enforcement of this arrangement held the possibility that the Minister of *Secogef* could impose sanctions for non-compliance.

A decade later, in 1992, the law was changed to create a registration office of *assets statements* in each of the State branches, so legislators and judges did not turn in their information to a bureau under the Executive Structure. In order to preserve the Constitutional provision of Division of Powers, *Secogef* kept the archives of *asset statements* just for the Executive Branch staff (López Presa, 1998:156).

The creation of *Secogef* (1982) occurred at a time when the Mexican political system did not give high priority to accountability and transparency. Democratic norms and values are part of the *environmental requirements* that must be met by democratic political regimes (March & Olson, 1995:185). In the context of Mexico in the twentieth century, the *environmental requirements* were defined by an exacerbated presidentialism in a non-competitive party system.

In a democratic regime, it would be impossible to have an institution with the characteristics and legal faculties of *Secogef*. In practice, its main objective was to strengthen Presidential control over the individuals who worked in the government administration. The creation and design of *Secogef* confirms Michael Power's (1997:13) assertion that "audit is never purely neutral in its operations; it will operationalise accountability relations in distinctive ways, not of all which would be desired or intended." This *operationalisation of accountability* implied that professional politicians and bureaucrats were the agents who gave accounts of their actions to a powerful principal: the President.

The financial audits of *Secogef* were not meant to be just a technical accounting procedure, but a political tool to prevent bureaucratic and internal dissent. Often, the audits and information collected by *Secogef* were used as ammunition against enemies of the President. As will be presented in chapter 3, during the government of Carlos Salinas (1988-1994), *Secogef* archives were used to blackmail several state governors, forcing them to resign from their elected positions in order to benefit the political strategies of the President. If the governors refused to resign, a Presidential envoy threatened to send the *Secogef* archives to the Courts or to the press (Amezcuca & Pardinias, 1997).⁶ Democratic accountability is antithetical to a power monopoly, as it propels a dialogue between accounting and accountable actors (Schedler, 1999:19). In Mexico, the people dedicated to the public service were accountable to the monopoly of power, where the President was the only one entitled to demand accountability

⁶ As will be addressed in chapter 3, 17 governors out of 31 states resigned during Salinas' six years in office.

answers. In contrast, no institution had enough autonomy or political leverage to demand direct answers from the President.

2.2.4 Secodam: the effort to modernise the internal audit bureau

In December 1994, a change in the Law of the Public Administration (LOAPF) increased the powers of *Secogef* and renamed it the *Secretaría de la Contraloría y Desarrollo Administrativo* (Secretary of the Comptroller and Administrative Development, *Secodam*). As a consequence of this reform, the Secretary assumed the administration of the government's real estate and the enforcement of government acquisitions, leasing and public work contracts in addition to the previous duties of responsibility for internal control and evaluation.

In 1996, a new wave of legal reforms transformed the structure of the Internal Control Bureaus in the federal government. Before the changes in the law, the 230 directors of the Internal Control Bureaus were appointed and removed by the head of each agency and ministry. This institutional design limited the autonomy of the internal auditors and reduced their ability to impose corrections or sanctions as a result of their oversight. As I have mentioned above, according to the law, the *Secretario* of the *Secodam* had the capacity to give an "opinion about the appointment of the OCIs directors and could request their dismissal." However, the suggestions were not mandatory and could be rejected by the head of the agency.

The OCIs were so irrelevant in the internal structure of the government that they were mentioned in the internal statutes of only five ministries (Interior, Education, Labour, Health and Foreign Affairs). This lack of legal recognition transformed the OCIs into low-ranking bureaus, without the legal capacities to audit the finances of the minister's offices. In the case of the Ministries of Tourism and Environment, the respective OCI didn't even have the authority to impose direct sanctions against public officials who misappropriated public funds. "In a universe of 2 million public servants, less than 20 people had the legal capacities to impose

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administrative sanctions and just one, the minister in *Secodam*, could impose financial penalties higher than 200 monthly minimum wages⁷” (López Presa, 1998:309).

The 1996 reform gave *Secodam* (the former *Secogef*) the power and freedom to appoint or dismiss the directors of the nearly 230 OCIs of the federal government. Through this legal change, the OCIs became part of the structure of *Secodam*, although each Ministry and government agency had to pay the salary of the staff and total costs of its respective OCI from their own budget.

Despite the fact that the number of employees administratively dependent on *Secodam* went from 1,500 prior to the reform to close to 12,000 after it took place, its budget remained almost constant. In 1995, the *Secodam* budget represented 0.25% of the administrative budget of the Executive Branch (López Presa, 1998:297), while for the year 2008 the proportion had changed to 0.23%.⁸

The new law gave the heads of the OCIs the authority to impose administrative and pecuniary sanctions without a limit on the amount. The OCIs also gained the capacity to resolve the appeals of civil servants who requested a review of their resolutions. The heads of the OCIs also gained the capacity to demand the intervention of the public prosecutor when they found a wrongdoing that might imply jail offences.⁹ These legal changes in the OCI network had a multiplier effect in the audit and enforcement capacities of *Secodam*. Due to the reform, the number of OCIs with capabilities to impose administrative sanctions rose from 20 to 230, and from one to 230 in the case of economic sanctions (López Presa, 1998:314).

⁷ Mexico has official minimum wages (OMW) which are established by the federal government. The unit of OMW is used in several laws and norms as a benchmark to establish financial penalties.

⁸ This figure considers the budget of the subset *Ramos Autónomos*, which includes the 18 *Secretarías de Estado*, the Federal Investigation Police, Land Tenure Courts, Special Courts for Taxation and Administrative Issues, Legal Counsellor of the Executive and the office of the President.

⁹ In September 1997, the internal statutes of *Secodam* were changed to specify the powers of the heads of the OCIs. Art. 26 subsection III and IV.

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This reform basically gave *Secodam* the “teeth” to enforce its mandate; although, as a study by Transparency International showed, *Secodam*'s efforts are more focused on sanctioning administrative misdemeanours than the unlawful appropriation of public funds. In 2001, the Mexican Chapter of Transparency International carried out the first independent survey of the performance of the 230 offices that comprise the OCI system (*Transparencia Mexicana*, 2001). Its conclusions constitute an important critique of the network of OCIs:

- 1) The OCI detects and sanctions a very high number of minor infractions of administrative rules that cannot be considered acts of corruption.
- 2) The OCI system is incapable of detecting and sanctioning relevant cases of corruption.
- 3) In the rare cases that corruption is detected and the OCI manages to impose sanctions on those individuals who are liable for it, the sums recovered for the public treasury are irrelevant (0.45% of the total economic sanctions).
- 4) The administrative regulations and penalties imposed by the OCI system have not helped reduce the problem of corruption and in fact complicate the government's performance.

Considering *Transparencia Mexicana*'s conclusion that the OCI system is incapable of detecting and sanctioning relevant cases of corruption, it could be assumed that the anti-corruption CSO fell in the “expectation gap” defined by Michael Power. However, the general conclusions of *Transparencia Mexicana* are aligned with the basic premises of Anechiarico and Jacobs (1996:xii): “(T)he pursuit of corruption-free government by means of more rules, procedures and organisational shuffles is an important contributing factor (to government inefficiency). It should not be assumed that all corruption controls improve or even coincide with governmental efficiency and effectiveness, or that such measures actually reduce corruption.” For Dye (2007:304) “audit staff often tends to take a clerical approach, demanding strict compliance with procedures while often missing the objective of the procedures. Minor aberrations and misuse of funds are highlighted, while major systemic failures resulting in large losses to the public treasury go unidentified.”

When I interviewed him, Francisco Barrio, a former Comptroller General, complained about the rigidity of anti-corruption laws in the Mexican Government: "I have a budget to refurbish my office, but I cannot use that pool of money to hire a secretary to answer the phone at lunch time" (Barrio, 2001). If the money for furniture was used for a different purpose the *Secretario* would risk incurring an administrative penalty. The aim of preventing corruption in Mexico has created "exhaustive, rigorous and sometimes redundant internal control systems" (World Bank, 2003:26).

A civil servant from the Labour Department in charge of mediating contractual disputes between unions and management received a reprimand from *Secodam* because of his lack of performance in his job. According to *Secodam*, he only helped to solve two threats of union strikes during a given year. What *Secodam* failed to note was that during the previous 12 months, only two unions had made strike threats. This is an extreme example of the kind of oversight that *Secodam* performs over public servants. With government actions lacking transparency, *Secodam* compensated the lack of accountability with bureaucratic controls.

In a Financial Accountability Assesment (2003:26), the World Bank stated: "The main weaknesses (of Mexico's internal audit structure) are associated more with a persecutory and punitive approach than a preventive character of SFP's procedures, supported by extremely extensive and rigorous legal rules... (that) are perceived by government officials as a persecutory programme, inhibiting their administrative decisions and consequently hindering governmental management."

Peter Self (1977:277) defines the classic dilemma of public administration as "the tensions between the requirements of responsibility or 'accountability' and those of effective execution." Is there an alternative to this dilemma between accountability and efficiency? In principle, government performance would improve with increased flexibility in the decision making process. It would be beneficial to end the culture of persecution where "no one dares to sign any document or approve a course of action." This improved management flexibility and

discretion should go hand in hand with stronger transparency in the decision process and its results. To increase government efficiency, there is a need to increase the flexibility of public servants in exchange for greater transparency and accountability. The challenge ahead for the internal audit system of the Executive is to reduce the oversight over bureaucratic paperwork and administrative regulations and to focus the oversight on the outcome of policy actions (Behn, 2001:216; Anechiarico & Jacobs, 1996:207).

There are several alternative institutional designs for government internal audit systems:

U.S. government agencies have their own Inspector General's Office that submits their accounts directly to the General Accountability Office (GAO), the audit support bureau of Congress. The main difference from Mexico is that the network of ICBs is not centralised under the control and structure of a government ministry.

In the United Kingdom, the *Comptroller and Auditor General* (C&AG) is the head of the National Audit Office (NAO), the accountability agency at the service of the Parliament. The NAO fulfils a double role of internal and external audit agency of the Executive and the Parliament.

In Chile, the internal audit offices of government agencies present their reports to a Supreme Audit Institution that is independent from both Executive and Congress. In Chile, the United States, and the United Kingdom, accountability institutions privilege external audit from the control and oversight mechanisms performed within the Executive branch.

2.2.5 The creation of the Secretaría de la Función Pública (SFP)

In 2003, the new law of the civil service (Philip, 2003:5) was approved, giving *Secodam* the authority to regulate the civil service career of the federal bureaucracy. After the enactment of the civil service law, *Secodam* retained its previous legal and administrative responsibilities but changed its name to *Secretaría de la Función Pública* (Secretary of Public Function, SPF). The SFP

has tried to rebrand itself as the institution in charge of the administrative modernisation of the federal government. In this process, the SFP has coordinated and homogenised the audit and financial oversight of the entire administrative structure of the Mexican government. In addition, the SFP has created innovative technology-based control mechanisms like *Compranet*, an Internet-based procurement system that provides for systematic disclosure of bidding, purchases, leasing and services related to government contracts. The SFP created an electronic data base that records whether a former government employee is legally disqualified from obtaining a job in the public service, considering his past legal record or administrative problems.

Table 2.1 shows the different stages in the internal audit institution from the creation of the *Secogef* in 1982 to the SFP, which remains in place at the time of writing (July, 2008). The activities shown in the second row of Table 2.1 correspond to the description of the activities of the internal audit bureau according to the Internal Law of the Federal Public Administration.

Table 2-1 Evolution of Mexico's internal audit institution since 1982

Period	Institution	Activities
December 1982 - December 1994	<i>Secretaría de la Contraloría de la Federación (Secogef)</i>	-Corrective Control -Audit -Sanction
December 1994 – April 2003	<i>Secretaría de la Contraloría y Desarrollo Administrativo (Secodam)</i>	-Corrective Control -Audit -Sanction -Administrative development and simplification of government paperwork.
April, 2003- to present ¹⁰	<i>Secretaría de la Función Pública (SFP)</i>	-Preventive control -Audit -Sanction -Anticorruption -Administration of the Civil Service employment scheme

Source: Constructed by the author with information from the *Ley Orgánica de la Administración Pública*.

¹⁰ March, 2008.

Controls over the behaviour of civil servants take different forms across political systems (Hood & Peters, 2004:130). Despite the institutional evolution of the SFP (See Table 2.2), the transition to democracy and the end of presidentialism, the type of control over civil servant behaviour has maintained the model of surveillance (Power, 1997:128-129) and the prosecution for minor administrative misdemeanours. Despite the fact that the current legal framework of the SFP emphasises *preventive over corrective control*, the practice of prosecuting administrative misdemeanours is still common.

An analysis of the SFP's annual reports shows: during 2006, from 3,113 internal audits performed inside the structure of the federal government,¹¹ there were 3,278 administrative sanctions (*Secretaría de la Función Pública*, 2006). A simple arithmetic exercise shows that, on average, for every audit there was at least one administrative sanction. In only 37 cases, 1.1% of the total, there was evidence to build a judicial case for corruption (SFP, 2006). However there are no public figures or data about the final outcome of these 37 cases.

As part of its legal mandate, the SFP annually collects the *personal asset statement (declaración patrimonial)* of 216,468 higher public servants under the structure of the Executive Branch (SFP, 2006). The privacy of civil servants is protected because all *asset statements* are treated as confidential information, unless there is a specific request from the individual concerned. During 2006, the office within the SFP that receives and processes all the *asset statements* found one irregular file for every 1869 high ranking civil servants (SFP, 2006). However, there is no public information about the legal or administrative situation of the public servants with irregular *personal asset statement*.

Regardless of its *institutional re-branding*, the SFP still performs its activities of surveillance over civil servants. The transition to democracy and the end of presidentialism preserved some of the main features of the SFP's previous institutional incarnations. One of the characteristics that

¹¹ From January to November 2006.

survived the transformation of the political system was the “expectation gap” over its role as corruption watchdog. When Francisco Barrio was appointed as minister of *Secodam*, at the beginning of the Vicente Fox administration in December 2000, the media welcomed him as the “Corruption Czar” of the new government. Through interviews and speeches, Barrio confirmed the perception that his main challenge was to catch “the big fish” of the corrupt ancient regime. Power (1994, 1997) and Dye (2007) claim that audits are not necessarily a tool against corruption and fraud. Confirming this, Barrio resigned from the ministry in March 2003, after two years and three months of an unsuccessful search to catch the so-called “big fish” of Mexico’s corruption with an army of auditors.

A quarter of a century after the creation of *Secogef* (2008), internal audit is still used as a means of Presidential control over high ranking officials in the Mexican government. However, the period after transition to democracy needed a new audit institution which had the acquiescence of a plural Congress with multiple political forces. The coexistence of the SFP as internal auditor of the Executive and the *Auditoría Superior de la Federación*, the new SAI organisation that reports to the Chamber of Deputies, created what is called a ‘double whammy’ a “pattern in which new process rules and oversight are added without a substantial reduction of the old ones...” (Hood, 2005:16). Before the analysis of the ‘double whammy’, with the audit institutions of the former and the current political system, the following pages will focus in the history of external audit in Mexico.

2.3 The External Audit Function in Mexico

2.3.1 Early History

Throughout Mexican history, the political context has determined the institutional design and capabilities of the nation’s Supreme Audit Institution. The earliest institutional precedent in the history of the external audit bureau is the *Tribunal Mayor de Cuentas* (High Court of Accounts) created in Spain in 1453, as an organisation to oversee and approve the financial administration

of the Royal Treasury (Manjarrez, 2002:83). In 1524, the King established a Court of Accounts¹² in the New Spain to audit the fiscal income and expenditure of the colony. Nine ministers appointed directly by the King headed the collective body. In 1605¹³, Philip III of Spain ordered the Court of Accounts to have the additional responsibility of writing an annual report with recommendations on how to improve the oversight of the Crown revenues. The Court of Accounts was formed by a large number of magistrates. Their opinions about the accuracy of the financial records were presented in the form of a judicial statement.

The first Spanish Constitution, promulgated in 1812 in the city of Cadiz, established the 'right of the deputies' assembly to oversee the Crown accounts and determine the allocation of public expenditure and the collection of taxes (Manjarrez, 2002:85). This cemented in law the division of powers and the legislature's right to oversee of the Executive finances (Lanz, 1987:526). The *Constitución de Cadiz* established the first provisions for Horizontal Accountability in the Spanish Colony that latter would become Mexico.

After the proclamation of Independence, Mexico enacted its first Constitution in 1824. Article 50 instituted the exclusive power of the general Congress to "establish expenditures and the necessary income to cover them, arrange tax collection and supervise the government accounts" (Manjarrez, 2002:83; Lanz, 1987:526). Congress also passed a bill to regulate the administration of the public treasury. In Articles 42 to 51, the document established the closure of the Court of Accounts and the establishment of the *Contaduría Mayor de Hacienda* (High Comptroller of the Treasury, CMH), the first SAI of independent Mexico.

Embracing the model of the *Contaduría* and rejecting the *Court of Accounts*, the new constitution adopted an institutional design that was similar to the Treasury Comptroller of the

¹² The Court of Accounts gained historical relevance when it revoked the right of the Spanish conqueror Hernán Cortes to demand 60,000 *ducados* as the cost of the wars of conquest. The audit performed by the Courts led to an accusation against the Conqueror for theft and hiding of the Crown's taxes (Faya, 1980:62; Lanz, 1987:526).

¹³ In the same year, the first Courts of Accounts in South America were established in Lima, Peru, and Bogota, Colombia.

recently independent United States and dismissed the model designed by its former European masters.¹⁴ The 1824 bill decreed that the Mexican *Contaduría* would have the responsibility of examining and commenting on the accounts presented by the Ministry of the Treasury. Despite the bicameral design of the first Congress, the Constitution located the CMH under the exclusive supervision of the Chamber of Deputies. For 180 years, that arrangement has prevailed, with the Senate excluded from the control of the SAI.

The political instability of Mexico during the 19th century¹⁵ was reflected in a lack of institutional permanence for the SAI. In 1836, the Constitution was abrogated although the fields of responsibility and responsibilities of the CMH survived for a brief interval. In 1838, the powers of the CMH were affected by the creation of a *Tribunal de Revisión de Cuentas* (Court of Account Supervision). The Tribunal had the power to impose penalties on public servants and appoint auditors to oversee the allocation of a particular transaction (Manjarrez, 2002:86; CMH, 1984:36; Lanz, 1987:527). The new institutional arrangement reintroduced the European model of the Court of Accounts.

The lack of institutional permanence is well exemplified by the fate of the Court of Accounts. President Santa Anna abolished the Court of Accounts in 1843, although it was reinstated ten years later. The succession of liberal and conservative governments, with opposing views concerning the *Tribunal*, marked the existence of the institution. Conservative forces tended to favour the Tribunal of Accounts as the system applied in the European Monarchies, while the Liberals opted for the American model of Comptroller General. Over a period of 18 years (1838-1855), the Court of Accounts was created, suppressed, re-enacted and abolished again. In 1865, the Austrian-born Emperor Maximilian re-established the Court of Accounts, but two years later his government was overthrown along with the last version of the audit tribunals.

¹⁴ It is worth noting that the Treasury Comptroller in the United States was part of the Treasury Department under the structure of the Executive. The US Congress assumed the task of auditing the federal treasury until 1921.

¹⁵ In a period of 60 years (1823-1876), Mexico had 38 Presidents. In this period, Antonio López de Santanna was President 11 times. The average span of a Presidential term was 16 months.

The new Constitution (1857) established in Article 72 the power of Congress to freely appoint and remove the head and the staff of the CMH, which was considered an “independent bureau” of the Legislative Branch. The institutional mission of the CMH was to audit and comment on government accounts. In 1862, President Juárez (1853-1863 and 1867-1872) published a decree that established strong powers for the head of CMH. The *Contador Mayor de Hacienda* had the authority to demand any kind of document or information from government sources (Manjarrez, 2002:89). Porfirio Díaz’s government (1876-1911) brought institutional stability to the CMH. He also introduced a legal reform in 1896. For the first time, a specific piece of legislation was enacted to specify the capacities and obligations of the CMH. This legislation set the basis for Mexico’s contemporary Audit Institutions.

2.3.2 Mexico SAIs in the 20th Century

There is no single approach to the institutional design of a SAI. The institutional relationship between the SAI and the legislature, or other state powers, varies among countries and political systems. The SAI may be subordinate to the legislature or the Supreme Court, or be an entirely independent organisation. However, there are four basic audit structures:

- 1) The Napoleonic model was created in 1807 with the establishment of the *Statute des Cours des Comptes* in France. The model was exported to Germany, Austria, Belgium, Spain, Greece, Italy, Portugal and Brazil (Manjarrez, 2001:37). It is a system oriented to enforcement, which makes legal judgements on the compliance of government actions to laws and regulations. The European Court of Auditors, located in Luxemburg, is one example. Based on the French model, it is responsible for auditing the budgetary expenses of the European Union and is composed of one judge for each member country of the EU.
- 2) The Westminster system is designed to have an Auditor General (AG) who makes periodic reports to the parliament, usually once a year (in the case of the UK and Canada, reports can be more frequent). The Westminster model has the singularity of combining the internal and external audit bureaus in a single institution. The Comptroller & Auditor General model (C&AG) is prevalent in countries influenced by British political institutions like the Republic of Ireland, or former British colonies like India. (Dye and Stapenhurst, 2000:282).

- 3) The Board system shares similarities with the Westminster model with one major difference: the responsibility of the AG is shared within a Board of Auditors. This model is found in Japan and South Korea.
- 4) Most Latin American countries share the institutional design of the Government Accountability Office¹⁶ (GAO), the oversight support agency of the US Congress. This system is different from the Westminster model in that the posts of the Auditor and the Comptroller General are held by two different individuals heading their respective institutions and working for different branches of government. The institutional characteristics of the eight national SAIs are compared in Appendix 2.1 at the end of this chapter.

During the 20th Century, Mexico was influenced by the institutional model of the oversight supporting agency of the US Congress. Articles 73 and 74 of the 1917 Constitution established the basic guidelines of the relationship between the Congress and the Supreme Audit Institution. Article 73 specified the right of Congress to draft the internal law (*Ley Orgánica*) of the CMH. For the next two decades, Congress did not enact the internal law of the CMH. Finally in 1937, President Lázaro Cárdenas (1934-1940) published the *Ley Orgánica* of the CMH that regulated the internal life of the institution. This period was marked by political turmoil; from 1917-1934 the average span of a presidency was 2½ years. The lack of stability helps explain the delay in publishing the *Ley Orgánica*, although it also shows a certain disdain for the role of the CMH in the institutional structure of the Congress.

Article 74 of the Constitution reaffirmed the exclusion of the Senate from the management of the CMH. Through the *Comité de Vigilancia* (Investigative Committee), the Chamber of Deputies had the political control over the CMH, which was expressed in the authority to appoint the head of the SAI and the approval of its annual budget.

The *metaconstitutional* powers of the President and the one-party system that emerged from the revolution brought unprecedented political stability to Mexico. In the case of the CMH, this

¹⁶ After 83 years, in July 2004, the US General Accounting Office changed its name to the Government Accountability Office.

stability was reflected in longer periods of time without any statutory changes. In 1963, a reform in the *Ley Orgánica* established that the ministries and bureaus under the structure of the Executive branch had the legal obligation to submit an annual report of its accounts directly to the CMH.

In 1976, the CMH gained the capability of doing more than paying “visits” to the offices of the Executive structure and to conduct on-site audits. The reform included the requirement that the CMH was to produce its annual report on the government’s accounts, within a year from the dates when the complete documentation was submitted. The CMH also gained legal authority to demand the audit of contracts established between state-owned companies and private entities. In 1978, a change in its *Ley Orgánica* (Internal Law, LO) defined the CMH as a “technical bureau of the Chamber of Deputies in charge of the revision of the financial accounts of the Federal Government and the Federal District¹⁷ (Mexico City)” (Manjarrez, 2002:97).

One of the main changes of the law was the tenure of the *Contador Mayor* (the head of the CMH), who would remain in his post for eight years. Previously the law had established a three-year tenure, parallel to the electoral cycle of the Chamber of Deputies. Before 1978, the ministries and agencies in the federal government did not have a specific period of time to clarify any errors or misdeeds found by the CMH. The new law gave the offices under the Executive structure a 45-day period to answer, with no extension. This period to respond to the CMH has remained as a standard for future reforms, but an additional extension period of 45 days was added in 1999 in case the Executive bureaus did not meet the original deadline.

The initiative to reform the law, presented by a group of deputies from the state of Tabasco, considered the change in the name of the institution from *Contaduría* to *Contraloría*. In Spanish, the term *Contaduría* implies the idea of the managerial accounts of a business, the input and outflow of a company’s money. The term *Contraloría* is not limited to the strict management of

¹⁷ Since 1994, the Legislative Assembly of the Federal District has gained the autonomy to oversee the accounts of Mexico City’s government through its local SAI.

accounts but also certain degree of *control* over the actions of civil servants. Finally the Chamber rejected the new name because it would have required a Constitutional change¹⁸ and the term *Contaduría* stayed.

2.3.3 Auditoría Superior de la Federación (ASF)

In the first six months of a Presidential term, the Executive has the constitutional mandate to draft and publish the *Plan Nacional de Desarrollo* (National Development Plan). This planning document should outline the central government's projects for the six years of the Presidential term. The *Plan Nacional de Desarrollo* for the administration of Ernesto Zedillo (1994-2000) stated that:

It is imperative to strengthen the independence, technical capacities and credibility of the institutions in charge of the oversight and evaluation of government actions and public spending. This will imply a structural reform of the current institutions and mechanisms of the government's internal and external controls, as well as the statutory framework of accountability (Zedillo, 1995).

Mexico joined the OECD in May 1994. The majority of OECD member countries already had an independent SAI with operational autonomy and strong audit capacities. In this context, President Zedillo introduced an initiative in November 1995 to create the *Auditoría Superior de la Federación* (ASF), a supportive audit agency that would replace the CMH and enhance the accountability capacities of the Chamber of Deputies. The initiative to increase the technical and operational autonomy of the new SAI implied a reform of four articles in the Constitution.

The initiative was not a Presidential priority. From December 1994 to July 1997, Zedillo was the last President with a majority in both Chambers of Congress, which would have supported the

¹⁸ This argument might sound rather odd for Mexico's constitutional history: from 1917 to 2005 the Constitution was revised more than 400 times.

initiative at the President's request. However, it was not until December 1998, three years after the Bill was presented to Congress, that the Chamber of Deputies approved the reform, by 338 votes in favour and 121 against. The PRI joined forces with the PAN to achieve the majority, while the PRD opposed the bill, arguing that the deputies ought to approve a reform to fight corruption and eliminate impunity. In their eyes, the initiative was a "*mediocre*" solution (Gómez, 1998). In an address to the Congress floor, the Deputy from the PRD, Pablo Gómez, explained that his party aimed for a more ambitious reform and they were not going to support a diluted version of their proposal.

The PRD initiative proposed that the SAI should be a totally independent institution from the Congress and other State Powers. International experience shows that in most presidential systems SAIs are located within the structure of the legislative branch, with different degrees of independence.¹⁹ The PRD proposal was similar to Chile's SAI, which has the atypical institutional design of being independent from all three branches of government. However, the PRI deputies and senators rejected the possibility of an independent SAI and the PRD initiative was disregarded. The Chamber of Deputies approved the bill and sent it to the Senate for its ratification. In a debate on the Senate floor, the then main opposition parties, PAN and PRD, disagreed on the virtues of the Bill approved by the deputies but expressed a consensus on the need to reform the SAI.

Despite the fact that his party opposed the reform, the legislative leader of the PRD, Pablo Gómez, acknowledged the political need to transform the congressional supporting agency; during an address in the Senate house he stated: "The *Contaduría Mayor de Hacienda* has been historically like a laundering process, because the President always appointed the *Contador Mayor* (head of the SAI) and because all its actions were in conformity with the interests of the Executive" (Gómez, 1998). During his turn on the Senate podium, the PAN senator García Villa

¹⁹ In some rare cases, like the State of California in USA, Bolivia, China and the Philippines, the Supreme Audit Bureaus are located within the Executive Branch, meaning that they are internal audit bureaus.

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stated: "For more than 175 years, Mexico has audited government in a very poor and limited way, today (with this reform) we have the opportunity to take a major step" (García Villa, 1998).

In April 27th, 1999, the Senate held the debate and approval of the reform with 89 votes in favour (PRI-PAN) and 13 against (PRD)²⁰. During the debate in the Upper Chamber, the PAN Senator Juan Antonio García Villa provided three reasons to justify the support of his party:

- 1) The head of the new SAI was to be appointed by a two thirds majority vote in the Chamber of Deputies. Previously, the head of the former CMH had been elected by a simple majority vote. The simple majority helped the PRI, and the President, to appoint the head of the SAI without the need for any kind of political bargaining. This new provision was consistent with the policy to bolster the trust and institutional legitimacy of the SAI, through political autonomy from the Presidential sphere of influence. As no party can control more than 60% of the seats in the Chamber of deputies²¹, in the future, the head of the SAI was to be approved by at least two political parties. For Pope (2000:75): "The Office of the Auditor-General (Comptroller or Supreme Audit Institution) stands at the pinnacle of the financial accountability pyramid. It is therefore crucial that the appointment of the office-holder not be in the gift of the ruling party. If it is, it is a little like asking the burglar to select the watchdog. Indeed, political appointments of Auditor-Generals have been the root cause of many of the problems with integrity systems in various parts of the world."

²⁰ Any Constitutional reform has to be first approved by the Federal Congress and then ratified by a simple majority (16 out of 31) of the State Congresses. The Legislative Assembly of the Federal District is not considered as a state Congress.

²¹ As stated in constitutional articles 51, 52, 53 and 56, the Mexican Congress works according to a mixed electoral system that prevents any party from controlling more than 60% of the total seats. The Lower Chamber is formed by 500 members who serve a three-year time period; 300 of them are voted by simple majority in single-member districts, 200 are chosen by proportional representation through the system of party lists in five multi-member districts of 40 seats each. Article 54 establishes the legal constraint that forbids any party from having more than 300 deputies. The Senate has 128 members; each of the 32 federal entities selects 2 Senators by simple majority and one seat is given to the party that obtained the second largest amount of votes. The other 32 Senators are selected by proportional representation according to voter rolls in one single national multi-member district. Neither Deputies nor Senators can be reelected for the next immediate period.

- 2) The new wording of Article 79 of the Constitution emphasised the technical and managerial autonomy of the SAI from Congress. The SAI was defined as an organisation under the control of the Chamber of Deputies, which could still request a special audit of a government office. However, due to its Constitutional autonomy, the Deputies could not veto an internal decision of the SAI to perform a certain audit or verification process.

- 3) The third major change is the possibility that the SAI, in special circumstances, could make concurrent audits before the end of the fiscal year, during the spending stage of the budget cycle. Before the reform, the SAI had to wait between 22 and 32 months to start a detailed audit of an irregular transaction. This measure was the first step in balancing the relationship between internal and external audit in Mexico. However, the motion set the stage for the 'double whammy' scenario, where two audit institutions, one internal the other external, might oversee the same government transaction.

According to the wording of the new regulation, the CMH was replaced by the *Entidad de Fiscalización Superior (EFS)*, which was put in place in January 2000, to begin oversight functions with the financial accounts of FY 2001. With the approval of the secondary law that regulates the constitutional provisions (*Ley de Fiscalización Superior de la Federación, LFSF*), the *Entidad de Fiscalización Superior* became the *Auditoría Superior de la Federación (ASF)*, which began operations on January 1st, 2001.²² The ASF became the financial audit arm of the Chamber of Deputies, which performed the external audit process of the public finances of the three branches of government, the agencies of the federal government and autonomous state organisations.

²² Currently there is a legal anomaly regarding the name of Mexico's SAI. While Article 74 of the Constitution mentions the *Entidad de Fiscalización Superior*, the secondary law speaks of the *Auditoría Superior de la Federación*. The problem was that the Congress first approved the constitutional reform, then changed the name of the SAI in the secondary law, but did not acknowledge the new name with a new amendment of the constitutional text.

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Table 2-2 Differences between the former and current Mexican SAI

<i>Contaduría Mayor de Hacienda</i> (CMH) Until 2000	<i>Auditoría Superior de la Federación</i> (ASF) From 2001
The head of the SAI was appointed via simple majority of the Chamber of Deputies.	The head of the SAI is appointed by two thirds vote in the Chamber of Deputies, so no single political party can control the appointment of the head of the SAI.
The Chamber of Deputies could decide or veto the audits performed by the SAI.	The ASF has the technical and managerial autonomy to decide upon the depth, timing and subjects to be audited.
The CMH had limited scope of audit in terms of time and subjects under vigilance; the autonomy was limited and dependent on the cooperation and goodwill of the Chamber of Deputies.	The ASF has internal and technical autonomy to perform audits. The ASF does not require the permission of the Chamber of Deputies to perform an audit.
CMH reports of its audits were treated as confidential information.	The report over the <i>Cuenta Pública</i> is made public once it is given to the Chamber of Deputies, and is accessible through the Internet.
If the CMH wanted to prosecute a civil servant, who had presumably committed a wrongdoing, it did not have the independence to present the evidence before a tribunal. The CMH had to present the evidence to <i>Secodam</i> with the expectation that the Ministry would present the case before a judge. This design gave the President a <i>de facto</i> veto power over the capabilities of the CMH to present evidence against public servants.	The ASF has the legal capability to press charges against public servants who have presumably committed unlawful acts.
The CMH was a bureau focused only on financial audit.	The main activities of the ASF are financial audits, but it can also perform evaluations on the outcomes of government programmes.
The CMH limited its sphere of audits to the then-17 Ministries and 11 public entities dependent on the Executive branch.	The ASF can audit the three branches of government, autonomous state organisations and even federal transfers of funds to subnational governments.

Source: Constructed by the author using information from *Ley de Fiscalización Superior de la Federación* and *Ley de la Contaduría Mayor de Hacienda*.

With the Constitutional reform (Art. 73, XXIV) and the new secondary law, the ASF widened the scope of its audit authority. The CMH was limited to audit the accounts of the Executive Branch and the Chamber of Deputies. In contrast, the ASF has the legal capability to oversee the

financial transactions of the Executive Branch, the Chamber of Deputies, the Senate and the Judiciary. The legal reform gave the ASF the authority to audit these branches of government as well as autonomous entities such as the Elections Commission (IFE), the National University and the Human Rights Commission (LFSF, Article 4th). Private entities and NGOs that receive public money are also subjects to oversight by the ASF.²³

2.3.4 *Comisión de Vigilancia (Congressional Oversight Committee)*

The relationship between the Chamber of Deputies and the ASF is mediated by the *Comisión de Vigilancia* (Oversight Committee, CV) which is in fact the institutional authority and supervisor of the ASF. Thirty deputies from different political parties form the CV, with its internal composition reflecting the distribution of political parties inside the Chamber. Until 1999, the CV was the only congressional committee that was specifically mentioned in the Constitution (Article 74 section II). With the enactment of the *Ley de Fiscalización Superior de la Federación*, the CV was erased from the Constitution, but the secondary law confirmed its role as the bridge between the Chamber of Deputies and the ASF. The CV also remained as the legislative body with the responsibility for evaluating the performance of the SAI.

Despite its constitutional ranking, for several decades the CV was not regarded as a high-level committee within the Chamber. Antonio Gershenson, deputy of the former *Partido Socialista Unificado de México*, remembers his role on the CV in the Legislature from 1982-1985: “By law we had to meet every month, but nobody cared that much about the Committee. There were times when the only people in the meeting room were the President (of the CV) and myself (Gershenson, 2008).” The Committee had no professional staff and without the re-election of deputies or personnel with some knowledge of the Committee responsibilities, the CV did not have any sort of institutional continuity. Ugalde (2000:74) narrates how, in 1994, two new members of the CV staff found that the only things left in the committee offices were “chairs

²³ The Catholic NGO, Provida, was banned from receiving government subsidies after the ASF found the misappropriation of a donation of 30 million pesos (£1.7 Million) in 2003.

and tables.” Juan Antonio García Villa narrates in an interview that he found “absolutely nothing” in the archives of the CV when he became chairman in 1994. “In the third and last year of each Congress, all the legislators disappear, so then there was no continuity in the legislative commissions (García Villa, 2008).

Despite these institutional shortcomings, the CV has the legal capabilities to:

- Present to the floor of the Chamber of Deputies the names of three candidates to head the ASF (LFSF, Art. 69).
- Present the request to remove the head of the ASF (LFSF, Art. 69).
- See the draft of the budget request of the ASF and the expenditure report (LFSF, Art. 67).
- Present the name of the head of the *Unidad de Evaluación y Control* (UEC), which is the bureau within the structure of the Chamber of Deputies with the sole mission of overseeing and auditing the performance and internal finances of the ASF. In other words, the UEC is the external auditor of Mexico’s external auditor (LFSF, Art. 96).
- Receive the *Cuenta Pública* from the Chamber of Deputies and turn it over to the ASF (LSFS, Art. 15). As stated above, the *Cuenta Pública* is a legal term for the comprehensive report of government transactions during the whole fiscal year.
- Request the presence of the head of the ASF to explain the report of the *Cuenta Pública*.

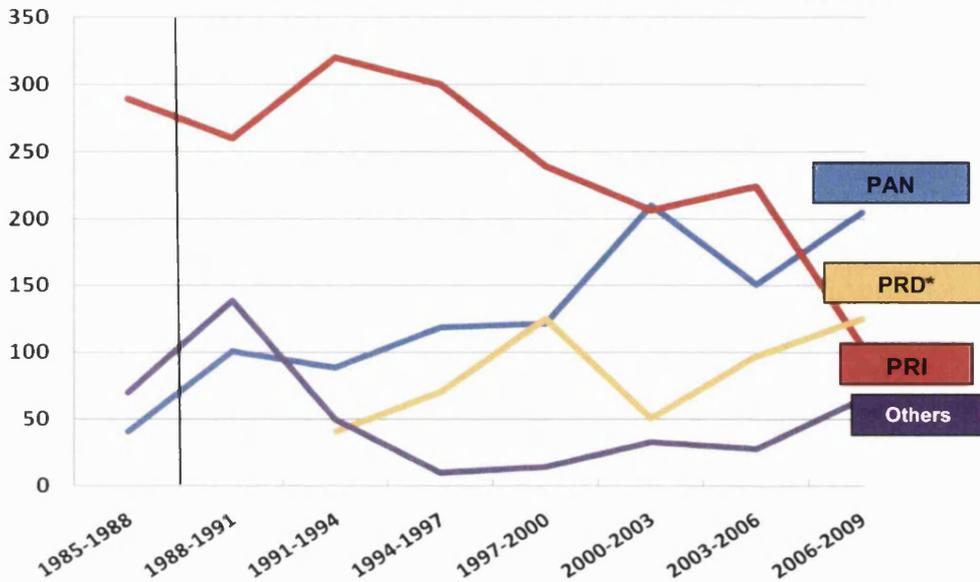
Reflecting the pre-eminence of the President’s party, from 1970 to 1994 the chairman of the CV was a deputy from the then-governing PRI (See Table 2-3). In 1994, Juan Antonio García Villa, from the opposition PAN, was elected chairman of the CV, although the PRI kept control of the Committee with a majority of 18 PRI members out of 30 seats. The appointment of García Villa raised the visibility of the CV and in consequence of the CMH. In an interview, García Villa stated: “(Since my appointment) it was established as an unwritten rule that the one in charge of such a commission (CV) should be a member of the opposing party... the logic is that an adversary should be in charge of this kind of work on oversight matters (García Villa,

2008).”With the election of García Villa as chairman of the CV, the SAI guaranteed that all its reports would be given to a member of the opposition in the Legislative Branch.

The survival of an institution like the SAI requires a reasonable match among its structure, purposes and the changing political environment (March & Olson, 1995:184). In Mexico at the end of the 1990s, political institutions had to evolve at the pace set by democratic change. In 1997, the PRI lost its majority in the Chamber of Deputies. In the previous 70 years, the hegemonic control of the PRI over the Congress had been reflected in a subordinate relationship with the President. The President’s control over the PRI strengthened his command over the collective decisions of deputies and senators. Until the PRI’s electoral defeat of 1997, Congress had functioned as a mere rubber stamp.

One of the four conditions put forth by Weldon (1997:227) for the survival of presidentialism is a unified government where the ruling party controls the presidency and both houses of Congress. If this condition ceases to exist, “then the equilibrium of presidentialism will begin to break down.” When the opposition parties became a majority in the Chamber of Deputies, the balance of power changed in an irreversible way. The outcome of the 1997 elections showed the emergence of a new political system. Figure 2.1 shows the number of deputies per political party from 1985 to 2009. The Figure shows how in 1997, the PRI had less the 251 deputies, the minimum to control the simple majority, in the lower Chamber with 500 seats. The Figure also shows the electoral success of the PAN and the PRD and the downfall of the PRI in its share of Congress.

Figure 2-1 Number of Deputies per Political Party (1985-2009)



Source: Federal Congress; www.cidac.org *The PRD was founded in 1989

The end of PRI's hegemony signified a power shift in the relationship between the Executive and Legislative powers. Despite the fact that the division of powers was an integral part of the Mexican constitutional tradition, the federal election of 1997 created the political conditions for a de facto separation between the Executive and the Legislative Branch. The Congressional role of financial oversight had to adapt itself to the transformation of the structure that guaranteed stability in the former regime. The creation of the *Auditoría Superior de la Federación* was part of a process of strengthening the Horizontal Accountability role of Congress. The ASF was a first step of an unprecedented political experience: the rendering of accounts of the presidency and the Executive branch.

Baeza (2003:6) defines a politically incongruent constitutional regime as “the permanent dichotomy between what is mandated by the Constitution and the actual common practices of the political actors. These actors interact in the spheres of power by creating their own codes of behaviour and using legality only as a formal requirement.” The 1997 elections in Mexico

resolved the permanent dichotomy between the *pays reel* and the *pays legal* (O'Donnell, 1997:49), between the division of power as a constitutional aspiration and the inefficacy of the Congress in its role as institutional balance to the Executive. The emergence of a true division of powers represented a structural innovation that provided institutionalised spheres for accountability (March & Olson, 1995:166).

As can be seen in Table 2.3, PAN and PRD together outnumbered the PRI in the Chamber in 1997. Therefore, the PRI lost its control over the integration of the CV. Table 2.3 shows the decline of the PRI's hegemonic control, in both the Chamber of Deputies and the Oversight Committee. For 27 years, the PRI had held both the majority and the chairmanship of the committee. It is worth noting that since 1994, the composition of the Oversight Committee has mirrored the party distribution in the whole Chamber. Since the year 2000, when the PAN won the presidency, the chairmanship of the Oversight Committee has been in the hands of the PRI (2000-2006) and the PRD (2006-2009).

Table 2-3 Composition of Chamber of Deputies and *Comisión de Vigilancia* (1970-2009)

Chamber of Deputies	Party Composition			Difference in % points between compositions	Chairman of the <i>Comisión de Vigilancia</i> (Party affiliation)
	Party	Congress %	CV %		
1970-1973	PRI	83	100	+ 17	Humberto Hiriart (PRI)
	PAN	9	0	-9	
	Other	7	0	-7	
1973-1976	PRI	82	100	+18	Julio Camelo Martínez (PRI)
	PAN	10	0	-10	
	Other	7	0	-7	
1976-1979	PRI	81	62	-19	Luis Pliego Irtiz (PRI)
	PAN	9	12	3	
	Other	7	24	17	
1979-1982	PRI	83	71	-12	Gonzalo Castellot (PRI)
	PAN	9	0	-9	
	Other	7	28	21	
1982-1985	PRI	74	64	-10	Rogelio Carballo (PRI)
	PAN	11	7	-4	
	Other	13	28	15	
1985-1988	PRI	73	66	-7	Fernando Ortiz Arana (PRI)
	PAN	12	9	-3	
	Other	13	22	9	

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Chamber of Deputies	Party Composition Congress %			Difference in % points between compositions	Chairman of the <i>Comisión de Vigilancia</i> (Party affiliation)
1988-1991	PRI	52	64	12	José Trinidad Lanz (PRI)
	PAN	20	17	-3	
	Other	28	17	-11	
1991-1994	PRI	63	76	13	Laura Alicia Garza (PRI)
	PAN	17	7	-10	
	PRD	7	5	-2	
	Other	12	9	-3	
1994-1997	PRI	60	60	0	Juan A. García Villa (PAN)
	PAN	23	23	0	
	PRD	14	13	-1	
	Other	2	2	0	
1997-2000	PRI	47	46	-1	Fauzi Hamdam Amad (PAN)
	PAN	24	23	-1	
	PRD	25	23	-2	
	Other	6	5	-1	
2000-2003	PRI	42	43	1	Manuel Galán Jimenez (PRI)
	PAN	41	40	-1	
	PRD	10	10	0	
	Other	6	7	1	
2003-2006	PRI	45	43	-2	Salvador Sánchez (PRI)
	PAN	30	30	0	
	PRD	19	16	-3	
	Other	6	10	4	
2006-2009	PRI	21	24	-3	Antonio Ortega Martínez (PRD)
	PAN	42	41	1	
	PRD	26	24	2	
	Other	11	11	0	

Sources: Constructed by the author using information from Manjarrez, 2002:119-120; *Cámara de Diputados* (www.diputados.gob.mx); and *Centro de Investigación para el Desarrollo* (www.cidac.org).

The Oversight Committee was in charge of the appointment and removal of the head of the then CMH, the *Contador Mayor de Hacienda*. During the times of presidentialism, the *Contador Mayor* was the head of a supporting agency of a weak Legislative Branch. Luis Carlos Ugalde (2000:37-40) has offered some relevant observations on the position of the *Contador Mayor*:

1. From 1970-2000, the CMH did not have any civil service practice or tenure jobs and none of the General Comptrollers had worked before in the CMH prior to their appointment.

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2. Most *contadores mayores* had had political careers linked to the PRI and the Federal Government. Francisco Rodríguez, *Contador Mayor* from 1978-1979, was elected to the Congress representing the PRI on three occasions, one of them just after his term at the CMH. Javier Castillo Ayala, CM from 1990-98, was member of the PRI and was Undersecretary of Budget when Carlos Salinas was secretary. When he finished his tenure as CM, President Zedillo appointed him as Under-Secretary of Labour.
3. From 1970-1998, there were 9 *contadores mayores* who had remained in the position an average of 3.1 years.

Countries like Argentina, Brazil and Spain have a Court of Accounts with high authority. However, the Mexican Chamber of Deputies opted that the ASF should be headed not by a council but by an individual. The PAN Senator, Juan Antonio García Villa (1998), argued that if the ASF were to be headed by a collective high authority, it was very feasible that the appointment of its members would reflect the weight and interests of the political parties represented in the Chamber of Deputies. After the 1999 reform, the head of the SAI was named *Auditor Superior de la Federación*, who is elected for eight years by a two-thirds majority of the attending quorum in the Chamber of Deputies. As stated above, with the two thirds majority it is impossible that a single political party by itself could have enough votes to appoint the head of the SAI. This legal requirement was designed in the context of a 7 decade tradition of a single political party, the PRI, with an almost absolute control over the Chamber of Deputies (Manjarrez, 2002:148).

In December 1998, Gregorio Guerrero Pozas was chosen *Contador Mayor* by 340 votes out of a total quorum of 459 deputies and the support of four out of five parties represented in the Chamber (*Gaceta Parlamentaria*, December 2nd 1998). Before his new position, Guerrero had been treasurer of the Chamber of Deputies and did not have any public affiliation to a political party. In an interview for this dissertation, Guerrero Pozas stated: "This was the first time that the deputies agreed and pushed forward the entire selection process for the *Contador Mayor*

without the intervention from the Executive power. I believe it occurred for the first time, when I was elected *Contador Mayor*" (Guerrero Pozas, 2008).

Originally, Guerrero Pozas was appointed for an eight-year period, but the Constitutional reform of 1999 and the new LFSF established that his term would end in December of 2001 to give way to the new auditor of the new SAI. The Chamber of Deputies had the option of bestowing on him the new title of *Auditor Superior de la Federación* or choosing a different person for the position. The Chamber did not ratify Guerrero Pozas in his post and opened a new selection process. Due to the distribution of political forces inside the Chamber of Deputies, only the joint support of the PAN and the PRI could produce the two-thirds majority needed to appoint the new head of the ASF. After an open contest to fill the position, Arturo González de Aragón was appointed *Auditor Superior* for the period 2002-2009.

Gregorio Guerrero Pozas, the former *Contador Mayor*, challenged in court his dismissal from the post with the argument that the Chamber of Deputies did not offer a valid justification for his removal. According to his appeal, the Chamber of Deputies had violated his constitutional rights. The case reached the Supreme Court, which rejected the appeal by a vote of 8 to 1 in October of 2003. The judge who voted against the decision argued that the post of the *Contador Mayor* was analogous to the judges of the Supreme Court, and thus a sitting official should not be removed in the absence of a major offence. However, the remainder of the judges rejected this opinion. Finally, the Court argued that the Chamber of Deputies had the "discretionary faculty" to discharge Guerrero and appoint González de Aragón. The verdict of the Court also stated that the *Contador Mayor* was an "employee" with no right to "tenure" so he could be dismissed by the deputies (*Suprema Corte de Justicia*, 2003).²⁴ After the court ruling, González Aragón was confirmed in his position until 2009. The legal interpretation of the Court reduced the autonomy of the ASF, because the head of a supposedly independent agency became a direct subordinate of Congress.

²⁴*Suprema Corte de Justicia*, (Supreme Court), October 28th 2003.

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In an interview for this dissertation, the former *Contador Mayor*, Gregorio Guerrero Pozas stated: "I think that the decision made by the Court was pretty bad, but not because it affected me personally. One of the concerns that the legislators had back at the 1999 constitutional amendment was to give enough autonomy to the SAI. Despite this, the Court's decision was to define the head of the SAI as an employee from the House of Representatives to serve as Comptroller General, allowing the House of Representatives to have full control, and to be able to remove the person at any time. This obviously weakened the institution's original design." (Guerrero Pozas, 2008).

With the selection of González de Aragón, it became clear that the Federal Executive had lost its capacity to appoint the head of the SAI. This fact gave the new SAI its basic premise of legitimacy in the new political system: independence from the presidential figure. The Declaration of Lima²⁵, the Magna Charta of Supreme Audit Institutions enacted in an international conference of SAIs in Peru's capital, emphasises the importance of independence from the audited bureaus: "SAIs can accomplish their tasks objectively and effectively only if they are independent of the audited entity and are protected against outside influence. Although state institutions cannot be absolutely independent because they are part of the state as a whole, Supreme Audit Institutions shall have the functional and organisational independence required to accomplish their tasks (INTOSAI:1977)." The autonomy to make decisions as to where and when to carry out audits, as well as an institution's ability to impose sanctions and penalties on other state agents is crucial for the performance of a SAI. A good measure of a SAI's organisational autonomy is the way in which the organisation decides on the subject, scope and timing of an audit.

The professional independence of the AG or the members of a court of audit "must be set out in legislation and acknowledged in tradition" (Dye & Stepenhurst, 2000). Legal independence is relevant to the quality of financial and performance audits, due to the possible political conflicts that are inherent in the auditors' role. An OECD survey (2003) shows that in 43.5% of the

²⁵ The Declaration of Lima was approved at an international conference of SAIs in Peru's capital in 1977.

countries, the SAI's independence from the Executive is established in law; in 56.4% of the cases it is stated in the constitution. The leader of the SAI should report directly to the legislature without any interference from the executive branch. Of the 40 countries participating in the OECD/World Bank survey on Budget Practices and Procedures, 7.9% of the SAIs reported to the Executive Branch, 74.3% to the Legislative Branch and 2.4% to the Judiciary (OECD/World Bank, 2003).

The SAIs are one of the main accountability instruments under the control of the legislature (Uhr, 1998:209). Through the SAI, the Congress supervises, audits, and verifies that all entities using public resources are allocating them in accordance with the guidelines approved in the budget. The role of Mexico's Congress in the political system was transformed through an election that took away the political control of the President over the Chamber of Deputies in 1997. This political change triggered institutional reforms to adapt the Congress to its new central role as real mechanism for Horizontal Accountability.

2.4 The timetable of accountability: from budget draft to the *Cuenta Pública*

2.4.1 The three stages of budget accountability

The control and oversight of public funds occurs in three stages. Heald argues that control is exerted *ex ante* and accountability is exerted *ex post* (1983:156). *Ex ante* controls are exercised when the Chamber of Deputies determines the allocation of fiscal resources through the modification and/or approval of the federal budget at the beginning of the fiscal year (FY).²⁶ The budget approval process is in itself an action of oversight regarding how the government money is allocated according to the priorities negotiated between the Executive and the Legislature.

²⁶ Breaking with the international linguistic norms of government budgeting, in Mexico *el presupuesto* (the budget) is understood to refer to the appropriation of expenditure resources. The government's income is treated in a different document called *Ley de Ingresos* (Revenue Law).

The second stage or concurrent oversight of government expenditure is performed by the *Secretaría de la Función Pública*, the Executive internal comptroller, and the network of more than 230 internal comptroller offices that are embedded within every ministry, bureau or state company that makes up the structure of the federal government. This simultaneous or concurrent control occurs while the government is spending the budget. The third stage occurs at the end of the fiscal year when the public resources have been spent. The Chamber of Deputies is responsible for the *ex post* oversight of budget accounts with the assistance of the *Auditoría Superior de la Federación* (ASF).²⁷

2.4.2 *Ex ante* accountability: the approval of the Federal Budget

The original text of the 1917 Constitution did not determine any precise deadline for the submission of the budget draft to the Chamber of Deputies. In 1977, an amendment to Article 74 established that the Executive would submit the budget initiative no later than November 30 of each year. In 1982, another constitutional reform moved the date to November 15th. In this budget calendar, which operated for 22 years, the Executive had ten-and-a-half months to prepare the budget proposal, while Congress had six weeks to debate and approve it, before the beginning of the next fiscal year. The Constitution did not establish a deadline for the budget approval by the Chamber of Deputies. To permit informed debate and approval, the budget should be presented to the legislature in a timely manner — that is, two to four months before the start of the fiscal year (Schiavo-Campo, 2007:272).

In order to give more time for the budget debate in Congress, a constitutional amendment was approved in July 2004 to change the calendar of the first stage of budget accountability. The amendment of Article 74 of the Constitution establishes that the President has the obligation to present the draft of the budget to the Chamber of Deputies by September 8th, with the deputies voting on it before the 15th of November, a month and a half before the beginning of the new

²⁷ According to a study by Gutiérrez *et. al.* (2001), among the countries with the longer periods for budget debate and approval in the Legislative Assemblies are the United States (235 days), Sweden (150 days) and Denmark (120 days).

fiscal year. The Executive presented the budget bill in September for the first time for the debate of the 2005 FY budget. Every six years, with the President's inauguration on December 1st, the budget bill must be presented to Congress by December 15th.

Diagram 2-1 Budget Preparation and Discussion

Year 1 Budget Preparation and Discussion				Year 2
April 1 st	June 30 th	September 8 th	November 15 th	FISCAL YEAR
The economic forecasts of the budget should be published.	A list of the main programmes to be included in the following year's budget should be published.	The Federal Executive (SHCP) submits the Expenditures Bill (PEF) and the Bill of Income (LIF) to the Legislature. In case of the inauguration of a new government (every 6 years): December 15 th	Last day for the Chamber of Deputies to approve both parts of the Budget. In case of new presidential term every 6 years: December 31 st	Jan 1 st to Dec 31 th

Source: *Ley de Presupuesto y Responsabilidad Hacendaria* (2006).

If the legislators have not approved the budget by the beginning of the new fiscal year, Article 75 of the Constitution mandates that the salaries of public servants shall be paid according to the amounts approved in the budget for the previous year. This provision guarantees the minimum ongoing operation of the government, even if the deputies have not reached an agreement over budget appropriations. However, any other government expenditure needs the authorisation of the deputies.

The Constitution excludes the Senate from the approval of the appropriations bill, giving the Chamber of Deputies the exclusive right to discuss and vote on the budget. Criticising the distribution of responsibilities between the chambers in the budget approval, Rabasa (1976: 236-237) stated: "This exclusivism of the Chamber (of Deputies)... cannot be found in any of the constitutions of the most important nations of the continent... We ignore the source of inspiration of such a scheme that is an inconsistency that borders on a constitutional

contradiction.” On the same issue Tena Ramirez (1996:328) wrote: “This lack of congruence can only be explained as a leftover of the unicameral system of the 1857 Constitution.”

In a study by Santiso (2004:57) of 10 countries in Latin America with a presidential system and a bicameral Congress, Mexico was the only one where the budget was approved by a single Chamber. As Tena and Rabasa state, it is not possible to know the reasons for this peculiar arrangement. However, from the perspective of the Executive, a single Chamber simplifies the whole budget approval process, because there are no possibilities of a disagreement within the Congress that would delay the final approval of government spending. Von Hagen (2005:16) elaborates on the same argument in a European context: “Where both houses have equal budgetary authority, as in Italy or Belgium, finding a compromise is a necessary part of the budgeting process. The effect tends to weaken the position of the Executive because it now faces two opponent bodies. The Executive may be strengthened by limiting the budgetary authority of the upper house, as in France and Germany, where the lower house prevails if an agreement between the two chambers cannot be reached. In the United Kingdom, the upper house has no budgetary authority at all, leaving the Executive with only one chamber to deal with.”

Before the allocation of public expenditures, both chambers of Congress must determine the sources of tax and non-tax income. The senators, in conjunction with the deputies, have the power to reform the *Ley de Ingresos*, the revenue law approved each year to establish government income, drafted by the Executive. The Treasury Ministry sends the draft of the law to the deputies who discuss and may modify the original document. After that, they forward the bill to the Senate, which can also modify it. The *Ley de Ingresos* is approved when both Chambers give a favourable vote and the President enacts it into law.²⁸ All taxes must be included annually in the *Ley de Ingresos*, whether or not they are considered to have an indeterminate duration. Taxes not included in the revenue bill are void for that fiscal year

²⁸ As it will be detailed in chapter 4, the Senate can modify the Income Bill and send it directly to the Executive, without the need of the Deputies to endorse those changes.

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(Weldon, 1997:238; Tena Ramírez, 1985:323-27). If the Executive decides to veto the *Ley de Ingresos*, Congress can overturn the veto with the support of two-thirds of the legislators in both Chambers. There is a legal vacuum in the Constitution regarding circumstances in which the President neither vetoes nor publishes the law.

Under presidentialism, the budget approval process highlighted the subordinate role of the Congress. Despite its legal authority, the Congress was politically and technically overwhelmed by the Executive. To exemplify the lack of infrastructure of the Chamber Deputies during presidentialism, Rolando Cordera remembers: "(From 1982 to 1985) *we did not even have offices for each deputy, we only had one meeting room for the whole party (PSUM), with a small office for the typist. In such circumstances, it was impossible to have a professional Congress*" (Cordera, 2008).

"When the budget is submitted, the finance ministry knows a great deal about public finance, and the legislature knows very little other than what the government wants from it. This informational asymmetry places the legislature at an enormous disadvantage. Even with standing committees and modest staff resources of its own, the legislature is no match for the government (Schick, 2002:22)." Because of the prohibition on consecutive terms, deputies rarely have a deep understanding of the vast complexities of the preparation and execution of the government's budget.

The Chamber of Deputies does not have the technical support of an institution similar to the Congressional Budget Office (CBO) of the U.S. Congress. The CBO has more than 200 professional staff members selected according to non-partisan criteria, and its studies provide valuable input to the congressional budget debate. In Mexico, the *Centro para el Estudio de las Finanzas Públicas* (Center for Public Finance Studies, CEFP) created in 1998 does not have

sufficient resources or human capabilities to balance the asymmetry in technical knowledge between the Executive and the Congress.²⁹

2.4.3 *Ex post* accountability: the oversight of the *Cuenta Pública*

The Chamber of Deputies relies on the *Auditoría Superior de la Federación* to conduct the audit and the report of the document named *Cuenta Pública*. The *Cuenta Pública* is the consolidated report that the three branches of government and autonomous state organisations present to the Chamber of Deputies in order to render accounts of their financial transactions during the most recent fiscal year. The document presents information on the use of all the income and expenditures of the federal government. According to the internal law of the ASF,³⁰ the *Cuenta Pública* oversight consists of verifying the origin and appropriation of government resources, overseeing its financial transactions and certifying that these transactions are in compliance with the authorized amounts established in the Revenue Law and the Appropriations Budget.

To provide a sense of the administrative challenge of the oversight of the *Cuenta Pública*, Lanz (1987:530) notes that the document in 1978 consisted of more than 140,000 volumes containing 60 million government transactions. A reform of the accounting format gradually reduced the size of the document to 23 volumes in 1988 and just one since 1995 (Rocha & Samperio, 2003:17).³¹ As Diagram 2.2 shows, the *Cuenta Pública* should be presented by the Executive in the first ten days of the following June, after the closure of the fiscal year. Ten months later, the ASF is required to present the audit report to the Chamber before March 31st of the following year.³²

²⁹ In a request for information for this chapter, the Center for Public Finance Studies of the Mexican Congress responded that the data concerning its budget and human resources was confidential.

³⁰ *Ley de Fiscalización Superior de la Federación*, Article 7th.

³¹ On the physical size of the documentation that contained the Mexican Federal Budget, *The Economist* (December 5th 2002) commented: "The Mexican government's budget proposals for 2003 are now going through Congress. Nothing very unusual about that: except that, by comparison with previous budgets, this one has shrunk — by about one foot and ten inches, or 56 cm. Mexico's legislators now have a handy, 450-page single-volume summary of the budget to consult, containing a crisp synopsis of each department's aims, main spending plans and performance targets."

³² *Ley de Fiscalización Superior de la Federación*, Articles 8th and 30th.

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As it can be inferred from Diagrams 2.2 and 2.3, the whole budget cycle, from its draft and approval to the final steps of oversight, lasts almost four years. Due to the prohibition of re-election in Congress and the term of office of the deputies for a single three year period, the legislators do not have the opportunity to participate in the whole budget cycle. They approve the budget in their first year, and then the budget is spent during their second year. By the time the ASF gives to the CV a first report about the *Cuenta Pública*, the deputies are out of office. This lack of synchronicity between the budget cycle and the permanence of the deputies in their elected positions is a remaining vulnerability in the Horizontal Accountability role of the Mexican Congress. In this case, the no-re-election rule represents a bidimensional weakness of accountability affecting both the horizontal institutions and the vertical mechanisms to render accounts.

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Diagram 2-2 Budget Cycle

Year 1	Year 2	Year 3		Year 4			
November 15 th	Jan 1 st to Dec31 th	June 10 th	November	March 31 st	April 15 th	May 15 th	October 15 th
Budget Bill approved by the Chamber of Deputies	FISCAL YEAR	SHCP submits the CP to the Chamber of Deputies	ASF present its preliminary report of the CP	<p>ASF presents its final report of the CP to the <i>Comisión de Vigilancia</i> (CV) with two possible outcomes:</p> <p>If observations are found, the ASF will request the respective public servant or government office to provide further explanation</p> <p>If the ASF finds that public funds have been misappropriated, it produces a different kind of observation in order to recover the funds.</p>	The ASF gives to the CV a first report about the state of observations	<p>The audited agency can answer observations till this date. In case of no answer within the next 15 days, the ASF has the authority to impose financial sanctions.</p> <p>The audited agency has till this date to restore the funds to the Public Treasury or the ASF will begin the legal procedures to recover them.</p>	The ASF gives a second report to the Chamber of Deputies about the state of observations and given answers.

Source: Ley de Fiscalización Superior de la Federación.

2.4.4 *The oversight of the Cuenta Pública*

The audit of the *Cuenta Pública* has the objectives of:

1. Verification that: a) the government's costs and payments are aligned with market prices; b) the quality of public works is acceptable c) government offices abide by the statutory regulations over public expenditure and the provisions established in the budget.
2. Oversight of the subsidies and investment projects provided by the federal government to the states, municipalities,³³ state owned companies and private entities. The process of oversight has the aim of certifying that the resources were used as programmed in their respective budgets.
3. Certification that public expenditure was invested according to the government's programmes and objectives (Manjarrez, 2002:142).

If the ASF detects any anomalies in the supervision of the *Cuenta Pública*, it must take preventive and corrective measures. Fifteen months after the end of the fiscal year, the ASF presents a report of its "*observations*" of the *Cuenta Pública*. The term *observaciones*, as used by the ASF, is a political euphemism to highlight potential wrongdoings or incomplete information in the financial transactions of the public administration. If observations are found, the ASF will request the respective public servant or government office to provide additional explanations and clarifications of any possible confusion in the information presented in the *Cuenta Pública*.

The audited agency has 45 days to answer the observations. If the period of 45 days passes and the audited agency does not present its clarifications, or an explanation for the delay, the ASF has the authority to impose financial sanctions and may request the dismissal of the public servant in charge. These penalties do not cancel the obligation to respond to the original

³³ State governments are in charge of overseeing the subsidies to municipalities.

request of observations. The Treasury Ministry is required to submit a report twice a year to the ASF on the procedures it has undertaken to recover the sums that were defrauded (LFSF, Arts.56). From 2002 to 2005, the oversight of the *Cuenta Pública* produced 12,133 observations, of which the audited government bodies have clarified 93.5% (ASF, 2007:224).

When the ASF finds that public funds have been misappropriated, it produces a different kind of observations that are intended to recover the funds as well as clarifying the information. The audited agencies have a 45 day period, without extension, to restore the funds to the Public Treasury, or the ASF will begin legal procedures to recover them. If this proceeds, financial sanctions and criminal charges follow. Public servants have three kinds of legal responsibilities derived from the *observaciones* of the ASF:

- Direct responsibility falls upon the public servants, private individuals or companies that have perpetrated the wrongdoings.
- Subsidiary responsibility is borne by the immediate superior of the public servant who had direct responsibility.
- Shared responsibility corresponds to the public servant, private individual or company that participated in the wrongdoing.

The ASF has the authority to verify the performance of the *Sistema de Administración Tributaria* (Inland Revenue Service, SAT). If the ASF detects a possible fiscal evasion, it can request the SAT to perform a direct tax audit to determine the amount in question. The ASF can request a government agency to impose direct sanctions upon public servants or other individuals who have broken the law or an administrative norm. In addition, the ASF can present evidence and judicial accusations to the *Procuraduría General de la República* (Public Prosecutor Office, PGR) (Manjarrez, 2002:144). The ASF can solicit the *Tesorería de la Federación* (Federal Treasury, TESOFE) for the sequestering of goods or capital of the accused person or organisation. Every six months, the Finance Ministry has the obligation to submit a report to the ASF and the Chamber of Deputies, presenting the amounts recovered as a consequence of the observations.

2.4.5 The ASF observations and the rescue of the Mexican banking system

As a result of the oversight of the *Cuenta Pública* of FY 2000, in the revision of the financial bailout of the Mexican banking system, the ASF reported observations for 47,139 million pesos (£3,287 million)³⁴. The observations did not necessarily indicate unlawful actions. In the following months, the Treasury Ministry, bank regulators and the institution in charge of the administration of the bank rescue (IPAB) gave proof and explanation for about 38,674 million (£2,670 million), which represented 82% of the total rescue package for that year. With respect to 8,465 million pesos (£617 million), the authorities did not provide enough information to justify the allocation of public money to the banks. According to the ASF, this amount came from bad loans and interest that should have been absorbed by the banks and not the public treasury.

In the oversight of the *Cuenta Pública* 2001, the ASF reported additional observations for 45,409 million pesos (£3,396 million) that presumably were misallocated to the financial system. From this sum, the respective authorities justified 18,362.4 million pesos (£1,373 million). An additional 25,896 million pesos (£1,936.9million) were not classified as legitimate transactions, so the public treasury should not have been responsible for this share of the bailout. According to the ASF, the total for both years amounted to 34,360 million (£2,570 million) and were required to be repaid according to the following procedures, depending on the type of bank: For banks that survived the crisis, the value of the misappropriated funds (25,860.8 million pesos) was deducted from future payments of the financial rescue package. For the banks that were

³⁴ Methodology for currency conversion: The Mexican peso was converted into UK pounds (and vice versa) using data from INEGI. The exchange rate is a yearly average for the mean of the sale and purchase price, that is, the price offered to the public and the price at which banks buy the foreign currency. For the sake of consistency, every amount in pesos was converted to an amount in pounds for the same year. For example, 1,000 pesos of 2003 correspond to £56.41 of 2003.

		Exchange rates (1995-2007)												
		1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007
1£=X Pesos	X	10.27	11.96	13.04	15.34	15.53	14.34	13.37	14.78	17.73	20.82	19.71	20.26	21.92
1 Peso= Y £	Y	0.097	0.084	0.077	0.065	0.064	0.07	0.075	0.068	0.056	0.048	0.051	0.049	0.046

rescued and then sold to new owners, the ASF requested the *Secretaría de la Función Pública* (former *Secodam*) to do an inquiry and establish sanctions or press for criminal charges.

The federal government took the ASF to the Supreme Court to challenge the demand to reduce future payments to the banks as a way to recover the misallocation of public funds. With this legal action, the government defended the banks' interests with the argument that the ASF did not have the authority “to order” the reduction of imminent transfers of public money to bolster the financial system. The Supreme Court ruled that the ASF, as a support agency of the Congress, has the authority to suggest but not to give orders to the Executive Branch. A majority vote in the Congress can force the Executive to take a certain course of action, but that constitutional capacity is reserved for the deputies and senators and not a congressional supporting agency. As a consequence of the judicial verdict, the ASF limited its actions to “recommending” that the *Secretaría de la Función Pública* should follow up the inquiries and the recovery of the public funds that are presumed to have been misallocated in the bank rescue. The Supreme Court rulings, first regarding the ASF and then on the bank rescue, diminished the powers and autonomy of the SAI, but have also been part of its institutionalisation process. The decisions of the Court have clarified the capabilities and limitations of the ASF that were not expressly included in the law.

2.4.6 Budget resources and the audit capabilities of the ASF

Dye and Stapenhurst described the minimum requirements that ought to be fulfilled by the institutional design of a SAI. The new legal framework for the ASF fulfilled the principles outlined by Dye and Stapenhurst (See Table 2.4), although an adequate institutional design does not guarantee the functionality of an agent of Horizontal Accountability. The legal framework should entitle the SAI to apply directly for the necessary financial means to the public body that decides the allocation of the national budget (INTOSAI, 1977). Lack of financial or human resources for a SAI would mean that the legal aspiration for accountability could be transformed

into an *unfunded mandate*.³⁵ Budget limitations have restrained the ASF's audit capabilities. In Mexico's Financial Accountability Assessment, the World Bank (2003:30) stated: "the ASF is an institution still in formation, it is not possible to show results or significant strengths and weaknesses in its management. However... (its) still incipient operational capacity will not be substantially improved unless it is granted an adequate budget."

Table 2-4 Dye & Staphenurst Principles and Mexican SAIs

Principles	CMH*	ASF**
1. Criteria for the selection of the auditor general or equivalent position	YES	YES
2. Term of service	YES	YES
3. Provisions for retirement or dismissal	NO	YES
4. Immunity from liability for the auditor general	YES	YES
5. Requirement to report regularly rather than annually	NO	YES
6. Right to hire and fire SAI employees	NO	YES
7. Right to contract out professional services	YES	YES

*Contaduría Mayor de Hacienda

**Auditoría Superior de la Nación.

Source: *Ley de fiscalización Superior de la Federación; Ley de la Contaduría Mayor de Hacienda*

For FY 2004, the ASF requested that the Chamber of Deputies double its budget from 588 million pesos (£29.4 million) to 1,286 million pesos (£64.3 million).³⁶ According to ASF projections, 234 million pesos of this sum were to be distributed between the states' SAIs that show the will to co-operate with the Federal Congress in the audit of decentralised funds. The Deputies ignored the request and determined the ASF budget for FY 2004 at 613.8 million pesos (£30.7 million).³⁷ As seen in Table 2.5, in the nine budget proposals from 2000 to 2008, in four years (2000, 2001, 2005 and 2008) the ASF obtained the funds to cover its full budget request; also in five years (2002, 2003, 2004, 2006 and 2007) it obtained an average of 18.65% less than the requested budget. However, the average does not reflect the wide variations from one year

³⁵ According to the US Congressional Glossary an *unfunded mandate* is a requirement imposed by Congress on state or local governments with no funding to pay for it. Through Internet: www.c-span.org/congress/glossary/unfunded.htm, consulted April 25th 2005.

³⁶ *Proyecto de Presupuesto de Egresos de la Federación* for 2004.

³⁷ *Presupuesto de Egresos de la Federación* 2004. Through Internet:

http://www.shcp.sse.gob.mx/contenidos/presupuesto_egresos/temas/pef/2004/por_ramos/temas/tomos/01/r01_ep.pdf, consulted May 31st 2004

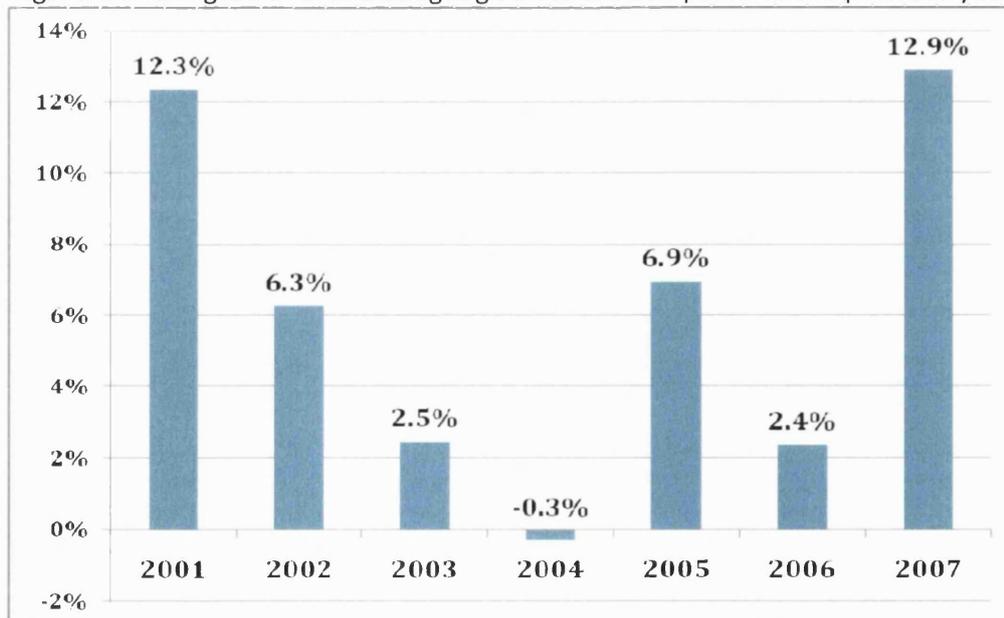
to the next, especially 2002 and 2004. With an accumulated inflation of 41.65 %³⁸ in the period 2000-2008, the budget of the SAI grew 36.6% in real terms.

Table 2-5 Requested and official budget for the SAI (Millions of current Mexican pesos)

	Requested	Official Budget	Difference	Difference (%)
2000	415.93	415.93	0.00	0.00
2001	493.71	493.71	0.00	0.00
2002	704.99	549.49	-155.50	-22.05
2003	620.38	588.00	-32.38	-5.20
2004	1,286.48	613.88	-672.60	-52.30
2005	680.98	680.98	0.00	0.00
2006	725.96	721.88	-4.09	-0.56
2007	971.33	843.67	-127.66	-13.10
2008	929.39	929.39	0.00	0.00

Sources: Budget projects and official budget reports 2000-2008. Through Internet: http://www.diputados.gob.mx/LeyesBiblio/ref/pef_2008.htm, <http://dgpp.sep.gob.mx/PPTO/principal2.htm>, consulted March 20th, 2008.

Figure 2-2 Real growth of the budget given to SAI compared to the previous year



Source: Constructed by the author from Federal Budget Decrees.

³⁸ Last data for inflation: May 2008

The financial limitations of Mexico’s SAI demonstrated a conflict of interests between the ASF and the Chamber of Deputies, since the budget of the accountability supporting agency is taken directly from the resources allocated to the deputies. Between the years 2000 and 2008, the budget of the Mexican Congress has been an almost-constant 0.34% share of the total national budget (see Table 2.6). In this same period, the budget of the ASF remained almost constant with an average of 10.8% of the combined congressional budget of both the Senate and the Chamber of Deputies.

Table 2-6 Percentage of the total national budget allocated to the Congress and percentage of the Congress budget allocated to the SAI

	Congress/Total National Budget	SAI/Congress
2004	0.33%	11.30%
2005	0.35%	10.70%
2006	0.35%	10.40%
2007	0.33%	11.20%
2008	0.35%	10.40%
Average	0.34%	10.80%

Source: *Presupuesto de Egresos de la Federación* (2004-08)

If the budget of the Congress remains constant, the Chamber of Deputies would have to take resources from its own pool in order to increase the funds of the ASF. The Deputies lack incentives to increase this funding above its “minimum indispensable”.

Table 2-7 Percentage of the total national budget allocated to the Congress, 2004

Argentina	Chile	Mexico (2000-08)	USA
0.59%	0.40%	0.34%	0.17%

Source: Constructed by the author with information from National budget documents. Through Internet.

With its current budget, the ASF is capable of auditing a sample that represents 1.9% of the total federal budget (Fuentes, 2008). The audited budget sample in OECD countries ranges from 5% to 9%. At current budget levels, the ASF would have to limit its activities to the 325 audits

performed in 2003. Table 2.7 present the share of the Congressional Budget with regard to the total national budget to provide context for Table 2.8, which shows that in 2004 the Mexican Congress allocated a smaller share of its budget to its SAI than other legislatures.

Table 2-8 Financial resources of the ASF as percentage of the legislative budget compared to other SAI, % (2004)

Chile*	United States**	Canada	Mexico	UK***
34.7	17.6	17.6	10.5	12.1

Sources: Constructed by the author with information from national budget documents through Internet.

*The Comptroller General of Chile is independent from the Executive and the Legislative Branch.

**The data of the US Congress excludes the budgets for the Library of the Congress and the Office of the Architect of the Congress.

*** This percentage is the result of the addition of the net operating costs of both Houses of Parliament plus the NAO budget for 2000-01.

With the evidence presented above, it is possible to argue that the ASF lacks proper funding to increase the size of the audited budget. Table 2.9 shows that the ASF has one half of the budget of the SFP, but its responsibilities are more extensive. If the comparison includes the 230 internal audit offices inside the Executive branch, the ASF budget represents 1/10 of the entire structure controlled by the internal audit of the Executive.

Table 2-9 Human and Financial Resources ASF vs. SFP

Resources	ASF	SFP
Number of Employees (2008)	1,571	222,441
Budget 2003 (Millions of pesos)	929	111,520
Audited bodies	Executive, Congress, Judicial branch, independent organisms and co-ordination for the oversight of decentralised funds to the states	Executive

Sources: Federal Budget 2003; *Transparencia Mexicana*, "Diagnóstico Institucional del Sistema Federal de Control (DSFC)"; *Auditoría Superior de la Federación*, 2003. *Reforma*, October 27th, 2003

The ASF argues that an increase in its budget would reflect an efficient investment of public money because, through its audit report, it would reduce government waste and

misappropriation of funds. According to ASF data, for every dollar invested in its budget, it recovered \$1.78 between 2000 and 2003, while the *Secodam* recovered only 72 cents out of every dollar invested in its budget.³⁹ These figures should be taken with scepticism, since the ASF publish them as an argument to increase its budget, under the premise of the efficiency returns as a result of its performance.

2.4.7 Institutional relationship between the ASF and the SFP

The ASF and the SFP have the mandate to audit the finances of the federal government and oversee its compliance with the resources allocated in the appropriations bill. Both organisations have to resolve the operationalisation of the 'double whammy' between the internal and external audit institutions. The internal audit institution of the times of presidentialism had to coexist with the external audit institution that emerged from the transition to democracy and a Congress with plural political forces.

The internal and external audit bureaus have some supplementary functions that can give rise to confusion. In order to reduce the risks of redundant oversight and to promote a complementary approach, in May 2001, the ASF signed an agreement with the then-*Secodam* to co-ordinate actions, prevent duplication, and strengthen the oversight capabilities over the Executive branch. This was the first time that the internal and external audit institutions formalised their willingness to assist each other with their responsibilities. The agreement is in line with the constitutional precept of division of power and the laws that regulate the *Auditoría Superior de la Federación*.

In a reflection over the relationship of the two institutions, the World Bank Accountability Assessment (2003:29) stated that the agreement "does not seem to be the correct way to formalize these types of institutional commitments...the delimitation and compatibility of

³⁹ The ASF turned down two formal requests from me for the methodology on how they produced these figures.

functions between the ASF and the SFP must be carefully analysed and defined to avoid overlapping and redundant audits.”

In the agreement the *Secodam* commits to: A) Share information about the basic audit programmes applied to the ministries and agencies of the Executive Branch. B) Inform the ASF about the audit results. C) Through the internal control bureaus, *Secodam* can request the report received in answer to the observations made by the ASF. The agreement also establishes that the ASF will present the results of its audits to the *Secodam*. All the information is to be open between the two institutions, with the exception of documents that had been classified as confidential. The most politically relevant aspect of the agreement was that *Secodam* acknowledged that the ASF was an institutional partner in the accountability process of the budget cycle. A ministry under the structure of the Executive regarded a Congressional supporting agency as a collaborative partner. This equal treatment between the two institutions would have been unthinkable in the times of presidentialism.

A World Bank report (2003:30) stated that the analogous functions of the SFP and the ASF, in addition to “the major difference in operational capacity between both entities, have created confusion with respect to how viable the coexistence of both institutions may be... Opinions have been expressed to strengthen the ASF and restrict the scope of the SFP to the function of Administrative Development.”

The overlapping responsibilities of the ASF and the SFP could be corroborated by examining the legal basis of both institutions. Table 2.10 presents a comparison of the tasks granted to the SFP, as stated in Article 37 of the *Ley Orgánica de la Administración Pública Federal* (Internal Law of the Public Administration, LOAPF) that have common characteristics with the institutional responsibilities of the ASF.

Table 2-10 Overlapping responsibilities of the SFP and ASF

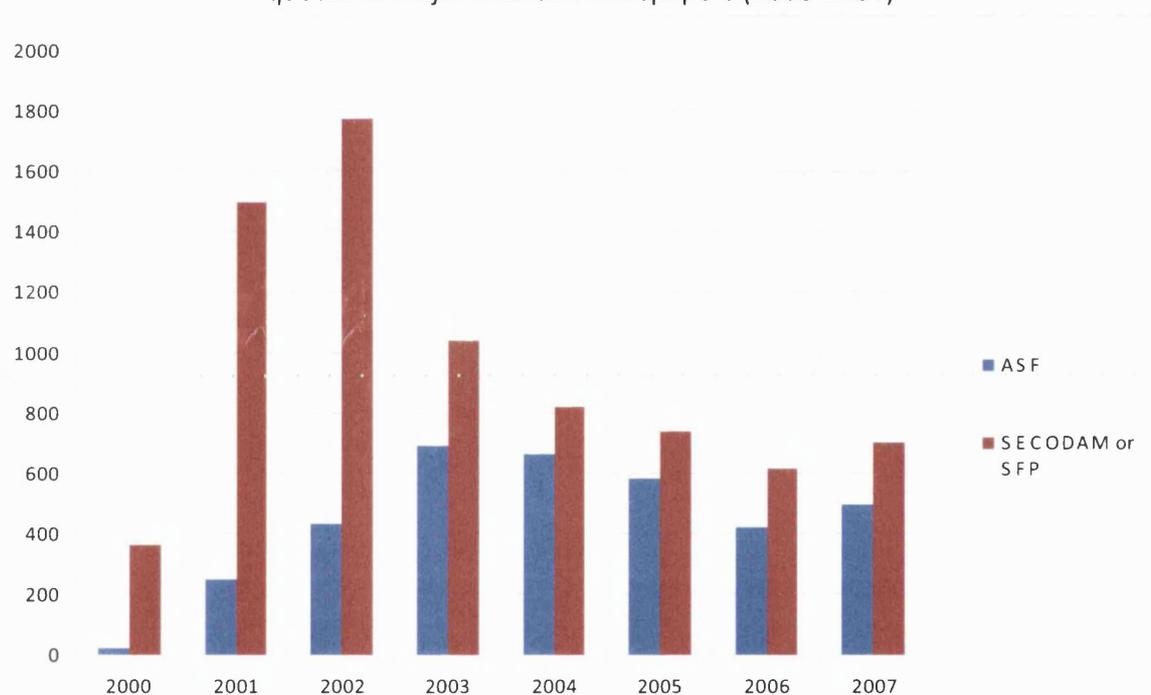
Legal Responsibilities of the SFP	Does the ASF perform a similar task?
Inspect the expenditure allocations and oversee their alignment with the criteria established in the federal budget.	Yes
Oversee the legal and financial accountability of government bureaus and public servants.	Yes
Substitute or support the control bureaus in the audit procedures of the public administration.	Yes
Legal Responsibilities of the SFP	Does the ASF perform a similar task?
Investigate the conduct of public servants that might constitute administrative misdemeanours, apply the respective sanctions, and if applicable press for criminal charges.	Yes
Oversee and audit the construction of public works and the financial agreements between government offices and contractors from the private sector.	Yes
Perform the audits and evaluations decided on its own or requested by the SHCP.	Yes, but audits are requested by the Chamber of Deputies
Organise and coordinate the internal control system and government evaluation.	No, just external audit
Appoint external auditors for state owned companies and supervise their performance.	No
Approve the organisational and employment structure of the Ministries and entities that constitute the Federal Government.	No
Conduct an inventory of the real estate owned by the federal government.	No
Organise and operate the civil service of the federal government.	No
Publish the norms and internal regulations of the internal system of control of the federal government.	No

Source: *Ley Orgánica de la Administración Pública Federal; Ley de la Entidad de Fiscalización Superior de la Federación.*

The legal reform and conflicts in the Supreme Court have raised the profile and the public awareness of the ASF as a key institution of budget accountability in Mexico. In its previous institutional form, the *Contaduría Mayor de Hacienda* was a weak supportive agency of a Congress that had a minor role in the political system. The political height of the Executive overshadowed any media interest in Congress. *Secodam* was acknowledged by the press as the main institution in charge of government accountability. Figure 2-3 shows a comparison of the number of times that the main Mexican newspapers (*El Financiero*, *Milenio*, *Reforma* and *El*

Universal) have mentioned the ASF and the *Secodam* in the past four years. These numbers have the shortcoming of only capturing the number of times the institution was mentioned and not the prominence of the mention (e.g. front page or inner pages). However, Figure 2-3 shows increased coverage of the ASF by the political press. In 2001, the ASF was mentioned 201 times, while by 2007 this number had jumped above 500. Gradually, the Mexican press has been giving more attention to the SAI.

Figure 2-3 Number of times the ASF and *Secretaría de la Función Pública-Secodam* have been quoted in major Mexican newspapers (2000-2007)



Sources: webpages of newspapers *El Financiero*, *Milenio*, *Reforma*, and *El Universal*. Hits for: ASF OR “Auditoría Superior de la Federación”/ Secodam/ SFP OR “Secretaría de la Función Pública” between 2000-2006.

2.5 Conclusion

During the 70 years of Mexican presidentialism, the former *Contaduría Mayor de Hacienda* was an agency shaped by its political role and its institutional design. A presidency not accountable to other powers made politically impossible the operation of autonomous institutions outside

the realm of his influence. *Metaconstitutional presidentialism* was able to flourish because state institutions, isolated from Executive pressures, did not exist. The evolution from the *Contaduría Mayor de Hacienda* (CMH) into the *Auditoría Superior de la Federación* (ASF) was part of the process of institutional change that built the basis for a new political system in Mexico. The CMH had a trust deficit and institutional inadequacies that did not fit the needs of an empowered Congress. The new ASF became an institution “willing and able” to perform its role as the external auditor of government financial transactions. Through the ASF, the Chamber of Deputies reduced the asymmetry in the analysis and audit of budget information.

As Table 2-11 shows, the ASF has widened the scope and number of audits over the *Cuenta Pública*. The CMH, the former SAI, performed mostly *regularity audits*, which had the aim of verifying that the audited entities used their resources in conformity with the criteria approved by the Chamber of Deputies. Since the review of the *Cuenta Pública* for FY 1999, the ASF also performs *special audits*, which oversee transfers and subsidies which are categorised as “atypical financial operations” of the federal government. In 2003, the ASF started to do *tracking audits*, which are an oversight-follow up of the recommendations originated in the audits of the previous years. The ASF performs exceptional audits, when the Oversight Commission demands a financial investigation over a particular government bureau, because of a suspicion of corruption.

Table 2-11 Audits executed by the Public Account by type, CMH-ASF (1993-2006)

	Audit type/FY	Performance	Regularity	Special audits	Process tracking	Exceptional situations	Total
CMH	1993		551				551
	1994		552				552
	1995		649				649
	1996		670				670
	1997		726				726
	1998	60	516*				576
ASF	1999**	23	450	36			509
	2000**	24	257	31			312
	2001	24	248	35			307
	2002	24	226	42			292
	2003	24	219	46	9		298
	2004	44	273	42	13	3	375
	2005	51	481	32	9	1	574
	2006	72	578	46	8	2	706

*For 1998 a unique audit on *Ramo 33* was included as regularity audit.

**Public Accounts of 1999 and 2000 were revised by the ASF as stipulated in transitory articles of the *Ley de Fiscalización* (Audit Law), even though it begins its formal activities for Public Account 2001.

Sources: *Informe de Resultados de la Revisión y Fiscalización Superior de la Cuenta Pública* 2000, 2001, 2002, 2003, 2004, 2005 and 2006 (ASF 2001-2008); *Informe sobre la Revisión de la Cuenta Pública Federal* 1998 (CMH 2000).

However, if *Secogef* was an institutional product of the *presidencialismo*, the ASF has sometimes been labelled as an instrument of political parties inside the Chamber of Deputies. As Apreza Reyes shows (2004:22), deputies have been known to order audits against their political enemies, meaning that the ASF can be used as a pawn by political parties, as in the former regime the President used *Secogef*.

The ASF represented an institutional improvement in terms of independence and technical capacity. However, its full institutionalisation is still in process and several Supreme Court rulings are still defining the uncharted corners of its legal framework. However, the process of approval of its institutional design and the new SAI itself marked the sign of the times: the congressional initiative and the Judicial verdicts draw the blueprints and capabilities of the ASF. For the first time in 175 years, the Executive has had a supporting role in the process of drafting the institutional design of the SAI.

CHAPTER 2 - FEDERAL INSTITUTIONS FOR ACCOUNTABILITY IN MEXICO

The creation of the ASF strengthened the rendering of Horizontal Accountability of the Executive towards the Congress. The unprecedented political plurality inside the Legislative Branch and in state governorships forced the President to a new kind of Horizontal Accountability towards subnational governments. Through the decentralisation process, the President and the Federal Government were forced to end the discretionary mechanisms of financial transfers to states and municipalities. During the times of the *metaconstitutional presidentialism*, the President had a strong control over budget expenditure at federal and subnational level. After an intense process of decentralisation, the presidency lost its grip over a large share of government spending. Chapter 3 explains how the transition to democracy led the President to release a substantial portion of the federal budget to subnational authorities.

&

CHAPTER 3

Decentralisation and Presidential Accountability

CHAPTER 3 DECENTRALISATION AND PRESIDENTIAL ACCOUNTABILITY

Being for or against decentralisation is not enough. The following should also be clear: why, when and how decentralisation is to be encouraged (or discouraged); what trade-offs are involved; at what speed it should proceed; in what sectors and for what functions decentralisation would be introduced first; what specific forms it should take; toward which levels of government it can most easily be implemented and what precautions or correcting measures should be introduced with it.
Prud'homme (1995:2)

The previous chapter explained how the Congress created a new SAI to strengthen the President's accountability. Chapter 3 argues that through decentralisation, the federal Executive was forced to render accounts to subnational authorities. Here, I will contend that the transparent allocation of transfers to states and municipalities reduced the President's capacity to use the federal budget for political manipulation. The chapter will analyse how the discretionary criteria for allocating transfers to subnational authorities were replaced by clear and predictable formulas approved by the new plural Congress.

During most part of the 20th Century, the federal nature of the Constitution was overridden by the centralising synergies of the PRI monopoly and presidentialism. In a quasi-single party system, the Mexican President controlled the appointment of PRI candidates to elected positions at federal, state, and even municipal level. Electoral competition at local level brought new life into the formal arrangements of Mexico's federalism. For the first time, subnational political forces called for more financial accountability from the federal government. For Riker (1964) the most important variable defining the nature of the federal regime is the level of competition within the party system. This chapter addresses how the evolution of Mexico's democracy, and its party system, defined the outcome of decentralisation under the structure of a federal Constitution.

In 1980, the states signed a fiscal revenue sharing agreement with the federal government in order to surrender their main taxation powers in exchange for sharing increased federal transfers. The

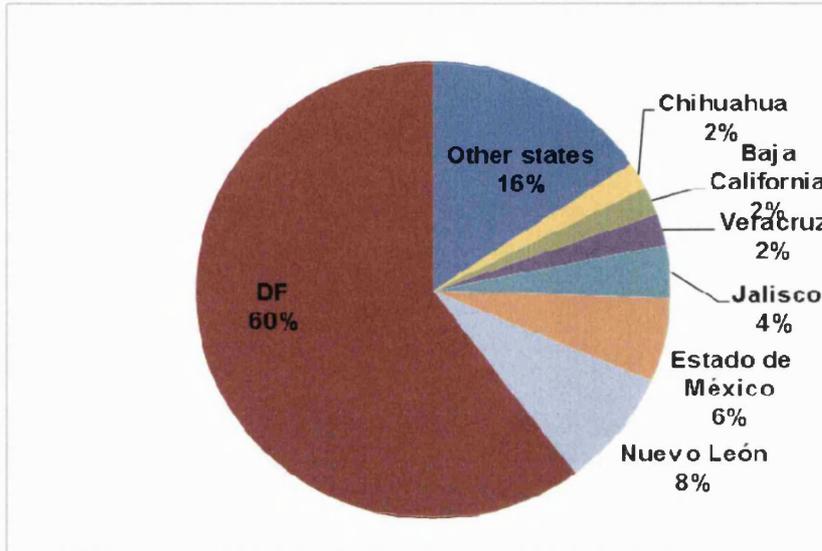
centralisation of taxation was based in the arguments of the regional asymmetries of the tax bases and the unevenness of revenue administrations in states and municipalities. As a consequence of the federal framework, the decentralisation of spending treated all Mexican states as equals, despite the differences in their accountability infrastructures.

The decentralisation process started as a Presidential initiative, where states and municipalities had to absorb their new tasks, without regard for their capacities to administer public expenditure. Mexico's decentralisation was in its origins a *deconcentration* of earmarked resources and administrative burdens from the central government, rather than a vertical dispersion of policy making and political power. During the twilight of presidentialism, the process of decentralisation strengthened the political autonomy of Mexico's subnational authorities. This chapter contends that expenditure decentralisation combined with the declining of presidentialism gave the governors unprecedented political autonomy and turned them into central figures of national politics.

3.1 Centralising taxes, decentralising expenditures

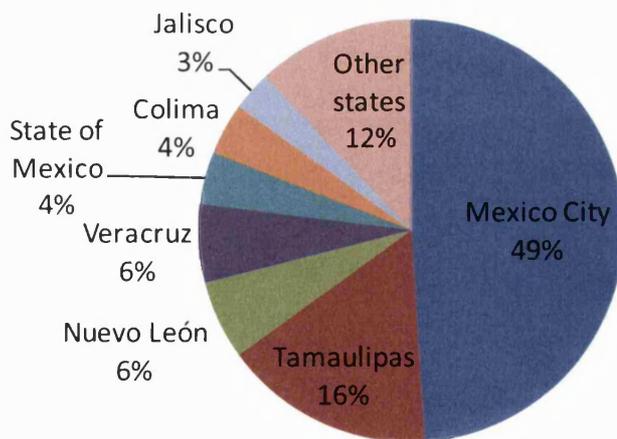
The centralisation of taxation responsibilities by the federal government, established in the system of fiscal coordination, acknowledged the economic asymmetries of the tax bases in Mexican states. As Mikesell (2007:22) affirms: "Tax bases are not evenly dispersed because there is an unequal geographic distribution of natural resources; hubs of commerce; and people within countries. A pattern of fiscal imbalance will emerge with almost any local tax source..." Graphs 3.1 and 3.2 show how Mexico City concentrates the largest share of the two main sources of tax revenue: the Income Tax (60%) and the Value Added Tax (49%). The uneven geographical distribution of the tax bases was a strong argument in favour of the concentration of tax collection by the federal government. Antonio Alvarado, former official in the Treasury Ministry affirmed in an interview: "It was a lot easier to modify the national fiscal coordination law rather than making each of the 2,500 municipalities and 32 states establish their own fiscal legislations and taxation systems."

Figure 3-1 Income Tax collected by States and Mexico City, 2006.



Source: *Reporte de Información Oportuna IQ 2007*, INEGI, 2007.

Figure 3-2 Value Added Tax collected by States and Mexico City, 2006.



Source: *Reporte de Información Oportuna IQ 2007*, INEGI, 2007

To prevent this pattern of imbalances, Mexico's federal government kept control of the main taxation responsibilities. In contrast, the decision to promote the decentralisation of expenditure

to states and municipalities disregarded the asymmetric capabilities of subnational governments. The decentralisation of spending gave equal treatment to states with differing administrative and accountability infrastructures.

3.2 The *Municipio*: the forgotten “cell”

According to its Constitution, Mexico is a federal Republic with three tiers of government: federal, state and municipal. The country’s entire territory is divided into 31 states and a Federal District¹. Governors are the state executives and are elected by popular vote for a six-year term, and re-election is forbidden.² The states’ legislative branches are represented by a unicameral Congress elected every third year, and immediate re-election of state deputies is also forbidden by the law. Each state is subdivided into municipalities,³ which are considered the foundation of Mexico’s administrative and political organisation. In the law and political discourse, the *municipio* is enthroned as the “cell of government,” because it is the closest authority to the citizens.

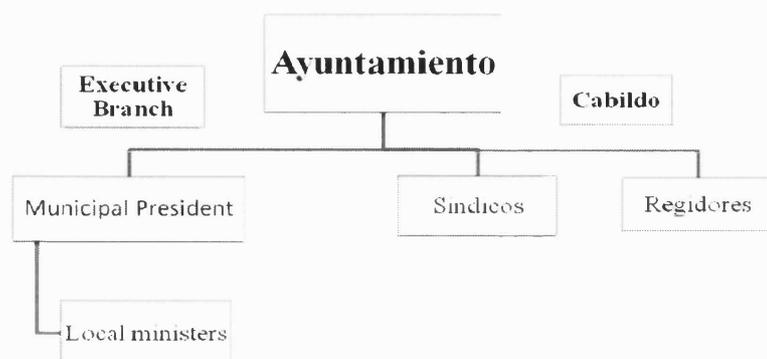
The *ayuntamiento* is the collective government authority in each *municipio*, and is formed by a municipal president (or mayor) in charge of the Executive Branch; and the *cabildo*, an assembly that is the “rough equivalent of the legislative branch” (Ward & Rodríguez, 1999:60). The *cabildo* is in charge of the oversight of the municipal president, approving the budget of the *municipio* and voting all the local regulations of the municipality. However, the municipal assembly does not have the legal authority to approve laws; the state or the federal congresses approve all the laws that regulate the operation of the municipalities. As Diagram 3.1 shows, the *cabildo* is formed by the *síndicos* (trustees) and several *regidores* (councillors or aldermen) with equal hierarchical status (Cabrero, 1999:10). The *síndicos* are in charge of municipal finances and also perform the equivalent function of an attorney general or legal representative of the municipality.

¹ Each State has its own Constitution. Mexico City, the Federal District, does not have its own Constitution and its general government structure is defined in Article 122 of the National Constitution.

² Each State Constitution has different criteria governing the re-election of governors who had gained the post through means other than an election, such as appointment by Congress.

³ At the end of 2007, there were 2,426 municipalities in Mexico. State congresses have the authority to subdivide the territory of a *municipio* to create a new one.

Diagram 3-1 Structure of the Ayuntamiento



Every state has its own secondary law that establishes the size of the *cabildo*, which ordinarily is formed by a range of 5 to 20 members, depending on the demographic scale of each *municipio*. As an example, Table 3.1 provides the size of the *cabildos* for the 10 *municipios* with the largest population in Mexico (2005). As the Table shows, the 2 *municipios* from the State of Mexico (Ecatepec de Morelos and Nezahualc6yotl) have the same number of *s6ndicos* and *regidores*, also the two municipalities of Baja California (Mexicali and Tijuana) share the same structure in their respective *ayuntamientos*.

Table 3-1 Size of *Cabildo* in the 10 *municipios* with largest population in Mexico.

	Municipio	State	Population (2005)	<i>S6ndicos</i>	<i>Regidores</i>
1	Ecatepec de Morelos	State of Mexico	1,688,258	3	19
2	Guadalajara	Jalisco	1,600,940	1	19
3	Puebla	Puebla	1,485,941	1	23
4	Tijuana	Baja California	1,410,687	1	15
5	Juarez	Chihuahua	1,313,338	1	18
6	Leon	Guanajuato	1,278,087	2	12
7	Zapopan	Jalisco	1,155,790	1	19
8	Nezahualc6yotl	Mexico	1,140,528	3	19
9	Monterrey	Nuevo Le6n	1,133,814	2	27
10	Mexicali	Baja California	855,962	1	15

Sources: Constructed by the author using data from *Conteo 2005* by INEGI, municipal web pages and <http://www.e-local.gob.mx>

The members of the *cabildo* are elected through a list included in the ballot of the candidates for municipal president. Because citizens vote for a list rather than for individual, it is not possible to split the votes between the different positions of the *ayuntamiento* (Rodríguez, 1997:32). In most municipalities, the *cabildo* seats are allocated to different political parties in accordance with a semi-proportional distribution of the percentage of votes. In 30 out of 31 states, the municipal authorities are elected every three years. In Coahuila, the period was extended to four years in 2002. In line with the Mexican Constitution, state laws forbid re-election for municipal representatives. As will be explained in the next section, the prohibition on re-election and the relatively brief period of the government term have hampered the autonomy and performance of municipal governments.

3.2.1 *The first step for decentralisation: the municipal reform of 1983*

Just five days after his presidential inauguration, in December 1982, Miguel de la Madrid (1982-1988) sent a bill to Congress to reform Article 115 of the Constitution, which regulates the life of the *municipios*. With this reform, opposition parties were allowed to be part of the *cabildo* through a clause of relative proportional representation. In addition, the *ayuntamientos* became responsible for their internal administration and the management of their finances. The fiscal component of the reform transferred the collection of the property tax and water services from the states to the municipalities. Both taxation capabilities already belonged to the *ayuntamiento*, but in practice they were absorbed by state governments. However, few municipalities had the administrative infrastructure to collect tax revenues, and so to profit from fiscal decentralisation (Rodríguez, 1997:2). The law gave municipalities the ability to levy taxes, though this capacity was constrained by the challenge to transform the tax law into actual revenues. The hypothetical extra revenue was to be used to cover the cost of a wide range of public services like local police, drinking water, sewerage, public lighting and cleaning. Article 115 of the Constitution specified that the municipalities were responsible for providing these services.

The 1982 Constitutional amendment determined that State Congresses would be in charge of the approval of the municipal revenues and the *ayuntamiento* would have the freedom to determine the appropriations in their budget. This new freedom of the *ayuntamientos* had the political constraint of an overreaching presidential power, with the capacity to veto the decisions of elected officials at all three levels of government. As will be explained later in the dissertation, this political constraint ended with the fall of presidentialism. The only expenditure constraint on the municipal authorities was the auditing capacities of the state legislatures, which gained the constitutional mandate to review and approve the financial accounts of the *ayuntamientos*. The process of approving municipal budget expenditures has three general stages common to most municipalities in Mexico. The Treasury of the *ayuntamiento* receives the first budget drafts containing the financial needs of the different offices of the municipal public administration. Then the Treasury prepares a final draft that is presented for the approval of the *ayuntamiento*. Once the budget is approved by the municipal collective government, it is sent to the state legislature for its registration and publication.

For Martinez (2003:266) the 1983 reform did not enhance the autonomy of the municipalities, but rather gave constitutional stature to the political control that the state legislatures exercised over the *ayuntamientos*. Through the reform, the state's legislative hegemony over the municipalities became more formal and less arbitrary. The reform also clarified that in special circumstances, the state legislatures have the capacity to revoke the mandate of the entire municipal government or of one of its officials. The state legislatures also have control over the debt-financing capabilities of municipal governments. In the income part of the budget, the municipal government must request permission from Congress in order to contract debt. Ramírez Verdugo (2001:2-3) found that municipal presidents who share party affiliation with the state congressional majority tend to acquire more debt than the *ayuntamientos* with a different party affiliation from the congressional majority. A municipality governed by a party that has the absolute majority in Congress has a 20% greater possibility of having a higher debt than a *municipio* governed by a party with a simple majority, a 45% higher chance than one with a relative minority and an 89% greater chance than a

municipal government with the same party affiliation as the minority in Congress (Ramírez Verdugo, 2001:133).

Although the *Ley de Coordinación Fiscal* (Law of Fiscal Coordination, LFC) states that municipal debt can only be used for investment infrastructure, there are well-founded suspicions (Merino, 2001:167) that loans are often used to cover current expenditures. The PAN federal deputy Moisés Alcalde Virgen asks himself during an interview: “The Fortamun is a federal transfer for the strengthening of municipal treasuries, well, why are the municipalities in so much debt? If this federal transfer is to pay debt, right? Either it is not being used correctly, something in the design is not right or the Mayors have too many incentives to be very irresponsible” (Alcalde Virgen, 2008). The state legislatures have to give special authorisation when the repayment of the debt exceeds the 3-year term of the municipal government. While intended as a political and financial overhaul of the structure of the *ayuntamiento*, the reform left untouched the clause for no consecutive re-election.

The prohibition of re-election in consecutive terms obstructs the abilities of municipal presidents to build a solid political base within their constituencies. The ban on re-election is the single most relevant legal provision that affects the autonomy of the municipalities. The right of citizens to re-elect an incumbent municipal President would reduce the political control of governors and political party bureaucracies over local officials. Originally, the Constitution of 1917 forbade presidential re-election, but allowed the re-election of municipal authorities and members of Congress at the state and federal levels. A constitutional reform in 1933 forbade re-election in all elected positions. This measure increased the political control of the President and the PRI⁴ and weakened the autonomy and strength of regional political machines. Through the prohibition of re-election, the President was able to control the professional future of all Mexican politicians. In the words of Alonso Lujambio (1995:175):

⁴ Then called the *Partido de la Revolución Mexicana* (PRM). The name PRI was formally instituted in 1946.

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In a rural, ungovernable country, dominated by regional strongmen (*caciques*), the rule of no-re-election might have positive effects: it created the basis of the governability in the Executive-Legislative relationship and solved the problem of the circulation of elites, which is one of the main challenges of an authoritarian regime.

Schlesinger (1994:39-40) identifies three types of incentives for professional politicians: 1) static, when the politician aims to gain re-election, if re-election is available, 2) progressive, when the politician desires to climb to higher positions and 3) discrete, when a politician sees his current position as a goal in itself and without particular concerns about his next job. With the cancellation of re-election, the President controlled the other two incentives identified by Schlesinger.

The lack of continuity of the municipal authorities hinders long-term municipal planning. Issues like urban development are hard to plan and implement in the span of a three-year government term. Once the municipal officials have gained basic knowledge and experience, they have to leave their positions to the newly elected administration. In cases where a different party wins the next election, it is common for the newly elected municipal President to replace most of the officials who worked with the former government.

Table 3-2 shows the term for municipal governments in 19 Latin American countries. Mexico and El Salvador have the shortest terms with 3 years and only Colombia, Mexico and Paraguay prohibit immediate re-election. The average term in the 19 Latin American countries is 4.2 years. Costa Rica allows re-election for municipal Presidents but prohibits it to the federal congress. In the 19 Latin American countries, Mexico is the only one that limits re-election of all elected positions.

Table 3-2 Municipal authorities in Latin America

Country	Term (years)	Immediate re- election in local government
Argentina	4	Yes
Bolivia	5	Yes
Brazil	4	Yes
Chile	4	Yes
Colombia	4	No
Costa Rica	4	Yes
Ecuador	4	Yes
El Salvador	3	Yes
Guatemala	5	Yes
Haiti	4	Yes
Honduras	4	Yes
Mexico	3 *	No
Nicaragua	6	Yes
Panama	5	Yes
Paraguay	5	No
Peru	4	Yes
Dominican Republic	4	Yes
Uruguay	5	Yes
Venezuela	4	Yes

*In the State of Coahuila the period was extended to 4 years in 2002

Source: Constitutions and Municipal Laws of each Country, through Internet.

3.2.2 The 1999 Reform

Seventeen years after the 1982 constitutional amendment, a new reform was implemented by the Zedillo administration in 1999. This new municipal reform clarified the capacities of the state congress as the entity that regulates the relationship between the *ayuntamientos* and the other two tiers of government. The legal reforms consolidated the notion that state legislatures are in charge of drafting and approving the legal frameworks of the municipalities. The 1999 reform also introduced a change of wording with important political implications. Since 1917, the Constitution had stated that each municipality would be “administered” by an *ayuntamiento*. The 1999

constitutional amendment changed the word to “governed.” Consistent with the previous municipal reform of 1982, the 1999 change failed to address the issue of immediate re-election of the *ayuntamiento*.

Considering the financial and political leverage of the state legislatures over the *ayuntamiento*, future reforms of the municipality will depend on political negotiations inside the local congresses. The increased plurality of state political forces might have a wider impact on municipal life than the reforms that are promoted through constitutional changes in the Federal Congress (Martínez, 2003:268).

3.3 The fiscal structure of Mexican Federalism

3.3.1 The Constitution and subnational fiscal and expenditure procedures

Article 124 of the Constitution establishes that the states have the capability to execute all residual functions not expressly reserved for the federal government. For Courchene and Díaz Cayeros (2000:204), the Constitution reflects a serious distrust of the states, as it limits their authority by excluding their specific taxation and tariff rights, but expressly mentioning the federal and municipal taxation capabilities. Since the first draft of the 1917 Constitution, states and municipalities have been forbidden to contract debt from foreign governments or in foreign currency, and the debt that is acquired can only be used for investment in infrastructure.⁵ Following the pattern stated in the federal Constitution, every year state executives are required to submit the budget bill to their respective congresses. However, each state defines the legal procedures, timing and contents of the budget bill.

In three different articles, the Constitution expressly defines the distribution of taxation authority among the three levels of government:

⁵ For an analysis of operational costs and capital investment at the subnational level, see chapter 4.

- 1) Article 73 gives the federal Congress the exclusive power to establish taxes on gasoline, electricity, alcohol and tobacco.
- 2) Article 177 forbids state authorities from imposing any kind of levy on the transit of people and goods. As will be explained below, a secondary law establishes the formulas that distribute the tax funds between the federal government and each state. The legal capacities of the states are established in their respective constitutions and secondary laws. States do not have legal capabilities to approve any law that controverts the federal judicial framework, including taxes on people or merchandise that goes through their territories.
- 3) Article 115 regulates the competence of municipal governments, which are responsible for the provision of several public services. The same article establishes that the *ayuntamientos* can obtain income through tariffs on the provision of public services, property tax, and financial transfers from state and federal governments. Despite the fact that the Constitution defines the municipal governments as “free,” their autonomy is limited because they do not have the capacity to write and approve laws. However, all the state constitutions allow the municipalities to present bill reforms before state congresses. In tax issues, each state Congress is required to discuss, reject or approve any levy proposed by the municipalities (Cabrero & Carrera, 2000:9-10).

In several cases reported by Martinez (2003:227), state congresses have vetoed the revenue bills of the municipalities. In her study, four municipalities⁶ presented new tax bases to increase revenues, but the bills were rejected by the state congresses. All the municipalities took these controversies before the Supreme Court, but the verdict favoured the state congresses in all cases.

During 2005, the 300 municipalities with the largest populations accounted for 71.5% of the total revenue generated at the municipal level; the remaining 2,000 *ayuntamientos* have weak tax

⁶ The municipalities were Rio Bravo and Ciudad Victoria in the state of Tamaulipas, City of Puebla in Puebla and Cuernavaca in Morelos.

administrations and/or limited tax bases (INEGI, 2007:86). As a consequence of the lack of funding, several municipalities either provide public services with the support of state governments, or simply fail in the quality or coverage of the services.

3.3.2 Low Tax revenues as a share of GDP

As is shown in Table 3.3, Mexico's tax revenues are low as a share of GDP. Excluding oil revenues and social security payments, the government revenues amounted to 11% of GDP (on average from 2000 through 2004). More highly developed economies would be expected to have a higher proportion of tax revenues. However, Mexico's tax revenues are proportionally lower than those of countries with similar or lower GDP per capita in Latin America. One of the reasons of low fiscal revenues is the centralisation of taxation responsibilities in the federal government, as it will be explained in the following section.

Table 3-3 GDP *per capita* and tax revenues in Latin America, 2005

Country	Tax revenues as % of GDP	GDP per capita (\$ USA)
Brazil	33.4	4,788
Chile	20.0	7,351
Bolivia	19.4	1,004
Argentina ^a	19.3	3,975
Uruguay	18.7	5,219
Colombia	18.2	2,669
Nicaragua	16.8	841
Venezuela	15.6	5,427
Mexico*	14.6	7,447
Costa Rica	14.2	4,609
Peru	13.8	2,920
Paraguay	12.6	1,289
Guatemala	11.2	2,158
Ecuador	11.1	2,761
Mexico**	9.7	7,447
Panama	7.1	4,799

*Includes oil tax revenue ** Excludes oil tax revenue, ^a Data for Argentina: 2004

Sources: Government Finance Statistics Yearbook 2006, IMF; All the GDP data were taken from World Economic Outlook Database, October 2007; Data for Mexico is from the Treasury Ministry, SHCP; Data for Brazil is from the report *Carga Tributaria no Brasil 2005*, *Coordenação-Geral de Política Tributária*; Data from Ecuador is from Tax Collecting Agency, SRI (<http://www.sri.gov.ec/sri/portal/searchForms/stats.do>).

3.3.3 *The National System of Fiscal Coordination*

Mexico's original system of revenue distribution was created in 1953, with the first *Ley de Coordinación Fiscal* (Law of Fiscal Co-ordination, LCF), although it wasn't until 1974 that all the states signed agreements to join the tax sharing system. Originally, the pool of federal distributable resources was collected only through a limited tax base excluding the main sources of fiscal revenue.

David Ibarra, former Treasury Minister (1976-1981), stated in an interview: "Mexico had a concurring fiscal system that allowed each federal entity to make their own fiscal laws in their territories. The same happened on a smaller scale in each of the municipalities. This generated a series of distortions when it came to assigning investments and the exemption of taxes in each of the states. We had a very weak fiscal system, which is why we created a single fiscal pool" (Ibarra, 2008).

In 1980, the states signed a new revenue sharing agreement with the federal government to create the *Sistema Nacional de Coordinación Fiscal* (National System of Fiscal Co-ordination, SNCF). The contract established that the states would surrender their main taxation powers in exchange for sharing federal transfers derived from the key sources of fiscal revenues. The criteria for distributing these tax revenues to local governments was established in the Law of Fiscal Co-ordination, approved in 1978, but not enacted until 1980. The new fiscal scheme was the culmination of a process of centralisation of tax revenues that began with the first National Fiscal Convention of 1925 (Gutiérrez, 2003:55).

The SNCF encouraged participation by state governments with the promise that the new scheme would give them more revenues than they could expect to raise themselves. The enactment of the SNCF was possible due to the cancellation of 383 state and 206 municipal taxes (Indetec, 1997:3).

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In an interview, Guillermo Prieto, undersecretary of Revenue in the Treasury Ministry (1978-1986), remembered the negotiation process with the states: “It was brutal, we had endless meetings and, sure, the basic topic was stated to the Secretary of Treasury; he went over it, gave his feedback, made some changes and then he’d present the generalities to the President, who had the final word. The President would approve or reject it, command a few changes, but the actual building-process was always done by the people at the bottom. It took years, not months but years of negotiations (with the states) for the fiscal coordination. The states didn’t complain too much because this reform implied a budget increase, and indeed, their resources did increase substantially” (Prieto, 2008).

There was no legal force that compelled the states to abandon their taxation capabilities, although the political dominance of the President and the extra revenues from the oil boom made the agreement a palatable option. The truth is that the governors did not enjoy sufficient political autonomy to reject the offer; moreover, the financial agreement was highly beneficial in that the LCF created more predictable financial scenarios for state and municipal governments.

In an interview, David Ibarra, former Treasury Minister (1976-1981) provides his interpretation of the issue: “States and municipalities were not very good at collecting taxes, because all the friends, close friends who finance political campaigns are always near by, ready to receive a tax exemption” (Ibarra, 2008). Jesús Silva Herzog, former Treasury Minister (1981-1986) stated in an interview: “The basic judgement of the Treasury Ministry was that states were incompetent as tax collectors. There was a perception of lack of capacity and lack of honesty, and we sincerely thought that the federal government could do it better than the states (Silva Herzog, 2008).” Both former Treasury Ministers were in charge of implementing the 1980 revenue sharing reform. Ibarra and Silva Herzog share their concern not only about the efficiency state revenue administrations, but also about the corruption practices in subnational governments. Later in the 1990s, those concerns were ignored when expenditure decentralisation moved in rapid steps.

The 1980 agreements to abide by the SNCF had a special appendix for oil-producing states, which stated that they would receive additional revenues in proportion to their hydrocarbon production. Prior to the agreement, the local authorities did not obtain direct benefits from oil exports, since the extra revenues were under the administration of the federal government. In addition, the President and the federal bureaucracy controlled the investment projects financed by the oil wealth (Courchene & Díaz Cayeros, 2000:127), meaning that the flow of investment to states and municipalities was subject to the discretion of the federal Executive.

The premise of the revenue-sharing agreement was that the federal government was a more efficient tax collector than the states. The literature on fiscal federalism argues that subnational tax administrations are not optimally efficient in the collection of revenue from bases with high geographical mobility. The argument states that mobile tax bases, like income or labour, would have incentives for relocation to other subnational entities with lower taxes. In consequence, tax bases with high mobility or with revenue sources “unevenly distributed among jurisdictions” should be administered at national level (Norregaard, 1997:55). The same argument dictates that subnational governments should administer less mobile tax bases like property (Oates, 1972:136). However, when the theory of decentralisation is applied to a specific country, its geographical, historical and constitutional context determines the policy outcome. Therefore, “(T)he optimal degree of fiscal decentralisation will vary substantially among different societies” (Oates, 1972:31). Table 3.4 shows that Mexico has the lowest share of tax collection at the subnational level of all federal countries of the OECD for 2005.

Table 3-4 Percentage of total tax revenue by Level of Government in OECD Federal Countries

Country	Federal		State		Municipal or Local		Social Security Funds	
	1985	2005	1985	2005	1985	2005	1985	2005
Australia ¹	81.4	69.2	14.9	27.9	3.7	3.0	-----	-----
Belgium	62.6	32.2	–	24.0	4.8	5.0	31.0	37.7
Canada	41.2	44.8	36.0	38.4	9.3	8.4	13.5	8.4
Germany	31.6	30.2	22.0	21.4	8.9	7.8	36.5	39.9
Mexico	87.7	81.1	0.4	2.1	0.6	1.1	11.3	15.7
United States	42.1	41.1	20.2	20.1	12.6	14.1	25.2	24.7

¹From 1 July 2000, the GST has been collected by the Commonwealth and all receipts are appropriated to the States and territories. Source: OECD, *Revenue Statistics 1965-2006*.

Mexico's policy makers followed the argument established by the decentralisation literature, as the federal government absorbed more mobile and lucrative revenue sources (Income and Value Added Tax), while subnational authorities took over the administration of property taxes. As it will be analysed later in the chapter, the proportion of property tax revenue is extremely low in comparison with other countries in the OECD and Latin America.

From the perspective of Mexican taxpayers, the SNCF eliminated double or even triple taxation by the different levels of government. But, as a consequence of this new arrangement, subnational finances became heavily dependent on federal transfers. From 1979 to 1980, during the first year of the agreement, state-generated tax revenues were reduced by 54%, while the share of federal revenues increased in real terms by 121% (Gutiérrez, 2003:55).

Locally generated revenues have fallen as a proportion of total state income from 17.6% in 1994 to 9.1% in 2008 (Income Laws for all states and Mexico City, 2008). Table 3.5 shows that, in Latin America, Mexico has very low levels of subnational tax revenue in contrast with Argentina, Brazil or Chile. However, Mexico's tax revenue in states and municipalities is similar to other Latin-American countries with a high degree of taxation centralisation.

Table 3-5 Tax revenue by level of government as % of GDP, 2000*

Country	National Governments	Subnational governments	Total
Argentina	12.9	8.3	21.2
Brazil*	20.3	13.9	34.3
Chile	17.8	1.5	19.3
Colombia	15.8	0.0	15.8
Mexico	14.9	0.5	15.4
Peru	14.9	0.3	15.2
Venezuela	12.8	0.0	12.8

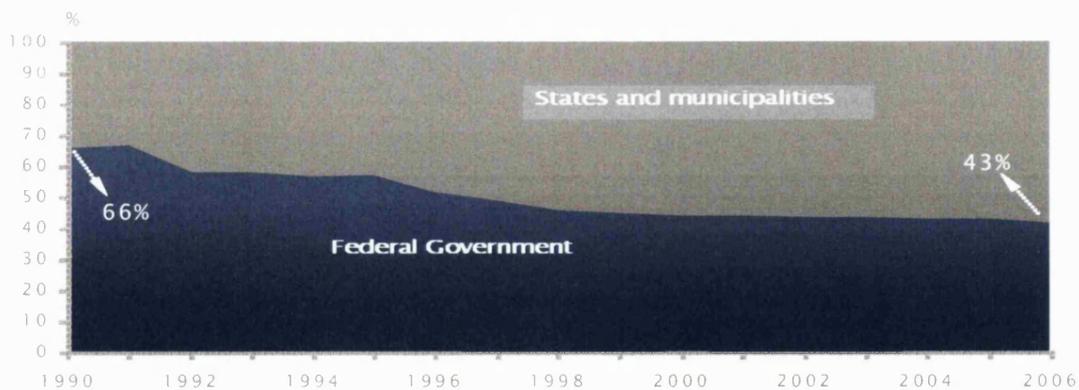
* Data for subnational governments includes transfers of federal taxes.

+ Includes contributions to social security.

Source: with data from *Banco de México, 2003*, www.banxico.org.mx; *Informe de los avances de trabajo de la Primera Convención Hacendaria*, <http://cnh.gob.mx/>; *Servicio de Impuestos Internos, Chile, Carga tributaria y tasas impositivas*, www.sii.cl.

For Cabrero *et. al.* (2000:11), “federalism in Mexico has meant financial subordination for subnational levels of government. The *central government*⁷ has taken the most important fiscal resources, and therefore it possesses the most elastic and adequate revenue sources.” With the enactment of the SNCF, the states lost their fiscal autonomy, but the local authorities gained the political advantage of not being directly responsible for the main sources of public revenue. The governors enjoyed the political rewards of being at the expenditure end of the budget cycle. The convergence of the revenue-sharing agreement and the process of financial decentralisation have created a situation in which the federal government is the main party responsible for public revenue collection, and local authorities are in charge of the main share of expenditure. When referring to the extent and speed of Mexico’s decentralisation of expenditure, Giugale and Webb observed: “The bold expenditure-cum-transfer revolution in fiscal federalism is impressive (2000:19).” As Figure 3-3 shows, in 1990 the Federal Government spent close to 66% of total expenditure and states and municipalities the other 36%. For 2006, subnational governments spent close to 57% of all total expenditure.⁸

Figure 3-3 Total expenditure by level of Government



* This percentage excludes the budget allocation for debt, pensions and autonomous state entities like the Congress, the Judicial Branch and IFE. Source: SHCP, 2003.

⁷ In this dissertation, it is assumed that "federal government" is an equivalent to "national government." Other authors, like Cabrero, use "central government" as a synonym for "national government." The use of the term *central government* can cause some confusion in the case of countries with a federal system.

⁸ This percentage does not include federal debt service, government employees' pension provisions or subsidies to state-owned companies.

3.3.4 Financial transfers and the Federal Budget

Intergovernmental transfers aim to balance the expenditure needs and the limited revenue capabilities of subnational authorities through sharing the tax and non-tax revenues of the federal government. These financial transfers also give a social and political dimension to fiscal federalism, because they integrate socio-economic criteria into the conditions and formulas of the transfers (Giugale & Webb 2000:19).

Participaciones and *aportaciones* are the two main mechanisms for federal transfers to subnational governments in Mexico. *Participaciones* are formed by tax revenues that correspond to local authorities, but are collected by the federal government under the guidelines of the SNCF. *Aportaciones* are earmarked federal transfers that cover the costs of key public services, like health and education, which were previously provided by the federal government but were decentralised to states. More regulations and conditions on the allocation of funds between levels of government mean greater centralisation; fewer conditions imply greater decentralisation (Giugale & Webb, 2000:19). Mexico combines strictly regulated and conditional transfers (*aportaciones*) with unconditional ones (*participaciones*).

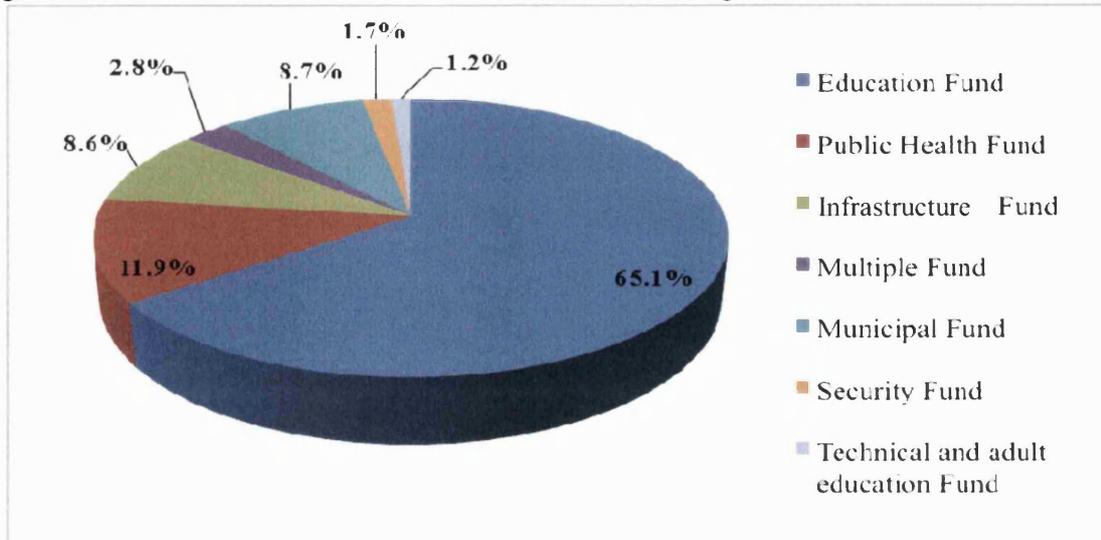
Every year, the Chamber of Deputies approves the transfers to subnational governments as a component of the federal budget. Both *participaciones* and *aportaciones* are allocated in specific sections of the budget, which are called *Ramos* according to Mexican budgetary jargon. The classification of the budget by sections or *Ramos* aims to answer the question: Which entity is in charge of the administration and expenditure of these resources? The federal budget is composed of 39 sections or *Ramos*, each corresponding to a ministry, an autonomous entity or a government programme financed through budget allocations. The financial transfers to subnational governments are concentrated in *Ramo 28 (participaciones)*, *Ramo 33 (aportaciones)* and *Ramo 39 (federal subsidies to strengthen state finances)*. *Ramo 20* allocates the funds for human development and the anti-poverty programmes controlled by the Ministry of Social Development

in the federal government. The resources of *Ramo 20* are spent in states and municipalities, but the policy design, implementation and internal audit is performed by the federal government.

The resources transferred through *participaciones* are non-earmarked funds that are spent according to the priorities and political interests of subnational governments (Giugale & Webb, 2000:19). The pool of money of the *participaciones* (*Ramo 28*) is formed by the state’s share of national oil revenues, along with proceedings from the Income Tax, VAT, excises and the tax on ownership of new and used vehicles. According to the Law of Fiscal Coordination, the federal government is simply returning the revenues that legitimately belong to the subnational authorities. As the allocations of *Ramo 28* are classified as “state resources,” the state Congress is in charge of the supervision and auditing of the funds.

Since 1998, *Ramo 33* of *aportaciones* contains the transfer of funds for education, health and social infrastructure. The federal transfers to cover the decentralisation of teachers’ payrolls represent the largest item in *Ramo 33*. The earmarking of federal transfers limits the capacity of state governments for discretionary spending and “has brought not much autonomy but more accounting for funds” (Cabrero & Carrera 2000:168).

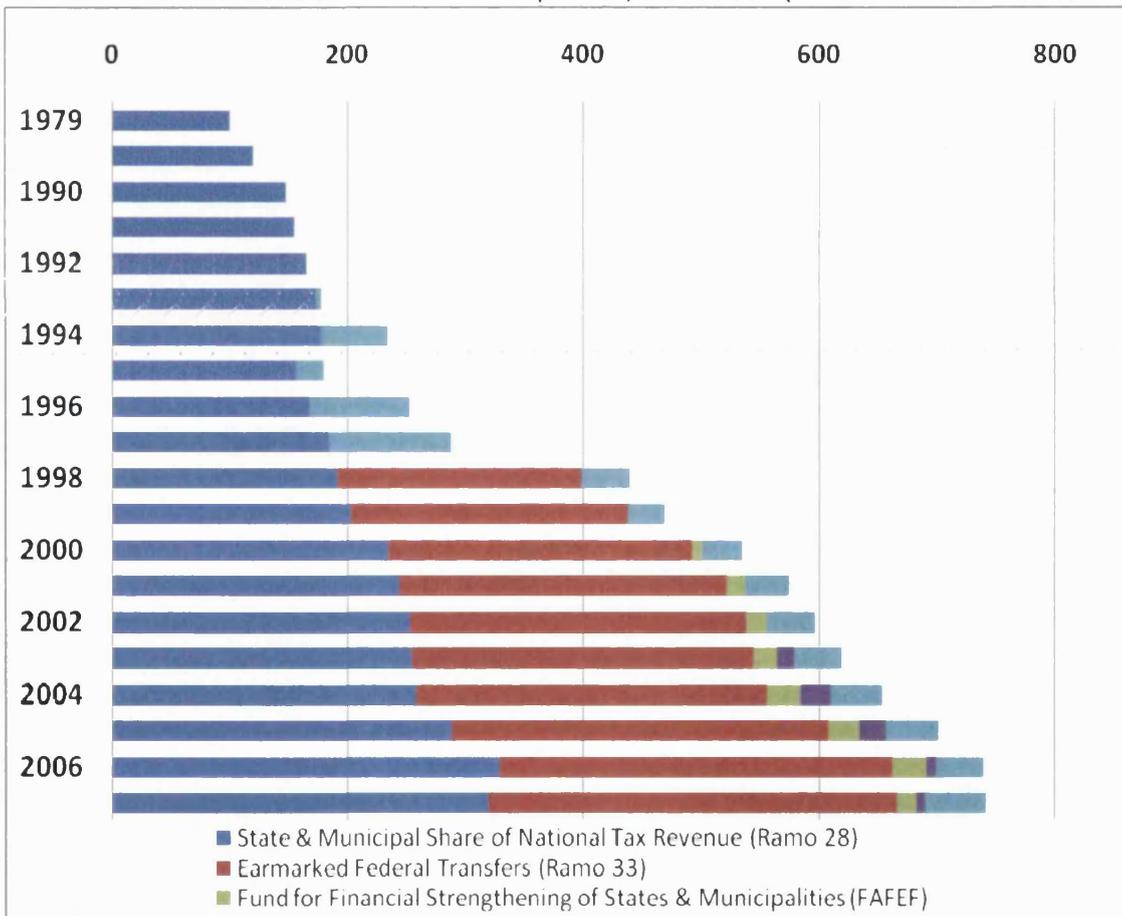
Figure 3-4 Distribution of *Ramo 33* transfers to subnational governments, 2000-2006 average



Source: Author research from SHCP Data.

Ramo 39 of the Federal Budget was created in 2003. The guidelines for the application of these resources were negotiated between the central and state governments. The aim of *Ramo* 39 is to increase the financial stability of local administration through debt refinancing, pension provisions and improvements in the administration of local revenue. As the resources of *Ramo* 39 are legally registered as federal funds, the federal Congress, through the *Auditoría Superior de la Federación*, has the legal capacity to audit their use and administration. Figure 3-5 shows the increase and composition of federal transfers to subnational governments.

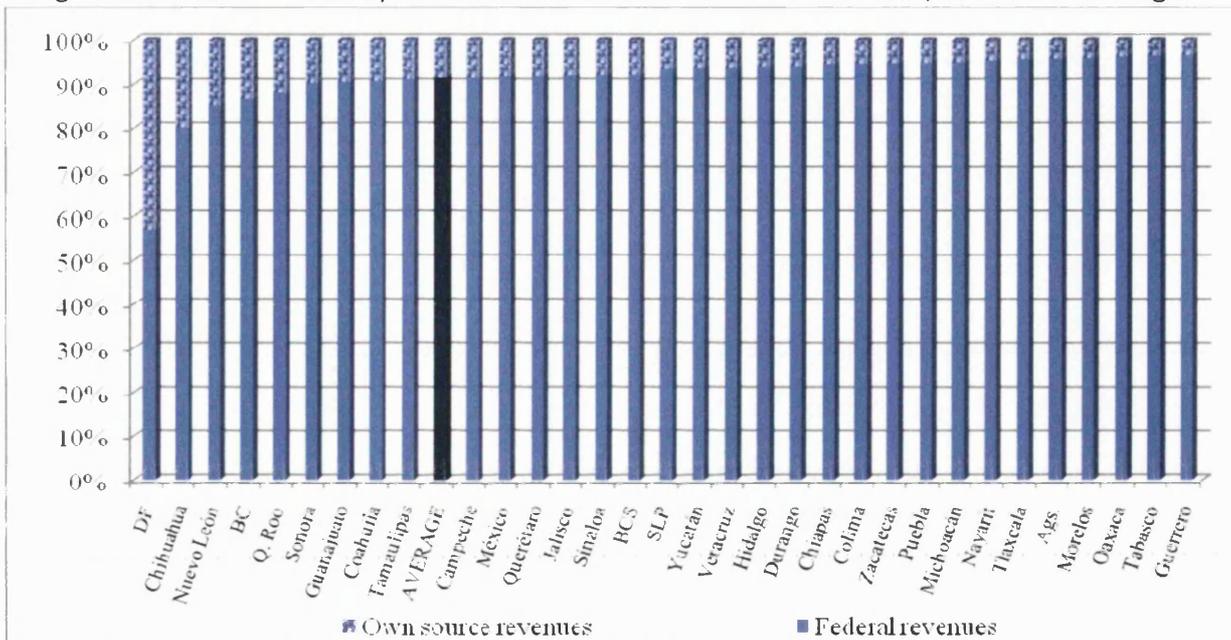
Figure 3-5 Total Transfers to States and Municipalities, 1979-2007 (Billions of 2006 Mexican Pesos)



Sources: *Diagnóstico integral de la situación actual de las haciendas estatales y municipales*, 2007, SHCP.

Figure 3-6 shows the 2004-2006 average of total state revenues including federal transfers and the state's own sources of revenue. Mexico City is a rare case because 43% of its total revenues come from its own sources, while the national average is just 9%.

Figure 3-6 State revenues by Federal Transfers and State Own revenues, 2004-2006 average



Source: Own research with data from INEGI. Due to a lack of information, average for State of Mexico is 2004-2005.

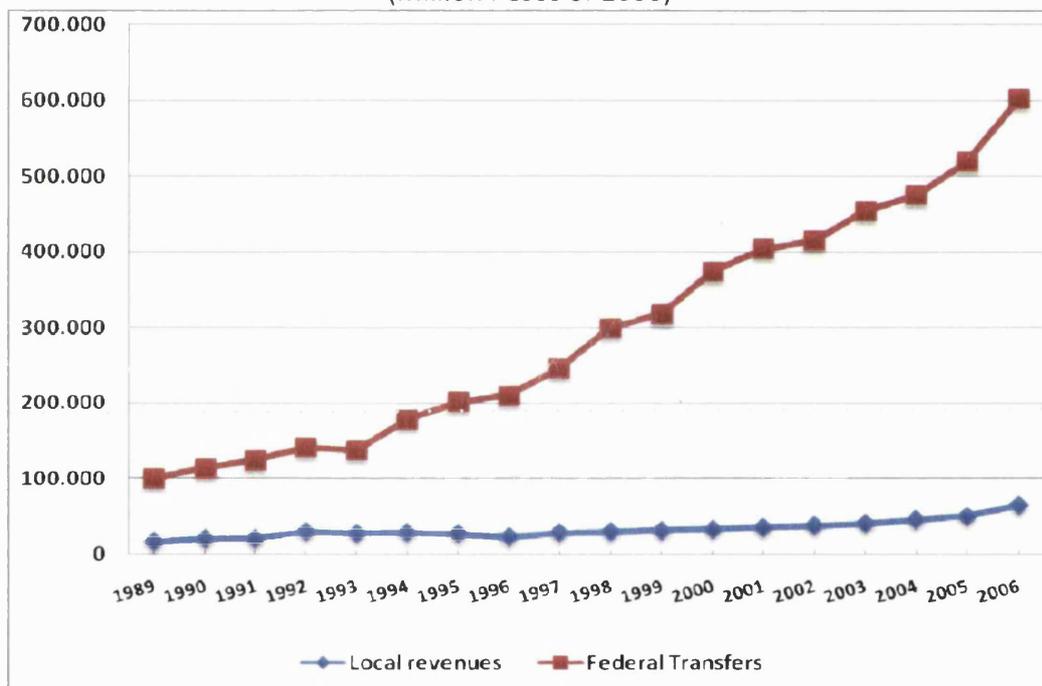
3.3.5 State Tax Dependence and Accountability

Besides the *aportaciones* and *participaciones*, the other two sources of revenue for states and municipalities are their local tax bases and direct investments of the federal government. The anti-poverty programmes, governed by the *Ramo 20* in the budget, are invested in the states and municipalities but are administered and controlled by the federal government.

After the enactment of the SNCF, the states retained the legal capacity to impose taxes on beer, tobacco, spirits, payroll, hotel occupancy, car tenancy and real estate sales, although local administrations have not taken full advantage of their fiscal capacities. Most of the states and municipal revenue administrations neglect their own capabilities for taxation and rely on the flow

of federal money. The massive reliance on central transfers has worked as a strong disincentive against tax efforts in states and municipalities (Cabrero & Carrera, 2000:13). In 1990, close to 76% of local government income came from federal transfers, (SHCP, 2003: 44) while in 2005 it was 86.1% (SHCP, 2007: 124). As Figure 3-7 shows, federal transfers have grown almost ten times faster than the increase of locally generated revenues.

Figure 3-7 Growth of Local Revenues vs. Federal Transfers to States, 1989-2006
(Million Pesos of 2006)



Source: Constructed by the author with data from INEGI, 2007.

The former undersecretary of the Treasury, Guillermo Prieto, states in an interview: “The relationship between the states and the federation has always been very conflictive, in my opinion, when it comes to fiscal matters. The states have always wanted resources, but in my opinion they’ve tried to avoid the responsibility of tax collection. They don’t want to go through the trouble of staining their political popularity if they can avoid it, and so they gradually accepted larger budgets that were obtained from the participation of federal taxes. A mechanism was designed to distribute federal resources amongst federative entities based on a formula that included the

product from within the city, the total population, etc... This formula has suffered millions of changes, and the ideal version will never be reached because everybody wants to get more and the federation wants to give less” (Prieto, 2008).

By 2001, a few states like Veracruz and Zacatecas had approved fiscal reforms in order to develop their own sources of tax collection. Both states approved a payroll tax that in the case of Veracruz helped to increase its tax revenues from 70.6 million pesos in 2000 to 521.3 million pesos for 2001 (SHCP, 2003:30). In the 1994-2005 period, Zacatecas made a substantial contribution to the growth of tax collection from the states, with a share of 66.5% of the total increase. From 2001 to 2005, 22 states⁹ enacted fiscal reforms to create new taxes. The core of these reforms was payroll tax, which offered an easy basis for increasing revenue (SHCP, 2007:127). This payroll tax consists of between 1 and 2% of the labour costs of businesses located within the state's territory. Table 3.6 shows the growth of tax collection and those states that applied fiscal reforms. The high growth of tax revenue, like Querétaro's 734.6%, can be explained due to a very low starting point of local tax collection. Within a few years, these percentages of growth should stabilize.

Table 3-6 Growth in tax revenue of states which applied fiscal reforms recently (percentages)

State	2005/2004	Tax and year of implementation
Colima	323.0	Payroll tax and public events in 2005
Guanajuato	659.9	Payroll tax and Cederal tax* 2005
Querétaro	734.6	Payroll tax in 2005
Chihuahua	9.4	Cederal tax 2005

*Cederal tax is a license fee applied to professional activities, goods and building rents, and business activities. Source: *Diagnóstico Integral de las Haciendas Públicas Estatales y Municipales*, SHCP 2007.

David Colmenares, the former treasurer of the state of Oaxaca, stated in an interview for my dissertation (2008): “Governors only go to the Chamber of Deputies trying to get the federal government to give them more money; however, they are rarely concerned about their own income or tax policies, very rarely.” Municipalities also depend heavily on financial transfers and do not take advantage of their own taxation capabilities. Less than 0.2% of GNP is collected through

⁹ During 2001, Hidalgo, Baja California Sur, Zacatecas, Veracruz and Tamaulipas established new taxes; in 2002 Tlaxcala, Michoacán, Oaxaca, Sinaloa and Chiapas did so as well; in 2003 Querétaro, Morelos, Hidalgo and Michoacán; in 2004 Campeche, Hidalgo, Colima and Yucatán; and for 2005 Colima, Guanajuato, Querétaro and Chihuahua.

the property tax, according to the Treasury Ministry (SHCP, 2007; 183), though municipalities could collect as much as 0.5% of GNP from this source (Cabrero, 2004:4). In addition, municipalities also have the responsibility of charging fees for the provision of water services, but according to the National Water Commission, more than 60% of the water services are free.¹⁰

Jose Luis Romero Hicks, Treasury Minister of Guanajuato during the administration of the then governor Vicente Fox (1995-1999), stated in an interview: “Some states, like Tabasco, don’t even charge for water. What I mean is that water is a public service that the people defray with their taxes, not with the payment of bills” (Romero Hicks, 2008).

3.3.6 State Systems of Fiscal Coordination

The current Law of Fiscal Coordination has been characterised by its lack of legislative stability. In the 25-year period following its enactment in 1980, the law was modified 26 times.¹¹ These changes reflect the unstable nature of the agreement on how to distribute the national pool of fiscal revenues.

In contrast to the states, which receive direct transfer from the federal government, municipalities receive funds indirectly, depending on the formulas established by the local legislation or the allocation decisions of state congresses. Just as the federal government coordinates transfers to the states, they coordinate with the municipalities. The transfer of funds to municipalities takes place in two stages: first the federal government transfers the resources to state governments, and then these funds are allocated to the municipal authorities. The *participaciones* to municipalities are distributed with two different criteria for each stage of the transfer process: The first is determined at the federal level and governs the distribution of the pool among the states, and the second is determined by each state legislature based on its own criteria for distributing funds among the municipalities.

¹⁰ *Comisión Nacional del Agua* (2001), *Tarifas recaudación y agua no contabilizada*. Through Internet: <http://www.cna.gob.mx/portal/publicaciones/subsector2001/cap2.PDF> consulted May 2nd 2004.

¹¹ The most recent reform was published in the *DOF* 10/02/2005.

The constitutional autonomy of the states limits the capacity of the federal government to transfer resources directly to the municipalities. Article 6 of the *Ley de Coordinación Fiscal* states that the “Federation will deliver the *participaciones* to the *municipios* through the states.” This constitutional scheme gave the states some precedence over the freedom and financial autonomy of municipalities. With the two-stage transfer, the state governments had some discretion in the distribution and timing of the allocation of funds.

The LCF was modified to establish a maximum period of five days in which the states had to pass on the transfers of *participaciones* to the municipal authorities. If state governments retained the *participaciones* for more than five days, they had to pay the interest rate established by the Federal Congress for this purpose. However, the enforcement of this clause of the law has been very weak in certain states. David Colmenares Páramo was treasurer of the state of Oaxaca from 1986 to 1992, then from 2000 to 2006 he became the chief federal liaison officer between the Ministry of the Treasury and the financial ministries in the 31 states and Mexico City. In an interview for this dissertation, Colmenares Páramo (2008) said this about the discretionary management of the state governors in the financial transfers to municipalities:

“When Diódoro Carrasco was state governor of Oaxaca (then member of the PRI, governor from 1992-1998) the state's capital¹² transfer coefficient was 30% of the total. However, the municipality houses just the 8% percent of the population. When Diódoro was governor, the city of Oaxaca had its first Municipal President from the PAN. After the municipal election, a law was approved promptly in order to reduce the transfers to the city to 13% of the total. But the real payment was that of four or five percent, because the municipal presidents had no idea of what was the true percentage for their municipality's contributions.” This discretionary treatment over the financial transfers to another level of government resembled the informal capacities of presidentialism.

¹² Oaxaca is both the name of the state capital city and the whole state.

3.3.7 The Municipalities and the Law of Fiscal Coordination

In the original 1980 version of the LCF, Article 6 stated in a single paragraph of 45 words that the municipalities would receive no less than 20% of the *participaciones* allocated to the states. A quarter of a century and eight legal reforms later, Article 6 takes four paragraphs and 330 words to improve the certainty that the municipalities will receive their respective funds in full and in a timely manner.

Table 3-7 Reforms to Article 6 of the LCF in 1981 and 1983

Before Reforms	After Reforms (Year of Reform)
There were no clear and definitive criteria to define how the <i>participaciones</i> would be distributed among municipalities.	State legislatures establish the criteria for distribution of the <i>participaciones</i> with a general standard for all the municipalities in each state. (1981)
There was no time framework to transfer the funds from the state to the municipality's treasuries. There were no penalties for delays or unexplained retention of the funds.	The <i>participaciones</i> must be handed over to the municipalities five days after the state receives them. Any delay will generate the payment of interest, and the federal government will transfer the funds directly to the municipality at the expense of the retention of future <i>participaciones</i> that correspond to the state treasury. (1983)

Source: Digital Library of the Chamber of Deputies through Internet: <http://www.diputados.gob.mx/bibliot/docleg/refleyes.htm>, consulted March 14th 2006.

These changes to Article 6 formally reduced the margins of discretion that the state governments originally had over the administration of funds allocated to municipalities. However, testimony collected through interviews for this chapter show that, despite the amendments in the LCF, some governors retained discretionary control over financial transfers to municipal authorities. Rosendo Villareal, the first Municipal President from the PAN in the city of Saltillo (1991-1993), state of Coahuila, remembers in an interview for this dissertation:

“If the relationship between the governor and the municipal president wasn't good, they would simply cut you off from the budget. Federal contributions came through the state governor and

since there was no transparency at all, nobody could see how the money was being managed. I was the first municipal president from an opposing party in the city. We received far less money than we ought to have got. Somebody here in Mexico City offered to tell me how much we should be receiving in exchange for some payment. I came to the Federal Ministry of the Treasury and explained the situation to them, so they told me that I was receiving a lot less than we were supposed to get... I can't remember the exact numbers now, but I think that (the state government was) keeping at least a forty percent of what we had to get. There was no transparency either. We had no idea how much we could get and the local Congress was completely dependent on the governor. There was no chance to ask the Congress for help. In fact, the Congress was against us.”

Francisco Barrio, governor of the state of Chihuahua (1992-1998) and Mayor of Ciudad Juárez (1983-1986) shared his experience for this dissertation (2008): “The state handled all the investment expenses, what happened to me and the other mayors from PAN in big cities of Chihuahua was that the governor set off a programme, so all that money was distributed in the small municipalities, who were governed by the PRI. (However) I had a good relation with the governor of the PRI obviously (Oscar Ornelas 1980-1985) and I managed to get his support in a few things, to convince him to give us money, but it was fully capricious behaviour.”

Despite the fact that both testimonies could be considered as anecdotal evidence, Villareal and Barrio's experiences suggest that Horizontal Accountability provisions in the law were bypassed by the informal power of the governors. The financial opacity of state governors towards municipal presidents reproduced the informational asymmetries between the Federal Executive and subnational governments. Even though Barrio and Villareal give testimonies from the 1980s and early 1990s, the dissertation will provide evidence that their individual experiences as municipal presidents reflect a weak accountability of state governors, which is still customary in some Mexican states. As Table 3.7 shows, Article 6 of the LCF had further amendments in the year 2000. The new round of reforms provided further mechanisms to reduce the discretionary power of state governors in the management of the transfers to municipal governments.

Table 3-8 Reforms to Article 6 of the LCF in 2000

Before Reforms	After Reforms (Year of Reform)
In some cases, when there was a bad relationship between the governor and the municipal authorities, the <i>participaciones</i> were “transformed” into infrastructure investment projects decided upon by the governor.	State governments are required to hand over the <i>participaciones</i> to the municipalities in cash with no conditions, and funds cannot be exchanged for investment in public works. (2000)
Data and information about the <i>participaciones</i> were not public and in some cases this information was not even shared with municipal authorities.	State authorities must publish annually in the government newspaper the calendar of the transfer handover, the percentages for each municipality and the formulas for distribution. In addition, every three months, the state is required report publicly on the funds transferred to municipalities. (2000)

Source: Digital Library of the Chamber of Deputies through Internet:
<http://www.diputados.gob.mx/bibliot/docleg/refleyes.htm>, consulted March 14th 2006.

Some observers interviewed for this dissertation considered that the strengthening accountability of state governors is due more to the presence of strong opposition parties in the state congresses than to the amendments of the LCF. It is impossible to construct a common narrative for the 31 states and Mexico City, as each region has its own singular characteristics. However, congressional plurality can be one relevant explanation of stronger Horizontal Accountability in some states.

In an interview, Jesús Silva Herzog compares the “accountability” of governors in the times of presidentialism, to the conditions at the beginning of the 21st Century: “We have to understand that several political variables have changed. Back then, governors could not exercise a lot of political power because they had to look well behaved in the eyes of the President. Today they simply do not care about it because presidentialism does not have this central force that formerly was applied through the Treasury Minister... Today governors behave in an unaccountable way that was unthinkable back then (in the times of presidentialism) — ‘You don’t want to explain to me how you spent the 28 million I sent, well I wont send you a penny the next time.’ Today that is

not possible, because the governor is going to put political pressure upon the Treasury Minister, so he will have to surrender. Today that is feasible and frequent” (Silva Herzog, 2008).

David Ibarra, Treasury Minister during the Government of José López Portillo, remembers: “Back then in the seventies, the petitions (of resources) from the states were taken care in the Federal Executive and they didn't follow a normative procedure. There was a serious authoritarian favouritism for one state or the other, depending on what was politically convenient... If there was waste or corruption the transfers were reduced, and the government investment was completely centralized... The Ministry of Finance acted as an accountability institution” (Ibarra, 2008).

3.3.8 State governments and the evolution of the LCF

The LCF defined the size of the transfers to subnational governments through the creation of the *Fondo General de Participaciones* (General Fund of Participations, FGP). In the original version of the law, Article 2 established that the FGP would receive 13% of the total tax revenue collected by the federal government. In 1987, the allocation for the FGP changed to 17.3% of total government revenues. Two years later, in 1989, the share was increased to 18.1% and finally in 1995 it was settled at 20%, the share that has remained until the present (June 2008). The FGP was distributed among states according to the following criteria:

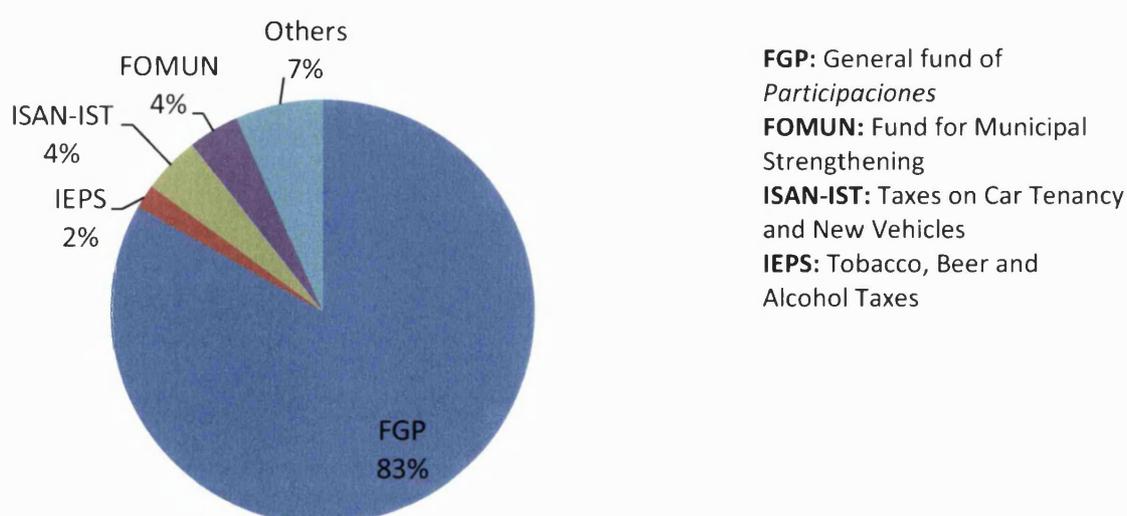
- 45.17% in direct proportion to the number of inhabitants in each state for that fiscal year.
- 45.17% based on the tax revenues generated by the tax bases of each state.
- The remaining 9.66% in inverse proportion to the *participaciones* per capita in each state.

In 2007, a major reform of the LFC changed the distribution of the FGP. Beginning in 2008, the new distribution of this fund is:

- 60% based on local GDP growth of the previous year.
- 30% according to an average of the last three years' growth of the state's own source of revenues from local taxes and water duties.
- 10% depending on the state's sources of revenue from local taxes and water duties of previous year.

The FGP represents 85% of the total resources transferred as *participaciones*.¹³ As shown in Figure 3-8, the remaining 15% is allocated through the revenues collected from taxes on car ownership and new vehicles (7.6%), the Fund for Municipal Strengthening (3.7%) and the pool of resources from tobacco, beer and alcohol taxes (1.5%).

Figure 3-8 Composition of total resources transferred as *participaciones*, Ramo 28



Source: Author calculation made using data from the SHCP report at the end of the budget cycle for 2007

¹³ This calculation was made using data from the report at the end of the budget cycle for 2007.

CHAPTER 3 – DECENTRALISATION AND PRESIDENTIAL ACCOUNTABILITY

The Law of Fiscal Coordination also establishes that the states are mandated to transfer at least 20% of their respective share of *participaciones* to the municipalities (Art. 3A), although each state is free to design and execute the criteria to distribute the resources within their respective municipalities. In light of the high financial dependence of the municipalities on federal transfers, the municipalities are politically and financially subject to the local Congress. The power of the state legislature to define the criteria by which resources are distributed can determine the fate of the municipalities. Most of the subnational laws of fiscal coordination define the formula of distribution based on population, municipal tax revenue and/or levels of poverty. However, in cases where the governor's party also controls the majority of the legislature, the state Executive can administer the resources to undermine or bolster the finances of the municipalities.

De Remes (1998:4-5) identifies four possible electoral outcomes that would determine the political relations among local congresses, state government and municipal authorities. These political outcomes could determine the transfer of resources to the *ayuntamientos* as well as the strength of the financial oversight:

- Unified government: The governor, the state Congress majority and the municipal president share the same party affiliation.
- Overlapping government: The municipal authority is from a different political party from the state Congress majority and the governor.
- Divided government: The municipal president shares party affiliation with the governor, but the majority of the Congress is in the hands of the opposition.
- Divided executives: The municipal president shares party affiliation with the majority of the Congress but the governor belongs to a different party.

The main beneficiaries of the 1983 municipal reform were the governors because they still had legal control over the flow of federal transfers to the municipalities (Rodríguez, 1997:150). Tello (2002:4) found that local politics might play a role in the allocation from states to municipalities, as there are wide variations of transfers to different municipalities with no apparent pattern. There is

no clear relationship between the size of the transfers from the states and the efficiency of municipal tax collection (Martínez, 2003:226-28). As stated above, each state establishes its own distribution methods, criteria and allocation priorities to transfer funds to the municipalities.

In 1990, just five states had local laws of fiscal coordination to organise revenue sharing between state and municipal authorities. In the other states, the distribution of resources was established in an annual decree by the state Congress or was included as an appendix to the state budget (Mijangos, 1996:628). Without state laws of fiscal coordination, the state Congress had the power to change the criteria guiding the allocation of resources from one year to the next. This regulatory vacuum left open the opportunity for wide political discretion in the transfer of *participaciones* to *municipios*.

By 2008, 29 states had approved statutory regulations governing the allocation of resources to the municipalities.¹⁴ These laws determine the allocation formulas for redistributing the transfers to different municipalities within the states. As with the distribution of federal revenues, the limited tax bases make the sharing of subnational resources a zero-sum game between the municipalities of each state.

3.4 The fiscal outcome of decentralisation

According to Oates (1998:97), the optimum efficiency of decentralised public services occurs when local governments raise most of their revenue from the taxes, fees and levies on their own constituencies, with intergovernmental transfers serving solely as an income supplement. The larger the federal transfers to subnational governments, the lower is the incentive to collect taxes. In contrast to Oates' theoretical scheme, the fiscal outcome of Mexico's decentralisation has been an immense transfer of expenditure to subnational governments combined with a high degree of tax dependence (Díaz Cayeros, 2004:209).

¹⁴ Article 73 (XXIX, G) of the Constitution establishes that the state Congresses will fix the percentage of the electricity consumption tax allocated to the municipalities.

Musgrave *et. al.*(1973:6) state that a condition of economic efficiency in the provision of public goods is that the provider should be the level of government closest to the users of the service and its costs should be absorbed by the residents of the community. In theory, the internalisation of the benefits of these public goods ought to be compensated by an equivalent payment to the local tax administration. One of the premises of fiscal federalism is that the authority required to provide a service should be responsible for collecting the taxes to pay for it. The issue is not just a fiscal problem, as it also affects the performance accountability of local authorities.

As shown by Shah (1998:94), a significant delinking of taxation and spending responsibilities leads to accountability problems in the local public sectors. If the citizenship complains about the low quality of public services, local governments can shift the blame to a lack of financing by the federal government. The current Mexican system of centralised taxation and decentralised spending has created politically unaccountable governments that are not fully responsible for policy outcomes. The tax co-ordination system was the result of an agreement between federal and state governments, under which local authorities delegated taxation power to the federal government in exchange for increased transfers.

On the revenue side of the fiscal equation, Mexico's policy makers acknowledged the differences between the administrative and revenue collecting capacities of states and municipalities. As there are wide disparities among Mexico's subnational governments, the federal authority absorbed the administration and collection of the most important tax revenues. However, on the expenditure side of the equation, the decentralisation process treated all states and municipalities as if they had equivalent capacities for the management and accountability of public spending. Mexico's expenditure decentralisation was treated not as a process where subnational entities build administrative capacities in parallel to the absorption of new responsibilities, but as consummated decision where states and municipalities had to absorb their new tasks, no matter whether they were ready or not.

3.4.1 *The politics of decentralisation*

In political speech and academic research, decentralisation is often put forth as a goal in itself. This dissertation assumes that decentralisation is a policy tool, the goal of which is to increase the efficiency of public finances and improve the provision of public services. As with any other policy instrument, decentralisation can succeed or fail depending on its planning and execution. The incentives inherent in the institutional design of the decentralisation process have an impact on the achievement of its policy objectives (North, 1990:135). The governance gains of decentralisation also depend on the interaction between the policy aims and the political objectives of the entire process.

Riker (1964) argues that the most important variable shaping the nature of the federal regime is the level of competition within the party system. Based on this premise, this analysis also addresses how the evolution of Mexico's democracy and party systems interacted with the federalist nature of the Constitution. Haggard (1999) points out that decentralisation is not simply a technical or administrative problem, but also a political and institutional issue. Alongside with the transformation of the political party system, Llerenas (2004:15) analysed the role of health and teaching unions in the move toward decentralisation in Mexico: "Decentralisation was a way to manage the crisis of the welfare state by trying to bypass corporate actors; improve the delivery of the services; increase local financing and divert conflict." Prud'homme explains (1995:3) that the concept of decentralisation implies the double notion of an ongoing process *and* an outcome that results from this process. The next section will explain the *process*, its *outcomes* and its consequences for the Horizontal Accountability of the President towards the subnational governments. Decentralisation in Mexico will be explained as a process that evolved in two stages, corresponding to the presidential terms of Carlos Salinas (1988-1994) and Ernesto Zedillo (1994-2000). The *sexenio* of Vicente Fox (2000-2006) represents the outcome of the decentralisation process, started by the two previous governments.

3.4.2 From *Ramo 26* to *Pronasol*: the budget in the president's service

During the presidential term of Miguel De la Madrid (1982-1988) the funding of several investment programmes for states and municipalities was concentrated in one regular budget line called *Regional Development* or *Ramo 26*, which was created in 1982 (Haggard, 1999:42; Gutiérrez, 2003:56). The rules for the allocation of federal transfers were neither clear nor permanent; each year the criteria for allocation were included in the text of the federal budget as part of a negotiated agreement between the federal and state governments. As there was no institutional mechanism for budget transfers, the investment priorities and expenditure preferences of the President could be inferred from the geographical allocation of *Ramo 26*. With political control over the Chamber of Deputies, the President had ample room to impose his expenditure preferences in the budget decree.

Francisco Barrio, former Governor of Chihuahua, remembers the relationship of the state executives and the federal government during the times of the presidentialism: "There were times where we governors had to spend much of our time in Mexico City looking after undersecretaries, secretaries and the President (lobbying for money). Now it is extremely unusual that a governor would visit the ministers, because there are smaller pools of discretionary resources. But... still in the times of President Salinas there were thousands of millions every year. It was a big fund where the President could really make the difference. When a project was proposed to the President or some funds requested, he really had the possibility to respond and act. This gave way to a lot of asking for favours and requesting: '...Excuse me, Mr. President, sorry to bother you...' We were promised copious amounts of money, but it was not transparent, it was like... 'Come over here to the back, and you will be given the money and bang... you got it'" (Barrio, 2008).

Otto Granados, press secretary of President Salinas (1988-1992) and former PRI governor of Aguascalientes (1992-1998) remembers his negotiations with federal authorities: "During my administration I worked with two presidents, Salinas and Zedillo. I have to say that, as for me, and as for the government of Aguascalientes, we frankly had good access and good negotiation

capacities with both presidents. I'll give a few examples: I had worked very closely with Salinas in the past so surely he'd help me with my requests — Pedro Aspe (the then Treasury Minister) was a gatekeeper you had to get past if you wanted something from the Ministry of the Treasury — so I would say to the President: "we need this much money for important works of infrastructure," so he (President Salinas) would refer me to Pedro Aspe. Then, I'd go to the Treasury and they would reduce my budget request by 15 or 10%. But the point of it is that at the end of the day I always got something... I never had a problem negotiating anything: roads, federal highways, infrastructure, nothing (Granados: 2008)."

Jose Antonio Alvarado, a high ranking official in the Undersecretariat of Budgeting in the administration of Salinas and Zedillo, commented on the financial dependence of states from the perspective of the federal government: "In a very discretionary way, the federal government had a huge amount of power through the management of the resources and its ability to determine the when, where and how they were going to be used. There was a federal programme made through coordination agreements (between the states and the federal government) and (federal) decisions could easily change the agreements. For example, a certain amount of money would be allocated to the state of Guanajuato for the water and sewage programme and a minute later the figure would be reduced. The federal government controlled all this and was allowed to either slow down the process of authorisation for the resources or to demand a series of bureaucratic measures from the states in order to postpone the transfer indefinitely" (Alvarado, 2008).

During the Salinas administration (1988-1994) the funds of *Ramo 26* were exploited as electoral assets for the PRI (Molinar & Weldon, 1994:133). *Pronasol*, a demand-based anti-poverty programme assigned under *Ramo 26*, became the hallmark of the president's political strategy. Nora Lustig (1994:94-96) emphasises the political use of *Pronasol* when she argues that the strategy for resource allocation was not related to the level of poverty in the communities. During Salinas's six-year government, *Pronasol* quadrupled its fraction of the federal budget, from US\$500 million in 1989 to US\$ 2.2 billion in 1993 (Rodríguez, 1997:81). During the first two years of *Pronasol* (1989-91), the process of expenditure and programme decentralisation shifted

responsibilities from the federal government directly to societal institutions, bypassing subnational governments. Decentralisation resulted in an exclusion of state authorities from the policies established by the federal government (Merino, 1996:387-88).¹⁵

Pronasol Committees within urban and rural communities requested funding for specific projects directly from the federal government or its branch offices in each state. The *Pronasol* network constituted a parallel organisation to the subnational structures of the PRI, which remained under the control of the governors. Despite being criticized for its political exploitation of the anti-poverty problem, *Pronasol* was the catalyst for an unprecedented degree of citizen participation in the debate over public expenditure allocation. *Pronasol* created a national network of assemblies and committees that were in charge of deciding on the allocation and utilizing of decentralised funds. Francisco Barrio shared his insights on *Pronasol*: “The Federal Government still decided on the money used in municipalities through the delegates of *Pronasol*. When all investment projects were decided, they created a solidarity committee in each municipality. A high percentage of them incorporated people with records of PRI militancy, who were popular leaders or peasant leaders. Then, they were manipulated (2008).”

The anti-poverty programme’s list of beneficiaries was made up of willing participants in PRI campaign rallies and were easily mobilised on election days. The *Partido Acción Nacional* (PAN) governor of Baja California, Ernesto Ruffo, complained that their states were marginalised from their fair share of *Pronasol* funds for political reasons (Ward & Rodríguez, 1999:106), and research by Molinar and Weldon (1994:133-134) shows that the allocation of *Pronasol* funds was larger in the states that favoured the PRI in the polls. The political relevance of the programme became evident through the size of its financial allocation. The federal funds disbursed as part of the government’s antipoverty strategy became a key part of the PRI’s political machinery (Pardinas, 2004:67; Cornelious, Craig and Fox, 1994:3).

¹⁵ Merino (1996) shows that municipal authorities were also excluded from the political benefits of *Pronasol*, while in contrast Ward and Rodríguez argue that the single authority excluded from the process were the state governors.

This “decentralisation to society” at the expense of subnational authorities implied an extreme centralisation of political power in the hands of the President and the federal bureaucracy. Governors resented their position as mere spectators of a politically successful expenditure policy. The programme also showed that Salinas had insufficient trust in the will of state governors to implement his anti-poverty programme and administer the funds for it (Ward & Rodríguez, 1999:56, 67). As the presidential election of 1994 approached, there was a policy U-turn and the governors became more involved in the *Pronasol* programme. The change of strategy also had political consequences. Luis Donaldo Colosio, the man in charge of *Pronasol* since 1992, became the PRI’s presidential candidate handpicked by Salinas. It would have been extremely difficult to run a successful presidential campaign with the antipathy of the PRI’s subnational leaders. As head of the *Pronasol* programme, Colosio had created a network of political allies in the state governments through the disbursements of the anti-poverty funds. However, Colosio was assassinated during a campaign rally in March 1994, and Ernesto Zedillo became the newly appointed heir to the Salinas presidency.

3.4.3 Education decentralisation: the search for political stability

During 1989, the first year of his administration, Carlos Salinas confronted a national strike by the powerful national teachers union (*Sindicato Nacional de Trabajadores de la Educación, SNTE*) of more than one million members. The strike left 10 million elementary and high school students without classes. Two weeks of school closings in Mexico City and several states created major political turmoil for the government. The largest union in the country had shown its capacity for pressuring the federal government, with the union’s leader and the political machinery of the President seemingly incapable of disciplining the ranks of one of its strongest corporate arms. After an initial rejection of a 10% wage increase demand, finally the government agreed to a 25% rise, which was accepted by the union under new leadership (Presidencia de la República, 1994:211). This increase led to a near-doubling of pay increases of all other public workers.

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After the 1989 strike, it became clear that without major changes in the administrative structure of the education system, the annual contract negotiations with the teachers' union would pose a permanent risk to political stability. Decentralisation policies are often "predetermined" by political parameters (Prud'homme, 1995:24), and educational decentralisation became a way of preventing further challenges to the authority of the federal government. For Llerenas (2004:16) "In education, the reformers wanted to improve quality, reduce social unrest and reduce the power of the (union) SNTE."

In 1992, Salinas launched the decentralisation of education with the aim of fragmenting the national contract negotiation into 31 separate agreements between the state governments and the teacher's union. With incentives similar to those in the 1980 System of Fiscal Coordination, the federal government lured the states into joining the agreement through the promise that the amounts of transfers for education would be at least on the scale prior to the decentralisation agreement. Finally the government decided not to break the teacher's union, because that would pulverize one of the PRI's most efficient political machines (Raphael, 2007:100). However, state governments became responsible of paying the teachers' salaries with the resources transferred through the federal government.

Educational decentralisation changed the provision of a service, where the federal government was in charge of the day to day operation of schools, to a transfer of resources to pay for the states' provision of educational services (Merino, 2003:352). Beginning in 1993, more than 13.5 million students from kindergarten through high school were absorbed into the states' school systems. From one year to the next, state authorities assumed the administration of 100,000 schools and saw their teachers' payroll multiply by a factor of two (Moctezuma, 1993:123-124). Subnational authorities were given an enormous administrative responsibility and in some cases, insufficient funds to handle it. Some state governments had to add from their own resources to face the demand for the teachers' wage increase. As all the funds were earmarked for the educational payroll, in this particular case the extra resources obtained through federal transfers did not improve the autonomy of state finances. Before decentralisation, in most of the regions,

federally hired teachers enjoyed higher salaries than teachers hired by the states to perform the same tasks (Llerenas, 2004:115-117).

The decentralisation of education was a “centralised” decision of the federal government, with the state authorities acting mostly as passive recipients of the initiative. State governors did not have enough political power to negotiate the whole process on their own terms. The decision to decentralise also ignored regional and institutional diversity within Mexico. Decentralisation was ordered from the centre by a presidency in full use of its *metaconstitutional* capabilities: homogeneous responsibilities and administrative challenges were imposed on state governments with heterogeneous capabilities (Merino, 1996:377). In Mexico, as in other countries of Latin America, the national authorities triggered the decentralisation processes with a lack of consideration for the administrative development and managerial conditions of the subnational governments (Cabrero & Carrera, 2000:30).

In considering the motivations of key actors involved in the process (Haggard, 1999:34), it is clear that the President and the federal bureaucracy obtained the largest advantages from educational decentralisation. In contrast, the teacher's union lost bargaining power, as the initiative diminished its capability to apply homogenous political pressure at the national level. The teachers union had to organise separate negotiations with each state governor. Decentralisation gave more flexibility to the administration of the school system, although it did not promote significant educational reform. The federal Ministry of Education retained the authority to evaluate and coordinate school programmes, but unloaded most of the conflict resolution responsibilities and administrative burdens onto subnational authorities (Merino, 1996:386). For example, states required permission from the Ministry of Education to change the topics of study or the school calendar, but were free to set their own educational expenditures. The main aim of decentralisation was not to improve the efficiency of the system, but to reduce the political exposure of the federal government. In his memoirs, Salinas de Gortari (2002:620-632) concedes that decentralisation in education was a policy to change the relationship with the teacher's union and solve the labour conflict.

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In order to convince the SNTE to participate, the government made important concessions to the union's leadership. The SNTE kept its legal authority to represent teachers' interests in salary and labour matters at the federal and state level. State governments signed agreements with the SNTE to establish that the union's central committee would have the capacity to remove regional representatives and assume the labour representation of teachers in the region. Moreover, federal and local authorities conceded that educational authorities would collect the union's fees directly from the teachers' payroll and pass them on to the union's national committee. The state branches of the union did not have the legal capacity to collect fees directly from their own members. Any transfer of funds to the union's regional offices had to come from Mexico City, directly from the national union committee (Raphael, 2007:107). The federal government approved additional funding to reduce the disparity between the salaries of state and federal teachers.

To make decentralisation even more palatable to the union, the government agreed that in a first stage of the process, labour negotiations would remain centralised.¹⁶ Finally in December 1997, Congress approved a motion to pass on to the state governments the full responsibility for salary negotiations with the teacher's union (Ward & Rodríguez, 1999:156). From 1992 to 1997, the federal government negotiated a national minimum pay rise and then state governments had to deliver the additional funds required to match the demands of local teachers. In most cases, federal transfers for education were not enough to cover the teachers' payroll, causing a huge impact on local finances. Article 16 of the 1998 federal budget established a cap on federal transfers that would be used to cover the states' teacher payrolls, potential salary increases, pensions, and the creation of new teaching positions (PEF, 1998:Article 16).

A process of decentralisation implies the existence of independent subnational authorities. However, the meaning of "independent subnational governments" can differ (Prud'homme, 1995:3), depending on the institutional design and the political context. At one end of the spectrum, there are locally elected subnational authorities with real independence to implement policies or hold opinions that do not correspond to the views and decisions of the central

¹⁶ Ornelas (1997) presents a useful analysis of the process of annual labour negotiations.

government. However at the other end there are subnational governments that behave as subordinates of the national authorities, with the task of implementing policies that were designed and decided upon at the centre.

In the first stages of Mexican decentralisation, during the administrations of De la Madrid and Salinas, the process involved subnational governments that were politically and financially dependent on the president's will. In Mexico's case, decentralisation was initially a *deconcentration* of earmarked resources and administrative responsibilities from the central government, rather than a vertical dispersion of political power and decision-making capabilities. In the second stage, electoral competition gave new meaning to Mexican federalism and granted unprecedented freedom to subnational authorities. Without the shadow of the presidentialism, the process of decentralisation strengthened the political autonomy of Mexico's subnational authorities.

3.4.4 Federalism with quotation marks

At the end of the nineteenth century, the Mexican thinker Ricardo Flores Magón affirmed that the Mexican Constitution of 1857 was a dead letter when it was written.¹⁷ By this he meant that the formal prescriptions stated in the law were merely a facade that disguised the true dynamics of Mexican politics. In 1916, Venustiano Carranza presented a legal draft to amend the 1857 Constitution. In the bill, Carranza claimed that Mexican federalism was a vain "promise," because state autonomy was only a written formality with no empirical backing in the relationship between the states and the central government.

The congressional assembly of 1916 used almost the identical wording to the previous Constitution to reinstate federalism as a basis for Mexico's political and administrative organisation. As did its predecessor of 1857, the 1917 Constitution established in Article 40 that states were free and sovereign. However, during the twentieth century, the powers of the presidency added another

¹⁷ In the original quote from Spanish, Flores Magón stated: "La constitución es letra muerta."

layer of meaning to the federal status of the law. The metaconstitutional capabilities of the presidency (Carpizo, 1977:190) blurred the notion of free and sovereign local authorities. In the words of Acosta Romero (1982:401-02): “Mexican federalism is an aspiration punctuated by the reality of an undeniable centralism which is characterised by an increasingly pervasive presidency.”

The federal nature of the Constitution was overridden by the centralising synergies of the PRI monopoly and presidentialism. In a quasi-single party system, the Mexican President controlled the appointment of PRI candidates to elective positions at federal, state and even municipal level. The President had the power to determine the political future of state governors through his consent over nominations, support for campaign finance and non-elective appointments, which served as professional safety nets once an individual’s term in power was over. Governors and local politicians understood that discipline towards the President did pay off. For Weldon (1997:255): “the metaconstitutional powers of the President are also in part due to a consensus over the elite members of the party that delegation to a central authority is (was) in their best interest.” However, as it will be explained in the next section, during the Salinas government the “delegation to a central authority” brought negative consequences for the regional elites of the PRI and its most visible leaders: the state governors.

3.4.5 Institutional and non-institutional mechanisms to oust governors

The political autonomy of a governor within his state was maintained only if his decisions did not interfere with the wishes of the President. This was the premise that had defined the relationship between the President and the governors since the administration of Lázaro Cárdenas (1934-1940). Within the boundaries of the states, the governors reproduced a smaller-scale version of the president’s written and unwritten powers.¹⁸ In most states, the local Congress and the judicial branch failed to exercise the elementary tasks of Horizontal Accountability. Despite the end of

¹⁸ As the presidential institution concentrated political power, it also centralised the attention of political scientists. There is a vacuum of studies of the metaconstitutional powers of governors at the state level. One exception is the research of Ramírez Gutiérrez (2003) on the relationship between the Executive and the Congress in the state of Tamaulipas.

presidentialism, in several regions a scaled-down version of “*gubernadourism*” is still prevalent in the Mexico of today. In some states, local media and press lack the basic freedom to question the actions of the government,¹⁹ and the political independence of national newspapers, TV channels and radio stations has yet to trickle down to regional news media. However, the *metaconstitutional* power of governors is limited through institutional and noninstitutional mechanisms.

Article 76 of the Constitution gives the Senate the power to remove state governors through the dissolution of powers. By a two-thirds majority, the members of the upper chamber can depose the elected governor and appoint his substitute based on a three-name list (*terna*) presented by the President. The new governor then finishes the rest of the term or holds the post until new elections are called. According to González Oropeza (1987:252), the removal of state powers has been applied 49 times since the enactment of the Constitution in 1917, with 41 of these cases occurring before the birth of the PRI in 1940 (Weldon, 1997:253). The last time the Senate applied this constitutional provision was in 1975. However, the President retained the means of removing dissident or incompetent governors by coercing their resignation through non-institutional means, without the need for the Senate’s collaboration. The dissolution of state powers is a “club at the door that the President rarely needs to use” (Weldon, 1997:254).

The ousting of governors was not an unprecedented practice in the 20th century. Since the three-decade dictatorship of Porfirio Díaz (1876-80, 1884-1911), a golden rule had governed the relationship between the President and the state executives: the authority of a governor was respected as long as his political decisions did not interfere with the priorities of the Federal Executive. After the enactment of the Constitution of 1917, the relationship between the President and the state governors maintained the patterns established during the Díaz regime. “The Mexican president has the ability, when he wishes, to clamp down on petty tyrannies and local abuses of

¹⁹ During the gubernatorial elections of Campeche in 1997, a German visitor observed that local TV news reminded him of the bias of TV broadcasts in the former East Germany. In the same election, the PRI government of Jorge Salomón Azar bought 3 months of printed publicity in the major state newspaper in exchange for the editors of the journal cheering the PRI candidate and neglecting the reports of the main opposition contender.

authority” (Philip, 1992:170). Lázaro Cárdenas had the highest number of unseated governors; 19 state executives were ousted before the completion of their constitutional terms (See Annex 3.2). Most of these changes were a consequence of the political rupture between Cárdenas and the *maximum boss* of the revolution, Plutarco Elías Calles. For Weldon (1997:227): “The legal authority granted to the President was insufficient in creating stability and efficiency through centralisation,” so there was a political need to increase the concentration of power through his stature as the PRI’s central authority.

In the six years of the Salinas’ administration, on average, a governor was ousted every 4½ months. Fourteen out of 31 states had provisional governors and 17 holders of state executive offices were not elected by popular suffrage. More than 50 million people, then 62% of the total population, were governed by subnational authorities that had not won their post through an election. President Salinas treated the governors as his subordinates even without any legal basis for doing so.

During his government, Salinas broke several unwritten rules of Mexican political behaviour. One of the most important of these rules implied perfect symbiosis between the political interests of the President and its party. However, Salinas’ decisions frequently clashed with the interests of the PRI’s regional apparatus, and state governors were the most visible victims of this collision. Salinas ousted 17 state executives, more than any other civilian President (Lázaro Cardenas was a former army general). Every confrontation with the PRI state political machines left open wounds between the PRI and the Presidency. These tensions between PRI governors and President Salinas set the stage for future pressures towards greater decentralisation and higher margins of freedom to allocate budget apportionments in subnational governments.

If a governor showed resistance, the President had several tools to exercise pressure. The discretionary management of federal funds transferred to the states and municipalities constituted political leverage that could determine the fate of the local public treasuries. A tense relationship between a state governor and the President could bring to a halt federal investment programmes

in the region. In such circumstances “governors behaved more like appointed federal bureaucrats than elected local officials” (Díaz Cayeros, 2004:223). Even the internal audit office of the Executive, (Secodam-Secogef) could use some of its files to “twist the arm” of a governor who wanted to remain in place despite the president’s wishes.

When Zedillo assumed the Executive office, he inherited the animosity against the overreaching powers of the presidency. Roberto Madrazo, governor of Tabasco (1994-2000), was the first governor to resist pressure from the central government to push for his resignation during the first months of Zedillo’s term. The resignation of Madrazo was negotiated in Mexico City to appease a state revolt over accusations of massive overspending during his electoral campaign in 1994. In violent street demonstrations, Madrazo loyalists revolted against the decision and halted his resignation. “While subnational actors operate in a larger system that they do not control, they are able to exert some influence over national actors (Beer, 2004:181).” Roberto Madrazo in Tabasco was the last time that a governor was coerced to resign through political pressure. When the governor survived pressure from the President, it was a sign that the overreaching powers of presidentialism were not what they used to be.

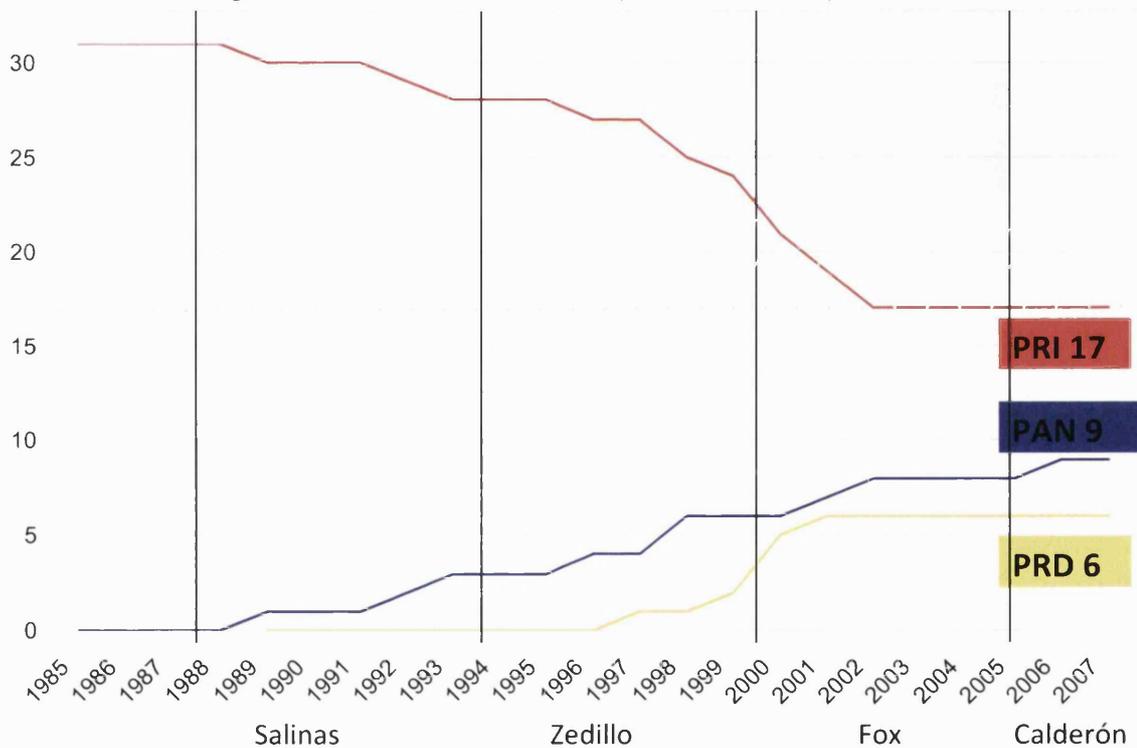
3.5 The emergence of a plural party system

With analytical foresight, Robert Dahl predicted in 1971 the future of Mexico’s political system: “The eventual shift from an hegemony to a polyarchy may well come about slowly and not too painfully, as the opposition wins an increasing number of victories at the local level and takes on the always sobering responsibility of governing (1971:227).”

In a slow but incremental process, local political forces became a serious challenge to the PRI’s electoral monopoly. In the first half of the 1980s, municipal elections became true contests with unpredictable outcomes. The toll of the economic crisis was reflected in an increase of the anti-PRI vote. In the northern part of the country, the PAN emerged as a serious contestant for state and municipal positions in urban centres. After the contested 1986 state elections in Chihuahua, the

PRI could not take its unrivalled electoral success for granted. For Gabriel Zaid:²⁰ “To finish with presidentialism without finishing the country (Mexico), there is the need to demand effective suffrage where it is possible to obtain it: in the least relevant elections for the Great Elector (The President), but most relevant for local voters.” In 1989, for the first time in six decades, the governing party lost a state governorship. The PAN’s triumph in Baja California became a crucial step in Mexico’s political evolution towards a democratic system, and soon citizens in many states and municipalities became accustomed to party alternation in government and divided congresses in local legislatures (Lujambio, 2000:43).

Figure 3-9 Number of Governors per Political Party (1985-1997)



Source: Own construction with data from CIDAC, through Internet: http://www.cidac.org/cidac_nuke/modules.php?name=Encyclopedia&op=list_content&eid=1, consulted March 6th 2008.

The triumphs of the PAN during the Salinas administration were seen as a path to improve the democratic credentials of the President at the expense of the state branches of the PRI. The PRI’s

²⁰ Quoted in Lujambio 1995.

local political machines became the most vociferous opponents of the emergence of a plural party system and the anachronistic state electoral laws became the last stronghold in defence of the *ancien regime*. The presence of the first *panista* governors created new paradigms of governance and fresh patterns of political behaviour. These entrepreneurially driven governors gave impetus to administrative modernisation and in some cases confronted local congresses with PRI majorities in order to promote policy reforms (Ward & Rodríguez, 1999:71-72).

In his first press conference as governor of Baja California, Ernesto Ruffo announced that he had inherited a bankrupt government and challenged President Salinas to keep his promise that the federal government would give equal treatment to state governments led by a party other than the PRI. In budget terms, this meant that the flow of federal transfers would not change despite the party affiliation of the state governor. *Panista* governors from Baja California and Chihuahua (Francisco Barrio) made claims on President Salinas to increase the distributable share of revenues from 18.5 to 30%. The federal government finally settled on 20% through the Law of Fiscal Coordination.

During the Zedillo administration, increased electoral competition altered the subordinate relationship between the state Executives and the President. The governors from the PAN or the *Partido de la Revolución Democrática* (PRD) were outside of the presidential sphere of political influence. PRI governors assumed that their positions were the consequence of voter support and not presidential intervention (Díaz Cayeros, 2004:217). With the increase of electoral competition and the dusk of presidentialism, governors gained unprecedented political autonomy and became central figures of national politics.²¹

²¹ During the 2000 Presidential election, the three main contestants were governors and the winner, Vicente Fox, was the first president who had previous experience as a governor since 1964. For the 2006 presidential elections, two out of three main contenders had experience as local executives.

3.5.1 A 90-year-old-untested constitutional order

Mexico's slow transition to democracy involved an ongoing debate over how to achieve valid and convincing electoral results under conditions of real competition. In striking contrast with other transitions in Latin America or Eastern Europe, Mexico did not break with its political institutions, but merely adapted them to the new circumstances. There was no sudden collapse of the previous regime, nor was there a demand for a new constitutional framework (Lujambio, 1995:11). The legal basis of presidentialism was never challenged with any serious propositions for alternative constitutional models, such as parliamentarism. The main criticisms of the previous regimes centred on the unwritten powers of the President and the lack of transparency of the electoral system. The equation was simple: a President bound by law and institutions, plus fair and free suffrage, equalled democracy. The constitutional scaffolding of the *ancien regime* provided the guiding light for the new era.

Despite being promulgated in 1917, the Mexican Constitution remains young and unttested as a legal means for imposing limits upon political actors (Silva Herzog M, 2004). The overpowering of constitutional rule by presidentialism, in so many instances, meant that Executive determination was the main mechanism for resolving political disputes and the leading source of jurisprudence. With the end of presidentialism, the Constitution and its judicial interpretation emerged as a new referent to solve political disputes. Many decades after its enactment, Mexico's constitutional order became what it was meant to be, although the Supreme Court had to fill in the blank spaces where the constitutional text left room for interpretation, as the overreaching presidential authority was not there to solve uncertainties.

The President was not a "six-year-term absolute monarch," but the axis of a coalition of corporate and regional interest groups that were willing to rethink their association with him if he acted against their interests (Lujambio, 1995:53). Once the institution of the Presidency opposed the interests of this coalition of local interest groups, the federal nature of the Mexican Constitution

became a shield for their political agenda and a point of reference to solve political controversies between the federal government and the state authorities.

3.5.2 Decentralisation under a new political system

During the Salinas administration, the decentralisation of funds and public services was in accordance with the political interests of the President. With the emergence of autonomous political actors at the subnational level, the process of decentralisation acquired a new set of priorities. The decentralisation process began within the context of a quasi-single party political system and a strong President, but continued under a national collage of party representation and an Executive with receding powers. The transformation of the political landscape had unforeseen consequences in the dynamics of expenditure decentralisation. In the words of Ward and Rodríguez (1999:53): “If De la Madrid and Salinas were in a position to centralise by decentralising, Zedillo’s reality is to *survive* by decentralising.”

A new wave of decentralisation was one of the most relevant consequences of the democratisation process in Mexico (See Appendix 3.1 for a timeline of democratisation and decentralisation). The emergence of political pluralism was the catalyst for a process of expenditure decentralisation with clear rules for all the participants involved. The longstanding pattern of financial transfers to local governments based on the President’s discretion had only been possible as a result of the political submission of regional authorities. Electoral legitimacy gave the governors an unprecedented margin of political autonomy to make direct budget claims from the federal authorities. To reduce the political dispute over budget transfers, it was necessary to create a new set of non-discretionary norms to institutionalise and clarify financial transactions among the three levels of government. A legitimised system of Horizontal Accountability over financial transfers became a necessity for the construction of a new political stability.

Governors and political parties demanded greater control and freedom to administer the resources they received. For the first time, local political forces called for more financial accountability from

the federal government. The basic premise of the new rules was that states ought to have clear, complete and trustworthy information on the amount of resources that would be transferred every fiscal year. The re-allocation of resources and responsibilities among the three levels of government helped to ease rising political pressures, and alleviated “some of the administrative problems that have contributed to the erosion of the government’s legitimacy and control” (Rodríguez, 1997:1). Political competition redistributed the power of decision-making across the three tiers of government and increased demands for accountability at all government levels (Giugale & Webb, 2000:XV). Decentralisation with accountability became the best available policy to appease the plurality of regional political forces.

3.5.3 Decentralisation without discretionary funding

The rise of regional political pluralism had a spillover effect on national politics. The processes of decentralisation and democratisation accelerated during the government of Ernesto Zedillo. As was detailed in chapter 2, the PRI lost the congressional election of 1997. The change in the balance of power within the Chamber of Deputies promoted a reform to end the discretionary criteria and political manipulation that governed federal transfers. As an outcome of the electoral defeat, the PRI lost its control over congressional committees and its ability to speed or obstruct the passage of bills in the legislature. In an interview for this dissertation, Porfirio Muñoz Ledo, (2008) leader of the PRD in the Chamber of Deputies after the 1997 election, said: “During this Congressional period, the total control over the Congress was lost. The party that had the power lost its absolute power during this legislation. I explained it to Dr. Zedillo. The country had already changed... they had to understand that they weren't the majority any longer, and that they wouldn't be able to pass laws without us. They couldn't even pass the budget.”

In the new Congress, transparency in the allocation of resources for states and municipalities became the centre of budgetary debates. The political grievances caused by over-centralisation converged with the pressures of the new pluralism to produce an authentic redistribution of government finances and political control. In November 1997, an unprecedented event took place

in the Mexican Congress: the PAN and the PRD, which together controlled more than 50% of the Chamber of Deputies, presented their own budget bill in parallel with the one drafted by the Executive. To end the dispute between these two alternative pieces of legislation, the PRI and PAN approved the government's bill against the opposition of the PRD. However, the Executive conceded to several of the demands embodied in the opposition budget. In exchange for its support, the PAN demanded a compromise from the federal government to increase transfers to subnational governments. Close to 1% of the GNP was reallocated under the supervision of the state and municipal treasury offices (Estévez & Magaloni, 1998:8).

3.5.4 Progresas: an anti-poverty programme not designed for political manipulation

Progresas was the first antipoverty scheme that was explicitly designed to shield itself from political influence. Traditionally, peasant organisations close to the PRI would negotiate their electoral support in exchange for government benefits. On election days, the peasant groups would be encouraged or even coerced into voting for PRI candidates. Under *Progresas*, financial transfers go directly to individuals rather than to middlemen or corporate leaders, reducing the influence of intermediate organisations that might require electoral support for their favoured candidates in exchange for social benefits.

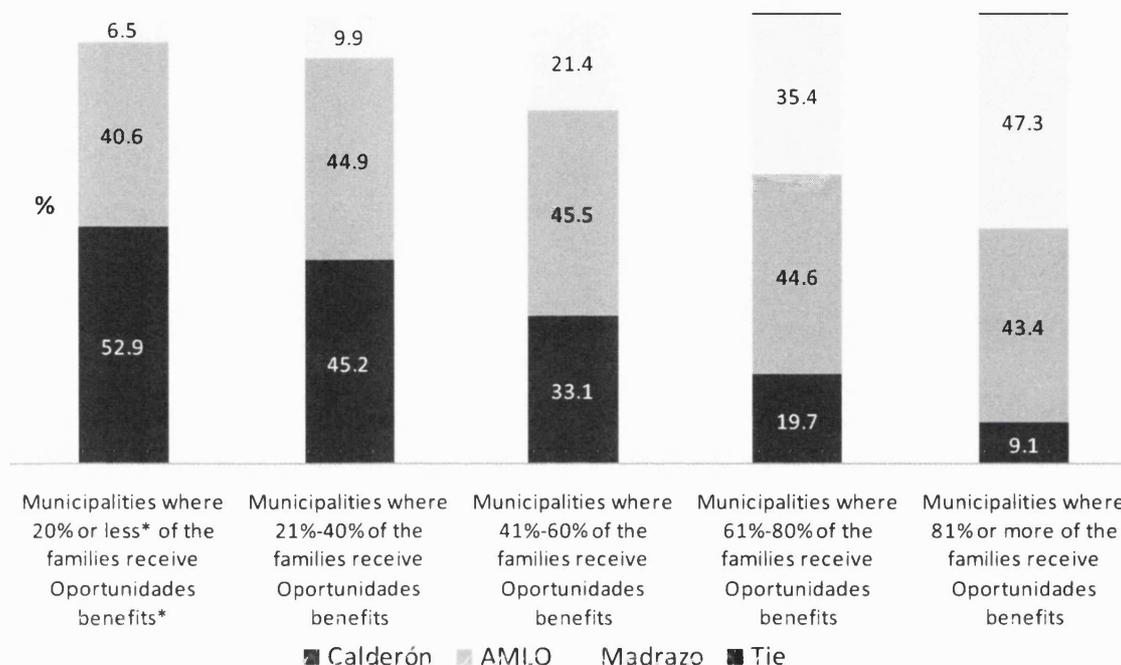
It is difficult to claim with any certainty that *Progresas*, with an annual budget of US\$1800 million and 5.2 million beneficiary families in thirty-one states, is immune from electoral pressure, although the ongoing oversight of media and Congress certainly provide some protection. In addition, the 2000 presidential elections serve as a prime piece of evidence that *Progresas* had succeeded in protecting itself from political manipulation. On Election Day in July 2000, the turnout of the PRI's rural constituencies was lower than expected. Without the full support of its strongholds and with massive opposition in urban centres, the PRI had to concede defeat and the opposition candidate, Vicente Fox, was elected to the presidency.

According to an exit poll by the *Los Angeles Times* and the Mexican daily *Reforma*, 44% of the beneficiaries of *Progresa* voted for a party other than the PRI.²² Although the PRI still had its strongholds in non-urban areas, in 2000 its share of the rural vote fell below 50% for the first time ever. In the presidential election of 1994, the PRI received 5.5 million votes in regions with high levels of poverty; for the 2000 election, PRI turnout in the same areas fell to 4.4 million votes. The share of the PAN vote in poor and rural areas grew from 14.7% in 1994 to 28.9% in 2000 (Tuirán, 2000). In the *sexenio* during which *Progresa* was implemented, the PRI lost its capability to mobilize 1.1 million of the core voters that had given the party its triumph of 1994.

In the Presidential election of 2006, *Progresa*, under its new name *Oportunidades*, confirmed the claim that the largest anti-poverty scheme of the Mexican government was not a successful tool for political manipulation. Research by Fernando Pliego Carrasco (2006:39) shows that in municipalities with a higher percentage of the population benefiting from *Oportunidades*, the PAN's government candidate Felipe Calderón received fewer votes. Figure 3-10 shows that in municipalities where 81% or more of the population were *Oportunidades* recipients, Calderón received just 9.1% of the total votes.

²² *Reforma*, July 3rd 2000.

Figure 3-10 Distribution of the vote in the 2006 Presidential Election among municipalities with different percentages of *Oportunidades* beneficiaries



* This range includes votes from the 20 municipalities without *Oportunidades* information, including 10 boroughs in the DF.

Source: Pliego Carrasco (2006), "Las políticas de combate a la pobreza en México y sus efectos en la elección presidencial de 2006: ¿Coacción del voto o justicia social?" in *Revista Mexicana de Ciencias Sociales*, Num. 198 IIIQ UNAM.

3.5.5 Decentralisation under Zedillo: the transformation of Ramo 23 and the creation of Ramo 33

Until 1998, *Ramo 23* of the federal budget contained a Programme of Fiscal Coordination with state governments.²³ This *Ramo* was used as a mechanism for transferring federal resources to state governments in exchange for certain promises to improve their fiscal balance. Through this programme, the states reduced their public debts in the aftermath of the "Tequila Crisis" of 1995; in that year, local governments allocated an average 7.8% of total expenditure to debt service, while for 1998 this percentage was reduced to 2% (Levy, 2000:13). The distribution of funds within

²³ Empirical academic research on state budget institutions in federal countries has developed mostly in the United States. See Alesina & Bayoumi (1996) and Poterba & Hagen (1999).

states depended on direct negotiation with the Treasury Ministry. However, the final allocation of resources was subject to the president's will. In addition, the resources of the programme created a "moral hazard" because state governments that had a close political relationship with the President had strong incentives to contract new debt above reasonable levels, because they could expect to be bailed out with federal transfers.²⁴ "In 1998 and 1999, discretionary transfers under *Ramo 23* declined to less than one tenth of their pre-1995 value. In the 2000 budget, the transfers at the discretion of the Executive ended completely" (Giugale & Webb 2000:20).

For decades, most of the resources in the federal budget allocated to state governments were transferred through the Ministry of the Treasury and the regional offices of the federal ministries. From 1998 on, after the defeat of the PRI in the Chamber of Deputies, the funds for poverty reduction and social development (*Ramo 26*) were consolidated in *Ramo 33*, which distributed earmarked resources to local authorities via a formula system. With the creation of *Ramo 33*, the rules of allocation became clear and stable, as they were set in the Law of Fiscal Coordination (LCF). The creation of *Ramo 33* constituted a revolution in the financial relationship between the states and the federal government; before its creation close to 80% of the federal budget was "open to more discretionary-federal-influence; and 'successful' governors are those who manage to leverage a greater share of funding from the Treasury" (Ward & Rodríguez, 1999:678). *Ramo 33* became a mechanism of Horizontal Accountability from the President and the Federal Government towards the subnational government.

The LCF sets the allocation formulas of the seven federal funds that compose *Ramo 33*.²⁵ These make up the transfers earmarked for financing health, education, infrastructure and public security. The resources that were managed with discretionary criteria under the *Pronasol* scheme

²⁴ Ter-Minassian and Craig (1997:160-61) show through case studies of twelve developing countries from Latin America, Asia and Africa that the central government exercises, with different degrees of success, certain administrative restraints over the indebtedness capacity of subnational governments. In the cases of fifteen transition economies, local authorities are forbidden from contracting any debt in local or foreign currency.

²⁵ The *Ramo 33* is not expressly mentioned in the *Ley de Coordinación Fiscal*.

during Salinas' administration became part of the earmarked funds for state and municipal infrastructure, which constitute a component of *Ramo 33*.

As a consequence of a reform in the LCF, states were able to incorporate the transfers of *Ramo 33* as part of their own budgets. However, the LCF establishes that states and municipalities cannot use the funds transferred through *Ramo 33* as guarantee of future income to negotiate with potential creditors. In contrast, the law allows the subnational authorities to obtain credit through the use of the non-earmarked funds (*participaciones*) of *Ramo 28*.

After the creation of *Ramo 33* in 1998, subnational authorities spent more resources than the federal government for the first time, although these additional transfers did not always increase the discretionary spending of state governments (Merino, 2001:150). The discretionary spending to states was funnelled through *Ramo 28*, which distributed the non-earmarked funds. *Ramo 33* and *Ramo 28* became the budget mechanisms of expenditure decentralisation and a new structure for Horizontal Accountability from the federal government to state and municipal authorities.

According to the Constitution, the Senate does not participate in the debate and approval of the expenditure portion of the federal budget, so the Chamber of Deputies became the central arena of the decentralisation reforms. Since 1997, no party has had majority control of the Chamber of Deputies, so the reforms of the LCF and the new design of the federal budget were approved with the joint votes of PRI and PAN legislators. Both parties had an interest in bolstering the finances of state governments. The PAN conditioned its crucial vote on the federal budget to the creation of *Ramo 33*. For Haggard (*et. al.* 1999:18), the shape of decentralisation is determined by the structure of political parties and its balance of power. "Subnational electoral competition is a crucial variable for understanding decentralisation (Beer, 2004:181)." The emerging political forces had a definitive influence in the shape of decentralisation during the Zedillo government.

In Mexico, the opposition and the ruling party exerted pressure to change the statutory framework of the expenditure decentralisation process. After the decentralisation due to the *Pronasol* programme, governors from the PRI wanted to recover some influence in the allocation process of

the federal budget. The PRI's subnational structures were affected by presidential control over the allocation of the budget. The creation of *Ramo 33* was not just a direct result of the process of democratisation, but also an answer to PRI regional political forces that were mistreated during the Salinas administration.

One key difference between the two funding mechanisms is that *Ramo 33* distributes federal funds, while *Ramo 28* are considered to be a federal transfer of state funds. This difference implies that the *Auditoría Superior de la Federación* (ASF) (see chapter 2) has the mandate to oversee the allocation of *Ramo 33* at state and municipal level. The legal capacity is not the same as the enforcement of this capacity, as the existence of a Horizontal Accountability framework does not necessarily compel its enactment. However, this prerogative of the federal SAI creates contrasting conditions in the state's management and administration of the resources. As will be explained in chapter 5, local SAIs are fully responsible for the audit of *Ramo 28*.

As summarised by Díaz Cayeros and Magaloni (2003:34):

“Mexico transited in a very brief period of time from a highly discretionary and politically manipulated allocation of funds for local public works characterizing *Pronasol* during the 1989-1994 period, to a formula-driven system of resource allocation, where municipalities and states not only know the amount of funds they will receive, but also their calendars for disbursement and clear rules for the application of those resources, under federal monitoring.”

Table 3-9 Main Changes in the Decentralisation of Federal Funds

Before 1998	After 1998
The transfer of funds might exclude some states.	All states are included in the transfer scheme.
Transfers were made according to the President's discretionary criteria.	Transfers are based on rules and formulas stated in law.
The size of the transfers was unpredictable for states and municipalities.	The size of transfers became more stable and predictable.
The transfers to improve the financial position of the states were established in the federal budget after an agreement between the Ministry of the Treasury (SHCP) and the state governments.	The transfers to improve the financial position of the states are stated in the federal budget, the amount is based on budgeted federal revenues.
Uneven distribution of resources	More proportional distribution between regions
Before 2000	After 2000
The SAI of the federal Congress did not have a legal mandate to oversee the transfers of <i>Ramo 33</i> .	The ASF has a legal mandate to oversee the transfers of <i>Ramo 33</i> .

Source: By the author, based on the diagram presented in SSE, 2000:118 and Levy (2000:5).

Despite the fact that the creation of *Ramo 33* occurred during the tenure of President Ernesto Zedillo, the critical mass for decentralisation reform came from the newly plural Congress and the demands of state governors. Zedillo's administration provided the technical input to impose constraints on the discretionary allocations for expenditure, transfers and borrowing (Giugale & Webb 2000:30). Since 1997, the largest expenditure programmes of the federal government, like the anti-poverty scheme *Progresa*, operated under strict norms to guarantee a basic level of accountability. The new balance of forces inside the Congress triggered the application of mechanisms for Horizontal Accountability that would have been impossible in the previous political system. The President was forced to explain *how*, *where* and *when* the federal funds were to be

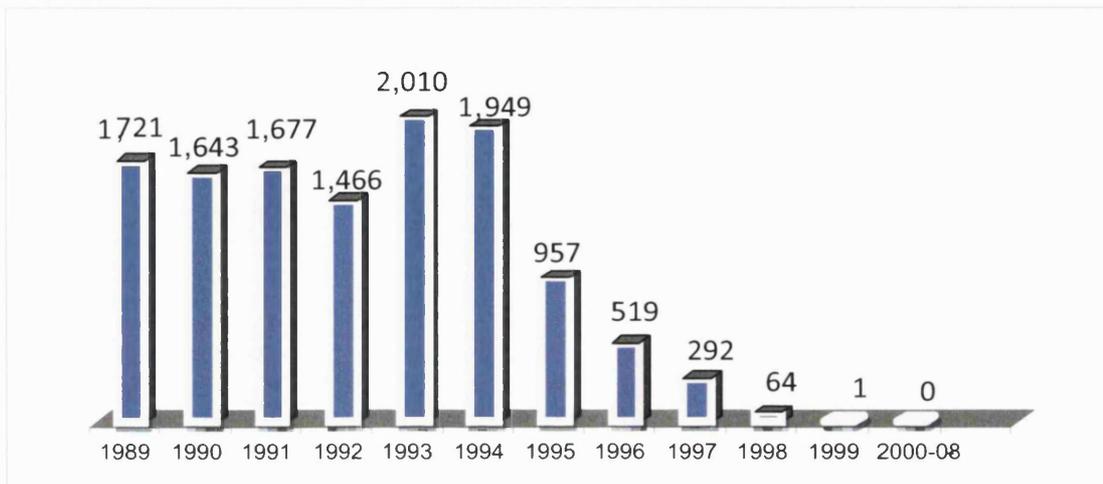
distributed among Mexican states. The explanations of the President were discussed openly, through the debate and approval of the federal budget. This Executive's obligation to provide answers and explanations to Congress meant that the President was being accountable.

3.5.6 The secret budget item: a prerogative of presidentialism

Article 74 of the Mexican Constitution mandates that: "There will be no other *partidas secretas* (secret pools of resources or secret budget items), with the exception of the ones that would be considered as necessary in the Budget." The pool will be used by the ministers through a written agreement with the President. As its name implies, the resources of the secret budget pool were not subject to the oversight of any internal or external auditor. This statement gave the President a constitutional license to use public funds without any kind of budget accountability.

The "secret fund" provision originated as an amendment approved in 1977, during the government of José López Portillo (1976-1982), and does not appear in the original text of the Constitution. As of March 2008, the secret fund provision remained in the Constitutional text, although it has not received any funding since 2000 (See Figure 3-11). However, its permanence in the Constitution gives state governors the legitimacy to have unaccountable portions of resources in the state budgets. The peak of the secret fund occurred in 1993, when President Salinas de Gortari allocated 2,009.8 million pesos (£436.13 million) to it. During the government of Ernesto Zedillo, the use of the secret fund was reduced from 1,949 million pesos in 1994 (£374.2 million) to one million in 1999 (£64,000) (Levy, 2000:3).

Figure 3-11 Budget of the Presidential secret fund 1989-2008 (Million pesos 2000)



Sources: Constructed by the author using data from Levy, 2000 and Federal Budget Decree 2001-2008.

The standards of disclosure of financial accounts have evolved as a consequence of changes in the accountability expectations over government finances. The process of political change has forced a constant negotiation of the norms and traditions of budget disclosure.

As O'Donnell, (1999:43) affirmed, the perception of corrupt acts do change from one country to another. The perception of corruption and wrongdoing can also evolve in the same country in different historical periods. What used to be an accepted budget practice of the former presidentialist system has become politically unviable two decades later. Today the re-enactment of the “secret fund” would be a cause for political confrontation with the Congress and the media. With stronger mechanisms of Horizontal Accountability and more dynamic vertical accountability, it seems unlikely that the “secret fund” could be replenished in the future. Sergio Aguayo analyses Zedillo's attitude toward transparency in a positive light: “Zedillo's attitude was very different from Salinas' when it came to political perspectives and styles. Zedillo took measures to reduce secrecy, and the *partida secreta* was reduced to nothing — it was still backed up by the Constitution, but at least he became the first president to publish the information on his salary” (Aguayo, 2008).

3.6 Budget accountability and the 1995 Tequila Crisis

Before the “Tequila crisis” of 1995, Mexico’s federal and subnational governments had no legal obligation or commitment to systematically disclose key financial information. There was no requirement to disclose basic financial data of national or subnational governments. At federal level, the recently autonomous Central Bank did not regularly disclose the level of international reserves. At the subnational level, there was no public information about revenue from local taxation, the size of the public debt or the calendar of payments. Federal and state government financial institutions did not provide key data, according to regular timetables, in order to be accountable to financial markets. However, the 1995 financial crisis highlighted the need for true and relevant information on government finances. As a consequence of the crisis, the timely disclosure of government financial information became a common practice for the Mexican government. In the aftermath of the crisis, the routine disclosure of public debt payments in state budgets became an innovation for Mexico’s subnational authorities.

In 1996, the Mexican government signed the Special Data Dissemination Standard (SDDS), a mechanism created by the International Monetary Fund (IMF) to evaluate the transparency and quality of the financial data of its member countries. In an indirect way, the IMF acknowledges on its web site that the Mexican financial crisis of the mid-1990s was the catalyst for promoting new standards for accountability of government financial and budgeting accounts:

In the wake of several international financial crises that began in 1994,²⁶ there was heightened awareness that the ready availability of comprehensive, reliable, and timely data would facilitate the implementation of sound macroeconomic policies and investment decisions, thereby reducing the frequency and moderating the severity of future crises.²⁷

²⁶ The Mexican financial meltdown known as the Tequila Crisis exploded in December of 1994.

²⁷ Through Internet: <http://dsbb.imf.org/Applications/web/gdds/gddsfaq/>, consulted March 16th 2005.

CHAPTER 3 – DECENTRALISATION AND PRESIDENTIAL ACCOUNTABILITY

In an address “How to Avoid International Financial Crises,” Stanley Fisher, Deputy Director of the IMF stated:

One of the many lessons drawn from Mexico was that the extent of the crisis was worsened by the poor quality of information supplied to both the official sector (including the IMF) and the markets.²⁸

As a consequence of the Mexican crisis, the IMF created a compliance information system for financial data (Savage, 2005:67). In October 1995, a committee of the IMF recommended the establishment of a two-tier standard for financial transparency: the SDDS, and the General Data Dissemination System (GDDS).²⁹ The GDDS is a less demanding standard of disclosure and a first step before joining the stricter benchmark of the SDDS. Both standards link the accountability of national financial information to the success of macroeconomic policies. The aim of the GDDS³⁰ is to modernize the statistical systems with an emphasis on the dissemination practices for economic, financial, and socio-demographic statistics. The objective of both disclosure standards is to help member countries strengthen their financial statistical disclosure in order to seek access to international capital markets. The list of 83 countries that adhere to the GDDS is comprised of less developed economies from Africa, Asia and the Middle East.³¹ The 60 countries that meet SDDS specifications include highly developed economies and new emerging markets.³²

In order to improve the confidence of bondholders and potential lenders, the Mexican government had to adhere to the IMF criteria of information disclosure. Mexico subscribed to the SDDS in

²⁶ Through Internet <http://www.imf.org/external/np/speeches/1997/101497.htm>, consulted June 27th 2005.

²⁹ The formal decisions to establish the SDDS and GDDS were taken in March 1996 and December 1997 respectively.

³⁰ The decision of a country to incorporate both accounting and disclosure guidelines is voluntary. Each national government had the flexibility to determine the speed and mechanisms for implementation of both systems. However, the guidelines of the GDDS are considered as a first step on the road to the SDDS's more challenging standards. The SDDS shares the same goals as the GDDS, but the participant countries, in general, already meet high data quality standards.

³¹ Of the 83 countries that have participated in the GDD, four now subscribe to the SDDS: Kazakhstan, Armenia, Bulgaria and Kyrgyz Republic, through Internet: <http://dsbb.imf.org/Applications/web/gdds/gddshistorydates/>, consulted March 16th 2005.

³² Through Internet: <http://dsbb.imf.org/Applications/web/sddssubscriptiondates/>, consulted March 17th 2005.

August 1996, but did not meet its specifications until June 2000. With the subscription to the Dissemination Standards Bulletin Board (DSBB), the Mexican government abided by a compromise to disclose timely financial information related to balance of payments, international reserves and foreign currency liquidity.

As a consequence of the 1995 financial crisis, Mexico's subnational treasuries fell into a payment crisis. During the negotiation of the financial bailout of the states, the federal government pressed for the periodic disclosure of the financial information of subnational authorities (Ramírez Verdugo, 2001:47).³³ The disclosure methodology established by the SDDS formed the basis for new benchmarks to improve the financial transparency of Mexico's state and municipal governments.

Jorge Chávez Presa, former director of the Public Debt Management in the Ministry of the Treasury (1994-1996) remembers: "The 1995 crises helped to discipline the states. The crises meant that there was a big financial problem for the majority of the state governments. The debt became ridiculous and impossible to pay since there were interest rates of 100%. The financial rescue of the states that happened during (19)95, was meant to reduce their debt and to order their accounting. They were very precise agreements in terms of federal transfers for subnational debt reductions. We forced state governments to inform us of their debts and of their public finances. It was a mess because states would come to ask for money and I would say, 'on what grounds? Do you have information on your public finances?' -No! 'Do you have a public account?' In this case we helped the PAN governors, then there was no one from the PRD, but (PAN Governors) from Baja California and Chihuahua. We helped, and then asked them to do the same for the municipal governments. That helped a lot. It was the catalyst for the change in the debt grades, I mean, it was a radical reform, actually the modifications transformed the financing to the states and municipalities — that was the result of the 1995 crisis (Chávez Presa, 2008).

³³ In December 1995, the total debt of states and municipalities was equivalent to 1.8% of the GNP (Amieva-Huerta, 1997:592)

With the aim of reducing the risk factor of subnational public borrowing, the federal government promoted a reform in the Fiscal Coordination Law³⁴ that forced states and municipalities to publicise their financial records. After Zedillo's reforms, subnational governments were required to publish current financial information in order to be eligible for a loan from a public or private financial institution (Cabrero, *et. al.*, 2000:14). In the aftermath of the financial crisis of 1995, the federal authorities did not have enough resources to bail out states with financial problems. The Tequila crisis raised alarm over the lack of budget and financial transparency, not only of national governments, but also of subnational authorities in federal countries. In order to prevent the need for further bailouts from the federal government, the new law required that state and municipal borrowers adopt the risk valuations of the rating agencies. According to Merino (2001:167) there has been a reduction in the discretionary use of federal funds to provide financial help to state governments. Since March 2000, there are new audit regulations, which establish that state debt ought to be graded by at least two independent rating agencies (Ramírez Verdugo, 2002:48).

Subnational governments use the *participaciones* as collateral to guarantee the borrowed sums (Giugale & Webb 2000:23). The new legal framework for subnational debt marked an important improvement in the disclosure standards of subnational budgets. However, this wave of transparency only affected data that is mainly relevant to the financial markets: the calendar of debt payments, debt/state revenue ratios, etc. As will be discussed in chapter 5, in fields that are not directly linked with financial performance, state budget transparency in Mexico still leaves ample room for improvement.

3.7 Decentralisation and the dusk of Presidentialism as we know it

Mexico's accelerated decentralisation eroded the financial dimension of the metaconstitutional powers of the President. The political system, with its commanding central figure who ruled the country with no counterbalance to his authority, receded to be replaced by a polyarchy (Dahl,

³⁴ *DOF*, January 28th 2000.

1971:7) with dispersed political and financial powers. In his 1996 State of the Union address, Ernesto Zedillo acknowledged the existence of presidentialism and phrased the epitaph for an era:

“It is my conviction that the President of the Republic should not have to exercise any powers other than those explicitly conferred on him by the Constitution and the law. The Executive Power can only be legitimately strong if it abides by the law. I will always be on the side of the Mexicans that demand the consolidation of a new stage, where the exercise of Executive powers would not be authoritarian nor benefit from powers foreign to the rule of law. If the Executive invades the rights of other powers or other levels of government, it does not resolve conflicts, nor does it improve democracy or strengthen the Republic (Zedillo, 1996:23).”

Zedillo was not joking. In 1994 he promoted a reform to increase the independence and judicial review abilities of the Supreme Court. He also decentralised the nomination of the party's candidates for state governorships to the local PRI machines. In 1994, the PRI changed its statutes to permit local conventions to choose local candidates without the interference of the centre. In 1996, he promoted an overhaul of the electoral system, diminishing the influence of the Executive over the electoral institution. Finally, during the last year of his *sexenio*, Zedillo relinquished the president's unwritten power to appoint his successor. Ernesto Zedillo was the first president in modern times who faced a Congress effectively controlled by the opposition. In this political context, he was left only with his constitutional powers.

3.8 Conclusion

For the last seven decades of the 20th Century, the constitutional federal system was made ineffective by the centralising synergies of the presidentialism and the PRI monopoly. In a quasi-single party system, the Mexican President controlled the appointment of PRI candidates to elective positions at federal, state and even municipal level. The same figure that controlled the professional career of politicians had domination over the tax bases and the geographical

distribution of government spending. The President had control over the input and output of public finances, as the federal government concentrated the tax revenues and the expenditure allocation. Democratisation of the political system and the decentralisation of expenditure eroded the hegemony of presidentialism. The laws and distribution formulas that were the basis of decentralisation forced the President to render accounts to subnational political actors. The Executive was transformed from accountability *holder* to accountability *holdee* of state governors.

The most relevant characteristic of Mexico's decentralisation is that the President and the federal bureaucracy agreed to cede control over a massive pool of resources that were used as a device of political manipulation. The act of self-mutilation of a financial tool of political control was a means to hold on to power, not for the President as an individual, but for the institutions that gave the PRI its command over the political system (Ward & Rodríguez, 1999:52). An anecdote illustrates the outcome of the new political and financial order. According to press reports,³⁵ a street vendor approached President Ernesto Zedillo and tried to sell him a small figure of the Virgin of Guadalupe. The president's reply provides an apt metaphor for the conclusion to this chapter: "Excuse me, but I do not have cash." The institutional figure who was the supreme patron of political clientelism did not have any money on him. But after decades of client-patron relationships, clientelistic practices would not vanish just because of a change in the president's political behaviour. Zedillo announced the epitaph of Mexican presidentialism, but state governors became the modern heirs of the declining institution.

These changes are fundamental in understanding the endurance and evolution of clientelism (Roninger & Gunes-Ayata, 1994:15). In Mexico, single-party presidentialism was the hegemonic system of political organisation, but was challenged by the emergence of a competitive party system. To understand current clientelistic practices at the subnational level, it is crucial to follow the decline of the President as a central figure of the political structure and the main financial source for subnational governments.

³⁵ *La Jornada*, October 31st 1998.

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With increased accountability mechanisms in financial transfers to states and municipalities, the President faced a reduced ability to apply clientelistic strategies and use federal cash transfers as a tool of political control. From 1998 on, the President's powers over a clientelism-based budget diminished. This was not the end of political clientelism in Mexican politics, but the beginning of its decentralisation.

The unintended result of decentralisation was to make additional financial resources available to state and municipal office holders, who did not have effective institutional mechanisms to enforce budget accountability. The concentration of tax collecting tasks in the federal government was a sign of the asymmetrical economic development and institutional imbalances of Mexico's regions. However, the decentralisation of spending treated all Mexican states as legal equivalents, despite their deep disparities in administrative and accountability infrastructures.

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CHAPTER 4

The Decentralisation of Clientelism

CHAPTER 4 THE DECENTRALISATION OF CLIENTELISM

*Decentralisation efforts of the last twenty years have produced change;
it has been in the emergence of a new brand of federalism,
with large powers concentrated at state level.*
Victoria E. Rodríguez (1997:87)

The government of Ernesto Zedillo (1994-1997) marked the beginning of a new order in Mexico's political system. This transformation implied that the Executive became an accountability holder of the Congress and subnational governments. The Legislative branch and the state authorities evolved from a submissive role, to become the accountability holders of the presidential institution. Through these changes, the President lost his role as the supreme patron of political clients in Mexico.

Chapter 4 claims that clientelist practices survived presidentialism. The traditional patron-client relationship adapted itself to the transition from a single party system, to a new context of intense electoral competition under a multiparty structure. Clientelism continued under a competitive democratic regime, because it works as a mechanism of reward for party loyalty. The most relevant difference between the earlier version of clientelism under the PRI hegemony and the new plural party system is that the budget used for clientelistic practices is not monopolised by either the President or a single political group.

In chapter 4, I contend that state governors and municipal presidents became the new patrons of clientelistic politics in Mexico. With a resemblance of the habits of presidentialism, the unwritten powers of state governors undermine the formal checks and balances that are stated in the law. However, state and municipal governments are not alone in the use of public resources to mobilise loyal constituencies.

Chapter 4 analyses how the allocation of public resources through the Federal Congress became influenced by the political preferences of the parties represented in the Chamber of Deputies. Clientelism in the Mexican democracy has a singular characteristic. As the law forbids congressional re-election, the deputies do not have the classic pork barrel incentives because they do not obtain individual political gains from increasing spending in their own electoral districts. Their incentives lie in allocating expenditure to states governed by their own parties and expecting that the governors and party bureaucracies will take notice of their services in the budget negotiations. In the aftermath of decentralisation, the Congress and the subnational authorities became the new managers of particularistic spending.

4.1 Mexico after decentralisation

Since the creation of *Ramo 33* in 1998, the most visible changes in the decentralisation process have been the increasing demands for funds made by subnational governments. During the government of Vicente Fox (2000-2006), the effective tax bases of state governments were the deputies at the federal Congress. The governors applied political pressure on the deputies that represented their own states in order to increase the share of financial rewards. This trend increased subnational fiscal dependence and created further disincentives for state and municipal tax collection (Díaz Cayeros, 2004:207).

In countries where there is a full decentralisation of taxing capacities to local authorities, subnational tax bases might increase the revenues of the entire public sector. In Mexico, fiscal federalism has become a dispute over a fixed pool of resources: the federal tax base. With limited political will for taxing local fiscal bases, the distribution of federal resources is based on a zero-sum game. The additional resources obtained by one state are lost by the others or by a corresponding reduction in federal government spending (Rojas, 1999:21). Such a distribution of fiscal responsibilities and the limitation of subnational tax bases created incentives for rent seeking behaviour by states and municipalities. Fiscal federalism became an endless dispute over a purse of finite resources (Díaz Cayeros, 2004:200). Haggard (1999:33) finds that in a decentralisation process there are cases where expenditure responsibilities are transferred

ahead of revenue-raising powers, as has happened with Mexican states. In the opposite case, funds are transferred without any additional responsibilities.

When the main motive for decentralisation is to appease regional political forces, the reallocation of responsibilities and funds is not based on the premise of increased efficiency and improvement in the quality of public services. As will be shown later in this chapter, the increase of funds for municipal governments has triggered bureaucratic expenditures and extravagant pay-rises for municipal officials.

4.1.1 Accountability: the neglected issue of Mexico's decentralisation

Mexico's prospects of economic development have been burdened both by an extreme concentration of power in federal hands during presidentialism and a "high-speed" decentralisation process. In the former political system, the budget was used as a political tool of the Executive. Under the new political system, the decentralisation of spending redistributed the means of guaranteeing political power in states and municipalities. In theory, a decentralisation process has the potential of promoting development through greater efficiency and accountability. However, if it is ill designed and executed, the process can have unwanted effects (Prud'homme, 1995:2; Giugale, Webb, *et.al.*, 2000:1).

Mexico's decentralisation transferred symmetric responsibilities to states and municipalities with asymmetric infrastructures and institutional capabilities. The federal character of Mexico's Constitution determined the outcome of the decentralisation process. As the Constitution treats all states as legal entities with equal rights, it would have been politically complicated and legally contested to promote different degrees of decentralisation, in accordance with the respective level of budget management administration. The decentralisation of Mexico's expenditure was treated as a consummated decision where states and municipalities had to absorb their new tasks, no matter whether they were ready or not. Instead, it should have been a process where subnational entities built administrative capacities in parallel with the

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absorption of new responsibilities. It is easier to write and approve a new law than to create the institutional infrastructure and human capital to enforce it.

From a constitutional point of view, states are legally equivalent to each other, and the same is true about the municipalities. However, these entities with equivalent constitutional rank had enormous disparities in their levels of economic development and contrasting governance capacities to absorb the responsibilities of expenditure decentralisation. To illustrate the different socioeconomic circumstances of the country's regions, Mexico's Human Development Report (UNDP, 2007:26-27) considers that the inhabitants of the Federal District (Mexico City) have a level of human development equivalent to the Czech Republic. The states of Oaxaca and Chiapas rank below the human development of the Palestine Occupied Territories. The contrasting levels of Human Development are also reflected in the different institutional capacities of state and municipal governments. For example, in 2000, only "25 to 40% of the municipalities had a budget planning unit and computerised accounts" (Giugale & Webb 2000:9).

The acknowledgement of institutional differences among legally equivalent levels of government would have added some prudence to the pace of the decentralisation process. On the other hand, the transition from a *metaconstitutional* to a constitutional presidentialism would have been much more difficult under a gradual approach to decentralisation. To withhold the transfer of funds and responsibilities to some states on the grounds of their fragile institutional structure could have been constitutionally contestable and politically unviable.

For Shah (1998:86), "a strong... accountable government at the national level is critical to the success of decentralisation policies." At the time when decentralisation moved forward (1988-98), transparency and accountability were neither attributes of the Mexican political system, nor topics of research for political scientists. The whole debate around the democratisation of the country focused particularly on the construction of institutions to guarantee free and fair elections. If the issue of accountability was ignored by the democratisation debates, it is understandable that it was also overlooked by the whole process of decentralisation. In

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Mexico's case, the assumption that decentralisation is a mechanism for good governance was tested in the context of a federal country in a period of political flux. Through Mexico's case study, it would be feasible to suggest that a certain degree of political stability at national level is a desirable precondition for the success of decentralisation. Mexico had a stable transition to democracy, although it was evident that the *sexenio* of Ernesto Zedillo marked the beginning of a new order in the political system.

By 1998, when the institutional setting of decentralisation was already in place, the Congress and the federal government were taking the first steps to build technical capacities for modern audit and budgeting systems.¹ As described in chapter 2, Mexico's Supreme Audit Institution did not become fully operational until 2000. During the most intensive stage of decentralisation, the federal institutions did not have the technical skill, nor the legitimacy, to provide leadership on how to design institutions for budget accountability. The initiative to take advantage of decentralisation as a tool for good governance was left to the resourcefulness and will of state governments. Tanzi (2000:9-10) maintains that the outcome of decentralisation depends on functioning institutions for budget management, tax policies, revenue administration and financial accountability. Strong budgeting and accountability institutions increase the likelihood that local authorities will use the financial transfers to improve efficiency and public services. As a basic step, decentralised decision-making must incorporate institutions for Horizontal Accountability in order to fulfil its theoretical expectations of improved governance.

Weak administrative systems and the inadequacy of budget and financial institutions at subnational level are some of the problems that were highlighted by Mexico's decentralisation (Cabrero, 2000:30). Decentralisation refers both to a condition and to a process, and its merits and flaws are often discussed simultaneously for both concepts (Prud'homme, 1995:3). The gains obtained from decentralisation depend on the institutional framework, the regional political culture and the speed of its implementation. Mexico's decentralisation process started

¹ See chapter 2 regarding the institutional changes that led to the creation of the Supreme Audit Institution and the reform in of the federal budgeting cycle.

from a point of institutional asymmetry between federal and local bureaucracies. The professional capacities of public servants and the institutional infrastructure in each state or municipality have a determinant influence on the process. There were contrasting differences between the administrative capacities of state bureaucracies.

4.1.2 Differences between federal and local bureaucracies

In the early 1980s, state administrations had neither the capacity nor the resources to face the challenge of decentralisation. During the De la Madrid government, federal ministries began to open branch offices in the state capitals in order to build a basic administrative infrastructure at the local level. The federal government needed to decentralise its own structure before initiating a genuine process of delegating responsibility at a subnational level (Merino, 1996:375). In education and health, the federal government created a network of regional offices (*delegaciones federales*) that would be the institutional bedrock of subnational public administrations. The next step of decentralisation was to transfer this network of regional offices to the administrative control and authority of state governments. The decentralisation process thus began, in the early eighties, with a geographical dispersion of administrative units but no real process for distributing authority and political power among different levels of government (Díaz Cayeros, *et. al.*, 2000:127).

Decentralisation transfers power and resources both to local governments and local bureaucracies. Despite some advances in building administrative infrastructure, there are still big gaps between the federal, state and municipal authorities. The federal bureaucracies operate with better resources and technical skills than some of their local counterparts. Federal bureaucrats also tend to receive higher salaries and better opportunities for promotion than their local peers (Prud'homme, 1995:9). After the recent implementation of the civil service law of the federal administration, the level of political intervention in bureaucratic activity will be higher in states and municipalities than at the federal level. Since 2003, 4 states governments (Aguascalientes, Veracruz, Quintana Roo, and Zacatecas) and Mexico City have approved civil

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service laws. However, further research is needed to investigate the impact of the new legislation on the professionalisation of a new generation of civil servants at state level.

The asymmetry of administrative development between federal and state governments reproduces itself at the next level of government. The *ayuntamientos* often depend on the structure and capacities of state administrations in the same way that states rely on federal capacities. With an identical premise that the federal government has better capabilities for tax collection than the states, some state revenue bureaus perform the collection of the property tax for the municipalities. “Thus by agreement, by custom or by inertia, state governments often act ‘on behalf’ of municipalities. To what degree they take on these functions varies from state to state and municipality to municipality. (Cabrero, 2000:11)” With the aim of breaking the chain of fiscal subordination, municipalities in large cities have built their own revenue administrations to collect property taxes and charge for the use of public services.

Chapter 1 of the dissertation offered a discussion on corruption and decentralisation. For the present chapter, it is relevant to incorporate Prud’homme’s critique of decentralisation (1995:9), as he presents several intuitive arguments to sustain the case that there are greater opportunities for bureaucratic corruption at the local than at the federal level. He does not present empirical evidence, but his intuitions are useful to explain Mexico’s case:

- Local politicians and bureaucrats are probably more subject to pressing demands from local interest groups (whose money and votes count).
- The major theoretical advantage of decentralisation is the flexibility of local politicians and bureaucrats to make decisions; however, this attribute might lead to discretionary use of the budget to favour their own political clientele.
- Subnational bureaucrats have a smaller margin of autonomy relative to subnational politicians than national bureaucrats do relative to national politicians.
- Corruption frequently requires the collaboration of politicians and bureaucrats and the distinction between them is generally less rigorous at the local level.

Mexico could add a fifth argument to Prud'homme's thesis: In states, the media is rarely independent. Most local newspapers and electronic media have a strong financial dependence on state governments. In O'Donnell terms, the vertical accountability of local bureaucracies through free media is a rare exception in Mexican states. The following section of the chapter presents some recent cases to show that the margins of autonomy among local politicians and bureaucrats have created a new breed of clientelism and pork barrel politics² in Mexico.

4.2 Clientelism and Democratisation in Mexico

Shah (2007:232) includes patronage and clientelism as two of the forms of corruption, where officials abuse their positions to provide assistance to their clients to guarantee that they receive preferential treatment in their dealings with the public sector, including public sector employment. Clientelism implies a *dyadic relationship* in the sense that it is a direct association involving some kind of exchange between two individuals (Lande, 1977:xiii). This dyadic relationship presupposes that the client will welcome his patron's political leadership and in exchange be "provided with goods, services and social advancement" (Roninger & Gunes-Ayata, 1994:4). The practice of clientelism requires a certain kind of incumbent who is willing to use the powers of his office to generate direct benefits for core supporters. Politicians will give preference to policies that benefit voter clusters, which bring higher expectations of electoral gain. According to Díaz Cayeros and Magaloni (2003:16), politicians can provide four different kinds of rewards:

- Targeted goods or services that are delivered to particular individuals or groups and the consumption of which can exclude the rest of the society.
- Goods that are usually granted to political followers but can also be used by other groups in society, including swinging voters.

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- Universal public goods where it is impossible to target the benefits to specific groups: these might include clean air, universal immunisation or national defence.
- Public goods that have limited or targeted beneficiaries because their provision is circumscribed to certain geopolitical jurisdictions. These goods are those most widely used for “pork barrelling,” or particularistic spending.

The voter will determine his or her voting behaviour according to his or her preferences in the delivery of public goods and the credibility of a candidate’s promises. Clients award their votes on the expectation of some benefits. Medina and Stokes (2002:16) distinguish clientelism from general electoral politics because it involves a convincing possibility that clients who do not show their support at the polls may be excluded from the benefits. In this sense, clientelism implies the use of goods that can be targeted to loyal supporters.

The allocation of budget spending and the provision of public goods aligned with political interest was a basic element of the Mexican political system under the PRI regime (Mitchell, 2001:1). Weldon and Molinar (1994:139) found evidence that PRI governments directed goods and expenditures to their core supporters. Roninger & Gunes-Ayata (1994:19) state the expectation that “modern” forms of political participation would replace patron-client relations. However, clientelistic practices are not fated to vanish with the emergence of democratic regimes. If economic development has slowed behind political modernisation, clientelistic practices can be more adaptable to new political structures (Lermarchand, 1981).

For Díaz Cayeros and Magaloni, (2003:29) as modernisation and urbanisation move forward, clientelism becomes circumscribed to rural or backward areas; in their view, clientelism does not fade, but it is concentrated in specific regions of a country. However, in 2001, the mayor of Mexico City created a pension scheme for low-income, elderly citizens that bred a new version of urban clientelism. Close to 330,000 people, 70 years or older, receive monthly pensions of

² According to the OED, “pork barrel” refers to “The state’s financial resources regarded as a source of distribution to meet regional expenditure; the provision of funds (in U.S., Federal funds) for a particular area achieved through

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700 Mexican pesos (£35). With the pension provided for the elders, it was possible to mobilize other members of the family for political purposes. The beneficiaries of the program were frequently called up for electoral rallies. The city government sent the message that the only way to guarantee the continuity of the pension scheme was to re-elect the incumbent political party.

The main critique of this pension scheme was its long term financial viability, even though the programme was replicated by different political parties in other states of the country. In light of this example, it is unreasonable to infer that clientelistic relations are limited to rural areas. It can even be said that the practice of clientelism depends on the degree of economic development more than on the level of political modernisation. For Roninger & Gunes-Ayata (1994:22), the key determinant in the prevalence of clientelistic relationships is whether individuals or communities perceive their expectations, hopes and sense of security as dependent on the political fortunes of their patron.

According to official data,³ in 2006, 42.6% of the Mexican population lived below the threshold of poverty. Despite the radical changes in the political system, this vast sector of low-income citizens still leaves ample room for budget-based political manipulation. As prosperity remains an unattainable goal, there is a propensity to exchange political support for goods and services. Scott (1972:125) argued that clientelistic practices are preserved by a state of inequality in which the patron supplies goods that the “client and his family need for their survival and wellbeing.” In a comparative analysis Piattoni (2001:23) found that in some European societies like Spain, clientelism can coexist with the civic society and that the patron-client relationship might persist even after an intense process of economic modernisation.

political representation or influence.” The term was used for the first time with this meaning in 1909.

³ CONEVAL, through Internet: <http://www.coneval.gob.mx/coneval/Programas.html>, consulted January 7, 2008. The threshold of poverty refers to people who earn less than what is necessary to cover basic consumption in food and clothes; Coneval defines it as *Pobreza patrimonial* (Assets poverty).

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Clientelistic bonds might be affected by political modernisation, but new versions of exchange can emerge within the new environment. Carl Lande (1983) argued that modern political systems and clientelism were not only compatible but also complementary. Clientelism can evolve and interact with modern types of political participation (Roninger & Gunes-Ayata, 1994:20). Clientelism can survive the transition from an authoritarian single party system to a plural and democratic regime, because it works as a mechanism to reward political activists and party loyalty. However, control over the constituency of clients is not assured and might be subject to the competition of alternative patrons and power brokers, such as other political parties or social organisations (Roninger & Gunes-Ayata, 1994:14). The most striking contrast between previous forms of clientelism under the PRI hegemony and the new plural party system is that the resources used for clientelistic practices are not monopolised by either the President or by a single political group.

With the expansion of political pluralism in Mexico, there was an open question about how traditional clientelistic practices would mutate after the end of the PRI monopoly in power. During the twentieth century, Mexican presidents used social policies to support their legitimacy. As a consequence of political change, the Presidency required more democratic means of legitimisation (Mitchell, 2001:2). The divided Congress and the reforms that promoted budget accountability and decentralisation reduced the space for clientelistic policies emanating from the Presidency and the federal government.

The PRI is no longer a national hegemonic presence, but it is still the strongest force in the political spectrum. In several states, the PRI prevails as a chief political actor. In 2008, it governed 18 states and was the main political force in 17 local congresses. The PRI's corporatist arms have reduced their political strength, but they are still effective means of political participation and channels to articulate special interests (Mitchell, 2001:7). Patronage and clientelism are mechanisms that serve to bridge the formal and informal rules of the game (Roninger & Gunes-Ayata, 1994:10). If the rules change, as happened in Mexico, clientelistic practices will adapt their informal practices to the new political order. Governors and municipal

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authorities still use the provision of goods and services as a source of political capital that enables them to obtain the support of community and corporatist leaders.

David Colmenares, former Minister of finance of Oaxaca, states in an interview: “Every governor has an incredible clientelistic sense of public works investment. Even PAN governors. They will talk about public works as their own: ‘I’m building a hospital, I’m building a freeway,’ they’ll say. And their best technique is spending. I was financial secretary for five years. Talk to my boss, the state governor, all he did was to spend money, and it still works that way” (Colmenares, 2008).

Opposition parties do not have enough access to state resources to mobilize large clienteles, but they can make use of patronage once they are in power as it remains the most common way to manipulate public funds for political gain. Roninger and Gunes-Ayata (1994:22) state that in a democracy, political parties have two basic purposes: 1) they are the bargaining agents over resource allocation in the case of both clientelistic practices and universalistic principles; 2) they create in the individual “a new kind of identity, a sense of belonging to an imagined community” that serves as a bridge of access to political power. Often, belonging to these politically organised communities can bring direct benefits to their members. In a democratic system, clientelistic networks can be a source of both electoral influence and a political input to define the formulation, execution or blockage of public policies.

Normally, clientelism does not break the law, but it pushes the boundaries of “proper moral and ethical conduct in government.” The tolerance or acceptance of this behaviour depends on the regional or national political culture (Simpson, 1988:387). The logic of clientelism is not a matter of legality, but the administration and allocation of public resources. Clients and patrons are looking for ways to maximise their advantages through the non-illegal diversion or political use of government funds. Client networks can create mechanisms of allocation that act parallel to the formal standards or they can become an intrinsic element of the legal procedures for assigning resources.

4.2.1 Clientelistic practices under Mexican democracy

Díaz Cayeros and Magaloni (2003:21) argue that petitions for employment in the bureaucracy are an “excludable and reversible good” that link the medium- and long-term interest of the voter to the fate of his patron-politician. Thus, an employment position is an ideal “good” for the voter because there is no assurance that politicians will keep their commitment to deliver other kinds of policies or services. For Robinson and Verdier (2002:2) politicians have the motivation to expand the public sector even at the expense of higher taxes. As will be shown in the following section, in Mexico new bureaucracies are funded through higher federal transfers and in some cases cuts in capital investment. Patrons also prefer to create constituencies in the bureaucracy because they can expect long-term support from government workers. Just four states and Mexico City have a civil service regulation, and there is no formal tenure for government workers in subnational public administrations. The lack of tenure makes public servants more vulnerable to the pressures from their political patrons.

Figure 4-1 shows the average real growth in total expenditures and in the cost of bureaucratic payroll in states and municipalities from 2001 to 2006. After discounting inflation,⁴ during this period bureaucratic payroll grew 34% in states and 69% in municipalities. Average total expenditure had a real growth of 43% in states and 53% in municipalities.

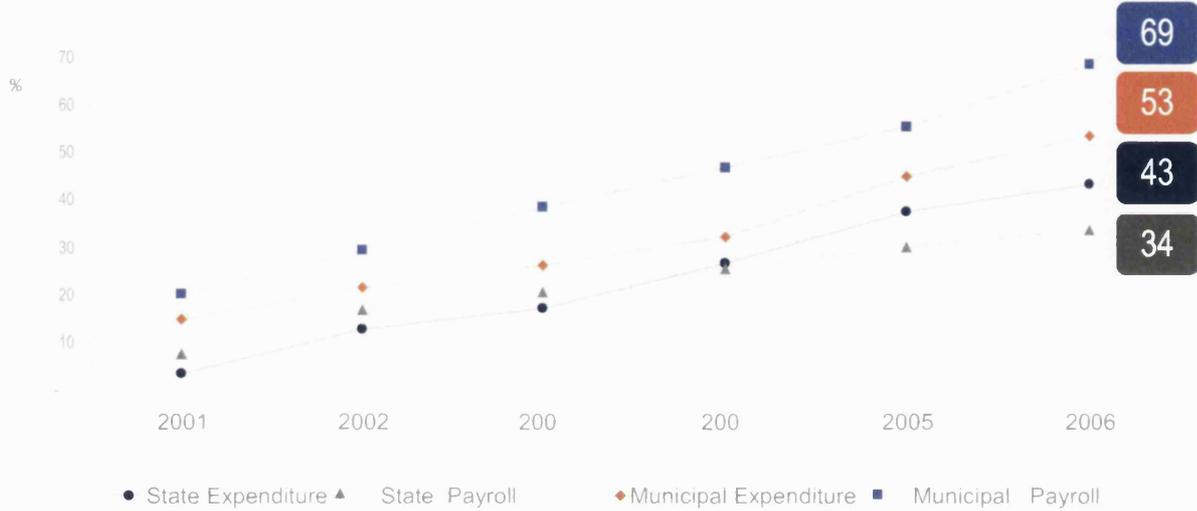
⁴ According to Banxico, aggregated inflation in Mexico from 2000 to 2006 was 39.53%.

Year	2000	2001	2002	2003	2004	2005	2006
Annual inflation at December of each year	8.96	4.40	5.70	3.98	5.19	3.33	4.05
Deflator 2006	1.298	1.2430	1.1760	1.1309	1.0751	1.0405	1.0000

Source: BANXICO, Índice Nacional de Precios y Cotizaciones 2000-2006, through Internet: <http://www.banxico.gob.mx/polmoneinflacion/servicios/calcdelInflacion/calcdelInflac.html>, May 8th 2008.

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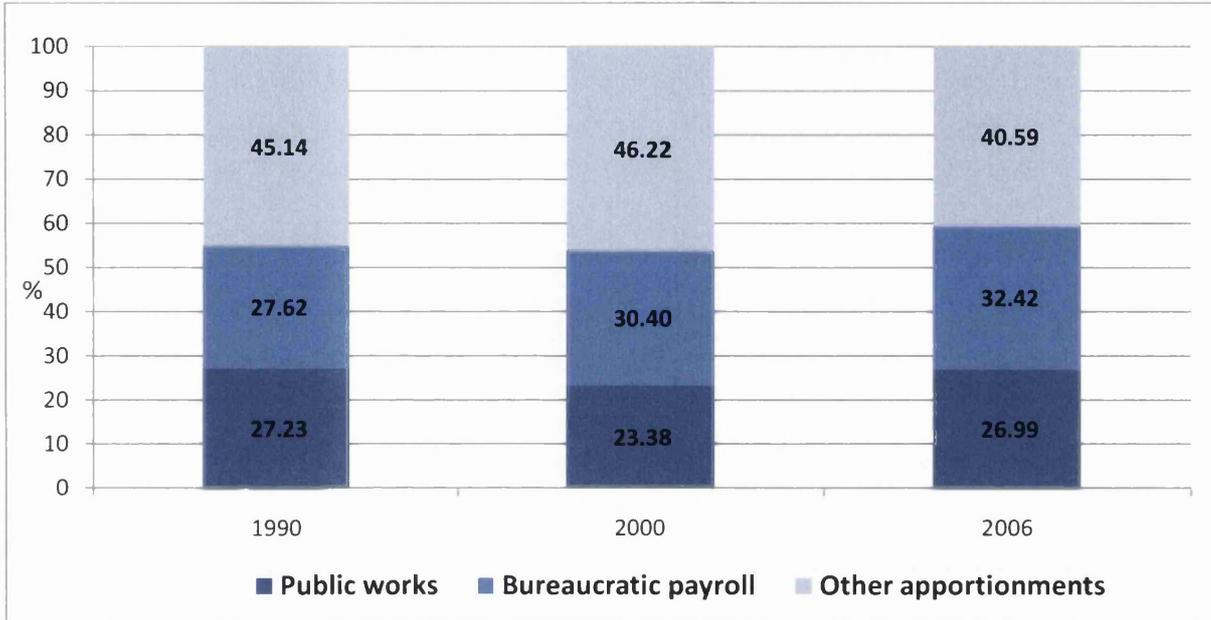
Figure 4-1 Real cumulative growth in states and municipalities (2001-2006)



Source: Calculated by the author, using data from INEGI, 2007.

Figure 4-2 shows that the percentage of bureaucratic payroll has grown as a share of total municipality expenditure from 27.6% in 1990 to 32.4% in 2006. It is plausible to suppose from the Figures 4-1 and 4-2 that municipalities have more budget margin to apply clientelistic practices than states do. In states, the share of bureaucratic payroll has remained almost constant at 28% of total state expenditure.

Figure 4-2 Distribution of total municipal expenditures

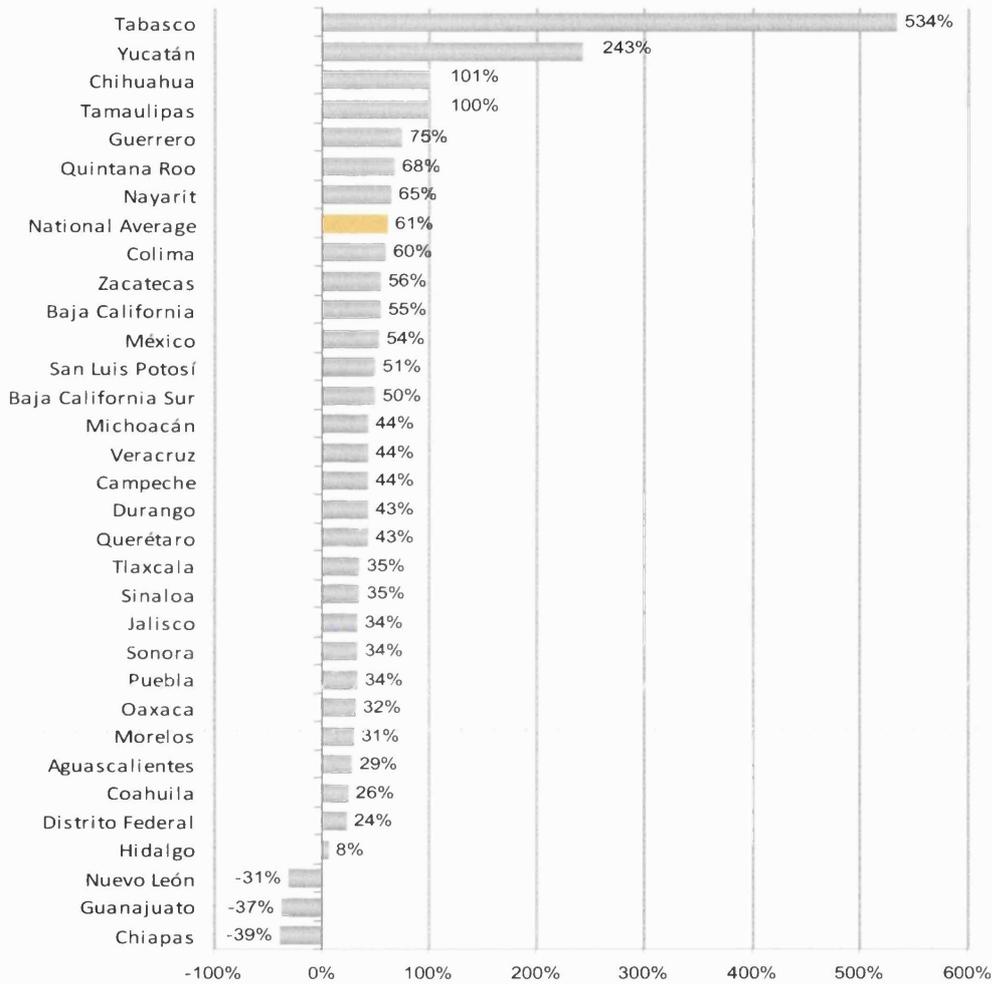


Source: Constructed by the author, using data from INEGI 2007

The data for Figures 4-1 and 4-2 was collected from the *Informe de Finanzas Públicas Estatales y Municipales* (Report of Public Finances of States and Municipalities), which is the largest compendium of financial data of subnational governments and is published by the INEGI, the National Office of Statistics. INEGI gathers the data directly from the *cuenta pública*, the end of fiscal year financial report, of the 31 states, the Federal District and the 2,438 municipalities. The category of Bureaucratic Payroll, *servicios personales* in its Spanish original, includes all the costs associated with the labour relationship between the state governments and its employees: salary, social security, pensions and worker benefits.

Figure 4-3 presents disaggregated information by state of the real growth in Bureaucratic Payroll for 2000-2006. The Table shows wide disparities in the changes in expenditure on the bureaucracy, with 534% increase in the state of Tabasco, and 3 states (Chiapas, Guanajuato and Nuevo Leon) with negative growth at the bottom of the Figure. The national average growth was 61% and the mode was 44%. Thirteen states had an increase of 50% or more in payroll expenses during the six year period.

Figure 4-3 Real Growth in Bureaucratic Payroll Expenditure (2000 – 2006)



Source: Constructed by the author, using data from INEGI, 2007.

4.2.2 The challenge of measuring government employment in states and municipalities

With the available data, it is impossible to discern if the increase in payroll costs is the result of higher wages, increased number of workers or a combination of both factors. Until 2005, there was no systematic and periodical information of government employment in states and municipalities. INEGI applied a four-yearly poll, the *Encuesta Nacional de Empleo* (National

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Employment Survey, ENE) from April 2000 to the end of 2004. The main objective of this poll was to provide periodical data of Mexico's labour market. This poll distinguished between people who worked in government and the private sector. However, there was no additional information to differentiate between federal, state and municipal workers. In 2005, the ENE was replaced by the *Encuesta Nacional de Ocupación y Empleo* (National Poll of Occupation and Employment, ENOE). The new poll shared the same objective as its predecessor, but it had a new methodology and a new questionnaire. In its 2005 exercise, the ENOE incorporated a question that allows us, for the first time, to have data about changes in government employment in states and municipalities. From the perspective of the dissertation, the problem is that there are only consistent figures from the same source for the years 2005 and 2006. At the time of writing, July 2008, there is no scheduled date for the release of the data for 2007.

Another possible source of information about government employment are the INEGI monographs with economic and demographical information for each state. This source presents inconsistent and contradictory information due to lack of homogeneity in the classification of information: some states include the teachers as government workers, others exclude them from the category. The state of Michoacán reported 296,000 workers in the year 2000, but for the year 2002 it only stated 33,000 without any explanation for the 89% reduction in government employment. For this dissertation, I tried to find the data through the states' Freedom of Information Act. However, state governments merely referred back to the documents published by INEGI.

There was a national survey of municipal presidents in 2002, including data about government workers employed in municipalities. In 2002, one of every three employees was dedicated to administrative services and one of every five to policing and public security (Sedesol, 2002:59). The problem was that the survey of municipal presidents was an isolated exercise that was not replicated in later years. Using the data of the 2002 survey⁵ of municipal presidents and the

⁵ *Los municipios en México: Información para el Desarrollo*, Cedemun-Inegi 1997; *Encuesta Nacional a Presidentes Municipales sobre Desarrollo Social*, Sedesol, INEGI, Conapo, 2002.

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2006 National Poll of Occupation and Employment, the total number of employees in the 2,427 *municipios* grew from 548,000 in 2002 to 758,178 in 2006; this represents a 38% increase in the number of people working in municipal governments. In the same period (2002-2006), the real growth of bureaucratic payroll in municipal governments was 40%. There are obvious methodological shortcomings of comparing data from two different measures of municipal employment and there is no data available for the years 2003 to 2004. Patience is required in order to obtain data for future years and be able to have a proper correlation analysis of the INEGI's National Poll of Occupation and Employment and the Report of Public Finances of States and Municipalities.

Table 4.1 presents the first known data on employment in the 31 state and DF governments in Mexico. The table was constructed with information derived from the National Poll of Occupation and Employment, which contains data on the employed population by sector of the economy and state. Since the poll is applied every three months in 120,260 homes, these figures guarantee that the sample is representative at national and state level. The aggregated data of the ENOE poll is available through INEGI's Internet webpage,⁶ but the information on government employment does not distinguish between workers in the three levels of government. However, since 2005, the data base of the poll allows the use of information from question 4d of the questionnaire, which differentiates the population employed in the Federal, state and municipal government.

Table 4.1 shows the percentage of state government workers as a share of the total population above 14 years of age, which is considered by INEGI as the threshold for the working age. In three states, (Baja California Sur, Tabasco and Zacatecas) the state government provides more than 10% of the employment opportunities available in the state. The INEGI account of the total working populations includes workers from both the formal and informal sectors.⁷ If the

⁶Through Internet: http://www.inegi.gob.mx/est/contenidos/espanol/sistemas/enoe/ind_trim/default.asp?c=11415 Consulted June 11th 2008.

⁷ Rural workers are considered by INEGI as part of the informal sector.

percentage includes only the formal sector, the weight of government employment increases up to 20.7% in the case of the state of Tabasco.

Table 4-1 Number of State Government Workers and Percentage of Total Population In Working Age (2006)

State	State Government Workers (SGW)	SGW as % of Total Working Age Population	SGW as % of Total Working Age Population In the formal economy
Aguascalientes	36,572	9.0	12.1
Baja California	73,858	6.0	7.5
Baja California Sur	23,198	10.3	11.9
Campeche	31,498	9.5	13.2
Coahuila	70,904	7.1	9.0
Colima	21,852	8.3	12.7
Chiapas	103,726	6.8	12.5
Chihuahua	95,324	7.0	8.8
Distrito Federal	270,108	6.9	7.4
Durango	51,298	9.3	14.2
Guanajuato	95,623	5.1	8.4
Guerrero	107,248	9.0	16.1
Hidalgo	84,620	9.0	16.8
Jalisco	168,976	5.9	8.9
State of Mexico	338,287	6.0	12.3
Michoacán	122,654	7.7	14.3
Morelos	52,460	7.8	13.5
Nayarit	37,339	9.2	14.2
Nuevo León	115,749	6.2	7.4
Oaxaca	113,149	8.2	14.0
Puebla	117,127	5.2	10.4
Querétaro	45,167	7.2	9.2
Quintana Roo	45,794	8.4	10.5
San Luis Potosi	65,055	7.0	11.6
Sinaloa	84,269	7.4	11.7
Sonora	64,424	6.5	9.0
Tabasco	74,557	10.3	20.7
Tamaulipas	87,367	6.8	9.4
Tlaxcala	32,819	7.7	15.6
Veracruz	181,164	6.7	12.4
Yucatán	59,683	7.4	11.7
Zacatecas	52,547	10.3	17.9

*Includes teachers, and workers in the state health system.

Source: Constructed by the author, using data from ENOE, INEGI 2007a.

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With no tenure, the absence civil service systems in most of the state administrations, and non-transparent processes for bureaucratic career advancement, governors have an important influence upon the opportunities in the labour market. As PRD Senator from Tabasco Arturo Núñez phrased it during an interview: “In my state, either you work for Pemex (the national oil company), for the municipalities or for the governor. The other job option is to become a government contractor” (Nuñez, 2008).

The premise that decentralisation will produce efficiency gains in budget expenditure assumed that governors would not use the new pool of resources for different objectives than maximising the welfare gains of society. “The Mexican public sector is clientelistic. The president chooses his cabinet and selects a number of people to fill a number of public offices; senior figures in the government will also expect to be able to appoint their juniors so the process continues downward.” What Philip (1992:7) states here about the federal bureaucracy can also be applied to governors and municipal administrations.

Moisés Alcalde Virgen, former PAN deputy in the Congress of the State of Mexico and contender to the municipality of Naucalpan in the same state, said in an interview: “A municipal president from any political party begins his political aspirations first with the heart and mind’s desire, right? ‘I want to become a city-mayor’... for this reason, he will have to go with its party activists and constituencies... at the end of the day commitments are generated, and those commitments generate the obligation that when one becomes Mayor, one has to pay with jobs as a reward for participating in the political project...and another reason is that it’s important to maintain political bases, right?, and that happens in any political party” (Alcalde Virgen, 2008). Fakin & Crombrugghe (1997:8) noted that the decentralisation of expenditure may imply the expansion of the state's bureaucracy, as in many cases greater resources have produced “an unnecessary increase in the staff members.” The figures presented in the previous section support Fakin & Crombrugghe’s claim.

4.2.3 Bureaucracy as clientelism: the bounty of municipal autonomy

As a consequence of financial decentralisation, municipalities have received considerable unallocated funding (Giugale, *et. al.* 2000:21), and the transfer of funds without additional responsibilities has created incentives for overblown payrolls and inefficient expenditures. In December 2002, the daily *Reforma* published the following story on its front page: “The mayor of Tultitlán, José Antonio Ríos, earns US\$46,000 more than the British Prime Minister, Tony Blair... According to the secret payroll of the municipal government, Ríos Granados receives at least US\$213,000 (a year), while the British head of government received US\$167,000 in the same period (*Reforma*, 2002-XII-19).” Tultitlán is one of the 125 municipalities in the State of Mexico and according to the 2000 census it had a population of 432,000 people. There are 2,429 municipalities in the country.

Article 115 of the Constitution grants municipalities the autonomy to decide upon their own “internal administration.” In some cases, this constitutional provision has translated into the autonomy and freedom for municipalities to provide government officials with salaries that are equivalent to the heads of government of G-8 countries. Neither federal nor state governments have legal mechanisms to prevent municipal officials from allocating a disproportionate share of municipal budgets into their own salaries. The federal constitutional system shielded states and municipalities from pressures to improve the transparency and accountability of public expenditure. Subnational authorities exercised the freedom and sovereignty to decide upon internal administrative matters. Until the constitutional reform of 2008⁸, neither the federal nor the state governments had any authority over the draft, content and accounting typologies of municipal authorities. Each state and municipality has had its own semantic categories to classify its expenditure appropriations in the budget decree. Also, every local authority has the liberty to establish its own disclosure criteria. The former mayor of Tultitlán hid his 16,000 USD

⁸ The Congress has until May 2009 to approve the secondary legislation that will enforce the homogenisation of budget information in states and municipalities. For an analysis of the Constitutional Reform, please refer to chapter 5.

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per month salary behind obscure budget categories like “contingent appropriations” or “special expenditures for non-predicted budget items.”

The lack of clear and homogenous budgeting criteria opened the door for opacity, waste and corruption at subnational level. Before the recent constitutional reform, there was no mandate to have a coherent glossary of budget terminology. The information about the oversized salary of public officials in the municipality of Tultitlán was just the tip of an iceberg.⁹ Local authorities have had numerous ways of creative accounting to hide the real wages of high-ranking municipal officials. The gross income of municipal officials can be broken into different budget lines like “performance bonus,” “incentives,” or “costs related to the municipal president’s office.” The budget line of *remuneraciones adicionales y especiales* (additional and special payments), which consists of supplementary income for elected and administrative municipal officials, grew 45.25% in real terms between 1999 and 2006. For 2006 the amount allocated for *additional and special payments* represented an additional 17% of the total recognised expenditure as bureaucratic payroll of municipal administrations (INEGI, 2008:78). One of the problems with budget documents in several states and municipalities is that it is impossible to get a complete picture of labour costs just by observing the budget line item of *servicios personales* (bureaucratic payroll). That lack of transparent budget data was one of the arguments for promoting a national legislation to homogenise the design and content of budget documents in states and municipalities.

The disproportionately high salary of a city mayor may not have grave financial implications within a given municipal budget; however, the problem is that the pay of the highest ranking officials sets an income standard for the top officials of the municipality. As the salary of the mayor is granted by the vote of the *cabildo*, the municipal version of a legislative branch (see chapter 3), the members of this municipal assembly usually receive generous incomes to assure

⁹ According to the weekly newspaper *Cambio* (2002-1-27th), at least three municipal presidents in the State of Mexico earned higher salaries than President Vicente Fox.

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their collaboration. In 2002, the monthly payroll of 18 officials¹⁰ of Tultitlán's Municipal government was close to US\$1.5 million (Reforma, 2001-VIII-02).

At the federal and state level, there have been several initiatives to impose a ceiling on the salaries of municipal presidents. The State of Mexico changed the law to force municipal governments to publish full information about its payroll (*Diario de México*, 2004-VII-23), but there were no provisions to enforce the bill. In Tlaxcala there was a decree to cap municipal salaries, but municipal authorities did not abide by the new rule (*El Sol de Tlaxcala*, 2005-III-29). The then leader of the PAN in the Chamber of Deputies, and current President of Mexico, Felipe Calderón drafted a bill to limit municipal salaries, but it was never presented on the floor of the Congress because of the possibility that it might be rejected by the Supreme Court, due to the constitutional concept of free sovereignty of municipalities. The political parties tried to curb the increases of the salaries through written commitments of their candidates for municipal elected positions, but these were informal compromises that are not enforced by any law. Any serious attempt to cap the payroll expenditure of municipal authorities would need to change the Constitution, in order to reduce the margins of administrative autonomy given to state and municipal authorities.

In the heyday of presidentialism, there was no transparency of public official salaries and the President had the political leverage to control or revoke the decisions of subnational authorities, even in the furthest corner of Mexico. The administrative opacity of the presidentialist era has been replaced by a considerable degree of transparency but without any institutional mechanisms to prevent a lawful but abusive appropriation of public funds by top officials in subnational governments. The disproportionate size of public official salaries has been interpreted as a "legalisation of corruption," because those wages are paid without the infraction of any law.

¹⁰ One mayor and 15 *regidores* (aldermen) make up the *cabildo*, along with two high ranking officials of the local administration.

The problem is not limited to the salaries but also to government waste. In an Interview, Jesús Silva Herzog, Minister of Finance from 1982-1986, stated with a joke: “The distribution of resources in states and municipalities has contributed to a suburbanisation of government expenditure. This means that when a Municipal President gets some transfers, the first thing he does, is he goes to buy a suburban vehicle” (Silva Herzog, 2008). The former governor of Chihuahua, Francisco Barrio, shares a similar perspective: “I saw many Municipal Presidents in the state and other states, where you could see the city hall buying SUV and useless stuff. For example, in my state, I saw municipalities that were locked away in the mountains, where there wasn’t a newspaper in two hundred kilometres around and had no radio station in two hundred and fifty kilometres, but they had a budget for a press secretary and a media relations department... that kind of expenditures in cell phones and vehicles, was and is still brutal” (Barrio, 2008).

Expenditure in bureaucratic payroll and government contracts give subnational authorities enormous influence over their respective states and municipalities. In the absence of a consistent time series of employment in municipal and state governments, it is impossible to make a statistical examination of how this influence translates into favourable outcomes in local elections. However, there are some recent cases that contribute to the claim that governors have wide margins to mobilise resources and clientele in order to guarantee favourable electoral results.

4.3 Governors' role in electoral outcomes

The present section will make a descriptive analysis of three different cases where it is plausible to assume that governors can have a relevant influence in the outcome of local elections. The first case is the 2002 PRI internal election to determine the leadership of the party. The following sections are the only two cases in Mexican history where the Federal Electoral Tribunal has reversed the results of a governorship election under the premise that the

governor of the incumbent party made an unlawful intervention in the election process. The first annulled election was in the state of Tabasco in 2000 and the second in Colima in 2003.

4.3.1 The 2002 PRI internal election

The case of the 2002 internal election of the PRI helps to show that Mexico's governors retain non-institutional and non-legal means of influencing elections. After the triumph of the PAN's candidate Vicente Fox in 2000, the PRI was shut out of presidential authority. For the first time in its seven decades of existence, the party had to find an institutional mechanism to choose its new leader without presidential intervention. In February 2002, the PRI held an internal election to choose the chairman of the party. The participation in the internal election was open to all Mexican citizens with voter identification. The electoral system was based on a simple majority, meaning that the candidate with the most votes at the polls would be the next leader of the major opposition party.

The campaign teams of the two candidates, Roberto Madrazo and Beatriz Paredes, made mutual accusations that their respective opponent was receiving unlawful support from some of the 18 PRI governors. According to the rules of the internal election, the governors were not able to show or give any kind of support to the candidates; however, several press reports¹¹ stated that most of the PRI governors were using the weight of their offices to mobilise the voters in favour of their preferred candidate. In at least eight states, there were press reports of the use of public resources to support the political campaigns.

In a very strongly contested election where almost 3 million PRI supporters went to the polls, Roberto Madrazo won by merely 51,846 votes, just 1.7% of the total participation. The close result did not reflect the wide margins of difference in the results state by state. The average margin of difference between the candidate with more votes and the other contender was

¹¹ *Reforma* February 27th 2002; *La Jornada* February 13th 2002; *Milenio* February 14th 2002.

33.3% and the median was 37% in the 18 states with PRI governors. Roberto Madrazo obtained 91.5% of the valid votes in his state Tabasco and 84.5% in Oaxaca. These two states, which represent only 5% of the national voter's list, gave Madrazo 20% of his total votes. On the other hand, Paredes received more than 66% of the votes in five states. As Table 4.2 shows, the candidate that received the support of the governor won the state's election with a wide advantage. The first column of the table gives the name of the governor and his preferred choice for the chairmanship of the PRI, according to press reports prior to the election. The second column shows the winner in the respective state and his margin over his contender.

Table 4-2 State governors and the outcome of the 2002 PRI internal election

State (Governor and allegedly supported candidate)	Margin of voting difference between the two candidates (Winner)
Tabasco (Manuel Andrade allegedly supported Madrazo)*	86.14 % (Madrazo)
Oaxaca (Jose Murat allegedly supported Madrazo)*+	73.02 % (Madrazo)
Tlaxcala (allegedly supported Paredes)	60.82 % (Paredes)
Quintana Roo (Joaquín Hendricks allegedly supported Madrazo)*	51.71 % (Madrazo)
State of Mexico (Arturo Montiel allegedly supported Paredes)*++	42.97 % (Paredes)
Campeche (Antonio González allegedly supported Madrazo)*	41.44 % (Madrazo)
Hidalgo (Miguel Angel Nuñez allegedly supported Paredes)*	40.78 % (Paredes)
Guerrero (René Juárez allegedly supported Madrazo)*	38.83 % (Madrazo)
Colima (Fernando Moreno allegedly supported Paredes)*++	38.73 % (Paredes)
Tamaulipas (Tomás Yarrington allegedly supported Paredes)*++	37.18 % (Paredes)

* Milenio Semanal (10-II-02); +Accusation by Paredes Supporters (Notimex, 8-II-2002);

++ Directly accused by Madrazo (Reforma, 10-II-02)

The single explanation for such wide disparities in the states' voting pattern is the political support of the governor. It is important to note that the internal elections of the PRI were not monitored by an external electoral bureau that could verify the process, so any disputes over

the validity of the results had to be resolved by the party's own authorities. This fact is not a conclusive indication of the persistence of clientelistic practices in the Mexican democratic system, but it helps to support the claim that state governors have ample room to use the power and influence of their offices during voting procedures.

From 1997 to 2007, during the first decade after the PRI lost the majority in the Chamber of Deputies, there were 64 governorship elections in Mexico,¹² and in 44 cases (69%) the incumbent party won the election. In the period 2000 to 2007, since the PRI was ousted from the presidency, there have been 41 governorship elections, with 30 cases (73%) in which the incumbent party remained in power (See Table 4.3). From the historical perspective, the Mexican democracy is still young and at this point in time it is hard to draw the long term features of the emerging political system. However, given the ten year electoral data, it is possible to claim that a political party that controls the governorship has more than a two-thirds probability of remaining in power.

Table 4-3 Outcome of State Governor's elections in Mexico (1997-2007)

Year of election	State	Governor's Party before election	Governor's Party after election
1997	Campeche	PRI	PRI
1997	Colima	PRI	PRI
1997	DF	PRI	PRD
1997	Nuevo León	PRI	PAN
1997	Querétaro	PRI	PAN
1997	SLP	PRI	PRI
1997	Sonora	PRI	PRI
1998	Chihuahua	PAN	PRI
1998	Zacatecas	PRI	PRD
1998	Durango	PRI	PRI
1998	Veracruz	PRI	PRI
1998	Aguascalientes	PRI	PAN
1998	Oaxaca	PRI	PRI
1998	Tamaulipas	PRI	PRI
1998	Puebla	PRI	PRI
1998	Sinaloa	PRI	PRI
1998	Tlaxcala	PRI	PRD+Others

¹² Including three elections of the Chief of Government of Mexico City in 1997, 2000 and 2006.

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Year of election	State	Governor's Party before election	Governor's Party after election
1999	Baja California Sur	PRI	PRD
1999	Hidalgo	PRI	PRI
1999	Quintana Roo	PRI	PRI
1999	Guerrero	PRI	PRI
1999	Nayarit	PRI	PRD+Others
1999	State of Mexico	PRI	PRI
1999	Coahuila	PRI	PRI
2000	DF	PRD	PRD
2000	Guanajuato	PAN	PAN
2000	Morelos	PRI	PAN
2000	Chiapas	PRI	PRD+PAN+Others
2000	Jalisco	PAN	PAN
2001	Yucatán	PRI	PAN+PRD+Others
2001	Baja California	PAN	PAN
2001	Michoacán	PRI	PRD+Others
2001 *	Tabasco	PRI	PRI
2003	Campeche	PRI	PRI
2003*	Colima	PRI	PRI
2003	Querétaro	PAN	PAN
2003	Nuevo León	PAN	PRI
2003	San Luis Potosí	PRI	PAN
2003	Sonora	PRI	PRI + PVEM
2004	Chihuahua	PRI	PRI
2004	Durango	PRI	PRI
2004	Zacatecas	PRD	PRD
2004	Aguascalientes	PAN	PAN
2004	Oaxaca	PRI	PRI+Others
2004	Veracruz	PRI	PRI+Others
2004	Puebla	PRI	PRI
2004	Sinaloa	PRI	PRI
2004	Tamaulipas	PRI	PRI
2004	Tlaxcala	PRD+Others	PAN+Others
2005	Baja California Sur	PRI	PRD
2005	Guerrero	PRI	PRD
2005	Quintana Roo	PRI	PRI + PVEM
2005	Hidalgo	PRI	PRI + PVEM
2005	State of Mexico	PRI	PRI + PVEM
2005	Nayarit	PAN+PRD+Others	PRI
2005	Coahuila	PRI	PRI
2006	Chiapas	PRD+PAN	PRD
2006	DF	PRD	PRD
2006	Guanajuato	PAN	PAN
2006	Jalisco	PAN	PAN

Date of election	State	Governor's Party before election	Governor's Party after election
2006	Morelos	PAN	PAN
2006	Tabasco	PRI	PRI
2007	Michoacán	PRD	PRD+Others
2007	Yucatán	PAN	PRI
2007	Baja California	PAN	PAN+Others

*Extraordinary election after TRIFE's decision to revoke previous results

Source: Constructed by the author with data from www.cidac.org and State Electoral Institutes.

4.3.2 *The invalidation of Tabasco's 2000 gubernatorial election*

In an unprecedented decision, in 2000, the Federal Electoral Tribunal annulled the election of the governor of the state of Tabasco. The Court verdict took the victory away from the PRI candidate and decreed that new elections must be held during the first six months of 2001. According to state electoral law, if more than 20% of the state polls experience any kind of irregularity it is possible to call for a new election. With a divided majority of four votes against two, the court stated that there were reasons to invalidate the result because of interventions of the PRI governor Roberto Madrazo to support his party's candidate, Manuel Andrade. The court also alleged irregularities in a number of state polls, and other "generalized and disturbing factors" (TRIFE, 2000:XII-29)¹³.

The Court's verdict affirmed that at some voting polls, cash and food supplies were exchanged for voter support. Furthermore, local authorities made the delivery of public works and services conditional on the triumph of the incumbent's party. The Tribunal also found that the local Ministry of Transport made an illegal donation of 2.5 million pesos (£174,350) to the PRI. This was the first time the Electoral Court accepted evidence of clientelistic practices and illegal diversion of public resources as evidence to overrule the outcome of an election.

Tabasco has a wide budget margin for clientelistic practices in Mexico due to its higher share of federal transfers, because of special taxes related to oil extraction. Tabasco also receives the

highest *per capita* revenues when there is an oil surplus. As will be discussed further, the oil surplus is not overseen by the local Congress and in some cases is not even included at the end of year spending accounts. This lack of control leaves wide room for misallocation of the non-budgeted oil revenues.

4.3.3 The invalidation of Colima's 2003 Governor Election

In October 2003, for the second time in history, the Federal Electoral Courts annulled an election for state governor, revoking the triumph of the PRI candidate Gustavo Alberto Vázquez in Colima. In a split decision of four votes against three, the Federal Electoral Court annulled the verdict of the state tribunal, which had ratified the PRI victory. The court sentence found that the incumbent governor, Fernando Moreno, intervened in the election result by making public statements in favour of the PRI candidate, participating in his political rallies, and authorizing an advertising campaign promoting the achievements of his government.

The draft of the final verdict stated that the “number, magnitude, importance, frequency, intensity and generalisation of interventions” (TRIFE, 29-X-2003) made by Governor Moreno in favour of the PRI, despite the legal restrictions on doing so, were reason enough to invalidate the election. According to the tribunal, the governor made public statements that bolstered the PRI campaign before, during and after the election. Another offence quoted in the verdict was that 40 PAN supporters were detained without justification by the state police on Election Day.

The court decision was controversial, because in the midterm elections of that year, President Vicente Fox followed a similar strategy to that of Colima's governor, indirectly promoting the vote for his own party. In most democracies, the incumbent in the Executive has the legal right to engage in the political promotion of his own party. As a backlash to the extreme powers of

¹³ Source: Constitutional revision process. File: SUP-JRC-487/2000. Tribunal Federal Electoral, December 29, 2003.

presidentialism, there is an informal expectation that the Mexican President and the governors will refrain from participation in political campaigns.

In the case of Colima, the political right of the Governor to promote his own party is forbidden by Article 59 of the state Constitution. Following the invalidation of the election, the state Congress appointed an interim governor for two months, the period given to organize a second election in less than six months. In December 2003, in the re-run of the elections, the PRI candidate Vázquez Montes won again with 51.5% of the vote.

There are interesting differences between the cases of Tabasco. In Colima, the Tribunal punished the governor for promoting his own party in an electoral campaign. This would be an odd fault for a professional politician in most democracies around the world. In Tabasco, the Federal Electoral Court documented clientelistic practices and the use of public funds for political purposes. The election in Tabasco in 2000 offered judicial evidence of subnational clientelistic practices in modern Mexico. Moisés Alcalde Virgen, from the PAN, states that the problem affects the whole political spectrum and not just PRI governors: “There is a permanent citizens’ complaint, and a political complaint from all political parties of all colours, of the governors’ use of budget resources for electoral matters. How many times have we heard that Veracruz’s Governor (PRI) used all the available resources for local Congress and municipal electoral campaigns? But we hear the same from Guanajuato’s (PAN); and we hear the same from Zacatecas’ or Mexico City (PRD)” (Alcalde Virgen:2008).

The flow of resources from state coffers to the *ayuntamientos* is another source of power for governors who want to guarantee the electoral loyalty of municipal presidents. By 1997, just three states had secondary legislation to regulate fiscal relationships with the municipalities, budget accounting and public debt. By 2008, 29 states have laws to coordinate the financial transfers from states to municipalities. In the case of Mexico City, Michoacán and Sonora, the fiscal coordination between levels of government is organised through specific decrees that are voted by the two state congresses and the Legislative Assembly of Mexico City. Despite the

existence of formal mechanisms to transfer resources from states to municipalities, Grindle (2007:96-99) found testimonies in six Mexican states, where the flow of resources from the state treasury to the municipalities was used to cultivate personal relationships between the Municipal President and the Governor or other state officials. The importance of personal and political relationship to ensure the flow of resources brings back memories of the times of presidentialism, when the main task of a Governor was to befriend the President or the Finance Minister in order to guarantee the financial health of his state.

State and municipal governments are not alone in the use of public resources to create or mobilize politically loyal constituencies. As will be shown in the next section, the budget process and the allocation of public resources through the Federal Congress is highly influenced by the political criteria and clientelistic preferences of the parties represented in the Chamber of Deputies.

4.4 The Chamber of Deputies and democratic incentives for clientelism

In 2005 and 2006, during the second half of Vicente Fox's *sexenio*, the President and the Congress began an embittered confrontation over the approval of the federal budget. Since 1997 no party has had the simple majority of 251 deputies, necessary to approve on its own the annual expenditures of the federal government. However, during the first years of a divided Congress, the main opposition parties in the Chamber of Deputies agreed to endorse the Executive priorities included in the budget. From 1997 to 2004, the Chamber of Deputies displayed a tense but cooperative attitude towards the budget bills presented by the Executive. There were harder debates on the floor of the Chamber of Deputies and backroom negotiations, but the budget was always approved under the spending premises set by the Executive. However, the relationship between Vicente Fox's government and the majority opposition moved from scepticism and lack of trust to an open political and judicial conflict. The budget became the metric for measuring the power of the Congress versus the Executive (Schick, 2001:6).

From 2000 to 2008, the Chamber of Deputies has pressured to increase the original spending amount proposed by the Executive in the budget bill. As shown in Table 4.4, the deputies approved more optimistic forecasts for public expenditure than the sober estimations of the Finance Ministry. In 2005, the opposition deputies approved a raise of 4.24% of the original budget, in order to provide higher allocations to the states governed by the PRD and PRI.

Table 4-4 Difference between appropriations bill and the budget decree
(Millions of current Pesos)

Year	Total spending proposed by the Executive in the federal apportions bill (A)	Total spending approved by the Chamber of Deputies in the federal budget (B)	Difference between the apportions bill and the budget decree B-A (% increase)
2000	1,187,819	1,195,313	7,494 (0.63)
2001	1,339,601	1,361,866	22,264 (1.66)
2002	1,410,654	1,463,334	52,679 (3.73)
2003	1,500,180	1,524,845	24,665 (1.64)
2004	1,637,055	1,650,505	13,449 (0.82)
2005	1,744,370	1,818,441	74,071 (4.24)
2006	1,881,200	2,000,072	118,872 (6.32)
2007	2,234,375	2,260,413	26,038 (1.17)
2008	2,416,917	2,569,450	152,533 (6.31)

Source: Extracted by the author from federal budgets 2000-08.

According to the 2003 OECD/World Bank Budget Practices and Procedures Survey of 41 countries, only the Indonesian legislative assembly modified the budget by more than 3% of total spending (See Table 4.5). At the time of the survey, Mexican deputies were not used to the incorporation of major changes in the budget. However, in 2005, 2006 and 2008, the Mexican Chamber of Deputies made reallocations that ranged from 4.24 to 6.31% of total government spending.

Table 4-5 In practice, does the legislature generally approve the budget as presented by the Executive?

Answers	Total	Percentage of all countries
It generally approves the budget with no changes	14	34.1 %
It generally approves the budget with minor changes only (affecting less than 3% of total spending)	26	63.4 %
It generally approves the budget with major changes (affecting more than 3% but less than 20% of total spending)	1 Indonesia	2.4 %
It generally approves a budget significantly different from the executive (affecting more than 20% of total spending).	0	0

Source: Through Internet: http://www.oecd.org/document/61/0,2340,en_2649_34119_2494461_1_1_1_1,00.html consulted June 3rd 2007.

Table 4.6 is based in the OECD Budget Practices and Procedure Survey of 2006, which compares the size of the expenditure reallocation as a share of the total budget for FY 2005 and 2006. With the exception of Venezuela where the Congress has increased the total budget by over 20%, in the Latin American context the Mexican Congress executes some of the most extensive modifications to the Executive Budget Draft.

Table 4-6 Percentage of total spending affected by changes made by the legislature to the budget

Range (% of total budget)	Countries FY 2006	Countries FY 2005
0	Chile	Chile
0.1–1	Uruguay	-
1.1–2	Bolivia, Guatemala	Bolivia, Costa Rica, Ecuador
2.1–3	Argentina, Costa Rica, Peru	Argentina, Brazil
3.1–4	Ecuador	Peru
4.1–5	-	Mexico*
5.1–7	Brazil, Mexico*	-
20.1--25	Venezuela	Venezuela

*Data from Mexico: Author calculations based on budget bills and federal budgets.

Source: Budget practices and procedure survey 2006, phase I, through Internet:

http://www.oecd.org/document/61/0,3343,en_2649_33735_2494461_1_1_1_1,00.html, consulted June 5th 2008.

For the fiscal year 2005, the opposition parties decided to make substantial changes to the budget draft presented by the Executive, not only in the total amount spent but also in the

deficit projections and in the geographical allocation of spending. On the issue of government indebtedness, the Chamber of Deputies has usually adopted the budget deficit suggested by the Executive appropriations bill, but in 2005 that tradition was broken and the Chamber of Deputies changed the deficit margin from 0.63% of the total budget to 0.95%.

Through the increase in the deficit, the deputies increased the amount of money available to assign to different uses. According to Hernández (2005:10), up to 93% of the federal budget is made up of committed expenditures that are not subject to any possible reassignment.¹⁴ Thus the margin of flexible expenditure is close to 7% of the total federal budget. Each country has its own standards for defining an irreducible budget, but a common agreement is that these appropriations are legally restrained obligations to cover certain expenditures or commitments for future unavoidable payments like salaries, debt services or pension coverage. The only way to “soften” this “hard” budget is to change the law, or to modify labour contracts and social entitlements.

Accepting Hernández’s figures for 2005, the opposition parties in the Chamber of Deputies reallocated funds equivalent to 30% of the Executive “flexible” budget. The deputies from the PRI and the PRD, who together controlled 321 out of 500 seats in the Chamber of Deputies, rearranged the appropriations to increase the expenditure in the states governed by their own parties. At the end of 2004, out of the 32 federal entities, 18 were governed by the PRI, 8 by the PAN and 6 by the PRD. Table 4.7 shows how the opposition deputies distributed the appropriation reforms among states governed by the different political parties.

¹⁴ Hernández used three different sets of variables to calculate the “hard share” of the budget. His calculations produced the following results, depending on the methodology: 87%, 91% or 93% of the federal budget can not be reassigned to other uses.

Table 4-7 Allocation of expenditure increases in the 2005 federal budget

	States governed by the PRI PRD PAN		
% of the total Mexican population living in states governed by	57.4%	17.7%	24.8%
Distribution of resources in different programmes			
Education and Health	46%	40%	14%
Highway Infrastructure	75%	11%	14%
Drinkable Water and Sewage	59%	22%	19%

Source: Compiled by the author using data from *Presidencia de la República* (2005) and Annex 19, 19-A and 19-B of the 2005 Federal Budget.

In the case of expenditures for highway infrastructure, the information available shows that the deputies increased the original allocation of the budget draft by 231% in states governed by the PRI, 162% in PRD states and 82% in PAN states (Federal Budget Annex 19, 2005).

The Chamber of Deputies applies a singular brand of indirect clientelistic politics. As Mexico does not allow for congressional re-election, the deputies lack the classic pork barrel incentives because they do not obtain individual political gains from increasing spending in their own electoral districts. Their incentives lie in allocating expenditure to states governed by their own parties and expecting that the governors and party bureaucracies will take notice of their services in budget negotiations.

After the 2005 budget, the Supreme Court limited the capacity of the Chamber of Deputies to make extensive budget reallocations. For the first time in Mexico's history, the President vetoed the share of the budget that was modified by the deputies. The Supreme Court had to solve the Constitutional dispute over the veto capacities of the Executive. The Constitution clearly states the possibility of a presidential veto, when there is a ruling by the bicameral Congress. The Constitution limits the Senate's role in the budget process exclusively to the approval of government revenues (*Ley de Ingresos*) and excludes the Upper House from the negotiation of the appropriations bill. The Chamber of Deputies has the exclusive right to discuss and vote the allocation of public expenditures. The Supreme Court had to determine the Executive's capacity to veto a bill passed by a single house and not the Congress as a whole. In June 2005, with a split

vote of 6 to 5, the Supreme Court ruled that the President had the power to impose a full or partial veto over the apportionments bill.

For 70 years, the Congress had not dared to modify a line of the budget without Executive consent. Under a plural and competitive political system, with presidential power restricted by the law, there was no clear certainty about the possible outcomes of a budget dispute between the Congress and the Executive. The Supreme Court ruling strengthened the command of the President on budget matters and filled one of the institutional blanks in Mexico's democratic transition. The Chamber of Deputies kept the power to overrule the veto with a two-thirds majority, though the opposition deputies from the PRI and PRD decided not to overrule the presidential veto over a share of the budget. Still, the deputies found ample opportunities for increasing the transfers to subnational governments, through the windfall of resources from oil wealth.

4.5 The dispute over oil revenues

During 2002, the states' finance ministers created a joint group with their federal equivalent to supervise the sources of oil and non-oil revenues. Since then, the federal government shares all its revenue information with the state governments. For the first time, the profit reports of Pemex have been disclosed outside the sphere of the federal bureaucracy. The aim of this oversight committee was to reduce suspicions by some state authorities that the federal government was not transparent concerning the amount of resources available to be distributed among the federal entities. This informal agreement between the Ministry of Finance and the state treasurers was another example of how the political power of state governors became a force demanding more Executive accountability.

Until March 2006, Mexico did not have a specific law to manage the surplus of resources from oil revenues. Before the enactment of the new *Ley de Presupuesto y Responsabilidad*

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Hacendaria (Law of Budget and Fiscal Responsibility), the Ministry of Finance presented its own projections of the average price per barrel on the revenue side of the budget bill. However, the Congress had the last word in fixing the forecast over the average price per barrel. The predicted price has a significant impact on the amount of resources available for distribution to states and municipalities. Oil revenues from Pemex and the duties on its income represent on average 30%¹⁵ of total government revenues and close to 5.3% of GDP. They also account for close to 48%¹⁶ of the pool of transfers to subnational authorities. According to the Law of Fiscal Coordination, most of the oil revenues are appropriated by the federal government, although a share is transferred directly to the states. The Law of Fiscal Coordination states that subnational governments receive 20% of the ordinary oil extraction rights through the *Ramo 28 of participaciones*.

During the oil shock of 1998, the price projection in the budget was US\$15.5 per barrel of exported Mexican oil, but the average market price at the end of the year was US\$10.1 per barrel (See Table 4.8). The drop in oil prices during 1998 caused political tensions and budget cuts across the three levels of government. After that year, the Executive and the Congress opted to err on the side of caution in their price estimations. As Table 4.8 shows, from 1999 to 2007 the year's end market prices have been on average 48% higher than the budget projections.

Apart from the price fall of 1998, there are sound reasons to keep expectations low over future oil prices. The previous price falls (1982 and 1986) have provoked parallel expenditure cuts. Sharp appropriation cuts are financially inefficient and politically unpopular. Sudden decreases in resources for capital investments might abort or delay the construction of vital infrastructure. With a drastic fall in public income, the government faces the dilemma of cutting expenditure and affecting the productivity of public investment or tolerating a mounting fiscal deficit.

¹⁵ *Leyes de Ingresos*, 2000-2005.

¹⁶ Calculated for 2004: oil revenue levies/*Ramos 28* +33.

Table 4-8 Government expectations per export barrel of oil vs. end of year market prices

Year	Expectation price per barrel suggested by the Executive in the budget bill US\$	Expectation price per barrel approved by the Chamber of Deputies in the <i>Ley de Ingresos</i> US\$	Average market price per barrel at year's end US\$	Percentage of difference between the expectation in the Federal Budget and market price at year's end %
1998	NA	15.50	10.18	-34.3
1999	NA	9.25	15.57	68.3
2000	15.50	15	24.79	65.2
2001	18	18	18.61	3.3
2002	17	15.5	21.52	38.9
2003	17	18.35	24.77	34.9
2004	20	20	31.05	55.3
2005	23	23	42.71	85.7
2006	31.5	36.5	53.05	45.3
2007	42.5	42.8	61.63	44
2008	46.9	49	89.38*	82.4

* Until May 2008

Sources: Constructed by the author with *Iniciativas de Ley de Ingresos 2000-08*; *Ley de Ingresos 2000-08*; *Cuenta de la Hacienda Pública 2001-08*; *Secretaría de Energía*, through Internet: <http://sie.energia.gob.mx/sie/>, PEMEX, and www.pemex.com, consulted May 24th 2008.

Empirical evidence from an International Monetary Fund Study (Barnet & Vivanco, 2003: 148) shows that oil prices have extreme and unpredictable fluctuations, as they don't have a well defined average or "normal" price to which they regress after the booms or busts have elapsed. Moreover, current oil prices do not necessarily convey information for forecasting prices over the long term or predict the occurrence of a negative shock.

The Law of Fiscal Coordination established that certain revenues would not be part of the pool of resources transferred to subnational authorities via *participaciones* (Ramo 28). These included additional taxes on oil exports and unexpected revenues that result from higher-than-budgeted oil prices (Art. 2, paragraph 3). This clause in the law created an annual dispute between the opposition in Congress and the Vicente Fox government. In the times of presidentialism, as the resources from the oil surplus were not considered in the Law of Fiscal Coordination, their allocation depended on the criteria set by the Executive. For decades, the Ministry of Finance determined the expected price and the Chamber of Deputies followed its

guidelines. After the end of presidentialism, not all the areas subject to Executive discretion had been replaced by an institutional mechanism. These sources of income, such as the oil surplus, became focal points of political dispute. The opposition parties in the Chamber of Deputies tried to establish a higher price for the forecast of the average price per barrel of Mexican oil, or to guarantee a larger share of the oil surplus for state governments. Meanwhile, the federal government aimed to fix a more conservative estimate of the oil's price and prevent state governments from getting a larger share from a potential non-budgeted surplus. The opposition parties tried to obtain more resources to distribute among the subnational authorities governed by their respective parties.

More recently, the positive price differential between budgeted and actual amounts has created an unbudgeted surplus. Once the projected price is fixed in the Income Law (*Ley de Ingresos*) by both chambers of Congress, the deputies decide how to distribute the potential revenues derived from a positive differential between projected and observed oil prices.

During the budget approval process of 2005, there was an unprecedented clash between the two Chambers of Congress over predictions of the price per barrel. The Chamber of Deputies ignored the government's proposal to set the expected price at US\$23 and settled it at US\$27. This 17% increase was the highest variation ever enacted by the deputies over the oil price forecast presented by the Finance Ministry in the income bill. As the revenue side of the budget is discussed and approved by both chambers, once the deputies changed the price of oil, the Senate received the income bill for its final approval. Before its enactment as a law, the senators reversed the price change incorporated by the deputies and reduced the price per barrel to the original figure (US\$23) set by the Finance Ministry.

The deputies complained about the lack of coordination between the chambers, but they did not have the legal capacity to overturn the Senate's decision. According to Pemex estimates over the volume of exported oil for 2005, 1.8 million barrels per day,¹⁷ each dollar variation in

¹⁷ The yearly production comprises the 365 calendar days.

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the price per barrel represented 7,095 million pesos a year (£ 114.2 million). As the deputies raised the benchmark price and the size of the financial pool to be distributed among the states, they accepted that the subnational authorities would not receive additional resources if the oil price rose above the benchmark.

State governors had a special interest in the oil surplus. As they are extra-budgetary revenues, governors have more margin of freedom to allocate the unexpected pool of resources. In reference to the extra-budgetary revenues, Schiavo-Campo stated, “The amount of expenditures that are not included (in the budget) increases the risk of corruption and waste... In some countries, revenue from natural resources is treated more as a contribution to the purse of the president or to a political slush fund or ‘black box’ than as a contribution to the government budget. Secrecy about revenues from oil resources and their uses is still common. In some developing countries in the 1970s, revenues from commodity boards were used to set up a parallel budget, which was not submitted to any scrutiny. Including these revenues and expenditures in the budget is a prerequisite to improving transparency and governance. (2007:56-65).”

In most states, surplus appropriations do not require the approval of the local Congress and are merely reported at the end of the fiscal year. So, the oil surplus revenue has poor oversight and accountability. If oil revenues and government expenditures can be hidden in off-budget funds and shielded from democratic control, voters and their representatives are unable to hold the government accountable for its performance (Von Hagen, 2007:37). Minxin Pei describes the Chinese, with words that could well describe the situation in Mexico: “Off-budgeted revenues have become a preferred form of predation for two important reasons: discretion and opacity... (off-budgeted revenues were) spent at the discretion of local authorities with no central supervision” (2008:143).

The Mexican federal Congress imposed the condition that the oil surplus transfers ought to be spent only on infrastructure projects. However, federal authorities did not have any legal capacity to oversee the way the oil surplus was spent by subnational governments. The federal authority had to believe that the information presented by state governments was true and that subnational accountability infrastructure would be solid enough to guarantee the oversight of non-budgeted revenues.

4.5.1 The oil surplus from cause of conflict to a new budget law

The first priority for the allocation of the oil surplus is to cover non-budgeted governmental expenses that might occur during the fiscal year.¹⁸ In the case of an oil surplus and a higher than expected government deficit, the additional oil revenues would help keep the federal deficit aligned with the forecast in the budget. From 2000 to 2006, once these unexpected government costs were paid, the remainder of the surplus revenue was distributed according to the guidelines set by the majority of the deputies in the budget decree. With a lack of permanent rules to regulate the process, the Chamber of Deputies had to harmonise conflicting interests over the use and allocation of the oil surplus. As subnational authorities cannot levy taxes on natural resources situated within their jurisdiction, their share of the oil wealth depends on the budget decisions made by the Chamber of Deputies. The unprecedented political leverage of state governors manifested itself in increased and successful demands over the distribution of the oil wealth.

In each budget, the Congress had to decide the share of the oil surplus that was saved and the part that would be spent. The percentage of distribution of the eventual surplus was integrated into the annual federal budget. The federal budget for FY 2000 created the *Fondo de Estabilización de los Ingresos Petroleros* (Stabilisation Fund of Oil Revenues, FEIP), with the aim of improving fiscal equilibrium if the oil price fell US\$1.5 below the fixed reference price.

Originally, the total withdrawals from the fund were limited to 50% of the assets at the end of the previous year.

However, in 2002, the rules were changed to allow full compensation for shortfalls, so the resources from the fund could be fully drawn down in a single fiscal year. In years with higher-than-expected revenues, a share of the surplus was to be allocated to build up the fund. Every year, the government proposed an allocation percentage to the FEIP in the budget bill, but the deputies decided whether or not they would accept the government's recommendation.

In 2000, with the fresh memory of the 1998 negative fluctuation in oil prices, the Chamber of Deputies allocated 40% of the potential surplus to the FEIP, and the remaining 60% to service public debt (See Figure.4-4). There is a consensus in public finance literature that the best available practice for investing a budget surplus is to pay off debt and not to use it to cover recurrent expenditures. From 2001 to 2005, the oil surplus share allocated to the Stabilisation Fund was gradually reduced, from 40% in 2000 to 33% in the 2001 budget. From 2003 to 2005, the transfers to the Stabilisation Fund were reduced to 25% of non-budgeted revenues. The oil surplus allocation for public debt service was also reduced from 60% in 2000, to 33% in 2001 and 2002, then to 25% from 2003 to 2006.

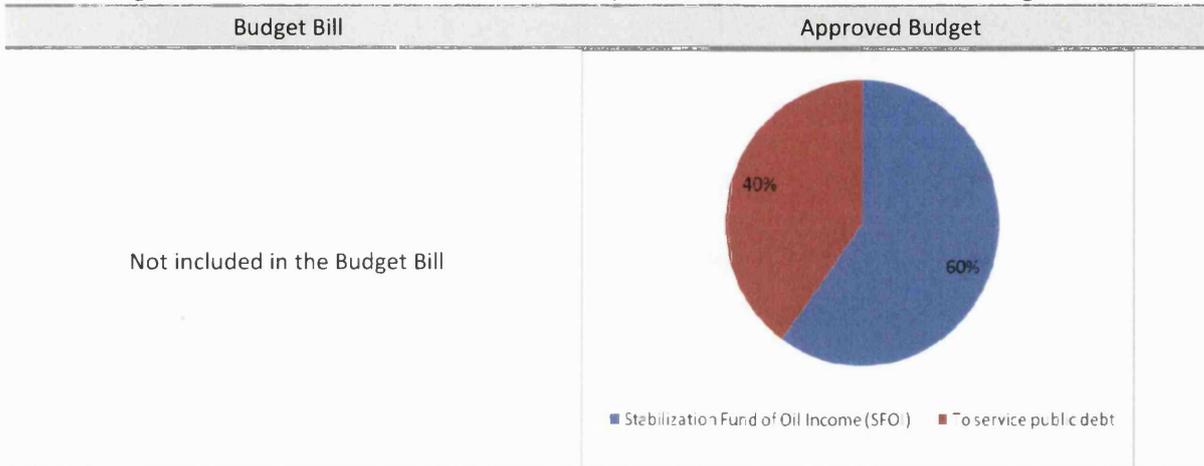
The biggest winners of the redistribution of the oil surplus were the state governments. As shown in Figure 4-4, in 2001, 34% of the surplus was allocated to infrastructure projects in Mexico's southern states. This share grew to 50% in 2003, and the surplus was made available to all state authorities. During Vicente Fox's government, the regional political forces that benefited from decentralisation increased their demands for a larger share of the oil wealth. At the same time, the high political profile of state governors gave them better lobbying capabilities to pressure Congress for a more decentralised distribution of oil revenues. For 2005, the budget included a prescription that 50% of the oil surplus ought to be reinvested in Pemex

¹⁸ For example, government subsidies for electricity generation became more expensive with an unexpected rise in the price of natural gas.

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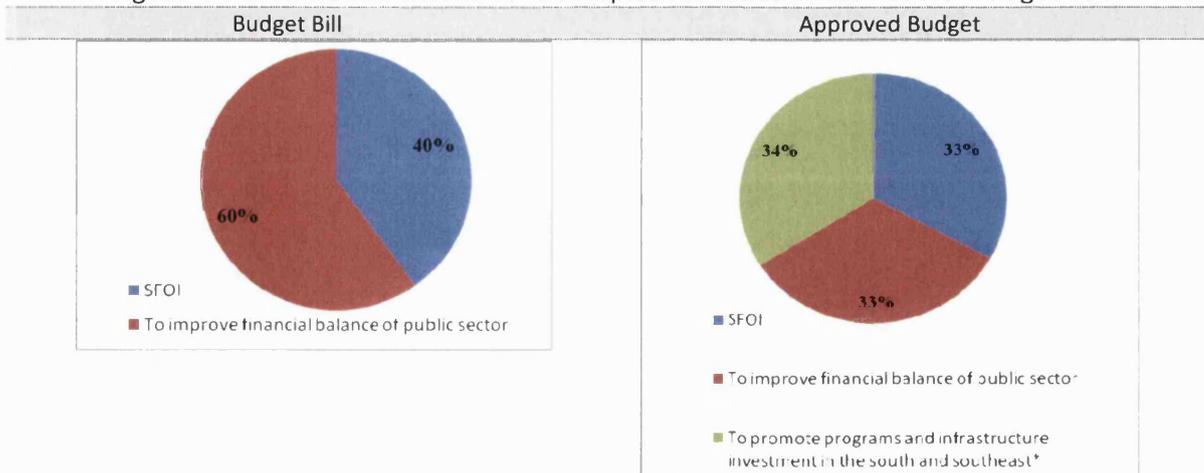
for infrastructure building¹⁹ and the repayment of the company’s debt. (See Figures 4-5, 4-6, 4-7, 4-8, 4-9, 4-10 and 4-11).

Figure 4-4 Distribution criteria for oil surplus revenues in the Federal Budget 2000



Source: Budget Bill and Budget Decree for 2000 Budget (Art. 35, Sec. E), and Fiscal Responsibility Law.

Figure 4-5 Distribution criteria for oil surplus revenues in the Federal Budget 2001

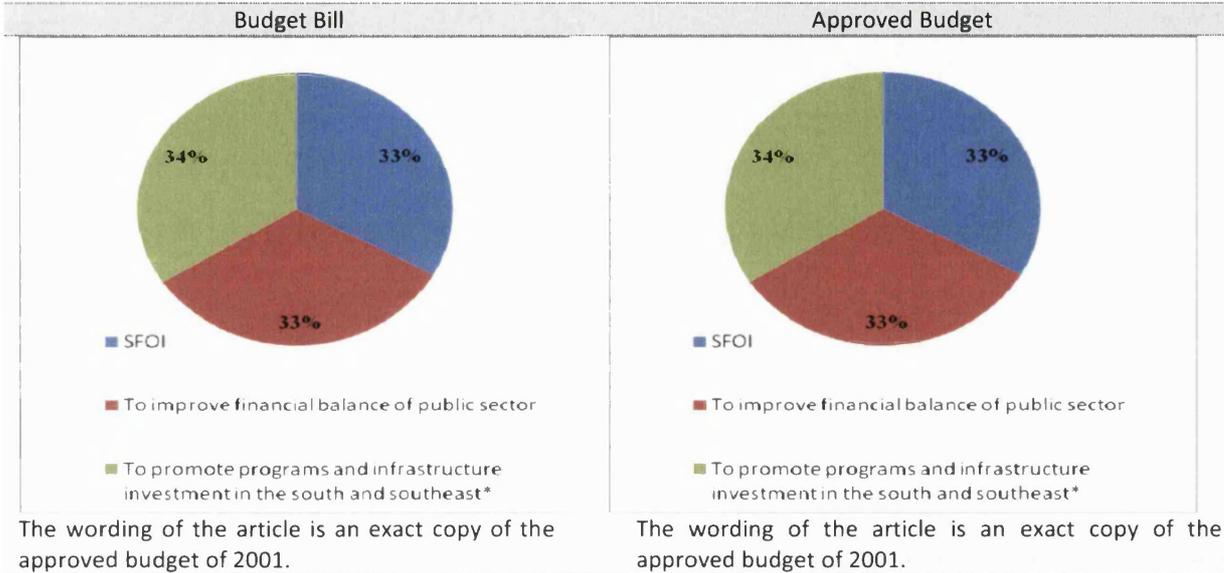


*Hydro-infrastructure, drinkable water, sewerage in the least developed regions and in the oil producing areas. This surplus can not be allocated to current expenditure.

Source: Budget Bill and Budget Decree for 2001 Budget (Art. 31, Sec. F), and Fiscal Responsibility Law.

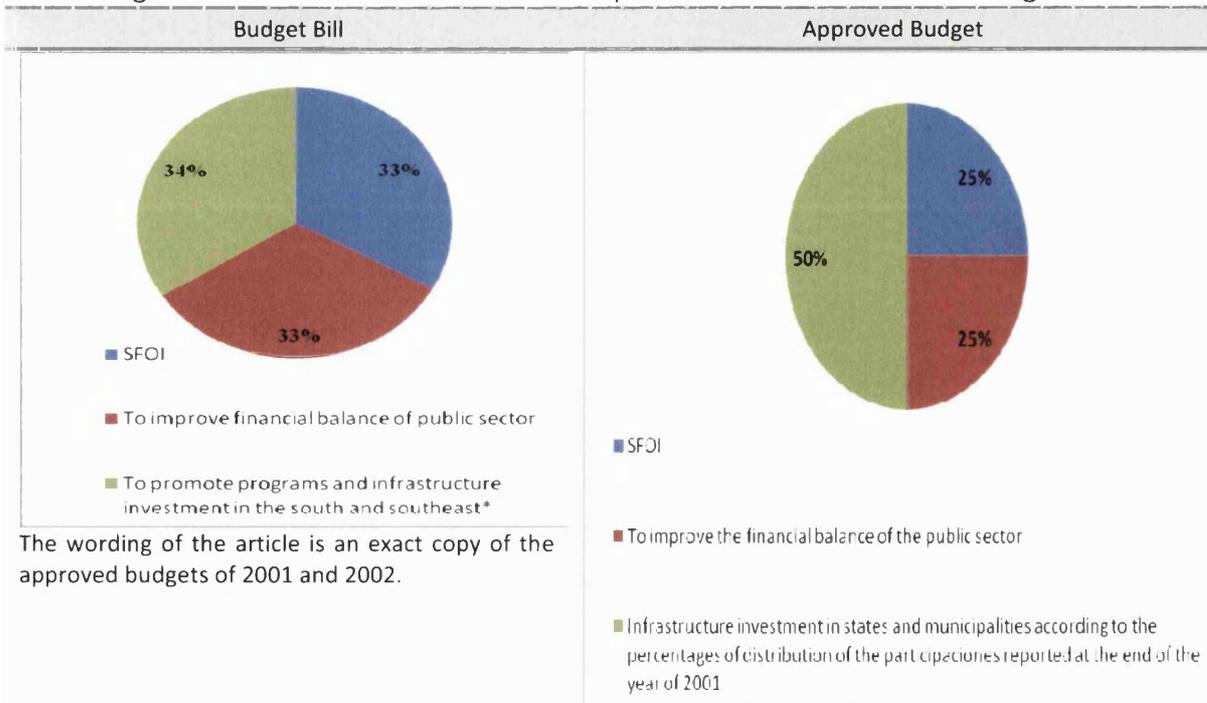
¹⁹ At the end of Vicente Fox’s government, Pemex’s level of capitalisation was close to zero.

Figure 4-6 Distribution criteria for oil surplus revenues in the Federal Budget 2002



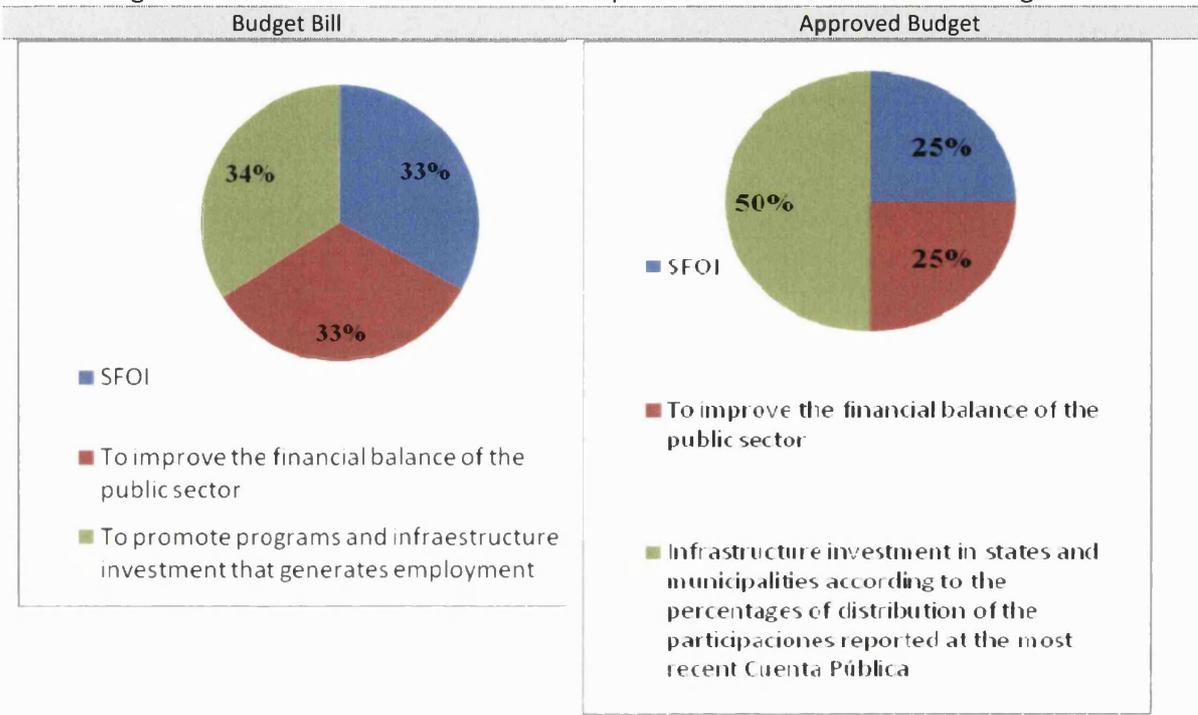
Source: Budget Bill and Budget Decree for 2002 (Art. 19, Sec. J), and Budget and Fiscal Responsibility Law.

Figure 4-7 Distribution criteria for oil surplus revenues in the Federal Budget 2003



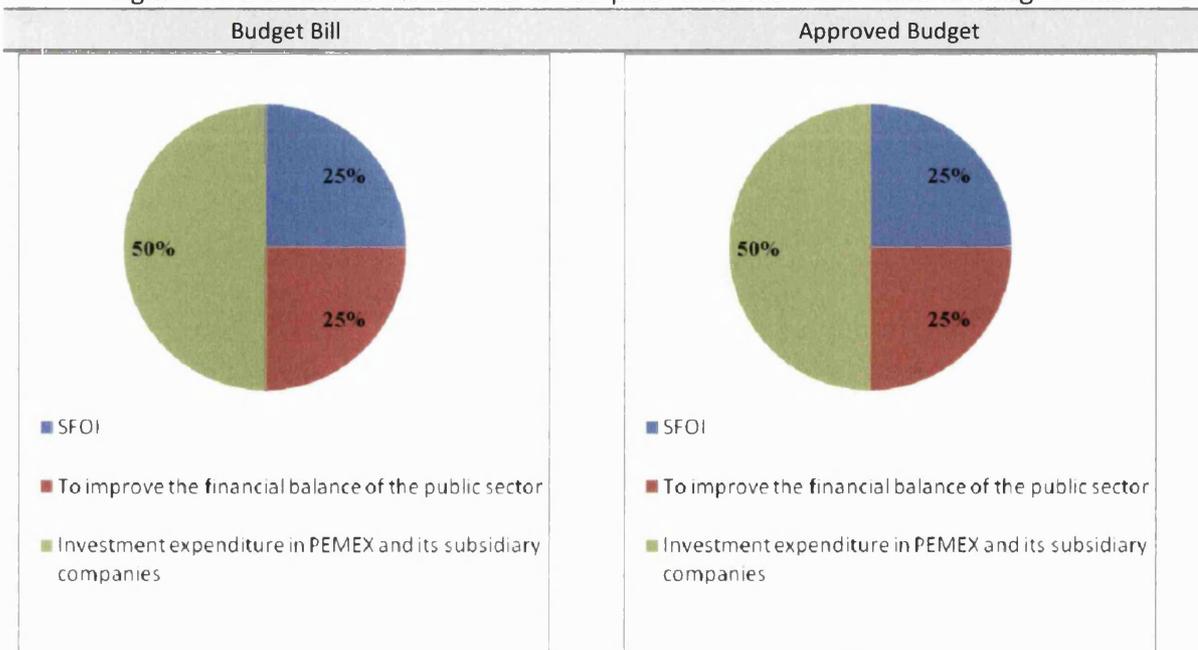
Source: Budget Bill and Budget Decree for 2003 (Art. 21, Sec. J), and Budget and Fiscal Responsibility Law.

Figure 4-8 Distribution criteria for oil surplus revenues in the Federal Budget 2004



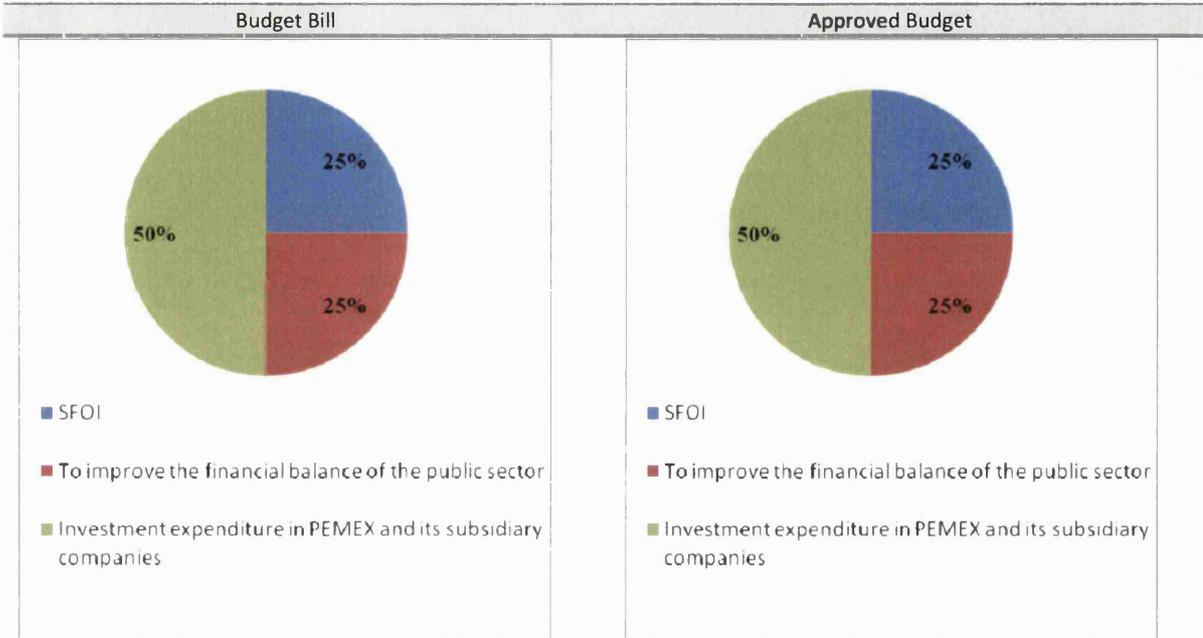
Source: Budget Bill and Budget Decree for 2004 (Art. 23 Sec. J), and Budget and Fiscal Responsibility Law.

Figure 4-9 Distribution criteria for oil surplus revenues in the Federal Budget 2005



Source: Budget Bill and Budget Decree for 2005 Budget (Art. 21, Sec. J), and Fiscal Responsibility Law.

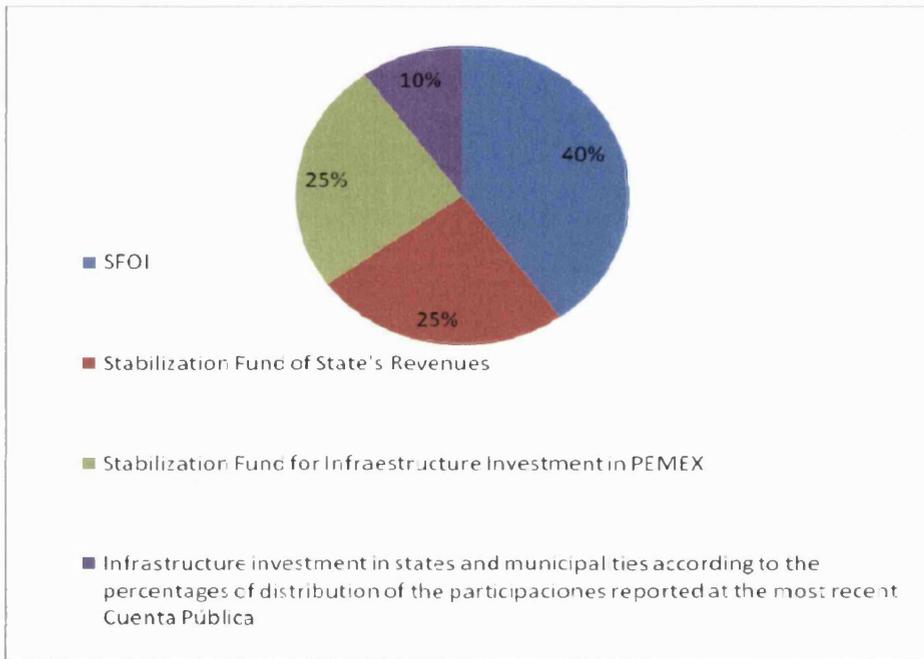
Figure 4-10 Distribution criteria for oil surplus revenues in the Federal Budget 2006



Source: Budget Bill (Art. 22, sec. J) and Budget Decree for 2006 Budget (Art. 25, sec. F), Fiscal Responsibility Law.

In March 2006, the Budget and Fiscal Responsibility Law were approved and the distribution of oil surplus revenues was constrained to be as article 19 sec. IV, which establishes the distribution criteria as shown in Figure 4-11.

Figure 4-11 Distribution criteria for oil surplus revenues in the Federal Budget 2007 and 2008*



*Budget Bill and Federal Bill have remained the same for these years.

Source: Budget Bill and Budget Decree for 2007 and 2008 Budget, and Fiscal Responsibility Law.

The whole budget dispute of 2005 left the impression that there are still indeterminate areas of the law which Mexico's democracy needs to codify. Should expectations over the price of oil be fixed by the technocrats in the Ministry of Finance or the politicians in Congress? Can the Senate overrule a fiscal revenue decision of the Chamber of Deputies? What is the best allocation for surplus oil revenues?

In the former political system, these uncertainties were resolved by the authority of the President. Today the presidential institution has neither the political influence nor the legal mandate to settle these disputes. The emergence of these uncharted and unprecedented disputes in Mexico's political system reveals the multiple spheres that were covered by the umbrella of the metaconstitutional powers of the president. Every arena that formerly was encompassed under the president's decision-making authority has been replaced by two

alternatives: an institutional solution accepted by all political forces, or open conflict where the interests of each party seek to impose a short term solution.

In order to resolve the disputes over the oil price forecast and the oil surplus distribution between the federal and state governments, in March 2006, the Federal Congress approved a new law to establish a legal framework for the draft and approval of the budget: *Ley Federal de Presupuesto y Responsabilidad Hacendaria* (Federal Law of Budget and Financial Responsibility). As shown in Figure 4-11, the new law created a fixed formula to forecast oil prices²⁰ and defined a fixed distribution for non-budgeted oil surpluses:

- a) 25% to a Stabilisation Fund for state revenues.
- b) 25% to a Stabilisation Fund for the Infrastructure Investment of Pemex.
- c) 40% to a Stabilisation Fund for Oil revenues.
- d) 10% to Infrastructure investment in states and municipalities.

The new legal framework for the federal budget made the rules clearer for all the political actors involved in the debate, and approval of the government's revenue and expenditure. The Executive was forced to define transparent criteria for the oil price forecast. A legal formula of distribution of the oil surplus helped to reduce tensions during the process of budget negotiation. In the decentralisation process as well as in the allocation of oil surplus, clear formulas for the distribution of resources became an institutional mechanism to reduce political conflict and provide state treasuries with more predictable forecasts of the federal transfers.

In 2004, states received an oil surplus bonus that represented, on average, 3.8% of their original budget for that fiscal year. Unpredictable revenues from non-renewable resources can be misused or otherwise subject to poor governance. In some states, the extra-budgetary revenues help to "release" budgeted resources originally allocated for infrastructure projects and there is no federal oversight of the final destination of the "released" resources. For example, if the state government had a budget allocation to build a bridge, the oil surplus revenue will have

²⁰ The formula is based on an average of the monthly price of Mexican oil for the previous ten years and the expected future price for the next three years of West Texas Oil on the New York Stock Exchange.

covered the costs of the public works project and “released” the funds originally appropriated for the bridge. These unbudgeted funds increase the risk of duplication of expenditure or capital investments that do not take into account the impact on future recurrent expenditure (Davis & Ossowski, *et. al.* 2003:280).

IMF (2007:52) research suggests a preference for institutional schemes that allow “unified control” over expenditure, preventing the existence of a parallel set of expenditure allocations that are financed by a separate pool of resources from those approved by the legislature. The double budget, one depending on congressional approval, the other subject to the fluctuation in oil prices, may obscure the priorities of state and municipal spending. The risks of inefficient expenditure and misemployment of funds increases when they are treated as off-budget expenditures.

The federal government, through the Ministry of Finance, tried to increase the transparency and accountability of the budgeted and non-budgeted resources transferred to subnational authorities. In theory, state governments present information about infrastructure projects to be funded with the surplus. However, the *ex post* accountability of the outcomes of the investments depends of the state Supreme Audit Institutions. The audit and supervision of the investment projects is performed by the state comptroller and the local SAIs. As will be discussed in the next chapter, in several states these institutions do not have the basic infrastructure to perform the supervision of state finances.

4.6 Conclusion

The oil revenues and a share of the federal budget have become a mechanism to supply public goods to beneficiaries in circumscribed political jurisdictions. This kind of targeted clientelistic spending through the federal budget is different from other democracies, because of the absence of congressional re-election. The lack of re-election does not create an incentive to target expenditures within the deputy’s own constituency. A special characteristic of Mexico’s

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clientelistic expenditure patterns is that legislators are not promoting targeted expenditures to benefit their own constituencies, but rather their party's strongholds through the state governments. Governors have become the real patrons through the particularistic spending provided by the deputies.

For state governors, oil surplus revenues have a key political appeal: they are considered non-budgeted revenues, so the local congresses do not have a say in their allocation. The state legislatures can carry out *ex post facto* oversight of the expenditure, although the rigor or laxity of these audits varies from state to state. As the oil surplus revenues allocated to the subnational governments are not integrated into state and municipal budgets, local Congresses does not have an *ex ante* control over expenditure allocations. In some cases, the ex post audit of non-budget resources can happen two years after the resources have been spent.

The transformation of Mexico's political system implied an enforcement of O'Donnell's vertical and Horizontal Accountability upon the political figure of the president. The challenge of the new political order in the aftermath of the transition to democracy is to guarantee the enforcement of both vertical and Horizontal Accountability, despite the *de facto* powers of subnational authorities. The metaconstitutional powers of state governors undermine the formal checks and balances that are stated in the law. The fifth chapter of the dissertation focuses on two elements of subnational Horizontal Accountability: heterogeneity in the contents of budget information and the distinct capacities of state Supreme Audit Institutions to perform the ex post budget accountability.

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CHAPTER 5

Budget Accountability at Subnational Level: an Empirical Analysis

CHAPTER 5 BUDGET ACCOUNTABILITY AT SUBNATIONAL LEVEL: AN EMPIRICAL ANALYSIS

The federalism in some countries tends to allow the existence of local powers often no less delegative and unaccountable than the central one, among which intricate power relations exist that often partake of a rather unabashedly instrumental utilisation of legal rules.
Guillermo O'Donnell (1999:41)

Chapter 5 will analyse the heterogeneity of budget accountability in the Mexican states through two elements in the subnational budgeting cycle: the contents and information of the budget decrees approved by the state legislatures, and the institutional capabilities of Supreme Audit Institutions (SAI) in each state. The diverse disclosure practices in the budget decrees and the institutional design of the subnational SAIs will be used to answer the question of what subnational budget accountability looks like in the aftermath of presidentialism and decentralisation.

Budget accountability provides a platform from which to analyse the legal and institutional diversity of subnational political systems in contemporary Mexico. For Snyder, (2001:94) political and economic reform processes can “have varied effects across the territorially-defined subunits of a political system.” Through the subnational comparative method, it is feasible to appreciate the complexity and diversity of political change across a national territory. Budget accountability at state level in Mexico contributes to support Snyder’s claims of the diverse consequences of a process of economic and political change. The heterogeneous accounting criteria in budget documents and the institutional diversity of SAIs show the wide-ranging effects of democratisation on Horizontal Accountability.

Mexican states offer a diversity of political contexts that produce a wide range of accountability outcomes. In several cases, the informal customs of the local political system, like vote buying practices in state congresses, determine the success or failure of institutions for Horizontal Accountability. In the case of Baja California Sur, the state fulfilled the formal norm to publish an annual budget, however the

budget is compressed in a single paragraph with no tables or additional information to disaggregate the allocation of public expenditure. Chapter 5 shows that a research limited to the formal sphere of Horizontal Accountability does not necessarily reflect the practical dynamics of the political system. The enforcement of Horizontal Accountability is constrained both by *de jure* and *de facto* realms.

The chapter will analyse a recent Constitutional reform, approved in May 2008, which sets the legal foundation to start a process for the homogenisation of state accounting systems. The Constitutional reform needed a secondary law to set the framework for a gradual transformation of subnational budgeting systems. In recent history, Mexico has had five experiences of modernisation that were initiated at federal level and then “trickled down” to reform the states’ institutional order: 1) state commissions for human rights (local ombudsmen); 2) subnational bureaus in charge of organising elections (local versions of the *Instituto Federal Electoral*); 3) The Freedom of Information Act (FOIA); 4) An ongoing reform, approved in May 2008, to homogenise budget accounting in states and municipalities and 5) another reform in process, which aims to create basic common standards for Supreme Audit Institutions at state level.

The local ombudsmen and the enactment subnational FOIA¹ were institutional changes forced upon state authorities through two Constitutional reforms in 1992 and 2002 respectively. Through the Constitutional amendment, all state governments followed the institutional path set by the federal Congress. The second experience of modernisation from above was the creation of autonomous institutions to organise elections and perform vote-counting at subnational level. Though, this reform was not based in a Constitutional reform, but in a political agreement between the leaders of the three main political parties (PRI, PAN and PRD) signed in 1995. The accord established the compromise to promote electoral reforms at the subnational legislative assemblies that will incorporate the criteria of the amendment approved previously in the federal Congress.² The three reforms mentioned in this paragraph were an acknowledgement that the states would not be capable of performing a homogeneous process of modernisation. The federal institutions had serious doubts about the governors’ drive to

¹ López Ayllón (2006) provides a detailed study of the history of Mexican FOIA at federal and state level.

² Lujambio (1995) offers a general analysis of this electoral reform.

change the status quo within their states. As a consequence of these doubts, they forced a reform upon subnational governments.

The fourth and fifth cases of modernisation from above are directly linked to the subject of the chapter and the dissertation. In September 2007, the Federal Congress approved a Constitutional reform in order to promote budget homogenisation and a redesign of Supreme Audit Institutions at state level. The reasons to promote budget homogenisation will be analysed in the following pages. The impact of the constitutional reform upon the state SAIs will be analysed on the second part of this chapter.

5.1 Budget homogenisation

After the constitutional amendment published on May 8th 2008, the new wording of Article 73 reads: "The Congress has the power... to approve legislation related to governmental budgets that will provide a norm for public accounts and a homogeneous format of financial information, of revenue and expenditure, for the federal, state, municipal and Mexico City governments, in order to guarantee its harmonisation at national level."

The present author's original research for this chapter was used by members of the Federal Congress as an argument to promote the standardisation of subnational budgets. The 2008 constitutional amendment will give Congress the authority to homogenise the disclosure criteria and contents of state and municipal budgets. The details of the amendment are yet to be defined, in a secondary law that has to be approved by May 2009, and then states will have to approve their own legislation to adapt their current framework to the new federal mandate. At least two or three years will have to pass (by 2010 or 2011) until subnational governments adhere to a common standard for the contents and specificity of budget information.

This Constitutional amendment was aimed at reducing the discretionary and uneven disclosure of subnational budgeting data. In a similar fashion to the Freedom of Information constitutional amendment, the secondary law will aim to provide a benchmark for the classification and semantic categories of state and municipal budgets. However, the approval of the

Constitutional amendment does not automatically imply that the new laws will be enforced at state and subnational level. The success of other examples of modernisation from above does not guarantee that the legislative aim to homogenise budgeting disclosure will not be watered down in the draft and enforcement of secondary legislation.

Schedler (1999:339) provides an explanation of why these initiatives should be forced upon state authorities: "By legal necessity, all paths of institutional creation pass through the offices of top state officials and, in this sense, accountability-promoting reforms cannot come from anywhere else than 'from above.' There is no way to ignore or bypass the centres of state power. Unless they consent to institutionalise 'self-restraint,' the road to Horizontal Accountability is blocked." Under the structure of a federal constitutional system, with three different tiers of sovereign authority, the only path to impose a modernisation from above was through a change in the Constitution.

March and Olson (1995:180) argue that "Proper accounting procedures for any particular agency depend on the procedures used by others. A particular accounting procedure gains legitimacy by becoming conventional practice in many agencies. The legitimacy of accounting procedures evolves over time by a co-evolutionary process of diffusion between several agencies." The "contagion" of this legitimising process of accounting procedures can happen in two circumstances: 1) when there is a centralising authority that can impose the legitimacy of new accounting systems, or 2) when there is a "race to the top" among several entities or government authorities to improve the quality and controls of the accounting mechanisms. Through constitutional reform, Mexico's federal Congress gained the authority to legitimise new accounting rules and criteria of classification. The absence of a "race to the top" to improve subnational budget accountability triggered an imposed modernisation from the federal Congress. The measure was a move to "re-centralise" regulation over the documents that define the allocation of public expenditure.

Due to problems involving the existence of funds outside the budget, information gaps, data inconsistencies, and accounting systems that are not amenable to internal and external audit,

Mikesell proposed that “the accounting systems and standards should be prescribed by the central government, to ensure comparability and to improve transparency (2007:32).” Mexico’s decision to homogenise budget criteria at subnational level is not an isolated example in federal countries. In 1969, Germany approved the Law on Budgetary Principles to uniform budgetary standards across levels of government. According to Spahn (2001:144), these uniform principles included specific rules “regarding the preparation of the budget, accounting and the rendering of accounts including the classification of the budget.”

Mexico will engage in a process of transition from a system where subnational budgets lack homogenous standards to a model that aims to establish a minimum set of rules to make budget accounting practices uniform. The Federal Congress will determine a pattern of disclosure that should be followed by executives and congresses at state level. The states will have to relinquish their prerogative to set their unique and peculiar budget standards in order to abide by the national budget regulation.

The 2003 OECD/World Bank Budget Practices and Procedures Database shows that out of 38 countries surveyed, in nine (including Mexico)³, national and subnational governments do not use common standards and each authority decides on its own budget classification (See Table 5.1). In the near future, once the constitutional reform is enacted, Mexico will join the group of 18 countries where the national authorities establish the budget classification and accounting rules.

³ The other eight countries are Argentina, Canada, Finland, Japan, New Zealand, Sweden, Turkey and the United States.

Table 5-1 Is there a common standard for budgeting for national and subnational governments?

Answers	Total	Percentage of all countries	Percentage of OECD countries
Yes, national and subnational governments have the same budget classification and accounting rules, set by the national government.	18	47.3 %	36
Yes, national and subnational governments have the same budget classification and accounting rules, set by external bodies.	0	0	0
No, national and subnational governments do not use common standards. The standards for the subnational levels are set by the national government.	11	28.9 %	32
No, national and subnational governments do not use common standards. Each authority decides on its budget classification.	9	23.6 %	32

Source: Through Internet http://www.oecd.org/document/61/0,2340,en_2649_34119_2494461_1_1_1_1,00.html, consulted June 10th 2007.

5.1.1 Literature review of rankings

Before the analysis of the Budget Information Index, here is brief review on the literature on rankings. The proliferation of indexes, rankings or scorecards has produced two generations of analytical approaches to study the methodologies and shortcomings of these instruments. The first generation focus on the methodological challenges and risks that inherent to the measurement systems. The second generation uses the previous critiques to forge a process of incentives and quality controls to raise the methodological robustness of future rankings (Hood, Dixon, *et.al.*, 2008a:298).

As part of the first generation of ranking analysis, Gormley and Weimer argue that these instruments encourage accountability to external audiences and provide valuable feedback to services providers (1999:1). Though, the authors acknowledge the methodological challenges and constant tradeoffs in the design of the scorecards. Gormley and Weimer also analyse the pathological incentives of organisations, whose performance is measured by scorecards. The typical examples of these perverse incentives are the schools that stop teaching certain subjects and adapt their curricula to elevate their position in the rankings.

One of the problems with rankings is that they aim to fulfil a double role as mechanisms of communication and policy instruments. Besançon acknowledges this dual perception of the measurement instruments for governance as a “shaming mechanism” and a standard “to indicate where policy might prove most effective (2003:2).” In his critique of Transparency International, Corruption Perception Index (CPI), Galtung (2005:1) defines the index as a “formidable instrument in raising awareness”. However it also highlights that the “principal flaw is that it is a defective and misleading benchmark of trends. Initially set up to encourage reform, the CPI cannot answer the basic question: ‘After four years, are these reforms making any difference?’” (Galtung, 2005:12). The CPI is an excellent mechanism to set an advocacy agenda in the public opinion, but it does not throw any light in the policy options to tackle the problem associated with corruption. Galtung structures his analysis around seven failures of the CPI.⁴ In his closing argument, the author recommends that the CPI should no longer be published in its present form.

McGillivray (1993:189-190) criticises the UN Human Development Index (HDI) because it adds few new insights to a ranking of per capita income. The HDI aims to measure welfare with more complex dimensions than the income variable. The HDI is a composite index of four indicators: life expectancy, literacy, educational attainment and GDP per capita. McGillivray criticism highlights a problem with the HDI methodology, because it does not achieve its objective of differentiate Human Development from per capita income or its other three components taken individually. McGillivray provides a series of suggestions which can improve the index in aspects of weights, composition and comparability (1993:189-191).

The second generation of analysis sets off from the fact that the use of rankings will not end in the foreseeable future. In consequence, there is a need for incentives to measure and improve their methodologies. Based on the work of Gormley and Weimer, Hood and Dixon (2008a:298) developed a method to rate 14 international rankings according to three criteria of validity and

⁴ 1. Only Punishing the Takers, not the Givers or Abettors; 2. Irregular and Uncontrolled Country Coverage; 3. Biased Sample: More Than 90% of the World is Missing; 4. Imprecise and Sometimes Ignorant Sources; 5. Far Too Narrow and Imprecise a Definition of Corruption; 6. Does not Measure Trends: Cannot Reward Genuine Reformers; 7: Guilty by Association - Aid Conditionality.

three of reliability. The authors define validity as a metric “that captures what it intends to measure, while reliability broadly means that a metric will produce consistent results when repeated (2008a:298).” Hood and Dixon initiative could have a positive repercussion improving the methodological quality of ranking mechanisms, as it apply the logic and competitive incentives of the benchmark systems to strengthen the validity and reliability of the ranking exercises.

5.2 The challenge of measuring budget transparency in Mexico

The analysis of budget transparency in Mexico is a novel exercise in academic research. The secrecy and lack of clarity of budget information was one of the characteristics of Mexico’s presidentialism. The absence of detailed information over government spending was an additional source of power and influence of the Executive office. Until 1997, the President did not have legal or political pressures to clarify the opaque presentation of budget information. As other vices of Mexico’s political system, the lack of budget transparency at federal level trickled down to subnational authorities. Until a few years ago, it was impossible to construct a Budget Transparency index, because there was not enough information to design the ranking. The emergence of multiparty representation in the federal and state congresses promoted different degrees of openness in budget transparency, which allowed the first steps of research on the topic.

As discussed in the Introduction of this dissertation, the first transparency indexes presented in Mexico reported on the national budgets in five Latin American countries⁵ (Hoffbauer & Guerrero, 2002) and were based on a perception survey completed by 792 continental experts on budgeting.

For this dissertation, I designed the first Budget Transparency Index for Mexican States based on the actual contents of the budget decrees for the FY of 2003. The BTI had the aim of examining whether Mexican states had homogeneous disclosure criteria for the construction of their budgets.

⁵ Argentina, Brazil, Chile, Mexico, and Peru.

The effort was useful as a first approach to the challenge to build a Budget index for Mexican States. However, the instrument was limited to just 25 questions. The questionnaire omitted important information on subnational public finances such as the disclosure of specific transfers to municipalities in each state, or the distinction between local and federal revenues. Another shortcoming of the Budget Index of 2003 was that each question had an identical weight in the final result of the Index. Giving the same value to each answer of the questionnaire simplified the methodology of the Index, but gave matching importance to very different aspects of budgeting: e.g., the disclosure of the budget to the State Electoral Commission received the same weight as the disaggregated information of the financial transfers to municipalities.

The exercise of the Index in 2003 functioned as the base for a new Index based on an instrument with 43 questions and a new methodology that will be explained in the following section. As the 2003 and 2008 indexes use different instruments and methodologies, it is not possible to make a valid comparison between them. However, some of the information that was gathered during the 2003 exercise is still useful for analysing the changes in specific state budgets during the last five years (2003-2008).

5.3 Budget Information Index

In his essay on the execution of local budgets, Thurmaier (2007:272) states: “democratic accountability for budget execution depends on the quality of the initial budget documents. The budget document presents the spending plans that will be monitored during budget execution. A budget document that lacks sufficient detail and is not structured programmatically makes it difficult for citizens — even legislators — to effectively monitor budget execution.”

Based on a similar claim to Thurmaier’s argument, I designed the Budget Information Index (BII), based on the initial budget decrees approved by the 31 state congresses and Mexico City

Legislative Assembly for the FY 2008⁶. The Index has the objective of assessing the diverse criteria for budget data disclosure in Mexican states. As will be shown, each local government develops its own procedures to convey and break down the information on how and by whom public money is spent.

The first step to construct the BII was examining the 2008 state budgets in order to address the type of information they included. The exercise was focused on finding the best disclosure practices of state budgets. If a state budget decree presented more specific information or disaggregated financial data, this type of information was used as a benchmark to measure the other state budgets. For example, if a state provided detailed information about the public resources allocated to finance political parties, that element would become a benchmark to measure all the states.

The second step was designing an instrument to collect information and compare the budgets in a systematic way. The instrument contained 43 questions and was based on the best practices of the 32 budgets in terms of information specificity, as identified during the first stage of construction of the Index. Once the instrument was designed, it was used to analyse the 32 subnational budgets for the year 2008.

⁶ The budget decree documents were collected from the 1st to the 20th of March 2008.

5.3.1 *The ten categories and the questions of the BII*

The instrument was divided into ten categories⁷, which intended to address the level specificity of budget information in different state institutions and domains of public finance. Four of these categories are derived from a basic budgeting question: which state institutions are in charge of government spending. Possibilities are Legislative and Judicial Branches, State Autonomous Institutions, Executive Branch, Transfers to municipal governments. Despite the heterogeneous criteria for disclosing comprehensive information, 95% of state budgets decrees have in common a gross category to present the expenditure allocation of the three branches of government, the Autonomous Institutions and the transfers to municipalities. As each of these categories includes a different number of state entities or government offices, there are a different number of questions in each category. Though, there are uneven numbers of questions in each category, weighting process for each category, controls these differences.

Regarding this group of categories, the item 'Transfers to municipal governments' is related to the power of some governors to administer, for their convenience, the flow of resources from state coffers to the *ayuntamientos*. The financial opacity of state governors towards municipal presidents reproduced the informational asymmetries between the Federal Executive and subnational governments. This informational asymmetry is based in lack of clear and timely information about the amount of resources that ought to be transferred to municipalities.

The other four categories of the BII (Budget management, Government employment, Public debt management and State government subsidies and transfers) include financial and nonfinancial information regarding the allocation and administration of government expenditure. The questions in each category are derived from the common structure of the budget decrees and the benchmark of best disclosure practices that resulted from the examination of the 2008 state budgets. For example, the majority of the states budgets disaggregate the payments for state public debt, but only a subset differentiates the funds

⁷ For the individual score in each category, see Appendix 5.

allocated to principal and interest. The number of questions in each category reflects the level of detail or specificity of these sections of the state budgets.

From this group of categories, I had special interest in the information regarding Government Employment, specifically the number of people working in state bureaucracies. As analysed in chapter 4, government jobs could be used as a deliverable good in a clientelistic exchange between the patron and its political base. With no tenured positions, the status of government workers is tied to the political faith of their patron, or in the absence of re-election, to the results of the incumbent party. chapter 4 explained that there are only consistent figures of state government workers for the years 2005 and 2006, derived from data of the National Bureau of Statistics. In this regard, budget documents could be an alternative source for mapping the scale of government employment at subnational level. However, just one third of the states provide data about government employment in their budget decrees. The systematic disclosure of the number of workers becomes a crucial piece of information in the case of states which have an explosive growth in payroll expenses in the aftermath of decentralisation.

The category of Federal transfers was included in the BII because of their importance in subnational finances. As shown in chapter 3, on average 91% of state expenditure comes from federal transfers. The number of questions in this category reflects the different pools of resources and federal subsidies that benefit state treasuries.

The Internet Accessibility of budget documents is the last category of the BII. The category determines if states have different disclosure criteria for the availability of budget documents.

The ten categories and their respective questions are:

Legislative and Judicial Branches

1. Is there a line item for the Local Congress included in the state budget?
2. Is there a line item for the Local Supreme Audit included in the state budget?
3. Is there a line item for the Judicial Powers included in the state budget?
4. Is there a line item for the Electoral Justice Tribunal included in the state budget?

State Autonomous Institutions⁸

5. Is there a line item for the State Electoral Institute (electoral organ) included in the state budget?
6. Is the public financing for Political Parties disaggregated from the Electoral Institute budget?
7. Is the public financing for each political party disaggregated?
8. Is there a line item for the State's Human Rights Commission included in the state budget?
9. Is there a line item for the Transparency and Access to Information Institute (or equivalent bureau) included in the state budget?

Executive Branch

10. Is there a budget line item for each Ministry of the Executive Government?
11. Is the Executive Power's expenditure disaggregated by program?
12. Does the budget disaggregate the media-relations expenses of the state government?
13. Does it disaggregate contributions for a contingency fund to respond to natural disasters?
14. Are the amounts destined to Government Public Trust Funds disaggregated?
15. Does the budget specify maximum amounts for direct assignment, invitation and bidding of private contractors?

State government subsidies and transfers

16. Does the budget disaggregate the allocation of government subsidies?
17. Does the budget establish criteria or a methodology for approving new subsidies or trust funds?
18. Does the budget disaggregate government subsidies to charity organisations?
19. Does the budget disaggregate government subsidies to organisations of agricultural producers?

Budget management

20. Does the budget present criteria for salary increases of government workers?
21. Does it establish criteria for the reallocation of public expenditure within budget items?
22. Does the budget establish criteria for the management of extra-budgetary revenues?
23. Does the budget establish criteria for the management of savings or non-spent resources?
24. Does it define or use a thesaurus for budget line items?

⁸ These organisations were created as a consequence of the process of institutional change imposed from the federal authorities upon state governments. They operate outside the structure of the three branches of Government, but receive resources from the state budget.

Public debt management

25. Does the budget disaggregate the state public debt?
26. Does the budget disaggregate the principal and interest service payments?
27. Does the budget disaggregate pending payments from previous FYs?
28. Does the budget disaggregate loans to government by banking institutions?

Government employment

29. Does the budget establish the number of people working in the state government?
30. Does it distinguish between unionised and non-unionised government workers?
31. Does the budget establish the number of teachers on the state payroll?
32. Does the budget present a salary tabulator for mid-range and high government authorities?
33. Does the budget define the unionised and non unionised school teachers?
34. Does the budget have a tabulator of teachers' salaries?

Transfers to municipal governments

35. Does the budget present the amount of resources transferred to municipal governments?
36. Does the budget disaggregate the resources transferred to each municipality in the state?

Federal transfers

37. Does the budget disaggregate the resources for the *Seguro Popular* (Popular Health Insurance) transfers?
38. Does the budget disaggregate the resources for the *Alianza para el campo* (Agricultural subsidies) transfers?
39. Does the budget include estimates and disaggregated data of the 8 funds that comes from *Ramo 33*?
40. Does it disaggregate the devolution of federal taxes?
41. Does it disaggregate locally generated income from federal transfers?

Internet Accessibility of Budget Documents

42. Is the budget available on the State Congress' website?
43. Is the *Ley de Ingresos* (Income Law) on the State Congress' website?

Each of these questions formed a dummy variable (where "1" equals yes, and "0" no). Thus, the index was formed by 43 variables grouped in the same ten categories that were used in the instrument to collect the information. To produce the Index, each category was measured on a 0 to 10 scale. The ten categories were composed of a different number of variables. The weight of each variable results from dividing the maximum value of the category (10) by the number of

variables within the category (See Table 5.2). The formula below shows the construction of the

BII:

$$BII = \frac{1}{10} \sum_{k=1}^{10} \sum_{i=1}^{n_k} \frac{1}{n_k} x_i$$

Where:

k = category

n_k = number of questions/variables in category k

x_i = 0 if the answer to question/variable i is "no"

1 if the answer to question/variable i is "yes"

The overall BII score is the sum of the weight of the variables in the ten categories. The Index scale is from 0 to a maximum of 100, in the given case that a state budget has the maximum result in all ten categories. The results of the 43 questions, distributed in their respective categories, were represented in a 43X32 database. In case that the budget contained the information relevant to the question, a column in the database specified the Article or section of the budget where the information was found.

Table 5-2 Methodology of the BII

Category	Number of variables per category	Weight of each variable according to the category	Maximum value of the category
1. Legislative and Judicial Branches	4	2.5	10
2. State Autonomous Institutions	5	2.0	10
3. Executive Branch	6	1.7	10
4. State government subsidies & transfers	4	2.5	10
5. Budget management	5	2.0	10
6. Public debt management	4	2.5	10
7. Government employment	6	1.7	10
8. Transfers to municipal governments	2	5.0	10
9. Federal transfers	5	2.0	10
10. Internet Accessibility of Budget Documents	2	5.0	10
TOTAL	43	-	100

Source: Constructed by the author.

This binary scoring system has advantages over more complex systems: 1) Results are replicable; 2) results are accessible and reliable because they could easily prove the absence or presence of budget information; 3) results are valid to demonstrate the average achievement in a state in terms of budget information specificity. Another advantage of the overall index is that it effectively discriminates among states with high levels of achievement in budget information specificity, and those with low scores.

The BII is subject to measurement errors. However, I assume they are marginal, because the main source of error for the BII could be generated by the data collection process. Specifically, there might be coded errors because data was captured once. To reduce and quantify this kind of errors it would be necessary to train a team of coders to construct several versions of the data base. Though, the binary scoring system reduces the possibility of misinterpretation in the data collection process, in comparison with more complex instruments with a wider range of options.

The budget decrees for 2008 are the single source of information from where the data was collected to construct the BII. These documents represent 100% of the information contained in the state budget decrees for 2008, which constitutes an element of validity for the BII. Regarding the Mexican states or units of analysis of the BII, I collected data for each of the whole 31 states and Mexico City. In this regard, the BII is a census, so the error attributed to the variance of data by state does not apply.

It is important to emphasise that the BII is not a transparency index. From the results presented in Figure 5-1, it is not possible to infer that one state has more budget transparency than another. Alt and Dreyer-Lassen, (2003:5) created a framework to evaluate the transparency of budget documents. The authors specified four characteristics of procedural transparency:

- 1) The number of separate documents one must study to access budget information; transparency decreases as the number of separate documents increases.
- 2) The possibility for outsiders to perform an independent verification of the data presented in the budget.
- 3) The

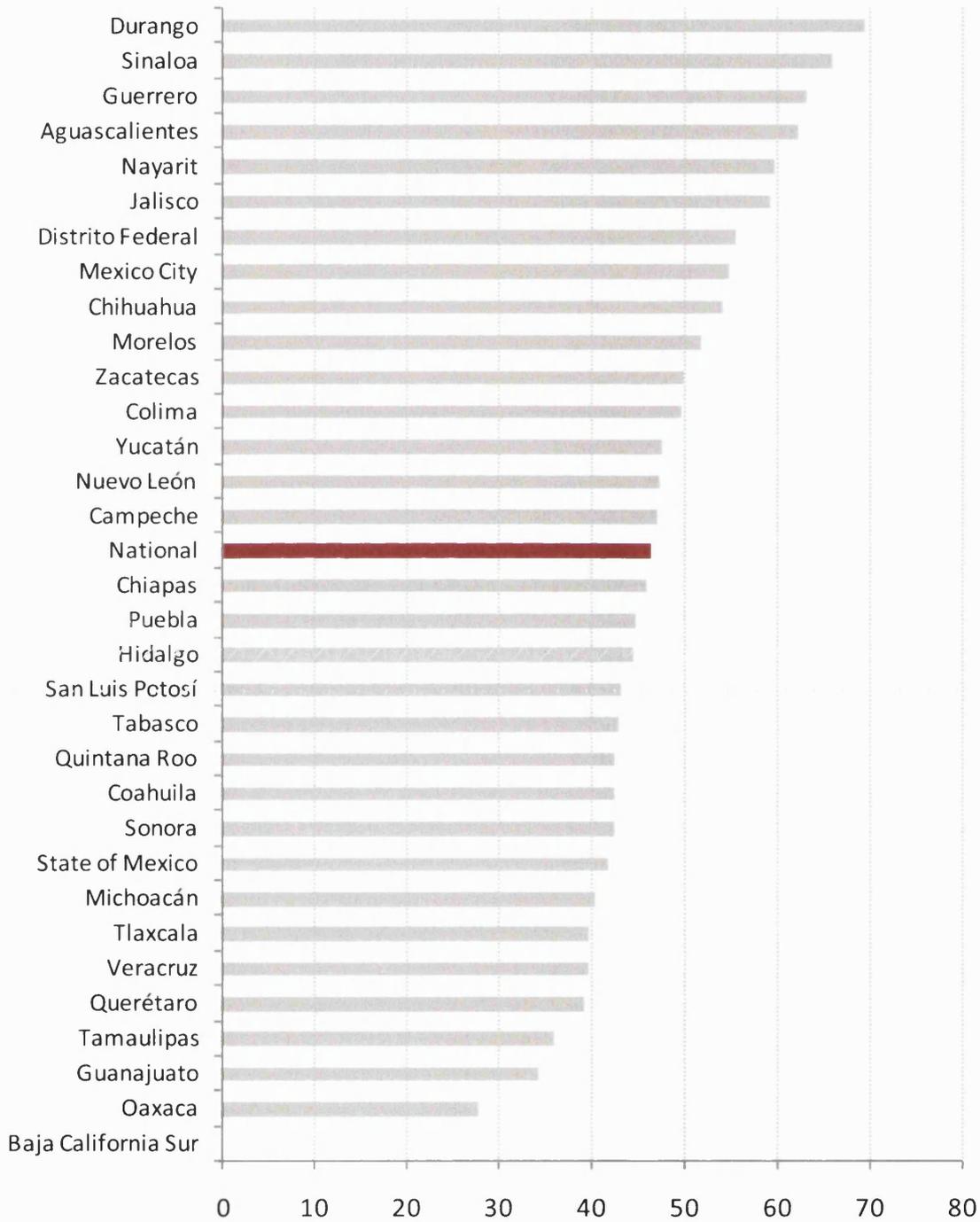
use or avoidance of opaque and arbitrary language vs. applying generally accepted accounting standards. 4) The provision of explicit justifications of the data and explanations contained in the budget.

Characteristics 2 and 3 of Alt and Dreyer-Lassen are relevant for the study of subnational budgets in Mexico. Neither an individual researcher, nor the federal government, is capable of making an independent verification of the budget data of state governments. Regarding dimension 2, subnational budget information is created and audited⁹ by state institutions that are at risk of control by the power of local Executives. With respect to dimension number 3, as described in the following pages, states coined their own arbitrary language to classify their budget categories and apportion line items. Without a common set of definitions for the meaning of budget categories, it is almost impossible to systematically compare the degree of transparency of the different states. The BII compares the budget contents and information disclosed by one state with the information presented by its peers. The BII draws a distinction between the different budget disclosure standards, but does not verify the certainty of the data contained in state budgets. The index does not assume that budget information is consistent or truthful, but it is feasible to compare the criteria and items disclosed through the information.

Figure 5-1 presents the results according to the questionnaire and the methodology of the BII. Durango has the highest mark on the BII with 69.5 out of a maximum of 100 points. The national average is 46.5 points. Baja California Sur got zero, the lowest possible score, due to the fact that its 2008 state budget decree was composed of a single paragraph article, which established the total amount of resources for the fiscal year (6.5 billion pesos) without accompanying tables to explain the distribution of resources among the different state branches and government bureaus. The budget decree of Baja California Sur did not disclose information that allowed an answer to any of the 43 questions of the instrument.

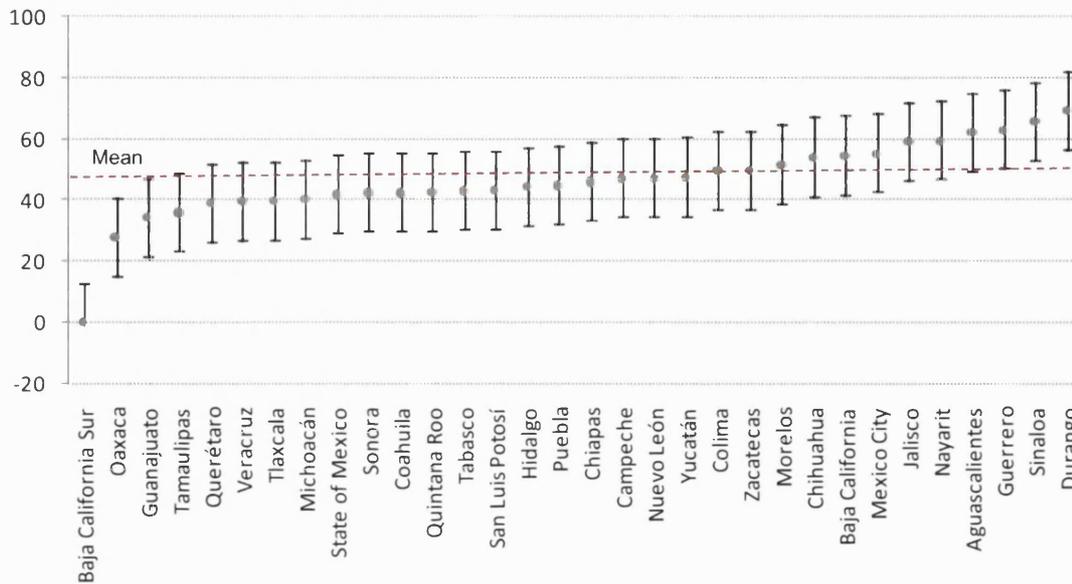
⁹ State Supreme Audit Institutions will be analysed in the second part of the chapter.

Figure 5-1 Results of the BII



Source: Constructed by the author with data from the questionnaire on the 2008 state budgets

Figure 5-2 Intervals constructed with the BII standard deviation



In order to boost the differences among state BII results, I constructed intervals from the BII standard deviation of 12.8 (See Figure 5-2). These intervals don't relate to measurement errors. Although, they are not confidence intervals, they illustrate the place a state occupies in terms of the others (mean), given the dispersion of the whole set of data. This exercise complements results obtained through the BII ranking (see Figure 5.1), since it remarks differences among states. According to this exercise, it is possible to distinguish three groups of states. The first set is formed by Baja California Sur, Oaxaca and Guanajuato, which have the lowest intervals in the BII and are below the total mean. The second group is the most populated one and is placed around the mean. The 26 states in this group obtained scores between 36 and 62 BII points (+/- 12.8) and in this exercise they perform in a similar way. Guerrero, Sinaloa and Durango belong to the third set. This group had the highest scores in the ranking.

5.4 Heterogeneous Budget Information in Mexican States

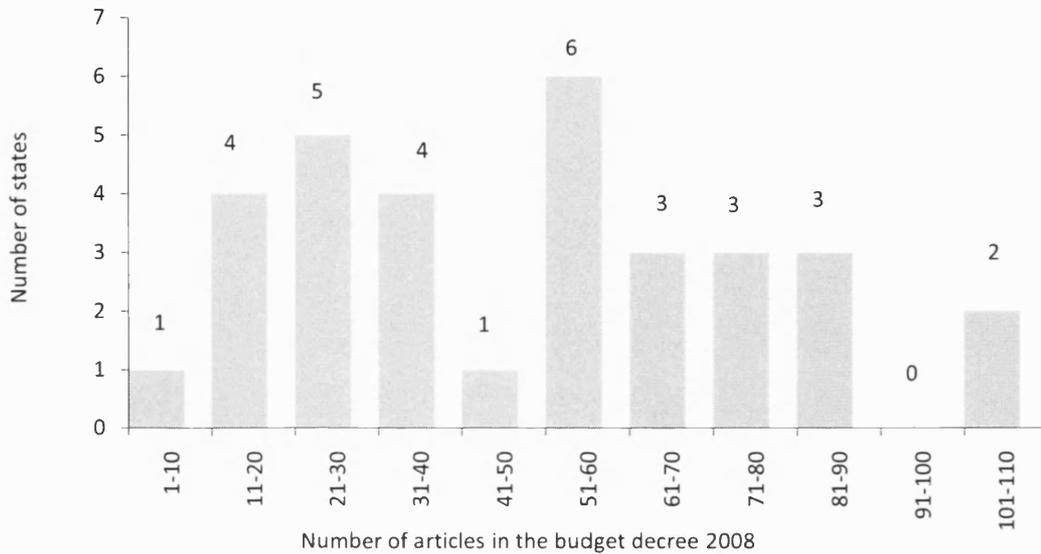
The different grades of the BII show the multiple criteria for budget disclosure in Mexican states. In the process of analysing the subnational budgets for answering the BII questionnaire, I found additional elements to support the claim that state budgets are designed with widely varying standards. In the following pages, I will address the relevant issues and particular cases regarding examples of budget heterogeneity. The particular examples of budget heterogeneity will be addressed through the following seven points:

- 5.4.1 Heterogeneous legal structure of State budget decrees.
- 5.4.2 Idiosyncratic language to establish budget items.
- 5.4.3 Transparency and opacity in transfers to municipalities.
- 5.4.4 Budgets of the State Legislatures and Judicial Powers.
- 5.4.5 Discretionary management of expenditure and non-budgeted revenues.
- 5.4.6 Communication expenditures and public resources for political parties.
- 5.5.7 The Budget in Jalisco: Backward Modernisation.

5.4.1 Heterogeneous legal structure of State budget decrees

A simple exercise to show the heterogeneous legal structure of Mexican state budgets is to compare the number of articles contained in each budget decree. Figure 5-3 shows the number of articles in the state budgets on the horizontal axis, and the number of states on the vertical axis. In the future, once the secondary legislation in budget harmonisation is enacted, states will tend to have less variability in the number of articles in the budget decree and a more homogenous legal structure. The graph shows that one state budget has between 1 and 10 articles, while the right side of the figure shows that 2 states (Aguascalientes and Puebla) have over 100 articles in the internal structure of their budget decrees.

Figure 5-3 Legal structure of budget decrees



Source: Constructed by the author with data from 2008 state budgets.

5.4.2 Opaque language to establish budget items.

The diversity of state budgets is not limited to their legal structure, but also applies to the use of language to categorise government revenues and expenditures. Tables 5.3 and 5.4 are a brief “dictionary” of budget terms in Mexican states. Table 5.3 shows how six different states classify the transfers for the *Seguro Popular*, the system of health insurance for the people who work in the informal economy. The *Seguro Popular* is a government program that is financed by both federal and state governments through a bilateral agreement. As it is shown in Table 5.3, states could classify the federal transfers to the program as revenue or expenditure, each according to its unique semantic definitions.

Table 5-3 Classification of the *Seguro Popular* according to the budget of selected states (2008)

State	Located in the	Language definition
Chiapas	Budget Decree	Social Security System for Health
Chihuahua	Income Law	Federal Transfers
Sinaloa	Income Law	Federalised Resources
Veracruz	Income Law	Other apportions from the federation
Sonora	Income Law	Federalised Resources transferred through agreement
Guerrero	Budget Decree	Solidarity apportion to the state's Social Security System for Health

Source: Constructed by the author with data from state budgets, 2008.

Table 5.4 gives the results of an identical exercise, but with the program *Alianza para el Campo*, which provides subsidies for agricultural producers. In six different states, the subsidy program is referred to six different names. The federal programs *Seguro Popular* and *Alianza para el Campo* are just two examples of the use of opaque and arbitrary language in subnational budgets.

Table 5-4 Classification of the *Alianza para el Campo* according to the budget of selected states (2008)

State	Located in the	Language definition
Chihuahua	Income Law	Federal transfers
Coahuila	Income Law	Agreements
Nayarit	Budget Decree	Programs and Agreements
Nuevo León	Budget Decree	Transfers for investment
Sinaloa	Income Law	Federalised resources
Guerrero	Budget Decree	Budget apportions from agreements

Source: Constructed by the author with data from state budgets, 2008.

5.4.3 Transparency and opacity in the transfers to municipalities

Despite the fact that the federal Law of Fiscal Coordination establishes penalties for governors who withhold resources from municipalities, the enforcement is weak and state executives still have wide room to administer municipal transfers according to their own convenience. The Law

of Fiscal Coordination determines that 20% of the *participaciones* transferred to the states have to go to municipal governments, but the governors and local congresses can define the distribution among the municipalities of their respective states. As was described in chapter 3, governors can change the apportionment formulas to benefit certain municipalities. Grindle (2007:99) remarks that the main responsibility of a municipal president is to guarantee the flow of funds from the state government to the *ayuntamientos*. One of reasons why state governors still hold a grip over municipal transfers is the lack of accountability about when and how much is transferred to the *ayuntamientos*.

The 2008 questionnaire showed that all states, with the exception of Baja California Sur, presented budget information regarding the total pool of resources available for municipalities. However, just 7 states and Mexico City presented the detailed formulas and amounts of resources to be transferred to specific municipalities and *delegaciones*.¹⁰ In these states, the municipalities have a clear financial horizon as they have sufficient data about the resources transferred from the states. In the other 25 states, municipalities could be subject to arbitrary disclosure policies of the state government. The weak Horizontal Accountability in the transfer of resources from state to municipalities resembles the arbitrary financial power of the President over subnational governments during the former political system. The informal powers of governors overshadowed the formal regulation that aims to transparent transfers to municipalities.

5.4.4 Budgets of the State Legislatures and Judicial Powers

In 2003, all Mexican states, with the exception of Colima, disclosed the funds allocated to their respective congresses and tribunals. Article 5 of Colima's budget decree for 2003 stated that there would be transfers of funds for "182 million pesos (£9.1 million) assigned to Programs, Private and Public entities, civic and welfare associations. These organisations include the Legislative and Judicial Powers." No other part of the document provides a disaggregated

¹⁰ The *delegaciones* are the equivalent to municipalities in Mexico City.

account that explains the distribution of resources among philanthropic institutions and government powers. The 2003 Colima budget gave the same treatment to the Legislative and Judicial branches as to CSOs and charity organisations. For 2008, the Colima state budget disaggregated the budget for each of its state powers.

According to the budget decrees for 2008, the Legislative Assembly of Mexico City and the Congress of the State of Mexico are the best-financed local legislatures in the country, with 964 million and 1,104 million respectively (£46 million and £52 millions respectively). These resources are equivalent to the combined budgets of the congresses in Baja California, Jalisco, Nuevo León, Puebla, Quintana Roo, San Luis Potosí and Sonora. If the budget of the Legislative Assembly of Mexico City were to be distributed among the 66 members of the legislature, each would receive 14.6 million pesos (£697,484) during the fiscal year. These figures make the expenditure per legislature member in the Mexico City Assembly almost the same as that of the federal deputies, who would receive, if distributed per capita, 15.8 million pesos in 2008 (£752,388).

5.4.5 *Discretionary management of expenditure and non-budgeted revenues*

In 2003, the Quintana Roo state budget gave the governor an equivalent of the federal secret pool of 12.5 million pesos (£625,000) for *pagos imprevistos* (unexpected expenses or unpredictable payments) and as such cannot be specified in the budget of state government agencies (Art. 18). These funds are part of the pool for salary rises, so it can be expected that they were used to complement the income of the governor's associates. As there are no homogeneous semantic categories to classify budget items, it is impossible to know if other states have equivalent secret pools of resources misclassified or hidden behind various labels. For 2008, Quintana Roo's budget did not include a line item for *pagos imprevistos*.

In 12 out of 32 subnational governments, the budget fails to specify any kind of disclosure, audit or accountability mechanism to report the non-budgeted revenues, including unexpected profits derived from the oil exports. In the budgets for 2008 from 32 subnational governments,

just three states (State of Mexico, Guanajuato and Zacatecas) specified a role for the state congresses in the *ex ante* control of non budgeted revenues. Article 30 of the Guanajuato Budget decree establishes that in the given situation that non budgeted revenues exceed 7.5% of total expected revenues, the local Congress should authorise the apportions. In the case of the State of Mexico, the local legislature would have to authorise any apportion of non budgeted revenues if they exceed 2% of total revenues.

For the years 2003 and 2008, Zacatecas is the only subnational government which presents in its budget decree a criterion for the *ex ante* control of non-budgeted revenues. For 2008, the state Executive can allocate the non-budgeted revenues if they are below 5% of the total state revenues determined in the Income Law. If the percentage is higher than 5% but lower than 10%, the state Executive has to report to the local Congress before its apportion. If the surplus revenues are higher than 10%, the Congress must give its approval before any expenditure. Every three months, the governor of Zacatecas is required to report to Congress on the flow and use of unbudgeted revenues.

However, the management of non budgeted revenues in Zacatecas is an example of the heterogeneity in budget information, not only between different states, but in the same state in different years. In 2003, the Zacatecas budget had a more restricted *ex ante* control over non-budgeted revenues. In that year, the state Executive could use the unbudgeted revenues only if they were below 2% of the budget approved by the Congress. If the extra revenues were higher than this percentage, the Congress would have the power to decide upon its allocation.

Five years later, in 2008, the governor gained a margin of discretionary management of resources equivalent to 5% of the total state budget. Zacatecas' management of non-budgeted revenues shows that the budget standard is not consistent across accounting periods (Mikesell, 2007:32). The aim of Mexico's federal government to homogenise the subnational budget documents might bring more stable criteria in the disclosure and accounting standards of subnational public expenditure.

In 2008, the three states where the local Congresses had a role in the *ex ante* allocation of non-budgeted revenues have different distribution of power inside the legislature. In the State of Mexico, the party that holds the governorship, the PRI, is the second force in the local Congress with 30% of the seats. In Guanajuato, the ruling party, PAN, has a comfortable majority with 64% of the seats in the local Congress. In Zacatecas, the ruling PRD is the first force in Congress with 43% of the seats.

There is no obvious relationship between the distribution of forces in the local Congress and checks and balances of non-budgeted revenues. During 2008, in 15 states the party of the governor did not hold the majority in Congress and in consequence the approval of the state budget requires certain political bargaining. In only two of these 15 states, State of Mexico and Zacatecas, does the Congress have a role in the apportioning of state resources. From 18 states where the party of the governor holds more than 51% of the seats in the state Congress, only in Guanajuato does the legislature have a say in the *ex ante* distribution of the revenue surplus.¹¹

According to a study by the Ministry of Finance, for the 2005 fiscal year, Aguascalientes, Colima, Jalisco and Puebla failed give an account of the non-budgeted revenues in their reports of the *cuenta pública*, so their respective congressional SAIs were unable to perform *ex post* audits of the additional revenues. In the case of these four states, there is no financial accountability of non-budgeted revenues, either at the beginning or the end of the budgeting process. According to the ASF, from 2003 to 2007, state governments received 95 billion pesos from non-budgeted oil revenues.

For Rubin (2007:148): "Where corruption may be a severe risk, the budget should include as many programs and resources as possible. Programs and resources left out of the budget are often nearly or completely invisible. They create tempting opportunities for cronyism, patronage hiring, overpayments and unaccounted fees. National governments that are engaged in decentralising efforts may not fully trust their local governments. To compensate, they may impose extra reporting requirements to ensure that local governments are complying with

¹¹ Information obtained through the Internet from the web pages of state congresses.

rules.... In this case, a format that highlights the legal framework underlying the budget may be desirable even if the impression at the local level is that the national government is still calling the shots." For Von Hagen (2007:32): "The budget should not allow policy makers to hide expenditures or to use them for purposes other than those stated in the executive's budget proposal and authorised by the legislature."

The 2008 budget of the State of Mexico does not hide non-budgeted revenues, but disguises the real size of the public debt. After a FY is over, usually there are still pending payments from the previous budget cycle. All states classify the pending payments as a subsection of public debt, since the government has the legal requirement to pay. However, in its 2008 budget, the State of Mexico had the singular accounting practice of including the pending payments under the category of government revenues. The possibility of disguising payment obligations as government revenues or the weak accountability for non budgeted oil revenues in subnational governments are among the important catalysts to promote homogenised budgets in the three levels of government.

5.4.6 *Communication expenditures and public resources for political parties*

For 2008, 17 states specified "social communication" expenditures in their budgets. The *gastos de comunicación* is the budget term for expenditure in contracting of media advertising that publicises the achievements and policies of the state governments. In 2007, the federal Congress approved a reform to prohibit the image, voice or name of the any elected executive (President, governors or Municipal presidents) to appear in the promotional campaigns of the different levels of government. The prohibition was a response to a national trend in political advertising, where especially state governors appeared on TV commercials, using the government campaign as a mean of personal promotion. In 2008, the state of Nuevo León acknowledged in its budget the largest financial apportionment for social communication expenditures with 114.6 million pesos. However, due to the lack of clarity in the language and classification of state budget data, it is impossible to ensure that other states do not have even higher apportionments for media advertising.

In the 2003 budgets, just 6 states and Mexico City disaggregated the information of resources allocated to political parties. For 2008, the figure went down to 5 states. Three states¹² and Mexico City disaggregated the information in 2003, but did not disclose it for their 2008 budgets. These changes show that subnational governments can change their disclosure budgeting criteria without any further explanation. In 2008, Sinaloa was the only state that disaggregated the budget transfers to each political party (See Table 5.5).

Table 5-5 Public Resources allocated to Political Parties in the state of Sinaloa (Pesos 2008)

Partido Acción Nacional (PAN)	18,400,224
Partido Revolucionario Institucional (PRI)	21,887,474
Partido de la Revolucion Democratica (PRD)	4,576,908
Partido del Trabajo (PT)	2,294,976
Partido Verde Ecologista de Mexico (PVEM)	1,699,476
Convergencia (PC)	1,703,868
Alternativa Socialdemocrata (ASD)	1,330,608
Partido Nueva Alianza (NA)	1,330,608
Total government finance to political parties in the state of Sinaloa	53,224,142

Source: Sinaloa State Budget 2008.

5.4.7 The Budget in Jalisco: Backward Modernisation

Since 2001, the Finance Ministry in the State of Jalisco has transformed the formats of the budget document. The change consists in organising the budget information around the *compromisos* (commitments) made by two governors from the PAN, Francisco Ramírez Acuña (2001-2006) and Emilio González Márquez (2007 ongoing) during their electoral campaigns. For the budget of 2003, the Jalisco budget document provided information about the objectives of expenditure allocation, although without specifying which government agency was in charge of using the resources. For example, the budget showed that the *Commitments for Human Development* received 1300 million pesos (£65 million, 2003), but it was impossible to know the amount allocated to the Education Ministry.

¹² State of Mexico, Nayarit and Zacatecas.

For the 2008 state budget, Jalisco included the item of *Unidad Presupuestal por Objeto del Gasto*. This budget jargon is untranslatable to English, but specifies which bureau or government entity is responsible for the budget apportionment. From 2003 to 2008, the budget decree of Jalisco has evolved to answer one of the most basic questions of government financial accountability: which institution is in charge of spending public money.

The main issue with Jalisco's budget is that since the year 2001, it has violated the constitutional principle of Division of Power. In the 2008 budget, the governor's commitment of *Impulso al Desarrollo Democrático* (Impulse for democratic development) mixes the resources allocated to a government ministry, the local Congress and the autonomous electoral state commission. In the text of the document, the legislature and an autonomous state institution have joint responsibility to fulfil the commitment of the Jalisco governor.

The examples presented in the section above illustrate particular cases of how state governments design their budgets according to uncommon accounting standards. The budget decrees represent the ex ante controls of the legislature upon the expenditure decisions of state governments. These financial documents, which contain the forecasts of government revenue and expenditures, represent the first step in the accountability of the budgeting cycle. At the end of this process are the state Supreme Audit Institutions, which have the aim of verifying the completeness and accuracy of government financial transactions at the end of the fiscal year. If budget decrees represent the beginning of the budget process, the state SAIs are the organisations at the last stage of the accountability of government expenditure.

5.5 Supreme Audit Institutions at the State Level

Chapter 3 described that the two largest sources of revenue for state governments were the funds transferred through the *Ramo 28 (Aportaciones)* and *Ramo 33 (Participaciones)* of the federal budget. *Ramo 33* is classified as federal resources labelled to cover the expenses of education, health services, municipal infrastructure and other government programs transferred to state authorities. *Ramo 28* consists of the devolution of federal taxes that were

collected in the states. One of the key differences between the two pools of resources is that *Ramo 33* is categorised as federal funds, while *Ramo 28* is considered as state funds. This different classification implies that the resources of *Ramo 33* can be audited by federal institutions, the *Secretaría de la Función Pública* and the *Auditoría Superior de la Federación*. In contrast, funds from the *Ramo 28* can only be audited by state internal comptrollers and the congressional Supreme Audit Institutions.

The decentralisation of public funds in Mexico over the past decade has transformed patterns of public spending (See chapters 3 and 4). In 1990, 66% of the total budget was in the hands of the central government, and the local authorities used the remaining 34%. Today the ratio is reversed, with governors and municipal presidents controlling 57% of total government expenditure and the Federal Government the remaining 43%. The decentralisation process has expanded the budgets of governors and municipalities.

According to Article 46 of the Law of Fiscal Co-ordination (*Ley de Coordinación Fiscal*), state Congresses, through their audit supporting agencies, have the responsibility of overseeing the allocation of these resources. The 31 state congresses and the legislative assembly of Mexico City each have a technical bureau dedicated to supervising the financial accountability of the three branches of government and the municipalities. The state Supreme Audit Institutions (SAIs)¹³ do the audit work at the end of the budget cycle, once the public money has been spent. SAIs are the last accountability mechanism in Mexico's budget cycle. According to a report of the ASF for the fiscal year 2001,¹⁴ local governments failed to clarify 85% of the irregularities in state accounts, requested by the Auditoría Superior de la Federación.

Following the same pattern as that of state budgets, each state in Mexico has had its own legal framework and design for congressional supporting agencies that perform an external audit.¹⁵ In 1999 and 2000, legal reforms at federal level for the creation of the ASF triggered a cascade

¹³ State laws use different names for their respective audit bureaus. This chapter will use Subnational Audit Institutions (SAI) as a generic name.

¹⁴ ASF, *Informe Sobre la Cuenta Pública del 2001*, (2003).

¹⁵ Other federal countries like Australia and the United States have a similar model, where each state determines its own audit requirements and has its own institutional design for the SAI.

of changes in state laws. In the spring of 2000, the state of Zacatecas published a new law to redesign its Supreme Audit Institution. During the same year, Veracruz, Campeche¹⁶ and Nayarit¹⁷ followed with a new normative framework to strengthen their respective congressional bureaus for external audit. By April 2008, 26 state congresses had created such a new normative framework for the institutions in charge of the oversight of public accounts. In the last decade (1998-2008) just five states¹⁸ have declined to enact new laws regarding their SAI¹⁹ (See Table 5.6). Ten years after the enactment of the *Ley de Fiscalización Superior de la Federación* (Law of Superior Fiscalisation of the Federation, LFSF), 23 states have given constitutional recognition to the local SAI.

Table 5-6 Dates of Legislation for SAIs at the state level

State	Date of Publication of the Law
Aguascalientes	19/IV/81 Amended 26/06/99
Baja California	28/IV/04 Amended 14/09/2007
Baja California Sur	25/II/02
Campeche	29/VI/00
Coahuila	27/VI/07
Colima	16/VII/88
Chiapas	18/VIII/01 Amended 04/XI/2004
Chihuahua	23/VIII/2007
Mexico City	8/02/99 Amended 21/02/07
Durango	15/XII/01
Guanajuato	07/XI/03 Amended 29/04/05
Guerrero	30/X/02 Amended 28/XII/2007
Hidalgo	29/XII/06
Jalisco	15/XII/03
State of Mexico	29/VII/04 Amended 19/12/2006
Michoacán	27/III/03 Amended 21/XI/2007
Morelos	11/VIII/03 Amended 31/05/2006
Nayarit	21/X/00 Amended 04/VII/2007
Nuevo León	18/VIII/06
Oaxaca	23/VIII/95

¹⁶ Campeche reformed its state Constitution, but did not publish a specific law to regulate the oversight functions and responsibilities of the SAI, which were integrated in the internal law of the Congress.

¹⁷ These four states enacted their laws to regulate their respective SAIs, even before the federal Congress approved the secondary law of the ASF in December 2000.

¹⁸ Aguascalientes, Colima, Oaxaca, Sinaloa and Sonora.

¹⁹ As it will be reported at the end of the chapter, in May 2008 a constitutional reform forced all state congresses to modify their legislation in order to strengthen the political independence and autonomy of their SAI.

State	Date of Publication of Law
Puebla	11/V/01
Querétaro	22/III/06 Amended 07/IX/07
Quintana Roo	16/XII/03 Amended 14/12/2005
San Luis Potosí	23/IV/03
Sinaloa	31/III/97
Sonora	13/II/85
Tabasco	29/IV/03
Tamaulipas	12/XII/01 Amended 31/05/2007
Tlaxcala	6/XI/01 Amended 01/09/2004
Veracruz	26/V/00 Amended 21/XI/06
Yucatán	30/III/04 (approved)
Zacatecas	30/III/00 Amended 28/08/2007

Sources: Compiled by the author with data from state legislation and Figueroa, 2008.

In the eyes of the Federal Congress, this cascade of reforms in state SAIs was not enough to guarantee the political independence of these organisations. In the same process of legal amendment that aimed to homogenise budget documents and procedures at subnational level, the Federal Congress established in the Constitution that state SAIs should have three common characteristics:

- 1) The head of the state SAI shall be approved by a 2/3 majority of the local Congress.
- 2) The head of the SAI will have a minimum tenure of 7 years.
- 3) The head of the SAI should have at least 5 years of experience in government audit.

The next part of the chapter will make both a *de jure* and *de facto* analysis of the SAI in the aftermath of the constitutional amendment to reform state SAIs. The following pages will provide a descriptive analysis of the design and capabilities of state SAIs before the 2008 constitutional reform. The analysis is based in two surveys applied to the SAIs. The first survey was applied from March to October 2003, the second from October 2007 to April 2008. Both surveys aim to provide information for a descriptive analysis of the legal framework and institutional capabilities of the Subnational Audit Institutions.

The 2003 survey benefited from the cooperation of the *Centro de Investigación para el Desarrollo A.C. (CIDAC)* and the daily *Reforma* of Mexico City. Both organisations gave me institutional support to organise a census of the 32 legislative audit offices in Mexico. In 2003, I was a postgraduate student with no institutional support, and none of the state SAIs responded to my request. Three months after sending the census questionnaire by courier mail and email and not receiving a single answer, it was obvious that the SAIs bureaucracies were reticent to answer any inquiries about their performance or the internal organisation of the institution. However, thanks to the support of a newspaper with national influence, the staff of the SAIs showed more will to cooperate with the census.

The 2003 empirical research was the first academic effort to measure the institutional capabilities and the legal design of subnational SAIs in Mexico. Despite the fact that decentralisation increased the financial relevance of subnational governments, legislative audit offices at state level were absolutely ignored by Political Science analysis. Before this dissertation, there was no academic research on local accountability institutions in Mexico.

The 2003 census was based on 16 questions (See Appendix 5.1) to assess the institutional capabilities and performance of each SAI. The census is divided into 4 sections: 1) Budget; 2) Human Resources; 3) Audits, 4) Sampling. The survey was completed in October 2003. However, 5 out of 32 subnational SAIs never replied to the request to participate in the survey. The institutions in charge of budget accountability in states and municipalities were not used to rendering accounts of their performance to academic or journalistic research. Additional information about the institutional design of the SAIs was obtained through a review of the legal framework of each audit supporting-agency of the state congresses.

The 2007-08 survey was designed and applied in collaboration with Alejandra Ríos Cazares, then researcher at the Center for US-Mexican Studies at the University of California in San Diego. It was based on 44 questions, divided in five sections: I) Legal Framework II) Institutional organisation, III) Operational Issues IV) Audit Impact and V) Relationship with Congress. For 2008, 10 out of 32 SAIs never replied after six months of written and oral requests. From the 10

that did not reply to the census, 5 states were governed by the PRI, 3 by the PRD and 2 by the PAN. Regarding the hegemony of the governor's party in Congress, in 5 states it had more than 51% of the seats. In the other 5 states the governor's party did not have control over the congressional majority.

5.5.1 Tenure and appointment of the Director of the SAIs

The appointment of the head of the SAI through a simple or a two-thirds majority is not a minor issue under the structure of Mexico's party system. A two-thirds majority forces a consensus between at least two political forces, because it is highly improbable that a single political party will control 66% of votes in a state Congress.²⁰ The Constitutional amendment published in 2008 will force all states and the Federal District to appoint the head of the SAI by a two-thirds majority in all state congresses and the Legislative Assembly of Mexico City. As seen in Table 5.7, 20 states already have a legal framework that demands a two-thirds majority to appoint the head of the state SAI; four states require a simple majority and seven states do not specify how the Congress will choose the leader of the audit institution.

Table 5-7 Election processes and tenures of the audit institutions heads in Mexican States

State	Elected by (proportion of the assembly)
Aguascalientes	Undefined
Baja California	2/3 of the Assembly
Baja California Sur	Undefined
Campeche	2/3 of the Assembly
Chiapas	2/3 of the Assembly
Chihuahua	Undefined
Coahuila	2/3 of the Assembly
Colima	Undefined
Mexico City	2/3 of the Assembly
Durango	2/3 of the Assembly
State of Mexico	2/3 of the Assembly
Guanajuato	2/3 of the Assembly
Guerrero	Simple majority
Hidalgo	Simple majority

²⁰ In 2008, Baja California Sur is the only state where a single political party, the PRD, controls more than 66% of the votes in the state congress.

State	Elected by (proportion of the assembly)
Jalisco	2/3 of the Assembly
Michoacán	2/3 of the Assembly
Morelos	2/3 of the Assembly
Nayarit	2/3 of the Assembly
Nuevo León	2/3 of the Assembly
Oaxaca	Undefined
Puebla	2/3 of the Assembly
Querétaro	Simple majority
Quintana Roo	2/3 of the Assembly
San Luis Potosí	Undefined
Sinaloa	Undefined
Sonora	Simple Majority
Tabasco	2/3 of the Assembly
Tamaulipas	2/3 of the Assembly
Tlaxcala	2/3 of the Assembly
Veracruz	2/3 of the Assembly
Yucatán	Undefined
Zacatecas	2/3 of the Assembly

Source: Constructed by the author on the basis of state laws.

However, the two-thirds majority legal design can be bent through some of the vices of Mexico's political system. In an interview with me, the PRD Senator from Tabasco, Arturo Nuñez, stated that the current head of his state SAI (Francisco José Rullán Silva) was appointed because the PRI Governor bribed the PRD deputies in the state Congress (Nuñez, 2008). Even the most advanced institutional design for Horizontal Accountability could not prevent this corrupt practice in Mexico's subnational politics. I could not find any additional proof to corroborate Senator Nuñez's accusation. However, other testimonies collected for the dissertation indicate a very real risk of vote-buying practices in state congresses.

Without giving a specific example, the former Ministry of Interior, Jorge Carpizo, talked about the same problem: "A governor has many means, especially economically speaking, which allow him to coerce members of the Congress from the opposing party. This is the way many governors are operating, even when their party doesn't have the majority in the Congress and you could think that the power would be balanced. In reality, they do have the majority because

they are able to force, not all, but many opposing representatives, which gives the governor the guaranteed majority of the seats” (Carpizo, 2008).

The former Comptroller General, Gregorio Guerrero Pozas, said in an interview: “Governors name their auditors and their accountants and they operate under the governor's control. This means that there is no guarantee that the institution is independent, and I believe this is a very delicate matter in the states. What people used to criticise about the central federal government, where the president controlled one or more institutions of this kind, is now happening in some states” (Guerrero Pozas, 2008).

Arturo Nuñez stated that the control of the PRI governor over the Tabasco state SAI resulted in frequent and detailed audit checks on the municipalities governed by the PRD. In an interview, the former local PAN deputy of the state of Sinaloa, Alma Alcaraz, described a similar problem: “The SAI (of the state of Sinaloa) allowed the municipalities governed by the PRI to divert government funds to pay for (PRI) party activities, but if the PAN was governing the municipality the SAI would perform an audit on every nail and pencil in the *ayuntamiento*” (Alcaraz, 2008). Deputy Alcaraz was President of the Oversight Commission in the Congress of Sinaloa (1999-2001) in charge of the state SAI, however she complains that the Audit Institution did not share the findings of its audits: “As president of the Commission of Vigilance, I never got anything. It’s regarded as normal to conceal and not reveal anything” (Alcaraz, 2008).

Bardhan and Mookherjee (2000:135) identified the fact that accountability failures exist because of political capture or bureaucratic corruption. Their assumption is that local authorities are more prone to capture because factors like the degree of voter awareness, the cohesion of special interests, the electoral system and its competitiveness. One of the biggest challenges in the study of Mexico’s subnational politics is the fact that equivalent legislations can produce very different outcomes due to the particularities of the subnational political systems. A Congress with a plural representation of political parties could mean an operating check and balance of government power in one state, and an opportunity for corruption in its neighbour. The federal Congress can change the Constitution to force states to appoint the head

of the SAI through a two-thirds majority vote, but in some states they can not stop the governor from winning a majority vote through the illicit use of public resources.

The example of vote-buying practices shows that the efficiency of Horizontal Accountability might be subject to the vigour of vertical accountability and the informal practices of the political system. The theory of Horizontal Accountability and its practical institutional enforcement could become an empty shell that does not reflect the inner workings of the political system. The challenge to forge Horizontal Accountability institutions in the context of a demobilised society, weak citizenship awareness and fragile media oversight opens the door for additional research questions. Further studies should proceed from the fact that HA institutional performance is constrained both by *de jure* and *de facto* mechanisms. A research limited to the formal sphere of HA is in itself incomplete. In the effort to introduce Horizontal Accountability mechanisms into subnational government structures, the federal Congress's legislation to homogenise the design of SAIs also considered a minimum tenure of seven years for the heads of the audit institutions. The tenure of its leader is one factor that determines an AI's degree of institutional autonomy from the Legislative, the Executive and the electoral cycles. The longer the tenure, the stronger the shield against political pressures from the six-year period of the governor's elections and the three-year congressional term.

In countries with a long democratic tradition, tenure is longer than seven years²¹. The ASF has an eight-year term for the *Auditor Superior*, with one possible re-election. In 2003, the SAI of just two states, Guerrero and Nuevo León, matched the tenure of the head of the ASF. In 2007, a legal amendment in the state of Coahuila increased the tenure of the head of the SAI from 6 to 8 years. From 2003 to 2008, the average tenure of the head of the state SAIs increased from 3.75 years to 4.45 years. However, six out of 31 states and the Federal District had audit legislation in place that already satisfied the new requirements of a seven year tenure demanded in the 2008 Constitutional amendment. In four Mexican states, the law does not establish the length of the Comptroller's tenure, so the heads of the AI can be discharged at any time (See Table

²¹ The Comptroller General of the United States has a 15 year tenure. In Canada the Auditor General has a 10 year tenure.

5.8). Currently (July, 2008) in 22 states, the Comptroller General's tenure is equal to or shorter than the governor's six year term. In the period from 2003 to 2008, 7 states promoted legal reforms to extend the tenure of the head of the state SAI, but in six cases the new tenure was still under the six-year time frame of a governor's period.

Table 5-8 Tenure of the heads of the state Supreme Audit Institutions 2003 and 2008

State	Years of tenure of the Comptroller General 2003	Years of tenure of the Comptroller General 2008
ASF (National)	8	8
Guerrero	8	8
Nuevo León	8	8
Chiapas	7	7
Tabasco	7	7
Campeche*	6	6
Coahuila	6	8
Puebla*	6	6
Sonora*	6	6
Tlaxcala*	6	6
Veracruz*	6	6
Quintana Roo*	5	5
Aguascalientes*	4	4
Mexico City*	4	5
Durango*	4	4
Michoacán*	4	4
Nayarit*	4	4
Tamaulipas*	4	6
Zacatecas*	4	4
Baja California*	3	4
Baja California Sur*	Undefined	Undefined
Colima*	Undefined	Undefined
Guanajuato*	3	5
Jalisco*	3	4
State of Mexico*	3	4
Morelos*	3	4
Querétaro*	3	3
Yucatán*	Undefined	Undefined
Chihuahua*	Undefined	Undefined
Hidalgo*	Undefined	7 years
Oaxaca*	Undefined	Undefined
San Luis Potosí*	Undefined	4 years
Sinaloa*	Undefined	Undefined

*States that will require a legal reform in order to abide to the constitutional amendment of 2008.

Source: Constructed by the author on the basis of state legislation for state SAIs.

In a pioneering study of the topic, Jorge Manjarrez states in his Ph.D. thesis that from 1985 to 2001 only 25% of the heads of the AI completed their legal tenures. The 2008 survey (Pardinas & Ríos Cazares, 2008) shows a divergence between the tenure established in the law and the actual permanence of the head of the SAIs in 17 states.²² The average permanence of the immediate former head of the SAI was 28 months, although according to the legal framework the average tenure should have lasted 53 months. From the 17 states, the former head of the SAI completed the tenure established in the law in only four cases (Morelos, Puebla, Querétaro and Zacatecas).

Under the 2008 constitutional amendment, the states are able to prohibit or allow the re-election of the head of the SAI. Currently, three states do not specify if the head of the SAI can be re-elected, five states and Mexico City do not allow re-election, and 23 states do allow re-election. However the re-election of the head of the SAI has been rare. Pardinas and Ríos Cazares show that from 22 states that answered the survey, only in three cases had the head of the SAI been re-elected.

For Pope (2000:76): "To be effective, any external auditor must be immune from pressures from the clients or institutions being audited. The Auditor-General's clients are the Legislature or Parliament, and the public officials entrusted with public expenditure. Unfortunately, the Auditor-General's office can be particularly vulnerable to pressure from its clients if, as in the majority of cases, the Executive: 1) Appoints the Auditor-General; 2) Determines the resources allocated to the Auditor-General's office; 3) Determines staffing levels and classifications and is responsible for overall financial management and administration through the Minister of Finance."

Pope's argument highlights the fact that the opportunities of influence that lead to institutional capture are not limited to the figure of the head of the SAI, but also to the human and financial resources available to the SAI.

²² From 20 states that answered the survey, 17 reply to the question: "For how long had the last three heads of the SAI remained in their posts?"

5.5.2 Human and Financial Resources for Accountability Enforcement

The human and financial resources of each audit bureau vary widely from one state to another, a disparity that is reflected in unequal capabilities to perform the accountability objectives.

For example, the budget of the SAI of the state of Jalisco, the best financed during 2007, was 131.1 million pesos (£7.7 million) — an amount higher than the sum of the budgets for the SAIs of seven other states during the same year. (Aguascalientes, Baja California Sur, Colima, Campeche, State of Mexico, Morelos and Nayarit). At the other extreme is the SAI of the state of Baja California Sur, which received 7.9 million pesos in the same period. As Table 5.7 shows, the State of Mexico occupies the last place of SAI spending in per capita terms (SAI budget/number of inhabitants), investing only 1 peso per inhabitant. In the other hand, Quintana Roo invests 57 pesos, Colima 35 and Tlaxcala 31. The National SAI invests 7.5 pesos per inhabitant.

Table 5-9 Per capita budget allocated to SAI in 2007

State	Mx. Pesos per inhabitant
Quintana Roo*	57.0
Colima	35.5
Tlaxcala*	31.1
Baja California	27.7
Tabasco	27.5
Campeche	27.4
Zacatecas	23.6
San Luis Potosí*	22.3
Coahuila	22.1
Querétaro	21.6
Chiapas	20.9
Mexico City	20.6
Veracruz	19.6
Jalisco	19.5
Sonora	18.1
Chihuahua	17.4
Nuevo León	16.8

State	Mx. Pesos per inhabitant
Nayarit	16.5
Hidalgo	16.5
Puebla	16.3
Baja California Sur	15.5
Guerrero	14.4
Morelos	12.3
Aguascalientes	11.4
Durango	10.4
Guanajuato	9.8
ASF (National)	7.5
Oaxaca	7.2
Sinaloa	5.5
State of Mexico	1.0
Michoacán	**
Tamaulipas	**
Yucatán	**

* 2008, ** States that did not answer the questionnaire and do not break down the data of the AI in the state Budgets. Source: State budgets 2007-2008, Questionnaire to the SAIs.

The size of an SAI's budget does not by itself guarantee that there will be better oversight of the public's money; however, an institution that lacks the resources to hire and train a team of auditors can make only a very limited contribution to the verification of government financial transactions.

The budget of the SAI depends on the political will of the state congress. The percentage of its budget that each congress allocates to the AI gives an idea of the importance that the various elected assemblies assign to the task of accounting for public resources. At the federal level, the Congress gave 10.3% of its resources in 2008 to the ASF (see Table 5.8). Víctor Infante, a federal deputy from the PAN, said in an interview: "The truth is, we behaved very stingily with the ASF, because every peso we give to them we take from the congressional budget (Infante, 2003)." At state level, the lowest percentages of congressional budgets allocated to the AI are found in Morelos (8.5%), Baja California Sur (8.4%) and State of Mexico (1.4%). In contrast, Chiapas and Baja California allocated 60.9% and 50.1% of the programmed expenditure of the local legislature (see Table 5.8).

Table 5-10 Percentage of congressional budget allocated to SAI in 2007

State	%
Chiapas	60.9
Baja California	50.1
Coahuila	45.9
Veracruz	44.2
Puebla	40.6
Hidalgo	33.2
San Luis Potosí*	33.0
Jalisco	31.5
Nuevo León	28.1
Chihuahua	28.0
Quintana Roo*	23.8
Colima	22.0
Zacatecas	21.7
Sonora	20.8
Tlaxcala*	20.3
Campeche	19.5
Tabasco	19.5
Mexico City	18.6
Querétaro	18.4
Guanajuato	15.7
Oaxaca	14.1
Guerrero	14.0
Durango	12.3
Nayarit	11.5
ASF (National)	10.4
Sinaloa	10.2
Aguascalientes	9.0
Morelos	8.5
Baja California Sur	8.4
State of Mexico	1.4
Michoacán	NA
Tamaulipas	NA
Yucatán	NA

* 2008

NA: States that did not answer the questionnaire and did not disaggregate the data of the AI in their Budgets. Source: Constructed by the author.

The Veracruz SAI reduced its budget dependency on the state Congress through an “accountability tax.” The State Law for Financial Oversight (*Artículo 8 Ley de Fiscalización*)

establishes that the AI will keep five pesos out of each thousand invested in public works by state and municipal governments. The increase in costs as a result of this special tax could be compensated for by the savings resulting from improved supervision over the allocation of contracts and the construction of public works.

5.5.3 The budgets of the SAI vs. Internal Comptroller

All the state governments have high-ranking bureaus for internal audit. In 18 out of 32 states, these are at cabinet level. These 18 states have reproduced the structure of the federal government, with the *Secretaría de la Función Pública* (former Secodam) fulfilling the mission of internal comptroller. The “double whammy” (Hood, 2005:16) model for accountability that combines the original internal audit bureaus of the Executive with the new audit bureaus of the Congress has been reproduced in several states.

Table 5-11 compares the budgets of the state SAIs and the local equivalents of the *SFP* for 2007. The table is limited to data from 28 states and the Federal District, because information was not available in the 3 budgets of the remaining states. Of the 28 cases examined in Table 5.9, 17 states and the Federal District allocated higher budgets to the comptroller's office than to the congressional SAI, even though the former is responsible only for auditing the accounts of the Executive while the latter must perform financial oversight of all three branches of government and the municipal authorities.

Table 5-11 Resources allocated to the State SAIs and the Internal Comptroller of the Executive Branch (Millions of pesos 2007)

State	SAI budget	Budget Comptroller of the executive
Aguascalientes	12.1	21.3
Baja California	78.7	39.1
Baja California Sur	7.9	12.0
Campeche	20.7	26.3
Chiapas	89.8	113.1
Chihuahua	56.3	31.0
Coahuila	55.2	66.0
Colima	20.2	82.2
Mexico City	179.8	272.0
Durango	15.8	23.5
Guanajuato	48.0	95.0
Guerrero	45.0	21.5
Hidalgo	38.6	15.3
Jalisco	131.8	68.2
State of Mexico	13.5	147.8
Morelos	19.8	20.6
Nayarit	15.7	21.8
Nuevo León	70.6	64.0
Oaxaca	25.4	77.7
Puebla	87.9	147.8
Querétaro	34.4	43.5
Quintana Roo*	64.7	45.0
San Luis Potosí*	53.7	42.5
Sinaloa	14.4	35.1
Sonora	43.3	66.4
Tabasco	54.8	86.1
Tlaxcala*	33.2	31.1
Veracruz	139.2	122.2
Zacatecas	32.3	66.4

*Information for FY 2008 for those states that did not present the SAI information in their budget for FY 2007. NOTE: Michoacán, Tamaulipas and Yucatán did not break down the information for the SAI in their budgets and did not answer the questionnaire provided.

Sources: Constructed by the author with state budget decrees and questionnaire to the SAIs.

5.5.4 *What percentage of the budget is audited?*

Accountability agents do not pretend to supervise everything. In this sense, the aim of accountability must allow for imperfect information. If every government transaction were transparent, there would be no need for holding anybody accountable (Schedler, 1999:20). As audits can hardly ever be all-inclusive, SAIs use a sampling approach, although the samples should be selected on the basis of a model and must specify a high enough sample size to provide a clear idea of the controls over financial management.

A key measure of the performance of the AI in a state or a country is the size of the audited sample relative to the total budget. The AI uses a representative sample to do its audits; in OECD countries, the size of the sample varies between 5% and 9% of the total budget.²³ In Mexico, there is no public data available for calculating this ratio. In the 2003 questionnaire, the heads of the SAIs were asked to establish “the percentage of expenditure audited with respect to the total public expenditure of the state (excluding the payments of the state public debt).”

When asked the same question, the ASF acknowledged that the audited sample it uses is 1.9% of total federal spending. In 2001, the SAI of the state of Chiapas reported that the size of the audited sample was 4.8% of fiscal revenues of the local executive branch. From the replies of the 25 SAIs that answered the questionnaire, Nayarit reported an audit sample amounting to 8.2% of the state budget, including the accounts of the municipalities. In the rest of the cases, three responded that they did not have available information and 19 SAIs gave data that exceeded the range established by the OECD and the ASF. On average these states reported that they audit 50% of the state expenditure — a figure that is too high to be believable. The SAI of the state of Quintana Roo answered in 2003 that this data was confidential.

In the 2008 survey, from the 15 states that answered the question of the percentage of the audited sample with respect of the total expenditure, the average figure was 46%, relatively

²³ OECD, Results of the survey on Budget Practices and Procedures, <http://ocde.dyndns.org/> Consulted May 20th 2005.

similar to the 50% average in the 2003 questionnaire. Aguascalientes, Chihuahua, Guanajuato, Jalisco, Puebla and Veracruz responded that the size of the sample was 60% or above of the total budget. The most modest sample was 10.8 for Mexico City. Due to the lack of transparency and the dubious credibility of the answers, the census of 2003 and 2008 to the SAIs do not provide solid information to know with certainty the percentage of funds that are audited in Mexican states and municipalities.

5.6 Conflicts between the ASF and state governments

Article 79 of the Constitution establishes the right of the ASF to exercise vertical oversight of federal transfers to states and municipalities. This precept presumes that the federal entity has the capacity to supervise the finances of autonomous subnational governments. However, the wording in the Constitution and some contradictions in secondary laws leave ample room for political conflict and judicial interpretation. Article 2 of the law that regulates the SAI (*Ley de Fiscalización Superior de la Federación*) determines that all subnational governments are subject to the oversight authority of the *Auditoría Superior de la Federación*. In contrast, Article 49 of the law, which determines the fiscal relationship between the different levels of government (*Ley de Coordinación Fiscal*) states that each of the 32 subnational SAIs had the responsibility to perform the ex post audit of state and municipal governments.

In Article 33, the LFSF states that the ASF will “propose procedures of coordination with state congresses and the Legislative Assembly of the Federal District” to collaborate in the oversight of federal funds of *Aportaciones (Ramo 33)* transferred to local governments. The ASF can establish agreements with each local SAI to organise the audit procedures between the two institutions. Three states (Guanajuato, Michoacán and Tabasco) include in their constitutions the prerogative to establish cooperation agreements between their local SAIs and similar audit bureaus that might help to accomplish the financial oversight of government funds. When the audits give indication of some irregularity attributable to the state or municipal authorities, the ASF will proceed to demand the recovery of funds, and impose sanctions. It could also request penal or civil investigations to punish wrongdoings (LFSF, Arts. 33, 34 and 35).

The ASF has denounced the current legal framework for not allowing a strict audit process. Article 49²⁴ of the Law of Fiscal Co-ordination establishes that once appropriations from the federal government are transferred, they can only be overseen by state congresses and that once the local governments have received the federal funds they should be registered as state revenues. The only legal window for the ASF to pursue the audit of decentralised expenditure is to sign cooperation agreements with the state SAIs, although the state congresses are not forced to endorse the agreement. Even when the agreement is signed, the ASF does not have the legal or political means to enforce it.

The federal framework requires that audit agreements be negotiated and accepted by the state political forces. Absolute audit power of the ASF over subnational finances could potentially lead to a constitutional controversy in the Supreme Court. Political negotiation between the ASF and the state powers has thus far been the path for resolving conflict between the different levels of government; however, the accountability outcomes have not favoured the interests of the ASF.

From the *Cuenta Pública* of 2001, the ASF found inconsistencies in the audits of 291 million pesos (£14.5 million) transferred to the states for social expenditure.²⁵ The states provided evidence to clarify 15% of this sum (£742,000) within the period established by the law (ASF, 2003).²⁶ According to the ASF report, the states showed financial, administrative and accounting anomalies accounting for 30 cents out of each peso approved in the federal budget. Out of 724 irregularities, state governments gave satisfactory answers to 151. Out of 32 local governments, only Hidalgo and Sonora answered the full requests of the ASF. At the opposite end of the spectrum is the state of Chihuahua, the budget of which showed anomalies of 58.7 million pesos and provided proof of 1.6 million, or 2.7% of the total.²⁷

²⁴ *Ley de Coordinación Fiscal*, through Internet: <http://www.cddhcu.gob.mx/leyinfo/pdf/31.pdf> Consulted May 20th 2004.

²⁵ The distribution of decentralised funds through the budget is analysed in chapter 3.

²⁶ ASF, *Informe de Solventación de Observaciones de la Cuenta Pública* de 2001.

²⁷ *Reforma*, October 27th 2003.

The ASF has requested a change in the text of the LCF to increase the powers of the federal congress in the oversight of decentralised funds to the states. In addition, the ASF has requested a constitutional reform of Article 115, which defines the autonomy of municipal governments to organise the administration and audit of their own funds. As of April 2008, the Congress had not accommodated the request for legal reform to increase the powers of the ASF. Frequently, deputies and senators have strong political links with local governors, and it is not in their political interest to increase the powers of the federal audit bureau at the state and municipal level.

In January 2004, the government of the state of Oaxaca and the local Congress rejected an audit from the ASF, claiming that it would violate the *Ley de Coordinación Fiscal* and the state's sovereignty. The leader of the local congress stated that "the local SAI cannot audit the expenses of the President of Mexico, so the ASF cannot audit the expenses of the Oaxaca government."²⁸ This level of political confrontation is rare between the state governors and the ASF, but other governors and local congresses have subtle ways of obstructing the ASF without receiving much attention from the media. The ASF and the Chamber of Deputies decided to present a Constitutional Controversy against the Executive and Legislative branches of Oaxaca. In August 2006, a unanimous decision of the Supreme Court affirmed that the ASF had authority to perform an ex post audit over federal transfers to finance decentralised public services through *Ramo 33*.

The Supreme Court ruling empowered the ASF to oversee federal subsidies to subnational governments. The audit and oversight is performed through the common efforts of the federal and the 32 subnational SAIs. The results of the audit of the *Cuenta Pública 2005* gave evidence of the asymmetric performance of audit bureaus at federal and subnational level. From 33 audits, the ASF made financial recoveries of 57.7 million pesos, while the recovery of 252 subnational SAIs audits was zero pesos.

²⁸ *Apro*, January 27th 2004, through Internet
<http://www.proceso.com.mx/noticia.html?nid=21363&cat=2> consulted September 7th 2007.

5.7 Conclusion

This chapter shows that each state used its sovereign authority to design and categorise its budget apportionments according to its own singular criteria. During the first years of Mexico's transition to democracy, the heterogeneous accounting systems at subnational level increased budget opacity and hindered the efforts to oversee the allocation of subnational expenditure. Mullins (2007:213) defends the diversity of subnational budget accounts, but with a word of caution: "Local budget systems, processes, and structures within and among nations reflect historical tradition and diversity in culture, capacity, national governance, and institutions. Thus, no single model of local government budgeting is best."

This chapter shows that the main problem with Mexican state governments is that "the historical traditions" and political culture reflected in budget documents are the legacy of presidentialism, characterised by weak accountability and lack of transparency. Preserving "historical tradition and diversity in culture" has come at a high cost in the realm of budget administration. The asymmetry of budget information between the governors and the respective state congresses is a *déjà vu* from the times of presidentialism. The state legislatures have limited knowledge of budget expenditure allocations. The future legislation that will aim to homogenise subnational budgeting is expected to create a common vocabulary and a systematised typology to reduce the information gap on expenditure appropriations.

Schedler (1999:15) distinguishes two kinds of accountability answers provided by the government: 1) justifications for "the validity and reason to take a certain course of action" (the argumentative dimension) and 2) data or hard facts (the informational dimension). The informational dimension of accountability is, for example, financial data presented according to pre-established expectations or standards of disclosure, accuracy and classification. In the current circumstances, Mexico's state governors do not provide hard financial data under a criterion that is understood by members of subnational congresses or ordinary citizens. With opaque budgets, the informational dimension provides misguided or incomplete answers.

In a federal constitutional system, the adjustment of institutions to their political environments is further complicated by the fact that they must adjust to the multiple-layer environments of each level of government (March and Olson, 1995:221). In Mexico, state and municipal institutions must adapt to the new democratic environment at both the federal and subnational levels. This multiple adaptation process results in an interaction of regional political practices and institutions.

The structure of the “national political system provides the framework in which organisations function and in which all policies are carried out” (Rodríguez, 1997:6-7); however, the national system’s influence over regional political systems is very diverse. In the case of Mexico’s subnational political systems, it is difficult to find a common narrative that explains patterns of behaviour towards the evolution of accountability institutions. Each state reacts differently to the pressures of the evolving environment. State electoral institutions have developed more quickly and in a more coordinated manner than budget accountability institutions. The institutional reforms in the ASF have marked the path towards a modern scheme of democratic accountability, although these changes did not manifest themselves homogeneously in most of the state audit bureaus.

The legal framework for budget oversight and the institutional resources of each subnational SAI have set the accountability standards for each state. These standards of budget accountability aim to prevent the waste or misappropriation of government finances for political or personal gain. For Kearns (1996:69) these standards have to be enforced by an outside oversight agency with the power to impose sanctions for non-compliance. With low legal standards of accountability or weak institutions to enforce them, it is impossible to limit the arbitrariness of political power.

In several states, the governor preserves the habits and informal powers of the former Mexican presidentialism. Some state congresses have fulfilled their mission to counterbalance the power of the governor, while in others the checks and balances necessary for a true division of power do not exist. Control over the state’s institutions and the decentralisation of spending has given

the governors an enormous margin of political and financial power, while the organisations in charge of the financial oversight lack the human and financial resources and proper institutional autonomy to do their jobs. This conclusion suggests that Mexican democracy has a weakness in the institutions in charge of financial accountability.

In recent years, several states have made efforts to modernise the institutional framework of their Audit Institutions. However, in the eyes of the Federal Congress, the effort of modernisation has not been enough, or sufficiently homogeneous. For the fifth time in 20 years, the federal Congress has used its authority to impose reforms over the political and administrative structures of the states. In the aftermath of Mexico's transition to democracy, the federal Congress strengthened the mechanisms of Horizontal Accountability upon the Mexican president. Through the 2008 Constitutional Amendment to harmonise budgeting standards and strengthen subnational SAIs, the Congress enforced the mechanisms of Horizontal Accountability upon the state governors.

I have been writing regularly for the newspaper *Reforma* since 2004. Occasionally, I write about issues of accountability and may have made myself known to members of Congress. When the Legislative Branch was discussing the contents of the secondary law, I was invited by the deputy Alma Alcaráz (PAN) to present a summary of the findings of this chapter in a conference held in the Chamber of Deputies in July 2008. This talk was my only role in the legislative debate regarding the law to enforce budget harmonisation in Mexico's subnational governments. By the time of the presentation, the current version of the thesis was basically ready for resubmission. Given the time line of events, it is unlikely that my role in the congressional debate would have caused an "observer effect". I have a sceptical optimism regarding the faith of the recent budget harmonisation reforms in Mexico: It is one thing to reform the Constitution, and quite another, to approve an enabling secondary law and a very different thing to change the reality on the ground.

CONCLUSION

CONCLUSION

*"Although they provide important elements of order
in the changing scene of politics,
political institutions themselves also change.
The processes of change include the mundane,
incremental transformations of everyday life
as well as the rarer metamorphoses
at breaking points of history"*
March-Olsen 1995:166

Mexico's transition to democracy was an historical process with very particular characteristics, due to the unique features of the political system. In contrast with other democratic transitions in Latin America or Eastern Europe, Mexico's construction of a plural party system did not imply the destruction of the former regime and its political institutions. There was no sudden collapse of the previous order, nor was there a collective demand for a new constitutional framework. The legal foundations of presidentialism were not challenged by any serious propositions for alternative models (Lujambio, 1995:11-12).

Democratisation in Mexico involved a shift of power from the Federal Executive to the Congress and the subnational authorities. The transition from a *metaconstitutional* presidentialism to a constitutional presidency enforced new accountability mechanisms upon the Executive figure. The creation of a more effective Supreme Audit Institution and the new legal framework for the approval of the federal budget empowered the Horizontal Accountability of the Executive to the Legislative Branch. Through the decentralisation of the federal budget, based on clear formulas for expenditure allocation, the President began to render financial accounts to state governors and municipal presidents.

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Democratisation has largely undermined the arbitrary financial power of Mexican presidentialism. It has reduced discretionary criteria in the allocation of the federal budget and improved federal expenditure accountability. Before the emergence of a plural political system, expenditure decisions were made by a small number of players within the President's circle. Under the new political system, the President's expenditure decisions are constrained by the emergence of new political players in Congress and limited resources due to the decentralisation of expenditure.

The unintended result of decentralisation was to make additional financial resources available to state and municipal office holders, who did not have effective institutional mechanisms to enforce budget accountability. The arguments in favour of decentralisation claim that it helps to improve the delivery of public services and reduces the inefficiencies of centralised systems. But to achieve an increase of efficiency in spending, subnational governments must meet certain conditions and basic levels of administrative development. Institutions and norms that guarantee budget accountability are one of these prerequisites for gains in efficiency.

The disparity of accountability environments at the state and municipal levels in Mexico has influenced the outcome of decentralisation. This dissertation highlights some of the risks of a decentralisation process that disregards the importance of budget accountability. Without adequate institutions for financial accountability at the local level, the decentralisation process may not lead to an improvement of efficiency in subnational expenditure.

Regarding taxation, Mexico's policy makers acknowledged the differences between the administrative and revenue collecting capacities of states and municipalities. Since there are wide regional disparities among Mexico's subnational governments, the federal authority undertook the administration and collection of tax revenues. However, on the expenditure side of public finances, the decentralisation process treated all states and municipalities as if they

had equivalent capacities for the management and accountability of public spending. Mexico's expenditure decentralisation was treated not as a process where subnational entities built administrative capacities in parallel to the absorption of new responsibilities, but as an already taken decision where states and municipalities had to absorb their new tasks, regardless of whether they were ready or not.

The concept of accountability is so foreign to the Spanish language and the national political culture that two of the most influential dictionaries of political science, published in Mexico, do not have an entry for the term.¹ It is thus perhaps not surprising that Mexico's transition to democracy overlooked the challenges of accountability at the subnational level and focused mainly on the creation of institutions to guarantee the credibility of the electoral process.

With the twilight of presidentialism, the areas of decision that had been overshadowed by the *metaconstitutional* powers of the Executive had to be reformed with norms and institutions that would fill the vacuum of authority. With regard to budget accountability, the most relevant reform was the creation in 1999 of a new Supreme Audit Institution (SAI), to strengthen the auditing functions of the Federal Congress. During the 70 years of Mexican presidentialism, the existing SAI, the *Contaduría Mayor de Hacienda*, was undermined by its legal design and the political weakness of Congress. The untrammelled powers of the president were antithetical to autonomous institutions that existed outside his area of influence. Metaconstitutional presidentialism was able to flourish because state institutions, isolated from Executive pressures, did not exist.

The transformation of the *Contaduría Mayor de Hacienda* (CMH) into the *Auditoría Superior de la Federación* (ASF) was part of the process of institutional reinforcement of the Chamber of Deputies. The CMH had institutional inadequacies that hampered its accountability mission. The

¹ Bobbio, N. and Matteucci, N., *Diccionario de política*, [México: Siglo XXI, 2000] and Baca-Olamendi, L., *Léxico de la política*, [México: FLACSO-FCE, 2000] do not have an entry for "accountability."

former SAI did not have the technical autonomy to decide the subjects, scope and timing of its audits. Every year, the CMH had to present its program of government auditing to the approval of the Chamber of Deputies. The CMH was legally incapable of directly accusing or sanctioning bureaus or public servants who might have committed a wrongdoing. Moreover, its audit capacity was limited to the administrative structure of the federal Executive, and it had no authority to oversee the expenditure of the Congress, the Judicial Branch or other autonomous state institutions.

In contrast with the powers of the former CMH, the ASF has autonomy to decide all issues regarding the government audit. The creation of the new SAI gave the ASF legal capacity to impose direct sanctions on public servants who might have broken the law. The new framework of the SAI widened the scope of its oversight capacity to all federal powers and institutions. The ASF has greater margins of institutional autonomy. However, it still receives orders from the Oversight Committee of the Chamber of Deputies to perform certain audit work. The best way to prevent the interference of political parties into its oversight activities is to grant constitutional autonomy to the ASF, meaning that Mexico's SAI would evolve from a congressional supporting agency to an audit bureau independent from all state branches, as is the *Contraloría General de la República* in Chile. A comparative analysis of independent SAIs is a provocative premise for further academic research into accountability institutions in Mexico.

The creation of the *Auditoría Superior de la Federación* set an example for equivalent institutions at the subnational level. The creation of the ASF helped to trigger a critical mass for institutional reform in some states, while in others the example was ignored. In general, the modernisation of accountability institutions at the federal level did not trickle down to subnational governments during the first decade (1997-2007) of a divided Congress in Mexico. However, a constitutional amendment published in May 2008 gave a minimum common ground for the homogenisation of state SAIs. The amendment established that the heads of all state

SAIs ought to have a minimum tenure of 7 years and they should be elected by a 2/3 majority in the state congress.

This dissertation provides an analysis of the general situation of state SAIs before the enactment of the Constitutional amendment. The study of SAIs at subnational level in Mexico shows the mixed results of democratisation across territorial units, with equivalent constitutional hierarchy. In some states, accountability accompanies electoral democracy, while in other regions, the presence of a credible and functioning electoral system coexists with weak audit institutions. The performance of Mexico's subnational governments supports the claim that the presence of a credible and functioning electoral system does not guarantee the existence of governmental accountability.

In O'Donnell's terms, vertical accountability, in its electoral dimension, does not guarantee the enforcement of mechanisms for Horizontal Accountability. From a theoretical perspective, the concept of Horizontal Accountability has to take into account, how informal political practices could shape and erode the *de facto* framework for rendering accounts. If the weaknesses of subnational audit institutions is a by-product of the democratisation process, this research shows the unevenness (O'Donnell, 1999:139) of democratic change in Mexico. Even within the same region, discrepant accountability environments arise between neighbouring states.

The structure of the "national political system provides the framework in which organisations function and in which all policies are carried out" (Rodríguez, 1997:6-7). However, the influence of the national political system over regional political structures is far from homogenous. In the case of Mexico's subnational political systems, it is very difficult to find a common explanation for patterns of behaviour towards the evolution of accountability institutions. Each state reacts in different ways to the pressures caused by changes in the national political system. Due to the modernisation promoted by the Federal government and the main political parties, state

electoral institutions were modernised in a faster and more homogeneous manner than budget accountability institutions.

Accountability, clientelism and decentralisation

With the decentralisation of spending and improved budget accountability, the federal government reduced its capacity to engage in pork-barrel strategies and use of federal cash transfers as a tool of political control. The end of presidentialism was reflected in diminished capability to allocate client-based budgets, yet this was not the end of political clientelism in Mexican politics but rather the beginning of its decentralisation.

Within the context of a declining presidential role, the interaction of democratisation and decentralisation gave way to an unprecedented degree of political and financial autonomy for subnational governments. For the first time, governors owed their political power to the polls and not to their personal relationship with the president. Moreover, the financial stability of state treasuries no longer depended on the political will of the federal government. On these grounds, state governors began to pursue their own political agendas with disregard for federal priorities. The President became accountable to the Congress and to regional political forces, while some state governors remained accountable to no one.

This decentralisation of political and financial power has produced mixed results in terms of welfare improvement for the population. In some cases, decentralisation has created incentives to use public resources for political purposes. The premise that decentralisation leads to efficiency gains assumed that governors and municipal presidents would not use the new pool of resources for different objectives than maximising the welfare of society. Fakin and Crombrughe (1997:8) note that the decentralisation of expenditure may imply the expansion

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of a state's bureaucracy, and that in many cases greater resources have produced "an unnecessary increase in staff members." This thesis provides empirical evidence in support of Fakin and Crombrughe's argument through its analysis of the payroll growth of state and municipal governments in Mexico from 2001 to 2006. The obscenely large salaries of top municipal officials are another unexpected negative effect of Mexico's decentralisation.

During the Government of Vicente Fox (2000-2006), the transition to a constitutional presidentialism left some crucial areas of policy making unchanged. The issues and institutions that had been the subject of presidential influence, but were left untouched by institutional reform, became *casus belli* for political confrontation: Does the president have veto power over the federal budget? What share of the oil export surplus should be saved and what share allocated for subnational spending? Who determines the expected price of an export barrel of oil, a variable needed to forecast public revenues? To solve the recurrent political conflict related to budget negotiation, these questions were answered through the intervention of the Supreme Court and a new legal framework for the budget process. A Supreme Court verdict determined that the President had veto power over a section or the whole budget approved by the Chamber of Deputies. The calculation to forecast the oil price and a formula for the distribution of the oil surplus were established in a new budget law approved in 2006.

Improved accountability and the reduction of discretionary criteria in the budget allocation process undermined the financial basis of Mexican presidentialism. The loss of political power reduced the president's ability to use public resources for political gain. One of the questions that drove this research is whether state governors are also willing to relinquish the discretionary powers that come with their office. Through the institutional strength of their respective audit bureaus, each state gives a different answer to this question.

During the first decade of Mexico's transition to democracy, there was no intention of the federal authorities to promote the strengthening of accountability institutions in state governments. The reform of accountability institutions was left to the will or neglect of local authorities. However, the Federal Congress decided to impose a modernisation of state SAIs from above, as it had done previously with subnational ombudsmen's offices and the states' electoral commissions. The 2008 constitutional amendment will homogenize the *de jure* design of state SAIs. However, it is plausible to expect that *de facto* political factors will still play a relevant role in the capability and performance of state SAIs.

In several states, governors have preserved the habits and informal power of the former Mexican presidentialist system. In some states, governors are unaccountable to local legislatures and municipalities in a similar way as the President was unaccountable to the federal Congress and subnational governments. Control over the state's institutions and spending decentralisation gave the governors enormous margins of political and financial capacity. The former supporting actors of Mexico's *ancient regime* have become central players of the new political system.

With their new political leverage, state governors pressure the federal Congress to increase budget transfers to their regions. As a result, the federal deputies have become the most important "tax base" for subnational governments, as their lobbying efforts in Congress are rewarded with sizeable increases in their non-earmarked budgets. The financial accountability of subnational expenditure is one of the pressing issues of Mexico's young democracy.

The debate over the transition to democracy focused mostly on the construction of institutions that would build the credibility of the electoral process. The old institutions in charge of preparing the polls and counting the votes did not fulfil the needs of a modern multiparty competitive system. A similar phenomenon is at work in the majority of those institutions

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charged with maintaining accountability at the local level: they do not answer the expectations of transparency and performance required of a modern democracy. The 2008 constitutional amendment to homogenise budgeting formats and standardise some features of the state SAIs is an aim to strengthen the accountability of subnational authorities. The practical enforcement of this new legal framework ought to be a catalyst for further research. The 2008 Constitutional amendment shows that Mexico is still adjusting its laws and institutions to the demands of an evolving political system.

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APPENDIX

APPENDIX

Chapter 2- Comparison of institutional design of SAIs in designated countries

Political system	Presidential					Semi Presidential	Parliamentary		
Country	USA	Argentina	Brazil	Chile	Mexico	France	Spain	Canada	United Kingdom
Official name of the SAI	Government Accountability Office	<i>Auditoria General de la Nación</i>	<i>Tribunal de Contas da Uniao</i>	<i>Contraloria General de la República</i>	<i>Auditoria Superior de la Federación</i>	<i>Court des Comptes</i>	<i>Tribunal de Cuentas</i>	Office of the Auditor General	National Audit Office
Title of the Head of the SAI	Comptroller General	A President of the AGN and six Auditor Generals	<i>Presidente do Tribunal de Contas da Uniao</i> (Tribunal of Accounts of the Union is composed of one President and 8 Ministers)	Comptroller General	Auditor Superior de la Federación	The Court of Accounts has one Premier President, 8 Presidents of Chamber and more than 200 magistrates	The Court of Accounts is run by 12 members and a Prosecutor. The members of the Court vote to choose a candidate to be President of the Court for a three year term, then the winner of the internal vote is appointed by the King.	Auditor General	Comptroller and Auditor General

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Political system	Presidential				Semi Presidential		Parliamentary		
Country	USA	Argentina	Brazil	Chile	Mexico	France	Spain	Canada	United Kingdom
Appointed by	The President from a list presented by Congress, then ratification by the Senate and the House of Representatives.	3 Auditors General are appointed by the Senate and 3 by the Chamber of Deputies. The President of the AGN is appointed by the opposition party with the highest representation in the Congress and ratified by a joint resolution of both Chambers' minority party.	The 9 members of the court select one of their peers to be President of the Tribunal for one year. The President, with the approval of the Senate, appoints one-third of the magistrates; the other two thirds are selected by both Chambers of the Congress.	The President with Senate ratification.	Two-thirds majority of the Chamber of Deputies from a three-name list provided by the Oversight Committee of the Chamber of Deputies.	The Court is presided over by a <i>Premier président</i> , appointed by a decree of the Council of Ministers, and enjoys security of tenure.	The members of the Courts of Accounts are appointed, six by the Congress of Deputies, six by the Senate by a 3/5 majority in both Chambers and then validated by the General Courts. The Prosecutor is directly appointed by the Government in accordance to the law of the <i>Ministerio Fiscal</i> .	The Prime Minister with parliamentary approval.	The C&AG is appointed by HM The Queen, the Head of State, on a recommendation from the House of Commons moved by the Prime Minister after an agreement with the Chairman of the Public Accounts Committee.

APPENDIX

Political system	Presidential					Semi Presidential	Parliamentary		
Country	USA	Argentina	Brazil	Chile	Mexico	France	Spain	Canada	United Kingdom
Tenure	15 years	8 years with the possibility of re-election.	The Ministers have life tenure. They retire when they reach 70 years old or after 30 years of service with full pay.	No term limit. Once appointed the CG cannot be dismissed, but must resign when he is 75 years old.	8 years with possible ratification for a second term.	Life tenure	The members of the Court have tenure of 9 years.	10 years	The appointment of the C&AG is "without limit of time".
Dismissed by	Joint resolution of the Congress and the President.	Joint resolution of both Chambers of the Congress	They can only be removed from their post by a judicial decision that proves serious misconduct.	The Chamber of Deputies has to put forward an accusation of constitutional transgression and the Senate validates or rejects the accusation.	Two-thirds majority of the Chamber of Deputies	Cannot be dismissed.	They can only be removed from their posts by a decision of the General Courts.	Majority vote of both Chambers of the Parliament	The C&AG can only be removed from office by HM The Queen on recommendation of both Houses of Parliament.

Political system	Presidential					Semi Presidential	Parliamentary		
Country	USA	Argentina	Brazil	Chile	Mexico	France	Spain	Canada	United Kingdom
Reports to	Both Chambers of Congress	To both Chambers of Congress.	Final decisions are published in the official newspaper.	Congress and the Executive	Oversight Committee of the Chamber of Deputies	The <i>Cour des comptes</i> is independent of both the legislative and executive branches of government, although it sends its reports to the Parliament and the President.	The <i>Tribunal de Cuentas</i> presents its reports to the General Courts.	The Chamber of Commons	The House of Commons

Chapter 3- Democratisation and Decentralisation Timeline

	Democratisation	Decentralisation
1988	-Presidential elections: Carlos Salinas of the PRI wins under suspicion of fraud, but loses a 2/3 majority in Congress, which is necessary for Constitutional changes.	
1989	-For the first time, an opposition party wins a State government (PAN in Baja California).	Social Development Agreements are established to coordinate PRONASOL under <i>Ramo 26</i> . State transfers in the Fiscal Coordination Law are increased from 17.3% to 18.1%.
1990		
1991		
1992	-PAN wins Chihuahua in the governor's election.	-The enactment of decentralisation of educational resources and responsibilities to state governments.
1993		
1994	-Creation of Federal Electoral Institute (IFE) as an independent institution. -A redesign of the Supreme Court shields the juries from presidential influence. -Ernesto Zedillo from the PRI wins the presidential election.	
1995		-Share of state transfers in the Fiscal Coordination Law is settled at 20%.
1996	-Electoral Reform, which allows public and private funds and media access to all parties. The Reform guarantees the IFE autonomy from the Executive.	-65% of <i>Ramo 26</i> decentralised to municipalities.
1997	-Intermediate elections: PRI loses control of 51% of the Lower Chamber. -For the first time, local elections took place in DF, the PRD wins local legislature and the city government with Cuauhtémoc Cárdenas as first elected mayor.	Creation of <i>Progresa</i> , a conditional cash transfer antipoverty program where financial transfers went directly to individuals. <i>Progresa</i> reduces the margins of clientelism of the Federal Government.
1998		- <i>Ramo 33</i> is included in the Federal budget to substitute for <i>Ramo 26</i> to distribute earmarked resources to local authorities via a formula system.
1999		-New funds are included in <i>Ramo 33</i> to finance the transfer of new responsibilities to state governments. -The <i>Auditoría Superior de la Federación</i> replaces the Contaduría Mayor de Hacienda.
2000	-PRI is defeated in presidential elections after 71 years by PAN's candidate Vicente Fox.	-The ASF has a legal mandate to oversee the transfers of <i>Ramo 33</i> .
2001	-The <i>Auditoría Superior de la Federación</i> (ASF) began oversight functions as the federal SAI.	

APPENDIX

2002	
2003	-Intermediate elections: No party gets the majority in Congress.
2004	Struggle for the distribution for budgeted and no budgeted resources between the federal government and the states. (See chapter 4 of this dissertation).
2005	President Fox veto the federal budget. (See chapter 4 of this dissertation).
2006	-PAN's candidate, Felipe Calderón, wins presidential elections by a small margin against PRD's candidate Andrés Manuel López Obrador. PRI is the third political force in Congress
2007	Constitutional Reform to homogenize the budget classification of states and municipalities. The secondary legislation to enact the constitutional reform will have to be approved by 2009 (See chapter 5 of this dissertation).

Chapter 3- The Ousting of governors, 1934-2005

NAME	STATE	YEAR
Lázaro Cárdenas (1934-1940)		
1. Gonzalo Vázquez Vela	Veracruz	
2. Manuel Ortiz	Tabasco	
3. Rafael Villareal	Tamaulipas	
4. Salvador Saucedo	Colima	
5. César Alayola	Yucatán	
6. Gabriel R. Guevara	Guerrero	1935
7. Carlos Real	Durango	
8. Melchor Ortega	Guanajuato	
9. Manuel Páez	Sinaloa	
10. Ramón Ramos	Sonora	
11. José Luis Solórzano	State of Mexico	
12. Fernando López	Yucatán	
13. Severino Cenicerros	Durango	1936
14. Guillermo Rebolledo	Veracruz	
15. Victórico Grajales	Chiapas	
16. Gabriel Leyva	Sinaloa	1937
17. Refugio Bustamante	Morelos	
18. Saturnino Cedillo	San Luis Potosí	1938
19. Mateo Hernández	San Luis Potosí	
Manuel Ávila Camacho (1940-1946, Last President with Military Origin)		
1. Miguel Alemán	Veracruz	1940
2. Javier Rojo Gómez	Hidalgo	
3. Alberto F. Berber	Guerrero	
4. Reynaldo Pérez	San Luis Potosí	1941
5. Pedro Rodríguez Triana	Coahuila	
6. Manuel Santillán	Tlaxcala	1944
7. Ernesto Hidalgo	Guanajuato	1946
Miguel Alemán (1946-1952, First Civilian President)		
1. Nicéforo Guerrero	Guanajuato	
2. Juan Esponda	Chiapas	
3. Edmundo Sánchez	Oaxaca	1947
4. Marcelino García Barragán	Jalisco	
5. Hugo Pedro González	Tamaulipas	
6. Jesús Catorena	Guanajuato	
7. Paz Faz Riza	Coahuila	
8. Avelardo L. Rodríguez	Sonora	1948
9. Ricardo Ainslie	Coahuila	
10. Adolfo Ruiz Cortines	Veracruz	
11. Agapito Pozo	Querétaro	1949
12. José María Mendoza	Michoacán	
13. José González	Yucatán	1951
14. Manuel Mayoral	Oaxaca	1952

APPENDIX

NAME	STATE	YEAR
Adolfo Ruíz Cortines (1952-1958)		
1. Ignacio Morones	Nuevo León	1952
2. Enrique Pérez Arce	Sinaloa	1953
3. Tomás Marentes	Yucatán	
4. Alejandro Gómez Maganda	Guerrero	1954
5. José Aguilar y Maya	Guanajuato	1955
6. Manuel Bartlett Bautista	Tabasco	
7. Oscar Soto	Chihuahua	
8. Alfonso Corona Rosal	Hidalgo	
9. Manuel Mayoral Heredia	Oaxaca	1958
Adolfo López Mateos (1958-1964)		
1. Manuel Álvarez	San Luis Potosí	1959
2. Raúl Caballero Aburto	Guerrero	1960
3. Antonio Nava Castillo	Puebla	1964
Gustavo Díaz Ordaz (1964-1970)		
1. Juan Gil Preciado	Jalisco	1964
2. Enrique Dupre	Durango	1966
Luis Echeverría Álvarez (1970-1976)		
1. Víctor Bravo Aguja	Oaxaca	1970
2. Manuel Sánchez Vite	Hidalgo	
3. Carlos Galvez Betancourt	Michoacán	1971
4. Eduardo Elizondo	Nuevo León	
5. Rafael Moreno Valle	Puebla	
6. Gonzalo Bautista	Puebla	1973
7. Israel Nogueza Otero	Guerrero	1975
8. Otoniel Miranda	Hidalgo	
9. Carlos Biebrich	Sonora	
José López Portillo (1976-1982)		
1. Jorge Rojo Lugo	Hidalgo	1976
2. Jorge de la Vega Domínguez	Chiapas	1977
3. Manuel Zárate Aquino	Oaxaca	
4. Salomón González Blanco	Chiapas	1980
5. Oscar Flores Tapia	Coahuila	1981
6. Juan Sábines Gutiérrez	Chiapas	1982
Miguel de la Madrid Hurtado (1982-1988)		
1. Graciliano Alpuche Pinzón	Yucatán	1984
2. Enrique Velasco Ibarra	Guanajuato	
3. Oscar Ornelas	Chihuahua	1985
4. Alfredo del Mazo	State of Mexico	1986
5. Florencio Salazar Martínez	San Luis Potosí	1987
6. Enrique González Pedrero	Tabasco	

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NAME	STATE	YEAR
Carlos Salinas de Gortari (1988-1994)		
1. Enrique Álvarez del Castillo	Jalisco	
2. Fernando Gutiérrez Barrios	Veracruz	1988
3. Luis Martínez Villicaña	Michoacán	
4. Xicoténcatl Leyva	Baja California	1989
5. Mario Ramón Beteta	State of Mexico	1990
6. Víctor Manzanilla Shaffer	Yucatán	
7. Ramón Aguirre Velázquez	Guanajuato	1991
8. Fausto Zapata	San Luis Potosí	
9. Salvador Neme Castillo	Tabasco	
10. Guillermo Cosío Vidaurri	Jalisco	
11. Beatriz Paredes Rangel	Tlaxcala	
12. Genaro Borrego	Zacatecas	1992
13. Eduardo Villaseñor	Michoacán	
14. Gonzalo Martínez Corbalá	San Luis Potosí	
15. Patrocinio González Garrido	Chiapas	
16. Dulce María Sauri	Yucatán	1993
17. Elmar Setter	Chiapas	1994
Ernesto Zedillo Ponce de León (1994-2000)		
1. Eduardo Robledo Rincón	Chiapas	
2. Emilio Chauyffet Chemor	State of Mexico	1995
3. Ruben Figueroa Alcocer	Guerrero	
4. Sócrates Rizzo	Nuevo León	1996
5. Mario Villanueva	Quintana Roo	1999
Vicente Fox Quesada (2000-2006)		
1. Andrés Manuel López Obrador	Mexico City	2005 (Reinstated in power after two weeks)

APPENDIX

Chapter 5- BII scores for each category

State	1. Legislative & Judicial Branches	2. State Autonomous Institutions	3. Executive Branch	4. State Government Subsidies & Transfers	5. Budget Management	6. Public Dept Management	7. Government Employment	8. Transfers to Municipal Governments	9. Federal Transfers	10. Internet Accesability	BUDGET INFORMATION INDEX
Durango	10.0	8.0	10.0	10.0	8.0	7.5	0.0	10.0	6.0	10.0	69.5
Sinaloa	10.0	10.0	6.7	5.0	6.0	5.0	3.3	10.0	10.0	10.0	66.0
Guerrero	10.0	4.0	8.3	5.0	10.0	7.5	3.3	5.0	10.0	10.0	63.2
Aguascalientes	5.0	8.0	8.3	7.5	10.0	2.5	5.0	10.0	6.0	10.0	62.3
Nayarit	10.0	6.0	6.7	5.0	6.0	5.0	10.0	5.0	6.0	10.0	59.7
Jalisco	7.5	6.0	5.0	10.0	4.0	7.5	8.3	5.0	6.0	10.0	59.3
Mexico City	10.0	6.0	6.7	2.5	6.0	5.0	3.3	10.0	6.0	10.0	55.5
Baja California	10.0	4.0	6.7	0.0	4.0	7.5	6.7	10.0	6.0	10.0	54.8
Chihuahua	10.0	6.0	8.3	0.0	4.0	2.5	8.3	5.0	10.0	10.0	54.2
Morelos	10.0	8.0	10.0	0.0	4.0	2.5	3.3	10.0	4.0	10.0	51.8
Zacatecas	10.0	6.0	5.0	2.5	8.0	7.5	0.0	5.0	6.0	10.0	50.0
Colima	7.5	6.0	6.7	5.0	2.0	10.0	1.7	5.0	6.0	10.0	49.8
Yucatán	7.5	6.0	6.7	2.5	4.0	5.0	5.0	5.0	6.0	10.0	47.7
Nuevo León	10.0	6.0	10.0	0.0	4.0	5.0	3.3	5.0	4.0	10.0	47.3
Campече	5.0	6.0	6.7	5.0	6.0	2.5	5.0	5.0	6.0	10.0	47.2
Chiapas	10.0	6.0	10.0	2.5	2.0	2.5	0.0	5.0	8.0	10.0	46.0
Puebla	10.0	6.0	5.0	2.5	6.0	0.0	3.3	10.0	2.0	10.0	44.8
Hidalgo	10.0	6.0	3.3	2.5	6.0	2.5	3.3	5.0	6.0	10.0	44.7
San Luis Potosí	7.5	8.0	3.3	5.0	6.0	2.5	0.0	5.0	6.0	10.0	43.3
Tabasco	10.0	6.0	5.0	0.0	6.0	5.0	0.0	5.0	6.0	10.0	43.0
Quintana Roo	10.0	6.0	6.7	0.0	4.0	5.0	0.0	5.0	6.0	10.0	42.7
Coahuila	10.0	6.0	5.0	0.0	6.0	2.5	0.0	5.0	8.0	10.0	42.5
Sonora	5.0	4.0	6.7	0.0	8.0	2.5	3.3	5.0	8.0	10.0	42.5
State of Mexico	7.5	6.0	8.3	0.0	8.0	5.0	0.0	5.0	2.0	10.0	41.8
Michoacán	7.5	6.0	5.0	2.5	6.0	2.5	0.0	5.0	6.0	10.0	40.5
Tlaxcala	7.5	6.0	8.3	2.5	2.0	2.5	0.0	5.0	6.0	10.0	39.8
Veracruz	7.5	6.0	5.0	2.5	0.0	2.5	3.3	5.0	8.0	10.0	39.8
Querétaro	7.5	6.0	3.3	0.0	4.0	2.5	0.0	10.0	6.0	10.0	39.3
Tamaulipas	7.5	4.0	5.0	0.0	6.0	2.5	0.0	5.0	6.0	10.0	36.0
Guanajuato	7.5	6.0	3.3	0.0	4.0	2.5	0.0	5.0	6.0	10.0	34.3
Oaxaca	5.0	0.0	3.3	0.0	6.0	2.5	0.0	5.0	6.0	10.0	27.8
Baja California Sur	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Mean	8.20	5.75	6.20	2.50	5.19	3.98	2.50	6.09	6.06	9.69	46.48
Standard deviation	2.31	1.95	2.37	2.91	2.43	2.36	2.90	2.45	2.12	1.77	12.80

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INTERVIEWS

Interview	Relevant Position / period	Date of the Interview
1. Aguayo, Sergio	Human Rights Activist and Transparency Advocate	V-25-2008
2. Alcalde Virgen, Moisés	PAN local deputy in the state of México (2003-2006)	VI-30-2008
3. Alcaraz, Alma	PAN local deputy in the state of Sinaloa (1999-2001)	VIII-20-2008
4. Alvarado José, Antonio	Former Federal Director of Budget Planning (1994-2000)	II-27-2008
5. Barrio, Francisco	PAN, Municipal President of Ciudad Juárez (1983-1986), Governor of Chihuahua (1992-1998) Secretary of <i>Secodam</i> (2000-2003)	I-20-2008
6. Bonilla, Javier	Undersecretary of the Minister of Health (1994-2000)	III-03-2008
7. Carpizo, Jorge	Former Member of the Supreme Court, Minister of Interior (1994)	I-29-2008
8. Chávez Presa, Jorge	Director of the Public Debt Management, Ministry of Finance (1994-1996)	VI-29-2008
9. Colmenares, David	Minister of Finance of the State of Oaxaca (PRI, 1986-1992)	I-21-2008
10. Cordera, Rolando	PSUM, Federal Deputy (1982-1985)	VI-16-2008
11. Fuentes, Benjamín	High Ranking Official at the Auditoría Superior de la Federación.	VIII-22-2008
12. García Villa, Juan Antonio	PAN, Federal Deputy, President of the Oversight Commission (1994-1997)	I-24-2008
13. Gershenson, Antonio	PSUM, Federal Deputy (1982-1985)	VII-01-2008
14. González de Aragón, Arturo	Auditor General, Head of the ASF, (2001-2009)	VIII-22-2008

INTERVIEWS

15. Granados, Otto	PRI, Governor of Aguascalientes (1992-1998)	VIII-19-2008
16. Guerrero Pozas, Gregorio	Former Comptroller General (1999-2001)	VI-23-2008
17. Handam, Fauzi	PAN Deputy (1997-2000)	VII-18-2008
18. Ibarra, David	Minister of Finance (1979-1981)	VIII-28-2008
19. Mariani, René*	Auditor General of the state of Veracruz (2000-2006)	IV-30-2008
20. Muñoz Ledo, Porfirio	PRD, Leader in the Chamber of Deputies (1997-2000)	I-27-2008
21. Nuñez, Arturo	PRD, Senator (2006-2012)	VII-10-2008
22. Paoli, Francisco José	PAN, Deputy (1997-2000)	VII-15-2008
23. Prieto, Guillermo	Undersecretary of Finance (1976-1986)	VII-14-2008
24. Rodríguez de la Gala, Tirzo**	Auditor General of the state of Campeche (1994-2004).	VII-31-2008
25. Romerc Hicks, Juan Carlos	PAN Minister of Finance of the State of Guanajuato (1995-1999)	VIII-18-2008
26. Roque Villanueva Humberto	PRI Leader in the Chamber of Deputies (1994-1997), PRI Chairman (1997-1999)	VI-16-2008
27. Silva Herzog, Jesús	Minister of Finance (1981-1986)	V-26-2008
28. Villareal, Rosendo	Municipal President of Saltillo (1991-1993)	26-II-2008

All interviews were made face to face in Mexico City, unless otherwise indicated. *Questions were sent by email and the answers were presented in written form. **Interview made by telephone.