Separation of Powers in New Democracies: Federalism and the Judicial Power in Mexico

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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 the work done in collaboration except where specifically indicated in the text

Susana Berruecos García Travesí Date: December 2009

Abstract

In the matter of a few decades, the Supreme Court in Mexico has gone from being a passive institution that served the interests of the federal executive to a genuine enforcer of law and the final arbiter in an increasing number of disputes over power and resources between different branches and levels of government. My thesis traces how and why this change happened and analyses the consequences of a more independent and active Court for the processes of federalism and democratisation in Mexico.

My research contributes to a growing body of literature on the judicialisation of politics in Mexico. I analyse the ways in which a more genuine separation of powers has begun to take shape in Mexico. Specifically, I look at how a more independent Supreme Court has provided different government powers at the federal, state and municipal levels with a means of defending their respective jurisdictions against competing powers. While I focus on the Supreme Court, my research situates the judiciary within the wider web of government institutions; increased political pluralism has enabled the legislative branch and state and local governments to exercise stronger checks and balances on the federal executive, with attendant consequences for the emboldened Court when it comes to involvement in the policy-making process.

At the core of my thesis is an empirical analysis of the Supreme Court's involvement in federalist issues via the use of constitutional controversies filed before the Court between 1995 and 2005 to resolve federal intragovernmental (between the three branches of government) and intergovernmental (between levels of government) disputes. The analysis operates on two levels: the national, and the subnational via an examination of legal recourses in seven case study states. It also looks at the role of the electoral tribunal in national and local election disputes.

A wide variety of political actors are resorting to legal channels in order to resolve political deadlock. The Supreme Court in Mexico has had the last word on issues that range from the generation of electricity to indigenous rights. While my research focuses on Mexico, I compare judicial reform in Mexico with parallel processes in the other three presidential and federal systems in Latin America (Argentina, Brazil and Venezuela). Methodologically, my PhD thesis includes a combination of quantitative and qualitative methods, including structured and semi-structured interviews and

extensive documental research in public and private sector archives, as well as national and local newspapers and specialist magazines

I declare that this thesis consists of 92,690 words (excluding references).

M. Susana Berruecos García Travesí

I dedicate this thesis to the memory of my grandmother Abita and my dearest daughter Sofía Jiménez Berruecos. To Miguel, my parents and my sister.

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GLOSSARY AND ABBREVIATIONS

Glossary of legal and political terms

Amparo A constitutional legal means of defending individual guarantees established in the constitution against the violation by any government authority.

Ayuntamiento Municipal government

Causales de improcedencia Recourses for appealing against Supreme Court rulings

Constituyente Permanente Body with authority to reform the constitution, the federal legislature and a majority of state legislatures

Delegaciones Local councils of the Federal District

Distrito Federal Electoral The 300 constituencies or electoral districts into which Mexico is divided for the purpose of federal elections

Incompetence of origin A jurisprudential thesis referring to problems relating to a public office holder who was not lawfully elected or appointed into office

Sobreseimiento Dismissal of complaints by the Supreme Court on the grounds that they lack legal foundation

Supreme Conservative Power A five-member elected body responsible for overseeing the executive, legislature and judiciary during the period 1836–43

Glossary of terms used by the Federal Electoral Tribunal (TEPJF)

Apelación Por Imposición De Sanciones Administrativas (ASA) Appeal against administrative sanctions

Asunto General (AG) General issue

Asuntos Especiales (AES) Special issues

Conflictos Laborales entre el TEPJF y sus Servidores (CLT) Labour disputes between the TEPJF and its staff members

Contradicción de Criterios (CDC) Contradiction of criteria

Innominado (INN) Unspecified

Juicio de Inconformidad (JIN) Legal challenge against of electoral authorities for violation of constutional or other laws regulating gubernatorial, congressional or municipal elections

Juicio de Revisión Constitucional Electoral (JRC) Legal challenge by political parties against electoral authorities for acts committed or resolutions issued in gubernatorial, local congressional and municipal elections

Juicio para Dirimir las Diferencias Laborales de los Servidores del IFE (JLI) Legal challenge relating to labour disputes involving IFE employees
Juicio para la Protección de los Derechos Político-Electorales del Ciudadano (JDC) Trial for the protection of politico-electoral rights of citizens
Juicios Laborales (ELI) Labour disputes
Opinión Solicitada por la SCJN Respecto de Acción de Inconstitucionalidad (OP) Opinión requested of the SCJN regarding an unconstitutional act
*Queja Por Responsabilidades Administrativas De Los Servidores Públicos (*QRA) Complaint regarding adminstrative responsiblities of public servants
Recurso de Apelación (RAP) Appeal recourse
Recurso de Reconsideración (REC) Appeal recourse for challenging sentences of regional tribunals relating to *juicios de inconformidad*
Recurso de Revisión en Materia de Transparencia y Acceso a la Información (RVT) Review recourse for issues relating to transparency and access to information
Solicitud de Ejercicio de la Facultad de Atracción de la Sala Superior (SFA) Request for the higher court to hear a case

Abbreviations

AD	Acción Democrática, Democratic Action party (Venezuela)
ADIN	Açao Direta de Inconstitucionalidade, Direct Actions of Unconstitutionality (Brazil)
CC	Constitutional controversy
CCE	*Consejo Coordinador Empresarial*, Coordinating Council for Businesses
CEE	Codigo Electoral Estatal, State Electoral Code
CFE	*Comision Federal de Electricidad*, Federal Electricity Commission
Cocopa	*Comisión de Concordancia y Pacificación*, Commission for Peace and Reconciliation (between the government and EZLN in Chiapas, Mexico)
COPEI	Comité de Organización Política Electoral Independiente (Venezuela)
CNBV	*Comisión Nacional Bancaria y de Valores*, Banking and Securities Commission
CUD	*Convenio Unico de Desarrollo*, Sole Development Agreement
CNDH	*Comisión Nacional de Derechos Humanos*, National Human Rights Commission
Cofipe	*Código Federal de Instituciones y Procedimientos Electorales Federal*, Federal Electoral Code
Congress	Lower Chamber of Congress

Coparmex	*Confederación Patronal de la República Mexicana*, Mexican Business Leaders Confederation
COPRE	Presidential Commission for the Reform of the State, Venezuela
CRE	*Comisión Reguladora de Energía*, Energy Regulating Commission
DF	Distrito Federal, *Federal District* (informally known as Mexico City)
EZLN	*Ejército Zapatista de Liberación Nacional*, Zapatista Army of National Liberation
FDN	*Frente Nacional Democrático*, National Democratic Front
TFE	Tribunal Federal Electoral, Federal Electoral Tribunal (created by the 1990 reform)
Fobaproa	*Fondo Bancario de Protección al Ahorro,* Banking Fund for the Protection of Savings
GDP	Gross Domestic Product
IEDF	*Instituto Electoral del Distrito Federal,* Electoral Institute of the Federal District
IPAB	*Instituto para la Protección de Ahorro Bancario*, Bank Savings Protection Institute
IFE	Instituto Federal Electoral, Federal Electoral Institute
LFOPPE	Federal Law on Political Organisations and Political Processes (1977)
ILO	International Labour Organisation
LCF	*Ley de Coordinación Fiscal*, Fiscal Coordination Law
MVR	Movimiento Quinta República, Fifth Republic Movement (Venezuela)
MXN	Mexican Peso
NAFTA	North American Free Trade Agreement
NGO	Non-governmental organisation
PAN	*Partido Acción Nacional*, National Action Party
PANAL	*Partido Nueva Alianza*, New Alliance Party
PARM	*Partido Auténtico de la Revolución Mexicana*, Authentic Party of the Mexican Revolution
PGR	*Produraduría General de la República*, Attorney General's office
PPS	*Partido Popular Socialista*, Popular Socialist Party
PRD	*Partido de la Revolución Democrática*, Democratic Revolutionary Party
PRI	*Partido Revolucionario Institucional*, Institutional Revolutionary Party
PRIE	Integrated State Reform Programme (Venezuela)
PSS	*Partido Socialista del Sureste*, Socialist Party of the Southeast
PT	*Partido del Trabajo*, Workers Party
PVEM	*Partido Verde Ecologista de México*, Ecologist Green Party of Mexico

SCJN	*Suprema Corte de Justicia de la Nación*, National Supreme Court of Justice
Senate	Upper Chamber of Congress
SFP	*Secretaría de la Función Pública*, Ministry of Public Administration ()
SFT	Supreme Federal Tribunal (of Brazil)
SHCP	*Secretaría de Hacienda y Crédito Público de México*, Treasury Ministry
STJ	Superior Court of Justice (of Brazil)
TEPJF	*Tribunal Electoral del Poder Judicial de la Federación*, Federal Electoral Tribunal of Justice
TET	*Tribunal Electoral de Tabasco*, Tabasco Electoral Tribunal
TSJ	*Tribunal Supremo de Justicia,* Supreme Court of Justice (of Venezuela)
Tricoel	*Tribunal de lo Contensioso Electoral*, Tribunal of Electoral Contention
UVE	Unidad de Vencedores Electorales (Venezuela)

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ACKNOWLEDGMENTS

I have always thought that a PhD thesis is a reflection of an entire personal history. As a young student, full of plans and ideals at the start of a doctoral programme in a foreign country, it is difficult to imagine the circumstances you are going to face. Rather than referring to such life circumstances as excuses for the amount of time it has taken to finish this thesis, in reality these events have shaped my project of work and life, and have taken me some distance from my original plans.

I have devoted almost a decade to finishing this thesis. Obviously this represents a very long period of time, characterised by personal and academic ups and downs. My husband, with whom I was fortunate to share the PhD experience, no doubt understands what I am trying to say. I would like to thank Miguel Ángel especially, for his kind company, his enormous support and constant understanding during this complex but gratifying period of time. I believe we were both very lucky to have had the opportunity to share these years together in London. Walking this path with him as my partner and friend made everything easier and more enjoyable.

While studying for my Master's degree at the Government Department at the LSE, I had the privilege of meeting Professor George Philip, Dr. Francisco Panizza and Professor Michael Barzelay. I would like to thank them enormously for backing my entrance to the PhD programme, for their constant support throughout this process and, most importantly, for giving me the opportunity of a lifetime. I will always be grateful for the letters of recommendation from my professors at ITAM, Federico Estévez, Alonso Lujambio, Franz Oberazbacher, Miguel Basáñez, Alejandro Moreno and Leopoldo Gómez, as well as people with whom I had the privilege to work with such as Santiago Portilla, Genaro Borrego, Carlos Garza Falla, Enrique Jackson and Juan Pablo González.

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I would like to thank my family very especially for understanding and respecting this project, for giving me the encouraging words I needed throughout this process and for being sensitive to my needs while I lived in London and Washington. Thanks to email technology and their youthfulness, I was lucky to keep in close contact with my mother, Susana; my father, Luis; my sister Elisa; my aunt Titi and even my beloved grandmother, Abita. This line of communication was crucial for me not only as a source of warmth and support, but because it kept me abreast of events in Mexico and provided me with valuable information for my thesis.

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In 2000, Professor Loaeza generously introduced me to Professor John Bailey, who kindly opened to me the doors of Georgetown University so I could keep working on my research as a visiting scholar. Since then, I started presenting parts of my research in different academic settings. In September 2000, I presented my first findings to academics and students of the Government Department in Georgetown. All their comments were extremely valuable. In March 2002, I attended the Society for Latin American Studies (SLAS) Annual Conference at the University of East Anglia where I met the gurus of judicial studies: Pilar Domingo, Rachel Sieder and Luis Pásara, among others.

This forum gave me the opportunity to become involved with the Mexican Project and its Director at Oxford University, Professor Laurence Whitehead. In May 2002, he invited me to an Oxford-CIDE joint conference at the Latin American Centre at St Antony's College to present a paper entitled "Federalism and the Supreme Court" . I am deeply indebted to him for his support.

I also established contact with Layda Negrete and Ana Laura Magaloni, both academics at CIDE, who kindly invited me in November 2002 to present parts of my research in Mexico. Immediately after the conference, my paper was made available at CIDE's webpage which led to me being contacted by different academics working on this subject.

In September 2002, Arturo Cano, director of the *La Jornada* newspaper supplement *Masiosare,* challenged me to write a first article about the privatisation of the electricity

sector in Great Britain, putting his trust in me "*a distancia*". I thank him for offering me a permanent space in this well-regarded newspaper, so I could write from Britain about a wide variety of topics, including those related to my thesis.

At this point, in early 2003, I felt very close of finishing my thesis, but for a number of reasons, including financial, returned to Mexico. In Mexico, I was lucky to reencounter a professor from my undergraduate programme at ITAM, Virgilio Andrade, who in October 2003 became an Electoral Councillor at the Federal Electoral Institute (IFE) and kindly invited me to join his team. For the last six years, I have been fortunate to learn from one of the best electoral lawyers in Mexico and to share with him crucial moments in Mexico's political history such as the 2006 presidential elections. More importantly, I was able to witness the kindness, loyalty and generosity of Virgilio and of my good friends and teammates Beatriz Ledesma, Nicolás Herrera and, more recently, Yareni Chávez. At IFE, I have met numerous people who have given me important advice on my thesis and who I hope to cite accurately throughout my work, as I hope to do with people who I have met over the years at the Supreme Court of Justice, the Electoral Tribunal, and different political parties and public institutions. In recent months, I was lucky to meet Karina Ansolabehere at FLACSO.

One last reflection. Priorities of life change, and for me the birth of my daughter, Sofía, gave me a happy reason to distract my attention from my thesis but, at the same time, she gave me the strength and the motivation I needed to make the final effort and finish this thesis. It was not always easy going to work early, coming back at home to spend the afternoon with Sofía and then to start writing my thesis at night. Time passed and I thought my thesis may have lost some originality but, paradoxically, Sofía made me realize how important it is to finish what we start. As Sofía turned five, we managed to share my PhD project on a new footing when she lent me some of her English-language schoolbooks to help me write my thesis. I modestly dedicate to her and to all the people I have mentioned the genuine effort I have devoted to this project. I hope not to disappoint any of you.

Susana Berruecos García Travesí

México, December 2009

To Sofía

INTRODUCTION

Background to this thesis

I started researching this thesis in 1998, the same year in which Gibson, Caldeira, and Baird wrote that "[t]he degree to which the field of comparative politics has ignored courts and law is as remarkable as it is regrettable" (1998: 343). Indeed, at the time, as a political scientist working on the fringes of the judicial arena I faced two significant obstacles: first, the lack of published material by political scientists on the impact of the judiciary on political processes and, second, the sometimes guarded attitude of lawyers and judicial professionals in Mexico over their field of study.

In the intervening years, much has changed. The literature straddling the fields of judicial politics and comparative politics, which is where my thesis is situated, has mushroomed. A growing number of political scientists are looking at diverse aspects of the judiciary, including judicial reform, judicial performance and the judicialisation of politics.

In Mexico, where my study is based, the amount of information made publicly available by the courts has expanded exponentially, making it easier to scrutinise judicial performance and its impact on domestic politics at the local and national levels. When I first became aware of the potential of the Supreme Court of Justice to become a new arena of political contestation between local and federal actors through the resolution of constitutional controversies, I started to create my own database of these recourses, more than 1,500 filed between 1995 and 2005. A decade later, in 2006, the supreme court created an entire department devoted to judicial research; some 20 researchers within the department spent three years building a database of constitutional controversies, with parallels with mine. Constitutional controversies are the legal mechanism for defending the federal nature of the Mexican political system and the principle of separation of powers. They can be filed against different levels and branches of government when these exceed their constitutional jurisdiction.

My thesis therefore now sits within an established field of study. Its contribution to the research field is that it provides a detailed case study of an important but often neglected aspect of the democratisation process in Mexico: the progressive institutional differentiation of the judiciary vis-à-vis the political executive. It offers an empirical analysis of constitutional controversies, revealing how the judiciary became the venue

of choice for opposition-led governments to contest constitutional and other political issues.

While the focus of this dissertation is Mexico after the profound judicial reforms of 1994, I contextualise this period by providing historical background as well as regional comparisons. The first chapter looks at reform processes and their impact in the other three Latin American federal democracies: Argentina, Brazil and Venezuela. The institutional focus throughout the thesis is the Supreme Court of Justice, which in Mexico has been transformed over the past decade from being a pure enforcer of legality that was generally subordinated to the executive, into a real interpreter of the Constitution and the final arbiter in many political disputes.

Hypotheses and key questions

This thesis analyses the nexus between judicial reform efforts and the increasing separation of horizontal and vertical powers of government in Mexico since the early 1990s. The main questions I attempt to answer are:

1) While legal forms remained important under authoritarian government, the judiciary was largely subordinated to the executive and successive reform efforts to strengthen its independence lacked substance. Yet in 1994 a profound judicial reform was implemented. Why did the Mexican authorities elect to empower the judiciary at that time?

2) In which ways did the judicial reform process change the role of the Supreme Court?

3) What impact has the revitalised Supreme Court had on other powers and levels of government, and on federalisation processes more generally?

4) Is there a correlation between political party affiliation and propensity to file constitutional controversies, or their outcome?

At the heart of my thesis is an empirical analysis of the constitutional controversies presented since the reform (Chapters 3 and 4). My central hypothesis is that behind most of them is a clear conflict between opposing political parties regarding resources and powers. In the context of a more genuine separation of powers, the supreme court is becoming the final arbiter in such conflicts, a true "third power". Arguably the court's enhanced role is a reflection of a lack of political negotiation skills of branches and levels of government that are under the control of different political parties, rather than

of a new respect for the judicial institution. Nonetheless, the final outcome is that the Court is increasingly deciding a wide variety of issues and is becoming the subject of political pressure in certain contexts.

My sub-hypothesis is that through the increased use of constitutional controversies, the very process of federalism has been reinforced. Lower levels of government power have most commonly made use of the legal recourse to demand increased devolution of political and fiscal resources to the local level. But the recourse has also been used by the very highest government authorities, namely the federal executive and legislature, to defend their respective spheres of competence.

The main theoretical contributions I see my thesis making to the scholarly and policy debates stem from the fact that it looks at the legal sphere from the political science perspective. First, as one of Latin America's few federal systems, Mexico offers an ideal laboratory for the study of the political conditions that facilitate or hinder judicial reform efforts. More importantly, Mexico represents a special case in terms of the theory of democratic consolidation because during the most complicated political, economic and social contexts—including the post-electoral conflicts of 2006—the actors and political parties have opted to pursue a legal-institutional route to power. This contrasts with countries such as Venezuela or Argentina which in recent years have seen the status of their democracies severely questioned. My research makes clear that the judiciary should not be underestimated in studies of presidentialism, not only for the role it plays as a check on presidential power, but for the leverage it provides other tiers of government to assert claims on the central executive authority.

Second, I provide case study material of the ways in which the decisions of the supreme court contributed to the re-development of federalism in Mexico by providing effective judicial arbitration of election disputes in local and state government. In terms of the seven case studies, I present political-electoral and judicial analysis in states that were key to Mexico's democratic transition, such as Baja California, Chihuahua and the Federal District, as well as in states such as Tamaulipas, Puebla and Nuevo León, which have not been the focus of much comparative subnational research in Mexico.

In sum, I think my thesis makes significant contributions to the understanding of a) the judicialisation of politics b) federalism c) the role of the judiciary in processes of democratisation and d) presidentialism.

Methodology

There are many theoretical and methodological approaches to determining how judicial institutions perform. In previous research for my undergraduate and Master's degrees I used statistical analyses of electoral results and polling data from the state of Veracruz to analyse how different sectors (oil, sugar, industrial and farming) voted and how opposition parties started to grow steadily, the National Action Party (PAN) in the urban corridor and the Democratic Revolutionary Party (PRD) among oil and sugar producers. Here again I decided that quantitative analysis of particular aspects of the constitutional controversies under examination would help to uncover certain trends, such as the levels of government and political parties that most commonly use them, who is challenging whom or the direction of rulings. Yet my ambitions for the research were broader than this and so I have combined quantitative with qualitative methods. I decided to apply a case-oriented, historical (evolutionary) and qualitative approach that would allow me to conduct a narrative and institutional analysis of the dynamics affecting political and institutional change in Mexico, specifically in the area of judicially-created federalism. My thesis applies a narrative structure (Barzelay, 2001) to establish the chain of events that needs to be explained.

My approach was to select a certain number of representative case study states according to their relevance to my main hypothesis. This would enable me to delve deeper into the topic than a national-level study would have permitted. It also meant that I could be brought into contact with primary source material, including interviewing the protagonists of some of the reforms and cases I wished to analyse. By narrowing my field of study, I was able to provide historical and political context for the constitutional controversy cases, and was able to consider the role of individual agents in effecting change, that is, in pushing to defend or expand their jurisdictional demands for political and fiscal power. Thus my institutional analysis is nuanced by the inclusion of information about individual actors and their interests, as well as the political party, governmental or judicial institutions in which they participate. I also offer an explanatory framework in terms of which the case narratives are crafted and compared, which allows common narrative to emerge across the cases. The concept of narrative explanation and the idea of multi-case narratives are discussed by Abbot (1992, 72–80). According to Eriksson (2000) narrative explanations are theories about happenings that may consist of diverse forms of explanations, interpretations and explanatory sketches. In his view, there is no single form of narrative explanation; rather, narrative is seen as a form for synthesizing various explanations. By

considering historical characteristics and the case-specific context, a case-oriented approach is more holistic (Ragin, 1987: 54).

In selecting my methodology I was mindful of the words of Dunleavy who succinctly summarises the split in the social sciences between cross-national studies which use many countries and aggregate data (quantitative) and very specific case studies which treat phenomena separately (qualitative). He cites the pros and cons of both approaches as listed by Ragin (1987). Variable-oriented approaches "have the advantage of providing a means by which to test theory based on large numbers of cases and the rigorous treatment of a question armed with vast quantities of concrete data", but can be "vague and abstract", lacking in connection with human agency and process (Dunleavy, 2003). Restricted sample groups can produce unreliable results. Case-oriented studies on the other hand are limited since "few general conclusions can be drawn because of the limited amount of data, and many studies therefore become mired in specificity and exceptionalism." But they do "permit sensitivity to complexity" and are "well suited to addressing actual empirical history and generating conceptual ideas." Moreover, as befits my intentions, "human agency and process are accommodated and there is a strong connection between the research and actual events" (Dunleavy, 2003). Given this specificity of the cases, however, there is an obvious limit to the generalisations that can be drawn from them. Indeed, while I include a cross-country comparative analysis of the judicial reform processes in Argentina, Brazil and Venezuela, I do not attempt to generalise to them any of the conclusions relating to the use of judicial review tools to deepen federalism.

While the core of my thesis is an empirical analysis of constitutional controversies, the context and the qualitative analysis of these controversies is informed by more than 50 interviews conducted in the course of my research. According to Flick (2002: 96), "an alternative to approaching individual worlds of experience through the openness that can be achieved in semi-structured interviews is to use the narratives produced by interviewees as a form of data...narratives allow the researcher to approach the interviewee's experiential world in a more comprehensive way, the world being structured in itself."

One potential shortcoming of this method is the possibility of that "is presented in a narrative is constructed in a specific form during the process of narrating, and memories of earlier events may be influenced by the situation in which they are told" (Flick, 2003: 103). As will be seen, this could be argued in reference to my interview

with former president Ernesto Zedillo. The interview was conducted seven years after he introduced the 1994 judicial reform and so his memories of the motivations for the reform could be biased, especially since the reforms have had such a profound and generally well-regarded impact. It was therefore important to include other interviews with notable political actors (including court justices, congressmen, senators, and federal government ministers) to counterbalance the information. Similarly, the numerical analysis presented in most of the chapters lends weight to the interview material.

In order to ensure that my case study analysis is rigorous, I set out certain parameters for my research. I elected to study the decade following the judicial reform, 1995 to 2005. I decided to consider all of the controversies, rather than a specific sub-group of them, as I did not want to prejudice my findings. A first step was to identify and describe the administrative and jurisdictional processes used by the Supreme Court to track constitutional controversies. I then analysed these information flows to determine the variables for my database and to design the data entry forms. It is important to note that while the empirical analysis covers the decade 1995–2005, I make reference in several places to more recent cases in order to illustrate ongoing trends.

Although I was able to develop a very extensive and complete database, I wanted to provide a summary table (Annex 1) with the most relevant information for the reader or researcher. All data were checked on a case–by-case basis against the Supreme Court website. I include the following variables, which head each of the columns in Annex 1:

- Case file number
- Complainant, categorised according to the actors (government power, organ or entity) listed in Article 105 as having the authority to present controversies, and according to whether they belong to the federal, state, municipal or Federal District (Mexico City) level of government. I include the initials of the state where the complainant is based in the same column, while in column four I include the initials of the defendant's state.
- Political party of the complainant. This is not included where the controversy was presented by the judiciary or an actor that does not have legal authority to present constitutional controversies. In cases presented by a state or federal legislative body, efforts were made to include the political party that dominated the legislative body when the recourse was presented.
- Defendant and complaint. Below the defendant and marked with an asterisk, is the theme of the complaint. Complaints are classified into the following

categories: allocation of public resources, territorial conflicts, suspension or dismissal of public servants, municipal autonomy.

- Political party of the defendant.
- Resolution of the case. This identifies whether the Court determined that the controversy was well-founded, partially founded, unfounded, rejected, withdrawn, expired or disqualified for other technical reasons.
- Dates of presentation and resolution of the complaint. Constitutional controversies presented to the Court after the 15 December are registered under the following year. From the two dates it is possible to determine how long the Court took to resolve each case.

My next task was to choose the case studies. My starting point was very simple: I decided to include the seven states which were the most legally active just after the 1994 judicial reform was implemented. These states also happened to be representative across a number of variables that I was interested in examining: they have been governed by different political parties, but, since the 1980s, have all shown an increasing level of opposition representation at the local level; they differ significantly in terms of population, size and number of municipalities, as well as level of cultural difference and indigenous representation.

Data gathering

My research is built upon five main data-gathering activities:

a) Documentary research of archives dating to 1917. Extensive reviews of national and local newspapers, and a number of specialist magazines such as *Nexos*, *Voz y Voto* and *The Economist.* I reviewed material held in the following Mexican national archives: Supreme Court of Justice, Electoral Tribunal, Biblioteca del Congreso de la Unión (Mexican Congressional Records), Instituto Nacional de Estadística, Geografía e Informática (INEGI); and in the state electoral institutes of Baja California, Chihuahua, Federal District, Nuevo León, Oaxaca, Puebla, Tabasco, Tamaulipas and Yucatán. I was fortunate to have access to the following libraries: LSE, ITAM, UNAM, Instituto de Investigaciones Jurídicas, Georgetown University, Federal Electoral Institute, Secretaría de la Función Pública.

b) Interviews with senior figures from within the government and the judiciary. Fifty personal interviews were conducted, including with former President Ernesto Zedillo, Supreme Court justices, Electoral Magistrates, Electoral Councillors, politicians and academics.

c) Systematic data collection on constitutional controversies.

d) Systematic data collection on electoral results, particularly of case study states.

e) Systematic data collection on Electoral Tribunal reports.

My first task was to search for information on constitutional controversies. In contrast to today, in 2000 the search function on the Supreme Court's website was all but unusable. Very little information was published on the web and most of the detail about specific controversies was missing. I therefore had to spend the first few years of my research asking the Court's Transparency Unit (via third parties in Mexico who helped present the necessary written requests) for detailed information about the cases I was studying. The response time was rarely less than four months.

During the past decade, the quality and access of public information produced by the Court has been transformed. It is now possible to access each Supreme Court case file online, at <http://www.scjn.gob.mx/ActividadJur/Consulta/Paginas/indice.aspx>, which theoretically opens a database (http://www2.scjn.gob.mx/expedientes/) of all the case files resolved by the Court, including controversies, unconstitutional acts and, in the near future, *amparos.*

The reality is that while the database represents a good effort to systematise Court information, the information it contains had to be complimented from additional sources. Thus a case-by-case search of controversies on the database was only my starting point. The most recent case files contain links to 200-plus-page PDF documents of the entire case, which I could then summarise, but for the majority of cases the database only provided a very thin summary containing the date the recourse was filed, the presiding judge, the date of the resolution and the parties involved. The content of the case, when it was included at all, tended to be limited to references to the local or federal articles in question, which I had to look up before I could understand the conflict at issue.

The most difficult step in building my database was to identify the political party affiliation of the parties to the case. This was vital to test my hypothesis that it was opposition political parties that most often used controversies to clarify the scope of their powers at each level of government. For the most part this information was entirely absent from the case files, which meant I had to search the archives of the electoral institutes of the relevant state or federation, by date, to identify the political party involved in the dispute. This presented its own challenges since most electoral institutes only provide information on the most recent elections. The database of electoral results created by the think tank Centro de Investigación para el Desarrollo A.C. (CIDAC, http://www.cidac.org/es/index.php) was very useful in this regard,

particularly for identifying political affiliations of the parties involved in constitutional controversies filed in 1995–2000. Its database contains all federal results from 1964 to 2006, and state election results from 1980 to 2008 (http://www.cidac.org/es/modules.php?name=Encyclopedia&op=list_content&eid=1). In a few cases where the controversy was filed near to an electoral period it was necessary to trace the electoral history of the individuals involved, which often led to fascinating digressions into the histories of local politicians—the case of Río Bravo in Tamaulipas is a notable example. Where local legislatures were parties to a case, it was necessary to look at local congressional results to identify which party held the majority at the time the case was filed.

In late November 2009 I was able to meet the General Manager of Judicial Planning of the Supreme Court, Jacqueline Martínez, who showed me the first draft version of the Court's own database of constitutional controversies, the result of three years' work by a large team of researchers. It is important to note that the Court database includes information that the researchers were able to access through the original paper case files. Martínez said these had to be transported by armoured truck to the Court offices as they are considered national heritage documents. Given this access to the case files, the researchers who built the Court database were able to specify the political party affiliation of complainant and defendant in those cases where it is mentioned in the original text. They did not, however, consult electoral results to supplement missing information.

On how the judicial reform was adopted, I include an analysis of the different responses to the 1994 judicial reform as well as the congressional discussions and approval process. I also describe the election of Supreme Court Justices following the reform, for which I analysed different newspapers and political magazines dated from November 1994 to April 1996. Although some Mexican newspapers have modern websites and electronic archives, none of them had the information for the period in question and so I spent several weeks in the newspaper archives of the UNAM where I was able to analyse contemporary media responses to the reform initiative, its approval and the new Supreme Court appointments.

The majority of my research was carried out in Mexico, where I travelled to gather data in May and December 2001 before I moved there in mid 2003. I also carried out a research trip to Argentina in March 2008. I was able to conduct research interviews on extensive trips to three of my case study states, Nuevo León, Puebla and Yucatán.

Key definitions

a). Separation of powers

A central concept used in my thesis is the separation of powers of government. I take my lead in speaking about the doctrine of separation of powers from the classic text by Montesquieu in which he identifies three functions of government that should be separated: the making of law, the enforcement and administration of law, and the adjudication of controversial cases where the law has to be applied (Montesquieu c. 1748). These legislative, executive and judicial functions should be performed by separate branches of power and no one person can be a member of any two of the branches as, according to Montesquieu:

> When the legislative and executive powers are united in the same person, or in the same body of magistrates, there can be no liberty... there is no liberty if the power of judging is not separated from the legislative and executive... there would be an end to everything, if the same man or the same body... were to exercise those three powers. (Montesquieu c. 1748)

Montesquieu outlined a second condition for preventing abuse of power: there should be an overlap in functions such that each branch performs one main function and some aspects of the other functions. This evolved into the system of checks and balances introduced into the U.S. Constitution and defended by Madison, Hamilton, and Jay (Manin 1997).

That the branches of government are separate does not mean that they are equal, however. For Montesquieu, the legislative is the preeminent power. Judges apply the law, but do not exercise political power (Ríos-Figueroa 2007 citing Pasquino 2001, 210–13). Madison argued for greater equality among the powers and for a more active role for judges in their relationships with the other branches of government (Pasquino 2001, 210–13). By either view, the judiciary is dependent on the other branches of power for implementing its decisions and for securing its economic and political independence. Thus if the other two powers of government are strong and coordinated the judiciary can be expected to have a deferential attitude towards them and be less inclined to be involved in policymaking. This was the case in Mexico for most of the last century when both were controlled by the same party and the legislature did little more

than rubber-stamp executive decrees. As Rios-Figueroa (2007) writes, "[t]he common assumption in all separation-of-powers arguments is that judges behave strategically when making decisions, taking into account not only legal constraints—i.e., precedent and legal coherence—but also political circumstances—i.e., their relative situation vis-à-vis the other branches of government."

b). Independence of the judiciary

This brings me to a second key concept, which is the independence of the judiciary. Separation-of-powers principles require the judicial branch, like the legislative and executive branches, to be institutionally independent. It should have the authority to govern and manage its internal affairs, free from undue interference by the other branches of government, although not free from the scrutiny of those other branches or of the public (Tarr 2007). As well as having institutional independence, the members of the judiciary need to be independent in their handling of individual cases, what Tarr terms as having decisional independence (Tarr 2007). Given the potential number of cases in which the government has an interest and its power over the institutional aspects of the judiciary, one of the most important aspects of judicial independence is to insulate judges from other branches of government and judicial selection from partisan politics. As Garoupa and Ginsburg (2008: 201) point out, the selection of judges is a central factor in most theories of judicial independence. Although there is no consensus on the best selection mechanism to guarantee independence, a growing scholarly consensus has emerged in favour of "merit selection" (2008:202).

The following are generally understood to be necessary for promoting judicial independence:

- Fair appointment and removal procedures (the President or Minister of Justice cannot directly appoint or remove judges)
- Security of tenure (which sometimes includes life tenure for Supreme Court justices)
- Non transferability of judicial posts
- Secure salaries and pensions (underpinned by a fixed budget for the judiciary)
- Provision for disciplinary proceedings
- Court hearings are public
- Judgeships are held by professionals

According to Gudiño Pelayo (2001: 426), in addition to these institutional and legal guarantees, judicial independence also has a subjective component, which is the technical and moral training of those responsible for imparting justice. Kristy Richardson (2005) writes about yet another dimension of judicial independence. If the above institutional safeguards of independence can be thought of as protecting judicial "insularity" and "impartiality", then a third component of judicial independence is judicial "authority". The judiciary can promote its authority by: being involved in making the law and not just applying it; promoting and maintaining public confidence; providing accurate information about the workings of the court and responding to criticism; and participating in the legal review of actions by the other branches of government.

Another distinction often made by scholars is between de facto and de jure concepts of judicial independence (Feld and Voigt 2003). De jure judicial independence is based on the arrangements for the judicial functions found in legal documents pertaining to the highest court of a country. The concept of de facto judicial independence reflects the fact that the degree of actual judicial independence may differ from the de jure. Judicial independence is balanced by the need for judicial accountability (e.g. Tarr 2007).

My thesis looks not only at the horizontal separation of powers of government, but at vertical separation of powers, that is between the federal, state and municipal government. It sees the Supreme Court as a check on separation of powers, as the arbiter of legal challenges over jurisdictional disputes.

c). The Mexican political system: from central government to the municipalities

The Mexican system of government comprises 31 state governments, a federal district and 2,445 municipalities. Each state is divided into municipalities, except for the Federal District (Mexico City), which has *delegaciones*. The number of municipalities varies from state to state, from five in Baja California and Baja California Sur to 570 in Oaxaca. At the federal, state and municipal levels, power is divided among executive, legislative and judicial branches of government. For almost 80 years the Institutional Revolutionary Party (PRI) dominated the entire political system and consolidated a system of power that was presidentialist and authoritarian, with political and administrative authority centralised in the hands of the presidency. To illustrate the degree of centralisation, in 1982 at the height of fiscal centralisation, 91 cents of every

peso collected by the Mexican government remained at the federal level, with 8 cents going to the states, and 1 cent going to municipal governments (Barraca 2005).[1]

A process of devolution of power to local governments began in 1983 with the Municipal Reform introduced by President Miguel de la Madrid (1982–88). The reform was aimed at strengthening the financial and administrative capacity of municipal governments. It was part of an effort to deepen democracy as the PRI took the first tentative steps towards opening up areas of governing to the opposition. An increasing number of opposition victories was recognised at the municipal and, later, state levels; these became the most vocal in pushing for more power for local governments.

The reforms, while wide-ranging on paper, had little impact on actual power-sharing. Barraca (2005) explains that this was due to the persistent financial and administrative weaknesses of municipal governments, but also to the limitations of the democratic opening since the PRI maintained a monopoly of power at the state level and so "had incentives to obstruct reforms in order deny opposition governments the ability to take credit for improved municipal administration." State governments were given wide discretion in deciding how the reform should be carried out in individual cases.

Although President Carlos Salinas (1988–94) joined the pro-democracy chorus, in practice he used the doctrine of decentralisation to restore presidential legitimacy and enhance presidential power. It was not until 1999, well into the administration of President Ernesto Zedillo (1994–2000), that a profound municipal reform was implemented that achieved the goals set out in 1983. The reform granted municipalities the status of government bodies (not just administrative bodies) with exclusive competencies including over policing and fiscal issues, which only the town hall has the authority to transfer to or share with state governments. It also modified Article 115 of the constitution, which outlines the structure and powers of Mexico's municipal governments (or *ayuntamientos*). It transferred public services and financial resources from the state to the municipal level and specified which public services would be under the purview of the municipal government. Crucially, unlike the 1983 reform, the procedure for implementing the reform reduces the discretion of state governments and gives greater recourse to municipal governments, including the right to appeal against the state (or federal) government by filing a constitutional controversy before the Supreme Court (Barracca, 2005).

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[1] Citing E. Cabrero Mendoza, *Los dilemas de la modernización municipal: estudios sobre la gestión hacendaria en los municipios urbanos en México* (Mexico, 1996), p. 19.

Pressure for increased autonomy through devolution increased as the opposition gained ground at the local government level. Whereas prior to 1989 no opposition party had ever controlled a state government, by 2000 the opposition controlled 14 state governments (ten by the PAN and four by the PRD). Since Vicente Fox of the PAN won the presidential elections in 2000, a large number of PRI governors and municipal presidents found themselves in the role of political opposition and have added their voices to calls for greater devolution of power and resources.

Municipalities currently have regulatory power over law enforcement, government and public administration at the municipal level. They have control over water and drainage, street lighting, public security, traffic, cemeteries and parks, though they can agree for state governments to provide public services if this results in better service. In coordination with the state and federal governments, municipal governments can assist with education, emergency services, health services, environmental health and the maintenance of historic monuments and sites.

The main sources of municipal government income are:

- Property taxes, which are established by the laws of each state;
- Federal transfers, which are made up of *Ramo 33* resources sent by the federal government to a specific municipality for a specific item or project; and federal allocations to states, which are then allocated according to local state law;
- Fees for the provision of public services;
- Loans from the development bank or commercial banks in the case of income-generating projects (not for current spending).

d). The Mexican federal judiciary and its component parts

As a political scientist it was important for me to understand the way the Mexican court system is organised. The key pieces of legislation for the judiciary are Article 94 of the Federal Constitution and Article 1 of the Organic Law of the Judicial Power of the Federation of 22 November 1996 which establish that the "Judicial Power of the Federation (*Poder Judicial de la Federación*) is vested in a Supreme Court of Justice, in an Electoral Tribunal, Circuit Collegiate and Unitary Courts, and in District Courts." The Federal Judicial Council (*Consejo de la Judicatura Federal*) is responsible for the administration, supervision and discipline of the judiciary (except the Supreme Court).

According to Article 1 of the Organic Law, the bodies that comprise the federal judiciary are:

- Supreme Court of Justice
- Electoral Tribunal
- Circuit Collegiate Courts
- Unitary Courts
- District Courts
- Judicial Council
- The federal jury of citizens (*El jurado federal de ciudadanos*)
- The courts of the states and the Federal District in cases outlined in Article 107, section XII of the Constitution and in other cases when the law dictates that they should act in support of federal justice.

The work and jurisdiction of all federal courts, as well as the responsibilities of those who work for the federal judiciary are regulated by the pertinent federal legislative enactments, in particular the Organic Act of the Federal Judicial Power (*Ley Orgánica del Poder Judicial de la Federación),* the *Amparo* Act, the Federal Code of Civil Procedure (*Código Federal de Procedimientos Civiles*), the Federal Act of Administrative Procedure (*Ley Federal de Procedimiento Administrativo*) and secondary legislation regulating paragraphs I and II of Article 105 of the Federal Constitution (*Ley Reglamentaria de las Fracciones I y II de la Constitución Federal*).

The Federal Judicial Council is empowered to determine the number, circuit divisions, territorial jurisdiction and, when appropriate, the subject matter jurisdiction of the Circuit Collegiate and Unitary Courts and Federal District Courts (Art. 94).

Mexico's Supreme Court of the Nation comprises 11 justices (*Ministros*) who sit either as a full court (*en Pleno*) or in chambers (*Salas*). Its sessions are public except in cases which for moral or public interest reasons require secrecy.

Courts are divided into those of "ordinary jurisdiction" (including, civil, commercial and criminal jurisdiction) and administrative courts or courts of "special jurisdiction". Courts of ordinary jurisdiction include federal and state courts. At the federal level, the Supreme Court (*Suprema Corte de Justicia de la Nación*) is the highest court in the land and decides the most important cases in the country. The second most important courts in terms of their authority and significance are the Circuit Courts (*Colegiados de Circuito*), which hear cases on appeal and *amparo* cases. The third tier of courts is the

District Courts (*Juzgados de Distrito*), which have jurisdiction over *amparo* cases in the first instance, and which function as courts of ordinary jurisdiction on matters of federal law, such as commercial law cases.

Administrative law in Mexico has grown so quickly as to make it difficult to control the diversification of administrative regulation in the different legal areas. Administrative courts also exist at both federal and state levels. At the federal level are the so called Federal Boards of Conciliation and Arbitration (*Juntas Federales de Conciliación y Arbitraje*), which hear labour matters. They are very important because Mexico's Federal Labour Law controls every employer-employee relationship. They also include the Court of Agrarian Justice (*Tribunal de Justicia Agraria*); the Court of Military Justice (*Tribunal de Justicia Militar*); the Court of Jurisdiction over the Electoral Process (*Tribunal de Jurisdicción de Proceso Electoral*); and other special courts. Local administrative courts include the Administrative Court of Contentions (*Tribunal Contencioso Administrativo*), the Justice of the Peace Courts (*Tribunales Calificadores*) and others of minor importance.

Chapter outlines

My thesis is organized into five chapters. The first two provide the theoretical and historical context for the empirical analysis contained in Chapters 3, 4 and 5. The rationale, contents and key findings for each chapter are briefly outlined in this section.

Chapter 1. Democratic Consolidation and Judicial Reform in Latin America: Is the Judiciary the Weakest Link in Latin American Democracies?

Although the principle of judicial independence is included in most Latin American constitutions, Mexico was in no way unique in having a relationship between the executive and the judiciary that was characterised for most of last century by complete subservience to the will of the executive. This chapter looks at the process of consolidation of Latin America's so-called third wave democracies in Argentina, Brazil and Venezuela, focusing specifically on their respective processes of judicial reform.

The chapter also offers a review of new scholarship dedicated to the topic of accountability and rule of law in Latin America. The books and articles featured cover issues of relevance to this thesis such as: horizontal accountability (Schedler, Diamond and Plattner, 1999; Magaloni, 2003); access to justice (Méndez, O'Donnell and Pinheiro, 1999); judicial reform in comparative perspective (Prillaman, 2000); the development of political jurisprudence (Shapiro and Stone Sweet, 2002); and intervention of the judiciary in public policy decision (Kelman, 1987). The recent articles related to the Mexican judiciary concur with my conclusion that the expansion of judicial power within Mexico is directly related to a more plural political scenario, with greater separation of powers and alternation of political power in office.

Chapter 2 The Mexican Supreme Court of Justice: From Supine to Activist in a Decade of Judicial Reform (1995–2005)

As has been well documented, the Mexican judiciary up until the 1990s was always supportive of the executive though with some relative judicial autonomy around the amparo. This Chapter focuses on the 1994 judicial reform which represents a rupture with this tradition. It asks how and why the authorities adopted the reforms.

Coupled with judicial reform under Zedillo was a move towards fiscal and budgetary decentralisation, which brought with it foreseeable conflict between the various levels over rival budgetary rights. As municipalities became more fiscally powerful their powers needed more interpretation and so the Supreme Court was called on with

greater frequency to resolve disputes. The chapter therefore also assesses a series of municipal reforms, beginning in 1983, which have fed into the process of judicially-created federalism.

A final section of this chapter looks at recent polls of public perceptions of the judiciary, as one indicator of the success of the reforms. Polling data suggest that citizens remain concerned about judicial independence.

Chapter 3 The Supreme Court as the Lynchpin of New Federalism: An Analysis of the Constitutional Controversies (1995–2005)

This chapter provides an empirical analysis of the constitutional controversies presented in the decade after the 1994 judicial reform. As the first building blocks of political and administrative organisation and the first entities to be governed by opposition parties, the chapter reveals that it is municipalities that are making increasing use of this judicial process. Some of the claims have been upheld by the Court, which has led to the creation of a type of legally-defined federalism. In other words, political pluralism has brought with it the upgrading of traditionally weak institutions such as Congress and the judiciary.

Chapter 4 Party Politics, Fiscal Devolution and the Separation of Powers: Constitutional Controversies in Seven Case Study States

This chapter provides a more detailed analysis of constitutional controversies filed in seven case study states. I examine the ways in which the 1994 judicial reform and the secondary law regulating Article 105 (outlined in Chapter 2) have created new opportunities for subnational actors, especially the municipalities, to assert their claims and agendas within the constitutional framework. The seven case study states are those that generated the highest number of cases filed before the Supreme Court in the 1995–2005 periods: Baja California, Chihuahua and Nuevo Leon, which are prosperous northern states and PAN strongholds; Tamaulipas, Puebla and Oaxaca, which are still governed by the PRI, but have multi-party structures and important municipalities that are controlled by the oppositions; and the Federal District, which was the first state entity to be governed by the PRD, in 1997.

The case studies all show how the experience of governing, even if only at the municipal level initially, has been vital for opposition parties and for the entire institutionalisation process in Mexico. Municipalities and state governments with a

longer tradition of opposition have been more legally active and more successful in defending their constitutional attributions through legal channels.

Chapter 5 Electoral Justice in Mexico: State Sovereignty and the Role of Mexico's Electoral Tribunal

Whereas most of my thesis looks at issues to do with federalism and the resolution of constitutional controversies, this chapter shifts the focus onto the electoral process itself. This is because it is impossible to institutionalise democracy or the rule of law in a democracy without public confidence in the electoral process. And a central role for a credible judiciary is the correction of fraudulent or biased electoral practices.

The main arbitrating body in cases of disputed elections and electoral legislation is the Federal Electoral Tribunal of Justice (TEPJF). Its creation in 1996 is undoubtedly positive in terms of electoral institutionalisation and democratic consolidation since until recently there were practically no mechanisms for reviewing the legality of local elections. Yet its performance has been controversial for a number of reasons, which are analysed in this chapter. The chapter discusses the TEPJF's intervention in conflictive gubernatorial elections in Yucatan in 2001 and Colima in 2003; and municipal elections in Chihuahua in 2001; as well as the TEPJF's new role regulating political party and campaign financing, in particular in connection with "Pemexgate" (when funds from the Pemex union were allegedly funnelled to the PRI's campaign coffers) and the "Amigos de Fox" case involving alleged foreign donations.

CHAPTER 1
Democratic Consolidation and Judicial Reform in Latin America: Is the Judiciary the Weakest Link in Latin American Democracies?

A major criticism of Latin America's third wave of democractisation—which began at the end of the 1970s and swept away all but a few authoritarian governments[2]—has focused on the need to develop and stabilise solid institutional structures. Scholars have emphasised the lack of effective accountability mechanisms in the so-called third wave democracies (Mainwaring and Welna, 2003; Schedler, Diamond and Plattner, 1999; O'Donnell, 1998 a, 1998b). As Latin American countries aspire to consolidate their democratic institutions and secure a satisfactory level of economic, social and political development, adequate mechanisms of judicial accountability and rule of law become imperative. There is widespread recognition that judicial reform is vital to strengthen democratic governance and social justice and so democratisation has tended to be followed by a renewed interest in institutional reform, including judicial reform.

Within presidential systems, judicial independence is generally institutionalised through the principle of separation of powers. An independent judiciary serves as the ultimate guarantor of constitutionalism, ensuring that no agency of government acting on behalf of the people violates the principles of the rule of law. Although the principle of judicial independence is included in most Latin American constitutions, the relationship between the executive and the judiciary was characterised for most of last century as one of complete subservience to the will of the executive. Typically, Latin American judiciaries have been weak and over-politicised, often failing to act as effective control mechanisms and checks on political power. A few judiciaries, such as the Brazilian and Chilean, were considered quite conservative and were insulated from normal mechanisms of accountability. It was only with the process of democratisation throughout the region that judicial reform came to represent an important issue on the agenda. The role of the judiciary in strengthening democratic systems has not been openly debated until very recently.

[2] Domínguez (2003) considers the decay of two of Latin America's longest-lived democracies, Colombia and Venezuela; the abuse of presidential power in Fujimori's Peru; the fragility and instability of the democratic regime in Ecuador (Jamil Mahuad, the only constitutionally elected civilian president, overthrown in 2000) and the disastrous economic performance that hurt Argentine stability in 2002.

An examination of current changes in legislatures and judiciaries as well as other oversight agencies in Latin America signals that these institutions are becoming reasonably strong. According to Gibson, Caldeira and Baird (1998: 343) "...one of the most significant developments in comparative politics is the growing influence of judicial institutions in national and international politics". The trend has been generally described as a "judicialisation" of politics (Couso, 2008; Tate and Vallinder, 1995; Shapiro and Sweet, 2002; Ferejohn, 2002). For Latin American specialists, too, the term "judicialisation of politics" can be rightly applied to Latin America given the growing role for courts in the region (Domingo, 2005; Sieder, Schjolden, and Angell, 2005; Ríos Figueroa and Taylor, 2006). Maravall and Przwersoki (2003: 14) agree that "the general consensus is that during recent times the victors in these conflicts have been the courts". Even in countries with presidential systems, Supreme Courts have become more independent and assertive (Domínguez, 2003: 351).

This chapter offers a counterpoint to the subsequent chapters on Mexico by providing a comparative perspective on judicial reform as experienced in the other federal and presidential regimes in Latin America: Argentina, Brazil and Venezuela. Although the rule of law clearly varies from country to country, certain patterns and concerns regarding these judiciaries can be identified: primarily, that Latin American courts have progressed in some areas but still remain inaccessible for all of the population, mainly the poor. A second common denominator is the lack of judicial independence that has characterised a majority of Latin America's judiciaries. This chapter looks at the frequent intervention by the executive in the judiciaries of Argentina, Brazil and Venezuela, and the changes experienced within these judiciaries since the implementation of judicial reforms as part of the democratisation process.

As with the chapters on Mexico, this chapter focuses on the role that these judiciaries—particularly the high courts—are playing in the context of democratic consolidation. More specifically, it describes how the Supreme Courts in these new democracies have become crucial actors within their respective political systems. I analyse how high courts in each country have ruled on significant political and economic cases. For each case, I refer to the historical background of the judiciary and I identify the main actors or "agents of change" (Domingo, 1999) and circumstances which motivated and explain the recent trend towards judicial reform. This will provide the background needed for the following three chapters, where I study the influence that the Mexican Court has had on national politics since the 1994 judicial reform.

I begin with a brief summary of the most significant literature related to the role of the judiciary in a democratic system, particularly in new democracies such as those that have emerged in Latin America. First, I will briefly refer to Kelman's book *Making Public Policy: A Hopeful View of American Government* (1987). In terms of the US Supreme Court's role in the political process, Kelman identifies the considerable formal authority of the US courts compared with those of other countries. In terms of its judicial review powers, the US Supreme Court can declare laws that Congress has passed to be unconstitutional and hence void. According to Kelman (1987: 115), "the Supreme Court has (through 1985) ruled 114 provisions of federal laws and 1,088 provisions of state or local laws unconstitutional." In many cases the Court has the last say in political processes as many actions are not final until the Court rules so.

Kelman makes the point that although the US Court appears to have been less important than the other two branches of government, the impression of its increased importance may be misleading. In his view, the frequency with which provisions of laws have been declared unconstitutional is not necessarily a sign that the role of the Court is growing, because the number of laws itself has increased dramatically. What is true in the Mexican and other Latin American countries' experience is the fact that courts have been getting involved in public policy in ways they rarely did in the past. Both the Court and Congress, which were generally neglected in the context of the Mexican authoritarian system, have clearly expanded their political activity in conjunction with the democratisation process. Although in Mexico the Supreme Courts' jurisdiction is limited in terms of the types of cases it can hear, its workload has increased significantly and its justices have been involved in a wide range of political and economic issues.

Kelman also discusses the relative insulation of the Court from democratic opinion, which makes it easier to give effect to the values embodied in legal arguments. "The importance of courts in the political process thus means that rights are taken more seriously than they otherwise would be" (Kelner, 1987: 126). The US Court has formal authority separate from that of democratically elected officials, but there are also institutional arrangements (and informal norms) such as life terms and fixed salaries to insulate and encourage them to behave differently from politicians. The Court's institutional design has, however, allowed for some democratic influence since justices are named by the president and ratified by the Senate, as has happened in Mexico since 1995.

Literature review: Latin American judicial politics

Up until recently there were few political studies of the judiciary and the role it has played in the democratisation process in Latin America. In general, this institution was simply neglected for being subordinated to the executive's will and for decades it was only lawyers who referred to the judiciaries. As the waves of democratisation touched Latin America, interest grew in discussing issues other than the achievement of electoral democracy, however. It is easy today to identify a growing trend of new scholarship dedicated to the topic of accountability and rule of law in this region. As Tate (2007: 1) rightly points out, a vibrant new interest in "comparative judicial politics" pervades the field.

In 1993, Irwin Stotzky edited one of the first major publications examining the significance of the independence of the judiciary, *Transition to Democracy in Latin America*. The book's 26 articles focus on the role that the judiciary might play in peaceful transfers of power to reinforce the defence of human rights. The book concentrates on Argentina and Chile, although some authors do make references to other Latin American judiciaries. In 1995, Tate and Vallinder edited one of the largest comparative judicial politics book: *The Global Expansion of Judicial Power*. Substantial theoretical and historical contributions are offered in most of its 26 chapters, none of which deals with the Latin American region.

The Self-Restraining State (1999), edited by Schedler, Diamond and Plattner, collects articles that explore how new democracies can establish autonomous institutions of accountability (specialised oversight bodies) and what those agencies can do to achieve credibility. The book looks from various vantage points at the concept of horizontal accountability—the capacity of state institutions to check abuses by other public agencies and branches of government, as defined by O'Donnell (1994). A theoretical section discusses conceptual and normative aspects of public accountability, while empirical case studies provide descriptive accounts on electoral administration, judicial systems, anti-corruption bodies and central banks. The section on judicial systems reviews efforts to enhance judicial independence in three continents. In the article on Latin America, Domingo (1999) analyses the crucial role of the judiciary in a democracy, but also describes the obstacles that have hindered the development of credible legal institutions in the region. She identifies the agents of

change that have promoted judicial reform processes and concludes with an evaluation of Latin America's most recent wave of judicial reform. Eisenstadt describes regime change without governmental change ("democratisation through elections") to explain the building of a more credible electoral administration system in Mexico.

Méndez, O'Donnell and Pinheiro's book *The (Un)Rule of Law and the Underprivileged in Latin America* (1999) collates a series of articles that summarise the shortcomings of a variety of Latin American institutions, lamenting the incompleteness of the region's democratic transition. The authors suggest that legal and justice systems can be used to reverse the region's history of extreme inequality and injustice. Only the third and the last sections are related to my subject of interest. In the former, Méndez and Correa present articles on judicial and institutional reform and access to justice in a number of Latin American countries. Although the contributors acknowledge recent progress in the modernisation of the courts, they call for legal change and a reorientation of state institutions, specifically to benefit the underprivileged. In the final section, O'Donnell's partial conclusion is that the potential benefits for the dispossessed have not been realised and a "densification" of civil rights is needed.

In their book *Fault Lines of Democracy in Post-Transition Latin America* (1999), Aguero and Stark have coined the term "democratic fault lines" to describe pressure points that call into question the depth, quality and even durability of many of the post-authoritarian regimes in Latin America. A democracy with a weak judiciary will be unlikely to ensure a healthy arrangement of checks and balances on elected officials who may at times test the bounds of constitutionalism. "A democracy with a weak or politicised judiciary will have great difficulty ensuring a fair degree of horizontal accountability between the various branches of government" (O'Donnell, 1994).

Prillaman's book *Judiciary and Democratic Decay in Latin America* (2000) focuses on judicial reform processes in El Salvador, Brazil, Argentina and Chile. He uses an interesting comparative framework of analysis to evaluate the successes and failures of specific reform strategies adopted in these countries. The case studies are assessed in terms of three variables which, in Prillaman's view, are key concerns in judicial reform programmes: independence, efficiency and access. For this author, only the Chilean case represents a success story, because of its comprehensive approach which addressed all three variables simultaneously. The other reform attempts are criticised on the grounds that they tackle a single variable of judicial reform in isolation, that reforms are not implemented in logical sequence and that their design and

implementation fails to take account of the broader political and economic context. He concludes that the inadequacies of judicial reform efforts in Argentina, Brazil and El Salvador are contributing to democratic decay in much of the region.

Shapiro and Stone Sweet's book *On Law, Politics and Judicialization* (2002) is a compilation of eleven articles that discuss different aspects of the politics of law. It is theoretical, although the authors do analyse how legal systems develop in countries such as France, Germany and the United States, as well as the European Union. Shapiro argues that while the notion of an independent judiciary may have been carried further in the United States than anywhere else, "the central place of the Supreme Court in the American political scene has kept us from equating independence with apoliticism or defining independence in terms of an isolated sphere of competence only peripherally related to public affairs" (2002: 23). In his view, at least since 1937, the US Court and its constitutional decisions have consistently played a significant and controversial role in this country's political history. Particularly interesting is the author's description of the development of political jurisprudence and the subsequent understanding of law as politics under the theoretical framework of new institutionalism. The new jurisprudence has been an attempt to integrate the courts into the general framework of governmental institutions and political processes. Shapiro refers to the courts as political agents and judges as political actors, integrating the judicial system into the matrix of government and politics. He addresses the debate over judicial modesty (fundamentally apolitical in their jurisprudence, conceiving courts as non-political institutions) versus judicial activism in order to define the political role of the Courts.

A historical perspective underpins Mark Ungar's book *Elusive Reform: Democracy and the Rule of Law in Latin America* (2002). He unravels historical patterns to highlight the challenges facing Latin American nations as they strengthen democracy and establish the rule of law. He looks at a number of law enforcement agencies including the police, provincial governors and the judiciary, in particular in Argentina and Venezuela, although he also refers to other Latin American nations.

Mainwaring and Welna's book on democratic accountability, *Democratic Accountability in Latin America* (2003) addresses a critical issue for Latin American countries: how democratic leaders in the region can improve accountability in order to strengthen the quality of democracy and deepen democratic legitimacy, while simultaneously promoting governmental effectiveness. Some articles on the legislature and the

judiciary are included in a section analysing the interaction between mechanisms and institutions of accountability. Beatriz Magaloni's contribution on the Mexican Supreme Court is a valuable piece of work, especially for this thesis. Magaloni's argument about horizontal or intrastate (in Mainwaring's terms) accountability and the courts is two-sided: on the one hand, she recognises that the Supreme Court has become a more significant actor in Mexican politics, while on the other, she emphasises the weakness of local courts and law-enforcement agencies. It is worth mentioning that although she does refer to the federal judiciary and the Court's new role after the 1994 reform, she is more inclined to analyse topics related to crime and public insecurity. More recently, with Arianna Sánchez (2006), Magaloni presented a paper on the role of the Supreme Court in enforcing the constitutional order in Mexico's emerging democracy. The authors analyse Court rulings in order to assess the extent to which the Court acts as an "authoritarian enclave" to protect the interests of their autocratic appointers. Their analysis provides evidence that the Court more often sides with the former autocratic ruling party, especially in important cases where the fiscal federal pact is challenged.

In the book *Democracy and the Rule of Law* (2003), edited by Maravall and Przwersoki, the relationship between the rule of law and democracy is analysed. The authors ask why governments sometimes act and others fail to act according to law, concluding that the rule of law results from strategic choices of relevant actors. In their view, distribution of power is the key factor that distinguishes the rule of law because "when power is monopolized, the law is at most an instrument of the rule of someone" (2003: 3). This idea, where no group is strong enough to dominate the others and when the many use institutions to promote their interests, constitutes an important basis for this thesis. I agree that the law rules only when conflicting actors seek to resolve their conflicts by recourse to law. Rule of law will only be pre-eminent if rulers and subjects conclude that it is in their interest to obey the law, if the rule of law becomes self-enforcing. The only Latin American experience discussed in this volume is the Chilean dictatorship, although Smulovitz's chapter refers to Argentina and Brazil. Ferejohn and Pasquino's piece is very relevant for this thesis since both authors describe the trend toward the displacement of the political by the juridical, of elected and accountable organs by non-accountable courts, especially in fragmented political systems.

Gloppen, Gargarella and Skaar's *Democratization and the Judiciary: The accountability function of courts in new democracies* (2004) examines the political role of courts in new democracies in Latin America and Africa. In this volume, authors question some of the premises underlying the present drive towards strong constitutional government

and judicial powers, and what happens when judges themselves are not made accountable. The book assesses the hyper-presidential nature of some of these new democracies and so it is surprising that Mexico was not considered.

From Rebecca Bill Chávez's book *The Rule of Law in Nascent Democracies: Judicial Politics in Argentina* (2004), this thesis makes use of the idea that fragmentation of political powers is a necessary condition for the rule of law: party competition sets the stage for independent courts. Bill Chavez shows how this argument applies to the Argentinean case, as I will try to do while explaining the functioning of the Mexican Supreme Court in the context of increased political pluralism. In particular, she argues that the distribution of economic resources among members of a divided elite fosters competitive politics and can therefore lead to the requisite political fragmentation.

The book *Judicialization in Latin America* (2005), edited by Seider, Schjolden and Angell, offers research on the role of courts in politics and judicialization in the region's new democracies. This volume is organised by country, with the different chapters analysing the role of courts and judges in Argentina, Brazil, Chile, Colombia, Costa Rica, Mexico, Peru and Venezuela. These country chapters are complemented by a few topical studies on domestic violence and an introduction and afterword by Guillermo O'Donnell. Three relevant questions are addressed in this book: 1) where did the impetus for judicialisation come from, elite actors or institutional reform ("from above") or from society ("from below") or from international development agencies ("from abroad")? 2) Have courts modified their decision making practices or taken broader roles as a result of judicialization? 3) How have the different types of judicialization affected regimes, politics and courts themselves? Pilar Domingo narrates a top-down elite-led story of judicial reform for the Mexican case. This is similar to Rogelio Pérez Perdomo's account for Venezuela, in which he identifies two phases of judicialization: one in which the Court was more active (1992–1999) and the second when politicians used it to further their own ends following Hugo Chavez's victory. Catalina Smulovitz discusses the successful development in Argentina of two types of judicialisation "from below", while Rogério Arantes recounts a "mixed model" for Brazil: "from above" in 1988 with more impetus from within judicial institutions themselves and "from below" after the reform.

In 2006, Silvia Inclán presented a paper on the relative strength of judicial independence in Mexico compared with other experiences of judicial reform in Latin America (Argentina, Peru and Ecuador). She explores the extent to which electoral

incentives and divided governments explain the levels of executive power and the incentives for and capacity to strengthen judicial independence both at the initiation and the implementation stages of reform. She concludes that Mexican judicial independence can survive only for as long as conditions of divided government prevail or until Court rulings present a politically vital threat to the executive.

Linn Hammergren's (2007) book *Envisioning Reform: Improving Judicial Performance in Latin America* analyses the problems in the judicial reform process in Latin America over the past two decades and suggests how "to keep the movement on track" and strengthen the rule of law. In the first part, the author presents an overview of the history of judicial reform since the 1980s, in order to examine and evaluate five approaches that have been taken to judicial reform. Her work is interesting since she manages to trace the historical and strategic development of judicial reform in the region, as well as its intellectual origins and the role of local and international actors.

Also in 2007, Cornelius and Shirk edited *Reforming the Administration of Justice in Mexico*, which includes articles on five key themes in Mexican justice reform: crime and criminology, policing and police reform, legal actors and judicial reform, civic mobilisation and oversight in the justice system and policy recommendations for future improvement of the justice system. The book examines the challenges Mexico faces in reforming the administration of its justice system while presenting an up-to-date analysis of the functioning and imperfections of the Mexican justice system.

Again in 2007, Julio Ríos Figueroa published a revised version of an IFE article (2004) in which he argues that the fragmentation of political power can enable a judiciary to rule against the interests of power holders without systematically being challenged. By analysing Mexican Supreme Court decisions, Ríos demonstrates that the probability of the Court's voting against the PRI increased as the PRI lost the majority in Congress in 1997 and the presidency in 2000.

In sum, the recent articles related to the Mexican Judiciary concur that the expansion of judicial power within Mexico has been directly related to a more plural political scenario, division of power and alternation of political power in office. While Magaloni and Sánchez argue that the expansion of judicial power has worked primarily to the benefit of the former autocratic regime by "dismissing important cases" that could hurt the former ruling party, Ríos Figueroa shows that the rulings against the PRI increased as this party lost the majority in Congress in 1997. Moreover, while exploring some of

the strategies that the Mexican Court has used to build political capital as it gained a more active role, Staton (2004) points out that the Court has attempted to legitimise itself by "going public" and appealing to the general population to publicise controversial decisions, especially those which struck down important public policies.

World Bank Literature

The World Bank introduces judicial reform in Latin America as "a necessary precondition for encouraging new investment" (Dakolias and Said, 1999: 1). Both authors argue that, as opposed to Eastern European countries, Latin America did not include the judiciary as part of the initial public-sector reforms, but left it until the second generation of reforms which focus on institutional strengthening. Overall, the main aim of the judicial reform project is to build an impartial, predictable, accessible and efficient judicial system. As opposed to these authors' narrow, mainly economic, explanation of the national and international factors that explain judicial reform processes in the region, I will argue that in Mexico judicial reform was also motivated by the more pluralistic political scenario and the emergence of an increasing number of disputes between different levels and branches of government under the control of rival political parties. The cases of Argentina and possibly Venezuela are perhaps a better fit with the World Bank's analysis. However, as will be seen in this and subsequent chapters, judicial reform in Brazil and particularly in Mexico also responded to national aspects of the democratisation process and the need for internal actors to have a more independent judiciary. Thus, not only has public opinion begun to play a larger role in decision-making as democracies stabilise (Dakolias and Said, 1999: 1), but the judiciary has become a crucial actor in policy-making in the region.

In 2002, World Bank Institute researchers Kaufmann and Kraay presented a revised empirical strategy organising a large set of indicators measuring subjective perceptions regarding the quality of governance across countries (2002: 7). The authors draw conclusions that are in line with the existing evidence on the importance of good governance for economic development. The authors identify the term of 'state capture'—referring to the illicit influence of the elite in shaping the laws, policies, and regulations of the state (2002:30)—as a fundamental governance challenge in many transition economies. Mexico is one such country that has gone through periods of illicit influence by powerful elites, especially during the long PRI era.

In their updated set of worldwide governance indicators (covering 175 countries for the period 2000–01), the authors argue that while the majority of countries in Latin America fare well on the "voice and accountability" measure, most do surprisingly badly on the other three dimensions of governance: government effectiveness, rule of law and control of corruption. Particularly interesting are the results for the rule of law category which includes

> several indicators that measure the extent to which agents have confidence in and abide by the rules of society. These include perceptions of the incidence of both violent and non-violent crime, the effectiveness and predictability of the judiciary, and the enforceability of contracts. These indicators measure the success of a society in developing an environment in which fair and predictable rules form the basis for economic and social interactions (2002: 6).

Democratisation and federalism in Argentina, Brazil and Venezuela

Before looking at judicial reform in the three comparison countries, it is worth remembering that many of the initial publications on democratic transitions emphasised the importance of the mode of transition for explaining the subsequent likelihood of democratic consolidation.[3] O'Donnell and Schmitter (1986) have emphasised the differences between transition by regime collapse and pacted transitions, concepts that overlap with Juan Linz's (1978) terms *ruptura por golpe* and *ruptura pactada.* Share and Mainwaring (1986) refined the typology by breaking down the category of pacted transition into "transition through extrication" and "transition through transaction", depending upon the strength of the authoritarian government throughout the process.[4] Huntington (1992) groups processes into three broad types, transformation, replacement and transplacement,[5] according to the group that took the lead in ending the authoritarian system, the elites in power, opposition groups, or joint action by government and opposition groups, respectively.

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[3] According to O'Donnell, Schmitter and Whitehead, transition "is the interval between one political regime and another", delimited on the one side by the launching of the process of dissolution of an authoritarian regime and, on the other, by the installation of some form of democracy, the return to some form of authoritarian rule, or the emergence of a revolutionary alternative (1986: 6).

[4] Share and Mainwaring (1986) introduced the term "transition through transaction" to characterise the institutional framework that supported the democratic transitions in Spain and Brazil, where there was an enormous need to negotiate crucial features of their transitional processes.

[5] A more inclusive typology is that of Karl (1990) and Karl and Schmitter (1991) which with four polar ideal-types addresses the differences between "transitions from above" and those in which mass actors played a much more defining role. One of their major findings (also noted by Stepan and discussed by O'Donnell and Schmitter) was that "transitions from below", such as Guatemala (1946), Bolivia (1952), Cuba (1959) and Nicaragua (1979) did not generate stable democracies.

Garretón and Newman (2001: 9) introduced four democratic scenarios reflected in the process of political democratisation in Latin America. Firstly, they refer to transitions where democracy is the result of movement away from a military or formal authoritarian regime through political mechanisms. Of my case study sample, both Argentina and Brazil are examples of this. They also talk about the scenario of democratisation through reform, where the process is initiated by the government to extend or enlarge a restricted or semi-authoritarian democracy (Mexico and Colombia). Thirdly, the authors refer to a democratic foundation scenario where democracy is installed for the first time after civil wars and revolutions, mainly in the Central American region. Finally, they also talk about regression and crisis when a new or consolidated democracy suffers a major crisis that threatens to regress to a non-democratic situation, such as Venezuela.

As I argue in the subsequent chapters on Mexico, some of the critics of presidentialism (Lijphart, 1984; 1999; Stepan, 1999) neglect to take federalism into account, as one of the institutional arrangements that can alleviate the majoritarian feature of presidential systems by providing channels of expression for the opposition parties at the subnational level. The thesis will put forward that it is not only the Congress and the judiciary that can counterbalance the executive power, but also the federal condition of a presidential system such as the Mexican where there can be several opposition regional governments that counterbalance the presidential power. As will be discussed in subsequent chapters, the federalist arrangement in Mexico has not only provided the path for a gradual political change, but has also made it possible to strengthen regional governments under the "new federalism" trend in the context of democratic consolidation. Moreover, authors such as Holland (1991) and Shapiro and Stone (1994) coincide that federalism contributes to legitimate judicial activism, because it imposes discipline on the states with respect to the federal Constitution. It is interesting to note that in contrast to Mexico, where constitutional controversies are now regularly used to resolve problems between different levels and branches of government, both vertical and horizontal, Brazil and Argentina, do not have a legal instrument specifically designed to address conflicts between vertical levels of government (Navia and Ríos-Figueroa 2005, 204-205).

Argentina's judiciary: the legacies of human rights abuses and corruption

Unlike other countries in Latin America, Argentina had a relatively independent judiciary throughout the nineteenth century. Despite several attempted rebellions, between 1862 and 1930 Argentina enjoyed constitutional stability and the Court was

capable of resolving conflicts with sufficient neutrality.[6] This independent democratic tradition started to disappear with the rise of Peronism in the 1930s. According to Miller (2002: 78-85), the most serious event was the impeachment of all but one of Court judge in 1946 and 1947 under the civilian government of Juan Perón.[7] Although the Court continued to operate during the military administrations, it is worth noting that between 1930 and 1976 the Court was replaced on seven occasions. It also suffered attacks under democratic governments. These arbitrary interventions curtailed judicial independence by modifying retirement ages or simply placing the courts in recess and prohibiting some judges from returning to the bench (Biles, 1976).

After the 1976–83 period of military rule, President Raúl Alfonsín (1983–89) took office with broad popular support, pledging to "restore ethical values and the rule of law" (1993: 43). In general terms, Alfonsín was committed to strengthening institutional independence and the defence of human rights. He highlighted the importance of the separation of powers and the judiciary's role in controlling the exercise of power by the executive and legislative branches (1993: 41–42). His main objective was to replace the military-appointed Supreme Court with a civilian one that would be democratic enough to trial the military officers accused of human right violations during the Dirty War (1976–83). He managed to overturn the military's 1982 amnesty law, a move that was ratified by the Court together with another bill that guaranteed that federal civilian courts would have the last word on trials involving human rights abuses. This created tension since having independent judges judging military officers while ensuring the stability of a civilian regime were not mutually reinforcing activities.

In sum, Alfonsín's government focused on strengthening the individual and institutional independence of the courts, rather than improving their efficiency and accessibility. His main goals were to:

- Completely revamp the criminal justice system
- Establish small claim courts
- Increase decisional output of the Supreme Court (an additional set of laws was established to expedite the appeal process)
- Redefine the scope of responsibility of courts presiding over non-commercial conflicts such as inheritance disputes. (1993: 48)

[6] The Argentine judicial system comprises 25 independent judicial branches which include the National Judicial Branch, 23 provincial judiciaries and the City of Buenos Aires Judicial Branch. Other important offices within the judicial system are the Attorney General's Office, the Ombudsman's Office, the Ministry of Justice and Human Rights and the Federal Penitentiary Service.

[7] As vicepresident of the military government between 1943 and 1946, Perón had several confrontations with the Court. After Perón was elected in 1946, he wanted to eliminate the Court as an opposition source (Miller, 2002: 80). The Peronists had a two-thirds majority in Congress as well as control of the Senate, which meant the outcome of the impeachment process was a foregone conclusion: the only member of the Court not to be sacked was the newly appointed Tomás Casares, who sympathised with Perón.

According to Prillaman (2000:116), Alfonsín's most impressive achievement was to reduce the sharp judicial partisanship that had characterised the courts of virtually all his civilian predecessors: "Alfonsín offered two of the five seats to judges that had even served in past Peronist administrations, the only Radical Party president ever to make such an offer...The nomination and approval proceedings in the Senate went smoothly and were widely recognised as a noncontroversial process." In Smulovitz's (2005: 161) terms, the Argentinean judicialisation process was promoted "from below" as a "discourse of rights".

It is also worth noting the judiciary's increasing assertiveness vis-à-vis the other branches of government: the courts went so far as to challenge government policies, as in the case of the Austral Plan. Nevertheless, as expected, the military opposition strongly rejected what they felt was persecution by a left-leaning president. Because of the military reaction, the courts were unable to bring all the military figures involved before a judge, and what was called the "politicisation of the judiciary" began. Several thousand cases involving human rights abuses by the military were presented before the courts which resulted in an intolerable caseload and, eventually, in the decision by Alfonsin's government to pursue charges only against senior commanders who ordered the crimes (under the Law of Due Obedience, sent to Congress in 1987). Trial delays increased dramatically between 1983 and 1989 to the point where according to Buscaglia and Dakolias (1996) the courts were not accessible because they were inefficient.[8] This motivated people to solve their problems by negotiation rather than through legal means (in contrast to the Brazilian case, discussed below).

The decision to stop certain military trials affected the credibility of the courts, giving the impression that the executive had not been strong enough to pursue the judicial reform and, more importantly, that judicial processes were still defined by political rather than legal considerations.[9] But on the other hand, confrontations between civilian judges

[8] Almost 80 percent of the Argentines described the courts as inefficient and nearly half thought they were inaccessible (Buscaglia, et.al., 1995: 5)

[9] Chile's first democratic governments started a legal battle against members of the military government. After the 1997 judicial reform, human rights prosecutions produced modest successes. While the judiciary was a respected institution prior to the 1970s (Valenzuela, 1989), scholars criticised its conservative position and resistance to judicial modernisation. During Pinochet's regime, the courts accepted the claims of the military government. In his last months in government, Pinochet appointed 9 of the 17 Court judges. Following Pinochet's detention in London, the Chilean Court lifted his parliamentary immunity, though it later argued that he was not fit to stand trial. In July 2002, former Mexican president Luis Echeverría was called to explain his involvement in the 1968 and 1971 massacres. In October 2002, a historic military trial against generals Francisco Quirós and Arturo Acosta got underway after the Military Attorney General's Office established that both had ordered the assassination of 143 guerrilla members during the 1970s dirty

with the still strong military sector in many cases compromised their individual independence and personal security, putting at risk the efficacy of civilian institutions and raising the threat of future military rebellions. Added to these complexities was the difficult economic situation the country was going through, together with the loss of presidential control over Congress. Overall, the entire democratic transition process was compromised as conflicts between the executive and the military increased, to the point where Alfonsín was forced to resign six months before his administration ended.

In sum, while the Argentine judiciary became more professional and independent at the end of the 1980s, it was not necessarily more effective or attractive to foreign investors. The judiciary under Alfonsín was not only perceived as inefficient and inaccessible, but also became less credible and effective over time. His judicial reform showed how difficult it is to isolate this complex but relevant institutional process from the broader political-transitional context.

Carlos Menem (1990–94) and his judicial reform: the ghost of reelection

When Carlos Menem took office in 1990, the need to reform the judiciary became evident, especially given his ambitious free-market economic programme and plans to modernise the Argentine state. Menem did not want to risk the judiciary overturning parts of his economic legislation as it did Alfonsín's Austral Plan. According to Prillaman (2000), Menem pursued two main objectives within the judiciary: increasing access and efficiency, and strengthening "juridical security". Menem's reform efforts were backed by World Bank experts and were wide-ranging, encompassing reforms of the internal judicial bureaucracy.[10] In reality, though, this was a period when the judiciary was seen as being clearly subordinated to the executive and over-politicised.

Menem's main reforms to the judiciary were:

1) The number of Supreme Court justices was increased from 5 to 9, ostensibly to improve judicial efficiency (Ley No. 23.774, 16 April 1990).

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war. This was the only product of a long political transition and the victory of an opposition party in the presidential elections. While comparing the cases of Argentina, Chile and Mexico, Fernández (2002) argues that although the *ajuste de cuentas* in Chile was insufficient, the consolidation of the Concertación coalition was possible and Aylwin transferred power peacefully to Eduardo Frei and then Socialist Ricardo Lagos in a stable economic and social climate. In the Mexican experience, most accountability cases against senior politicians have been little more than political spectacles, far from achieving true justice.

[10] The agreement between Argentina and the Inter-American Development Bank (Support Program for the Judicial System Reform–BID Loan OC-AR 1082) was signed on 18 February 1998 (Gershanik 2002: 11). From an international perspective, the Argentine judiciary had been left for last, after structural reforms had taken place. Although the initial idea of judicial reform came from the executive, the pilot experience in Argentina is an example of a cooperative effort between the judiciary and the executive (Dakolias and Said, 1999: 14).

2) A two-third Senate approval was now required as opposed to the previous simple majority to select Supreme Court justices.
3) Constitutional guarantees for the salaries of members of the Supreme Court and lower Tribunals were introduced.
4) The Judicial Council (*Consejo de la Magistratura*, article 114) was created and later regulated by Law 24.937 and its "*corrective*" 24.939 (Boletín Oficial, 6 January 1998), with responsibility for administering the judicial budget,[11] and upgrading the Justice Secretariat to a full ministry.
5) Declaration of the public prosecutions service (*Ministerio Público*) as an independent body (article 120).
6) Creation of a Trial Jury (*Jurado de Enjuiciamiento*).

Menem also introduced a number of measures to improve efficiency and access to the courts. Yet despite these strategies poorer citizens still faced long delays for resolutions: between 1989 and 1996 the total of pending cases more than doubled. As Prillaman points out, the modest progress in the areas of efficiency and access was overshadowed by the unreformed aspect of judicial independence.[12] For the average person, the politicisation of the courts was clear, and Menem was widely thought to be using the courts to protect himself against accusations of corruption. As scandals involving members of the judiciary were published by the media, a main issue of concern for Menem was the need to control the courts so that justices would not hold his administration accountable. He offered incentives such as ambassadorships to justices affiliated to the Radical Party and was able to appoint six of the nine justices thanks to the expansion of the Court and the resignation of two justices.[13] Menem also doubled the numbers of public prosecutors and judges in Buenos Aires and created a new appellate court, appointing more than 90 percent of all the judges in this province.

As opposed to the Brazilian case, Argentina's justices did not challenge a single presidential decree under Menem, and even ruled that these were legitimate in times of economic emergency and congressional inefficiency (Rogers, 1994). This was especially significant since, although Menem had a congressional majority at the beginning of his term, most of his reforms were implemented by emergency executive decrees; he issued more than 200 of them during his first three years in government. According to Miller (2002: 75), the Court's obedience to President Menem reached

[11] Several provinces in Argentina introduced councils before the adoption at the federal level. The Argentine Federal Judicial Council is one of the largest in Latin America comprising 20 members who are elected for a four-year term with one possible reelection (Hammergren, 2002). The Supreme Court drafts its budget and sends it to the Judicial Council for observations. As in Mexico, the Court's Chief Justice is also President of the Judicial Council, which can sometimes lead to conflicts of interests (Nazareno, 1999: 30). For instance, nine out of 22 judges and magistrates removed by the Mexican Judicial Council between 1995 and 2007 were reinstalled by the Supreme Court (Fuentes, Reforma, 8 December 2008).

[12] By the end of Menem's administration, Argentina ranked 43 out of the worst 46 countries for the lowest confidence in fair administration of justice (International Institute for Managerial Development, 2000).

[13] The Senate approved Menem's choice on 19 April 1990 during a seven-minute secret congressional session without any opposition representation. The resignation of judge Jorge Bacqué insured an "absolute majority" for Menemism.

ridiculous heights, for instance when in 1993 the Court forced the Central Bank to pay the expenses of the lawyers who had collaborated in the liquidation of a bank, and then withdrew this decision to rule in favour of the government.

According to Skaar (2003: 156), the only motivation behind Menem's judicial reform was his reelection. Where Alfonsin's bid to promote reelection had failed, Menem was able to secure congressional approval for the reelection amendment to the Constitution in 1994 in exchange for a number of constitutional reforms, including the depoliticisation of the courts. Yet the promised measures such as a non-partisan Magistrates Council and the creation of a Public Ethics Department were never successfully implemented as true independent offices that could counterbalance the executive.

During the periods of economic recession under President De la Rúa (1999–2001) the Argentine Court adopted the Latin American trend of judicial activism. In February 2002 the Supreme Court ruled that a freeze on bank accounts decreed by the federal government, commonly called the "corralito", was unconstitutional. After this ruling, and in the context of financial collapse, President Duhalde (2002–03) called for the opposition to impeach the Court, which was accused by many politicians of being corrupt and completely subordinated to political interests.[14]

Kirchner (2003–07): attempting to breathe life into the Supreme Court

There was renewed interest in reforming the judiciary under President Néstor Kirchner, who was elected in 2003, after what was probably the most serious economic and institutional crisis in Argentina in recent times. Kirchner promised to address the perceived lack of independence of the Supreme Court and to restore the rule of law. According to Daniel Brinks, Kirchner faced a dual dilemma:

> on the one hand, a politicized and openly partisan Supreme Court, discredited and the subject of popular and elite demands for resignation or impeachment while on the other, the appearance that by removing all sitting justices he would himself be simply perpetuating a long tradition of appointing subservient justices that would compound and extend the problem [of the perceived lack of independence]. (Brinks 2005: 608)

[14] Some 30 challenges related to incompetence were filed against the Court, which became the subject of intense protests. One of the most controversial rulings released from house arrest Menem and his brother-in-law Emir Yoma who faced charges of organising illegal arms sales during his time in office. After more than five months, the 6-to-3 ruling was that there was not enough evidence of such an illicit association (21 November 2001). Another ruling in July 2001 related to salary and pensions cuts by President de la Rúa.

In June 2003, the Supreme Court was reformed by decree 222/03. With this reform, Kirchner implemented two strategies: one to address transparency in the judicial appointment process and another to replace some, but not all, of the Menemist Justices on the Court. Kirchner promoted a gradual and more transparent, public and deliberative appointment process, limiting his own discretion through a self-imposed presidential decree (Law No. 30175, 19 June 2003).

Impeachment proceedings initiated by Congress in 2003 resulted in the replacement of four judges who were perceived to be subordinated to Menem. On 27 June 2003 Chief Justice Julio Nazareno resigned his post before the impeachment could be held. Within two years of his taking office, the Court was made up of four judges named by Kirchner, two of them women, one by President Duhalde and two judges remaining since Alfonsin's administration (see Table 1.1). Kirchner's proposed candidates were perceived as more independent from political parties. The final impeachment approved by the Congress was of Antonio Boggiano on 23 June 2005. Augusto Belluscio resigned in June 2005 when the amnesty laws were declared unconstitutional and annulled by the Court.

Table 1.1 Argentine Supreme Court Justices 2009

Elected Judge	Election Date	Main Features
Named by Néstor Kirchner		
Ricardo Luis Lorenzetti	December 2004 Replaced Adolfo Vázquez	Chief Justice since November 2006
Elena Highton de Nolasco	June 2004 Replaced Eduardo Moliné	Deputy Chief Justice since September 2005 following the resignation of Augusto Belluscio
Eugenio Raúl Zaffaroni	October 2003	Born in 1940
Carmen María Argibay	February 2005	Born in 1939
Named by Eduardo Duhalde		
Juan Carlos Maqueda	December 2002	Born in 1949 Former Senator
Named by Raúl Alfonsín		
Carlos Santiago Fayt	Court justice since 1983	Born in 1918 Chief Justice in 2003
Enrique Santiago Petracchi	Court justice since 1983	Born in 1934. Chief Justice in 2004–06.

Source: http://www.csjn.gov.ar/autoridades.html; http://www.adccorte.org.ar/

On 13 August 2003, Kirchner issued Decree 588/03 which established a transparent procedure for the appointment of staff from the public prosecutions service and judges sitting in lower courts. In 2004 the government launched the "Strategic Plan on Justice and Security 2004–2007" to address public concern about crime and increasing insecurity. According to Walker (2006: 3), it is still uncertain whether Kirchner's reforms will reinforce the judiciary, but there is no doubt that he helped to restore some public

confidence in the Supreme Court by increasing transparency in the nomination process. However, the reforms have their critics, including Chief Justice Eugenio Zaffaroni, who was appointed by Kirchner in 2003 and said "The Court issue was really a reform of people. I think we need to focus on the institutional aspect ... the reforms were incomplete and absolutely irresponsible" (*La Nación*, 16 December 2007).

In December 2005, Kirchner was forced to withdraw from Congress a controversial judicial reform that would have given him greater control over the judicial council (*Consejo de la Magistratura*). The proposal had been introduced by his wife, then Senator and now current President Cristina Fernández, who argued that the reform was necessary because the judicial council had suffered from bureaucratisation since its creation in 1994. Opposition congresswoman Elisa Carrió criticised this initiative, saying it would bring about "the end of justice" (*El Reloj*, 27 December 2005). The reform was finally approved by 149 votes in favour and 89 against (Ley 26.080, 24 February 2006), but was criticised for having long-term implications for judicial independence. The number of councillors was reduced from 20 to 13 and the number of political representatives among them increased to seven, thereby giving them the majority needed to veto candidates and block removals. The impeachment tribunal (*jurado de enjuiciamiento*) was also politicised by Kirchner's reforms. The number of members was reduced from nine to seven: four legislators, two judges and one federal lawyer, guaranteeing once again the majority to political representatives. Following the defeat of the ruling party in the 2009 legislative elections, new Minister of Justice Julio Alak promised to revise the composition of the judicial council (*El Clarín*, 11 July 2009).

Brazil's independent judiciary: resistant to reform

According to Wesson and Fleischer (1983: 84), the Brazilian High Court has generally been free from the intense politicisation and recurring purges that characterised other judiciaries in the region. The only exceptions were in 1893 and in the post-1930 coup context, when President Getulio Vargas politicized the judiciary through court-packing and several dismissals, and by reducing the number of judges from 15 to 11. The Brazilian judiciary was modelled after the US Constitution with guaranteed fixed and non-transferable terms for judges, irreducible salaries and extensive powers of judicial review over acts of the other two branches of government. The judiciary gradually became considerably decentralised, but presented problems in terms of effective disciplinary action and accountability.

It was not until after the April 1964 military coup that judicial independence became severely compromised. The Brazilian military regime (1964–85) placed itself above the 1946 Constitution, wiping out powers of judicial review and reducing institutional independence of the courts through 17 Institutional Acts and more than 100 Complementary Acts (Prillaman, 2000: 77). With Institutional Act (AI) No. 1, the juntas' decrees were presented as the highest law and were excluded from judicial review. Institutional Act No. 2 expanded the Court from 11 to 16, as the military regime forced a number of justices allegedly sympathetic to former presidents Getulio Vargas and Joao Goulart to step down, and replaced them with justices more willing to uphold the government's extensive use of emergency decree powers. Moreover, on grounds of the threat to national security, the military regime was allowed to decide over local issues by reallocating them to the Supreme Court. The military centralised resource disbursement and conditioned it on the Court's political loyalty. Institutional Act 5 was introduced in 1968, giving the president the power to remove or retire any sitting judge. A subsequent institutional act reduced the number of justices to 11, forcing several justices who had been appointed by previous civilian governments into retirement.

In 1977, Congress failed to approve a constitutional amendment proposed by the military junta to curtail the purview of civilian courts and create an external oversight body to discipline judges. In response, General and President Ernesto Geisel merely suspended Congress and declared that the judicial reform bill would be an amendment to the Constitution. Brazil's first judicial council was created in 1977 with no budgetary or administrative functions, only disciplinary (Garoupa and Ginsburg, 2008: 209). Although it was designed to provide the appearance of judicial independence, in reality this council could not constrain military interference with the courts and was abolished in 1988 with the return to democracy.

Despite this situation, Courts continued to challenge the federal government in specific cases: they ruled in favour of political detainees and on the unconstitutionality of the National Security Law (Prillaman, 2000: 78). During this time, the military tried to maintain the façade of legalism. There are parallels to be drawn with Mexico, where the institutionalisation of the regime was aimed at achieving legal support for the hegemonic government. Skidmore (1988: 58) has argued that the military government had a "frenzy for law" and "penchant for formal legitimacy". In the mid 1970s, the military allowed the courts to assert their authority on increasingly controversial issues and re-establish some degree of independence. Court decisions against the military government became more common and the judiciary gained political power.

Table 1.2 Number of judges. Brazil's Federal Supreme Tribunal (1808–2004)

Name	Period	Number of Judges
Casa da Suplicação do Brasil	(10/05/1808 – 08/01/1829)	23
Supremo Tribunal de Justiça /IMPÉRIO	(09/01/1829 – 27/02/1891)	17
Supremo Tribunal Federal	Since 28/02/1891	
	a) 1891 Federal Constitution	15
	a) Decree 19.656, 1931 (Revolutionary Government))	11
Supreme Court	c) 1934 Federal Constitution	11
	d) Federal Law 1937 (*Estado Novo*):	11
	e) 1946 Federal Constitution	11
	f) Institutional Act nº 02/1965	16
	g) Federal Law 1967	16
	h) Institutional Act nº 06/1969	11
	i) Carta Federal de 1969	11
	j) 1988 Federal Constitution	11

Source: http://www.stf.jus.br/portal/cms/verTexto.asp?servico=sobreStfConhecaStfHistorico

Brazilian democratisation and judicial reform

The return to civilian rule in the 1980s brought a desire for further democratisation. Judicial reform entered onto the political agenda, especially after the election in 1985 of Tancredo Neves who in his campaign promised a new democratic Constitution. The tragic death of this politician before taking office damaged prospects for a more independent judiciary. He was succeeded by his vice president, José Sarney, who, because of his non-elected status and his previous support of the military government's judicial reform bill, lacked the legitimacy necessary to implement a coherent institutional reform, especially in the context of economic downturn, political disarray and with the heterogeneous cabinet he was forced to accept. The focus of the political discussion shifted to the possibility of adopting a parliamentary form of government.

According to Prillaman (2000: 79), the counterproductive role played by President Sarney is one of the key factors that explain the failure of judicial reform. Others include the nature of Brazil's opportunistic and extremely divided political class, and the country's populist approach to judicial reform. Congressmen elected in 1986 started drafting the new Constitution and opened the process to civil society. According to Macaulay (2002: 2), the resulting 43 articles of the 1988 Constitution that lay out the structure and powers of the courts and the public prosecution service bear the stamp of the chaotic drafting process and the corporate interests of judges and lawyers groups whose influence shaped the final text. The Brazilian courts acquired more political and

operational autonomy than anywhere else in Latin America, but this hyper-autonomy and insulation appeared to create more problems than it solved.

The 1988 Constitution: enhancing judicial independence

The 1988 Constitution strengthened the Brazilian judiciary in relation to the other powers, but at the same time it created a strong area of conflict among them. Since the main aim was to avoid the centralisation that characterised the authoritarian period, the judiciary was made structurally independent of the executive. The eleven members of the Supreme Federal Tribunal (STF) would be appointed by the President, while judges would be chosen on the basis of a civil service exam conducted by senior courts.[15] The redefinition of the judiciary's attributions established the STF as the highest organ, which would be predominantly constitutional and act as a court of exceptional appeal.

Three main changes were introduced in the new Constitution to increase judicial independence:

- The courts would have more control over their financial, personnel and administrative issues and state courts would have the power to prepare the annual budget for the judiciary and present it directly to congress; judicial salaries could not be reduced. The rationale for these changes was to safeguard impartiality and autonomy, but the result was a lack of accountability for the judicial system, which left the door open to nepotism and corruption.

- All judges were given life tenure (Art 95) until the age of 70, with the possibility of removal by the Senate in specific cases. Aspiring judges would be required to pass a rigorous professional entrance exam. This led to a crisis due to the lack of qualified judges, with implications for efficiency.

- In an attempt to strengthen regional judicial independence, the power to assume jurisdiction from a lower court was removed from the STF. The lower court judges consequently acquired high levels of discretion; in contrast to the other federal countries in Latin America, Brazil is the only country in which decisions of higher courts exert no power of binding precedent over lower courts (*sumula vinculante*), including in constitutional disputes. An attempt was made to create of a nationwide system of small claims courts, but it proved unsuccessful and was replaced in 1995 by a federal small claims court system.

According to Koerner (199: 12), "the 1988 Constitution strengthened the judiciary in relation to the other powers by creating new control procedures regarding the constitutionality of the laws, instruments for the defence of collective interests, etc. At the same time, it strengthened its external independence, extending the guarantees of

[15] While the Senate could remove Supreme Court justices through a judicial impeachment process, the lower court judges could only be removed by senior courts.

its members, organisation and performance." However, O'Donnell (1999: 116) has warned that "judicial autonomy is tricky...[because] it could mean that the courts will become dominated by a political party or coalition of not very commendable interests, or that judges will adopt the notion of their powers and mission that leaves no room for accountability to other powers in the state and society." He has criticised the Brazilian judiciary in this respect, arguing that it has acquired great autonomy in relation to the executive and Congress with no visible improvement in its performance. Judges and other court personnel earn high salaries and senior judges enjoy enormous privileges.

Judicial review and the risk of politicisation

In an effort to reduce the caseload of the federal STF, the 1988 Constitution created a separate Superior Court of Justice (STJ). The 33-member STJ would function as a final court of appeal, while the STF would serve as a constitutional court. As such, and as in Mexico, the STF has the exclusive power to hear a direct challenge to any federal or state law in what is known as Direct Actions of Unconstitutionality (*Açao Direta de Inconstitucionalidade*, ADIN). Whereas during the military regime, cases of unconstitutionality could only be brought by the Attorney General, following the democratisation process, the following political and social actors could also do so: the President, the Chair of the Federal Senate, the Chair of the Federal Congress, the Chair of Legislative Assemblies, state governors, the Federal Council of the Brazilian Bar Association; a political party represented in Congress; and a trade union, confederation or national professional association (Sadek, 1995).

As happened in Mexico (see Chapters 2, 3 and 4), the number of cases taken to the Court multiplied to the point of becoming unmanageable. Faro de Castro (1997: 246) calculates that between 1988 and 1992, 113 ADINs were filed by political parties and the Court only managed to rule on six of them. As has been said for the Mexican case, several claims referred to routine political or economic activities that were motivated by partisan interests and did not involve genuine constitutional issues at all. As political actors and society in general demanded more agility and coherence in its rulings, the Brazilian Court was increasingly exposed to strong criticism for assuming a political role as an ultimate referee in sensitive issues.[16]

[16] Bastos and Kerche (1999) have argued that since the judiciary can also interfere in the political decision-making process through an extremely open and decentralised system of control over the constitutionality of the laws, it is committed to the political sphere, increasing the cost of government.

In 1993, a constitutional reform authorised a limited number of entities to request a declaratory judgment from the STF confirming the constitutionality of a law or other federal norm, including presidential decrees. As Brinks (2005: 618) argues while these rulings were given *erga omnes* effect, decisions in direct actions challenging the constitutionality of legislation remained inter partes, which favours the party in power.

A notable case was the unprecedented congressional impeachment of President Fernando Collor de Mello in 1992 in which the Court was cast as arbiter between the executive and congress. The Court also decided other cases of corruption involving well-known politicians. Equally important was the frequent need to call on the Court to define the legality of executive decrees, which has become a common feature of the Brazilian government since the 1990s. As has been happening in Mexico since 1994, in Brazil the Court had the crucial task of deciding whether a President, by issuing provisional measures, was exceeding his constitutional authority, while at the same time defining the roles and prerogatives of each branch of government. In Mexico, too, the authoritarian regime's tendency to reform the Constitution continuously (Chapter 2) also affected the supremacy of Supreme Court decisions.

According to Sadek (1995), the current state of separation of powers in Brazil has forced the Court to act as political arbiter in institutional confrontations between the federal government and Congress, rather than as a constitutional court. Sadek and Batista (2003: 203) argue that the institutions that comprise the justice system have begun to occupy a central position in the political arena, even influencing how public policy is being implemented. "The political performance—either against the executive or the legislative, or against the two powers—has shown how a system based on multi-vetoes can be the root of the country's ungovernability, and how it has contributed to soil the image of the judiciary" (Sadek 1995: 161).

In sum, the goal of promoting individual and structural independence clearly was successful (Prillaman, 2000: 75; Macaulay 2000). However, a relevant question in a country that has suffered decades of politicisation of the judiciary is whether it is desirable to insulate the judiciary entirely from the more political branches of government. As Prillaman describes, during the 1993–94 constitutional review process, "12 of the 18 proposals for judicial reform called for introducing some form of external oversight of the judiciary" such as publicised internal disciplinary measures and external bodies to investigate the courts (2000: 86). Unsurprisingly, judges argued that

such reforms would pose a threat to judicial independence. The judiciary clashed with the executive when Cardoso introduced a law in 1996 banning federal judges from hiring relatives, including in-laws; and it clashed with the legislature after the Senate created a commission to investigate judicial corruption in 1999. Another important question is whether reforms that increase access to the courts and allow even minor disputes to be presented as constitutional challenges have made the Court's workload unmanageable. Compounding matters, in an effort to ensure that politically sensitive cases would not be shelved indefinitely, the STF was denied the writ of *certiorari*,[17] which stripped the Court of its control over its own timings and decisions.

Brazil under Lula: how to reform an unaccountable judiciary?

With higher crime indicators and the government suffering from a crisis of confidence brought on by corruption scandals, Luiz Inacio Lula da Silva (2003–) was more eager than ever to push judicial reform. From his first days in office, he publicly confronted Chief Justice Mauricio Correa over the independence of the judiciary and the need to include the judges in the public service pension cuts (Gosman, El Clarín, 7 June 2003). Judges threatened to strike over their pensions, which stirred popular anger. Supreme Court Justices's salaries are higher than the public sector ceiling that the government wanted to impose, at more than 70 times the minimum wage, or 17,170 reais (Gosman, *El Clarín*, 7 June 2003). According to report published on 25 March 2004 in *The Economist*, the "16,900 judges seem old-fashioned, out of touch and unaccountable to the citizens they serve." The same report states that GDP growth is a fifth lower than it would be if Brazil's judiciary were up to first-world standards.

In terms of the isolation and unaccountability of Brazil's judiciary, Lula's government created a new judicial council (Consejo Nacional de Justicia) with a very different structure from its predecessor to monitor the management and probity of the judiciary (Enmienda No. 45, 8 December 2004). As expected, Correa and most of his fellow judges opposed this measure on the grounds that a council of this type would undermine judicial independence. Lula's government agenda also contemplated allowing federal courts to take over human rights trials and to finance management training for judges. Reforms designed to streamline civil justice were approved in 2006, while other reforms related to criminal law were passed in Congress in 2008.

[17]An order by a higher court directing a lower court, tribunal, or public authority to send the record in a given case for review.

Since Lula was inaugurated in office in 2003, he has named eight of the eleven Supreme Court Justices, a record since the reestablishment of democracy in 1985 (see Table 1.3). In June 2003, Lula named three Justices: Antonio Cezar Peluso (current deputy chief justice), Carlos Aires Britto and the first black justice, Joaquim Benedito Barbosa Gomes. The next Justices to be named were Eros Roberto Grau (June 2004), Enrique Ricardo Lewandowski (March 2006) and Carmen Lucia Antunes Rocha (June 2006). After the death of Carlos Alberto Menezes, Lula named the youngest Court judge, a 41-year old lawyer who had worked on his electoral campaigns, José Antonio Dias Toffoli (October 2009). Justice Gilmar Mendes is the current Chief Justice.

Table 1.3 Number of STF Justices appointed by each Brazilian President (1930–2009)

PRESIDENT	NUMBER OF MINISTERS
Getulio Vargas	21
Jose Linhares (*)	3
Eurico Gaspar Dutra	3
Nereu Ramos (*)	1
Juscelino Kubitschek	4
Janio Quadros	1
Joao Goulart	2
Castello Branco	8
Costa e Silva	4
Garrastazu Medici	4
Ernesto Geisel	7
Joao Figueiredo	9
José Sarney	5
Fernando Collor de Mello	4*
Itamar Franco	1
Fernando Henrique Cardoso	3
Luiz Inacio Lula da Silva	8

Source: http://www.stf.gov.br/institucional/notas/

*In December 2000, Collor named the first woman to the Court bench, Ellen G. Northfleet.

In sum, there is wide agreement that the 1988 Constitution extended unprecedented power to the judiciary, making it probably the most autonomous and independent in Latin America. Unlike the experiences in Argentina under Menem, in Brazil guarantees of judicial independence granted in 1988 such as life tenure and non-transferability of judges have not been modified. While Brazil's executive and legislature reinvented themselves through elections, the latter becoming a serious counterweight to the executive, the judiciary remains unaccountable, even as it decides over an increasing number of significant political and social issues involving other branches of government.

Venezuela's judiciary: a battleground for competing political ideologies

As the crisis of the Venezuelan political system deepened during the 1980s, successive governments made efforts to introduce reforms of the 1961 Constitution. The Presidential Commission for the Reform of the State (COPRE), established via presidential decree on 17 December 1984 under the government of President Jaime Lusinchi (1984–89), presented in 1986 an Integrated State Reform Programme (PRIE) containing a series of reforms aimed at developing internal party democracy. The corruption and incompetence of the judicial system was widely perceived as propping up the old Venezuelan state. But although the need for judicial reform was included, it was not taken up.

President Carlos Andrés Pérez (1989–93) resumed the discussion on constitutional reform.[18] A central proposal was to reduce political parties' influence over the judicial system and to establish a High Commission of Justice with authority to remove judges. Traditionally, the majority party in Congress appointed judges and members of the Supreme Court. A quarter of the Court held permanent positions, but the rest could be easily dismissed, which made them vulnerable to reprisals if their decisions went against the interests of politicians or powerful businessmen. For instance, during the 1994 banking scandal, judges decided to drop charges against more than 20 bankers who had come close to bankrupting Venezuela's financial system. Similarly, the recommendations to investigate corruption charges against former President Lusinchi were ignored, even after one of the Court justices resigned in protest. As in Argentina, with the implementation of a drastic economic adjustment programme, legal certainty and the reliability of the judicial system became key issues of interest since the courts were not able to settle disputes between public authorities.

Rey argues that "in modern, democratic Venezuela, the distrust of judicial power has risen as political parties have taken over the judiciary by increasing their control over the judicial branch appointments and decisions" (1998: 126). Party control over the judiciary explained why, as accusations of corruption became more common, judges were unable to act against political interests and even began to "sell" their sentences. By the end of the 1980s, the judicial system was suffering from a serious case backlog. Between 1970 and 1991, the ratio of judges to the population decreased by 29 percent

[18] In the wake of the Chávez coup attempt in 1992, the "Special Joint Chamber Commission for the Revision of the Constitution", presided by former president Rafael Caldera, published a draft reform project and presented it to Congress. Little consensus emerged, however, and it was abandoned in August 1992.

and the time to process cases exceeded the legal standards. Poorly trained judges were derided for their partiality and dishonesty.

As Kornblith (1998: 15) has argued, "the poor functioning of the administration of justice is generally recognised in the country as a major cause of the loss of democratic legitimacy and, as a result, it has been another crucial issue on the agenda for political-institutional change." In his view, after the period of instability derived from the 1992 coups was over, judicial reform returned to its fundamental place on the agenda of institutional change.

President Rafael Caldera (1994–98) attempted to revive the idea of a new Constitution under his *Agenda Venezuela* programme, but with little success. In 1996, the Senate Special Committee's report recommended a minimum allocation to the administration of justice of 5 percent of the national budget, the creation of a constitutional division within the Supreme Court and a disciplinary system for judges. There was no power strong enough to lead and implement the much needed judiciary reform, however, and though Caldera resuscitated the High Commission for Justice and at one point a coup against the judiciary was mooted, no significant progress was achieved.

The World Bank: an underwhelming reform plan

International organisations have been far more active in promoting the development of the judicial branch in Venezuela than in other countries in the region. In the early 1990s, the Venezuelan government requested assistance from the World Bank to combat corruption and promote public transparency, and the judiciary was identified as the ideal institution in which to start such reforms. The implementation of the Judicial Infrastructure Project to reduce private and social costs of justice began in 1995.

Court Chief Justice Cecilia Sosa in her speech at the 1999 Ibero-American summit of Supreme Courts acknowledged "the input of the World Bank, which has economically and technically supported the Venezuelan judicial reform process...This is the first time, in my opinion, that an international organisation has had no intention of imposing ideas, but rather contributed technical professionals, experiences and economic aid" (1999: 15). For the US-based Lawyers' Committee for Human Rights and the Venezuelan NGO Provea, this hands-off approach by the World Bank was one of the reasons for the reform project's failure. The say the project was not designed as part of a comprehensive long-term reform programme, and merely identified a range of

problems without developing a corresponding series of reform initiatives. They argue that international support has focused only on specific infrastructure improvements and has not developed a wider programme encompassing judicial independence.

The scope and content of the judicial reform project were negotiated between the World Bank, the Judicial Council and President Carlos Andrés Pérez's administration. There was a limited input from the judicial community and the private sector and no input from NGOs or the general public. The project's political viability was entirely dependent on the support of President Pérez and was almost concluded during the waning days of the Velázquez interim presidency. One result of the lack of consensus on the scope of reform was a fragmented, uncoordinated discussion of reform options among executive ministries and legislative committees.

Chavez's administration: a new era for a diminishing Supreme Court

Hugo Chávez's victory in the 1998 elections ushered in a new era in the history of Venezuela.[19] Upon taking office, the former military coup leader signed a decree for a national referendum on whether elections should be held for a National Constituent Assembly that would draft a new constitution. This was held in April 1999 and supported by 88 percent of voters.

Once in place, Chávez asked the New Constituent Assembly, which was largely filled with Chávez supporters, to produce a new constitution in the shortest time possible, providing a draft of his own. Since then, judicial reform has been tightly linked to the constitutional changes promoted by Chávez, resulting in the domination of the judiciary by the executive power. Judicial reform had been high on Chávez's list of priorities, since it had been a main motivator of the 1992 coups. In Chávez's opinion, "justice is not agile, it only reaches those who can afford it. Is that justice? It is impossible to restore the rule of law unless the undermined institutional framework is reformed" (1999: 14).

After weeks of political turmoil, on 14 August 1999 the National Constituent Assembly abolished the 1961 Constitution. The new Constitution established a single legislative chamber and strengthened political decentralisation with more accountability at the

[19] In December 2005, the Movimiento Quinta República (MVR) in coalition with *Unidad de Vencedores Electorales* (UVE) gained the majority in the National Assembly. The MVR took 114 congressional seats out of 167, as most parties, including *Acción Democrática* (AD) and the *Comité de Organización Política Electoral Independiente* (COPEI), did not present candidates fearing electoral fraud. On 15 December 2006, President Chávez announced the end of MVR and created the *Partido Socialista Unido de Venezuela* (PSUV).

local level and new powers to the indigenous population Invigorated by the 1999 referendum result, the Assembly granted the president emergency powers and supported a general drift towards a more presidentialist system. In terms of the judiciary, the Assembly reduced the congressional input in the appointment of judges and pushed for civil society participation in the nomination of judges at all levels. On 25 August 1999, Chávez decreed a "judicial emergency" and appointed nine members to form a Commission with full powers to dismiss the Court (Decree 310.499). A "judicial emergency commission" was set up within the Assembly to draft the legal clauses of the new constitution and to evaluate the work both of judges and of Court members. Despite bitter opposition from Chief Justice Sosa, eight of the 15 Justices supported the decree. Sosa resigned, declaring that the country's democratic system was in danger. According to Ellner, the new Chief Justice Ivan Rincón "collaborated with Chávez to a certain extent, although he also sharply criticized some of his actions" (2001: 8). A new disciplinary commission headed by the lawyer Manuel Quijada, found that at least half of the country's 1,200 judges were guilty of corruption or incompetence and should be sacked.

On 5 November 1999, the Supreme Court and the Judicial Council were dissolved and replaced by a new Supreme Tribunal of Justice (*Tribunal Supremo de Justicia, TSJ)*, organically different from the Supreme Court, which adopted both functions.[20] The TSJ incorporated a new Constitutional Court and introduced oral arguments in order to make justice more expeditious. The TSJ was given functional and financial autonomy; in contrast to Mexico, the judiciary is guaranteed at least 2 percent of the general federal budget. TSJ judges are named for a single 12-year period in a selection process managed by a Nominations Committee with civil society participation, and approved by a two-thirds majority of the Assembly. The 30-year old Judicial Council was replaced with the Executive Management Council for the Magistracy (Dirección Ejecutiva de la Magistratura).

Before enacting the new constitution, Chávez issued a decree to modernise the judicial system in 2000. Quijada's commission began to draft the legal clauses, which

[20] Because the new Supreme Court was appointed by Chavez's slim majority, its independence from the executive was severely questioned. In June 2000, the Court dismissed well-documented charges of corruption against Legislative Commission President Luis Miquilena. In the meantime, the Commission on the Functioning and Restructuring of the Judicial System started to replace judges in December 1999. By the end of March 2000, 294 judges had been suspended, 47 others fired, and 101 new judges appointed (Coppedge, 2003: 189). It was argued that most of these judges were corrupt or had ties with one of the traditional parties, as the courts had been long infiltrated by partisan or family-based "tribes".

suggested new procedures for the selection and training of judges, as well as new monitoring and disciplinary mechanisms.

In August 2002, the Court dismissed a case against four senior military officers involved in a coup attempt against Chávez in April 2002. The Court absolved the officers of the charge of rebellion, arguing that there were no grounds to judge them. However, the justices were deeply divided: 11 out of the 20 magistrates voted to absolve the officers, eight voted to put them on trial and one did not show up to cast his vote. Although the Court had previously been known for its loyalty to Chávez, the verdict was considered a sign of its increasing independence (Economist, 2002). It coincided with a rupture between Chávez and his former interior minister, Luis Miquilena; some of the judges appeared to have followed Miquilena into opposition. Following the ruling, Chávez called for constitutional reform. He strongly disagreed with the Court's decision, describing it as "absurd" and demanded that the judges be investigated. He accused them of corruption, favouritism and even drunkenness (CNN, 21 August 2002).

Venezuela's Court gradually became a battleground in a divided country as opposition leaders pushed for constitutional measures to oust the president. These measures included a referendum, an attempt to shorten his term and a number of lawsuits against him on the grounds of corruption, mental insanity and crimes against humanity. For Chávez's supporters, in contrast, the Court was a bastion of the political opposition, with a history of influence-peddling, political interference, and corruption.

The National Assembly weighed into the dispute by repealing the 1976 Organic Law of the Venezuelan Supreme Court and replacing it with the Organic Law of the Supreme Court of the Bolivarian Republic of Venezuela (Gaceta Oficial N° 37.942, 20 May 2004, http://www.tsj.gov.ve/legislacion/nuevaleytsj.htm). The 2004 Organic Law expanded the Court from 20 to 32 justices, which government supporters interpreted as a strategic move to counter the influence of pro-coup judges, while for government detractors it represented an executive branch attempt to gain control over the judiciary. The law regulating the functioning of the new TSJ stipulates that the new nominees can be named by a simple majority, should efforts to name them with a two-thirds majority fail three times in a row. The justices can be removed "for serious offences" by a two-thirds vote of the National Assembly. Another controversial provision is that the appointments can be annulled if the judge does not fulfil all the requirements laid down in the constitution.

The new law gave the Assembly's slim governing coalition the power to obtain an overwhelming majority of the Court's seats. Moreover, the National Assembly gave itself the power to annul the appointments of sitting justices on subjective grounds. Immediately after the law was approved, pro-Chávez legislators started taking action under the law, voting to remove one justice from the Court and to initiate proceedings against other justices perceived as hostile to Chávez and his views.[21]

With the Assembly now enjoying the power both to pack and purge the Court, the threat to judicial independence is clear. A Human Rights Watch report (2004) urged the Venezuelan government to suspend the new court packing law, and called on the high court to take steps to ensure that lower court judges are not subject to political persecution. The report even suggested that the Organization of American States (OAS) closely monitor the situation of the Venezuelan judiciary.

In May 2007, the Court declared "inadmissible" an injunction request by Radio Caracas Television president Marcel Granier against Chávez's decision not to renew his station's broadcast license. This led to serious national and international protests against Chávez's influence on the Court and its lack of freedom. The truth is that since Chávez came to power a decade ago, the independence of the judiciary has been undermined and once again subordinated to the executive's will.

Conclusions

This chapter has focused on judicial reform as part of the process of democratic consolidation in Latin America. In presenting a brief summary of the most significant literature related to the role of the judiciary in a democratic system, particularly in new democracies such as those that have emerged in Latin America, it becomes clear that whereas this was an understudied area in the past, recently there has been a significant growth in comparative judicial political research. This new body of literature recognises and analyses the political nature of the courts. In this review I looked most closely at scholarly books on Latin American judiciaries by political and social scientists who have perceived a growing role for the courts in the region. This trend justifies the assertion that there has been a "judicialization of politics" in Latin America.

The case studies on Argentina, Brazil and Venezuela highlight how much judicial reform has been undertaken in Latin America following redemocratisation. In some

[21] On June 2006, Supreme Court judge Luis Velásquez Alvaray was permanently removed from his post after refusing to appear before the National Assembly to defend himself from corruption charges. He argues that Chavez's supporters in the National Assembly have instigated the proceedings because he would not let them control him in the Supreme Court.

countries, such as Argentina, the effect of reform has been to strengthen the judiciary. This, for the most part, is the story in Mexico as I will reveal in subsequent chapters. However, the strengthening of judicial powers is not an inevitable consequence of reform. In Venezuela, but way of contrast, significant efforts have been made by successive administrations, helped by the World Bank, and yet its judiciary is now more politically controlled than ever.

Much of my discussion of reform efforts focused on the need to create an independent judiciary. Given my focus on federalism and the separation of powers, I am keen to understand the changing role of Supreme Courts within their respective political systems in these comparison countries over the last few decades, and hence an appreciation of their autonomy vis-à-vis de other branches of government is crucial. After highlighting the lack of judicial independence which characterised Argentina, Brazil and Venezuela in the past, including the frequent intervention by the executive, I unravelled the changes these judiciaries have undergone since the implementation of judicial reforms as part of the democratisation process and showed how high courts in each country have started to rule on significant political and economic cases.

The judicial reform strategies and their motivations have been quite different. Certainly across all three countries democratisation and economic liberalisation, within the framework of global governance, constituted an important incentive for several governments to implement judicial reform projects in the late 1980s and 1990s. The dramatic rise in crime rates and public insecurity in the region and the involvement of international donor agencies were other push factors for reform. In Argentina, the main drive for legal reform responded to historical factors, namely the need to deal with past human right violations (Kritz, 1995; McAdams, 1997). In his own words, Raúl Alfonsín argued that his first objective as President "was to implement effective judicial protection of human rights" (1993: 43). However, in Brazil the opposite happened. The 1988 Brazilian Constitution mostly introduced structural changes within the judiciary. In Venezuela, reform became the battleground for competing ideological visions, with the judiciary representing, variously, the corrupt heart of the ancient regime, or the stomping ground of an overreaching authoritarian president.

Venezuela offers an interesting case study of the involvement of international donor agencies in Latin American judicial reform. According to Domingo and Sieder (2001) the World Bank became a major actor in promoting judicial reform efforts at critical moments in the democratisation processes in many Central and South American

countries. Similarly, as Méndez (1999: 223) points out, although judiciaries have been particularly resistant to change, they have not generally rejected offers of outside assistance. Yet while too much money has been wasted—partly due to the failure to consult users of judicial services or beneficiary communities—the fault does not lie entirely with the naiveté and inexperience of international donors (1993: 224). In Méndez's view, one of the main problems has been the lack of creativity of national governments to understand how they could best use this assistance. Another problem is that, mindful of not intervening in sensitive issues, international donors failed to pay much attention to crucial issues such as the independence and impartiality of the courts. The international community's priority, as exemplified in Venezuela, has been to improve judicial infrastructure, to ensure efficiency in terms of delivery of service and to promote expeditious resolutions of investment disputes.

Despite the differences in motivation and approach, there are some parallels in terms of the results of the reform efforts. In general, these Latin American courts have been strengthened in some areas, particularly in terms of judicial appointments, but remain inaccessible for all the population. Some strategies, such as those followed by Kirchner and by Ernesto Zedillo in Mexico (which will be analysed in Chapter 2), placed great importance on the need for a strong judiciary to act as a horizontal check on presidential power within a more plural political scenario.

Brazil offers an interesting case study in terms of independence. The Brazilian judiciary enjoys unrivalled levels of independence within Latin America as well as extremely generous terms of office. Yet for some analysts, Brazil's pivotal 1988 judicial reform is a clear example of failure, since, in the words of Prillaman, "reformers successfully created the independent judiciary they desired – but in the process swept aside the balancing constraint of accountability. In failing to tackle judicial efficiency, reformers did not anticipate the potentially disastrous results when an inefficient judiciary is, in turn, given excessive independence. And finally, neither the extremely modest efficiency measures nor the ambitious access strategies could be isolated from the broader political and economic forces in Brazil" (2000: 82-83). In other words, comprehensive judicial reform strategies are needed to reinforce Latin American judiciaries so that they can serve as real horizontal checks on power, and it is important to acknowledge that not all judicial reforms are mutually reinforcing.

CHAPTER 2
The Mexican Supreme Court of Justice: From Supine to Activist in a Decade of Judicial Reform (1995–2005)

One of the main objectives of my research is to understand an important but somewhat neglected aspect of the democratisation process, namely the progressive institutional differentiation of the judiciary vis-à-vis the political executive. The Mexican experience in this regard makes for a critical case study. Throughout the thesis, I will explain how the Mexican governmental system came to be reformed so as to provide scope for such differentiation. This offers the backdrop for understanding how the judiciary became the venue of choice for opposition-led state governments to contest constitutional and other political issues (the subject of the empirical analysis in Chapters 3 and 4). I examine how formal institutional changes to the judiciary led to substantive changes in the role played by Mexico's Supreme Court, especially in political controversies. This case study aims not only to illuminate this sub-process of democratisation as it occurred in Mexico, but also to attract wider research efforts to the law-politics connection in Latin American studies of democratisation.

Whereas the previous chapter analysed the Argentine, Brazilian and Venezuelan judiciary, in this chapter I focus on the Mexican judicial system. My main unit of analysis is the Supreme Court of Justice, which I selected to emphasise the importance of its new role in the context of democratic consolidation. I show how the Mexican Supreme Court has been transformed during the past decade from a pure enforcer of legality, which was generally subordinated to the executive, into a real interpreter of the Constitution and even a final arbiter in many political disputes.

The chapter looks briefly at some of the most significant judicial reforms since independence (see Table 2.1), before honing in on the judicial reforms instituted since 1994, the reactions of political parties and the media to these reforms, and the recent selection of Supreme Court judges. The 1994 reforms sit within a context of continual reform of the judiciary since it was first created as part of the independent republic in 1824, but they represent a rupture with previous (mostly cosmetic) reforms in that they actually enhanced judicial autonomy and independence. This chapter takes a crucial look at why the Mexican authorities adopted this deep judicial reform in 1994. In analysing the reforms, I trace shifts in the relationship between the judiciary and the other powers of government. While not always the main aim of reforms—in 1994, for example, the need for a predictable justice system to underpin economic development

was at the forefront of President Zedillo's mind—the effect in terms of increased autonomy of the judiciary in its dealings with the executive and legislatures at federal, state and municipal levels is clear. Two indications of this shift are: public perceptions of the judiciary's independence and performance (discussed below); and the number of constitutional controversies presented at the different levels of government over the past decade (analysed in Chapter 3).

Although the key arguments posited by this thesis focus on judicially-created federalism and therefore on the relationship between the judiciary and the executive, the third power of government also comes into play. This is because fragmentation of power among executive and legislative bodies can contribute to a more effective judiciary by diffusing the pressure on the Court that can emanate from a single source of power; in Mexico's case up until recently this was the federal executive.[22] In this scene-setting chapter, I therefore begin with short sections on federalism and on fragmentation of power with a focus on the executive–legislature relationship, before discussing judicial independence and the 1994 reforms.

Political pluralism and the institutionalisation of federalism in Mexico

Although according to Article 40 of the Constitution, Mexico is a "federal, representative, and democratic republic," for most of the past century federalism remained inert in Mexico because of the lack of competition and the absence of political plurality. Since independence Mexico has always held elections, even under authoritarian conditions, but for years these were largely meaningless exercises in legitimating. Yet the system did permit small opposition parties to play a limited part in the process of government and very occasionally, even before 1989, opposition parties were declared the winners in municipal elections. This distinguishes Mexico from most Latin American authoritarian systems, which did not have regular elections.

The presence and absolute dominance of a hegemonic party was sustained by a series of ever-changing laws designed to build electoral institutions that could oversee non-competitive elections. During the long period when the PRI was dominant and elections were widely considered fraudulent, electoral institutions were the main point of negotiation between opposition parties and the government. Even though Mexico was a highly centralised country with a virtually unchecked executive power, it was the possibility of forging an electoral opening that preoccupied the opposition.

[22] For a discussion of fragmentation of power and its impact on Mexico's judiciary, see Ríos-Figueroa 2007.

The first steps toward democratisation involved greater pluralism in local elections, thanks largely to the political reform of 1977, the municipal reform of 1983 and the introduction of proportional representation in state governments in 1986. These made the electoral process in municipal and state government more important to Mexican democratisation than in other patterns of democratisation. They also led to a rapid increase in electoral conflicts (Loaeza, 2000; Middlebrook, 1986; Molinar, 1991). However, it was not until the so-called "definitive" reforms of 1996 that a free and fair democratic process can be said to have become entrenched.

A key agent of change in this process was the centre-right PAN, which had been protesting electoral fraud since the 1940s and by the mid-1980s governed more than 30 municipalities, including the state capitals of Chihuahua, Durango, Hermosillo, San Luis Potosí and Guanajuato. A pivotal moment was the controversial 1988 election which resulted in a sharp fall in the PRI's historic levels of voter support. The centre-left National Democratic Front (FDN, which later became the PRD) and its popular candidate Cuauhtémoc Cárdenas claimed victory and refused to recognise the presidency of PRI candidate Carlos Salinas. Had the PAN sided with the PRD, the PRI would have faced a political crisis that it might not have been able to surmount. Instead, the PAN offered a negotiated solution that would facilitate its gradual path to power via political alternation at the local level.

A decisive step came with the PAN victory in the Baja California elections of 1989. Once it became clear that this opposition victory would be allowed to stand—which was a controversial question at that time and required the intervention of the Courts—the question of how governance would work in practice with different parties governing at different levels could not be avoided. The issue became more salient still as opposition victories in local and state elections became increasingly common after 1989.

Yet while the PAN steadily accumulated governing experience in a number of strategic states and major cities, the fate of the PRD was bleak. Without a solid party structure and facing deep internal conflicts, the PRD lost much of its electoral support after 1988 and failed to win a single gubernatorial contest until 1997. Moreover, reprisals for its confrontational stance towards Salinas's government were severe. It has been well-documented that the Salinas administration was characterised by the selective nature of its democracy, to the clear detriment of the PRD (Bruhn, 1998). For instance, during the state elections of July and December 1989 in the leftist strongholds of Michoacán and Guerrero, massive fraud was registered in order to avoid a PRD-controlled local congress. Another example of the failure of central government to relinquish control

over subnational governments was the practice of removing governors at will; Carlos Salinas removed 17. Thus, although Salinas spoke the language of political reform in a bid to re-legitimise the regime as he tried to drive an economic liberalisation and free trade agenda, state and local elections continued to be conflictive events involving tacit pacts and backroom deals that systematically jeopardised regional autonomy.

As democratisation developed further electoral transparency finally ceased to be the main focus of discussion in Mexican politics, and the issue of separation of powers became tied in with broad issues such as judicial reform and fiscal decentralisation. This has theoretical significance for the study of presidentialism since it demonstrates that judicially-led federalism can have positive outcomes for pluralism even under presidentialism. In sum municipal and state governance was important in Mexico because it gave the system something to bargain with. The system could, at least initially, make non-threatening concessions that were large enough for the opposition to accept and fostered democratisation at a whole variety of levels.

The watershed moment in terms of institutionalising democracy in Mexico came when President Ernesto Zedillo took office in 1994 with a "new federalism" agenda. In a personal interview in 2001 he described a need to end with the "decadence" of blanket decision-taking from the centre. Under Zedillo, the PRI–PRD relation changed and there was a clear commitment to recognise victories by any opposition party. Profound electoral, judicial and devolutionary fiscal reforms altered the juridical and political landscapes.

The 1997 mid-term elections resulted in the first non-PRI-dominated Congress, the first PRD governorship (in the Federal District) and further gains for the PAN. Although a number of PRI hardliners resisted democratic progress, the PAN's presidential wins in 2000 and 2006 proved without doubt that political pluralism at the subnational level can enhance the likelihood of gradual democratisation. William Riker (1964) has argued that the most important variable for defining the nature of a federal system is the party system and its competitiveness. Although other studies insist that the authenticity of federalism is measured by the distribution of fiscal resources, Riker was one of the few who argued that it was useless to decentralise the fiscal system when the centre still dominated the political scene. I follow his line of argument, suggesting that for the Mexican case fiscal federalism was important but not as significant as political pluralism, which has facilitated an institutional discussion by a plurality of political forces at the state level of the other issues of the federal agenda.

The context for reform: political fragmentation, the legislature and the status

There is a body of literature on fragmentation within the political organs of government (also known as divided government) which posits that the more fragmented political power, the less pressure the judiciary will face to rule in favour of the government's interests (e.g. Chavez 2004, cited in Ríos-Figueroa 2007). Indeed as the below sections show, for the many decades when the PRI dominated the federal executive and legislative powers as well as most state governments, self-interest would dictate that judges rule in the government's favour since reprisals for not doing were severe, including court packing and purging or curtailing the judiciary's budget. Moreover, the fact that the judiciary depends on the other organs of government for implementing its decisions can also foment a deferential attitude. Separation of powers theorists also suggest that there is a link between greater fragmentation and the increased involvement of courts in policymaking since individuals or organs of government that seek to resolve conflicts will tend to gravitate toward institutions from which they can get solutions (Ferejohn 2002, 9–14; Bednar, Eskridge, Ferejohn 2001, 233, cited in Ríos-Figueroa 2007).

In this section I trace the results of federal and state elections in Mexico to show how the composition of Congress has become more fragmented in recent years (see Table 2.5) and assess the impact this has had on policy-making, including by the judiciary.

During the long period of PRI hegemony and especially during the 1935–88 period, the President was able to push bills and constitutional reforms through Congress without needing to build legislative coalitions. For the past decade, however, not only Congress but also the state legislatures have become more active in the process of policymaking. It is worth noting that a constitutional reform initiative must be approved by a two-thirds vote in both houses of congress and ratified by 16 of the 31 state legislatures.

As Figure 2.1 shows, the PRI lost its two-third majority in Congress in 1988, hence all reforms passed since then reflect in one way or another some bargain with at least one opposition party (see Pozas-Loyo 2005). The PRI lost its absolute majority in Congress in 1997 and the two main opposition parties combined to form a majority in the lower chamber, producing the first partially divided government in more than half a century. For the first time in many decades, the parliamentary behaviour of the

opposition defined the coalition-building process, as opposition parties were transformed from mere symbolic checks into pivotal actors within the Congress (Nacif 2002: 255).

Shifts in the balance of powers between parties began to have an impact on the output of Congress even before 1988, however: from 1982 to 1988 the executive ceased to be the main initiator of bills, though the approval rate for presidential initiatives remained very close to 100 percent. But the change was much more profound after 1988 when there was a notable rise in the number of bills introduced by legislators. As shown in Figure 2.2, the LIV Legislature (1988–91) was characterised by radical obstructionism strategies by opposition parties that wanted to force changes in legislation and parliamentary proceedings. Only 44.5 percent of the bills were passed during this period compared with 53.8 percent approved by the LII Legislature (1982–85).

The PRI increased its majority in Congress at the 1991 elections, and the new PRI leadership introduced new rules aimed at preventing obstructionism by the opposition. The approval rate during this period increased to 60.7, but fell again to 43.2 percent in the period after the 1994 election when the opposition made gains in Congress. Probably the most indicative figure is the very low 16.9 percent approval rate registered after the 1997 elections when the PRI lost its historic majority in Congress. It is also important to note that the number of bills introduced during this period compared with the previous one increased by 147 percent, many introduced by the opposition.

The first partially-divided government did not produce legislative paralysis, however. Of the 37 presidential initiatives presented to the LVII legislature, 32 were approved by the lower house; on many important issues this was thanks to alliances forged by President Zedillo with the PAN, which supported his economic reforms. Thus the divided government did not necessarily affect the presidential initiative approval rate, but rather the number of the executive's share of bills presented to Congress. Of the 500 bills presented by congressmen, only 99 were approved. In sum, the loss of the PRI majority in the lower chamber did not produce deadlock in the law-making process.

The government became completely divided when President Fox of the PAN was inaugurated into office in 2000. The PRI retained its dominance over the Senate while

the PAN fell well short of having a majority in Congress, with only 208 of the 500 seats. But just as the PAN became the centre of the coalitional system under Zedillo, the PRI became the main supporter of Fox's government, in the first half of his term at least. The resulting relationship between Fox and Congress was not free from tension, however, and the most important of his reforms were rejected by the divided Congress. The Supreme Court was drafted in to adjudicate in an increasing number of important discussions, including the indigenous rights bill, deregulation of parts of the electricity sector and tax exemption for beverages made with corn syrup. The Court was also asked to intervene in disputes between the executive and the Senate on various occasions, typically over nominations of judges to various courts. These cases are discussed in Chapter 3.

Figure 2.1

Composition of the Lower House of Congress:
Percentage of seats retained by each party (1982–2000)

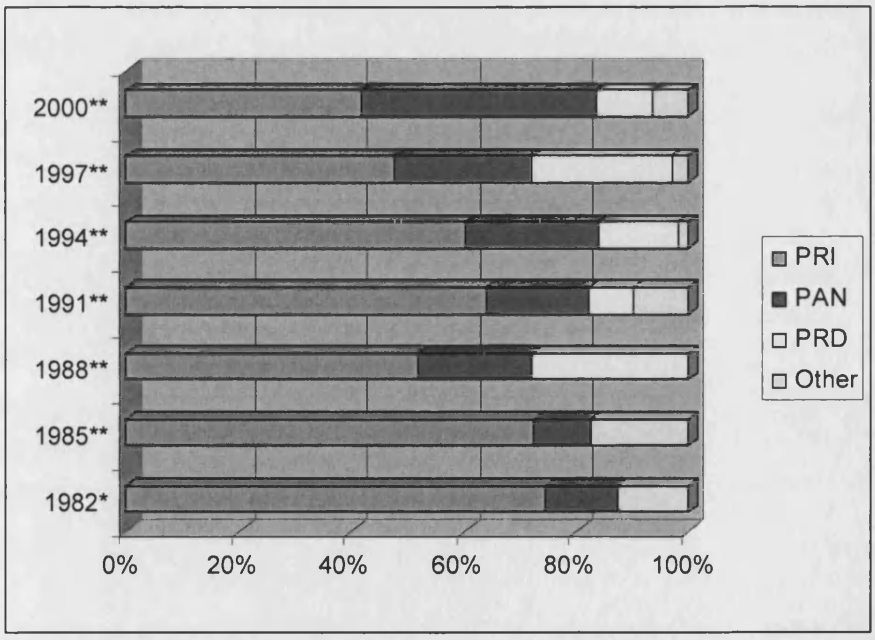
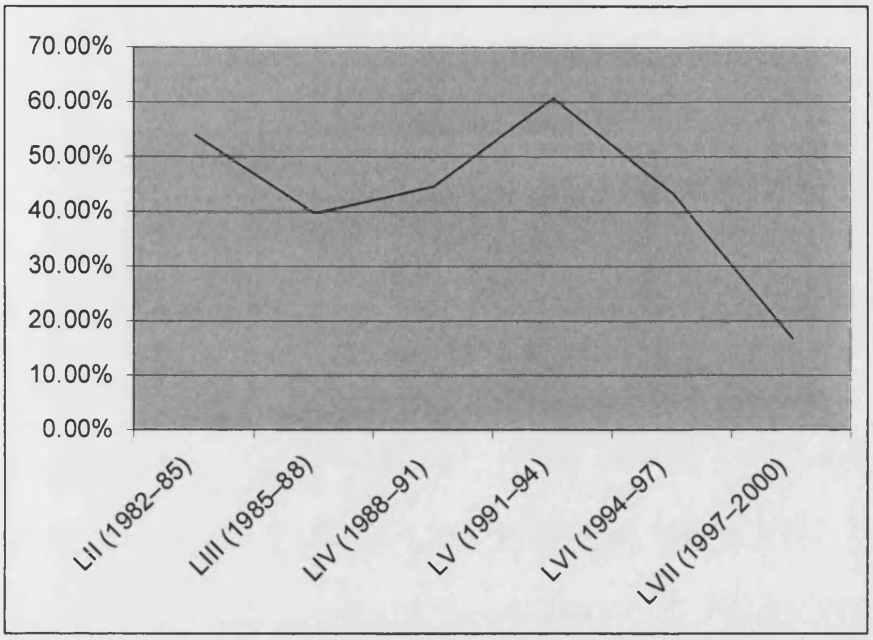


Figure 2.2
Legislative approval rate (1982–1999)



Source: Adapted from María Amparo Casar (1999), Benito Nacif (1997).

Judicial independence and the legacy of the hegemonic regime

Traditionally, Mexico's judiciary was viewed as a branch that had been subordinated to the executive in a strongly presidentialist and essentially undemocratic regime. The national Supreme Court of Justice and its state-wide equivalents enjoyed little effective independence. Towards the end of the 19th century and especially through the Porfiriato (1876–1911), the Court was still subordinated to the executive branch. In 1900, the *Ministerio Público* (public prosecutor's office) was made independent of the judiciary and ensconced within the executive, which further limited the scope of jurisdiction of the court. The principle of non-political intervention by the court in electoral matters was well established by the beginning of the 20th century and was maintained in the 1917 Constitution.

Yet, although judicial independence has been practically non-existent in Mexico, constitutional rule has been essential for underpinning the legitimacy of the regime and for upholding a theoretical separation of powers. Under the 1917 constitutional settlement, the judiciary granted the Mexican political system the veneer of legal authority it required to maintain the unique hegemony it had achieved during the post-revolutionary period. Up until the mid-1990s, electoral processes were generally

considered fraudulent; the judiciary's concern was to uphold a "state of legality" although not necessary the rule of law.

Since 1917, and despite its traditionally passive role, the judiciary has undergone numerous constitutional reforms. In contrast with the United States, where the Constitution has been modified on few occasions in order to overturn Court rulings, in Mexico almost 400 reforms have been approved in diverse areas during the last century, showing the importance that the hegemonic regime gave to legal forms (López and Fix, 2000: 13). The reforms have been both progressive and regressive in terms of judicial independence, but were a clear disincentive to the exercise of judicial interpretation and constitutional evolution due to the relative ease with which the Constitution could be modified (Fix Fierro 2000: 179).

The relationship between the judiciary and the executive has not been static; during certain periods the judiciary has enjoyed greater independence than others. The various constitutional reforms approved since 1917 reflect this dynamic relationship. Many of the reforms concern the appointments process and tenure for Supreme Court judges. Tables 2.1 and 2.2 show how changes to the appointments process and to the size of the Supreme Court enabled a large number of the presidents who served last century to significantly alter the composition of the bench. The reforms introduced in 1928 and 1934 were among the most blatant in this regard since they involved replacing the entire Supreme Court with new members.

Yet in his classic work, González Casanova (1970) presents data from 1917–60 indicating that the Supreme Court operated with a certain degree of independence with respect to the executive power. Similarly, Schwarz (1977: 147) argues that "the Mexican federal courts, especially in their exercise of *amparo* jurisdiction, are not as passively oriented to the executive as is commonly assumed. In a few areas such as the broad reviewability of federal and state tax laws and military courts-martial, they are even more activist than their counterparts in the United States."

Table 2.1 Key institutional reforms affecting Supreme Court appointments and tenure

Reform	Impact on Tenure and Appointments
1824 Constitution	Lifetime tenure established for Supreme Court justices (11 justices distributed in three *salas*); Supreme Court justices elected by the state legislatures and ratified by the federal Congress; direct election introduced in 1844
1857 Constitution	Six-year term established; indirect election
1865 Provisional Statute of the Mexican Empire (Emperor Maximiliano de Habsburgo, 1864–67)	Judges and magistrates to be tenured and not substituted
1882 reform of 1857 Federal Electoral Law (President Manuel González, 1880–84)	Supreme Court justices given the power to elect their chief justice by an absolute majority of votes; chief justice to serve for one year, with no possibility of reelection; vice-president to be named who could substitute the chief justice on specific occasions.
1897 Federal Procedural Code (Porfiriato, 1876–1911)	President to nominate magistrates and judges following specific proposals from the Court; Supreme Court made up of 11 justices (*numerarios*), four *supernumerarios*, one fiscal and a General Prosecutor
Constituent Congress of 1916–17	Full tenure re-established for the 11 Supreme Court justices; election by an absolute congressional majority (both chambers in Electoral College functions) in a secret ballot from a list of candidates proposed by the state legislatures. Changes introduced in 1923 stipulate that Supreme Court Justices, Circuit Magistrates and District Judges can only be removed if they act improperly.
1928 decree (President Plutarco Elías Calles, 1924-28)	Lifetime tenure eliminated; Supreme Court justices to be appointed or ratified by each successive president with Senate approval; entire Supreme Court replaced with new members; Article 111 introduces the possibility of removal for poor conduct by the president with congressional approval.*
1934 (constitutional Article 94) (President Lázaro Cárdenas, 1934–40)	Six-year terms for Supreme Court justices reintroduced, coinciding with presidential terms; entire Supreme Court replaced with new members; number of Supreme Court justices increased from 11 to 16 in 1938.
1944 constitutional amendment (President Avila Camacho)	Lifetime tenure re-established; president to name Supreme Court justices with Senate approval; Supreme Court to name Circuit Magistrates and District judges
1951 decree, 1967 reforms	Decree ratifies lifelong tenure at all levels within the judiciary and increases number of Supreme Court judges from 16 to 21**; reinforced by reforms in 1967 establishing that Supreme Court justices could only be removed following a *juicio de responsabilidad* ("trial of responsibility", a process of impeachment).
1988 reforms	Supreme Court justices to remain in post until the age of 70
1994 reforms (President Ernesto Zedillo, 1994–2000)	Lifelong tenure reduced to a 15-year position; Supreme Court justices to be selected by the Senate with a two-thirds majority vote from a list of three candidates nominated by the president (Article 96); number of justices reduced to 11.

* This clause applied until 1982. According to Carpizo (2004), between 1928 and 1976 only three members of the Court were removed by this procedure, but the very existence of the clause posed a risk for the judiciary in its confrontations with the executive.

** In reality the number of Supreme Court justices was increased to 26 due to the creation of a *sala auxiliar* (auxiliary court) made up of five *supernumerary* judges.

Table 2.2 Number of Supreme Court Judges appointed by each Mexican President (1934–2004)

President	Number of Judges
Lázaro Cárdenas (1934–40)	24
Manuel Avila Camacho (1940–46)	24
Miguel Alemán (1946–52)	12
Adolfo Ruiz Cortines (1952–58)	18
Adolfo López Mateos (1958–64)	9
Gustavo Díaz Ordaz (1964–70)	14
Luis Echeverría Alvarez (1970–76)	13
José López Portillo (1976–82)	16
Miguel de la Madrid Hurtado (1982–88)	20
Carlos Salinas de Gortari (1988–94)	8
Ernesto Zedillo (1994–2000)	11
Vicente Fox Quesada (2000–06)	3*
Felipe Calderón Hinojosa (2006–12)	3**

Source: Adapted from Magaloni (2003: 288)

* During Fox's administration, José Ramón Cossío (Nov 2003), Margarita Luna Ramos (Feb 2004) and Sergio Valls (Oct 2004, after Humberto Román died in June 2004) were elected as Court judges. It was agreed that even though it was a replacement, Sergio Valls would serve for a full 15-year period.
**Fernando Franco was elected on 13 December 2006, when Felipe Calderón (2006–12) had just assumed office. Calderón selected two more Court judges, Luis María Aguilar and Arturo Zaldívar, to replace Genaro Góngora and Mariano Azuela from 1 December 2009.

Cárdenas Gracia (1996) has identified four different stages in the executive-judiciary relationship since 1917. The first one covers 1917–28, when the judiciary enjoyed a considerable degree of independence from the executive based on the 1917 Mexican Constitution. During the second period, 1928–44, power was centralised in the hands of the executive and the official party was strengthened by presidents Plutarco Elías Calles and Lázaro Cárdenas. The reforms introduced in 1928 and 1934 clearly affected judicial independence by replacing the entire Supreme Court with new members. These reforms were reversed by President Avila Camacho in 1944.

The third period covers 1944–88, when a process of internal institutionalisation and administrative consolidation emerged. Despite its relative stability, the Court was subordinated more strongly to the executive's will during this period.[23] Finally, since 1988, Cárdenas argued that several reforms have enhanced judicial autonomy. Indeed, 1988 was a crucial year for political pluralism and the move towards a clearer separation of powers. Cárdenas Gracia suggests that President Ernesto Zedillo's pivotal 1994 reform augmented the Court's autonomy, although it still left a long way to go.

[23] According to González Casanova (1965: 19–21), during the 1917–60 period there were a total of 3,700 *ejecutorias*, in which the president is mentioned as the responsible authority.

In sum, the greatest weakness of the Mexican judiciary over most of the last century has been the very fragile nature of its independence vis-à-vis other branches of government. According to Fix Fierro (2000: 176), this weakness can be explained by three main factors: constitutional interpretation; the reach of the *amparo* suit as a mechanism of constitutional control; and the organisational context of the federal judiciary. In the final analysis, in the context of a hegemonic regime, presidential power easily overruns the Courts' independence by constantly shaping their internal rules through the manipulation of appointments, the dismissal of undesirable judges and even the shutting down of courts. In the next section I look at issues of constitutional control, with reference to the *amparo* suit and a more detailed discussion of the legal recourse of constitutional controversies, the analysis of which forms the basis of the empirical research presented in Chapters 3 and 4.

Judicial independence and constitutional control

During the 19th century, conflicts between different powers and levels of government were considered political disputes and so were resolved in political terms. Both the 1824 Constitution (Article 137) and the 1842 Bases Orgánicas granted powers to the Supreme Court to hear disputes between the states and the federation. But for the first half of that century the judiciary did not hold this role exclusively. The 1836 Second Constitutional Law established that the Supreme Conservative Power was responsible for annulling laws, while the Seventh Law recognised the power of Congress to resolve constitutional conflicts and the 1847 Reform Acts gave Congress the authority to annul general laws or local laws that breached the Constitution. Hence it was the General Congress, the Government Council and the Supreme Conservative Power that usually resolved conflicts between different levels of government while the Supreme Court's role was reduced to little more than making the public announcements connected with the cases, although it still resolved conflicts between states.

Later on, the 1857 Constitution created a judiciary that would have clear political and constitutional powers, mainly through the *amparo* suit. The *amparo* was conceived in 1842 and in 1857 became a constitutional guarantee of protection of individual civil rights against any violation by a public authority (Arteaga, 1999: 498). This provides scope for some relative judicial autonomy, though in practice the *amparo* generally represented a very limited form of judicial review since it applies only to individuals and

does not set precedents for future cases (Burgoa, 1986).[24] In addition to the *amparo* suit, the Constitution also included a second defence recourse: the *auto control* (Article 121). Article 116 established that the federal powers would protect the states against any invasion or external violence. In cases of internal conflict within a state, however, it was the President who acted as the final arbiter.

Secondary legislation approved during Benito Juárez's presidency, in 1870, activated Article 98 of the 1857 Constitution, which granted powers to the Supreme Court to resolve controversies between states or with the federation. During 1867–76, the Court defended its political power mainly through the thesis of "incompetence of origin" which had been established with the Amparo Morelos during José María Iglesias's administration (1873–76). In this case the Supreme Court granted an amparo to landowners from Morelos who opposed the Law of Local Property introduced by Governor Leyva whose re-election, they argued, was illegal under Article 16 of the 1857 Constitution. Some months after this historic resolution, the Court received another similar amparo against the re-election of the governor of Puebla. The Court's resolution again emphasised the need to protect individual rights against authoritarian acts. With these two consecutive rulings, the Court assumed the authority to take part in controversies of a political nature, regardless of whether the violating authority was at the federal, state or local level.

Iglesias's position was reversed by Chief Justice Ignacio Vallarta (1878–82), who faced increasing criticism of the Court's excessive interpretative power. Vallarta established that political issues were not individual rights and therefore should be excluded from the amparo protection at the federal level. Vallarta insisted on the need to depoliticise the Court to the point where the concept of "competent authority" was abandoned altogether. Although the right to be governed by legitimate authorities remained, Vallarta thought that the Court was not the appropriate institution to deal with such issues. Instead, the Electoral Colleges were strengthened as the proper channel for

[24] For most part of last century, the "Fórmula Otero" limitated the amparo law by establishing that judgments granting amparo do not set binding precedents for application in subsequent similar cases. The only binding case law precedents that exist in Mexico are through the so-called *jurisprudencia*. To qualify as a *jurisprudencia definida*, the legal principle set forth in an amparo suit must be reinforced in five consecutive cases by the majority vote of the judges. Such rulings are binding only on equal or lower courts and administrative courts, not on executive administrative agencies. Different drafts have been produced in recent years to reform the amparo law, mainly proposing that the "Formula Otero" be quashed. As will be discussed below, in December 2009 the Senate finally approved fundamental changes to modernise the amparo Law.

challenging the validity of political acts. The debate between the priority given by Iglesias to preserving individual rights as opposed to Vallarta's defence of a strictly neutral Court dominated much of the contemporary constitutional debate. Nevertheless, Vallarta's thesis of "non-intervention" by the judiciary in electoral conflicts delineated the limits of the Court's jurisdiction for almost 150 years.

In this context, several constitutional projects were presented with the aim of strengthening the Supreme Court's role in the aftermath of the revolution. In the end, it was Venustiano Carranza's project and the 1917 Constitution which clearly demarcated the types of conflict that could emerge between different levels of government and how they should be addressed: political conflicts were reserved to the Senate, which according to Article 76, Section II, could quash powers within a state, while constitutional conflicts had to be presented before the Supreme Court, according to Article 105.

The original Article 105 considered the following types of conflicts:

a) Between two or more states
b) Between different powers within a state over the constitutionality of their acts
c) Between the federation and one or more states
d) And those in which the federation played a part.

In sum, constitutional controversies were included in the Mexican Constitution in 1824 (Art 137, Section I), in 1857 (Arts 97 and 98) and in 1917 (Art 105). Yet the only actors allowed to use this legal mechanism were the federation, the states and the three powers within a state; neither the Federal District nor the municipalities were included. Article 105 was modified in October 1967 when Congress was granted the power to determine in which controversies the federation was involved, and which of them would be presented to the Court. It was modified again in October 1993 as part of the Federal District's political reform, when the different powers within the Federal District were authorised to take part in legal controversies.

Prior to the 1994 reforms, discussed in the next section, some municipalities had attempted to use this recourse but were unsuccessful. The most important antecedent to the involvement of municipalities in constitutional controversies was the amparo suit (4521/90) presented in 1990 by the municipality of Mexicali, in Baja California, against the federation (González Oropeza 2000: XXIV). In its resolution of the case on 7

November 1991, the Court established that the municipality did indeed have the legal authority to make use of controversies. This contradicted previous rulings in which the municipality was not recognised as a legitimate actor.

A second groundbreaking case was the constitutional controversy filed by the municipality of Delicias—then governed by PRI municipal president Rogelio Bejarano García—against the Chihuahua state government, which was led by the PAN (SCJN, CC 1/93, 29 April 1993). This was one of the earliest uses of a constitutional controversy to resolve a political conflict. The municipality filed the recourse to challenge the constitutionality of the Fourth Agreement signed by governor Francisco Barrio Terrazas on 26 January 1993 relating to the state government's refusal to allow municipalities to offer civil registration services, with the consequent impact on their budget (SCJN, CC 1/93, 29 April 1993). The municipality had already been unsuccessful in filing an amparo suit on the same grounds. It argued that the Fourth Agreement violated several constitutional articles, as well as local Article 125; the state administration's response was that the municipality was not yet recognised as a formal political power.

More than a year after the recourse was filed, the Court ruled in favour of the municipality, declaring that both the executive and the municipal presidents could offer civil registration and that the Fourth Agreement violated Article 138 section I of the local Constitution and Federal Constitutional Articles 115 (refering to municipal jurisdictions) and 124 (refering to powers of state and federal jurisdictions) (SCJN, 30 August 1994). According to a Supreme Court publication (2005:183) the Court ruling of "30 August 1994... was understood by the two parties and should have been obeyed... despite this and in open defiance of Francisco Barrio, the doors were opened in the parallel office of the Civil Registry of Delicias" (SCJN, 2005: 184). Rogelio Bejarano is said to be close to former PRI governor Fernando Baeza, and so questions were asked within the same Court document about whether the motivation for opening the office in Delicias was not simply to defy the then governor.

The ruling followed the judicial precedent set by Mexicali's amparo suit and also referred to Constitutional Article 115 which acknowledges municipalities as having full legal status since they are bodies of government. The relevance of this ruling is self-evident: in recognising municipalities as a separate power from the legislature, executive and judiciary it reinforced a crucial federal aspect of the Mexican political system. The Court defended the rights granted to municipalities by the 1983 and 1987

reforms (Cárdenas, 1995: 2) and from then on decided to recognise constitutional controversies presented by municipalities. The case also made manifest the need to regulate constitucional article 105, as President Ernesto Zedillo eventually did.

Ernesto Zedillo (1994–2000): The judiciary and the 1994 reform

President Ernesto Zedillo took office in December 1994 promising "to promote a 'state reform' to modify the regulations and institutions governing electoral processes, the integration of the legislative branch, the juridical-political status of the Federal District and the party system as a whole" (Office of the Presidency, 2000). During his electoral campaign, he spoke repeatedly of the need to strengthen the rule of law and ensure that no one could be above the law. True to his campaign pledge, only four days after being inaugurated in office Zedillo presented Congress with his initiative to reform the judiciary (Office of the Presidency, 1994, 5 December 2002). The judicial reform initiative had three main purposes: to modify the structure of the judiciary; to legalise the coordination of public security; and to create mechanisms of appeal against the public prosecutor (*Ministerio Público*) if it decided not to prosecute a criminal case.

This reform amends 27 constitutional provisions,[25] transforming the nature and size of the Supreme Court and creating the Federal Judicial Council (*Consejo de la Judicatura*), whose main functions are to appoint and oversee the circuit and district courts, as well as to approve and administer the judicial budget. The main aim of these changes was to relieve the Supreme Court of its administrative work and to establish more rigid and meritocratic criteria for career advancement. According to Fix-Fierro and Fix-Zamudio (1996), the Judicial Council was granted considerable powers including: the government and administration of the tribunals; the administration and discipline of the judicial career, including magistrates and judges; regulatory powers over administrative areas; and the resolution of conflicts within the judiciary, except those of the Supreme Court. The seven-member body comprises the Chief Justice, two circuit court judges, a district judge, two members nominated by the senate and one by the executive. All seven members, except the president (whose term lasts four years, with no immediate reelection), would remain in their position for five years, without reelection, and would be replaced sequentially.

[25] The decree, published in the *Official Gazette* on 30 December 1994, reforms the following constitutional articles: 76, section VIII, 89 section XVIII, 94 to 101, 103 to 107, 110 and 111. A second decree published in the *Official Gazette* on 26 May 1995 after the 11 new Supreme Court judges had been approved, reforms the 1988 Organic Law of the Judiciary of the Federation (*Ley Orgánica del Poder Judicial de la Federación*).

The idea of maintaining judicial independence through financial autonomy was retained in the 1994 reform. It should be noted that since 1976, the budget law (*Ley de Presupuesto, Contabilidad y Gasto Público*) has established that the judiciary does not require executive approval of the administration of its budget. However, there has been increased pressure from the Court to establish a fixed judicial budget of at least 1.5 percent of the national annual budget to guarantee "financial autonomy to protect their impartiality and independence" (SCJN, *Comunicado* 503, 6 February 2002).

Even though Chief Justice Góngora had meetings with congressmen to lobby for financial autonomy, the judiciary's budget was decreased in 2001 to just 1.04 percent of the national budget. The following year the judiciary was the most affected by budget cuts, receiving less than 18 billion pesos, 22 percent less than requested (Boletín 1528, Cámara de Diputados, 15 December 2002). At the end of 2003, for fifth year in a row, the lower chamber cut the budget requested by the judiciary by more than 4 billion pesos. A number of observers support this type of legislative control over the judiciary given the dramatic expansion of the judiciary following the 1994 reform. According to Miguel Sarré (Milenio, 2002), "the decrease in the judiciary's budget implies a simple moderation on the speed in which the *juzgados* have multiplied".

Since 2005, the judiciary's budget has been equivalent to 0.3 percent of GDP. It is worth noting that in 2009 the judiciary requested an increase to its budget for 2010 of 23 percent with respect to the previous year (see Table 2.5), despite President Felipe Calderón pushing for austerity measures. Senior members of the judiciary defended their request before members of the congressional budget and public accounts commission by pointing to the significant increase in cases that the judiciary as a whole is having to attend, for which planned spending on infrastructure will quadruple against 2009.

Table 2.3. Budget requests for the judiciary (millions of pesos)

	Budget Requested	Approved Spending
2000	9,225	8,075
2001	15,503	13,803
2002	20,301	15,363
2003	22,906	17,732
2004	23,770	19,400
2005		21,037
2006		23,389
2007		25,229
2008	32,539	29,963
2009	40,108	32,539

Source: Presupuestos de Egresos de la Federación 2000-2010, Secretaría de Hacienda (http://www.shcp.gob.mx)

From 1995 onwards, the Supreme Court would comprise 11 judges (reduced from 26) appointed for 15 years (no longer lifetime positions), each one to be selected by a two-thirds majority vote in the Senate from a list of three candidates nominated by the President. Candidates must have a law degree and ten years of work experience, preferably with experience in the judicial system. There were significant attempts to ensure that justices would be impartial by guaranteeing that they did not draw any other form of salary or remuneration and had not held a political position for at least a year prior to the appointment, in an attempt to draw potential candidates from a constituency of distinguished career judges rather than senior political appointees.

Before 1994, it was established that the salaries of the Supreme Court and lower court judges could not be reduced while in office. According to the constitutionalist Elisur Arteaga, even the new Supreme Court salaries, which are set at the same level as those of under-secretary of state plus some discretionary bonuses, will not attract many well-established jurists from the private sector. Moreover, Arteaga argued that by receiving discretionary bonus payments, the court judges undermined their autonomy as they became indebted to the executive.[26]

In sum, the Supreme Court was not only granted more constitutional power but also its jurisdictional and administrative functions were separated due to the creation of the Judicial Council. Since the 1994 judicial reform, constitutional and legal reforms have multiplied at the federal and local level. According to a Supreme Court study, between 1994 and 2002 almost all the judicial powers in the country implemented structural changes (SCJN, 2006: 67). Between 2003 and 2005, 565 initiatives to reform the judiciary at the federal level were identified (SCJN, 2006: 68).

In terms of public security, the 1994 initiative called for the appointment of the Attorney General to be ratified by a Senate vote, following a process similar to that for Supreme Court judges. The reform highlighted the need for improved coordination on public security among the federal government, the Federal District (Mexico City), the states and the municipalities. It also laid the foundations of a National System of Public Security which aimed to reduce crime and violence across the country as a whole. Profound changes to the police force were considered and proposals were made to create an integrated national system of information on habitual offenders, to

[26] Author interview with Elisur Arteaga, professor of constitutional theory at the Universidad Autónoma Metropolitana and of federalism at the Universidad Autónoma del Estado de México, 20 May 2001, Mexico City.

professionalise the police and to increase links between the police and the communities they serve. While this represents an important part of the judicial reform initiative, my focus will be on the changes that reinforced the Supreme Court as a constitutional court with the power to resolve claims between different branches and levels of government in the context of increasing pluralism.

The 1994 reforms and constitutional controls

The reform initiative sought to strengthen the principal appellate legal tools against government in Mexico, namely individual citizen claims through the amparo, and the resolution of conflicting claims between government jurisdictions via constitutional controversies. The reform also created a second mechanism of constitutional control: unconstitutional acts. The expansion of the Supreme Court's powers to protect the constitutionally based jurisdiction of each branch and level of government strengthened the state's balance of powers, as noted by the architect of the reforms, former President Zedillo (First State of the Nation Report, 1995).

As mentioned above, one of the key modifications of the constitutional review mechanisms brought in by the 1994 reforms was the explict inclusion of the Federal District and municipalities among the entities given legal standing to request review by the Court via constitutional controversies of conflicts arising between the governmental levels (see Table 2.4). According to Supreme Court Justice Olga Sánchez Cordero, speaking 15 years after the reform was introduced, "the main client of the controversies is the municipalities, without doubt. Everybody complains about the invasion of competencies and the Court has to enter into defining competencies."[27]

A second important modification was brought about by a piece of secondary legislation approved in 1994 to regulate constitutional controversies. Only when a controversy ruling is resolved by at least eight of the eleven Court Ministers and is "top-down" in nature or relates to equivalent levels of government, does it set wider precedent (Article 42, Secondary Law of Constitutional Article 105). In practice, successful "bottom-up" rulings apply only to the parties presenting the specific controversy.[28] Moreover, it has also been argued that Article 76, which recognises the power of the Senate to resolve political conflicts between powers within a state, clearly affects the scope of constitutional controversies.

[27] Author interview with Supreme Court Justice Olga Sánchez Cordero, Mexico City, 4 December 2009.
[28] Author interview with Elisur Arteaga, 20 May 2001, Mexico City.

Table 2.4 Constitutional controversies before and after the 1994 reform: Who can request them?

Original Article 105 1917 Constitution	Article 105 after the 1994 Judicial Reform
Two or more states	Federation and one state or the Federal District
Powers within a state	Federation and a municipality
Federation and one or more states	Executive and Congress
Controversies in which federation was part	Between states
	A state and the Federal District
	The Federal District and a municipality
	Two municipalities from different states
	Two powers within a state
	A state and one of its municipalities
	A state and a municipality from other state
	Two Federal District government bodies

Source: 1917 Constitution and 1994 Judicial Reform

In the case of unconstitutional actions, one third of a legislative body may challenge the constitutionality of actions of other branches of government and even suspend the enforcement of a law. Thus, cases of unconstitutionality can be brought by 33 percent of the lower or upper chamber of Congress against federal or Federal District laws or resolutions or by 33 percent of the members of a local legislature against their own state laws or resolutions. The Attorney General can also challenge federal or Federal District laws. However, an important criticism of this new legal mechanism is the short time frame allowed for presenting these legal challenges, since it is difficult to study and intelligently oppose constitutional legislation within only 30 days (Arteaga, 2001).

In sum, the 1994 judicial reform was an important first step in strengthening the credibility of the judiciary as an independent and impartial system of justice since it granted it enhanced powers within a context of increasing political pluralism and new federalism. According to Domingo (2000: 711), the 1994 reform "marks a break with the past, and potentially represents a qualitative change in terms of judiciary–executive relations. However, if it proves to have inaugurated a new period in the judiciary's history, this will be as much a result of changing political circumstances."

Motivations for and responses to the 1994 judicial reform

While few question the impact of President Ernesto Zedillo's 1994 judicial reform in terms of the independence and impartiality of the judiciary, for most academics, it is doubtful that the motivation for the reform had much to do with a new federalism agenda and the resolution of constitutional controversies. Rather, in their opinion, it

was primarily targeted at reforming the criminal justice system in the context of further economic liberalisation; it was vital to strengthen the judiciary as a means to create the conditions for adequate levels of economic development.[29] For example, the Director of Jurisdictional Statistics of the Supreme Court, Jacqueline Martínez said "I don't know whether Zedillo really had the vision—I honestly don't think so—to provide a scheme of separation of powers within a context of political pluralism, but his reform was fundamental for resolving political conflicts, notably municipal ones, via legal-institutional channels."[30]

I was able to interview former President Zedillo in 2001 when he was Distinguished Visiting Fellow at the Centre for Global Governance, London School of Economics. His explanation of the motivations for the reform was that there was a clear need to reform the judiciary to achieve a true separation of powers in the context of more plural politics. At the end of Carlos Salinas's administration, the Zapatista uprising in Chiapas, the assassination of Luis Donald Colosio and the unexpected nomination of Ernesto Zedillo to replace him as the PRI's presidential candidate were auguries of a very different future political scenario for Mexico. As Jacqueline Martínez said, "with Salinas the system seemed so consolidated, with a lot of leadership and management; everything seemed to be working but that image was shattered suddenly." Zedillo arrived to fill a huge institutional vacuum. He was seen by many commentators as a technocrat, a solid economist who could successfully manage the country's finances but would be unlikely to understand the complex political needs of the time. Perhaps for that reason his vision of reform was underestimated, and for many he was seen as simply following the trend for "second generation reforms" by strengthening the judiciary to underwrite investment and the economic well-being of the country.

A decade on from the end of Zedillo's term, I find the reasons he gave me for pushing for judicial reform convincing. He insisted on several occasions that one of the main aims of the 1994 reform was to reinforce the rule of law, but also, specifically, to shore up the independence of the Supreme Court of Justice as the highest legal tribunal in order to strengthen its decisions. He argued that in the context of increasing political pluralism, it would be more necessary than ever to have a means of resolving political disputes between rival parties governing different levels and branches of government.

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[29] Institutions such as the World Bank and the International Monetary Fund have tried to quantify the extent of damage caused by a weak judiciary in terms of economic development (Eduardo Buscaglia, Beatrice Weder). While campaigning in Guadalajara, Zedillo presented his "*Ten proposals for a new security and justice system*", with six of the ten proposals dealing with security issues (July, 1994).

[30] Author interview with Jacqueline Martínez, Mexico City, 24 November 2009.

A stronger Supreme Court would help avoid continuous presidential interventions and the subsequent deterioration of his power.[31] Zedillo was particularly aware that Article 105 did not take into account the many types of conflict between federal, state and municipal governments that were emerging in the new political reality. This point, as opposed to considering the 1994 judicial reform as part of the second-generation reforms, was confirmed by other interviews conducted during my fieldwork such as Virgilio Andrade, Hugo Concha and Francisco Cuevas.[32]

In a personal interview in December 2009, Justice Olga Sánchez Cordero explained that "since the administration of President Miguel de la Madrid the idea of a constitutional court was given support. Collegiate Circuit Courts were created to review constitutional issues... There were some very good, great judges, but the attitude of the Court was different. There was less transparency and communication with the general public, and so there was an almost total lack of appreciation for the Court. Zedillo saw the need to radically change the administration of justice so that it was more efficient and less corrupt".[33]

Whether Zedillo envisaged the importance of the reform in terms of political federalism at the time is doubtful, Sánchez Cordero argues. "He was a pure liberal who deeply defended the rule of law. By transforming the Supreme Court, changes would permeate the rest of the judiciary and the local judicial powers. While Zedillo was conscious that there was a stronger [political party] opposition, I don't really think that in 1994 or early 1995 he could have imagined or appreciated the magnitude and transcendence of his reform."[34] Regardless of his ambitions for the reform, according to Sánchez Cordero, granting autonomy to the judiciary as well as to Mexico's national bank, were the two acts that Zedillo will be remembered for. She describes the 1994 judicial reform as the "most important change in the modern era of Mexico's judiciary", which gave the country "an important institutional support". It was not until 1996 that the Court was given jurisdiction over electoral matters, however, and "today 90 percent of unconstitutional acts submitted before the Court are over electoral issues. For the Court, political questions were a huge taboo, so it has been a crucial step to enter into such themes."

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[31] Author interview with Ernesto Zedillo, London, 23 November 2001.
[32] Author interviews conducted in Mexico City on 8 December 2003, 18 October 2003 and 4 December 2009, respectively.
[33] Author interview with Justice Olga Sánchez Cordero, Mexico City, 4 December 2009.
[34] Auhtor interview with Justice Olga Sánchez Cordero, Mexico City, 4 December 2009.

Zedillo's judicial reform initiative received an unusually high level of media attention (Fix Fierro, 2004) and a detailed analysis of newspapers and political magazines dated from December 1994 to April 1996 reveals some interesting findings.[35] First, it becomes clear that the official presentation of the presidential initiative to reform the federal judiciary emphasised the need to respond to the most important citizen demand of the 1994 electoral campaign: improved public security and enhanced capacity of the state to guarantee protection against crime and violence (Ernesto Zedillo, 5 December 1994). In response to this demand from the electorate, President Zedillo argued that it was necessary to strengthen the rule of law and the institutions in charge of providing justice and public security. The appointment of the first non-PRI member of the cabinet to the position of Attorney General was crucial in this respect. The recruitment of a member of the opposition, Antonio Lozano Gracia of the PAN, sent meaningful signals to the public—and to the Senate, which would have to approve his appointment—that the issue was being taken seriously.

Initial reactions to the presidential judicial reform initiative were positive, even from traditionally critical sectors, such as opposition parties, the media and some human rights organisations. The general consensus was that the initiative was "good, prudent and sensible" (*La Jornada, El Universal*, 6–10 December 1994). The PAN claimed that it chimed with its party's own historic demand for respect for the rule of law (Felipe Calderón, *La Jornada*, 6 December 1994). The PRD agreed that the initiative was important, though pushed for the President to relinquish his power to nominate the Supreme Court judges. Supreme Court Director of Jurisdictional Statistics Jacqueline Martínez remembers the PAN and a number of academics being the strongest proponents of the reform, while the PRD and PT were the most vocal opponents and, paradoxically, are now the parties that make most use of the judicial recourses that were strengthened or introduced by the reform.[36]

According to Aguayo Quezada (1994: 9), the presidential initiative had two main merits: it was comprehensive and it demonstrated a new presidential disposition to renounce some of the traditional prerogatives of the Mexican presidential system. Finally, a representative of the private sector agreed on the importance of the reform, arguing that "only a strong judicial system would guarantee macroeconomic stability, fiscal discipline and price stability" (Concanaco, *El Universal*, 8 December 1994: 1). More

[35] These newspapers and magazines are not available electronically and were viewed at the archives of the National Autonomous University of Mexico (UNAM). Fix Fierro (2004) suggests that public opinion of the judicial reform initiative was generally positive.
[36] Author interview with Jacqueline Martínez, Mexico City, 24 November 2009.

than a decade after the judicial reform was implemented, Chief Economist of Bank of America Edgar Camargo and Flavio Torres, Technical Director of the Asociación de Bancos de México said that there is broad agreement in the financial sector that the Mexican judicial system is much stronger and independent in its resolutions.[37]

In spite of this positive atmosphere, a number of opposition voices started to emerge as Congress began to feel pressure to vote on the initiative before the end of the ordinary period of sessions on 24 December 1994, less than three weeks after it had been presented. Some senators, including a few PRI members, criticised the rush to adopt such an important reform (*La Jornada*, 10 December 1994) and pushed for an extraordinary session to be called in early January 1995 to discuss it. The main objections were the creation of a National System of Public Security, the possibility that the reform undermined the jurisdiction of individual states via the creation of the Judicial Council and administrative changes that would affect the role of state courts.

Two PRI senators who were also former Supreme Court judges, José Trinidad Lanz and Salvador Rocha Díaz, lent their weight to the campaign to delay the vote on the reform so that it could be debated thoroughly. They were particularly concerned about the need to establish a rigorous judicial career structure in order to avoid politicised appointments (*El Universal*, 16 December 1994: 1, 16). The new Chief Justice had to be elected at the beginning of January 1995 and "[w]ith less than 20 days until New Year it is not clear which rules will apply in terms of the election of the new Chief Justice" (Rivera, 13 December 1994: 4).

A number of well-known lawyers who were invited to analyse the judicial reform initiative (*Foro de Análisis de la Iniciativa de Reforma Judicial*, 13 December 1994) highlighted the need to avoid the "political use of the Court." According to the initiative, the 26 jutices would leave their positions and 11 new members would be selected by the President and ratified by the Senate. This divided opinion. Emilio Krieger (14 December 1994: 10) argued that the reform represented a threat and a possible "coup d'etat" by President Zedillo, who would guarantee the subservience of all judges, since they would all owe him their appointments. In Krieger's view, tenure offered a small degree of judicial independence, which was then negated by the wholesale replacement of the court. Ignacio Burgoa even compared Zedillo's reform to Fujimori's closure of the Peruvian Court (*El Universal*, 12 December 1994: 1). Other voices considered the initiative to be a reform to "macro-justice" because it only refers to the

[37] Author interviews with Edgar Camargo and Flavio Torres, Mexico City, 18 December 2008.

composition of the Supreme Court and the Judicial Council, but leaves aside important aspects of "micro-justice" which would be far more relevant to the majority of the population (García Ramírez, 15 December 1994: 11).

The Supreme Court was silent during this period. The media speculated that some of the justices were not entirely happy with the presidential initiative and with the prospect of losing their jobs, preferring to resign rather than accept the proposed retirement scheme. Tension was heightened on 15 December with the formal closing ceremony of the second period of sessions of the Supreme Court when Chief Justice Ulises Schmill presented his annual report of activities. There was growing confusion among the 26 justices as to their future (*El Universal*, 16 December 1994: 1, 10). In a recent interview, justice Genaro Góngora confirmed that "the decision to select new Supreme Court judges in 1995 left many of the previous judges clearly unsatisfied. In fact, some still have a deep resentment" (Reforma, 19 November 2009: 8).

The PRI senators rejected the PRD's call for more time to discuss the judicial reform initiative. The PAN was less unified in its position since it also had to consider the discussions on the appointment of one of its members to the position of Attorney General. Many Panistas felt it was important for him to begin his new job with a proper constitutional framework in place. The PAN representatives in Congress therefore not only wanted to approve the initiative before the end of 1994, but were pushing hard for some of their own initiatives to be included in the reform. A final report was approved by the PRI and PAN senators present (108), while the eight PRD senators left the building. The report called for 70 modifications to the presidential initiative (*Dictamen del Senado*, 16 December 1994). Some of the changes were more about the form than about the truly substantive issues, such as stricter qualifications requirements for future judges, the confirmation of tenure for judges who would only be removed by an impeachment procedure (*juicio de responsabilidad)*, the selection process for judges and magistrates which would be by lot (*insaculation*), and the new composition of the Judicial Council with a majority of representatives from the judiciary.

The modified initiative was finally approved by the PRI and PAN congressional benches of the lower chamber of Congress on 21 December 1994, against the opposition of the PRD and the Workers' Party (PT). According to González Luna, an opposition congressmen, "yesterday we had an economic devaluation, today we have an even deeper and more serious devaluation: that of the justice system" (*La Jornada*, 22 December 1994: 18). Reforms to 25 articles were confirmed and passed to the state

legislatures for their approval. Further substantive changes were deferred to later discussions on 16 related secondary laws; these included reforms to constitutional Article 105 which deals with constitutional recourses.

Judicial elections (1995–2009): A revitalised or newly stacked Supreme Court?

For the last few of weeks of 1994 and the first two weeks of 1995, the Supreme Court had no judges. After some delay, on 18 January 1995, President Zedillo presented a list of 18 established lawyers, including three women, for the 11 positions. Each was called before the Senate on 20–23 January to make a 30-minute presentation followed by questions. Successful candidates would need the votes of two-thirds of the members of the Senate. One candidate, Guillermo Guzmán, was disqualified during the nominations process for legal reasons.

A number of well-regarded lawyers who had been left off the list insisted that the executive should abstain from nominating the judges, while two of the candidates, Juventino Castro and Jorge García, suggested they should be elected by popular vote to have the same level of legitimacy as the legislature and executive. Burgoa went further, saying that the new judges would be practically inactive since historically problems between the federation, the states and the municipalities have never been resolved through the judicial channels, but by political means (*El Universal*, 20 January 1995: 10). As will be shown in Chapters 3 and 4, Burgoa's comment proved misguided since the Court acquired a very active role in resolving an increasing number of cases after the 1994 reform.

Table 2.5 Court judges elected in 1995

End 2003	End 2006	End 2009	End 2012	End 2015
				Olga Sánchez Cordero
José Aguinaco ***First Chief Justice	Juan Díaz Romero	Mariano Azuela	Guillermo Ortiz Mayagoitia	José Gudiño Pelayo
Juventino Castro	Humberto Román Palacios	Genaro Góngora Pimentel	Sergio Salvador Aguirre Anguiano	Juan Silva Meza

On 25 January 1995 11 new judges were inaugurated in office, following a process that was widely criticised because previous members were suddenly dismissed and PRI

senators could "pack" the Court.[38] All 11 Justices appointed by Zedillo were prominent lawyers at the peak of their careers who were known for favoring an independent and effective judiciary" (Inclán 2004: 121 cited in Ríos Figueroa 2007). The PRD voted against the nomination procedure arguing that most of the candidates were "conservative, linked to the PAN and even representing the Pro-life group" (Héctor Sánchez, *El Universal*, 26 January 1995). The PRD senators argued that the lack of time to discuss the reform in detail had affected the quality of the candidates. They said "the new Court would not be autonomous because the members approved by the Senate come from the business sector, the political bureaucracy and the authoritarian elite" (Félix Salgado, *El Universal*, 26 January 1995). During the voting procedure there were complaints about electoral fraud, in particular that the ballots had already been printed with the names of the favoured judges. Only two Supreme Court judges—Juan Díaz Romero and Mariano Azuela Guitrón—were carried over from the previous Court; they were supported by the PRI (95 votes), PAN (25 votes) and the divided vote of the eight PRD senators (*La Jornada*, 27 January 1995). According to Justice Sánchez Cordero, the radical removal of all Court judges was necessary and the President consulted widely with various sectors including bar associations, judicial councils and universities to identify a shortlist of 18 candidates. The Senate selected the final 11 "and not all were to the liking of the President or the PRI. One of Zedillo's candidates in particular was heavily criticised by the PRD and the name didn't get through."[39]

Vicente Aguinaco was elected Chief Justice and head of the Judicial Council on 1 February 1995 in a private session by consensual vote. The media argued that the judges' votes had been agreed ahead of time and criticised the failure to hold the election in public as had been announced. Four years later, in January 1999, Góngora Pimentel was elected as the second Chief Justice, in a historic session, which, for the first time, was opened to the public and in which there had apparently not been prior agreements over voting. His victory was confirmed in a second round with eight votes in favour and three against (ballots are secret and six votes are needed). According to some interviews, Góngora Pimentel's election initiated a more radical period for the Court since he insisted on the need for it to be more independent and was willing to become involved in controversial decisions.[40] For example, he was the only judge to vote in favour of ruling on the case of Aguas Blancas, Guerrero, where police massacred 17 peasants (*La Jornada*, *El Universal*, 5 January 1999).

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[38] Author interview with Arteaga, 20 May 2001, Mexico City.
[39] Author interview with Justice Sánchez Cordero, Mexico City, 4 December 2009.
[40] Author interview with Reyes Rodríguez Mondragón, Supreme Court, 11 November 2007, Mexico City.

Although the selection procedure established in 1994 introduced stronger Senate control over presidential appointments (Article 96), the PRI's significant majority in the Senate carried the election in 1995. In the context of dominant party rule and a highly centralised presidential system, senatorial approval did not have the significance intended until November 2003, when the first two of the new bench of Supreme Court judges were replaced.

The 2003 appointments process proved more complicated since it took place in the context of a plural Congress. On 19 November, President Vicente Fox sent two lists with different options of well-known lawyers to replace justices Vicente Aguinaco and Juventino Castro. Two weeks later, the Senate voted unanimously in favour of José Ramón Cossío, a young, academically-oriented constitutionalist, to replace Aguinaco. But it took three months to decide on the second replacement. In the first round of voting Margarita Luna Ramos received 37 votes, while in the second one she received only 72 of the 81 Senate votes required for ratification (*Gaceta Parlamentaria del Senado*, 27 November 2003).

In the process, it became clear that Luna had the support of the PRI, PRD and its ally Convergencia, while the PAN senators favoured Elvia Díaz (43 votes) and the Ecologist Green Party of Mexico (PVEM) preferred José Luis de la Peza (6 votes). The Senate returned the President's proposals to him in the knowledge that their lack of consensus gave the executive the power to nominate the new justice himself. On 10 February President Fox proposed a new, all female, list: Gloria Tello Cuevas, María del Carmen Arroyo (whom Zedillo had proposed in 1994) and, once again, Margarita Luna. Nine days later, 83 Senators, including some PAN members, voted in Luna's favour (*Gaceta Parlamentaria del Senado*, 19 February 2004). As opposed to Cossío, who had a more academic background and only had worked in the Supreme Court as an advisor, Luna Ramos is the only justice with a judicial career.

The death of judge Humberto Román Palacios led to a fresh nomination process at the end of 2004. On 28 November, Sergio Armando Valls Hernández was elected Supreme Court justice for a full 15-year period and not only until the end of Román Palacios's period in 2006. Valls received 85 votes from PRI, PRD and PVEM Senators, against 29 votes each for Felipe Borrego and Bernardo Sepúlveda. In January 2007, a new Chief Justice was elected: Guillermo Ortiz Mayagoitia. Even though six justices made clear that they wanted to be considered for the post, the decision in favour of

Ortiz Mayagoitia was unanimous. To some, he represented continuity with Góngora Pimentel's leadership.

Table 2.6 Mexican Supreme Court judges (1995–2021)

Elected judge (Date and place of birth)	Previous post	Period ends
1) Juventino Castro y Castro (Nuevo Laredo, Tamaulipas, 16 July 1918)	Entered the judiciary in 1948. Former Director of Amparo at the Attorney General's Office (PGR) President of *Primera Sala* (1995–97)	30 November 2003
2) José Vicente Aguinaco (Salamanca, Guanajuato, 14 July 1919) Died in 2007 aged 88	Entered the judiciary in 1956; Chief Justice (1995–99)	30 November 2003
3) Fernando Franco González-Salas (Mexico City, 4 December 1950) REPLACED: Juan Díaz Romero (Putla, Oaxaca, 5 November 1930)	Former Electoral Magistrate at the Electoral Tribunal; Under-Secretary at the Ministry of Work (2000–06). Entered the judiciary in 1962. Former Supreme Court justice (since 1986). President of *Segunda Sala* (1995–99)	December 2006–2021 30 November 2006
4) Sergio Armando Valls Hernández (Tuxtla Gutiérrez, Chiapas, 20 May 1941) REPLACED: Humberto Román Palacios (Pueblo Viejo, Veracruz, 15 April 1936)	Magistrate Superior Tribunal Federal District. Judicial Director at IMSS (social security ministry). Local PRI President in Chiapas. PRI congressman 1995–98. [District and circuit judge since 1970; appointed Supreme Court justice in 1995; President of the *Primera Sala* (1998–99).]	30 November 2019 28 November 2004
5) Mariano Azuela Guitrón (Mexico City, 1 April 1936)	Entered the judiciary in 1960. Former Supreme Court justice (since 1983)	30 November 2009
6) Genaro Góngora Pimentel (Chihuahua, Chihuahua, 8 September 1937)	Magistrate, Third Collegiate Tribunal for Administrative Affairs, Mexico City (1978–95). Supreme Court justice since 1995; Chief Justice (1999–2003)	30 November 2009
7) Guillermo Ortiz Mayagoitia (Misantla, Veracruz, Feb 1941)	Circuit Judge from 1981; Electoral Magistrate (1993–95).	30 November 2012
8) Sergio Salvador Aguirre Anguiano (Guadalajara, Jalisco, 1 February 1943)	Notary public and *Regidor* of Guadalajara (1985–86); member of the *Segunda Sala*	30 November 2012
9) José Gudiño Pelayo (Autlán, Jalisco, 6 June 1943)	Entered the judiciary in 1971. Magistrate of the Collegiate, Third Circuit (Civil, Guadalajara) (1990–94)	30 November 2015
10) Juan Silva Meza (Mexico City, 13 Septiembre 1944)	Entered the judiciary in 1970. Electoral Magistrate of the *Primera Sala*	30 November 2015
11) Olga Ma. Sánchez Cordero (Mexico City)	Magistrate of the Superior Tribunal of Justice (Sexta Sala Civil) (1993–95)	30 November 2015
FIRST REPLACEMENTS IN THE NEW SUPREME COURT NOV 2003 – FEB 2004		
1) José Ramón Cossío (Mexico City, 26 December 1960) REPLACED: José Aguinaco	Worked at the Supreme Court from 1989 to 1995 with Jorge Carpizo and as chief advisor of ex-Chief Justice Ulises Schmill (1991–95) Former Director of the Law Department at the ITAM (1995–2003).	November 2003–30 November 2018

2) Margarita Luna (San Cristóbal, Chiapas, 4 January 1956) REPLACED: Juventino Castro	Entered the judiciary in 1975. Councillor on the Federal Judicial Council since February 2003.	November 2003–30 November 2018

Source: Directorio de Ministros, SCJN (http://www.scjn.gob.mx/Consultas/Inicial_Consultas.asp)

Also on Zedillo's initial list were two former judges: Mariano Azuela (de la Madrid) and Juan Diaz Romero (1984), as well as Guillermo Guzmán (1982), Guillermo Ortiz Mayagoitia (1986), Humberto Román Palacios (1987), Carlos Sempe Minivielle, Maria del Carmen Arroyo (Magistrada, 1992), Refugio Gallegos Baeza (Magistrada, 1987) José Gudiño Pelayo (Magistrado, 1986) Genaro David Góngora (Magistrado, 1978), Juventino Castro, Juan Silva Meza, Olga Maria Sanchez Cordero, Jorge Garcia Ramirez and Raúl Medina Mora.

Finally, two of the most visible and controversial of the Supreme Court justices, representing opposite poles of the political spectrum, were replaced in December 2009. They are the left leaning Góngora Pimentel and more conservative Mariano Azuela, both former Chief Justices. As mentioned above, Góngora in particular is identified with a period of Court activism. Azuela had been one of the longest serving judges and had survived the 1995 judicial reform.

Asked to describe the differences between the Court as he found it in 1995 and presently, Góngora argues that "the Court was limited and didn't want to get into trouble. Once when as judges and magistrates we went to the office of the Chief Justice we heard him say 'every time the Supreme Court gets involved in political issues it gets covered in filth.' Now, with the reform of constitutional article 105 we have been flung into the political arena with controversies and actions that we have strived to resolve in the best way possible" (*Reforma*, 19 November 2009, p.8).

The process to replace Góngora and Azuela began on 19 November 2009, when President Calderón sent the Senate his two lists of preferred candidates for the 15-year seats. The six candidates appeared before Senate commissions on 26 November in a process that was questioned by PRD and PT congressmen, who said it was inadequate and did not eliminate the risk that the PRI and the PAN could have come to prior arrangements over whom to support (Becerril, *La Jornada*, 29 November 2009). In view of the criticism, the senators agreed to bring the candidates in for a second session, this time in front of the entire Senate on 1 December 2009. As expected, Luis María Aguilar and Arturo Zaldívar were elected in a secret ballot through a system of identity cards, with 91 and 90 votes, respectively, from the PAN, PRI and PRD. They both achieved the two-thirds Senate majority needed in the first round of voting. Aguilar takes up his seat on the Court after a long career within the judiciary, while Zaldívar has a more independent and academic profile. Zaldívar has described the past decade as having been dominated by cases involving different powers competing over spheres of competency, but he anticipates that the development of fundamental rights will gain

ground in future years. According to Arteaga (Méndez and Aranda, *La Jornada*, 2 December 2009), the election will help "renew the doctrines of the Supreme Court as both jurists are innovators when it comes to constitutional studies and the amparo."

Table 2.7. Lists of candidates to the Supreme Court (2009–24)

LIST TO REPLACE MARIANO AZUELA (Judicial Career)	LIST TO REPLACE GENARO GÓNGORA (Academics)
Luis María Aguilar Morales General coordinator of advisors to the Chief Justice; general secretary of the Presidencia and Oficial Mayor; Circuit Magistrate	Jorge Adame Goddard Researcher, UNAM, Instituto de Investigaciones Jurídicas
Luisa Martínez Delgadillo Actuary and former secretary to several collegiate circuit courts; judge in Zacatecas and San Luis Potosí; Circuit Magistrate	Eduardo Ferrer Mac-Gregor Researcher UNAM, Instituto de Investigaciones Jurídicas
Jorge Mario Pardo Rebolledo Judicial actuary and former secretary to several courts, judge in the Estado de México; criminal judge and civil circuit magistrate	**Arturo Zaldívar Lelo de la Rea** PhD in Law at UNAM, lawyer from the Escuela Libre de Derecho

Zedillo's third judicial reform: 1999

After the important 1996 electoral reform, which formally incorporated the Electoral Tribunal into the judiciary (See Chapter 5), a third reform was implemented in June 1999, this time more closely related to the judiciary. On 9 December 1999, President Zedillo submitted initiatives to reform the Organic Law of the Judiciary and the Law of Constitutional Protection to strengthen the capacity of the Circuit Courts and the status of the Supreme Court of Justice as a Constitutional Tribunal.

The initiative, proposed by the executive, modified the text of four constitutional articles 94, 97, 100 and 107. For some scholars this was a counter-reform, because it subordinated the Judicial Council to the Supreme Court, making it difficult for judges and magistrates to maintain internal independence (Carbonell, 2000). The main changes brought in by the reform are:

- Granting the Supreme Court the power to send general agreements to the Circuit Collegiate Tribunals in cases in which jurisprudence has been established or when the cases are not deemed particularly relevant to the Court (Article 94, paragraph 6). Constitutional controversies and unconstitutional actions are the only cases that would be resolved by the Supreme Court.

- Regulating the selection procedure for the Judicial Council, through the introduction of new pre-requisites for Council members (Article 100).
- Introducing a recourse through which the Supreme Court could verify that Judicial Council decisions relating to appointments and removals comply with the Organic Law of the Judiciary of the Federation (Gudiño Pelayo, 2001: 428) (Article 100, paragraph 9).
- Introducing mechanisms for determining the "importance and transcendence" of certain types of resolutions related to constitutional matters, in order to admit them for analysis and revision (Article 107, Section IX).

Panista administrations, Vicente Fox (2000–06) and Felipe Calderón (2006–12): signaling future judicial reforms?

During Vicente Fox's administration discussion intensified over the need to approve not only an amparo law but also a further judicial reform that could guarantee more effective independence from the other powers of government. In 2002, the ruling party, PAN, defended an initiative which aimed to restructure the Judicial Council. This initiative, which would also prohibit the Chief Justice from simultaneously fulfilling the role of president of the Judicial Council, was criticised and even considered a counter-reform (*Milenio*, 12–13 March 2002).

In 2003, the Supreme Court agreed to carry out a detailed and inclusive national consultation process on the need for further judicial reform. The response was overwhelmingly in favour of reform. Some 200 reform proposals were received covering all of the main issues relating to administration of justice, both at federal and state level. These were distilled by the Court into a series of 33 actions to reform the Mexican justice system. The subjects of proposed change that are most relevant to this thesis are:

- Strengthen the Supreme Court so that it can act as a Constitutional Court
- Create a consolidated Mexican constitutional defence system
- Reform the amparo law
- Judicial federalism
- Set a fixed budget for the judiciary to guarantee its independence and autonomy

- Improve the appointment process for Supreme Court justices (more detailed professional profile for prospective candidates; participation of two government powers in the appointments process; greater transparency)
- Improve the administration of justice and functioning of the Judicial Council
- Consolidate the judicial career structure
- Apply strict standards of professional ethics
- Enhance the Court's power to initiate laws.
- Standardise laws across the federation and states
- Review the Supreme Court's existing investigative powers
- Improve transparency and accountability
- Reform the criminal justice system

Source: *Libro Blanco de la Reforma Judicial. Una Agenda para la Justicia en México* (2006), Supreme Court of Justice.
http://www.scjn.gob.mx/RecJur/ReformaJudicial1/LibroBlancoReformaJudicial/Paginas/TextoLibroBlanco.aspx

In March 2004 Vicente Fox presented the Senate with a judicial reform initiative that would modify 23 constitutional articles and seven laws. The main proposals were to:

- Unify federal police corps under an interior ministry
- Replace the current Attorney General of Justice with an autonomous General Prosecutor's Office which would head all of the public prosecutor's offices *(ministerios públicos)*
- Include the presumption of innocence in article 20, which currently gives the accused certain guarantees
- Replace written processes with public and oral hearings on the grounds that this will expedite justice.

The Court created a group of federal judges to analyse Fox's initiative. Its response was that "the reasons given to justify the constitutional, criminal law and public security reforms lack foundations" (*El Universal*, 11 November 2004). The group pointed out that the proposal would double the number of judges without any guarantee that the judiciary would be granted the resources necessary to cover the increase (*El Universal*, 11 November 2004).

In August 2004, the Supreme Court, the Judicial Council and the Electoral Tribunal published the Code of Ethics of the Judicial Power of the Federation. Despite the creation of the National Commission on Judicial Ethics (CNEJ), concern remained on the part of the general public that the judiciary lacked legitimacy and could not be

trusted. According to the academic Javier Saldaña, judicial ethics "is still in nappies" and both federal and local judiciaries are plagued by nepotism (on some occasions carried out when two judges agree to promote each others' friends or relatives), poor treatment of subordinates, arrogance, and poorly trained judges (*Milenio*, 13 December 2009).

Although no more judicial reforms were approved during Fox's administration it should be noted that in recent years the Supreme Court has become more open in a number of ways: it held a public consultation on judicial reform; information on the Internet is updated with increasing regularity; since mid-2005 it has been possible to use the Internet for simultaneous access both to the Court sessions and judge's discussions; it approved a Transparency Law and has started to formally open more resolutions and specific cases to public scrutiny.[41] Secondary legislation affecting the judiciary was issued on 2 April 2004 (*Reglamento de la SCJN y del Consejo de la Judicatura Federal para la aplicación de la Ley Federal de Transparencia y Acceso a la Información*). It calls for increased transparency in all matters relating to the structure of the judiciary, including its budget, management, organisation and operation. In terms of case files, the law provides a unified definition for reserved information, and establishes that peoples' names should not be considered confidential.

President Felipe Calderón succeeded in passing legislation to reform the federal judicial system in March 2008. The reform legislation, which basically targets the regulation of the accusatorial criminal justice system, set a timetable of eight years for full implementation.[42] On reaching the mid-term of his administration, Calderón announced that he would also present an ambitious political reform plan, which will seek to enhance the Supreme Court's power to initiate laws by establishing the principle of "preferential initiative" (Office of the Presidency, 29 November 2009). On 15 December 2009, Calderón formally presented his political reform initiative to Congress. It aims to introduce a second-round of voting for presidential elections and referenda and to streamline the legislature, reducing the number of congressmen to 400 from 500 of which 160 would be elected by proportional representation, and Senators to 96 from 128 (http://www.presidencia.gob.mx/prensa/presidencia/?contenido=51465). The president's bill would also allow for independent candidates to stand for office and

[41] The 2002 Federal Law on Transparency and Access to Information was transformational in terms of the way the public sector operates.
[42] Author interviews with Efraín Cárdenas and Eduardo Amerena, both criminal lawyers with Buffet Cárdenas-Amerena Abogados, 26 March 2008, Mexico City.

takes aim at an enduring political taboo: the reelection of congressmen and municipal presidents.[43]

Also in December 2009 the Senate finally approved changes that modernise the amparo law and grant new related powers to the Supreme Court. According to Senators Pedro Joaquín Coldwell (PRI), Alejandro Zapata (PAN), Ricardo Monreal and Pablo Gómez (PRD) this amparo reform is the most important of the last 25 years in terms of judicial life of the country and the strengthening of the judiciary (Gaceta Parlamentaria Senado, 10 December 2009). The changes are aimed at allowing the Court to concentrate on the most important cases while other amparo cases are dealt with by lower courts. Among the changes is the introduction of a "General Declaration of Unconstitutionality" which can be issued by the Court when jurisprudence is established in the case of indirect amparo judgments under review. This brings an end to the so called "Fórmula Otero" whereby the amparo only protects the complainant. According to Justice Sánchez Cordero there is a lot of resistance to this amendment among litigants and judges in district courts who do not want the possibility of direct amparos to disappear. "I don't think there is real independence of local powers as governors have a lot of influence over local issues," she said.[44]

Public perceptions of the impact of judicial reform: a public relations success

In terms of judicial independence, it is important that the judiciary is not only independent but that it is perceived as such by the general public. Impartiality, both real and apparent, influences public confidence in the courts, the judges and the judicial process. Yet closer public scrutiny of the justice system and other societal and governmental institutions is a concomitant of the move towards a more democratic society. Greater access to information and greater recourse to the law in Mexico has given rise to concerns over delays and backlogs of cases in the courts. Concerns have also been raised over the activism of the courts, specifically the Supreme Court in political matters. Public criticism is directed at all aspects of the administration of justice, including judicial decision-making, judicial conduct, judicial appointments, court procedure and court management, as the following sample of polling data shows. Yet the Court's standing in public regard has improved in the last few years.

Reforma newspaper published a survey of 851 adults in November 2003, which revealed that only 16 percent of respondents were even aware that two Supreme Court

[43] Author interview with Alejandro Poiré, Under Secretary of the Interior, 23 December 2009, Mexico City.
[44] Author interview with Justice Sánchez Cordero, Mexico City, 4 December 2009.

judges were in the process of being selected, and only 2 percent knew that the court was made up of eleven judges. Slightly more than half of respondents, 51 percent, described the Supreme Court's decisions as opaque ("little/non-transparent"). Thirty-six percent of respondents thought the Court lacked independence and took political repercussions into consideration when issuing judgments, though only 35 percent were in favour of high salaries for judges to guarantee independence in their work. Six-out-of-ten respondents were against the pensions-for-life granted to retired Supreme Court justices. When asked how much the Supreme Court has contributed to democracy in Mexico, 53 per cent said "little or nothing", while 44 per cent said "some or a lot". Despite this negative perception, Supreme Court justices fared better than other elements of the justice system, in particular the public prosecutor's office, as the following tables show.

Table 2.8 What is your opinion of...?

	Very good/good	Average	Bad/very bad	Don't know
The system of administering justice in Mexico	32%	36%	24%	8%
Judges	29	38	24	9
Officials at the public prosecutor's office	23	36	33	8
Supreme Court judges	35	36	18	11

Table 2.9 And at different levels what is your opinion about the justice system?

	Very good/good	Average	Bad/very bad	Don't know
Federal	38%	18%	42%	2%
State level	33	20	45	2
Municipal level	27	21	50	2

When viewed as a series over time, the polls indicate a worsening opinion of the Supreme Court among the general public during the years 2000 to 2003 (see tables 2.10 and 2.11), though a subsequent poll shows some improvement (see table 2.12). The following data come from a series of national telephone surveys conducted by *Reforma* newspaper.

Table 2.10 What is your opinion of the Supreme Court?

	Very good/good	Average	Bad/very bad
December 2000	50	21	7
February 2001	53	25	8
October 2001	**47**	**26**	**11**
January 2002	40	31	16
March 2002	36	32	18
May 2002	39	33	14
July 2002	43	34	13
7 September 2002	35	39	17
5 October 2002	**40**	**35**	**14**
November 2002	37	36	14
January 2003	37	36	14
April 2003	38	34	13
June 2003	50	35	16
August 2003	50	38	12
October 2003	**36%**	**36%**	**15%**

A later poll taken in December 2004 by the same pollster using the same methodology[45] asks about the judiciary's role in approving the budget and reveals an appetite for judicial involvement in political controversies. Some 58 percent of respondents said President Fox should ask the Supreme Court to intervene to modify the budget, while only 30 per cent said he should accept the budget as approved by Congress. Half of respondents trusted the Supreme Court to act independently to resolve the budget dispute between the president and the lower chamber of Congress, against 40 percent who did not trust the Court's independence in the matter.

Another Mexican pollster, Parametría, grouped different public institutions into three categories according to the level of confidence they inspire among the general public:

1) High confidence in the public institution: the Church, priests, the military and TV news programmes.
2) Medium confidence: newspapers, radio news programmes, the National Commission for Human Rights and the Federal Electoral Institute
3) Low confidence: the President, judges and magistrates, congressmen and Senators, and political parties.

Still, as the following and other polls show, the public has more confidence in the courts than in other government institutions or political parties.

[45] National telephone poll of 850 adults conducted on 18 December 2004 by *Grupo Reforma*.

Table 2.11. Trust in 'low confidence' institutions

President	**High/some trust (%)**	**Low/no trust (%)**
June 02	45	46
May 03	47	52
August 03	48	49
May 04	40	55
June 05	41	57
Judges and magistrates	**High/some trust**	**Low/no trust**
June 02	24	64
May 03	30	64
August 03	26	68
May 04	22	65
June 05	34	62
Congress and Senate	**High/some trust**	**Low/no trust**
June 02	22	68
May 03	27	67
August 03	30	65
May 04	25	65
June 05	28	68
Political parties	**High/some trust**	**Low/no trust**
June 02	25	63
May 03	28	70
August 03	26	72
May 04	24	69
June 05	27	70

Source: June 2005, Parametría.

Consulta Mitofsky used a similar approach in a 2009 national survey that suggests that the Supreme Court is one of the institutions whose levels of confidence has increased with respect to 2004–05. As can be seen in Table 2.12, since October 2008, the Court has maintained a 70 percent approval rating which places it in the "medium institutional confidence" category.

Table 2.12 Trust in 'medium-low confidence' institutions (2004–09)

	MEDIUM			LOW		
	IFE	PRESIDENT	SUPREME COURT OF JUSTICE	CONGRESSMEN	SENATORS	POLITICAL PARTIES
APR 04	6.7	6.1	5.7	4.2	4.7	4.7
JUL 05	7.1	6.2	6.1	4.5	5	5.1
FEB 06	7.1	6.9	6.2	5.6	5.7	5.9
MAY 06	7.8	6.9	6.6	5.8	6.1	6.2
AUG 06	6.9	6.9	6.8	6.1	6.3	6.2
FEB 07	7.1	6.8	6.7	5.4	5.6	5.6
NOV 07	7.1	6.8	6.7	5.6	5.8	5.3
OCT 08	7.0	6.9	7.0	5.7	6.1	3.6
FEB 09	7.2	7.0	7.1	5.9	6.1	5.8
MAY 09	7.3	7.2	7.1	6.0	6.4	6.0
NOV 09	6.8	6.7	6.9	5.6	6.0	5.6

Source: Monitor Mitofsky (Nov 09), Economía, Política y Gobierno. Monitor Mensual de Consulta Mitofsky (http://72.52.156.225/Docs/FusionCharts/EPG.pdf).

Today, both supporters and detractors of the reform agree that the 1994 judicial reform was very important for the country and that the Supreme Court continues to be one of the most respected institutions in Mexico, even though its increased activism has exposed it to higher levels of public scrutiny than ever before. Criticisms are regularly made in the national news media about the salaries and benefits offered to justices and the size of the judiciary, but most polling data show that the general public does consider the Supreme Court to be a respected institution for resolving conflicts, with the final say on issues of great relevance for the country's present and future.

Conclusions

Important reforms to the judiciary have been implemented since 1994 and have clearly led to significant improvement in terms of judicial structure, performance, independence and transparency. Throughout this chapter I have argued that the 1994 judicial reform was an important first step in strengthening the credibility of the judiciary as a more impartial system of justice since it granted the Supreme Court of Justice

enhanced powers within a context of increasing political pluralism and new federalism. Not only was the Court granted more constitutional power but also its jurisdictional and administrative functions were separated thanks to the creation of the Judicial Council. Since then, constitutional and legal reforms have multiplied at the federal and local level. As will be seen in the following chapters, all these changes have clearly changed the relation between the executive and the judiciary.

There can be no doubt that the Supreme Court has become more open and transparent to public scrutiny. There is still a long way to go, however. The fact that the Court has become more active in deciding extremely topical political, economic and social issues has put this institution under the spotlight. As the surveys presented in this chapter show, citizens seem to doubt the independence of the court, though the Court's reputation does seem to have improved in recent years. In many ways, and despite the Supreme Court's public outreach efforts, public opinion of the Court seemed until very recently to be out of step with modernisation efforts and with the real change in its role vis-à-vis other branches of power. Since 2000 all Supreme Court justice appointments have required the support of all three principal parties, which no doubt has an impact on perceptions as well as the reality of increased independence. In the context of competitive elections, such as the 2006 presidential race or the 2009 federal election, a number of political actors questioned the performance and independence of court judges and of the Electoral Tribunal Magistrates, though it is perhaps of greater significance that the court's rulings were complied with.

This chapter addressed two main questions: why and how Mexican authorities adopted a judicial reform in 1994. Based on thorough archival research and several personal interviews, including with former President Ernesto Zedillo, I could confirm that an important motivation for the reform had to do with a new federalism agenda and the resolution of constitutional controversies. One of my main hypotheses is that in the context of increasing political pluralism it would be more necessary to have a means of resolving political disputes between rival parties governing different levels and branches of government, in particular involving municipalities which needed a legal-institutional channel to resolve their conflicts about resources, power and party politics.

CHAPTER 3
The Supreme Court as the Lynchpin of New Federalism: An Analysis of the Constitutional Controversies (1995–2005)

"This is the first time that we began hearing the word 'controversy'...What we could win (with regard to challenges to the indigenous reform bill) is that the government will understand that we are not going to let this lie"
Consejo Regional Indígena, May 2002

As discussed in Chapter 2, within presidential systems judicial independence is generally institutionalised through the principle of separation of powers. Although this principle was included in the 1917 Mexican Constitution, the executive tended to prevail over the other two branches of government. Furthermore, subnational governments were in practice clearly subordinated to the central authority in the context of a party system dominated by the PRI for more than seven decades. With a political system that concentrated most political power in the presidency and was highly centralised, the Mexican judiciary was characterised by its weakness and passivity, and often failed to act as an effective check on political power.

As opposition parties started to win strategic municipalities in the mid-1980s, there was increased pressure to move toward further democratisation and a more genuine balance of powers within Mexico's federal system of government. Within this process, the ambitious 1983 municipal reform represented the beginning of vertical decentralisation. The reform granted responsibility to municipal governments in specific areas such as sanitation, water and sewage, environmental protection, transportation and urban roads, traffic, local police, public lighting and land use planning. Nevertheless, little change was achieved and gradually the centre regained its political control. According to Cornelius (1999) and Rodríguez (1997), non-PRI municipal presidents frequently found themselves financially and politically marginalised in their relationship with state and federal governments. The impact of this reform and subsequent decentralisation efforts over the course of the decade was therefore limited and served mainly to shore up the regime's diminishing legitimacy rather than to revitalise subnational governments.

A decade later, President Ernesto Zedillo (1994–2000) promoted a shift in the balance of power to the state and local levels (Zedillo, 1994).[46] His project promised a more equitable distribution of resources with increased financial and administrative

[46] Also author interview with Ernesto Zedillo, 2001, London.

autonomy, as well as the institutional strengthening of state and municipal governments.

Overall, the gradual process of political liberalisation contributed to the ongoing progress of vertical decentralisation and to a more effective horizontal separation of powers. It became clear that a profound reform of the justice system would be key for resolving conflicts emerging between different branches and levels of government under increasing political pluralism and new federalism.

The 1994 judicial reform, discussed in Chapter 2, reinforced the Supreme Court's role as a check on the separation of powers through two types of recourses for the control of constitutionality: constitutional controversies and unconstitutional actions. Although rarely used during the decades of hegemonic PRI rule—when the regime opted to resolve political conflicts through internal negotiation channels—since 1995 the Court has been increasingly ruling over controversies between different levels of government, including the municipalities and the Federal District. For the first time in history, the Court is also ruling on cases of unconstitutionality presented by one third of a legislative body against federal or Federal District resolutions or laws.

Constitutional controversies are the legal mechanism for defending the federal nature of the Mexican political system and the principle of separation of powers, and form the focus of this chapter. They are used to prevent the different levels and branches of government from exceeding their constitutional jurisdiction and invading others. I will argue that increasing party competition and the consequent alternation of political power in several municipal (especially since the mid-1980s) and gubernatorial elections (since 1989) have made the judicial mechanism of constitutional controversies increasingly important and cast light on the need for a Constitutional Court. In sum, I will argue that over the last 15 years there has been a clear process of *judicialisation of politics* (Fix Fierro, 2000: 170) where rival political parties are increasingly using the Court to resolve a wide diversity of policy disputes, including in situations of political deadlock.

I have organised my empirical analysis of constitutional controversies into four broad areas (see Annex 1 for details of each individual constitutional controversy). First, I determine which levels of government have been involved in the disputes that have been taken to the Court and which types of controversies have been more common in the 1995–2000 period. I expect to find that most disputes are between municipalities

and state governments—the first building blocks of political and administrative organisation and the first entities to be governed by opposition parties—with fewer against the federal government.

Second, I identify the political parties governing in the entities that presented the legal recourses. I expect most of them to be from the opposition to PRI state and national governments. The centre-right PAN—the first opposition party to experience the responsibility of local and state government—has been particularly active in taking legal action to defend political and jurisdictional disputes. Indeed its strategy for reaching presidential power was for gradual change through political alternation at the local level, which proved crucial for further democratisation at the federal level.

Third, I look at the content of the demands in order to identify the issues under dispute. I look specifically at eleven areas: allocation of public resources (fiscal issues, budget expenditure, fiscal and income laws); responsibility of public servants (impeachment/ revocation of mandate/suspension); functioning and organisation of institutions; geographical issues (creation/elimination of a municipality/ territorial conflicts); appointments (restitution/ non-ratification); administrative justice/jurisdictional rulings; municipal autonomy (tax revenue); planning, infrastructure and public works; internal administrative agreements; invasion of spheres of competence and others. I show that most are related to fiscal-budgetary claims by municipalities and state governments seeking the proper allocation of public resources assigned for regional development under new federalism. I conclude by assessing the role the Supreme Court has played in preserving basic federal divisions and reinforcing the separation of powers during the ongoing process of institutionalisation. I also look at whether this process has resulted in more credible constraints on the federal government.

Fourth, I present a regional analysis of the constitutional controversies, showing that some states have been much more legally active than others. I demonstrate that most of the northern states—in which crucial municipalities have been governed by the opposition since the mid-1980s—have proved to be the most active in presenting legal recourses challenging the state and federal government in diverse areas. PAN strongholds such as Nuevo León and Baja California have been particularly activist since the 1994 reform, as has the PRD government of the Federal District since it gained power in the city in 1997. Also notable are the cases of PRI-governed states such as Puebla, Tamaulipas and Oaxaca, where opposition-governed municipalities show increased legal activism.

In the final part of this chapter, I discuss how a greater balance of power has been made possible by a stronger opposition presence in Congress. Since the election of the first opposition majority in the lower chamber in 1997, Congress has radically changed the nature of its relation vis-à-vis the executive, not only in terms of its traditional rubber-stamping attitude, but also by showing an increasing legal activism to defend its constitutional powers.

Open floodgates: Analysis of constitutional controversies (1995–2005)

This section offers an overview of the constitutional controversies presented by different levels of government before the Supreme Court in 1995–2005. The analysis is divided into two periods that coincide with important events that had a clear impact on the level of use of constitutional controversies. The first period covers the controversies presented before the Supreme Court immediately after the 1994 judicial reforms were introduced. The Court was headed by Chief Justice José Vicente Aguinaco Alemán (1995–99) at a time still characterised by PRI dominance at the federal and subnational levels. I expect to find that there would be an immediate increase in the use of legal mechanisms to defend jurisdictions after the 1997 elections, when the PRI lost the majority in the lower chamber of Congress and three further governorships, including the crucial Federal District. The second period covers the administration headed by Chief Justice Genaro Góngora Pimentel (1999–2003), who took over the post on 4 January 1999, and part of Mariano Azuela's (2003–07) administration as Chief Justice. The analysis shows that municipal authorities have been responsible for most of the recourses presented before the Supreme Court.

During the eight decades prior to the 1994 reform (1917–94) only 55 constitutional controversies were presented before the Court, less than one per year. Of these, the majority, 22, were between powers within a state, followed by 14 between the federation and a state and 12 between municipalities and states (Cossío, 1995: 1039). According to Arteaga (1999: 1376), the lack of operability of constitutional controversies was mainly due to the undemocratic nature of the regime, strong presidentialism and excessive centralisation of power.[47] Table 3.1 provides an analysis of the 28 (of the 55) controversies for which information is publicly available.

[47] One of the last judicial conflicts between the federation and a state was resolved by the Supreme Court in December 1932. The case was presented by the government of the southern state of Oaxaca against the federal government, and concerned the state law on jurisdiction of archaeological monuments, issued in February 1932. The Court annulled the local law, which had been issued in reference to the discovery of the Montalbán tomb, on the grounds that it invaded the federal jurisdiction established in Article 73, Section XXV (González Oropeza, 1993).

Table 3.1
Constitutional Controversies 1918–94

CASE NO.	YEAR	COMPLAINANT	DEFENDANT	ISSUE
7	1918	Local Congress, Nayarit	Executive / Governor of Nayarit	
18	1919	Municipality of Tezuitlán	Local Congress of Puebla	Annulment of elections
35	1920	Representative of the Local Congress, Estado de México	Senate, Executive Power and Governor	Declaration of annulment of powers and naming an interim governor
2	1921	Executive	Michoacán	Legality of elections
4	1921	Enrique Moreno Ramón Martínez		Case dismissed by 8 votes to 3
4	1926	Local Congress Tamaulipas	Governor Tamaulipas	Dispute between two groups of congressmen
7	1927	Federal Executive (Attorney General)	Powers in Guanajuato	Gubernatorial election (electoral procedures were violated)
11	1930	Legislative Power, Jalisco	Executive Power, Jalisco	
2	1932	Federation	State of Oaxaca, Executive power	Governor's February 1932 'Law on Ownership and Jurisdiction of Archaeological Monuments' accused of invading federal jurisdiction
1	1936	Governor, Querétaro	State Legislature, Querétaro	Lawsuit dropped by the governor
2	1936	Municipal President, Papantla, Veracruz	State Legislature, Veracruz	Decree validating the results of local elections
3	1936	Municipal President, Villa Cuauhtémoc, Veracruz	State Legislature, Veracruz	Decree validating the results of local elections
8	1936	Durango Electoral College and state Legislature	Federal Interior Ministry (Segob) and the Ministry for War and the Navy	Incursion into the sovereignty of Durango on electoral matters. 5 Oct 1936, claim disallowed on the grounds that complainants do not represent the state
1	1939	Judges of the First and Fifth District Courts		Commercial lawsuit, 26 January 1940. First Circuit Court prohibited for legal reasons from taking on the case
46	1940	Trial Court Judge, Topia, Durango	Criminal Trial Court judge, Topia, Durango	Refusal to hear a case involving alleged metals theft, 29 Aug 1940 No grounds for the lawsuit, unanimous decision (four votes)
3	1941	State Congress, Nayarit	Executive and Judicial powers, Nayarit	1 July 1941 Court abstains from intervening on grounds that it lacks competency (17 votes to 1)
9	1941	Guerrero		Elimination of powers; substitute governor named; new elections called. 1 July 1941 (carried by 17 votes to 1)
5	1943	Congressmen XXXV Legislature, State of Mexico	Executive Power	Complainants were no longer acting congressmen since they had had their parliamentary privileges withdrawn; 27 February 1945 Case withdrawn (by 16 votes)

207	1946	Justice of the Peace, criminal branch, Saltillo	District Trial Court, Galeana, Chihuahua	Fraud and abuse of trust, 20 July 1946 No sanctions, unanimous decision (four votes)
208	1946	Justice of the Peace, criminal branch, Saltillo	District Trial Court, Galeana, Chihuahua	Refusal to proceed with instructions to carry out arrest for fraud, 20 July 1946 No sanctions for either judge; unanimous decision (four votes)
325	1946	First Judge of the First Criminal Court	Criminal Judge (Juez de Defensa Social) of Cholula	Allegations of crime and carrying firearms, 22 March 1947 No sanctions; unanimous decision (four votes)
1	1947	Governor Jalisco	Legislative Power, Jalisco	Failure to publish the legislative decree reforming Art 28, which extended the government administration to six years. Rejection of the naming of an interim Governor to replace Marcelino García Barragán 9 vs 6 votes
259	1948	Mexico City Judge (Juez XVII of the Sixth Criminal Court)	Veracruz Judge (First Trial Court Judge)	Refusal to hear a lawsuit on theft 9 July 1951
126	1949	Veracruz Judge (Trial Court, Misantala)	Mexico City's Ninth Judge (Third Criminal Court)	Refusal to proceed in cases of murder, attempted murder, and criminal association 5 Jul 1949 21 Jul 1951
1	1993	Municipality of Delicias, Chihuahua	Executive power in Chihuahua	Municipality's right to offer civil registration services; the SCJN declares the case well-founded Presented: 15 June 93 Resolved: 30 Aug 94
2	1993	Municipality of San Pedro Garza García, Nuevo León (Rogelio Sada Zambrano)	Executive and Legislative powers in Nuevo León	Freedom to administer municipal public taxes; declarations of assets and income of public servants need to be approved by Congress Presented: 28 Oct 93 Resolved: 10 Feb 97
3	1993	Municipality of San Pedro Garza García, Nuevo León	State Congress, Governor, Comptroller General, Nuevo León	Asset declarations requirements; invasion of areas of the municipality. The SCJN is competent to take on the case, but declares it to be unfounded
1	1994	Municipality of Ciudad Victoria, Tamaulipas	Executive and Legislative powers in Tamaulipas	Income and tax laws; road vehicle licensing services; law on tax coordination (for transport services) Presented: 31 Jan 1994 Resolved: 10 Feb 1997
2	1994	Municipality of San Luis Potosí	State Congress, San Luis Potosí	Invasion of spheres of influence; rejection of transfer of three pieces of land; procurement process for roadwork concessions Presented: 14 Dec 94 Resolved: 25 Feb 97 Statute of limitations ran out

SOURCE:
http://www.scjn.gob.mx/PortalSCJN/ActividadJur/ControversiasConstitucionales/ControversiasConstitucionales1917-1994.htm
The Supreme Court did not rule in any of the above controversies, bar the more recent ones involving municipalities. In each of the other cases either the plaintiff desisted or the Court rejected the case due to lack of proper jurisdiction.

In contrast, 103 constitutional controversies were registered in the first three years following the reform (1995–97). After the 1997 mid-term elections, 102 controversies were taken to the Court in just four years (1998–2000). In 2001, just after the alternation of power, 329 controversies were presented by a number of municipalities from eight different states exclusively relating to the indigenous law approved by Congress on April 2001. In 2002–03, 179 recourses were taken to the Supreme Court, while in 2004 109 controversies were resolved. In 2005, a decade after Zedillo began his process of judicial reform, 83 constitutional controversies were registered, taking the total for the 1995–2005 period to 947. In 2006–08, 399 controversies were registered while in 2009, more than 100 such cases were taken to the Court. In the 1995-2009 period, 1,450 controversies have been presented to the Court.

Table 3.2.
Number of unconstitutional actions and constitutional controversies filed at the Supreme Court (1917–2009)

	Unconstitutional actions	Constitutional controversies
1917–92		50
1993		3
1994		2
After 1994 reform		
1995	1	19
1996	10	54
1997	10	33
Total (1995–97)	**21**	**106**
1998	12	28
1999	17	37
2000	41	37
2001	40	368
2002	35	67
2003	26	112
2004	30	109
2005	39	83
Total (1995–2005)	**261**	**947**
2006	55	131
2007	173	97
2008	134	171
2009	84	104
Total	**707**	**1,450**

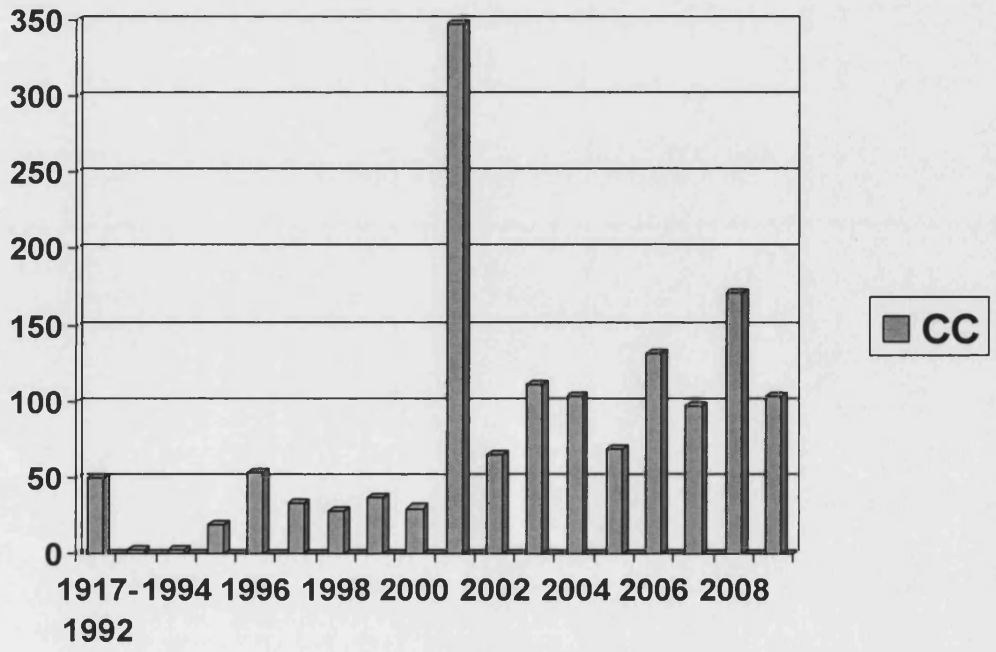
Source: Mexican Supreme Court of Justice, *Semanario Judicial de la Federación y su Gaceta*, 9a época. Informe de Labores (2001-2009), SCJN Data Bases.Actividad Jurisdiccional/Consulta de Expedientes/Textos de Engrose (http://www2.scjn.gob.mx/expedientes/)
Note: Total numbers differ from data in Alex, Portal de Estadística Judicial, Suprema Corte de Justicia, Controversias Constitucionales (http://www2.scjn.gob.mx/alex/), especially for the 2000-2005 period.

Although the mechanism of constitutional controversies existed in the past, the novelty of its use can be explained by the fact that it represents an ideal method for legally resolving disputes emerging in a more plural political scenario. Unconstitutional

actions, which are relatively new legal recourses, have also been used to a considerable degree, particularly since 1996. However, their use is complicated by strict time constraints: they have to be presented as formal cases before the Supreme Court within 30 days. Constitutional controversies, in contrast, have existed for longer and municipalities appear comfortable using them to defend their autonomy vis-à-vis state governments or even the federation, or to resolve internal political disputes that may involve taking unpopular decisions. As can be seen in Table 3.2, while 33 constitutional actions had been presented by 1998, the number of constitutional controversies was almost five times higher; there were 57 such constitutional controversies filed in 1996 alone. There can be no doubt that these legal mechanisms have become more common and even routine in Mexico.

From 2000 to 2006, the number of unconstitutional actions taken to the Court was relatively stable, on average 40 cases per year, compared with 140 constitutional controversies on average per year presented in the same period. However, it is worth noting that in 2007 and 2008 the number of unconstitutional actions tripled to 173 and 134, respectively. More than 60 percent of all these cases challenged electoral laws, while close to 20 percent dealt with fiscal issues. Overall, in the 1995–2009 period, 707 actions and 1,401 controversies were taken to the Court.

Figure 3.1
Number of constitutional controversies taken to the Supreme Court (1917–92 // 1994–2009)



In view of the high numbers of legal recourses that have been filed before it since 2000, the Supreme Court has begun to refer many cases to lower courts so that it can concentrate on issues of "exceptional interest" for the country. Such issues include cases related to the indigenous law, the construction of a new airport close to Mexico City, geographical disputes over state borders and unconstitutional actions related to electoral disputes (SCJN, April 2002, 'Comunicado de Prensa 516'). This step has clearly reinforced the Supreme Court's position as a Constitutional Court along the lines of the US Supreme Court. Indeed, as Kelman points out, "a court cannot make a decision on a policy question unless court procedures classify the policy question at issue as something appropriate for a court to hear in the first place" (1987: 118).

Parties involved in the constitutional controversies

Vertical separation of powers: the municipalities as new actors

Since 1995, municipalities have presented a significant proportion of the constitutional controversies taken to the Supreme Court. Table 3.3 shows that 80 percent of the controversies up to 1998 involved disputes between municipalities and state governments and/or local congresses. The immediate interpretation of this is that since political pluralism became a reality first at the municipal level, this level of government has been legitimated to formally use these types of recourse and is doing so increasingly. On the one hand, municipalities have been formally included among the entities with the right to access the Supreme Court to defend their jurisdiction. On the other, as opposition parties started to govern municipalities, there has been a significant increase in their legal activism. However, it could also be argued that clear weaknesses remain in the state-level regulations preserving municipal autonomy, which reflects deficiencies within the Mexican federal system.

All five controversies filed in 1993 and 1994 were between municipalities and state governments, four of them presented by northern municipalities and one by the central municipality of San Luis Potosí. The number of controversies escalated in the aftermath of the 1994 reform: 19 recourses were presented in 1995, 18 by municipalities and one by the government of Tabasco against the federation.

Seventeen of the disputes involving municipalities were against state governments. The remaining one was between a municipality (Tijuana) and the federal government over the validity of the 1995 national budget, specifically through the budget line known

as *Ramo 26*, formerly PRONASOL and later called Ramo 33, discussed below. Sixteen cases involved northern municipalities; the other two dealt with a political conflict in Tepoztlán, in the central state of Morelos.

Table 3.3 Parties Involved in Constitutional Controversies (1993–2000)

	Mun vs State	Mun vs Fed	State vs Fed	State vs Mun	Fed vs Mun	Fed vs State	Powers within a State // Since 99 powers within the Fed	State vs State	Total
1993	3								3
1994	2								2
1995	17	1	1						19
1996	54	1	1		1			1	57
1997	20	3	3	3			6		36
1998	18*	1		2			3	3	27
Total	109 78%	6 4.3%	5 3.5%	5	1 0.7%		9 6.4%	4	139
1999	24		9			1	2 1		37
2000	23	1	2	1		1	7		35** +2=37
Total	47 63.5%	1 1.3%	11 14.8 %	1		2 2.7%	10 13.5%		74

Source: Author's analysis based on figures from the CD-Rom 'Unconstitutional Actions and Constitutional Controversies' (SCJN, 2000)

* Two of these recourses were presented by the municipality of Tultepec in the Estado de México initially against the municipality of Cuautitlán (CC 19 & 20/98), but were later reformulated against the state government and the local congress. ** Two recourses were immediately dismissed as they were presented by actors who were not legally recognised to use this mechanism—recourse 24/00 was presented by the Governor of Morelos who at the time had taken a leave of absence (*con licencia*), and 26/00 was presented by a local party representative in Chiapas.

A similar pattern can be found in 1996 when only one of the 57 disputes was between a municipality (Mérida) and the federation, again over *Ramo 26* (CC 2/96). The first claim to be presented by the federation against a municipality (Guadalajara) took place in 1996, over the Savings Protection Law ("*Ley de Protección al Ahorro*", CC 56/96).[48] The remaining disputes were all between municipalities and state governments, including two different blocks of 22 controversies from diverse municipalities in Oaxaca against the PRI state government (see Chapter 4). Three cases were immediately ruled unfounded on the grounds that they had been presented by parties that lacked constitutional authority to file the legal recourse.

[48] The controversy rested on the decision by the municipality of Guadalajara to establish certain conditions to safeguard the banking sector. The federal government claimed that this area was an exclusive domain of the federation. Indeed, the Court ruled in favour of the federation, arguing that although Article 115 allowed municipal authorities to regulate public security issues within their jurisdiction, regulation of the protection and security of banks was the domain of the federation.

Two further disputes between a municipality and the federation were registered in 1997. Tuxtla Gutiérrez once again challenged the annual budget (1997) that determined the formula for distributing *Ramo 26.* The municipality of Berriozábal, also in Chiapas, presented a controversy against the President, the Senate and the state government challenging the appointment by the President of Julio César Ruiz Ferro to replace governor-elect Eduardo Robledo.[49] That same year Quintana Roo challenged Campeche for failing to respect the state border, in what was the first constitutional controversy between different state governments.

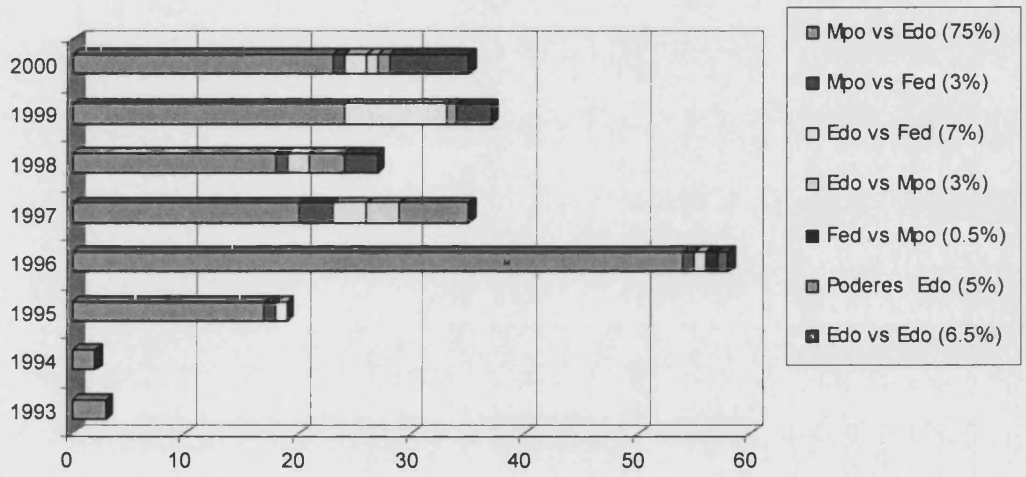
Again in 1998 more than half (18) of the controversies presented were between municipal authorities and state governments. Another involved a dispute between the municipality of San Nicolás Ruiz in Chiapas and the federal and state governments (CC 21/98, 5 August 1998) in connection with a military operation aimed at dismantling four Zapatista autonomous municipalities (SIPAZ, 1998). The case was immediately dismissed. Of the remaining controversies, two were submitted by the governments of Oaxaca (CC 2/98) and Puebla (CC 23/98) against different municipalities; three were between two states regarding geographical limits (CC 1 and 3/98, Jalisco and Colima); and two involved disputes among different municipalities (CC 19/98 and 20/98). The latter two recourses were presented by the municipality of Tultepec in the Estado de México, initially against the municipality of Cuautitlán regarding a housing project which was interpreted as a geographical dispute, but later reformulated in several controversies against the state government and the local congress.

As expected, given the more plural composition of the lower chamber and state governments since 1997, each year new actors have become involved in the use of constitutional controversies. In 1999, the lower chamber of the federal Congress (CC 26/99) and the Federal District initiated legal challenges against the federal executive (CC 5/99, 35 and 36/99). That same year nine controversies between state governments and the federation were registered. Three of these are particularly interesting and will be discussed in Chapter 4: the controversies involving the local judiciaries of Guanajuato (CC 3/99) and Baja California (CC 8/99) in disputes over economic resources and autonomy; and the dispute over vehicle registration in Chihuahua. In the same category are two recourses presented by the governments of

[49] Robledo was inaugurated in office on 8 December 1994 but in the context of the Zapatista uprising separated "temporarily" from the governorship two months later. In April 1996, Robledo was appointed Mexican Ambassador to Argentina and President Zedillo announced that he would be replaced by Ruiz Ferro. Nicolás Acero, the PRI municipal president who presented this legal recourse against the federation, was elected in October 1995 but was removed from office in December 1996 on corruption charges.

Nayarit (CC 13/99) and Coahuila (CC 34/99) challenging the federal Congress for creating a special commission to oversee that no federal resources were diverted to local electoral campaigns. It is interesting to note that the first recourse presented by President Zedillo against a state government concerned Chihuahua (regarding a local public security regulation, CC 7/99) where the state governor was from his same party, the PRI. Important political disputes were also resolved through the mechanism of constitutional controversies, as is clearly shown by the case of Morelos (CC 21/99), discussed in Chapter 3.

Figure 3.2
Parties involved in constitutional controversies (1993-2000)



In 2000 once again most controversies were presented by municipalities against state governments. Several controversies were filed against the government and local congress of Veracruz for issuing a new local Constitution (CC 15-19/00). One controversy was presented by the municipality of Hermosillo in Sonora against the federation, but was dismissed (CC 36/00). Seven controversies involved disputes among different powers within a state, including the first case in which a *Delegación* (local council) in the Federal District challenged the local executive (CC 37/00). Similarly, two recourses were taken to the Court by the head of the Federal District, Rosario Robles, against the federal congress and executive power (CC 11 and 32/00); the response to one of them was a further controversy presented by the federal executive against the Federal District regarding the Education Law (CC 29/00).

In sum, as can be seen from Table 3.3, most of the controversies were presented by the lowest level of government (municipal authorities) against higher levels of government (state governments and even the federation). The vast majority were

presented by municipal authorities against state governments, almost 80 percent in 1995–98, declining to 64 percent in the 1999–2005 period. This change is closely related to the increase in recourses taken to the Court by (mainly opposition-controlled) state governments against the (still PRI-controlled) federation. The study also identified an increasing number of disputes among different powers within the states, which had also become more plural in composition by 1999.

Resolution of constitutional controversies: Founded and unfounded cases

Up until 1998, the success rate for constitutional controversies was very low, only 6 percent (12 cases). Among the cases that were deemed to be well-founded in the 1995–98 period was the controversy presented in 1996 (CC 56/96) by the federation against the municipality of Guadalajara, which resulted in the Court annulling the municipal regulation. The Supreme Court also gave a favourable ruling in the case brought by the municipality of Río Bravo (CC 19/95) against the state government in 1995, establishing that public security and transit are areas of the exclusive competency of the municipality (see Chapter 4).

Table 3.4. Resolution of constitutional controversies (1995–2005)

	FOUN	PAR FOUN	UNF	DISMISS	REJECT	OTHERS	TOTAL
1995	1	0	9	5	2	2	19
1996	1	1	26	26	2	0	56
1997	7	1	9	12	3	4	36
1998	3	3	3	11	7	2	29
1999	1	3	3	17	10	3	37
2000	6	6	5	17	2	1	37
2001	9	6	2	15	6	0	36 332
2002	11	5	16	19	16	0	67
2003	10	5	15	63	16	3	112
2004	12	8	36	31	19	3	109
2005	14	6	9	28	26	0	83
TOTAL	66	44	133	244	109	18	614

Post 1997, the Supreme Court has ruled in favour of the claimant in an increasing number of cases, which no doubt reflects experience gained in presenting constitutional controversies. In 1997, the Court decided in favour of the claimant in seven controversies. Three were between municipalities and the state government (CC 27/97; 32/97 and 35/97), one between the state executive and legislature of Colima (CC 36/97) and two favoured the judiciary of Jalisco in challenges against the state legislature regarding two impeachment procedures against local judges (CC 19/97 and 26/97). In CC 32/97, the Court ruled in favour of the municipality of Valle de Bravo and

against the state congress's resolution to strip the municipal president of his mandate (SCJN, 2000: 155–56). Since then the Supreme Court also ruled in favour of the claimant in a number of crucial cases, including the first three controversies presented by the opposition-dominated federal congress against the executive—one against former President Ernesto Zedillo and two against former President Fox—and a challenge by the PRD governor of the Federal District against President Fox.

In the 1995-2005 period, 100 cases were ruled founded or partially founded, while 133 were unfounded; 244 were dismissed and 109 were rejected. As shown by the data, up until 1998 68 percent of cases were deemed to be unfounded, meaning that the Supreme Court had analysed the controversy but did not rule in favour of the claimant. Some 13 percent of cases were dismissed, which means that the controversies were not analysed in depth and there was no final ruling. Bearing in mind that close to 90 percent of rulings have been unanimous, it appears that in many cases the claimants failed to present a solid constitutional case. Yet even more relevant than the quality of claim presented might be the criteria set by the Supreme Court justices for interpretation of the controversies they have resolved. As will be seen in the next section, the criteria employed shifted as more controversies were presented. This was certainly the case in the challenge against the power of Congress to approve annual municipal budgets on the grounds that it violated municipal autonomy as established in Article 115. To begin with the ruling on the case was unanimous, but two judges subsequently changed their opinions (CC 13/95).

A study published by the newspaper *Reforma* in August 2005 shows that the percentage of Supreme Court decisions that were split soared in the first half of 2005 to 63.3 percent, which is three times as many as the average of the previous seven years. Half of the 69 split votes in 2005 were issued by a majority of fewer than seven judges. There have been fewer unanimous rulings since Chief Justice Mariano Azuela replaced Genaro Góngora in 2001, when approximately one-quarter of rulings were split. The Court's discussions have been made public since January 2005. According to Omar Guerrero, a well-known private lawyer "since the sessions are public one gets the impression that the judges feel they have to study the issues because they can't remain silent and be shown up for lacking knowledge."[50]

[50] Author interview with Omar Guerrero, 23 October 2005, Mexico City.

Finally, it should be noted that while the normal procedure for resolving constitutional controversies generally lasts three months, it is taking as long as 15 months to resolve crucial issues that require prompt resolution. In the 1995-2009 period, the average time taken to resolve controversies was 452 days (SCJN, Annex 1). According to critics of the 1994 reform, the mechanism has therefore proved quite unsuccessful given that the intention was that it would cover the defects (slowness) of the amparo suit. In order to rule over the constitutionality of different acts, it was necessary to accelerate and facilitate procedures, to guarantee that the resolutions would have general effect and to simplify the task of presenting the mechanism. Yet, according to Arteaga, the revamped constitutional controversy mechanism has been plagued by the "disease of bureaucratisation" (1999:1372)[51]. In fact, some of the sluggishness that has been seen in practice was actually written into the reform. Longer periods are allowed for presenting, countering, responding to and expanding the challenge, and even for responding to an expanded claim. The reform also created different recourses for appealing against the rulings (*causales de improcedencia*) and for dismissing complaints on the grounds that they lack legal foundation (*sobreseimiento).*

Categorisation of constitutional controversies: fiscal federalism

In this section, I offer a categorisation of the controversies presented up until 2005. As mentioned above, the controversies are grouped into eleven areas. In analysing the types of controversies I am able to show that most relate to fiscal and budgetary issues, pertaining in many cases to the allocation to state governments of funds assigned under "new federalism" for regional and social development through budget line *Ramo 26.* The nature of the controversies related to exclusive competencies and jurisdictional disputes is so varied that I do not analyse these in depth. I found that many of the claims involving the alleged invasion of spheres of competence by different levels of government were not properly made. Rather, the motivation for many of these particular controversies was political. There can be no doubt, however, of the expanding role of the Supreme Court in responding to intergovernmental disputes.

As discussed earlier, the Mexican President has enjoyed tremendous influence over state and local governments through his control of the federal budget, on which they depend for most of their income. Mexico's federal budget is divided into *Ramos* or budget lines, which generally correspond to a specific investment or expenditure programme. Up until 1997, federal assistance was distributed among the states

[51] Also author interview with Arteaga 18 May 2001, Mexico City.

through two main sources: federal allocations *(participaciones federales)* and decentralisation agreements *(convenios de descentralización).* The most important of these were *Ramo 26*, for social policy and poverty alleviation (via a programme called *Solidaridad* in 1989–95) and *Ramo 28*, which corresponded to the allocations to states and municipalities. *Solidaridad's* budget line was integrated into each state's Social Development Agreement (*Convenio de Desarrollo Social*, which replaced the earlier *Convenio Unico de Desarrollo*, CUD), while all other federal investment after 1989 became the *Programa Nacional* (Ward & Rodríguez, 2000:104–07). These individual development agreements were discretionary mechanisms to fund state and local governments, signed annually between the federal government and each state.

Under the Fiscal Coordination Law (LCF), federal assistance was distributed among the states through the General Participation Fund and the Municipal Development Fund according to a formula linked to poverty indicators in states and municipalities. According to the law, which was reformed in 1990, states must distribute among their municipalities at least 20 percent of the allocations from the first fund and 100 percent from the second (Rodríguez, 1995: 154). The LCF was reformed again in 1998 as part of the drive to reignite federalism, with the creation of *Ramo 33* (*Aportaciones Federales para Entidades Federativas y Municipios*, formerly called *Pronasol*, relabelled *Superación de la Pobreza* and later called *Ramo 26*).[52] Whereas prior to 1998 only half of federal funds were allocated according to distribution indicators, under *Ramo 33* more than 90 percent is allocated to the states "without any type of discretionality, based on clear regulations approved by the federal Congress" (*Presidencia*, 2000). Following the 1998 reform, more than 40 percent of *Ramo 33* resources were allocated to the most populous states, which also have high levels of poverty (Chiapas, Guerrero, Hidalgo, Estado de México, Oaxaca, Puebla and Veracruz), while 65 percent of the resources allocated under the poverty fund were allocated to the ten states with highest levels of poverty. In sum, the main aim of this reform was to give judicial security to the lower levels of government, since the decentralisation of funds was established in law and no longer the subject of discretional agreements. According to Zedillo, almost 70 percent of the total resources

[52] *Ramo 33* was originally made up of five different funds: *Fondo de Aportaciones para la Educación Básica y Normal* (FAEB), *Fondo de Aportaciones para los Servicios de Salud* (FASSA), *Fondo de Aportaciones para Infraestructura Social* (FAIS), *Fondo de Aportaciones para el Fortalecimiento de los Municipios y del Distrito Federal* (FAFMyDF) and *Fondo de Aportaciones Múltiples* (FAM). With the 1998 reform, two more funds were included: *Fondo de Aportaciones para la Educación Tecnológica y de los Adultos* (FAETA) and *Fondo de Aportaciones para la Seguridad Pública de los Estados y del Distrito Federal* (FASP). The LCF and the *Bases de Coordinación Administrativa and Intersecretarial* introduced specific transparency rules, which require the Ministry of Finance to publish in the *Diario Oficial* each January the amounts and schedule of federal allocations to the states (Escalante, 2001).

in *Ramo 26/33* were to be distributed directly to the municipalities. By promoting more equitable and transparent distribution processes, half of this amount was to be allocated by the state governments to the municipalities for social and development programmes while the other half was to be incorporated in the annual Social Development Agreement.

Table 3.5 Categorisation of constitutional controversies (1995–2005)

	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005
Allocation of public resources	5	25	4	8	13	5	6	28	43	17	19 **173**
Responsibility of public servants	5	1	7	2	4	3	7	5	12	12	10 **68**
Functioning and organisation of institutions	1	22	1	0	1	3	4	1	7	27	0 **67**
Geographical issues	1	0	3	7	6	5	0	2	10	10	7 **51**
Appointments	1	2	4	3	1	2	4	2	4	8	18 **49**
Administrative justice	2	2	4	3	7	4	2	5	6	6	5 **46**
Municipal autonomy	4	1	3	2	1	1	10	2	3	4	4 **35**
Planning, infrastructure and public works	0	2	8	2	2	4	1	5	0	5	4 **33**
Internal administrative agreements	9	0	1	0	1	1		6	4	3	1 **26**
Invasion of spheres of competence	0	0		1	0	0	0	0	3	10	0 **14**
Others	0	1		1	1	9	5	11	20	7	13 **68**
TOTAL	**19**	**56**	**37**	**29**	**37**	**37**	**39** ***329**	**67**	**112**	**109**	**83**

Given the context, it is not surprising that most controversies have been related to the proper allocation of public resources to lower levels of government. Numerous municipalities and state governments have presented legal complaints about the proper allocation of the funds under *Ramo 33*, according to which the allocations should have been legally set rather than influenced by partisan politics. Table 3.4 shows that fiscal controversies account for the highest number of cases presented against state and federal governments (173). Although closely related, I decided to separate out those controversies that relate more closely to internal budgets and

remunerations within states and municipalities or to administrative municipal autonomy over tax collection, which according to the constitution are the responsibility of these lower levels of government.

A few controversies have been filed against local judicial institutions and regulations. Particularly interesting is the case of Ciudad Victoria, which presented a controversy against the reforms to Article 124 in which the local Tribunal of Justice was empowered to oversee not only civil conflicts but also constitutional ones (CC 7/95). State judiciaries in Jalisco (CC 10/98) and Guanajuato (CC 17/98) filed controversies to demand greater autonomy from the executive in appointment decisions for local justices. Another subject of controversies was the need to enforce human rights recommendations (CC 18/98). The category "exclusive competencies" also differs from the purely financial claims since it deals with other broader areas of municipal autonomy, generally in opposition to state governments.

It is important to note that most fiscal disputes were either dismissed or decided in favour of the higher level of government. It is clear that, at least up until 1988, the presentation of genuine and well-founded cases involving incursions into the jurisdictions of other levels of government was problematic, although several more recent cases were more successful. Thus, many disputes had and still have a political tone. Particularly relevant is the case of Tabasco where *Ramo 26* funds were allegedly misused for electoral purposes. The federal Attorney General found evidence that the PRI candidate for governor, Roberto Madrazo, spent 50 times the legal limit on his 1994 campaign. The federal Supreme Court debated whether the federal government was empowered to conduct such a probe of Tabasco state matters, deciding that the Tabasco State Attorney General was the proper authority to investigate the matter. The investigation was subsequently turned over to that agency, which was dominated by the PRI and ruled that Madrazo had indeed violated spending laws, but would not be punished since no punishments for "electoral crime" were specified in the state penal code. The federal lower chamber of congress tried to reopen a federal probe in 1997, but was stalled by a controversy (CC11/95) presented by Governor Madrazo and the president of the local congress who argued that the federal congressmen had neither the jurisdiction nor the right to investigate how a local congress spent its resources. The Supreme Court made no pronouncement on whether the funds had been misused, but in November 1997 ruled (CC33/97) that it was lawful for congress to investigate the possible misuse of federal funds allocated under the 1997 "combating poverty" budget line, and that doing so would not violate Tabasco's spheres of competence.

Another relevant political case focused on Morelos governor Jorge Carrillo Olea who in 1998 was charged with corruption, incompetence and having links to drug barons. Carrillo Olea, a retired army officer from the PRI, was roundly criticised by the federal Human Rights Commission, the local legislature, opposition parties, the church and business leaders, and in mid-May he finally succumbed to pressure from Mexico City to step down. In August 1999 a constitutional controversy (CC 21/99) was presented by the PAN-dominated state congress against the Chief Justice of the local judicial tribunal and the local judicial tribunal for their refusal to keep the "governor on licence" under house arrest and for declaring the impeachment process invalid. In February 2000 the Supreme Court decided unanimously that state governors are accountable for their actions and agreed to the proposal by the local congress to impeach Carrillo. The Morelos constitution was the only state-level document that protected governors from impeachment procedures. Both rulings clearly show how the Supreme Court's intervention put an end to a situation of political deadlock, setting important precedents for future inter-governmental disputes.

Regional analysis: northern vs central region

This section offers a regional analysis of the constitutional controversies presented and resolved in the 1995–98 period. It shows that some states have been much more legally active than others: particularly active were municipalities from the northern part of the country, where opposition parties, generally the PAN, had their first experiences of governing at the local and state levels. In the case of the PAN-governed municipalities, Nuevo León leads field in terms of willingness to use legal recourses to defend their attributions and powers, followed by Chihuahua and Jalisco. Opposition-governed municipalities in states still governed by the PRI, such as Puebla, Tamaulipas and Oaxaca, also show a notable level of legal activism. More recently, the first PRD governorship has also presented different controversies in defence of the jurisdiction of the Federal District vis-à-vis the federal government.

The states that presented the highest number of constitutional controversies before the Supreme Court between 1995 and 1998 were Tamaulipas (18); Nuevo León (12); Puebla (9); the Estado de México (8); Chihuaha (5) and Jalisco (5), followed by states such as Chiapas, Morelos, Michoacán and Sonora with less than five recourses in each. Most of the controversies were presented by strategic urban municipalities, generally those dominated by the main opposition parties. From this first set of states I selected five to analyse in the following chapter (Tamaulipas, Nuevo León, Puebla,

Estado de México and Chihuahua). I also included Baja California because it was the first state to be governed by an opposition party and also because Tijuana was the first municipality to present a controversy against the President, regarding the 1995 expenditure budget. Finally I selected the Federal District because of the relevance it acquired particularly after 1997 when it started to be governed by the PRD and became more legally active.

Table 3.6 Regional analysis: states and municipalities that present controversies, by state

	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005
Oaxaca		45		4	1	1	2	7	5	4	1
Estado de México			4	4	5	7	6	16	4	10	8
Nuevo León	8		3	1	4	7	3	8	6	1	1
Sonora	1		2		4	1		4	1	25	0
Jalisco			2	3	2	2	2	2	5	7	8
Morelos	2		1	1	3	3	0	0	5	4	3
Tamaulipas	5	3	5	5	2	0	1	0	5	0	1
Federal District					1	2	2	9	7	4	2
Chiapas		1	3	1	2	1	1	0	2	2	0
Federal Powers		1			2	1	2	2	5	7	4
Veracruz				2	2	6		0	11	4	3
Puebla		1	4	5				0	0	1	2
San Luis Potosí				1	1		1	2	3	1	0
Baja California	1				2			1	1	4	6
Tabasco	1		1					0	0	3	1
Chihuahua	1	1	2		1		3	1	6	8	1
Yucatán		1	1					0	2	5	4
Michoacán		1	2				1	0	2	2	0
Quintana Roo			1					0	4	5	0
Aguascalien-tes			1			1	1	1	5	1	1
Guanajuato			1	1	1			1	0	0	2
Colima			1					1	1	1	6
Guerrero				1			1	0	7	3	7
Nayarit					1	1		1	14	2	3
Coahuila					1			0	0	0	3
Hidalgo					1		4	1	0	2	8
Tlaxcala						2	3	1	6	1	1
Zacatecas					1	2	2	2	5	1	1
Querétaro							1	0	0	0	1
Durango							1	3	0	2	0
Campeche							1	0	0	0	1
Others		1	2				1	1	2		0
TOTAL	**19**	**56**	**36**	**29**	**37**	**37**	**41 368**	**67**	**112**	**109**	**83**

In terms of the most legally active municipalities following the 1994 judicial reform, Río Bravo made use of 12 legal recourses, PAN-governed Monterrey presented six controversies; Ciudad Victoria in Tamaulipas and the municipality of Chihuahua each presented four cases, and the northern San Pedro and San Nicolás Garza García in the state of Nuevo León each presented three cases.

Río Bravo, discussed in more depth in Chapter 4, presents an interesting case, since the legal route for defending the municipal jurisdiction was pursued by successive governments led by two different opposition parties. From 1992 to 1995, while governed by the PAN, Río Bravo filed two controversies against the state government (CC 14/95 and 19/95). The Supreme Court ruled in favour of the second of these, which challenged the validity of local Article 91 on the grounds that public security and transit policies are the exclusive domain of the municipalities (CC19/95, 5 December 1995). The Supreme Court did not rule favourably in any of the ten controversies presented by the Río Bravo municipal government during the two consecutive periods since 1995 when it was controlled by the PRD. One of the issues in question—the Planning Law and the distribution of federal resources under *Ramo 26*—was the subject of a separate but simultaneous claim by PAN-governed Tampico in May 1996, which was also unsuccessful.

Partisan legal activity: opposition contestation against PRI regime

In this section, I establish a link between the actors involved in the constitutional controversies and their political parties to test the main hypothesis of this chapter: that behind most of the controversies is a clear conflict between opposing political parties over resources and powers. My analysis indeed demonstrates that these were disputes between rival parties, mainly presented by opposition local and state governments against a different party occupying a superior level of government, most commonly PAN- and PRD-controlled entities in opposition to PRI-controlled state and federal governments.

Table 3.7 shows that municipalities governed by the PAN presented the highest number of controversies against PRI state governments. Next were the PRD municipalities, also against PRI state governments. It is interesting to note that five municipalities governed by the PRI filed controversies against the PAN state government in Chihuahua. Even more notable is the fact that all five of the controversies presented by municipalities against the federation were governed by the

PAN; the two states that brought challenges against the federation were also controlled by the PAN. These cases are discussed in detail in Chapter 4.

Table 3.7 Political parties that presented constitutional controversies

	PAN	PRI	PRD	Judiciary	Other parties	No party	Unknown	Other	TOTAL
1995	15	3		0	0	0	1	0	19
1996	15	4	32	0	0	1	4	0	56
1997	12	14	5	3	0	2	0	0	36
1998	8	3	12	3	1	1	0	1	29
1999	10	13	10	1	0	2	0	1	37
2000	17	9	6	2	1	0	1	1	37
2001	17	6	2	5	1	1	2	2	36 332
2002	36	10	15	1	3	0	0	2	67
2003	50	25	17	6	10	0	0	4	112
2004	56	26	15	4	2	0	0	6	109
2005	42	16	12	9	0	0	0	4	83

The PAN-governed municipalities that filed the lawsuits included urban cities and capitals in Nuevo León, Baja California, Puebla and Tamaulipas. In Nuevo León, the prosperous municipalities of San Nicolás de los Garza, San Pedro Garza García and Santa Catarina, which had been governed by the PAN since 1991, and the capital, Monterrey, controlled by the PAN since 1994, all pursued legal defences of their respective local jurisdictions against the PRI state government until 1997, when the PAN won control of the state. Most of the cases referred to municipal autonomy in administrative matters, in particular control over pay for local employees, annual tax declarations and dismissal procedures. Although most of the recourses were unsuccessful, the Supreme Court ruled partially in favour of San Nicolás de los Garza's claim against the Fiscal Coordination Law and the validity of a number of official documents that had been approved by the PRI state government (*Oficios* 531/97 Y C-3-785-97, CC 18/97, Supreme Court, June 2001).

In Baja California, as discussed in Chapter 2, the *amparo* suit (4521/90) presented by the municipality of Mexicali against the federation in 1990 was crucial in paving the way for the involvement of municipalities in constitutional controversies. Five years later the municipality of Tijuana, which has been governed by the PAN since 1989, presented the first recourse (CC 6/95, 9 June 1995) against the federation, regarding the 1995 Social Development Agreement between the governor and the federal executive. Although the Court ruled in favour of the federation, the municipality set an important precedent by opposing the involvement of the Social Development Ministry in matters

that, they argued, should be decided independently by the municipality in accordance with Article 115, section IV.

In Puebla it was PAN-controlled urban municipalities, including the capital city, which adopted a confrontationist attitude against the PRI state government. Legal activity began in September 1996, when the capital, Puebla, and other PAN municipalities opposed the creation of a system to operate water services (CC 51/96 and 52/96), as well as the so-called "Ley Bartlett", which altered the formula for distributing *Ramo 33* fiscal resources to municipalities so as to favour poorer municipalities, which tended to be governed by the PRI, over wealthier urban cities controlled by the PAN (discussed in detail in Chapter 4). The PAN claimed that the local congress was acting unconstitutionally by circumventing the national laws for the allocation of fiscal transfers to municipalities (CC 4/98 and 6/98). In February 2000, the Supreme Court ruled that the state legislature and the executive had asserted their rights to determine the nature of revenue sharing in the state and had not acted improperly, but that the Planning Committees involved did affect municipal jurisdiction (SCJN, 1998: 219–20). Most of the other disputes filed by authorities in Puebla were presented by the state government against PAN-governed municipalities in connection with the urban development programme known as Angelópolis, designed by then Governor Manuel Bartlett. Most were deemed to be unfounded.

In Tamaulipas it is notable that although the state remains a PRI stronghold, opposition parties have gradually won more municipalities and have consolidated their political presence in the most populated areas. Important cities that were governed by the PAN in the 1992–95 period, such as capital Ciudad Victoria, Río Bravo, and industrial centre Tampico (1995–98), presented recourses before the Supreme Court against the PRI state government. For instance, the PAN government in Ciudad Victoria presented three such controversies, the first challenging the income tax law on the grounds that it violates municipal autonomy (CC 3/95, 25 May 1995); the second challenging aspects of municipal revenue streams such as licences for selling alcohol as well as municipal authority to regulate police services (SCJN, CC 5/95, 8 June 1995); and the third opposing local judicial reforms that empowered the State Tribunal to decide not only on civil, but also on constitutional conflicts between different levels of government (CC 7/95, July 1995). The Supreme Court ruled unanimously in favour of the state government in all three cases.

The case of the Federal District, analysed in depth in Chapter 4, provides a good illustration of the argument that opposition governments have been crucial in reinforcing an authentic federalism, on occasion through the increasing use of the law. In 1997 Cuauhtémoc Cárdenas was elected governor of the Federal District, the first governorship to be won by the centre-left PRD. Since then relations between the PRD government of the capital city and the federal government have been strained, increasingly so after Andrés Manuel López Obrador won the local election in 2000. Among the most problematic issues are the budget allocated to debt, federal spending cuts, the Fiscal Coordination Law and the withdrawal of revenue-sharing with the Federal District from 1999 onwards. During the period in question the PRD governments in the Federal District presented five constitutional controversies before the Supreme Court. Most of the controversies related to the demands by the three successive PRD governors—Cárdenas, Rosario Robles and López Obrador—for an equal allocation of federal resources. Another interesting case relates to the Education Law presented by Robles's administration and approved by the PRD-dominated local Assembly on 8 June 2000. After more than a year of discussions, the Supreme Court ruled unanimously that the Legislative Assembly of the Federal District does have constitutional powers to legislate over education, clearly determining the Federal District's attributions in the federal context (SCJN, 16 November 2001).

During López Obrador's administration, a renewed source of conflict with the federation focused on the presidential decree imposing a "daylight saving summer timetable" (CC 5/2001). The Court ruled that President Vicente Fox had misused his constitutional attributions specified in Constitutional Article 89, Section I, and had overstepped into the congressional sphere (SCJN, Comunicado No. 444, 4 September 2001). For López Obrador this ruling proved that "the Court is not entirely subordinated anymore to the executive, as happened previously" (*La Jornada*, 7 September 2001: 5). In 2001, López Obrador's government presented another legal recourse before the Supreme Court against President Fox, challenging the decision to build a new terminal of Mexico City's airport in Texcoco (SCJN, 4 December 2001). Even if in the final analysis these cases are not about substantive issues or rulings go against the claimants, they clearly show the increasing use of the law to determine a wide variety of issues with the aim of improving personal and political prospects of certain politicians or policies.

Horizontal disputes have emerged within the Federal District since 2000, when a more plural local Assembly and PAN leadership in several *delegaciones* (local councils) were elected. The local Assembly filed a lawsuit against the PRD-controlled executive for not

applying the compulsory *SUVA* car insurance in the metropolitan area. A second constitutional controversy against López Obrador's government was presented by three of the six PAN heads of *delegaciones* in the Federal District, over the validity of an agreement on social communication (SCJN, 1 April 2002). Other claims presented by the PAN-led *delegaciones* covered issues ranging from the use of partisan colours on official documents, the prevention of a preparatory (senior secondary) school in the Colonia del Valle from operating, and the devolution of the administration of Chapultepec Park. Many of the disputes appear to be political in tone rather than constitutionally based (see Chapter 4 for more detail). My analysis of these cases shows how the Court has become a sort of "super-referee" that is increasingly being used to resolve political disputes between rival parties.

In sum, political competitiveness among the different branches and levels of government has revitalised the issue of federalism and the separation of powers. Since the 1994 reform, the legal route has been increasingly used to defend specific jurisdictions. Gradually, more actors have used constitutional controversies and have gained experience in presenting solid constitutional cases to defend their jurisdictions against competing government powers. While in the 1995–98 period few cases were decided in favour of the claimant, this pattern has begun to change as more cases have been declared well-founded. In the last part of this chapter, I discuss an important feature of the horizontal separation of powers: the relationship between the federal Congress and the executive.

Horizontal separation of powers: disputes between Congress and the executive

Since 1997, when the PRI lost its majority in the lower chamber, not only has Congress fundamentally changed its traditional rubber-stamping attitude towards the executive but it has also become much more active in legally defending its constitutional powers. This section looks at three of the controversies presented by the federal Congress against the executive over the Fobaproa bank rescue, the electricity decree and the presidential decision to exempt the beverage industry from taxes.

First, in September 1999, the lower chamber presented a recourse (CC 26/1999) against the executive power demanding full disclosure of information about the trust fund operated by *Banca Unión* in connection with the bank rescue agency (*Fondo*

Bancario de Protección al Ahorro, Fobaproa).[53] Almost a year later, the Supreme Court unanimously ruled in favour of the opposition-dominated lower chamber in its interpretation of Articles 73 and 74. The ruling forced the President to give the information required to the legislature within 30 days (SCJN, 24 August 2000). This case was historic because it was the first resolution against the President (Semanario Judicial, Novena Epoca, 2000). As part of the ruling, the Supreme Court Judges issued six new jurisprudence texts reinforcing the jurisdiction of the legislature, including a constitutional mechanism of control over the executive regarding loans which gives Congress full autonomy to recognise and pay the national debt. The Court also established that "banking secrecy" should not be an obstacle for the prosecution of illicit acts or the supervision of financial institutions. According to Justice Sánchez Cordero, the Fobaproa ruling is probably still the most important to have been issued by the Court in the case of a constitutional controversy because it is about "the autonomy of the Court and the independence of Congress." She said "Zedillo abided by the ruling, arguing that the Court's decision was necessary',"[54]

After the 2000 presidential elections, for the first time in Mexico's history the Congress in plenary—the PRI and PRD factions in both lower and upper chambers, through the Permanent Commission—presented a controversy against the executive (CC 22/2001, 4 July 2001). This recourse demanded that the presidential decree announced on 24 May 2001 relating to secondary legislation regulating the electricity sector (*Reglamento de la Ley de Servicio Público de Energía Eléctrica*) be declared invalid. The decree authorised the Energy Ministry to modify the percentage of excess capacity that independent generators could sell to the Federal Electricity Commission (CFE) without the need for public auction. According to the Permanent Commission, President Vicente Fox's decree violated constitutional Articles 73 and 89, which clearly establish that Congress has exclusive power to modify laws or regulations in this area.[55] The

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[53] Fobaproa was a government-sponsored trust fund created in 1990 under the Law of Credit Institutions. In 1995, the Treasury Ministry (SHCP) and Mexico's central bank activated Fobaproa to provide "preventive support" by absorbing bad loans made by banks and businesses. This was in response to the 1994 Tesobono collapse and the flight of USD 30 billion from Mexico's banking system. Fobaproa gave the banks 552 billion pesos in loan guarantees in an attempt to inject liquidity into an ailing financial sector. Author interview with Edgar Camargo, Economist for Latin America for Merrill Lynch, 1 September 2000, Mexico City. The information requested included all those trusts with expiry dates up to 30 June 1998. It should be noted that it was only the lower chamber which had an opposition majority, since the Senate was still controlled by the PRI in the 1997–2000 period.

[54] Author interview with Justice Sánchez Cordero, Mexico City, 4 December 2009.

[55] Many sectors in Mexico have been fiercely opposed to ending the state's monopoly of the energy industry. Electricity was nationalised in 1960, partly to rescue struggling private companies. Since then, nationalists have tried to link this to the expropriation of foreign oil companies in 1938 by President Lázaro Cárdenas. In this context, changing the state's role would require changing the constitution. During his administration, President Ernesto Zedillo tried to part-privatise electricity but gave up under a hail of

Court had a crucial issue in its hands and finally ruled that the constitution barred the President from issuing decrees affecting this sensitive area (SCJN, 25 April 2002). The Court was divided in its final ruling; the "last-minute" vote by Justice Olga Sánchez Cordero, the only woman on the bench, gave the eight votes needed to decide the case against the executive.[56] According to Magaloni and Sánchez (2006: 3), the Court's decision resulted in the defeat of President Fox's attempt to promote private investment in the electricity sector and revived the economic nationalism embedded in the constitution that was drafted during the autocratic PRI era.

In 2002, Congress presented a legal recourse against President Fox's decision to suspend a 20 percent tax on beverages made with high-fructose corn syrup—most of which is imported from the United States or produced in Mexico by US manufacturers—for a period of six months from 5 March 2002 (SCJN, CC 32/2002, 2 April 2002).[57] The recourse demanded the invalidation of the presidential decree in which, Congress argued, the president had invaded, once again, its sphere of competence by revoking the fiscal reform approved by Congress in December 2001. By exempting from the tax only beverage producers who used sugar cane, the fiscal reform had been aimed at helping the domestic sugar cane industry, which had struggled since the implementation of the North American Free Trade Agreement (NAFTA).

The PRD bench in Congress led the motion to take the case to the Supreme Court and was supported by all of the other parties in Congress, apart from the PAN (with 255 votes in favour, 198 against). The case demonstrates how legal challenges have become common not only to defend jurisdictional attributions against different branches and levels of government, but also as a means of political protest. The political argument used by most congressmen was that the presidential decree benefited foreign producers over national ones, a view compounded for many by the fact that Fox is a former chief executive and possibly a share-holder of Coca-Cola in Mexico.

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protest. Years later, as soon as Vicente Fox was inaugurated in office, opposition legislators went to court to block his decree (*Economist*, August 25, 2001: 48).

[56] According to constitutional Article 105 and Article 42 of the secondary law, eight votes are required to invalidate laws that have generalised effects. Had only seven ministers voted in favour of the resolution project, drafted by Judge Juan Silva, a legal paradox would have ensued: the presidential decree would have been considered valid even though the majority of judges considered it unlawful (Granados Chapa, 25 April 2002). When it appeared that only seven judges would vote in favour of the project, the session was cancelled and resumed two days later. The three judges who voted against the ruling were former Chief Justice José Aguinaco, Sergio Aguirre and José Gudiño. The private sector and a number of foreign investors who were planning to invest in the electricity sector strongly criticised the Court's ruling and the impact it would have on the Mexican economy (*Reforma*, May 2002).

[57] If this tax had been applied normally, it would have represented an income of 1.3 billion pesos.

Given that the tax suspension period had already begun, the Court was quick to discuss the case, fitting in the hearing before the close of its first semester of activities. Following intense discussions, the Court ruled that only the legislature could decide on taxes and therefore the executive had acted illegally. In the judges' view, the executive was not authorised in this case to use Article 39, section 1, of the Fiscal Code. The ruling, drafted by former Chief Justice José Aguinaco, came into effect on 16 July 2002, the day it was published in the *Diario Oficial.* It represented the third legal victory for Congress over the executive (SCJN, 12 July 2002). The Court had apparently been concerned to ensure that the ruling should not be perceived as a confrontation with President Fox but rather as a formal recognition of the legislature's powers during the "judicial re-alignment of change" (*La Jornada*, 12 July 2002). The ruling in favour of Congress emphasised that secondary legislation should not prevail over the Constitution.

Three more controversies were registered between the executive and the legislature in 2003. For the first time since 1997 the President confronted the Senate in a case concerning the nomination of agrarian court judges who had not been proposed by the executive (CC 9/2003, Ruling of 5 December 2002).

The second controversy concerned Fobaproa and was filed by the executive against Congress and the senior federal auditing body (*Auditoría Superior de la Federación*) "with regard to the review of the 2000 public accounts which ordered the finance ministry and the Bank Savings Protection Institute (IPAB) to carry out certain acts to regularise the alleged irregularities." The executive called for the suspension of any audits aimed at reducing the fiscal cost of the bank rescue (CC 36/2003, 25 April 2003). The Court initially rejected the suspension, but in August 2004 revised its ruling and partially concurred with the executive (CC 61/2004). The final ruling limited the scope of the suspension and softened the impact of a number of prior legal challenges against the executive by Congress and by the government of the Federal District.

A further controversy (CC 91/2003) was presented by the executive against the lower chamber and the senior federal auditing body over alleged unconstitutional actions committed by the body in connection with the review of the public accounts for 2001. The auditing authority had asked the Ministry of Finance (SHCP), IPAB and the Ministry of Public Administration (SFP) to regularise supposed anomalies. The Supreme Court ruled in favour of the executive two years later, on 23 June 2005.

A further four controversies involving the executive and Congress were registered in 2004. One of them was again filed by the executive against the Senate for ratifying an Agrarian High Court judge whose nomination the executive had not proposed (CC 48/2004). The second involved an ongoing dispute over the powers of senior federal auditing body (CC 84/2004). A third was filed by Congress against the executive, the ministers of finance and the interior and the Senate, and called for the invalidation of secondary legislation concerning the Federal Law of Gaming and Lottery issued by the executive on 17 September 2004.

The fourth in the series of controversies was one of the most important to have been presented before the Supreme Court. It concerned a dispute that had been ongoing since the PRI lost its congressional majority in 1997 between Congress and the Executive over their respective powers to determine the federal budget. The executive filed the controversy (CC 109/2004) after the legislators refused to adopt presidential amendments to the 2005 budget. It called on the Court to clarify whether the President has the power to veto the budget, and to determine whether Congress had violated constitutional provisions by interfering in the sphere of competence of the executive. The legislators argued that the executive does not have the authority to make observations on the budget, as the constitutional provisions granting it power to do so apply only to legislation or decrees issued by *both* chambers of Congress.

Five months later the Supreme Court issued a divided ruling (six votes to five) asserting the executive's right to make observations to the congressional decree approving the budget (SCJN, 12 May 2005). Even though the resolution applied only to the 2005 budget, it set a useful precedent for future disputes that might arise unless the *Constituyente Permanente* reformulates the text of the constitution to clarify the scope of the respective powers without need for judicial interpretation.

In 2005, Congress once again challenged the executive over the energy sector. It filed controversy 54/2005 against a decree that brought into force secondary legislation for the Law of Energy for Rural Areas (Diario Oficial, 4 December 2003), which authorised the restructuring of electricity supply and sale rates. The recourse was presented in 2005, but was not resolved until 6 January 2009, when the Court decided to dismiss the case with only one vote against from Court Judge Sánchez Cordero.[58]

[58] Decision available at <http://www2.scjn.gob.mx/juridica/engroses/cerrados/295/05000540.009.doc>.

Also in 2005, the Senate challenged the executive (CC 58/2005) for failing to ratify judge Guillermo Domínguez Bello, but the controversy was superseded a year later by a decree abrogating secondary legislation regulating the section on judicial appointments and ratifications of the Organic Law of the Federal Court for Administrative Fiscal Justice (6 September 2006). A final controversy involving the two powers was filed that same year by the executive against Congress and the senior federal auditing body (74/2005) concerning requirements to review licenses granted for generating electrical energy (Oficio ASF/1565/05). The document called on the energy regulator (*Comisión Reguladora de Energía*) to revise electricity generation permits, but in 2008 the Supreme Court finally declared it to be invalid.

Some of the cases discussed above illustrate the new role that the Supreme Court is playing in the policy-making process and even in the future economic development of Mexico. The two rulings in favour of Congress affecting the electric energy sector and imports of fructose generated particularly strong reactions among the federal government, the private sector and foreign investors. The first case led to announcements by at least two foreign companies that they would scrap planned investments in the Mexican energy sector.[59] The US Commerce Department reportedly criticised the ruling on the tax on fructose since it would affect their corn producers (*Milenio*, 17 July 2002). The truth is that a more active Court ruling over such a wide variety of issues will have implications for the political and economic well-being of the country, but will also become more exposed to domestic and international scrutiny. Another relevant example of this trend is the case related to the planned new airport in Estado de México, discussed in chapter 5. The federal government plan was cancelled even before the Court ruled on the recourses, following of a series of protests organised by the communal landowners affected by the proposal and the presentation of a number of legal recourses by the municipalities affected (Presidencia, 1 August 2002).

[59] The representatives in Mexico of Electricité de France (EDF) and US company Intergen announced the reallocation of USD 3 million in the wake of the Supreme Court ruling (*Reforma*, 29 April 2002). The president of Mexico's business sector (*Consejo Coordinador Empresarial, CCE*), Claudio X. González, argued that although the CCE respected the Court's final decision, it urged the executive and the legislature to carry out legal changes needed to allow the private sector to participate in the energy sector. Similarly, the governor of the central bank, Guillermo Ortiz, noted that "the delay of the structural reforms that the Mexican economy needs will imply losing extremely valuable time." The president of the *Confederación Patronal de la República Mexicana* (Coparmex), Jorge Espina, went further, strongly criticising Congress for hindering the electricity reform. He even argued that the "state reform that the country needs should start with the modernisation of the legislature" (*La Jornada*, 27 April 2002).

Other relevant rulings: autonomous constitutional bodies

In 2007 the Supreme Court was forced to determine whether autonomous bodies have powers to file constitutional controversies. According to Article 3 of the Federal Transparency Law, the following constitutional bodies are considered autonomous:

- Federal Electoral Institute (IFE)
- National Human Rights Commission (CNDH)
- Banco de México
- Universities and other higher education institutions that the law considers autonomous

The issue first arose when the CNDH presented a constitutional controversy against the federal executive demanding the invalidation of certain actions by the Ministry of Public Administration and the Institute of Administration and Valuation of National Goods (CC 150/2006, 8 December 2006). Justice Góngora was in charge of the case and, alongside Justice Luna Ramos, accepted the controversy on 4 January 2007. Góngora argued that the case should first be heard and only then should the Court determine whether the CNDH has legal authority to file the controversy. A month later, while resolving reclamation recourse 20/2007 presented by the judicial advisor to the Presidency, Daniel Cabeza de Vaca, justices Franco, Aguirre (the presiding judge in the case) and Azuela argued that the CNDH does not have the right to file constitutional controversies because it is not specifically mentioned in constitutional Article 105, although it has been recognised since 1996 as a legitimate actor to present unconstitutional actions (SCJN, 14 February 2007).

The issue came to light again on 12 February 2007 when the Federal Electoral Institute (IFE) presented a controversy against the federal budget decree for 2007, which reduced the IFE's operational finances. The IFE itself was divided about whether to file the controversy, with only five of nine councillors voting in favour of doing so (IFE GC, 31 January 2007). As president of the General Council Luis Carlos Ugalde argued, since 1996 the IFE has enjoyed autonomy in deciding how much funding to allocate to political parties and yet the 2007 budget proposal stipulated that the reduction by 720 million pesos should affect only the operational budget of the IFE and not political parties. Ugalde confirmed in an interview that this could have affected IFE's autonomy.[60] Ugalde's position was supported by councillors Arturo Sánchez, Andrés Albo, Teresa González and Alejandra Latapí. Their view was opposed by lower house representatives Carlos Armando Biebrich (PRI), Adrián Fernández (PAN), Rafael

[60] Author interview with president of the IFE General Council Luis Carlos Ugalde 4 February 2007, Mexico City.

Hernández (PRD), Miguel Ángel Jiménez (New Alliance Party, PANAL), Abundio Peregrino (PT) and Jorge Legorreta (PVEM), who argued that the IFE's autonomy had not been violated. Legorreta even criticised the fact that "none of the councillors is a lawyer to understand that there are no legal bases at all for presenting a controversy" (IFE General Council, 31 January 2007: 13).

Of the four councillors who voted against the project, Lourdes López and Marco Antonio Gómez argued that constitutional article 105 makes clear that the IFE does not have legal authority to present a controversy before the Court. The other two, Virgilio Andrade and Rodrigo Morales, thought the claim was relevant since it would force the Court to clarify whether the IFE is authorised to use these type of claims, but voted against the project because they lacked the time to analyse it thoroughly.[61] Andrade, a well-regarded lawyer, made reference to the possible legislative invasion of competence regarding the IFE's autonomy to determine levels of financing for political parties.

The Court accepted the controversies the following day (CC 11/2007, 14 February 2007) by three votes to two, with the argument that under article 41 of the Constitution the IFE is an autonomous constitutional body with all the rights enshrined in Mexico's Magna Carta. Four months later, however, the Court threw out the controversy in response to a challenge filed by the leader of the lower house of Congress (Reclamation Recourse 58/2007, 12 June 2007). After an intense two-day discussion, a slim majority of justices (six vs. five) reversed the initial ruling on the basis that constitutional article 105 does not mention the IFE and so the body lacks legal authority to present constitutional controversies.

Table 3.7 Supreme Court's voting (Reclamation Recourse 58/2007: Congress vs. IFE)

IFE HAS NO LEGAL AUTHORITY TO PRESENT CC	IFE HAS LEGAL AUTHORITY TO PRESENT CC
Salvador Aguirre Anguiano	Genaro Góngora (presiding judge)
Mariano Azuela**	José Ramón Cossío
Fernando Franco	José de Jesús Gudiño
Margarita Luna Ramos	Olga Sánchez Cordero
Guillermo Ortiz Mayagoitia (Chief Justice)	Juan Silva Meza
Sergio Valls	

Source:
http://www.scjn.gob.mx/SiteCollectionDocuments/PortalSCJN/ActividadJur/Pleno/VerEstenograficas/2007/Junio/PL20070612.pdf
**http://www.scjn.gob.mx/SiteCollectionDocuments/PortalSCJN/ActividadJur/Pleno/Sentencias/Votos/Voto_RR_58-2007.pdf

[61] Author interviews conducted in Mexico City, 13 February 2007.

It should be noted that justice Margarita Luna Ramos was not present during the first day of discussions of the IFE case. The next day, she seemed a bit hesitant in her arguments against Gongora's project, particularly because in the previous similar case (CNDH) she had voted in exactly the opposite way. A few of the interviewees I met in June 2007, who preferred to remain anonymous on this particular issue, said that Luna Ramos changed her vote at the last minute. Apparently, the main concern was that the defendant would not only be Congress, but also the executive, i.e. President Felipe Calderón, who issued the 2007 budget. This had been one of the concerns of a number of IFE councillors who had voted against presenting the controversy in the first place.

Turning to the Court resolution, Luis Carlos Ugalde argued that it sets a precedent about the need for autonomous bodies to have a means of constitutional defence when their powers are invaded. Congressmen Obdulio Ávila (PAN), Elías Cárdenas (Convergencia) and Miguel Ángel Jiménez (PANAL) all argued that the ruling confirmed that drafting the federal budget is the exclusive preserve of Congress, which therefore has the authority to determine allocations to autonomous bodies such as the IFE.[62]

Two relevant congressional initiatives were presented immediately after the Supreme Court announced its ruling. In the first, congressman José Manuel del Río Virgen of Convergencia suggested that the IFE and the UNAM should be included among the autonomous bodies with legal authority to present constitutional controversies (Gaceta Parlamentaria, 15 February 2007). Congressman Jesús de León Tello of the PAN presented a similar proposal, this time to grant the IFE and its equivalent bodies in the states the power to present controversies (Gaceta Parlamentaria, 10 April 2007). Neither proposal has been adopted and so the need to clarify whether autonomous bodies have powers to file constitutional controversies remains pending on the judicial reform agenda.

Conclusions

In contrast to the traditional hierarchical relation between the federal and lower levels of government, new federalism policies have contributed to the decline of centralism and presidentialism by reinforcing municipal autonomy and state sovereignty. The process of vertical decentralisation has gradually led to a more genuine balance between the

[62] Author interviews conducted in London on 18 October 2007.

three branches of government, inserted into a broader climate of political change that started in the 1980s. The judiciary (since 1994) and the legislature (since 1997) are sharing a greater role in the governing process, demonstrating greater independence and a stronger sense of separation of powers.

In this chapter, I have argued that processes of institutional reform and increasing balance of powers have derived from gradual electoral opening and alternation of parties in power at all levels of government. The series of electoral reforms introduced since the 1970s has finally produced a more credible electoral framework. Moreover, political pluralism has brought with it the upgrading of traditionally weak institutions such as congress and the judiciary. Over the past decade, not only horizontal but also vertical separations of powers have been strengthened as the municipalities and the state governments are now playing a more active role in the institutionalisation process.

In terms of constitutional controversies, my analysis covering the 1995–2005 period shows how municipalities have increased their judicial activity since they were explicitly included among the entities with legal standing to request review by the Supreme Court of unconstitutional actions or the jurisdictional violation by another public entity. The Federal District also became increasingly active in using the law to challenge other government powers since it was added in 1994 to the list of actors who could use this legal mechanism. The municipalities increasingly challenged not only state authorities governed by opposing parties, but also the federal government. In the regional and political analyses, I have shown that 70 percent of the controversies were presented by opposition municipalities against state governments.

While it appears that since the 1994 reform there is a more visible role for the Supreme Court in political affairs, it is not necessarily a more respected one. Increased Court activism is not equivalent yet to greater political autonomy or better rule of law. The Supreme Court's role in the actual institutionalisation process has become fundamental for the future of Mexico, as public policy is increasingly contested in the Court with less predictable outcomes. The democratisation process has indeed brought new and greater expectations of the Supreme Court's role. However, it seems that the Court has become a type of escape valve in moments of political tension. Since 1995, the "apolitical" branch of government has been increasingly defining the way many most political processes work. The response of the Court to vital political issues may have important implications for its own credibility and legitimacy, not to mention the ongoing

institutionalisation process in Mexico. The eleven judges who comprise the Supreme Court hold in their hands key decisions for the future of democratic consolidation in Mexico.

On the one hand, it could be argued that the increasing use of these legal mechanisms is healthy; a positive sign of the new democratic era where there is a true separation of powers and the Court is able to fulfill its role in resolving, as the final arbiter, disputes that emerge between the different levels and branches of government. On the other hand, this trend could lead to problems or even political paralysis when it comes to actual governance. True separation of powers requires more political agreements between the main political forces rather than the constant evasion of the responsibility of governing. The recurrent intervention of the Supreme Court in such diverse areas is a clear sign that what was intended to be a final recourse to resolve specific conflicts has become an easy option for many political actors. In the final analysis, a Court's ruling does not replace the need for political agreements or for a build-up of capacity to govern by involving all political forces. Constitutional controversies were designed to clarify legal content, not to fill a political vacuum.

CHAPTER 4

Party Politics, Fiscal Devolution and the Separation of Powers: Constitutional Controversies in Seven Case Study States

Higher levels of political competition, which were an essential part of the democratisation process and which became more in evidence after PAN victories in municipal and state elections started to be recognised after 1989, led to a new kind of conflict. This occurred when different levels of government came to be controlled by rival parties, creating jurisdictional conflicts. Later on, similar conflict arose when different factions of the same party controlled different levels of government (as we will see in the state of Tamaulipas later in this chapter.) This tended to happen more often when the democratisation process was further advanced and pluralism more established. This jurisdictional conflict created a demand for judicial arbitration that was not adequately met by the PRI-dominated and politicised Supreme Court prior to 1994. As we shall see in this chapter, the PAN and other actors started to complain that the Courts were biased against it and pressed actively for reform. However, the judicial reform of 1994 on the whole did succeed in creating a Supreme Court capable of making legitimate decisions on disputes between different levels of government. The result was to turn Mexico's political system from very centralised into one in which the rights and duties of local, state and central governments became much more clearly defined. What this chapter does is trace this process as it affected politics in a number of Mexican states.

My main aim in this chapter is to explore the incipient separation of powers at the federal and subnational levels in seven case study states, and to analyse the new relationships between the branches and levels of government, as well as the more frequent use of legal mechanisms to defend their respective jurisdictions. As argued in Chapters 2 and 3, opposition parties first started to consolidate their positions at the municipal level and in the period 1989–2002 were able to win 17 out of 32 governorships. From these positions of power, different municipalities increasingly used legal channels to confront state governments and even the federation on a number of issues. Similarly, in states governed by opposition parties, with more plural state congresses, the internal balance of powers was gradually modified as the various state government entities sought to defend their autonomy.

In this context, I will explore the relationship between political competitiveness and the increasing use of legal recourses. Since constitutional controversies are the legal mechanism used to defend and protect the federal nature of the Mexican political system, it is the content of such legal claims presented by selected states that forms the core of my analysis. My selection of case study states is informed by the number of cases filed before the Supreme Court in the 1995–2005 period and by the relevance of the claims. The seven case study states are: the northern states of Baja California, Chihuahua, Nuevo León and Tamaulipas; Puebla and the Federal District in the central area of Mexico; and the large southern state of Oaxaca. These states have not only been governed by different political parties, but, since the 1980s, have all shown an increasing level of opposition representation at the local level. The case study states differ significantly in terms of population, size and number of municipalities, as well as level of cultural difference and indigenous representation, and so provide a representative sample of the national democratisation process.

In selecting the case studies I also considered that the northern region has had greater economic development than other areas of the country; the contrast is particularly sharp with Oaxaca, which is mainly rural with a large indigenous population. Table 4.1 presents a summary of the main political and socioeconomic characteristics of the selected states. The modernisation process and the emergence of a stronger middle class enabled opposition parties to consolidate their presence at the local and state level and in the 1990s the PAN governed three of the six border states. A similar process has taken place in prosperous and industrial cities in most other states, where opposition parties have also started to accumulate victories since the 1980s. Several authors have argued that the urbanisation process coupled with higher levels of education and economic dynamism of this region have contributed to the gradual political opening in most of these northern states (Rodríguez and Ward, 1994: 33; Guillén López, 1992: 153). The various elements considered in the selection of these states contribute to a more objective view of the relation between the transition at the subnational and national levels.

My main argument is that the growth of a strong regional opposition in these states—in most cases constructed around the PAN but in others involving the PRD in a multi-party system structure—helps to explain the evolution of a more genuine separation of powers through legal activism against rival political parties ruling at higher levels of government. The case-study states are grouped according to the party structure they have developed over the years. First, I analyse a group of three northern states that

have a bipartisan structure (PRI and PAN), but are governed by the PAN. In these states, the PAN gathered strength at the municipal level during the 1980s and later won the gubernatorial elections (Baja California, 1989; Chihuahua, 1992; and Nuevo León, 1997). These case studies show how the PAN used its strategic urban bases in these prosperous states to attack PRI state governments and even the federation, mainly over fiscal decentralisation and revenue-sharing.[63] The cases demonstrate my argument that the opportunity for opposition parties to experience governing, even if only at the local level initially, has been crucial for the entire institutionalisation process in Mexico. As will be seen, municipalities and state governments with a longer tradition of opposition have been more legally active and more successful in defending their constitutional attributions through legal channels.

I then analyse three states—Tamaulipas, Puebla and Oaxaca—that are still governed by the PRI but have a multi-party structure. The state governments have been characterised since the 1990s by atypical *intra*governmental relations with opposition parties. While in Tamaulipas most legal activism came from the two main opposition parties against the PRI state government, in Puebla confrontations were initiated by both the PRI state government against the PAN-controlled urban municipalities and vice versa. Oaxaca is particularly relevant since it is the only state to present blocks of legal recourses on the same issue: close to 300 controversies were filed by different municipalities against the indigenous reform bill approved by Congress in April 2001.

Finally, I will focus on the Federal District, not only because of its political and economic relevance, but because it became the first state to be governed by the PRD. Since then, three successive PRD heads of government in the capital have each demonstrated increased legal activism against the federation in a bid to re-establish the autonomy of the capital. In the wake of the substantial PRD victory in 1997, the first controversies against the federation demanded the proper distribution of federal funds. However, after the PRD lost its majority in the local legislature and the control of six political *delegaciones* (councils) to the PAN in the 2000 election, *intra*governmental disputes have increased significantly, some initiated by opposition-dominated entities against the PRD state government itself. By studying the three different PRD administrations in the capital, I can analyse the changes in its *intra*governmental relations, particularly in terms of a more active local legislature and *delegaciones.*

[63] Since the 1980s, the six northern states bordering the United States represent 19 percent of the national GDP and have above national-average levels of education and basic public services (Alvarado 1992:22).

Table 4.1 Political and socioeconomic data for the case-study states

State / capital	Gubernatorial election	Population/ area	No. mpalities/ federal electoral districts/ local congress seats (local congressional districts–prop seats)	GDP %
I. BIPARTISAN STRUCTURE / PAN VICTORIES				
1) Baja California Mexicali	1989: Ernesto Ruffo 1995: Héctor Terán 2001:Eugenio Elorduy 2007: José Gpe Osuna Millán	2,487,367 (15th highest in Mexico) 70,113 km2	5 6 25 (16 – 9)	3.3% 9th highest in Mexico
2) Chihuahua Chihuahua	1992: Francisco Barrio (PAN) 1998: PRI Patricio Martínez 2004: José Reyes Baeza (PRI)	3,052,907 (12th highest) 247,087 km2	67 9 33 (22 – 11)	4.5% 5th highest
3) Nuevo León Monterrey	1991: Sócrates Rizzo 1997: PAN Fernando Canales 2003: José Natividad González Parás PRI 2009: Rodrigo Medina (PRI)	3,834,141 (9th highest) 64,210 km2	51 11 42 (26 – 16)	6.9% 3rd highest
II. MULTI-PARTY STRUCTURE / PRI CONTROLLED				
4) Tamaulipas Ciudad Victoria	1992: Manuel Cavazos 1998: Tomás Yarrington 2004: Eugenio Hernández	2,753,222 (13th highest) 80,678 km2	43 8 32 (19 –13)	3.04% 11th highest
5) Puebla Puebla	1992: Manuel Bartlett 1998: Melquiades Morales 2004: Mario Marín	5,076,686 (5th highest) 33,919 km2	217 15 39 (26 –13)	3.43% 7th highest
6) Oaxaca Oaxaca	1992: Diódoro Carrasco 1998: José Murat 2004: Ulises Ruiz	3,438,765 (10th highest) 95,364 km2	570 11 42 (25 –17)	1.48% 19th highest
II. MULTI-PARTY STRUCTURE / PRD CONTROLLED				
7) Federal District	97: Cuauhtémoc Cárdenas/ R. Robles 2000: Andrés M. López Obrador 2006: Marcelo Ebrard	8,605,239 (2nd highest) 45,000 km2 **	16 *Delegaciones* 30 66 (40 –26)	22.7% 1st highest

Source: INEGI (2001) *Tabulados Básicos Nacionales y por Entidad Federativa. Base de Datos y Tabulados de la Muestra Censal. XII Censo General de Población y Vivienda, 2000.* México.
(GDP) Sistema de Cuentas Nacionales de Mexico *Producto Interno Bruto por Entidad Federativa, 1993-2000.* México, 2002; ** Mexico City's area is taken from Ward (1998: xiv); other areas are from portal.nl.gob.mx; www.tamaulipas.gob.mx

Towards a bipartisan structure: PAN's gubernatorial victories

Baja California: the first Panista victory

Baja California is one of the most urban and modernised states in Mexico, and has the highest education levels. Almost 80 percent of the state's population is concentrated in Mexicali and Tijuana, which have become major economic centres dominated by the *maquiladora* (assembly) industry.[64] Baja California was one of the first states where the opposition won representation. The PAN began building its political organisation in the state in the 1953 elections in Baja California by "exploiting regionalist resentment of control from Mexico City..." (Malbry 1973: 54). The party challenged the 1959 gubernatorial election results and called on the Supreme Court to intervene (Malbry, 1973: 64). Although numerous cases of voter manipulation and ballot box theft had been reported, the plea was unsuccessful and protests escalated. The elected PRI governor, Braulio Maldonado, was eventually arrested on corruption charges.

The PAN benefited from splits within the traditional alliances among the political bureaucracy and the business elite (Guillén López, 1992: 143) and went on to secure Baja California and other northern states as its main stronghold. Support from the business sector was particularly important to the PAN (Mizrahi, 1995: 82). In the 1968 election, the PAN claimed it won the Tijuana and Mexicali municipalities and six state legislative seats. The federal government had to intervene and results were annulled, but new elections were never held (Malbry, 1973:79). PRI-PAN civic governing boards were installed in the disputed municipalities. The PAN continued to protest and presented appeals before the Supreme Court. In 1970 the PAN declared once again that it had been denied victory in these two municipalities. Curiously enough, it was these very municipalities that proved decisive in terms of legal contestation and the defence of local autonomy, as is discussed below.

Non-PRI parties started governing at the municipal level in 1983 (see Table 4.2). In 1986, the PAN's persistence in calling for fraudulent local elections to be annulled finally paid off when Ernesto Ruffo won the municipal presidency of Ensenada. According to Crespo (1995: 22), Ruffo's resistance to the obstacles that PRI governor Xicoténcatl Leyva tried to impose upon him translated into higher popularity, on which

[64] Baja California was granted statehood in 1952 and was divided into four municipalities; the fifth, Playas de Rosarito, was created in 1995 (INEGI, 2001).

Ruffo capitalised during the 1989 gubernatorial race.[65] The non-PRI victory in Baja California—the first state to be governed by an opposition party—was an encouraging sign of the democratic opening of the political system (Guillén López, 1995: 51).

Table 4.2 Municipal elections in Baja California (1983–2007)

	Ensenada	Mexicali	Tijuana	Tecate	Rosarito
Population	370,730 (14.9%)	764,602 (30.7%)	1,210,820 (48.6%)	77,795 (3.12%)	63,420 (2.5%)
Mpal Election					
1983	**PST**	PRI	PRI	PRI	
1986	PAN	PRI	PRI	PRI	
1989	PAN	PRI	PAN	PRI	
1992	PAN	PRI	PAN	PAN	
1995	PRI	PAN	PAN	PRI	
1998	PRI	PAN	PAN	PRI	*Mpal Council
2001	PAN	PAN	PAN	PRI	PAN
2004	PRI	PRI	PRI	PRI	PAN
2007	PAN	PAN	PAN	PAN	PRI

Source: Instituto Estatal Electoral, Baja California (IEEBC) http://www.ieebc.org.mx
http://www.iepcbc.org.mx/archivos/elecciones/2007/municipes1.pdf

* Although the PAN was the strongest opposition party in the mid 1940s, it was the Socialist Worker's Party (PST) that first beat the PRI in Ensenada in 1983. Rodríguez and Ward (1994: 13) argue that the PST victory, together with the success of other small parties such as the Mexican Democratic Party (PDM) in Guanajuato, "appeared to have been orchestrated by the PRI in an effort to promote a semblance of democracy".

The first PAN (1989–95) administration introduced crucial changes to the electoral institutions to make them more impartial, including an electoral reform that tightened election controls and a new citizen registry with photo identification cards for voting in future electoral processes.[66] Ruffo also reformed the local justice system, paid more attention to human rights issues and delegated more responsibility and authority to the municipalities, particularly over education and housing development projects. A number of academics have studied Baja California and in particular the more confrontationist attitude of Ruffo as the first PAN governor (Guillén López, 1995, 1994 and 1992; Rodríguez and Ward, 1994; Mizrahi, 1997; Espinoza Valle, 1999).

Shortly before Ruffo was sworn in as governor, two reforms were approved by the PRI-dominated state congress. The first reform guaranteed the continuation in office of the local judges recently proposed by the PRI governor; the second forced Ruffo's government to increase the portion allocated to the municipalities of federal funds received by the states (from 20 to 35 percent). The state government became the first to openly challenge the Ministry of Finance, demanding the increase in its share of

[65] In 1989, the PAN also won nine of fifteen local districts and two of four municipalities. Tijuana became the only municipality to be governed by the PAN for five consecutive periods.

[66] The national registry and the process for monitoring voter registration were based on the Baja California state *credentialisation programme*.

federal allocations under the fiscal coordination law. Under the mechanism for distributing federal appropriations less was returned to the richer states than they contributed, which clearly penalised Baja California. Ruffo openly challenged fiscal centralism, under which 81 percent of each peso collected by the state was allocated to the central government, 16 percent to the states and only three to the municipalities. However, the state government lost the battle against the federation, and Ruffo decided not to refer the case to the Supreme Court. It was not until 1995 that the municipality of Tijuana did take the case to court.

After Ruffo complained to the Ministry of Finance, a public study was released showing that Baja California was in fact receiving 13.5 percent more in funding from the federal government than it contributed to the federal tax base (Espinoza Valle, 1999: 81). This led to a further cut in the state's share of federal funding in 1992. Ruffo's government was no doubt influenced in his decision not to pursue a legal challenge by the knowledge that the cost of a poor relationship with the federal government would be high, and that it would be difficult to defeat the federation while the Supreme Court was still dependent on the executive's will. Some authors have argued that Francisco Barrio, who became governor of the state three years later, took stock of the results of Ruffo's confrontationist attitude and chose to adopt a more cooperative strategy with the federation (Mizrahi, 1997).

According to González Oropeza (2000: XXIV), the most important antecedent to the involvement of municipalities in constitutional controversies was the *amparo* suit (4521/90) presented by the receiver (*Síndico)* of Mexicali against the federation in 1990 (see Chapter 2). In its resolution of this recourse on 7 November 1991, the Court established prior to the 1994 judicial reform that municipalities could make use of constitutional controversies. Contrary to what some authors have argued (Rodríguez and Ward, 1994: 102), PRI municipal presidents in Mexicali and Delicias were first to press the federation and the PAN state government in Chihuahua to respect municipal rights and responsibilities.

Tijuana was the first municipality to present a constitutional controversy (CC 6/95, 9 June 1995) after the 1994 reform. The case was against the President, the lower chamber and other federal authorities and concerned the decree containing the federation's budget for the 1995 fiscal year, in particular the final two paragraphs of Article 14, on allocations to states and municipalities. The municipality also called for the 1995 individual development agreement (*Convenio de Desarrollo Social*) between

the governor and the federal executive to be invalidated. As in most of the fiscal disputes at the time, the Court ruled in favour of the federation (SCJN, February 1997).

This controversy was the first example of an entity from the lower levels of government calling for true democratic federalism as established by the Constitution. Although the Court ruled against it, the municipality set an important precedent by opposing the involvement of the Social Development Ministry in matters that, they argued, should be decided independently by the municipality in accordance to constitutional Article 115, Section IV. Both the Tijuana and the Mexicali cases reinforce the argument that opposition governors or municipal presidents had more liberty to challenge presidential power than their PRI counterparts.

During the 1990s, the trend towards bipartisanship became more evident. Since 1989, the PAN has won the governorship in three consecutive elections (1995, 2001 and 2007) with more than 40 percent of the vote on each occasion.[67] Successive PAN governments at the state and municipal levels, especially Tijuana and Mexicali, have had to deal with a divided congress and have adopted a less confrontational attitude towards the central government.

Two more controversies were presented after the 1998 elections, one by the state of Baja California (CC 8/99) and the other by the municipality of Tijuana (CC 11/99). The first claim, presented by the state governor against the President and Congress, questioned the federal authority to intervene in the selection of state public servants in a case involving the "illegitimate decision of a federal judge to remove a local judge" (SCJN, CC 8/99). The Court voted unanimously to dismiss the case. The second recourse, against the local congress and judiciary, suffered the same fate.

During the third PAN administration, the municipal president of Mexicali, Jaime Díaz (2001–04) challenged governor Elorduy, the President and other federal authorities over the Fiscal Coordination Law and its 1995 reform (CC 35/2002). This time the Court ruled in favour of the municipality, declaring that the challenge was well-founded in terms of the procedure to pay the municipality obligations related to the federal participations (SCJN, 4 April 2005).

[67] In 1995, PAN candidate Hector Terán (50.9%) defeated the PRI (42.3%) (CIDAC); he was replaced after his death by Alejandro González, the local PAN leader, in October 1998. In 2001, Eugenio Elorduy (PAN-PVEM) won with 48% of the vote against 36% for the PRI candidate (IEEBC), in an election noted for high abstention rates and for returning a divided state legislature. The PAN won four municipalities. In 2007, the PAN's José Millán won with 50.4% of the vote.

In 2004, controversies were presented by the state government (CC 69/2004) and the municipalities of Ensenada (72/2004), Mexicali (73/2004), Tijuana (74/2004) and Playas de Rosarito (75/2004) against the state legislature, related to an economic agreement approved in June 2004 which replaced the state's chief treasurer (*Contador Mayor de Hacienda).* Two years later the Court ruled that all these recourses were unfounded, since the local legislature and the state's chief treasurer had acted according to the law (SCJN, 3 February 2006: 139). Finallly, in 2005, two controversies were presented by the local electoral institute (9 and 30/2005) and two by the local judiciary (10 and 19/2005) against the Baja California legislature and executive. Both claims concerned modifications to the 2005 budget. The Supreme Court dismissed the cases brought by the electoral institute, but found the claims brought by the judiciary to be well-founded.

In August 2007, the PAN won its fourth consecutive gubernatorial election with José Osuna Millán defeating the PRI's Jorge Hank Rhon, a former municipal president of Tijuana (2004–07). The election was notable for the opposing views of the local and federal electoral tribunals. The local tribunal ruled in June 2007 that Hank Rohn could not run for the governorship according to the "*Ley Antichapulín*" reform promoted by governor Elorduy in 2001 (*Proceso*, 29 June 2007), which forbids an elected public servant from resigning his post before the end of his constitutional period of office (local Article 42). Just one month after this ruling, the federal Electoral Tribunal confirmed Hank Rohn as the PRI gubernatorial candidate (SUP-JDC-695/2007).

The cases discussed demonstrate that Baja California has not only become a PAN stronghold, but has played a pioneering role in the use of legal channels to demand judicial recognition of lower levels of government. While initially it was the PAN in opposition that sought the Supreme Court's intervention to annul allegedly fraudulent election results since the late 1950s, the range of actors and issues involved in more recent court actions has expanded as different bodies of government seek to defend their fiscal and political jurisdictions.

Chihuahua: the only PRI recovery

The PAN started to build its political presence in Chihuahua in the 1950s. Proximity to the United States and greater prosperity meant that border-states could be more

independent of the federation.[68] In 1954, the PAN's Luis H. Alvarez exploited discontent with the PRI and regionalist animosity towards Mexico City in his campaign to win the governorship of the state. Although he lost the gubernatorial election, Alvarez became the PAN presidential candidate in 1958, when he adopted an aggressive attitude towards the PRI. The PAN was credited with 10 percent of the vote and six federal congressional seats (Malbry, 1973: 57). Alvarez refused to recognise the new government's legitimacy and was jailed. His party furiously debated their future stance towards electoral fraud and piled pressure on the Electoral College to recognise more congressional victories. A number of PAN supporters died protesting irregularities during López Mateos' presidency (1958–64). However, in the 1970s the PAN softened its stance and focused on constructing an independent party in opposition.

The nationalisation of banks in 1982 proved crucial in winning support for the PAN in Chihuahua. The local Congress has been bipartisan since the 1983 elections when the PAN won five local districts, although only four were formally recognised after the results in the IV district of Ciudad Juárez were annulled, as they were again in that district in the 1985 federal elections. According to Aziz Nassif (1992: 80) the reason was simple, "if this district was controlled by the PAN, the PRI would not have had the required number of deputies to change the governor, as happened in 1985." Paradoxically, more than a decade later, the 2001 elections in Ciudad Juárez were annulled twice by the local tribunal and it was not until 24 July 2002 that the federal electoral tribunal (TEPJF) stepped in to confirm the PAN's victory.

At the municipal level, the PAN won eight important cities in 1983, including the maquila centres. During the 1983–86 period, Francisco Barrio and Luis Alvarez governed Ciudad Juárez and Chihuahua, respectively. According to Rodríguez (1995: 156), there is evidence of some financial manipulation by the state government in its conduct with the PAN municipalities, which forced them to develop alternative sources of income. "Both Alvarez and Barrio had to contend with a number of instances where the state government impeded or refused to grant autonomy over a variety of municipal functions" (Rodríguez 1995: 162). Ultimately, this translated into higher popularity for

[68] Chihuahua is a large, mixed-economy border state with a total of 67 municipalities. Although it is at the top end of the GDP-per-capita spectrum, it also has a significant indigenous population in the Sierra Tarahumara. It has just over 3 million inhabitants, 62 percent of whom are concentrated in the two largest cities, Ciudad Juárez and Chihuahua, which are also two of the most important maquila cities in Mexico. Chihuahua has nine federal electoral districts, and a local Congress of 33 deputies elected in 22 local congressional districts and eleven proportional representation seats.

Barrio, who was able to contest the 1986 and 1992 gubernatorial elections. Like Ruffo in Ensenada and Carlos Medina in León, Barrio experienced the constraints imposed by higher levels of authority.

Table 4.3 Municipal elections in Chihuahua (1980–2007)

Election	PRI	PAN	PRD	PT	PPS	PSUM	Other
1980	65				1		1
1983	56	8			1	1	1
1986	65	1			1		
1989	67						
PANGOV 92							
1992	54	13					
1995	54	11	1	1			
PRIGOV 98							
1998	48	17	2				
2001	47	14	2				4
PRIGOV04							
2004	41	21	1				
2007	47	18	1				1

Source: CIDAC; Comité Estatal Electoral, Chihuahua (1995–2007)

In 1986, the PAN lost all the municipalities it had governed in the 1983–86 period. The PRI regime had to engage in fraud of enormous proportions to ensure the victory of its candidate, Fernando Baeza, over the PAN's Francisco Barrio (Crespo 1995: 23). According to Molinar (1987: 29), the state's voting list was biased in favour of the PRI. Barrio and a number of municipal candidates went on hunger strike to demand that the elections be annulled. Their campaign drew widespread attention and influenced opposition protests against electoral fraud in other states (Prud'homme 1999: 353). Federal congressmen from the PAN filed a complaint before the Inter-American Commission of Human Rights, thereby successfully "nationalising" these post-electoral conflicts and reinforcing PAN's position as the "democratic party" (Loaeza 1999: 393–7). However, both the Electoral College and the Supreme Court deemed the evidence of fraud to be insufficient. This experience partly explains why, up until the mid-1990s, opposition parties preferred to pursue extra-legal negotiations instead of using legal procedures. Future electoral and judicial reforms did reinforce legal contestation by democratising the relevant electoral and judicial institutions.

Despite the air of disappointment surrounding Baeza's inauguration, the PAN lost strength. In 1988 and 1989, the abstention rate reached 70 percent and the PRI won overwhelming local representation. Aziz Nassif (1992:87) argues that this was due to electoral fraud and to the way election campaigns were organised. Nevertheless, the business sector returned to the PAN in 1992 as they expected Barrio had better chances of winning the gubernatorial election. According to Prud'homme (1999: 354),

negotiations between the candidates Barrio (PAN) and Jesús Macías (PRI) focused on the conditions of competition rather than electoral outcomes.

Table 4.4 Electoral results for the most populated municipalities in Chihuahua (1992–2007)

	Population 2000	%	1992	1995	1998	2001	2004	2007
Ciudad Juárez	1,218,817	40%	PAN	PAN	PAN	*PAN**	PRI	PRI
Chihuahua	671,790	22%	PRI	PRI	PRI	PRI	PAN	PAN
Cuauhtémoc	124,378	4%	PAN	PRI	PAN	PRI		
Delicias	116,426	3.8%	PRI	PRI	PRI	PRI		
Hidalgo del Parral	100,821	3.3%	PRI	PAN	PAN	PAN		
TOTAL state population	3,052,907 12th national	73.1 %						

Source: INEGI (2001) *Tabulados Básicos Nacionales y por Entidad Federativa. Base de Datos y Tabulados de la Muestra Censal. XII Censo General de Población y Vivienda, 2000*, Mexico.
* The TEPJF annulled PAN's victory in Ciudad Juárez (SUP-JRC-196/2001, 8 October 2001). On 10 October, a municipal council with a PRI majority took control temporarily. After extraordinary elections were held on 12 May 2002, the local tribunal annulled the PAN victory for the second time (7 July 2002), but the TEPJF overturned this decision.

In 1992 Chihuahua became the second state to be governed by the PAN, but this was shortlived since six years later became the first state to be recovered by the PRI. In the 1995 election Governor Barrio lost the PAN majority in the state congress and the control of all large cities, except Juárez. The capital, Chihuahua, had always been governed by the PRI, except for the 1983–86 period, and the local PRI used it and other strongholds as bases for mounting legal challenges against the PAN government (1992–98). Among the legal challenges was the successful constitutional controversy presented by the municipality of Delicias in 1993 regarding its right to offer civil registration services (see Chapter 3). It was Chihuahua's municipal president Patricio Martínez who recovered the governorship for the PRI in the 1998 election after winning one of the party's first ever open primaries.[69]

Patricio Martínez had been very active in using legal channels to challenge the state government from his position as Chihuahua municipal president, presenting four controversies (CC18/95; 3/96; 28/96 and 53/96) against the local Tribunal, regarding taxes charged for a state government building that should have been exempt from paying them. In the end, the Court dismissed the case on the grounds that the dispute

[69] More than 200,000 citizens participated in the state primary. Martínez was able to capitalise on this popular support, as well as disappointment in the incumbent's performance at a time when the crime rate and drug-related violence were soaring. More than 100 young women had been murdered in Ciudad Juárez, with most cases still unsolved.

did not represent a true invasion of powers; it was a conflict between parts and not levels of government (SCJN, 10 March 1997). The PRI-dominated local Congress also presented an unsuccessful legal recourse against governor Barrio, demanding that the Regulation for Social Development programmes be invalidated (CC 12/97). The municipality of Ciudad Juárez, governed by the PAN, presented a recourse against the local Congress, which was also dismissed (CC 17/97). These cases clearly show how controversies became a tool for lower levels of government to oppose rival parties through legal channels to create political pressure, even when jurisdictions between levels of government had not actually been invaded.

Once inaugurated as governor in 1998, Martínez maintained his legal activism even though the target of his challenges—the federal government—was from his same party. His stance was unusual among PRI state governors, who tended to be submissive in their relations with the federal executive. Martinez's attitude was no doubt influenced by a generalised shift in the intergovernmental relations between states and the federation as more gubernatorial elections were closely contested or won by the opposition. The content of the controversies between the state and federal governments shows how in a more democratic context dynamics within the PRI started to change. Although I have argued throughout this thesis that the Court's role became crucial in resolving differences between rival parties, the truth is that in an ideal democratic scenario, the Court would also have to resolve differences between branches and levels of government controlled by the same party.

The first recourse involving the state government of Chihuahua and the federation was presented by the Ministry of Finance. It was the second ever constitutional controversy to be presented by the federation for invasion of their jurisidiction (SCJN, 27 April 1999; see Chapter 3 for a discussion of the first such case, against the municipality of Guadalajara, Jalisco). The Ministry of Finance argued that the state had violated constitutional Article 131 by issuing a local decree (105/98) establishing a registration programme for the approximately 250,000 foreign cars (*autos chocolate*) circulating in Chihuahua (CC 7/99). The decree authorised the local executive to issue a formal certificate for all cars identified as foreign, for which it charged MXN 300–3,000, depending on the model. The Ministry of Finance argued that this was equivalent to a "local car registration/road tax" and violated the Constitution, which gives the federation the exclusive power to tax and regulate foreign products. In political terms, the decision contradicted the Ministry's intention not to regulate foreign cars at all. In a meeting with Finance Minister José Ángel Gurría, Governor Martínez said the state government's

aim was not the registration per se, but to respond to an increasing public security concern (*Proceso*, No. 1177: 33). More than two years after the recourse had been presented, and after receiving several different reclamation recourses, the Supreme Court dismissed the case by eight votes to two; justices Castro and Góngora voted in favour of the project (SCJN, 15 May 2001).

A subsequent case involving the federal government and the state of Chihuahua was filed by Governor Patricio Martínez against the President, the Ministry of Finance and Congress. Martínez challenged the 1 percent discount on car registration tax which was applied against the Chihuahua state government (CC 27/1999). Although the Court eventually dismissed the case in February 2001, it did set an important precedent for future fiscal disputes in terms of the importance of using legal channels to challenge the federation.[70]

In 2001, the municipality of Juárez presented a recourse against the governor for failing to transfer responsibility for providing potable water and sewage services to the municipality (CC 362/2001). The municipality revived the issue in 2003 (CC 47/2003) and again in 2004, when two other municipalities joined in the challenge, as the Court declared legislative omission to provide adequate public water services according to the new municipal attributions defined in the 1999 reform to Article 115 (SCJN, CC 80, 82 and 83/2004, 14 July 2005).[71]

The municipality of Juárez presented a further two recourses (CC 15 and 47/2004) in 2004 against the local executive and legislature relating to the 2004 Municipal Income Law and to the General Fund of Participations and Municipal Support, respectively. The first of the claims was dismissed, but the Court ruled in favour of the second, declaring that the calendar and amount fixed by the Finance Ministry for each municipality under the General Fund were invalid. The municipality of Juárez had been making this same claim since 2003 (CC 26/2003). Another challenge brought by this same municipality was against Governor Patricio Martínez over an expropriation agreement (CC 28/2003); the case was dismissed in 2005.

The Chihuahua state legislature also readily pursued legal avenues to challenge the federation. The Supreme Court dismissed its first challenge (CC 18/2004), which was against a decision to hand over a section of a motorway to the Ministry of Transport

[70] See <http://www2.scjn.gob.mx/juridica/engroses/cerrados/302/99000270.009.doc>
[71] See <http://www2.scjn.gob.mx/juridica/engroses/cerrados/302/04000800.009.doc>

and Communications. Its second challenge (56/2004), concerning the installation of a motorway toll gate, was successful. The issue had already been the subject of a case brought by the state government against the federal executive (CC 23/2003), which the Court dismissed.

In 2005, the municipality of Ahumada presented a recourse against the local executive (CC 45/2005) over cuts in municipal funds (*Liquidación y Aportaciones a Municipios*). The Court ruled that the recourse was well-founded and that the Finance Secretary did not have the power to make these deductions.

From the cases studied, it is clear that Chihuahua represents an interesting case study for a number of reasons. As in Baja California, there is a bi-partisan PRI-PAN system with a divided congress, and legal recourses have been used on occasion against political rivals regardless of whether jurisdictions between levels of government have in fact been violated. It demonstrates how important the experience of governing is in terms of politicians making use of legal tools to defend jurisdictional disputes. It also represents a unique case in which a PRI state government legally confronted the federal government when it was still under PRI control. This reinforces the argument about the importance of the experience of governing since the governor involved in the case had previously made use of constitutional controversies when he was municipal president. But perhaps more importantly, it reflects a decree of democratisation of relationships within the PRI, and a relative increase in strength of state governors.

Nuevo León: the consolidation of the PAN

Nuevo León[72] is another example of the development of a bipartisan system (PRI-PAN) in northern Mexico, a trend that was accentuated, according to Nuncio and Garza (1992: 188), by the open confrontation between the local business sector and the federal administration of Luis Echeverría (1970–76).[73] The opposition started to gain ground at the local level in the 1960s, with PAN victories in the crucial municipality of San Pedro Garza García, a Monterrey suburb. In the 1970 municipal elections, the PAN alleged massive electoral fraud and used its national convention to discuss

[72] Another industrial and prosperous state, Nuevo León comprises 51 municipalities. It has been divided into 11 federal electoral districts, and has 42 local deputies elected in 26 congressional districts and 16 proportional representation seats. It has almost 4 million inhabitants, with more than a million living in the capital, Monterrey. More than 80 percent of the state's population live in the seven municipalities that make up the conurbated area.

[73] The death of business leader Eugenio Garza Sada in 1973 deepened the confrontation with the federal government. The economic power concentrated in the *Comité Industrial de Nuevo León*, or the *Grupo de los Diez*, is such that the *Monterrey Group* has historically negotiated directly with the federal government without the intermediation of regional authorities (Nuncio and Garza, 1992: 191).

whether to participate in future elections. Pablo Emilio Madero withdrew his candidacy for the 1976 presidential election and later ran for the municipality of Monterrey with a combative campaign opposing the central government. After his defeat, PAN supporters again alleged electoral fraud.

In the 1982 federal elections, the PAN topped the polls in Nuevo León, helped by the clear local links of its candidate, Madero, and by opposition to the nationalisation of banks. In the 1985 gubernatorial election, Fernando Canales ran a successful campaign supported by prominent local businessmen. Local actors again accused the victorious PRI of fraud. After 1985, the PRI state government reached a pragmatic governing agreement with Panista mayors (Nuncio and Garza, 1992: 192-193 & 211). A new local electoral law was approved and after 1988 the PAN was able to gradually gain political strength.

Table 4.5 Nuevo León conurbations: population and electoral results in the most populated municipalities (1985–2000)

	Population 2000	% of stat population	Election 1985	1988	1991	Elections 94/97/2000
1) Monterrey	1,110,997	30%	PRI	PRI	PRI	PAN
2) Guadalupe	670,162	17.4%	PRI	PRI	PRI	PAN
3) San Nicolás de los Garza	496,878	13%	PRI	PRI	PAN	PAN
4) Apodaca	283,497	7.3%	PRI	PRI	PRI	PRI
5) General Escobedo	233,457	6%	PRI	PRI	PRI	PRI
6) Santa Catarina	227,026	5.9%	PRI	PAN	PAN	PAN
7) San Pedro Garza García	125,978	3.2%	PRI	PAN	PAN	PAN
TOTAL State's Population	3,834,141 9 National	82.8%				

Source: INEGI (2001) *Tabulados Básicos Nacionales y por Entidad Federativa. Base de Datos y Tabulados de la Muestra Censal. XII Censo General de Población y Vivienda, 2000*, Mexico. Ley de Desarrollo Urbano de Nuevo León,1984. Electoral data: CIDAC/ Electoral Institute of Nuevo León (2000), http://www.cee-nl.org.mx/mb_elecciones.htm

Towards the end of the 1980s the PAN was able to consolidate its strongholds in industrial and highly populated suburbs such as San Pedro Garza García (1988), Santa Catarina (1988), San Nicolás de los Garza (1991) as well as the state capital, Monterrey (1994). The PRI's Sócrates Rizzo was elected governor in 1991 with 63 percent of the vote. Given that the PAN won 33 percent of the state level vote and gained an unprecedented five municipalities, the PRI opted to "tolerate" the opposition facilitating the way to a tacit "gentleman's agreement" (Bailey, 1995: 174). The attitude developed in these municipalities has been crucial for the federalisation process in fiscal and political terms, as well as in terms of increasing judicial activity.

In 1989 the PAN municipal presidents were very vocal opponents of the recentralisation of the administration of value-added tax and of the change in revenue-sharing formula, which upgraded population size over economic production (Bailey, 1995: 177). Upon being inaugurated into office in 1997 as the first PAN governor, Fernando Canales took up the mantle of fiscal protest, launching a campaign for higher federal funds for this prosperous state. He joined other state governors in demanding that the federation increase the percentage of federal participations to the states. He went as far as to suggest that the federal pact be abandoned altogether and a new fiscal coordination law be created (*La Jornada*, 24 September 1999).

In terms of constitutional controversies in this state, in just five years (1993–97) different PAN municipalities presented 13 recourses against the PRI state government. These municipalities were the most populated and economically active ones, governed by the PAN since the 1980s: Monterrey (six disputes), San Pedro Garza García and San Nicolás de los Garza (three each) and Santa Catarina (one). The disputes mainly concerned fiscal and budgetary issues. Common to all of the municipalities was a bid to defend their autonomy to decide over their own regulations for public servants (CC 2/93, 3/93, 4/95, 8/95 and 5/97), which the Court ruled against, stating that the legislature should decide all matters related to internal budgets and remunerations (SCJN, 19 September 1995). In controversy 5/97, the municipality of Monterrey opposed the state government's distribution of the Solidarity Municipal Fund (CC 5/97, 29 June 1998).[74]

In 1997, San Nicolás de los Garza presented a controversy against the federal and state governments related to the Fiscal Coordination Law (CC18/97). The Supreme Court partially found in its favour, invalidating the local agreements (SCJN, 4 June 2001). In 1995, Monterrey also challenged the state government in two controversies over the creation of intermediate authorities that restricted municipal autonomy (CC 1/95 and 2/95), but the Court unanimously ruled that both cases were unfounded. Similarly, Monterrey opposed a specific legal code created under Decree 213 which issued the Organic Law of the Administrative Tribunal, but the Court dismissed this case (CC 16/95, 21 May 1996).

During the first half of Canales administration (1997–2000), 11 controversies were taken to the Court by different municipalities, eight of them by a single municipality, the

[74] See <http://www2.scjn.gob.mx/juridica/engroses/cerrados/221/97000050.009.doc>

PAN-controlled Guadalupe, in opposition to the local congress and specific administrative resolutions (CC 30-33/99, 3-6/99). The PRI-dominated municipality of General Escobedo successfully opposed decree 349 issued by the local congress on July 2000, which established new borders between it and Monterrey (CC 31/2000). Finally, the municipality of Garcia, governed by the coalition candidate Raúl Aguirre, presented two recourses against the PAN governor challenging the illegal retention of municipal resources by the state government (CC 34/2000). This last case shows that fiscal disputes are not the sole preserve of the states and the federation, but also exist between municipalities and states, since allocations of the decentralisation fund are determined by the state governments and approved by the local congresses.

Following this period of intense legal activity, in 2003 the PAN lost the governorship by 20 percentage points to PRI candidate José Natividad González Parás. That same year, the municipality of Garza García presented a recourse (CC32/2003) against the state legislature related to its failure to harmonise local legislation with aspects of the reforms to Article 115 relating to municipalities. The Court dismissed the case. A further four controversies were presented by different minor municipalities (CC 75–77 and 79/2003) against the federal executive and other municipalities over a decree issued in 2000 regulating an area designated as a national park. The final recourse was presented in 2004 by the municipality of Guadalupe related to topographical issues (CC 79/2004).

In sum, Nuevo León tops the list of states in terms of the number of constitutional controversies presented before the Supreme Court. Its legal activism was apparently unaffected by the change of state government (13 controversies were presented in 1993–97 and 11 in 1998–2000). The PAN had its first opportunities to govern at the municipal level in the mid-1980s and gradually consolidated its strength before winning the governorship in 1997. Four urban and industrial municipalities were particularly active in legal terms in the context of new intergovernmental relations. The PAN municipalities fiercely defended their fiscal and jurisdictional attributions against the PRI state government, but with little success. The first PAN governor adopted a critical attitude towards the federation, demanding more public resources for the states and joining a cross-party group of governors seeking greater regional autonomy and a new federal pact. However, the PAN lost the governorship to the PRI in 2003 and once again in 2009 when the PRI's Rodrigo Medina beat Fernando Elizondo in a closely contested election. Legal activity decreased markedly after 2003 compared with the period described above.

PRI-governed states: a multi-party system structure

Tamaulipas

Tamaulipas is one of the remaining PRI strongholds and has never had a non-PRI government. In contrast to the cases discussed above, this northern state did not follow the traditional two-party system. Rather, a multi-party system developed with the PAN remaining strong in the industrial areas, and the PRD and to a lesser extent the PT consolidating their strength in other working class municipalities. Since the beginning of the 1980s, Reynosa, Matamoros and Nuevo Laredo have registered significant levels of support for the Authentic Party of the Mexican Revolution (PARM), which had been created as an offshoot of the PRI to create the illusion of opposition (Alvarado, 1992: 48). While since 1992 these industrial cities have remained under PRI control, Río Bravo is the only border city to be governed by the PRD (1995–2001) and PT (2001–04).

Tamaulipas is divided into 43 municipalities. Some 42 percent of the state's population and a significant portion of its maquila industry are concentrated in the three border cities: Reynosa, Matamoros and Nuevo Laredo. The state's capital, Ciudad Victoria, is the municipality with the fifth largest population. The southern cities of Tampico and Ciudad Madero are active oil and electricity manufacturing centres. As Table 4.6 shows, the main municipalities have always been governed by the PRI, except in 1995–98 when the PAN won in Tampico and Matamoros and the PRD won in Ciudad Madero and Río Bravo. During this period opposition municipalities increased their legal activity against the state government. Río Bravo has been particularly active in legal terms, with a number of recourses presented against the state government by the different non-PRI parties that have governed this municipality since 1992.[75]

In terms of gubernatorial elections, it is worth noting that although the PRI still controls the state government, its support has gradually declined. Its candidate won 80 percent of the vote in 1986, against 66 percent in 1992 and 55 percent in 1998, when Tomás Yarrington became governor. In 1986 the main contender was the PARM candidate, while in 1992, the PAN-PRD coalition received 26 percent of the vote, bolstered by the many PRI supporters who had defected to the PRD after oil trade union leader Joaquín Hernández Galicia "*La Quina*" was imprisoned. In 1998 the second-placed candidate (26.6 percent) was the PAN's Gustavo Cárdenas, the former mayor of Ciudad Victoria, followed by the PRD's Joaquín Hernández Correa (16 percent), son of *La Quina* and

[75] The municipality of Río Bravo was created on 10 January 1962 following Decree Number 53 approved by the state congress.

former congressman for Ciudad Madero. More recently, the PRI seems to have reinforced its presence in Tamaulipas: in 2004 Eugenio Hernández Flores won with 57.6 percent of the vote against 31.5 percent for the PAN.

Table 4.6 Most populated municipalities in Tamaulipas: electoral results 1989–2001

	Population 2000	%	Election 1989	1992	1995	1998	2001	2004	2007
Reynosa	420,463	15.3	PARM	PRI	PRI	PRI	PRI	PAN	PRI
Matamoros	418,141	15.2	PARM	PRI	PAN	PRI	PRI	PRI	PRI
Nuevo Laredo	310,915	11.3	PRI	PRI	PRI	PRI	PRI	PRI	PRI
Tampico	295,442	10.7	PRI	PRI	PAN	PRI	PAN	PRI	PRI
Cd Victoria	263,063	9.6	PRI	PAN	PRI	PRI	PRI	PRI	PRI
Cd Madero	182,325	6.7	PRI	PRI	PRD	PRD	PRD	PRI	PRI
Altamira	127,664	4.7	PRI	PRI	PFC RN	PRI	PRI	PRI	PRI
El Mante	112,602	4.1	PAN	PRI	PRI	PRI	PAN	PRI	PRI
Río Bravo	104,229	3.8	PRI	PAN	PRD	PRD	PT	PRI	PRI
TOTAL	2,753,222	81.1							

Source: INEGI (2001) *Tabulados Básicos Nacionales y por Entidad Federativa. Base de Datos y Tabulados de la Muestra Censal. XII Censo General de Población y Vivienda, 2000*, Mexico.
Electoral information: CIDAC / Electoral Institute of Tamaulipas
http://www.cidac.org/es/modules.php?name=Encyclopedia&op=content&tid=28

The level of legal activism of Río Bravo is especially relevant to my main argument that opposition parties from the lowest levels of government were the first to defend the Mexican federal arrangement through legal channels. In the 1992 elections, this municipality was won by the PAN and since then it has been governed by different parties, including the PRD (1995–2001), the PT (2001–04) and the PRI for two consecutive administrations (2004-07 and 2007-10). Juan Antonio Guajardo became the first opposition (PAN) municipal president in Río Bravo and in the last year of his administration he presented two controversies.[76] He used the first recourse to challenge local Article 152, regarding the political persecution of municipal representatives "who without reason were considered responsible for abusing their powers" (SCJN, CC 14/95, 8 September 1995). The Court dismissed the case on the grounds that it lacked legal foundation and that the constitutional controversy mechanism was not the ideal recourse for resolving the matter.

[76] Following his first term as municipal president for the PAN (1992-95), Guajardo became a PRD federal congressman and then ran as a PRD candidate for the first minority Senate position in 1997. Although he won the election by a tight margin and occupied the Senate seat for three weeks, he was later asked to step down after the Electoral Tribunal ruled in favour of the PAN candidate, María del Carmen Bolado (TEPJF, SUP-REC 047/97 and 048/97). In 2001 Guajardo was once again elected as municipal president of Río Bravo, but this time for the PT.

The second recourse challenged Article 91 of the local constitution for violating the exclusive authority granted by the federal Constitution to municipalities to set public security and transit policies. Almost a year later, on 1 October 1996, the Court ruled unanimously in favour of Río Bravo (CC19/95, 5 December 1995) and the gubernatorial nomination of public security delegates and police commanders was annulled.

Also in 1995, the PAN municipal government in Ciudad Victoria presented three controversies against the state government. The first challenged once again the income law on the grounds that it invaded municipal autonomy (CC 3/95, 25 May 1995). The second related to aspects of municipal revenues collected for the provision of services, such as licences for selling alcohol (SCJN, CC 5/95, 8 June 1995), while the third concerned the municipal jurisdiction to regulate police services (CC 7/95). The latter was presented on July 1995 in opposition to local judicial reforms empowering the Tamaulipas State Tribunal to decide not only on civil, but also on constitutional conflicts between different levels of government. The Court ruled unanimously in favour of the state government in all three cases.

In 1996, Bernardo Gómez (PRD) took over from Guajardo in Río Bravo and continued his strategy of using legal mechanisms to strengthen the municipality's financial autonomy. His first actions were to oppose the water law and to demand that the income law for this municipality relating to the 1996 fiscal year be declared invalid (CC 1/96, 16 February 1996). Gómez then opposed new planning regulations affecting the Fund for Municipal Development (CC 4/96, 24 May 1996).[77] In all three cases, the Supreme Court ruled in favour of the state government, declaring the respective laws to be valid (12 May 1998; 9 August 1999). The following year, in 1997, Gómez attemped to pursue the same three issues through the courts (CC 6/97, 7/97, 8/97, 4 February 1997; CC11/97, 7 March 1997). He also opposed local Article 58 (section VI) related to the Organic Law of the Finance Ministry (*Contaduría Mayor*) and the order to audit the municipality. The Court dismissed the case four years later (SCJN, CC 24/97, January 2001). The recourses all aimed to restore municipal fiscal autonomy but were unsuccessful.

In 1998, the PRD administration in Río Bravo presented three new controversies against the state government. The first was another challenge to the planning law and

[77] A week later another PAN municipal president in Tampico filed a similar controversy (CC 5/96, 30 May 1996).

the regulation for integrating the development councils under *Ramo 33* (CC 7/98, 8 March 1998) and was partially founded. The other two called for municipal autonomy to audit its own tax collection accounts (CC 15 and 16/98, 6 May 1998). Both were unsuccessful. Finally, the PRD-governed municipality of Ciudad Madero presented two politically motivated controversies in August 1998 regarding the decision by the *Cabildo* to suspend the Comptroller (*Regidora)* and to nominate an interim municipal president (CC 24 and 27/98). Both cases were dismissed for lack of legal foundation.

In 1999, two recourses were filed against the state governor, this time by the municipality of Reynosa (CC 19 and 20/99). Both claims referred to the arrest warrant issued against PRI municipal president Luis Gerardo Higareda for alleged corruption, falsification of official documents and abuse of power during his stint as Director of the Water Commission. Both recourses argued that the state governor could not suspend a municipal president, because under Article 152 of the local constitution the local congress has to authorise the arrest of certain public servants, including heads of state bodies. As it was a dispute between two PRI members, a number of local commentators argued that the charges against Higareda were part of a political struggle with governor Yarrington, who was "trying to punish Higareda for not supporting him in the gubernatorial race" (*El Norte Tamaulipas*, 19 August 1999).[78] The Court dismissed the claims, which were clearly centred on political issues. Yarrington's personal secretary, Humberto Valdez, replaced Higareda.

Up until 1999, only one of the 21 controversies presented by different opposition municipalities against the PRI state government was successful. The successful case was presented by the PAN administration in Río Bravo, whereas most of the other controversies were presented by the PRD or in some cases the PRI and related to disputes that were clearly political in character, some connected to internal divisions within the ruling party. It should be highlighted, though, that the number of controversies has decreased significantly since 1999.

Only two recourses were presented in 2000–05. In 2001, the PRI-governed municipality of Nuevo Laredo (CC 325/2001) presented a case against President Vicente Fox and the federal Congress demanding control of border crossings, but the Court dismissed the case. Four years later, a recourse (CC 37/2005) was presented by

[78] Indeed, the national Commission of Human Rights, issued a special recommendation (01/2000) to the Tamaulipas state governor and the local Congress for violating Luis Higareda's human rights (10 April 2000,http://www.cndh.org.mx/Principal/document/boletines/abr2000/bol_038.htm). Higareda has tried to impeach governor Yarrington (http://gaceta.cddhcu.gob.mx/Gaceta/2000/abr/20000415.html#Demandas).

the PAN-controlled municipality of Reynosa against the state governor regarding the nomination of the head of the municipal water commission.

In sum, Tamaulipas is particularly relevant for studying constitutional controversies, even though it is underrepresented in the Mexican scholarly literature. Aside from being the state with the second highest number of controversies presented over the 1994–1997 period (14), plus a further seven in 1998–2000, Tamaulipas's electoral patterns are interesting, especially after the breakdown of the oil trade union at the beginning of the 1990s when internal divisions appeared within the PRI. Since then, the number of controversies has decreased significantly.

Although the PRI's strength at the state government level is unquestionable, Tamaulipas is one of the few states in Mexico where three main parties have consolidated their political presence in diverse areas, including the most populated and economically active municipalities of Río Bravo, Ciudad Madero, Ciudad Victoria and Tampico. From these positions of power, representatives from different parties have used legal recourses to confront the state government and even the federation. Political disputes between members of the same party that were taken to the Court in 1998 and 1999 show how the PRI has become internally divided.

Puebla

Puebla has always been governed by the PRI at the state level. This central state has a three-party regional structure with a strong PAN presence in urban areas and clear PRD strength among rural sectors. A polarised state bordering Mexico City, Puebla has a high number of poor, mainly rural municipalities, as well as industrial centres where the PAN has been particularly strong. Puebla has the second highest number of municipalities of the country (217) after Oaxaca and, like Oaxaca, its population is dispersed: Puebla has only four municipalities with more than 100,000 inhabitants, which account for 35 percent of the state's population of over 5 million inhabitants.

Although the PRI retains control of the state government, its support has declined more sharply than in Tamaulipas. In the 1992 gubernatorial elections, PRI candidate Manuel Bartlett won 70 percent of the vote against 17 percent for the PAN; in 1998 Melquiades Morales (PRI) won with 55 percent of the vote against 29 percent for the PAN and 11 percent for the PRD; while in 2004, Mario Marín (PRI) won 51 percent of the vote against 37 percent for the PAN. At the municipal level, the five most populated

municipalities were governed by the PAN in the 1995–98 period, as Table 4.7 shows. The PRI was able to recover the cities of Puebla and San Pedro Cholula in 1998, though lost Puebla to the PAN in 2001. In 2004 the PRI recovered Puebla city and three years later was able to consolidate its presence at the local level.

Table 4.7 Most populated municipalities in Puebla: electoral results (1992–2001)

	Population 2000	%	Election 1992	1995	1998	2001	2004	2007
Puebla	1,346,916	26.5	PRI	PAN	PRI	PAN	PRI	PRI
Tehuacán	226,258	4.4	PRI	PAN	PAN	PRI	PAN	PRI
San Martin Texmelucan	121,071	2.4	PRI	PAN	PAN	PRI	PAN	PAN
Atlixco	117,111	2.3	PRI	PAN	PAN	PAN	PAN	PRI
TOTAL		35.7						
70 –100,000								
San Pedro Cholula	99,794	1.96	PRI	PAN	PRI	PRI	PRI	PRI
Huachinango	83,537	1.6	PRI	PRI	PRI	PAN	PRI	PRI
Tezuitlán	81,156	1.6%	PAN	PRI	PRI	Conv	PRI	PRI
Izúcar de Matamoros	70,739	1.4%	PRI	PRI	PRI	PRD	PRI	PRI
Xicotepec	70,164	1.4%	PRI	PRI	PRI	PRI	PRI	
TOTAL State's Population	5,076,686 5th National	7.96% 43.62 %						

Source: INEGI (2001) *Tabulados Básicos Nacionales y por Entidad Federativa. Base de Datos y Tabulados de la Muestra Censal. XII Censo General de Población y Vivienda, 2000*, Mexico.
Electoral information: CIDAC / Electoral Institute of Puebla (2001)

In terms of constitutional controversies, the PAN-dominated urban municipalities adopted a confrontational attitude towards the PRI state government as soon as the 1994 judicial reforms came into effect. In 1996 Puebla and other PAN municipalities opposed the creation of a system to operate water services (CC 51/96), though the Court ruled by seven votes to three against them.[79]

During Manuel Bartlett's administration (1992–98), the state government and the PRI-dominated local congress extended their degree of political control over revenue-sharing among municipalities. Two controversies presented by Puebla and the other eleven municipalities governed by the PAN focused on the *Ley para el Federalismo Hacendario* known as "Bartlett's Law" (CC 4/98 and 6/98). In the context of the 1998 gubernatorial election, Bartlett created the law to alter the formula for distributing

[79] After resolving several reclamation recourses, the three favourable votes, from justices Aguirre, Castro and Góngora, were lost four years later, when they dismissed the municipal claim on the grounds that the initial ruling had been questioned extemporaneously (SCJN, 29 January 2001).

federal funds to the 217 municipalities. Whereas allocations had been based on population, under Bartlett's Law they would be based on poverty levels. Although on paper this is progressive—since larger municipalities have greater capacity for local revenue generation through taxes and so are less dependent on federal funds than the poorer areas—in reality there were clear political undertones in the context of closely contested 1998 elections. The PAN's centres of control were the municipalities, including the capital, which stood to lose from the new arrangement. Moreover, Bartlett had his sights on the 2000 presidential election and wanted to position himself within the party and the general public.

The PAN claimed that the local congress had acted unconstitutionally in changing the formula for distributing fiscal resources to municipalities. Moreover, the municipalities argued, the "intermediate authorities" created by the new law to administer, distribute, carry out, exercise and audit the federal allocations (*Comités de Planeación para el Desarrollo Municipal*, *Juntas Auxiliares* and the *Grupos Organizados*), are prohibited according to Article 115, section I. Two years later, in February 2000, the Supreme Court decided that the "'Bartlett Law' did not affect the municipal jurisdiction in terms of federal allocations, because the local legislature is empowered to decide these issues" (SCJN, 2000: 219–20), but accepted that Planning Committees are intermediate authorities that interfere with municipal jurisdiction. The Court also ruled that federal authorities must supervise federal allocations, as it is not within state's jurisdiction to use these resources freely (SCJN, 2000: 220).

The other dispute between PAN-controlled municipalities and the PRI state government focused on a state government urban development and modernisation programme known as Angelópolis. According to Ward and Rodríguez (1999: 94), although this programme was mainly focused on the city of Puebla, it was designed to decentralise administrative capacity to other municipalities throughout the state. Angelópolis and the planning agency responsible for it were created independently of the state planning commission (COPLADE), and so were not subject to the usual level of oversight by congress. This prompted several legal actions. In response, the local executive presented three controversies against the municipality of Puebla for posing obstacles to the project's development (CC 20/97; 25/97; 28/97). On April 1998, the Court dismissed the state government's claims unanimously (SCJN, 1998: 125–27).

Legal challenges to the indigenous law will be discussed in the section on Oaxaca, but it is worth noting that the first municipality to present a controversy against President

Fox and the federal and state congresses was Molcaxac (SCJN, 12 July 2001). The municipality was supported by a human rights organisation and the outgoing PRD local government. The Court accepted the claim—along with hundreds of similar claims filed by other municipalities from different states—but it eventually dismissed all of the claims stating that it had no competence or any capability of jurisdictional control with regards to the *Constituyente Permanente,* the reforming body that approved the indigenous law (SCJN, 6 September 2002).

In sum, the balance of all the controversies presented by these state actors was mixed. The Court ruled in favour of the state government on the validity of Bartlett's Law and the creation of a system to operate water services. However, it ruled in favour of the municipalities in terms of the creation of Planning Committees as intermediate authorities that were affecting their jurisdictions. The Court also dismissed the state government's claims surrounding the Angelópolis project, as well as the recourses presented by municipalities in Puebla and other states against the indigenous law. What is notable about the case study has been the willingness of opposition-led municipalities—typically the PAN in important urban centres—to take advantage of the authority granted them by the 1994 reform to use constitutional recourses against higher levels of government.

Oaxaca

Historically, Oaxaca has been a PRI stronghold, with the PRI always governing at the state level and controlling the majority of the municipalities. However, there is significant PRD political representation in some rural and middle-sized municipalities, as well as an increasing support for the PAN in urban areas. By the beginning of the 1990s the PRD became the second force in the state, controlling 16 municipalities, while in the 2001 election the PAN gained ground in crucial industrial municipalities such as Tuxtepec, Salina Cruz, Huajuapan and Miahuatlán. Oaxaca has a large indigenous population of close to one million people (INEGI, 2000), of a total population of 3.5 million. It is primarily rural and has the highest number of municipalities (570) in the country.

The state is divided into eight regions organised into 16 different indigenous groups. Since 1995 the indigenous population has been granted the right to elect most of its municipal authorities through a special system of "*usos y costumbres*" (customary and traditional practice), in a process simultaneous with the system of registered political

parties. Previously, municipalities in Oaxaca and other states with significant indigenous populations could elect their local authorities under the system of customary practice, but candidates also had to be registered with a political party (Hernández Navarro, 1999: 154). According to Bailón (1995: 207), the failure by PRI delegates to recognise community decisions contributed to the rise of the opposition to the official party.

Table 4.8 Most populated municipalities in Oaxaca: electoral results (1992–2001)

	Population 2000	%	Election 1992	Ele 1995	Ele 1998	7 October 2001
1) Oaxaca de Juárez	256,130	7.4%	PRI	PAN	PAN	Convergencia Democrática
2) San Juan Bautista Tuxtepec	133,913	3.9%	PRI	PAN	PAN	PAN
3) Juchitán de Zaragoza	78,512	2.2%	PRD	PRD	PRD	PRI
4) Salina Cruz	76,452	2.2%	PFCRN	PRI	PRD	PAN
5) Santo Domingo Tehuantepec	53,229	1.5%	PRI	PRI	PRI	
6) Santa Cruz Xoxocotlán	52,806	1.5%	PRI	PRI	PRD	
TOTAL	3,438,765	18.8%				

Source: INEGI (2001) *Tabulados Básicos Nacionales y por Entidad Federativa. Base de Datos y Tabulados de la Muestra Censal. XII Censo General de Población y Vivienda, 2000*, Mexico.
Electoral information: CIDAC / Electoral Institute of Oaxaca

Since the 1995 elections, three quarters of the 570 municipalities have been elected through this communitarian method of direct democracy and support for the PRI has collapsed. While in 1989 the PRI won 535 municipalities, in 1995 412 municipalities elected their local authorities through local assemblies without the participation of political parties or a formal electoral organisation, and only 158 voted separately for parties. PRI losses were massive and included the state capital, which went to the PAN. The PRI has managed to retain its hold over the state governorship, but its grip is weakening: PRI candidate Diódoro Carrasco won 74 percent of the vote in 1992, compared with José Murat who won with only 48 percent of the vote in 1998, and PRI-PT-PVEM candidate Ulises Ruiz, with 47 percent against 43.2 percent for PAN-PRD-Convergencia candidate Gabino Cué.

Despite its loss of power, the PRI is still the first political force in the state in the context of a three-party regional system. The case of the capital, Oaxaca, is particularly interesting, since in the mid 1990s it became a PAN stronghold but was later won by Convergencia Democrática (CD). The poor relationship between the capital's municipal president and the state governor is well-documented and explained in terms of Gabino

Cué's closeness to the previous governor, Diódoro Carrasco (*Crónica*, 28 July 2002). Moreover, the *regidores* (municipal councillors) elected in the capital were from the PAN and the PRI and after six months in office both filed a complaint before the state legislature against Cué for allegedly diverting public funds.

Table 4.9 Municipal elections in Oaxaca (1989–2001)

Election	PRI	PAN	PRD	Usos y Costumbres	Others
1989	535	6	16	--	11
1992	537	4	16	--	13
1995	112	11	32	412	3
1998	112	9	30	418	1
7 Oct 2001	*88*	*6*	*3*		*4**

Source: CIDAC; Instituto Estatal Electoral, Oaxaca (1998). Out of the 418 municipalities that are elected through the traditional method, 63 have a one-year period; 24 a year and a half; one governs for a two-year period and the remaining 330 have a three-year period. *Suprisingly, the small Convergencia por la Democracia party won the capital and other three municipalities.

During Carrasco's administration (1992–98), two blocks of controversies were presented, each by 22 municipalities. The first block was taken to the Court in 1996 and concerned the creation of the local Institute for Municipal Development, which, the municipalities claimed, affected the administrative autonomy granted to them under constitutional Article 115 (CC 6/96 to 27/96). Nine of the 22 participating municipalities were governed by the PAN, 11 were from the PRD and the remaining two were elected under customary law. In February 1997, the Court ruled unanimously in favour of the state government.

The second set of disputes reached the Court a month later, and once again was related to budgetary line *Ramo 26*. The 22 municipalities demanded that the full budgetary allocation be handed over to municipal authorities in line with stipulations contained in the Funds for Social Municipal Development. Of the 22 recourses (CC 28/96 to 50/96), 13 were presented by municipalities governed by the PRD, one by the PRI and the remaining eight by municipal authorities elected by customary law. In August 1998, the Court declared unanimously that under local constitutional Article 27 it is the local Court that is responsible for resolving conflicts with municipalities.

In 1998, the PRI state government challenged the municipality of Oaxaca (governed by the PAN) over municipal regulations for transit and public transport (CC 2/98). Nine months later, the Court ruled in favour of the state government (by 10 votes) and the regulation was declared invalid (SCJN, 20 October 1998). The municipality countered

the ruling with a separate recourse filed in August 1999 (CC 24/99), but was unsuccessful (SCJN, 8 August 2000).

Regarding fiscal issues and the distribution of federal funds to municipalities, three consecutive controversies were taken to the Court in 1998 by the municipal authorities of Oaxaca, Asunción Nochixtlán and San Juan Bautista Tuxtepec against the state government (CC 11, 12 and 14/98). Almost three years later, the Court declared these claims to be invalid and affirmed the state government's authority to determine fiscal distribution issues (SCJN, 6 February 2001). In a separate challenge, the state government opposed the creation by the PAN-governed municipality of Huajuapan de León of a local Commission of Human Rights (CC 14/2000). The Court ruled unanimously in favour of the local executive on the grounds that the local legislature has the exclusive authority to create decentralised bodies (SCJN, 15 February 2001).

A flood of constitutional controversies followed the approval of the indigenous bill by Congress in April 2001. Different municipalities presented 331 constitutional controversies, 3 unconstitutional actions and 351 claims before the Court (Pedro Nava, *La Jornada*, 7 March 2002: 17). More than 273 of the controversies were presented by municipal authorities in Oaxaca with the support of the local legislature and executive (José Murat, *El Universal*, 8 May 2002). Most of the controversies not only criticised the content of the constitutional reform, but also the approval procedure followed in many state legislatures, which, they argued, failed to comply with constitutional requirements contained in Article 135. The legal recourses also criticised the failure of the reform to consider international agreements signed by Mexico, including Treaty 169 of the International Labour Organisation (ILO) which stipulates that indigenous communities must be consulted on any legislative measure that affects their interests. Neither did the reform comply with the *Acuerdos de San Andrés* signed by the federal government, the Commission for Peace and Reconciliation (Cocopa) and the rebel Zapatista Army of National Liberation (EZLN) in 1995. In addition, the Oaxaca state government claimed that the reform failed to consider the system of customary practice adopted in Oaxaca since 1995

In October 2001, the Supreme Court dismissed the first recourse by the Oaxaca state government since it had been presented before the indigenous law was published in the *Diario Oficial (Reclamation recourse* 209/2001 presented by the upper chamber against Oaxaca state government). The PRI governor had politicised this issue to the point of threatening to file a case before the Human Rights Interamerican Commission.

Indeed, two weeks after the Court dismissed hundreds of claims against the indigenous law governor Murat and municipal representatives of indigenous communities presented a formal claim before the ILO criticising the violation of an international agreement and the local Constitution of Oaxaca (*La Jornada*, 21 September 2002).

This was undoubtedly a complicated case for the Supreme Court since there was no precedent in Mexico's judicial history of a controversy opposing a constitutional reform which involved the entire reforming body (*Constituyente Permanente*), in this case both federal chambers of congress and all the state legislatures (Article 135).[80] Theoretically, the Court was expected to decide whether it had the power to revise acts of the *Constituyente Permanente* and, if so, to determine whether the approval procedure at the national and subnational level complied with constitutional stipulations. Similarly, the Court was expected to determine where international treaties fitted into the hierarchy of laws with respect to Mexican legislation. However, the Court dismissed the complaints filed against the indigenous rights law on the grounds that it does not have the jurisdiction to address such complaints and that the *Constituyente Permanente* is not susceptible to any jurisdictional control (jurisprudential theses 39/2002-09-07 and 40/2002-09-07). Although three judges voted in favour of discussing the content of the controversy, the final eight-to-three ruling set an important precedent for future constitutional reforms, since any decisions approved by the federal congress and the majority vote in local congresses would not be subject to any modifications via constitutional controversies, regardless of the Supreme Court's stance on the issue.

The ongoing conflict in Chiapas and pressure form many national and international organisations put the Court in a difficult position. The Court ruling was roundly denounced by national and international civil society organisations as a serious blow to the stalled peace process. Judge Díaz Romero defended the Court's decision to abstain from discussing the approval process of the reform on the grounds that "if they had started a profound analysis of the issue, the Court would have been criticised of 'judicial activism' and the arrogance of believing that it is the only institution capable of determining ethical issues" (*La Jornada*, 7 September 2002). Several local groups, particularly from Oaxaca and Chiapas, continued to challenge the issue after the ruling.

[80] The most similar case was the *amparo* suit presented by the former Mexico City mayor Manuel Camacho (1988–93) opposing the 1996 constitutional reform which barred former post-holders from running again. The Court ruled by the narrowest margin (six votes to five) to consider the *amparo*, though it eventually voted unanimously against it. The ruling did, however, establish important criteria for questioning constitutional reforms since it stated that it was possible to control the constitutionality of the reforming body, the *Constituyente Permanente*, through the *amparo* judgment (SCJN, 2000: 188–90).

Former President Fox was pressured into promising "to promote new political agreements in order to improve the indigenous reform" (*El Universal*, 25 September 2002), though his pledge was never fulfilled.

One final case of note relates to a Court ruling announced on 14 October 2009 over protests in Oaxaca from May 2006 to January 2007 that paralysed the state capital leaving at least a dozen people dead (Facultad de Investigación 1/2007, SCJN). The conflict began with a teachers' strike but soon became a broader movement in demand of the resignation of Governor Ulises Ruiz for alleged electoral fraud. In a unanimous vote the Court absolved Vicente Fox's government of any responsibility, but ruled that Ruiz's administration had committed serious violations of individual guarantees and had blocked access to information. Although a similar ruling had prompted the resignation of the governor of Guerrero in 1996 over the massacre of 17 farm workers in Aguas Blancas, Ruiz did not resign. According to Supreme Court Justice Olga Sánchez Cordero, "[f]or us in the Court, the controversies are a thermometer of the governability and political stability of a state. Oaxaca is the state that registers the most controversies.[81] As can be seen in Annex 1, most cases have been presented precisely during the administration of Ulisez Ruiz (2004-2010).

While this case study is notable for the precedent set in the case involving the indigenous law and Supreme Court's curtailment of its authority to rule on controversies relating to decisions approved by the *Constituyente Permanente*, the implications of cases related to fiscal federalism are equally important. Bailón (1995: 212) documents how one of the indicators of conflict with the PRI state government is its effort to adversely influence the level of resources assigned to certain municipalities. In particular, he analyses municipal appropriations and public investment in the 1985–92 period, and shows that while municipal assignations were unaffected by a change of municipal government, levels of public investment in opposition-controlled municipalities is influenced. By analysing public investment as the allocations received by the state government through the CUD (Convenio Unico de Desarrollo) to finance social infrastructure, Bailón (1995: 216) is able to conclude that opposition party power is directly related to the ability to negotiate and exert pressure: opposition municipalities received greater investment resources through mobilisation and pressure. After the 1994 reforms, the legal route became ideal for many of these municipalities to exert

[81] Author interview, conducted in Mexico City on 4 December 2009.

pressure on the state government on a variety of issues, including on fiscal matters, as this section has shown.

Federal District: the first PRD victory at the state level

The Federal District (DF, known unofficially as Mexico City) has existed as a special political entity since 1928 and since 1970 has been divided into 16 *delegaciones*. The sprawling metropolitan area currently transcends more than one jurisdiction, comprising the 16 political delegations of Mexico City and no less than 27 municipalities of the neighbouring Estado de Mexico (Ward, 1998: xiv). According to INEGI's 2000 figures, the Federal District has over 8.5 million inhabitants, second only to Estado de Mexico in terms of its population (INEGI 2001). It is Mexico's economic and political centre and, despite intense decentralisation efforts since the 1980s, it remains the largest manufacturing centre in the country both in terms of jobs and production (Jiménez, 2002).

Although the 1856–57 *Constituyente* granted the Federal District the character of a state with elected authorities, a decree issued in 1928 by President Álvaro Obregón subordinated the government of the Federal District to the federal executive, which was given power over the executive and legislative functions of the capital city (art. 43). Since then, the Mexican political system has offered few institutional channels for political participation to residents in the capital. Up until 1997, instead of locally elected representatives running the City Hall, it was the President who appointed Mexico City's *Regente* (mayor) and the 16 *delegados*.

As the Federal District grew, so too did the demands for its authorities to be closer to the *capitalinos* and more effective in responding to their needs and representing their interests. Since the mid-1980s, the political-administrative structure of the Federal District has undergone several transformations (Berruecos, 2002) that gradually expanded political rights for Mexico City's residents, including their right to elect local authorities.[82] The failure of the government to respond adequately to the earthquake

[82] In 1977, the Federal District created a hierarchically ordered neighbourhood consultative structure on civic matters at the local and state levels (*Juntas de Vecinos* in the delegations and the Consultative Council in the Federal District). The Decree published on 10 August 1987 in the *Diario Oficial* created the Representative Assembly as a representative body with limited attributions. Two Assemblies were elected and functioned until 1994. Prior to the 1994 election, almost half a million inhabitants in the capital supported direct elections for local authorities in a plebiscite organised by members of the civil society on 21 March 1993 (Berruecos, 2002). As a result of the Federal District's Political Reform published on 25 October 1993, the Assembly's powers were expanded to the equivalent of a legislative body. One of the most relevant legislative functions given to this body was the power to approve the electoral law for the Federal District (*Estatuto de Gobierno*), which was approved by the federal Congress in 1994. The 1993 reform also created Citizens' Councils which would report directly to the federal government.

that devastated the capital in 1985 triggered the most intense social mobilisation in the city's history (Tavera-Fenollosa, 1999: 107) and ultimately prompted the 1986 reform, which set the basis for political participation in Mexico City.

The 1996 political reform finally established direct elections in the Federal District: residents would be able to elect their own *Jefe de Gobierno.* The first elected government would be in power for only three years (1997–2000) while subsequent terms would last six years.[83] According a decree issued on 22 August 1996, a Legislative Assembly of the Federal District (ALDF) would be made up of elected deputies (rather than representatives) from 1997. It was also agreed that *delegados* would become three-year elected positions from December 2000. According to Ward (1998: xv), new federalism has affected Mexico City in several ways: it led to the downsizing of the federal bureaucracy and encouraged outwards migration from Mexico City. However, because of the "special status" afforded to the Federal District, successive governments have been unable to successfully champion its fiscal autonomy—it does not receive federal funds on the same basis as other states and is not formally be part of the national fiscal programme.

The Federal District is an interesting case study—especially after Cuauhtémoc Cárdenas took office (1997–99)—not only because it was the first entity to be governed by the PRD, but because it shows how incipient internal democratisation unfolded at the local level as part of the overall transition process. Opposition parties have historically been strong in Mexico City, but they gathered real momentum after the 1988 elections. From then on, the PRD strengthened its position within the Federal District and in 1997 not only won its first "governorship" (*Jefe de Gobierno*) but also secured an absolute majority in the local assembly (57.5 percent), winning 38 of the 40 majority districts.[84] Electoral participation was close to 70 percent. As can be seen in table 4.10, Cárdenas won 48 percent of the vote, followed by the PRI's Alfredo del Mazo (26 percent) and the PAN's Carlos Castillo (16 percent). Cárdenas stepped down

[83] According to the new rules contained in the Constitution and the Statutes of Government of the Federal District, the First Legislative Assembly (1997–2000) approved the Electoral Code on 15 December 1998. This new code contains the details for the organisation of elections for the Assembly, the Head of Government and the Councils, on the basis of the *Ley de Participación Ciudadana del Distrito Federal* and the *Código Electoral del Distrito Federal.* Given that the Federal District now has its own legislation and electoral authorities (as do the other 31 states), the 1997 local elections were the last to be organised by the IFE. Since the 2000 electoral process, the Electoral Institute of the Federal District (IEDF) has been in charge of organising local elections. The IEDF has a similar structure to the IFE, comprising a General Council of eight Councillors and a President, an Executive Secretary and five Executive Directors (IEDF, 2000).

[84] In 1997, the PRD secured 38 seats in the the Legislative Assembly, with 45 percent of the votes; the PRI won 12, with 24 percent; the PAN, 10, with 18 percent; and the remaining 13 percent was distributed between the PVEM (four seats), the PT (one seat) and the Cardenista Parties (one seat).

after less than two years to campaign for the presidency in the 2000 general election. He was replaced in September 1999 by his Secretary of the Interior, Rosario Robles.

In the 2000 elections Andrés Manuel López Obrador became the third PRD mayor of Mexico City, narrowly defeating PAN candidate Santiago Creel. As opposed to Cárdenas and Robles, López Obrador faced a divided Assembly: the PRD had 19 seats, against 17 for the PAN and 16 (proportional seats) for the PRI. The election for delegates was even closer, with the PAN and the PRD tied at 33 percent of the vote. The Electoral Tribunal had to resolve a number of complaints before confirming that the PAN had won seven and the PRD nine of the 16 delegations.[85] As will be discussed, the delegations, particularly the ones governed by the PAN, have used legal mechanisms to oppose the PRD head of government.

Table 4.10 Percentage of votes won in the Federal District elections (1988–2006)

Election	Local Assembly				Head of Government				
	PRI	PAN	PRD	Others	PRI	PAN	PRD	Others	Particip
1988	27.6	24.4	6.8	41.2					
1991	45.6	19.6	12	22.5					
1994	40.5	27	21.1	11.3					
1997	23.6	18.5	44.8	13.2	25.6	15.5	**48.1**	10.5	67%
2000	22	35.2	31	12.3	22.8	33.4	**34.5**		
2003					23.14	15.58	**34.86**	8.12	65.65%
2006					21.91	33.87	**47.05**	3.39	68.96%

Source: CIDAC, Instituto Electoral del Distrito Federal (2000)
(http://www.asambleadf.gob.mx/princip/E-02_t.htm)

Intergovernmental relations with the federal government have not run smoothly for PRD governments in the capital since the party won power in the city in 1997. Some of the most problematic issues have related to the budget allocated to debt, federal spending cuts, the Fiscal Coordination Law and the withdrawal of revenue-sharing (*participaciones*) to the Federal District from 1999 onwards, as well as challenges over the Electoral Code. Five constitutional controversies were presented before the Supreme Court by the three centre-left state governments. Most of the controversies focused on fiscal issues—indeed all three PRD mayors have mounted legal challenges to demand a share of federal resources equal to that allocated to all other Mexican states.

The first controversy was presented by Cárdenas against the federal Congress and other federal government entities including the Ministry of Finance (SHCP) opposing

[85] See <http://www.iedf.org.mx/docs/electoral/EJD_RD.html>

the presidential decree that reformed the Fiscal Coordination Law published in the Official Gazette on 31 December 1998 (SCJN CC 5/99, 8 March 1999). His specific challenge was against the presidential decision to exclude the Federal District from the resources given to strengthen the municipalities under budget line *Ramo 33.*[86] Cárdenas's successor, Rosario Robles, followed in his footsteps and presented a controversy against the federation (CC 11/2000) opposing the 2000 Annual Budget and the reform of Articles 36 and 37 of the Fiscal Coordination Law. Both claims were eventually dismissed for lacking legal foundation on 1 February 2001—Chief Justice Genaro Góngora was the only judge to defend the controversy.

Another area in which Robles used a legal recourse to challenge federal decisions was education. She demanded that Articles 1, 11, 12, 13, 14, 16 of the General Education Law be ruled invalid (CC 32/2000), but her claim was dismissed (by eight votes) on 31 May 2001. In a subsequent controversy between the federation and the Federal District, the Ministry of Education under the Zedillo administration argued that the federal government had exclusive authority to legislate over education. The process of decentralisation of education services had been completed in all states except for the Federal District. Nonetheless, Robles presented an Education Law that was approved by the PRD-dominated local Assembly on 8 June 2000. After more than a year of discussion, the Court ruled unanimously that the Legislative Assembly of the Federal District does indeed have constitutional powers to legislate on education (SCJN, 16 November 2001). The eleven justices ruled that of the 188 articles contained in the Education Law of the Federal District, only 16 were unconstitutional while a further four violated certain constitutional precepts. In a divided vote, six justices ruled that Articles 4 and 140 of the local law were constitutional which meant that pre-school services could be offered by the public education department.

During López Obrador's administration, a recurrent source of conflict was the presidential decree (*Diario Oficial,* 1 February 2001) on the daylight saving summer timetable. On 5 March 2001, the government of the Federal District presented a legal recourse (CC 5/2001) arguing that the federal congress is the only body constitutionally allowed to overrule the General System of Weights and Measures (Article 73) and therefore the presidential decree violated the principle of separation of powers contained in Article 49. López Obrador went as far as to publish his own Decree on 26

[86] The PRD government opposed the reform of Article 25, sections IV, 36, 37 and 38 containing information for local governments on resources corresponding to *Ramo 33* (federal resources allocated to the states and municipalities as per the Fifth Chapter of the Fiscal Coordination Law, SHCP, 19 January 1999)

February 2001, suspending the presidential one and establishing that the Federal District would keep the normal timetable. The federal government countered with its own constitutional controversy on 30 March 2001 against the Governor of the Federal District, for attempting to regulate the summer timetable through an internal decree (SCJN, CC 8/2001). In the end, the Supreme Court ruled that both decrees were unconstitutional. The non-validity of the presidential decree had effect from 30 September 2001, but only within the capital as this was the only actor that had opposed the decree. In its ruling, the Court argued that President Fox had misused his constitutional attributions as specified in Constitutional Article 89, Section I, by invading the congressional sphere (SCJN, Comunicado No. 444, 4 September 2001). López Obrador applauded the ruling and expressed sympathy "for the emerging Court's independence and a true separation of powers" (*La Jornada*, 7 September 2001: 5).

In late 2001, López Obrador's government presented another legal recourse against President Fox, this time for the decision to build a new terminal of Mexico City's airport in Texcoco rather than in Tizayuca in the state of Hidalgo (SCJN, 3/2002). The presidential decision infuriated *ejidatarios* (communal landowners) in 13 small communities in the area of Texcoco who were offered MXN 0.6 per square yard in compensation for their land. Most were situated in municipalities controlled by the PRD since 2000. López Obrador argued that the federal government had failed to consult the local governments of the Federal District and the Estado de México in a decision that would have a clear impact on the environmental and urban development of the metropolitan region. According to Article 115 of the federal constitution, planning policies for urban centres that belong to different states or municipalities have to be agreed among all the authorities involved. López Obrador used this principle, together with another ten constitutional articles and six local laws, in his confrontation with Fox.

The height of the confrontation was a violent four-day protest in mid-July 2002 which ended with the *ejidatarios* releasing 19 hostages, some of them police officers, and the government promising to wait for the final resolution of the Supreme Court and even to reconsider the location and terms of the USD 2.3 billion construction. According to Sullivan (2002), "the airport battle turned into the latest cause for Mexico's combative collection of extreme leftists, anarchists and anti-globalisation activists, who went to Atenco in large numbers to protest alongside the farmers...Now they are focusing their efforts on the airport, taking on the government and powerful private interests who stand to benefit from the multibillion-dollar development in the surrounding area." The truth is that the legal recourses used by the government of the Federal District, coupled

with several *amparo* suits brought by peasants affected by the expropriation of their ejidos and controversies brought by municipalities of Texcoco, Acolman and Atenco (CC 1/2002, 2/02, 9/02), were able to stop, or at least prolong, the decision to build the new airport in a combative and extremely poor area.

Fox's government announced on 1 August 2002 that the project would be cancelled and other alternatives would be sought. Although the decision was taken before the Court ruled on the legal recourses, there was a sense that the federal government stood to loose a lot more if the Court's decision went against it. The well-regarded jurist Ignacio Burgoa even suggested that it was a "strategic decision, since President Fox knew that it was a judicial battle he had already lost, since his expropriation decree violated Article 115, section five" (*La Jornada*, 5 August 2002). The presidential decision was widely criticised by investors and the business sector who thought it showed weakness; the construction of the 11,000-acre airport was undoubtedly the largest public works project attempted during Fox's term in office and no one disputes that a new airport is necessary for Mexico City. Other commentators considered the decision fitting and in line with public opinion since Fox could not risk further casualties if stronger tactics were used to expropriate the *ejido* land. Again, this case is an example of how, in the context of increasing political pluralism and separation of powers, different actors are using legal routes to claim respect for specific jurisdictions or to politicise almost any dispute, generally among rival parties.

In terms of the new horizontal separation of powers within the Federal District, three of the seven PAN council leaders (*jefes delegaciones*) presented a constitutional controversy against López Obrador's government over an agreement affecting their public relations budget (SCJN, 1 April 2002). The agreement, published in February 2002, established general guidelines in the areas of publicity, advertising, broadcasting and information, affecting all of the public entities within the Federal District (*Gaceta Oficial*, Number 17, 13 February 2002: 4). It referred to "austerity measures contemplated in the local Annual Budget" and established that "with the aim of obtaining better prices and conditions, the General Direction of Social Communication will concentrate and analyse the costs of services related to the areas 3601 'Advertising and institutional image expenses' and 3602 'Broadcasting public services and information campaigns'" (*Gaceta Oficial*, 2002: 5). The *jefes delegacionales* Guadalupe Morales from Delegación Venustiano Carranza (CC 27/02), José Espina from Delegación Benito Juárez (CC 28/02) and Francisco de Souza representing Delegación Cuajimalpa (CC 29/02) argued that the measures announced by López

Obrador interfered with their jurisdictions. In their view, the new communication programme aims to "control, censor, restrict and manipulate the channels of communication between the political-administrative entities and the citizens who live within the territorial limits" (*El Universal*, Lagunas: 2 April 2002). More than a year later, all three claims were ruled founded as the Court highlighted the relevance of the 1996 reform which granted the *delegaciones* the level of government bodies and thus the power to present controversies (SCJN, 4 November 2003), http://www2.scjn.gob.mx/juridica/engroses/cerrados/302/02000270.009.doc).

Other claims presented by the PAN *delegaciones* cover a wide variety of issues such as the use of partisan colours in official documents, the functioning of a secondary school in Colonia del Valle, and the centralisation of the administration of Chapultepec Park (CC 37/2000, 17 November 2000). The latter referred to document OM/2376/2000 through which Robles's government created the *Unidad de Bosques Urbanos* (*Gaceta Oficial del DF, 23 September 1999)*). The Court dismissed the case two years later (SCJN, 26 August 2002). Even though the claim was unfounded, the case is relevant since the ruling formally recognised the figure of *delegado* as an actor legally empowered to use constitutional controversies to defend the autonomy of a *delegación*.

The local Assembly has also become an active participant in constitutional disputes. In 2002 it filed a recourse against the local executive for not implementing the local third-party car insurance law (SCJN, CC 38/02). López Obrador refused to implement the specific portion of the law that deals with fines for infractions, on the grounds that compulsory car insurance affects the population's income to the benefit of insurance companies (*Reforma*, 9 July 2002). Forty local congressmen, mainly from the PAN and PRI, approved the decision to present a controversy against the Mexico City government. They were opposed by 13 PRD members and two abstentions (*El Universal*, 29 April 2002). López Obrador claimed not to be surprised by this first legal claim presented by the Legislative Assembly against his government, since in his view this is the normal procedure for resolving differences between different powers in a democratic context. He said he would only enforce the compulsory car insurance if the Court instructed him to (*Reforma*, 14 May 2002). Once again, it was the failure to resolve differences through political negotiations that forced the local legislature to call on the Court to act as an external referee.

So far, the Court has ruled in favour of the Federal District in only one of the five controversies presented by different PRD governments. All of the fiscal disputes have

been dismissed or decided in favour of the higher level of government. Given how short-lived the administrations of Cárdenas (1997–99) and Robles (1999–2000) were, it was difficult for the Court to resolve the cases while the claimant was still in office. More recently, the Court dismissed an unconstitutional action presented by the federal Attorney General Rafael Macedo on 14 June 2002 against new local government regulations affecting the functioning of commercial establishments (*Ley para el Funcionamiento de Establecimientos Mercantiles del Distrito Federal*, approved by the local congress on 30 April 2002). In particular, the federal government opposed the new powers granted to the 16 *delegaciones* to shut down banks that do not guarantee complete security to their customers. The final vote was split: seven ministers supported the federal recourse arguing that the local legislative assembly was not empowered to legislate on security issues since this is an exclusive area of competence of the federal Congress. Because a minimum of eight votes is needed according to Article 105, the Court was not able to rule on the constitutionality of these reforms (SCJN, AI 12/02, 22 October 2002).

In terms of democratisation within the Federal District, although significant advances have been made, important issues are still being discussed in the capital and the federal Congress by a plurality of forces. The initiative for *Political Reform of the Federal District* was unanimously approved by the local Legislative Assembly in November 2001 and a month later was approved by a majority of votes in the lower chamber of congress. The initiative would empower the Legislative Assembly to issue laws and decrees, including the Income Law; to draft the Federal District's budget; and to have the final say over the debt limits for annual governmental projects (Art 73, Fraction VIII, ALDF Initiative, November 2001). The initiative stalled in the Senate, however. Discussions were postponed on several occasions until the PRI Senators presented a counter-proposal in June 2002. One of the main objections to the initiative centres on the financial autonomy of the Federal District, an issue that was disputed by the three consecutive PRD governments via the controversies analysed in this section.

The implications of the reform initiative are wideranging and deep in terms of the Federal District's fight for political autonomy. It would finally have the legal right to receive federal funds through the Fiscal Coordination Law, and could therefore become part of the *Constituyente Permanente* and participate formally in the National System of Fiscal Coordination, which includes funds allocated under the budgetary line *Ramo 33.* As I have argued, most of the legal disputes have referred to the need to include the Federal District in the distribution of two main federal funds: Municipal Strenghtening

(Fortamun) and Support for Social Infrastructure (FAIS). As presented in this section, it could be argued that political and legal pressure initiated by political pluralism is finally bringing to the fore issues that are crucial for the democratic consolidation process.

Conclusions

In this chapter, I have measured democratisation not only in terms of increased electoral competition but in terms of a greater separation of powers between levels and branches of government. A lack of political competitiveness and the highly centralised political system meant that the checks and balances contemplated in the Mexican federal system had largely lain dormant. However, as opposition parties started to win at the municipal and state levels, there was a gradual reactivation of the incipient system of separation of powers. With increased political, economic and even legal independence, municipalities began to adopt greater autonomy vis-à-vis the state government and the federation, and in some cases have openly begun to challenge their authority. The case studies analysed in this chapter show how municipalities and state governments are also playing a more active role in policy design and have become in some instances important counterweights to the executive.

Following the argument that opposition governments have been crucial in reinforcing an authentic federalism through the increasing use of the law, I chose to analyse in more detail seven states that experienced the first opposition governments at the municipal and state levels. The first three of the seven case study states (Baja California, Chihuahua and Nuevo León) have been governed by the PAN and are characterised by a bipartisan structure in which power has been shared mainly by the PAN and the PRI. Then I introduced three PRI-governed states that share a multi-party system structure at the municipal level. Particularly interesting was the case of the Federal District, the first to be won by the PRD and which also has a multi-party structure. In all these cases, I demonstrated how opposition governments have operated as effective counterweights to state governments and even to the federation.

In the case of the Federal District, I compared the first two governments that had an important majority at the local level, with the third PRD government (2000–2006) which faced a more divided state legislature and contains delegations that are governed by the opposition parties. The PRD governments have launched significant legal battles in defence of the autonomy of this entity. Their actions form part of a much longer

process of democratisation within the capital. As I argued, the focus of conflicts has tended to be the need to strengthen the financial autonomy of the capital.

Since the 1994 reform, there does appear to have been a more visible role for the Supreme Court in political affairs thanks to a genuine recasting of intergovernmental relations and the reduction of dependence upon higher levels of authority. This has created new opportunities for democratisation and the emergence of true separation of powers. As opposed to the traditional hierarchical relation between the federal government and lower levels, new federalism policies facilitated the reduction of centralism and presidentialism by reinforcing municipal autonomy and state sovereignty. The process of vertical decentralisation has gradually promoted a more genuine balance between the three branches of government. The judiciary (since 1994) and the legislative (since 1997) are sharing a greater role in the governing-process dynamics.

Yet, as was discussed in Chapter 3, the new role for the Supreme Court is not necessarily a more respected one. After the 1994 reform, the "apolitical" branch of government has been defining a number of important political processes, although as some of the cases above have outlined it is delineating its sphere of competence in a number of ways by rejecting politically-motivated legal challenges between rival parties, and by recusing itself from deciding on constitutional changes introduced by the federal and majority of local legislating bodies. The response of the Court to most political issues may have important implications for its own credibility and legitimacy, not to mention the ongoing institutionalisation process in Mexico.

CHAPTER 5
Electoral Justice in Mexico: State Sovereignty and the Role of Mexico's Electoral Tribunal

"Demanding adherence to principles is, either, to accept the federal system with all its advantages and dangers, or to denounce it frankly and proclaim the empire of central government, granting it the power to correct the abuses that local authorities might commit" Ignacio Vallarta (González Oropeza, 2000: XXV)

The central claim of this thesis is that the empowerment of the judiciary has played a key part in institutionalising the democratisation process in Mexico. Much of the thesis has been taken up with issues to do with federalism and the resolution of constitutional controversies. However this chapter needs to deal with the electoral process directly. That is because reforming fraudulent or biased electoral practices is central to any credible role for the judiciary. One cannot institutionalise democracy or the rule of law in a democracy without public confidence in the electoral process. In the case of disputed elections and electoral legislation, the key arbitrating body is the Electoral Tribunal (TEPJF), whose role and operational behaviour is the main subject of this chapter.

The historic annulment of the 2000 gubernatorial elections in Tabasco set a fundamental precedent for electoral justice in Mexico and the role of the TEPJF in future federal, state and local elections. Successive constitutional reforms culminating with the 1996 "definitive" electoral reforms have consolidated a regime of electoral dispute adjudication at the federal level that gives political parties the right to appeal to federal authorities in state-level cases. The centralist position concentrated on the TEPJF and the Supreme Court of Justice in the electoral field contrasts with the trend under "new federalism", which, as its architect, former President Ernesto Zedillo explained, was aimed at reducing excessive centralisation and presidentialism through the devolution of power from the federation to states and municipalities in several policy arenas.[87]

This thesis makes the claim that the effective supervision and arbitration of Mexico's many election disputes, while in a certain sense centralising, was an essential part in the process of establishing a democracy with a significantly devolved process of governance. Even so, there have been criticisms made of the TEPJF to the effect that it has over-centralised the process of electoral arbitration and law enforcement. Whether or not this criticism is valid is considered again in the conclusion to this chapter.

[87] Author interview with former President Ernesto Zedillo conducted in London in November 2001.

Until recently, there were practically no mechanisms for reviewing the legality of local elections. Since parties could not legally oppose final outcomes, opposition parties became used to pressing for post-electoral concessions through negotiations that were clearly outside of any legal framework. Thus, on the one hand, the creation of the TEPJF was a fundamental step in the long process of electoral institutionalisation and has gradually become the main arena for dispute adjudication. On the other hand, there are also certain risks in giving this electoral institution the power to interpret legal criteria when ruling on subnational elections: the TEPJF is increasingly deciding a large number of political issues from the centre according to criteria that can be contested. Certain sectors have called for its powers to be limited so that in the future it can only rule over subnational elections based on well-defined criteria with respect for specific jurisdictional principles.

Throughout the discussion I refer to the concept of institutionalisation as it relates to the electoral courts. In doing so I follow Loaeza (2000: 104), who argues that the notions of liberalisation and democratisation are not useful for the Mexican case, as there was no need to reinstate individual (liberalisation) and civil (democratisation) rights but simply to expand them. In her analysis the concept of institutionalisation is more useful since it "captures the profound changes of electoral reforms" introduced during Mexico's protracted transition.

This chapter begins with a brief discussion of the evolution of electoral justice in Mexico, looking at the background to the TEPJF and the historical refusal of the judiciary to resolve electoral disputes. The incorporation of the TEPJF into the judiciary in 1996 was the result of an intense debate that existed throughout the past two centuries in Mexico over whether the Supreme Court should take part in electoral issues. Since then, the "apolitical" branch of government has been increasingly defining the way most political processes work. Enhanced competition and the pressure from parties to ensure more transparent elections resulted in improved administration of elections. However, it seems that the TEPJF is being consistently called to resolve matters that have no regional significance. In this context, it is crucial to assess opposition party compliance with electoral institutions; although electoral compliance has been studied by authors such as Eisenstadt (2004, 1999a; 1999b), the role of the TEPJF under new federalism is an important yet under-researched area.

After analysing the 1996 reforms and the prerogatives of the new TEPJF, I will present an evaluation of this institution's activities up to 2005. I reveal that there has been a significant increase in the number of cases challenging state court verdicts, which reflects a lack of confidence in electoral institutions at the subnational level. At the federal level, the electoral tribunals created under the PRI government have also been challenged in terms of their independence from the executive. Up until the 2006 election, the opposition questioned the TEPJF's impartiality as significant decisions still tended to favour the PRI regime. With alternation of power problems have persisted, with the PRI now also questioning the jurisdiction of the TEPJF. But rather than seek to identify whether there is continuing state bias, my focus in studying the recent conflicts in the Mexican south is to address a valid concern about the spheres of authority of federal institutions over subnational processes.

In the final section, I offer evidence from two crucial post-electoral conflicts, in Tabasco and Yucatán, which are typically identified as authoritarian enclaves (Eisenstadt, 2004; Lawson, 2000; Cornelius, Eisenstadt and Hindley, 1999). These case studies will help me explain the importance for the entire process of institutionalisation of the increasing use of judicial rather than political channels to resolve electoral disputes. The two examples also illustrate the ongoing difficulties involved in finding a legitimate balance between subnational autonomy and the need for impartial electoral institutions that can legally resolve these conflicts while operating with well-defined criteria. In fact, I show how after the events in the southeast, the TEPJF faced a crisis of credibility and its powers were finally restricted in terms of interpreting the constitutionality of electoral legislation.

I also look at several of the most recent rulings related to electoral matters and show how the Supreme Court has weakened significantly the TEPJF's future role by asserting its supremacy as a constitutional court. The 1994 judicial reform explicitly prohibited the Supreme Court from determining the constitutionality of laws with respect to electoral matters. The 1996 electoral reform partially removed this limit by allowing electoral cases to be considered via the recently created unconstitutional actions. Since then, 11 unconstitutional actions have been presented before the Supreme Court, mainly challenging the system used to determine the distribution of seats. The Court first invalidated an electoral law in a September 1998 ruling on a case involving Quintana Roo. The final discussion of this Chapter centres on the TEPJF's role in the "Amigos de Fox" and "Pemexgate" cases, and the crucial qualification of the

closely contested 2006 presidential elections, which paved the way for the 2007 electoral reform.

Antecedents to electoral justice in Mexico

Historically, there was a clear intention to refrain the Supreme Court from resolving political controversies. With the adoption of a presidential system in 1824, it was decided that the legislative power—the *"political power par excellence"*— would be responsible for the make-up of Congress. Electoral Colleges were created as means to protect citizens' political rights, while Article 113 granted the Supreme Court an incipient constitutional control of a political nature. After the short-lived 1836 Centralist Constitution, the debate about the Court's role in the context of separation of powers gained currency. The 1847 Reform Act restored the federal system and created the *amparo* judgment, a means of constitutional control through the judicial system to protect individual constitutional rights at the federal level (Burgoa, 1986: 135). From then on, there was an increasing need to define whether the Court would resolve *amparos* that protected political and electoral rights.

At the end of the 19th century, the thesis of "incompetence of origin", formulated under Chief Justice José María Iglesias (1873–76), was established with the Amparo Morelos. However, as argued in Chapter 2, Iglesias's position was reversed by Chief Justice Ignacio Vallarta (1878–82), who faced an increasing number of criticisms of the Court's excessive interpretative power. Vallarta insisted on the need to depoliticise the Court and established that political issues were not individual rights and therefore should be excluded from the amparo protection at the federal level. Instead, the Electoral Colleges were strengthened as the proper channel for challenging the validity of political acts. Vallarta's thesis of "non-intervention" by the judiciary in electoral conflicts delineated the limits of the Court's jurisdiction for almost 150 years.

The 1917 Constituent Congress established the principle of "self-certification", which prevailed until 1976. The principle ostensibly protected the judiciary from politicisation while resolving electoral conflicts but in reality served to maintain the PRI's hegemonic regime since it gave the PRI-dominated Congress the power to oversee flawed elections. The 1917 Electoral Law gave citizens the right to ask the Congress to invalidate presidential elections and those of the lower house in any district. However, the lack of clear procedures prevented this right from being exercised. At the time, electoral organisational responsibility was highly decentralised at the municipal level.

There were few restrictions on partisan activity and the registration of new candidates, which was reflected in the proliferation of and dominance of small regional parties.

Successive electoral reforms served to further reinforce the PRI's position. The promulgation of the 1946 Federal Electoral Law (LEF) and the transformation of the Mexican Revolutionary Party (PRM) into the PRI, were crucial factors for the modernisation of the electoral system (Molinar, 1990: 24). The LEF centralised the organisation and supervision of federal elections in the executive, through the creation of the Federal Commission for Electoral Surveillance. It also extended to political parties the right to challenge federal electoral results, though it introduced requirements that made it more difficult for new parties to register (Molinar, 1991: 24). The federal and state-level congresses were given the authority to certify elections, while the Court was empowered to investigate voting irregularities. But it was the Electoral Colleges that determined the scope of electoral certification and these were dominated by the executive.

The 1946 law was clearly designed to create a national party system, without regional and local parties, where the President and the PRI had absolute predominance over the electoral competition. In order to register candidates, an organisation had to be a national party and demonstrate it had 30,000 members, with a minimum of 1,000 in each of at least two-thirds of the 31 states. This made it more difficult for new parties to register. While some flexibility was retained in 1946, which allowed 11 parties to register that year, by 1949 only three of them obtained their registration (PRI, PAN and PP). Subsequent reforms introduced in 1954 made it even more difficult to form political parties.

Political institutionalisation: towards an electoral jurisdiction

The PAN failed to present a presidential candidate in 1976 due to internal party problems, which seriously threatened the legitimacy of the political system. Faced with the prospect of running an election with no credible opponents on the one hand, and with the real threat of political violence from the left on the other, the government supported the 1977 reform which would incorporate external protest into the system, namely by offering a legal path to the left, without dismantling PRI hegemony (Loaeza, 1999).[88] The process of political liberalisation hinged on the Federal Law on Political

[88] Some earlier concessions to the opposition had been introduced with the 1963, 1972 and 1973 electoral reforms, which were an attempt to reinvigorate the party system by guaranteeing marginal parties (PAN,

Organisations and Political Processes (LFOPPE), which was enacted in December 1977. This reform marked the beginning of a process of political institutionalisation: it offered opportunities for opposition forces as it created a mixed representation system. From that point on, electoral opening proceeded gradually from above, stimulated by constant pressure from the opposition.

The main changes introduced by the LFOPPE were:

- A mixed representation system was created and Congress was increased to 400 seats (300 to be elected by a simple majority of votes in single-member electoral districts (*diputados uninominales*) and 100 by proportional representation in party-list circumscriptions (*diputados plurinominales*, which were reserved for minority parties that won less than 60 single member electoral districts).
- Responsibility for party registration was moved from the Ministry of the Interior to the Federal Electoral Commission (FEC), which was also given the authority to oversee issues including public financing for parties, registration, approval of electoral coalitions and determining the electoral formula for proportional votes.
- Parties were made eligible for public financing and limited free access to mass media for election campaign spots.

In terms of the electoral justice system, the 1977 reform established the first appeal recourse against the Electoral College's resolutions, although it was only available to political parties. Through the reform of constitutional Article 60, it was made clear that the Supreme Court would act as a legal tribunal and not as a political-electoral body, since its rulings would only have "declarative" character. It would be up to the Electoral Colleges to decide whether to accept the irregularities reported by the Court. The reform also introduced a system of administrative recourses aimed at regulating acts that took place prior to or on the day of the election. The number of electoral and post-electoral conflicts increased after the 1977 reform and the Court was recognised as the competent institution to resolve controversies in electoral matters. Although from 1977 to 1986 it was the judiciary that certified congressional elections, the authority granted to it on electoral issues was very limited.

PPS and PARM) congressional representation at the national level through the so-called "diputados de partido" (party deputies). Nevertheless, none of these reforms transformed the existing parties into a credible opposition. The 1963 reform provided minority political parties winning more than 2.5 percent of the total national vote, a minimum number of deputies in Congress.

According to Patiño (1996: 72), the creation of the appeal recourse was aimed at giving greater objectivity to electoral results and at avoiding illegal interference by the judiciary in matters concerning the legislature. At this stage, a decision was taken not to involve the Supreme Court in political issues, since the emphasis of reform was to consolidate the judiciary as the legal branch of power. The Court's involvement in certifying elections was deemed to be a clear violation of the principle of separation of powers. Yet the need for a legal resolution to electoral conflicts was clear. Support grew for a tribunal that would be independent of the judiciary but that could resolve electoral conflicts based on the law.

The Electoral Tribunal: institutionalisation from the periphery?

The economic crisis of the early 1980s altered the basic foundations of the regime's legitimacy. President Miguel de la Madrid implemented a series of economic reforms that had political repercussions as opposition parties strengthened their presence at the local level. As discussed in Chapter 3, the 1984 reform of constitutional Article 115 strengthened the municipalities' economic and political independence by guaranteeing fixed revenues for public services (Rodríguez, 1997: 2). In the aftermath of the 1985 earthquakes urban social protests peaked, together with post-electoral confrontations. Particularly significant were the protests organised by the 1985 gubernatorial PAN candidates in Nuevo León and Sonora against the outcome of their respective elections. The candidates presented complaints of electoral fraud.

A year later, Chihuahua became the centre of political tension after the opposition protested against electoral fraud in the 1986 state elections (Molinar, 1987). Several municipal candidates mobilised, while federal PAN congressmen with the support of some US congressmen demanded that the elections be annulled. The PAN, which in 1986 had selected the confrontational hard-liner Luis H. Alvarez as party leader (Loaeza, 1999), even filed a complaint before the Inter-American Commission on Human Rights. However, the Electoral College and the Supreme Court considered that there was insufficient evidence of fraud.[89] This experience partly explains why up until the mid-1990s opposition parties preferred to pursue extra-legal negotiations instead of using legal procedures.

[89] In 1983 the PAN's victoriesin the IV local district of Ciudad Juárez and eight municipalities were annulled. Two years later the PAN received confirmation that its victory in the same district had been annulled once again. As will be discussed, two consecutive PAN victories in Ciudad Juárez were annulled in 2001, which demonstrates that there has been a history of rulings against the PAN.

It was against this background that the 1986 electoral reform was introduced, which expanded Congress to 500 members by adding an extra 100 proportional representation seats and limited the PRI to 350 members in the lower chamber. The Senate terms changed from concurrent with the presidential administration to semi-concurrent, with half of the senators starting at midterm. Public subsidies to opposition parties were enhanced, as well as their media exposure and their participation in administering and supervising the electoral processes.

In terms of the electoral justice system, the most significant change introduced in 1986 was the elimination of the *appeal recourse.* With the aim of avoiding judicial intervention, the 1987 Federal Electoral Code created the Contentious Electoral Tribunal (Tricoel) as an autonomous body of administrative character and independent of the judiciary. The Tricoel would decide appeal recourses in electoral matters and would have powers to invalidate the final outcome in any electoral district. Nevertheless, it should be noted that the Tricoel only had administrative powers and its resolutions could be modified in an unchallengeable and definitive way by the Electoral College, which continued to be the final certifying body. The Tricoel comprised seven magistrates nominated by the parties and approved by congressional majority. However, critics argued that despite this "impartial" selection procedure, the magistrates' performance during the 1988 elections was still compromised by Tricoel's institutional dependence on the Electoral Colleges.[90]

After the controversy surrounding the 1988 election, political reform was rapidly accelerated under Salinas's administration. Three different electoral reforms were introduced in less than five years. The 1990 reform created the Federal Electoral Tribunal (TFE) as an autonomous jurisdictional body whose resolutions would be definitive, unchallengeable and compulsory. The TFE was granted some judicial authority—it could resolve appeal and "nonconformity" recourses and could sanction parties that did not comply with its rulings—but the Electoral College could still override its resolutions with a two-thirds vote. The TFE judges would be nominated by the President, subject to congressional approval. In July 1990, the Federal Code of Institutions and Electoral Procedures (Cofipe) was approved. The reform also replaced the controversial Federal Electoral Commission, which was run directly by the Minister of the Interior, with autonomous entity, the Federal Electoral Institute (IFE), whose role would be to oversee federal elections. The IFE was given independent legal status and

[90] Author interview with Arteaga, Mexico City, 20 May 2001.

funding, and comprised representatives of the executive, legislature, political parties and the public. The legislation also enacted the "governability clause", which guaranteed a majority of congressional seats to the party with the majority of votes in a congressional election (Alcocer, 1996), though capped the number of seats for any single party at 70 percent. The governablity clause was eliminated by the 1993 reforms.

The 1993 reforms abolished the Electoral Colleges though the presidential certification process was not eliminated until 1996. The self-certification system was replaced and the authority transferred to the IFE, unless a controversy arose in which case the final resolution would correspond to the TFE. TFE appeals could be presented before appeal courts whose judges would be appointed by Congress from a list presented by the Chief Justice of the Supreme Court. The 1993 reforms also created the *Sala de Segunda Instancia* (Second Instance Court) and extended the possible conditions for invalidating voting for congressional elections. This reform introduced the changes necessary for the TFE's rulings to be binding and unchallengeable. Nevertheless, since these institutions emerged in the context of the PRI hegemonic system, their autonomy was severely questioned.

Zedillo's administration and the 1996 reforms

The 1994 elections were widely hailed as marking a significant advance in the competitive character of the electoral system. But as soon as Ernesto Zedillo was inaugurated into office, the practice of conducting post-electoral negotiations outside the legal framework was resumed in the context of the 1994 gubernatorial elections in Tabasco.[91] As discussed in Chapter 2, in a personal interview in November 2001 Zedillo acknowledged that increased political pluralism leads to a greater need to resolve political disputes between rival parties. The rule of law would need to be strengthened to avoid continuous presidential interventions and the subsequent deterioration of the executive's power. Meanwhile, the opposition insisted on the need for a truly independent electoral authority, and on 17 January 1995 an Acuerdo Político Nacional was signed by the President and the four political parties that had legislative representation: PRI, PAN, PRD and the Workers' Party (PT). After 18 months of

[91] Eisenstadt (1999b) has argued that the poorly executed negotiation in Tabasco, in which Zedillo lost credibility with the local PRI and the PRD, could have contributed to Zedillo's disdain for extra-legal negotiations.

intense negotiations, an electoral reform was unanimously approved in July 1996, ahead of the 1997 mid-term elections.

The 1996 reform (*Diario Oficial*, 22 August 1996) gave IFE complete autonomy, whereas previously, the Interior Minister presided over the IFE General Council and organised the electoral process.[92] It also put an end to a historic tradition that had hampered the Court's ability to resolve electoral conflicts: the Electoral Tribunal (TEPJF) replaced the TFE and was integrated into the judiciary as the highest jurisdictional authority. Hence the "definitive" reforms determined that electoral differences should be resolved according to legal and non-political criteria. The main transformation under this reform was the extension of the TEPJF's jurisdiction to include state and local elections. The states were also required to bring their own electoral laws into line with those at the federal level. According to Crespo (1996: 114–25), by 1996 all 31 states and the Federal District had Electoral Tribunals and in half of them Electoral College certification was replaced by judicial certification. One of the most important features of the 1996 reform was the introduction of direct elections for the authorities of the Federal District. This followed decades when the President appointed and removed the *Regente* of the City at will. The Federal District Assembly of Representatives created in 1987 has become the city's Legislative Assembly (see Chapter 4). Other areas affected by the reforms include the representation of political parties in the legislature, political party financing, auditing guidelines for party financing, access to media, registration of national parties and electoral district boundaries.

Among the most important changes in terms of electoral justice are:

- Strengthening of the TEPJF's structure by the creation of an *Appeal Circuit (Sala Superior)* comprising seven judges and *regional courts* in five electoral areas (Guadalajara, Monterrey, Distrito Federal, Xalapa and Toluca) with three judges each.
- Modification of the selection process for judges. The Court presents a list of proposals to be ratified by a two-thirds Senate vote. Federal electoral judges are given ten-year terms, while regional court judges serve eight-year terms.

[92] Prior to the reforms, the Interior Ministry organised the electoral process, certified federal elections and handed the majority certificates to the representatives, to be ratified by the Colleges in both chambers. Presidential election results would be certified by Congress and there were no appeal recourses against their resolutions. Since 1996, there is one President Councillor, elected for a seven-year term by a two-thirds vote in Congress from a proposal made by the parliamentary groups. The 2007 reform reduced the Presidency to a six-year term with the possibility one re-election (Art 110, Cofipe 2008).

- Modification of the presidential certification mechanism: the TEPJF is given responsibility for computing the final results and declaring the validity of the presidential election.
- Strengthening of the appeal recourses system for disputes over the constitutionality and legality of electoral acts and resolutions.
- Ratification of the TEPJF's jurisdiction to resolve definitively and irrefutably complaints related to federal electoral issues, labour conflicts between IFE and its public servants, and problems arising between the Court and its employees.
- Extension of the TEPJF's responsibilities to include the definitive resolution of *electoral constitutional revision* rulings of the competent authorities to organise, certify and resolve complaints in subnational elections when violations of the Constitution have taken place, and the resolution of *rulings for the protection of citizens' political-electoral rights.*
- Granting of exclusive powers to the Supreme Court to receive challenges about unconstitutional acts. This is aimed primarily at potential contradictions arising between a general regulation and the Constitution in electoral matters.

Under this new legal framework, but before secondary legislation was in place, the judges of the TEPJF sent a list of 76 candidates to the Senate for 22 new positions of the Appeal Circuit and regional courts. Court Judges Guillermo Ortiz Mayagoitia and Juventino Castro insisted that the list would ensure that the new electoral judges would be "judges, not politicians" (*Proceso*, 27 October 1996). In an "unusually fast process", according to Senator Juan de Dios Castro (SCJN, 2005: 173), the Senate ratified the Court's proposal on 31 December 1996 and named the seven judges who would comprise the Appeal Circuit until 2006.

José Luis de la Peza, the first President of the TEPJF, was responsible for conducting the 2000 presidential election, which is discussed below. He declined to run for re-election in September 2000 and Fernando Ojesto was elected in his place for the 2000–04 period. During Ojesto's presidency, the TEPJF annulled two gubernatorial elections in Tabasco (2000) and Colima (2003). As will be seen, Ojesto was severely criticised for statements made regarding the gubernatorial election in Tabasco and was forced to abstain in the case. He did, however, manage to conclude his presidency.

Table 5.1 Electoral Tribunal judges 1996–2006

José Luis de la Peza Muñozcano replaced after his death in January 2005 by José Alejandro Luna Ramos (elected in 2005 for a 10-year period)	Born in Mexico City; initiated his judicial career in 1987. Lawyer from Chiapas; initiated his judicial career in 1986.	President of the TEPJF (1996-2000) De la Peza oversaw the 2000 presidential election and declined to be reelected for a subsequent period.
Fernando Ojesto Martínez Porcayo	Born in Mexico City; lawyer with doctoral studies; initiated his judicial career in 1987.	President of the TEPJF (2000–4) Elected with one vote of difference.
Eloy Fuentes Cerda	Born in Coahuila; lawyer from UNAM; worked in the Federal District's Tribunal Superior de Justicia.	President of the TEPJF (2004–5) Elected in third round of a closed election; resigned on 28 Sep 2005
Leonel Castillo González	Born in Michoacán; lawyer; 30-year judicial career; worked in the Supreme Court since 1975	President of the TEPJF (2005–6) Elected by four votes in a public session.
Alfonsina Berta Navarro Hidalgo	Born in Jalisco; lawyer; first woman to become District Judge; initiated her judicial career in 1970.	
José de Jesús Orozco Martínez	Born in Mexico City; lawyer, with masters from UCLA.	
Mauro Miguel Reyes Zapata	Born in Puebla; lawyer; initiated his judicial career in 1975.	

In 2004 Eloy Fuentes became the TEPJF's president in a very closed election but he resigned before the 2006 presidential election to be replaced by Leonel Castillo. Several reasons were suggested for his resignation, including disagreements with the Supreme Court, his opposition to the election of 13 regional court judges and even corruption scandals (*El Universal, La Jornada*, October 2005). It was certainly the case that in its first decade the Electoral Tribunal faced challenges in terms of its legitimacy and future credibility. Its impartiality was severely questioned in the tightly run 2006 election and its final resolution gave rise to doubts over the future interpretation of electoral annulment claims (Alanís, 24 October 2009). Another electoral reform was approved in 2007 to address some of these issues and the electoral institutions survived this critical moment.

Only three months after the 2006 election, the Supreme Court sent the Senate a list of 18 candidates for the new Electoral Tribunal. On 31 October 2006 in a unanimous vote the Senate approved the first five new judges who currently comprise the TEPJF. After

some debate, the sixth judge was confirmed as José Luna Ramos who would serve a full term rather than just the time remaining of his predecessor De la Peza's term. Two weeks later the Senate elected the final judge, Pedro Esteban Penagos.

This new Electoral Tribunal elected Flavio Galván as its fifth president in a closed meeting, rather than in a public session as had been done previously. Galván resigned nine months later, ostensibly due to "health problems", though at the time one of his advisors, Norma Aguilar, was facing corruption charges. Galván stayed on as a judge but Mari Carmen Alanís replaced him as Court President. Several media reports criticised the decision since it was taken in a closed session (Cantú, *Proceso*, 5 August 2007), but Alanís rejected any suspicions about her election since the "decision was unanimous."[93]

Table 5.2 Electoral Tribunal judges (2006–15)

María del Carmen Alanís	President 8 August 2007	Lawyer from UNAM with a Masters from the London School of Economics.
Flavio Galván Rivera	President 6-Nov-2006 until 6 August 2007	Lawyer from UNAM with Masters and PhD from UNAM. Judge since 1990.
Manuel González Oropeza		Lawyer from UNAM with Masters from UCLA and PhD from UNAM. Academic career.
Constancio Carrasco Daza		Oaxaca-born lawyer from the Autonomous University of Oaxaca. Circuit Magistrate and judicial career in Oaxaca.
Salvador Olimpo Nava Gomar		Mexico-City born lawyer with PhD from Complutense University of Madrid.
José Alejandro Luna Ramos (elected in 2005)		Chiapas-born and -educated lawyer whose judicial career began in 1968.
Pedro Esteban Penagos López		Chiapas-born lawyer with PhD from the Universidad Panamericana; judge since 1987.

In sum, there was resistance to the incorporation of the TEPJF into the judiciary due to the historical tradition of not involving the judiciary power in political issues. As will be seen in this chapter in the specific case of the TEPJF, but has been analysed for the broader judiciary in Chapters 2, 3 and 4, the "apolitical" branch of government is playing a major role in defining the way most political conflicts are resolved. This is obviously good news in terms of the process of institutionalisation, but brings with it new challenges for the electoral institutions because the way in which they respond to

[93] Author interview with Mari Carmen Alanís, 11 August 2007, Mexico City.

political issues has implications for their own legitimacy and credibility. In the following section I present an overall evaluation of the TEPJF's performance up to 2005, before discussing in more detail two crucial post-electoral conflicts that demonstrate the interplay of the actors' interests in the context of political pluralism.

Evaluating the TEPJF

During the first TEPJF period, November 1996 to September 2000, the Court received a total of 11,096 complaints, of which 99 percent were resolved (11,001). Of this total, only 620 related to complaints against IFE rulings by political parties or associations, a marked decrease on the period before the electoral reform; 1,526 such recourses were presented in the 1994 elections. In contrast, the constitutional revision of the acts and resolutions of local authorities increased considerably after 1996. In less than four years, the Appeals Circuit received more than 1,000 complaints while more than 400 electoral constitutional revision cases were presented in 2000 alone. These figures show how this type of recourse has gained in popularity, but they also reflect the lack of autonomy of electoral institutions at the subnational level. In 1997, of 220 cases challenging state court rulings, 36 altered state decisions and in the most significant cases local elections were annulled, as is analysed below.[94]

Between November 1999 and September 2000 a total of 2,182 appeal recourses were presented, of which more than 75 percent (1,668 cases) corresponded to electoral opposition at the federal level. Only 514 challenged acts and resolutions of local authorities, and IFE labour issues. The most frequent complainant during this period was the PRI, which presented 190 recourses, followed by the PRD (122) and the PAN (93). Different coalitions presented 154 recourses and 1,448 were presented by individual citizens (TEPJF, 2000). More than 9,000 cases were presented to protect citizens' political rights, related mainly to the electoral register and the issuing of voter identification cards.

[94] Up until 1997, the TEPJF had annulled PRI victories in the municipalities of Tepetlaoxtoc, Estado de México; Santa Catarina, San Luis; and Aconchi, Sonora. Other cases of constitutional revision reversed a PRI victory in Uriangato, Guanajuato and altered the city council composition in Cadereyta, Nuevo León. In terms of gubernatorial elections, the TEPJF ruled that some of the PRD's complaints regarding Campeche's Tribunal had been improperly resolved, but that these were not decisive for the outcome of the election.

Table 5.3 Type of Complaint Presented to the Electoral Tribunal (1996-2009)

	Protection of Electoral-Political Rights (JDC)	Constitution Review (JRC)	Appeals (RAP)	Non Conf (JIN)	Reconsideration Recourse (REC)	IFE (JLI)	TOT Per Year
2009	13,807	843 (increased 82%)	659 (tripled)	86	102	55	**21,775**
2008	3,326	296	265	1	5	62	**4,067**
2007	2,585	662	117	0	0	102	**3,507**
2006 *	2,441	534	97	495	52	37	***3,745***
2005	918	281	80	0	0	23	**1,335**
2004	1,001	551	77	0	3	36	**1,702**
2003	684	552	145	132	63	30	**1,657**
2002	1,184	239	55	0	0	22	**1,518**
2001	142	457	70	0	0	29	**736**
2000	1,453	529	60	112	44	26	**2,275**
1999	43	289	44	0	0	52	**440**
1998	109	285	24	0	0	56	**487**
1997	7,543	215	42	194	73	59	**8,138**
1996	5	6	9	0	90	3	**36**
TOT	**35,241**	**5,739**	**1,744**	**1,020**	**342**	**592**	**51,418**

Source: Electoral Tribunal Reports. Data confirmed on 22 December 2009 with the help of Gabriela Pérez Suárez and Jesús Gerardo Toache from the Electoral Tribunal.

The power to intervene in subnational elections was a significant achievement for the TEPJF. Yet while the 1996 reform has served to eliminate major post-electoral mobilisations given that the TEPJF is being used as a forum for dispute adjudication, not all actors have completely accepted the TEPJF's jurisdiction or consider it to be absolutely impartial. Following problematic elections in Tabasco and Yucatán, the Supreme Court announced seven new jurisprudential theses confirming the TEPJF's role as the ultimate body for resolving electoral disputes. In April 2001, following its intervention in the Yucatán elections, the Supreme Court confirmed that no local Congress has the power to annul TEPJF rulings (SCJN, 9 April 2001).

A number of jurists and political actors have expressed concern over the lack of specific regulations for resolving regional conflicts. The TEPJF's rulings challenge state electoral institutions that might indeed be biased towards a state government, but that above all require more autonomy and professionalisation. Several actors have expressed a lack of confidence in local authorities and expect greater impartiality from the federal institution. Consecutive biased rulings by local authorities clearly render the process for the TEPJF more difficult, since they put the Court under pressure to concur with their rulings. This vicious cycle has reinforced the centralisation of power in the

TEPJF. Moreover, the constitutional interpretation technique used by the TEPJF in Tabasco, discussed below, could give it authority to determine a considerable number of local electoral criteria, thereby involving it in political cases (Cossío, 2001: 5). Indeed, only a year after reinforcing the TEPJF's role, "the Supreme Court stepped in to clarify the position of the TEPJF by determining that the Supreme Court itself would have the final say in electoral matters. This consolidated the Supreme Court's position as a Constitutional Tribunal, but may well have displaced some of the pressure on the TEPJF, leaving the Supreme Court to shoulder criticisms of undermining subnational authority or of playing politics in future election disputes" (SCJN, Contradicción de Tesis 2/2000, 23 May 2002).

Since the PRI lost the majority in Congress in the 2000 election, it has replaced the other opposition parties as the most frequent complainant, and has begun to express strong dissatisfaction with the TEPJF's powers. In the PRI's view, the TEPJF has exceeded its authority in subnational electoral processes. Particularly vociferous in their criticism were local PRI grandees Mario Villanueva in Quintana Roo, Roberto Madrazo in Tabasco and Víctor Cervera in Yucatán, who have championed federalism and sovereignty. Although their views are undermined somewhat by the fact that they come from PRI fiefdoms where authoritarian control is exercised and federal intervention is considered a threat, the criticisms against the TEPJF's partiality have resonated with observers at the national level and in academic circles.

According to Corrochano (2001), the TEPJF was not widely known or trusted during the 2000 elections. It faced a challenging moment in the run-up to the 2000 election when PAN candidate Vicente Fox challenged a TEPJF ruling rejecting his request to allow his photo to be used with the party's logo on the ballot (SUP-RAP-038-41-43/99). The ruling went against a previous agreement among IFE councillors that there was no constitutional prohibition against any candidate to use his photo. IFE electoral councillor Emilio Zebadúa felt that the TEPJF ruling revealed a bias because the law does not forbid a party from including a photo of a candidate in its logo (*Proceso*, 16 January 2000). Fox obeyed the ruling, but not before accusing the Electoral Court of "*marranadas*" (playing dirty). TEPJF President De la Peza denied the accusations of bias and argued that putting a photo of any candidate on a ballot paper was inappropriate since the party transcends the candidate.

This was not the only occasion in which the TEPJF was criticised for supposed bias towards the PRI regime. Zebadúa and his fellow electoral councillor Jaime Cárdenas

accused the TEPJF of inconsistency in six rulings, including the TEPJF decision—in favour of the PRI—to dissolve a special commission created by the IFE to receive complaints of fraud during the 1997 elections.[95]

A similar source of contention was the TEPJF ruling against the PAN in a dispute over the majority in the 2000 Federal District legislature, a decision the party accepted but also strongly criticised. In a surprise ruling carried by five of the seven judges, the TEPJF revoked the "governability clause" which gave the party holding the largest minority of seats sufficient addition seats so that they would control an absolute majority in the legislature. The governability clause had been granted by the IFE and Federal District Tribunal to the Alliance for Change (the PAN-PVEM coalition in the 2000 elections). The TEPJF reallocated 26 *plurinominal* (proportional representation) seats which gave the PRI 11 more deputies in the local assembly (IEDF, September 2000).

The President of the TEPJF was critical of both parties to the dispute, Fox and Mexico City Mayor Andrés Manuel López Obrador of the PRD. He pointed to a lack of judicial culture within political parties "that tend to remain mute while there is a convenient resolution but immediately disqualify the TEPJF if it affects its interests" (*La Jornada*, 21 September 2000). In the same article he did, however, acknowledge that the TEPJF "has not achieved the credibility required and still has weaknesses."

Vicente Fox's victory in 2000 helped to raise expectations that the electoral institutions and the judiciary would play an impartial role in the process of democratic consolidation. In the first months of 2001, attention centred on elections in Tabasco and Yucatán, which are discussed in detail below. Another case to attract broad scrutiny was the PRI's legal challenge in the 2000 gubernatorial election in Jalisco. The PAN had governed the state since 1995 and its candidate, Francisco Ramírez, won by a tight margin. The PRI accused the PAN state government of serious irregularities including printing more ballot papers than needed for the election, failing to properly protect electoral material, destroying the excess ballots and considerable errors in a number of polls. The PRI filed a constitutional review case before the TEPJF calling on it to annul the elections, having filed an unsuccessful recourse before the local tribunal opposing the votes cast in 1,792 polls (nonconformity judgment JIN-050/2000-I and reconsideration recourse REC-025/2001-S filed in November 2000). One month later,

[95] Autor interview with Jaime Cárdenas, former IFE Electoral Councillor, 13 July 2005, Mexico City.

on 26 February 20001, the TEPJF issued its ruling annulling the votes received in 43 polls, but confirming Jalisco's Tribunal ruling overall, and therefore the PAN's victory. This prompted outrage among PRI supporters. Senators from different parties criticised Judge Ojesto's handling of the case, though at the same time attempted to disqualify the PRI allegations as "imprudent and inconvenient" (Senado de la República, Boletín de Prensa 48, 18 July 2001).

Given the significance of events in Tabasco and Yucatán, I will analyse the TEPJF's role in these cases in more detail, as well as the responses of the parties and local authorities involved. The cases not only help to explain the importance of increasing use of judicial rather than political channels for resolving electoral disputes, but also highlight the dilemma facing the TEPJF under new federalism and increasing political pluralism. They show how important it was for the TEPJF to clearly define its jurisdiction so that its impartiality would be recognised in future electoral processes. The Supreme Court's clarification of its supremacy as a constitutional tribunal will eventually involve this institution in more electoral disputes when TEPJF decisions are contested on the grounds that constitutional interpretation is needed.

The historic annulment of the gubernatorial elections in Tabasco

The TEPJF's decision to annul the October 2000 gubernatorial election in Tabasco on the grounds that irregularities had benefited the PRI, constituted a crucial precedent for the history of electoral justice in Mexico. It was the first time that a major election had been overturned and that the TEPJF had ruled against the final results of a gubernatorial election in any state. The unprecedented ruling deprived the struggling PRI of the only governorship it had won in the 18 months since losing the 2000 general election. It generated uncertainty in the state and posed an early challenge for President Fox's administration since the ruling was announced only two days before the new governor was due to take office (SUP-JRC-487/2000, 29 December 2000).

The oil-rich state on the Gulf of Mexico has traditionally been a loyal PRI stronghold. Until the 1980s, the PRI had high voter support. The PRD became the strongest challenger, especially under the leadership of Andrés Manuel López Obrador, who ran as the centre-left coalition National Democratic Front (FDN) and PRD gubernatorial candidate in 1988 against the PRI's Salvador Neme. Neme won by a landslide and López Obrador alleged massive electoral fraud. In 1991, the PRD again felt it had been the victim of fraud in at least three municipalities and at the start of the following year

López Obrador led a protest march to Mexico City. The Salinas administration, which was in the middle of negotiations over the North American Free Trade Agreement, offered a political resolution, which represented a victory for López Obrador.

The Tabasco gubernatorial election of 1994 was again the scene of controversy. López Obrador ran for the second time as PRD candidate, against the son of a popular former PRI governor, Carlos Madrazo. Official results came out just days before Ernesto Zedillo's inauguration: the PRI was confirmed to have won with 57 percent of the vote, against 39 percent for the PRD. Several political actors accused the PRI of extensive fraud and exorbitant levels of campaign spending. The case was prosecuted before the Supreme Court and a complaint documenting illegal campaign spending was filed before the federal Attorney General's Office. The Court ruled that campaign spending was an internal state matter and so fell outside of its jurisdiction, but it did validate the Attorney General's investigations, which confirmed that illegal campaign spending had taken place (CC 11/95 / CC 33/97). When Madrazo was found innocent in Tabasco, the federal government remained "respectful" of state decisions. The case failed to progress, even after when Santiago Creel launched impeachment proceedings against Madrazo in Congress in 1998 on the basis of an independent report in 1995 that ratified serious irregularities.

The PRD presented several nonconformity recourses before Tabasco's Electoral Tribunal (TET) but most were rejected on technical grounds. Frustrated by the failure of their multiple legal challenges, the PRD organised another mass demonstration, which resulted in the first major crisis for Zedillo's government. There were early indications that Madrazo would be sacrificed, but the local PRI rebelled. According to Eisenstadt (1999b: 270), "the fact that Zedillo was not the instrumental force in determining who would serve as governor of Tabasco could be [...] viewed as a successful application of 'new federalism'." However, the more likely interpretation, he adds, is that Madrazo's continuation in power demonstrated a failure of the federal government to uphold the rule of law.

Six years later, new gubernatorial elections in Tabasco attracted a similar degree of scepticism, even though this time López Obrador would not be contending. The race was won by the PRI, but by a mere 8,000 votes. The opposition challenged the outcome and called on the TET to annul the elections. The PAN claimed that in most districts electoral documentation had been opened without any justification. The PRD denounced that irregularities were registered in 682 ballot boxes (SUP-JRC-487/2000,

29 December 2000, p.3). The opposition's claims were strengthened when some of the documentation relating to the election was discovered to have been destroyed. Although the TET recognised irregularities in some ballot boxes, the state electoral institution (IET) handed the confirmation of majority certificates to PRI candidate Manuel Andrade, at the same time as the TET ratified the PRI's victory in October 2000.

Table 5.4 Elections in Tabasco (1994–2001)

Candidates	Parties	Gov 2001* (5 Aug)	Parties	Gov 2000 (15 Oct)	Fed 97	Gov 94
Manuel Andrade Díaz	PRI	50.68% 360,738	PRI	46.25% 298,969	50.8% 301,412	57.46% 297,365
Raúl Ojeda Zubieta	Alianza por el Cambio (PRD-PT-PVEM)	45.9% 327,396	PRD	45% 290,968	40.5% 240,356	38.66% 200,087
Lucio Galileo Lastra/ José Pablo de la Vega	PAN	2% 14,794	PAN	8.73% 56,463	4% 23,527	2.5% 13,410
Blanca Guerrero	PAS	0.2% 1,595	Others	2% 13,475	4.7% 27,478	1.28% 6,636
	TOTAL	711,794	TOTAL	659,875	592,773	517,498

The PRD and the PAN strongly rejected this resolution and presented separate cases of constitutional revision before the TEPJF (SUP-JRC-487/2000 and SUP-JRC-489/2000). The impartiality of the TEPJF in the case was called into question when Judge Fernando Ojesto told a reporter that "to his knowledge, there have not been serious irregularities in Tabasco's election" (*Reforma,* 28 October 2000). Ojesto based his remarks on the fact that external observers had not reported irregularities. The general secretary of the PAN, Jorge Ocejo, demanded that Ojesto step down as the TEPJF's president (*La Jornada*, 29 October 2000) and subsequently both the PRI and the PRD presented impeachment procedures against Ojesto on the grounds of his lack of professionalism and impartiality (*La Crónica*, 17 July 2001; *La Jornada*, 14 November 2000). Ojesto sent a letter to a national newspaper denying that he had made the statements (*Reforma*, 31 October 2000), but he was nonetheless forced to abstain from the final vote.

One of Ojesto's advisors argued that the situation reflected internal conflicts among electoral magistrates and the way the TEPJF was handling its administration and resources.[96] Although he recognises that Ojesto's declarations were inappropriate, he believes the response was disproportionate and clearly affected the institution's image. In fact, some interviewees who asked to remain anonymous say that Ojesto was close to resigning but, due to the support of a couple of judges and his respect for the institution, he decided to remain in post though would not stand for a second period.

The TEPJF's ruling was controversial: of the six judges remaining, four voted in favour and two against annulling the elections. Those in favour argued that irregularities had marred the balloting and that the majority certificates given to Andrade should be revoked. The annulment ruling was constructed using several precepts of the Constitution, the local laws and the Electoral Code, and concluded that an election can only be democratic if it satisfies certain principles. The ruling indicated that the electoral organisation had been inequitable, since the two local television channels gave excessive airtime to the PRI (86.9 percent against 13 percent for the opposition); and that 65 percent of the electoral documents had been opened without authorisation (SUP-JRC-487/2000, 29 December 2000). The TEPJF referred in its ruling to Article 86 of the *Ley General del Sistema de Medios de Impugnación en Materia Electoral* (General Law of the System of Means of Challenging Electoral Issues), which allows a "general evaluation" of the entire electoral process as it relates to constitutional principles and international treaties that guarantee the freedom to vote. Although this criterion is not illegitimate, it affords the court a large degree of discretionary power when considering specific situations.

Indeed, the ruling in Tabasco set a crucial precedent for the history of electoral justice, because it established diverse criteria including the "abstract cause for annulment", which has subsequently been used by the Court. For an abstract cause for annulment to exist, the Court must deem two of the following electoral principles to have been clearly violated: free, authentic and periodic elections; universal, free, secret and direct suffrage; equitable political party financing; organisation of elections by a public and autonomous body; certainty, legality, independence, impartiality and objectivity as the guiding principles of the election; equitable media access for political parties; and monitoring of the constitutionality and legality of electoral acts and resolutions. As will be seen, PRD candidate Andrés Manuel López Obrador, who lost the 2006 presidential

[96] Author interview with Arturo Martín del Campo, Advisor to Electoral Magistrate Fernando Ojesto, 13 August 2009, Mexico City.

election, relied largely on the precedents set in this case, specifically the "abstract cause for annulment", in his quest for a vote-by-vote recount and the possible annulment of the presidential election.

The TEPJF ordered the state legislature to name an interim governor who would call a new election within six months. The PRI's immediate reaction was to criticise the TEPJF for bowing to political pressure. The party's main argument—which echoed the findings of the local electoral court—was that the annulment procedure for gubernatorial elections does not exist in the local Constitution; only municipal and relative majority congressional results could be annulled. The PRI argued that with this ruling the TEPJF was acting against the state's autonomy. The state Tribunal argued that Article 281 of the state's electoral code does not consider the possibility of annulling gubernatorial elections, but only municipal and relative-majority congressional results. Moreover, it argued, it was odd that the TEPJF would annul the gubernatorial election while confirming the results at the municipal and congressional level, which were held the same day and could have involved the same irregularities. However, the TEPJF decided to interpret Articles 278 and 329 of the state electoral code (CEE) as though they were consistent with Article 116, section IV of the Constitution (Cossío, 2001) which refers to the guiding electoral principles of certainty, impartiality, independence, legality and objectivity.

The government of Tabasco finally accepted the TEPJF's ruling rather than break with constitutional order. The outgoing PRI-dominated state legislature approved an interim governor, Enrique Priego, but also introduced an amendment to the local constitutional to delay calling new elections. Just one day after the ruling, however, the legislature gave Priego 18 months in office, and not the six months that were established in the local Constitution and by the TEPJF.[97] After these events, the debate centred on the fact that Priego had not resigned from his position as federal congressman, and so the new and almost evenly divided state legislature was given the right to name a new candidate, Adán López, for interim governor. For a short time there were two rival appointed governors, supported by the different halves of the divided the legislature, until López declined to be sworn in arguing that he preferred a negotiated solution.

At this point, both the PRD and the PRI presented different recourses before the Supreme Court. The PRD called for Priego to be impeached and presented an

[97] By reforming the local Constitution, the period within which the interim governor had to call for new elections was suppressed. Before Madrazo's administration ended, the president of the state electoral tribunal was also replaced. His position could have been crucial in the extreme case that powers in Tabasco were dissolved, because he would have become the interim governor.

"unconstitutional action" to annul the reforms that had been approved by the state legislature. The PRI challenged the TEPJF and threatened to initiate impeachment procedures against the four judges who had annulled the elections. Among the PRI heavyweights involved in the debate was Senator Manuel Bartlett who said serious mistakes had been made during the LVI Legislature that created the TEPJF, as it left "judicial vacuums" that judges are now using arbitrarily against the rule of law.[98] The new state legislature was inaugurated in the absence of opposition deputies. As PRI representatives ratified Priego as governor, there was fear that instability could break out again. On 10 January 2001, the PRI, PAN and PRD reached an agreement to hold "special" elections on 11 November, with the inauguration ceremony taking place on January 2002. The agreement included the renewal of the council and the state Tribunal.

Two months later, the Supreme Court resolved the PRD's recourse against the local congress and former governor Madrazo. The Court ruled that the reform extending the period for calling the next election was valid, but ordered that a new date be set of no later than September. After a prolonged silence and only one day before the TEPJF's deadline, the congress approved an election date of 5 August 2001. The situation seemed to be in order until governor Priego suddenly changed the inauguration date, with the backing of congress. This caused concern at the federal level, because it indicated that problems in Tabasco were not over.

The PRD retained Raúl Ojeda as its gubernatorial candidate in the rerun of the election, but the PAN decided to select its own candidate rather than join forces with the PRD.[99] The PRI benefited from the split within the opposition, winning by a margin of less than 5 percent (14,794 votes).[100] The PRD (via its Alliance for Change) once again challenged the results, but the state tribunal rejected its nonconformity recourses on 30 August, and the TEPJF confirmed its ruling (SUP-JRC-201/2001, 8 October

[98] Author interview, 7 February 2001, London.
[99] Of the 200 local delegates, 108 voted to select their own candidate, 64 for an alliance and 5 abstained. This result was ratified by the national PAN Committee, mainly by Senator Juan Rodríguez Pratts, who did not support an alliance with the PRD. According to Granados Chapa, on 8 February Andrade revealed conversations with the ex PRI member Pratts to "act jointly in this process, with one or different candidates" (*Reforma*, 2 April 2001). With four votes in favour and one against, the state Tribunal cancelled the PVEM's participation in the alliance, and the PRD only registered with the PT (29 May 2001).
[100] Some sources suggested that the federal government was not keen to recognise another PRD governor in López Obrador's territory, especially after his combative attitude from the Federal District. An article in *La Jornada* criticised Andrade's declaration: "It would be worrying to give Tabasco to López Obrador...just imagine, having the capital and the most important oil-state (Astillero, 17 June 2001). The Ministry of the Interior denied suggestions that there was a pact between the executive and actors in Tabasco (*Reforma*, 2 August 2001).

2001). This put a legal end to the post-electoral conflict. It could be suggested that not even with federal intervention was the PRD strong enough to defeat the local PRI forces.

In the context of "new federalism" it is crucial to acknowledge that there is tension between the drive to end discretionary federal intervention in state affairs, and the recognition that there is still a significant gap between federal and subnational institutionalisation. Mexico needs to abide by established legal procedures. Yet, the credibility of an electoral institution is not only dependent on compliance with its resolutions, but also on the impartiality and quality of its rulings, based on well-defined legal criteria agreed by the main political actors. In many ways, this case set an important precedent for the Supreme Court to impose a "lock" on future TEPJF decisions, a move that will not only increase the Supreme Court's responsibilities but will involve it in more political cases.

The sovereignty of Yucatán

The southern state of Yucatán has long been a hotbed of resentment against the centralisation of power. A secessionist movement developed in the state in the nineteenth century, and after the revolution the state company Henequeros de Yucatán, the Socialist Party of the Southeast (PSS) and other local trade unions became the organisational pillars of hegemonic political control in Yucatán (Ramírez, 1993: 83). This local structure of political competition was transformed in the 1950s when the federal government dismantled the PSS and integrated it with the PRI. After that Yucatán became one of many PRI strongholds, with a long history of strong political bosses.

Demands for federal intervention began in the 1950s when the PAN strengthened its position in Yucatán. In 1958, PAN leaders claimed that the government had stolen the local elections and protests in the capital Mérida left three party supporters dead (Mabry, 1973: 60). Acting under political pressure, the Electoral College recognised six PAN federal congressional victories, including the district of Mérida, the state capital.[101] Almost a decade later, in the 1967 municipal elections, PAN candidate Víctor Correa won the capital. Correa, who became the first opposition gubernatorial candidate in

[101] After Adolfo Christlieb's presidency (1962–68), the PAN was modernised and secularised and adopted a policy of dialogue with the government. The 1963 reform opened some spaces for opposition representation in Congress with the adoption of the party deputy system. The Federal Electoral Law was also modified along the lines suggested by the PAN, mainly around the issue of electoral transparency. At the end of the 1970s, the PAN called for a deeper democratisation process involving proportional representation for all electoral bodies.

1969, took advantage of a divided local PRI and criticised corruption abuses by previous governments (Poot, 1994: 185). According to Mabry (1973: 84) and Ramírez (1993: 84), there was abundant evidence to support the case that the PRI stole the 1969 election. Immediately after the polls closed, the PRI candidate, Carlos Loret, announced his victory by a 90 percent margin. The PAN suffered an internal crisis as several regional committees demanded that the party's national leaders reconsider participation in the 1970 election given the extent of the supposed fraud.

The PAN did not regain the state capital for another two decades, when the four main opposition parties formed an alliance. A new legal framework was used in the 1990 elections, following changes to the federal electoral law, but post-electoral conflicts worsened as the local Congress, acting as Electoral College, annulled the results in four municipalities due to serious irregularities. According to Poot (1994: 204), the regional PRI resented the attitude imposed by the party's central office; Governor Víctor Manzanilla stated that the citizens of Yucatán were above the PRI. In the end PAN candidate Ana Rosa Payán, who had won the first federal district in Yucatán in 1988, became the second opposition municipal president in the capital by a margin of less than 750 votes against the PRI. None of the PAN candidates won in the local congress, which gave rise to suspicions that negotiations had taken place with the federal government to only recognise the PAN victory in Mérida (Garrido, 1990). The President forced Governor Manzanilla to resign in February 1991. He was replaced by Senator Dulce María Sauri (Ramírez, 1993, p.85). Two years later, the 1993 local elections were also closely contested and followed by post-electoral conflicts. These disputes were resolved outside of legal channels with the main aim of preserving political equilibrium at the national level (Prud'homme, 1999: 357).

The PAN called once again for federal intervention to resolve severe irregularities in the 1995 gubernatorial election. The party accused Víctor Cervera Pacheco—who was acting as interim governor when he decided to run as the PRI candidate in 1995—of offering bribes and rigging the state's electoral institutions.[102]

A second serious dispute arose at the end of Cervera's second term (1995–2001), this time over the nomination of the state electoral council members. In August 2000, the

[102] Cervera acted as interim governor from 1984 to 1988 to conclude Graciliano Alpuche's administration after his resignation. The PAN strongly criticised Zedillo's government for "allowing" Cervera to run as the PRI candidate. Since then, Cervera was in the spotlight as he won the elections by more than 22,000 votes against the PAN candidate Luis Correa; opposition parties reported several irregularities and insisted on federal intervention.

PRI-controlled local congress reappointed the same council members to organise and monitor the gubernatorial election of 27 May 2001. The opposition strongly criticised the nomination procedure and presented a formal complaint before the TEPJF on the grounds that the reappointment had been done by simple majority (15 of 25 congressmen) and not by the qualified four-fifths majority established in Article 86 of the local code. The TEPJF ruled that the appointments were invalid because not all of the nominated candidates had been considered. Two subsequent legislative manoeuvres were also ruled invalid (Electoral Tribunal, Boletines de Prensa No. 62/2000, No. 66/2000, No. 67/2000, 15 November, 11 and 13 December 2000). At this point, the TEPJF dismissed the entire local council and selected a new panel from nominees proposed by different parties and civic organisations. Congress approved the selection, but the PRI majority suddenly refused to comply with the TEPJF ruling. Instead, the PRI supported the dissolved electoral council, whose members reinstalled themselves in office. Cervera kept a low profile in the conflict by deferring most issues to the legislative leaders that he controlled, though he did openly confront the TEPJF for violating state sovereignty.

In 2001, Cervera announced the publication of Decree 400, approved by the legislature (*Diario Oficial*, 5 January 2001), authorising the old council to use MXN 40 million to organise the elections. PRI leaders in Yucatán refused to recognise the new council. The head of the legislative commission on the matter, Myrna Hoyos of the PRI, stated that "the TEPJF was created to guarantee impartiality, but in Yucatán it has been openly partial in defending the interests of the PAN and the PRD...For us, this order is legally nonexistent" (*Proceso*, 17 December 2000). Up until March 2001, the two councils co-existed and neither was working to organise the election. To make matters worse, the PAN candidate, Patricio Patrón, registered himself with the TEPJF's council, while the PRI candidate, Orlando Paredes, did so before the old council.[103]

In view of the ruling in Tabasco and the dispute in Yucatán, an important section of the PRI elite, including 17 state governors, openly opposed the TEPJF for violating state sovereignty. The governors took out an advertisement in several newspapers on 6 January 2001 emphasising the need for an authentic federalism and criticising the TEPJF for using discretional rather than legal procedures in Tabasco and Yucatán.

[103] Former mayor of Mérida, Patricio Patrón, came second in the 2000 senate race, trailing the PRI by just one percentage point. The PRD National Council approved support for Patrón. Paredes was nominated as the PRI candidate in a complicated session, where the move to present him as a "unity candidate" was rejected. He won by only 21 votes against Carlos Sobrino (author interview with Gaspar Quintal, 1 March 2003).

They proposed reforms to eliminate scope for discretion in electoral matters. The PRI presented Congress with an initiative to limit the TEPJF's powers, calling the institution "an instrument of Fox's government" (*La Jornada*, 18 February 2001). The PRI's aim was to establish a clear prohibition of the TEPJF's role in future local elections (*Gaceta Parlamentaria*, 15 February 2001).

Table 5.5 Electoral results in Yucatán (1995–2000)

Parties	2000 Presidential Election	1998 Local Election State Congress	1995 Gubernatorial Election
PAN	328,386 (48.05%)	203,249 (35.67%) 8 Congressmen (5RM/3PR)	229,034 (45.55%)
PRI	321,170 (46.99%)	309,503 (54.32%) 15 Congressmen (10RM/5PR)	251,497 (50.02%)
PRD	27,213 (3.98%)	47,455 (8.32%) 2 Congressmen (PR)	16,799 (3.34%)
Others	6,603 (0.96%)	9,501 (1.66%)	5,440 (1.08%)
Total Valid Votes	683,372	569,708	502,770

Source: IFE and Consejo Estatal Electoral

At the start of 2001, the PRD presented another revision judgment before the TEPJF to demand the use of public force. Three months of theoretical deadlock followed, with the TEPFJ wanting to hold off on determining whether this would be necessary and President Fox—who had said he would not intervene in state matters—urging local authorities to obey the ruling. Meanwhile local authorities reiterated their view that federal insistence that they recognise the council selected by the TEPJF constituted a serious violation to Yucatán's sovereignty. According to jurists Burgoa and Raúl Carrancá, the federal institution exceeded its authority by rejecting a council that has to be elected by the local congress (Burgoa, 2001). Moreover, since the PRD's complaint did not indicate that any violation had taken place against the Constitution but rather against judicial aspects of the local law, the state congress was not obliged to accept the TEPJF's ruling. In their opinion, the Tabasco ruling was valid—although it could be argued it was badly defended—but in the case of Yucatán it was completely invalid as it attacked "Yucatán's democratic institutions" (Burgoa, 2001).

As the "new" deadline imposed by the TEPJF expired, the Attorney General's office (PGR) began a formal investigation of the matter. The PGR summoned Cervera to explain why state authorities had disobeyed the final ruling. The TEPJF demanded that his administration hand over the facilities, economic resources and official documentation that would allow the elections to be organised. At the same time, local PAN congressmen presented an impeachment process against Cervera and 14 PRI legislators. After weeks of uncertainty, Cervera presented a bill to reform Yucatán's Electoral Code (*Diario de Yucatán*, 9 March 2001). He proposed that both councils be merged into one 14-member "supercouncil" for this one occasion and that the elections be postponed by three weeks.[104] The PRI congressional majority approved the council, but the opposition disapproved, calling the "supercouncil" unconstitutional. The TEPJF judges strongly criticised this reform, as it did not comply with their final resolution. Nevertheless, no federal position was taken and this resolution was temporarily abandoned until the Supreme Court issued its final ruling. While the Fox government was paralysed in its decision between stronger federal intervention or "respecting" state sovereignty, it was the "apolitical" branch of government that became involved once again in a crucial decision to put an end to post-electoral conflicts in this state.

On 7 April 2001, the Supreme Court ruled unanimously that Cervera's initiative was unconstitutional, and ratified the council appointed by the TEPJF (SCJN, AI 18, 19 and 20/2001). The judges offered three main reasons for their decision: 1) the initiative created a council with 14 members, which could result in draws in important resolutions; 2) it was extemporaneous, because the "supercouncil" was created less than 90 days before the election; and 3) the "supercouncil" was approved by the votes of 15 local PRI congressmen, while the law requires at least 20. The Court ordered the rebellious local officials to accept the TEPJF's terms for the election. Cervera said he would respect the Court's decision, but he minimised it by adding that his government would analyse whether it contained more political than legal ingredients (*Reforma*, 10 April 2001). According to Supreme Court Justice Olga Sánchez Cordero, the ruling in Yucatán was one of the most significant in any of the unconstitutional actions dealt with by the Court to date.[105]

[104] Author interview with Gaspar Quintal, Mérida, Yucatán, 1 March 2003.
[105] Author interview with Justice Olga Sánchez Cordero, Mexico City, 4 December 2009.

Despite the confusion, the gubernatorial elections took place rather peacefully on 27 May.[106] The victory of the opposition candidate was confirmed the same day of the election. With a difference of 52,940 votes (8 percent), Patrón was declared the first PAN governor, ending the long PRI dominance in the state (See Table 5.6).[107] PRI local members did not accept the official results and Paredes presented a complaint before the local Tribunal. The complaint was unsuccessful and so a similar complaint was later filed before a higher state court and the TEPJF.

Table 5.6 Gubernatorial election, Yucatán, 27 May 2001

Candidates	Political parties	Valid votes	%
Patricio Patrón Laviada	PAN PRD, PT, PVEM	355,280	53.51%
Orlando Paredes Lara	PRI	302,340	45.54%
José Eduardo Pacheco Durán	PCD	4,207	0.63%
Erick Eduardo Rosado Puerto	PAS	563	0.08%
Francisco Kantún Ek	PAY	1,475	0.22%
		663,865	100

Source: Consejo Electoral del Estado de Yucatán

The events in Yucatán led to serious instability in the region. As both cases have shown, there is indeed a dilemma in allowing a federal institution to intervene with broad criteria in subnational processes. As Eisenstadt (1999b: 288) has argued, "new federalism was supposed to end discretionary federal interventions in local affairs, not to end federal monitoring of state governors", especially with traditional governors that continue to take electoral matters into their own hands. I have tried to demonstrate that these local authorities have not challenged the TEPJF in isolation, as other actors were also concerned about the need to regulate the future role of this institution. In order for the institutionalisation process to continue, the law must be allowed to prevail. It is crucial therefore that the main actors recognise the judiciary's impartiality and professionalism in dealing with sensitive political issues in order to keep complying with their decisions through proper legal mechanisms.

[106] Author interviews with Paulino Canul, Gabriel Peniche and Gaspar Quintal in Mérida, Yucatán, 1 March 2003.

[107] It has been argued that the '*PAN phenomenon*' in Yucatán, and especially in Mérida, has to be understood also as reflecting public opinion (interviewees in Yucatán, 1 March 2003). Although according to Ramírez (1993: 85) work with the local PAN political base had been poor, the political programme was confused and there was a lack of charismatic leaders, the *Diario de Yucatán* played an important role in strengthening the PAN. In his view, the newspaper was high quality and adopted a critical position against the PRI state government. Patrón became the eleventh PAN candidate to win a governorship.

Recent electoral rulings and the future role of the Supreme Court

Following its involvement in Tabasco and Yucatán, the TEPJF was involved in deciding a third important case, the 2001 municipal elections in Chihuahua. On two consecutive occasions, the local tribunal annulled the results in Ciudad Juárez, a municipality that had been governed by the PAN for three consecutive periods. On 8 October 2001, the TEPJF confirmed the first local tribunal's ruling and annulled the PAN victory (SUP-JRC-196/2001). Two days later, a PRI-dominated municipal council took control of Ciudad Juárez temporarily, with responsibility for organising the *extraordinary* elections on 12 May 2002. PRI candidate Roberto Barraza, who was supported by a coalition of parties, ran for the second time against the PAN's José Delgado. More than 10,000 PRI votes were annulled, giving victory to the PAN with 139,859 votes, against 137,674. The annulment of these crucial votes infuriated PRI supporters who presented a second complaint before the TEPJF (*Diario de Juárez*, 15 May 2002).

On 7 July 2002, the local tribunal annulled the PAN's victory for the second time. PAN members strongly criticised this decision arguing that it was partisan and had been orchestrated by Chihuahua's PRI governor, Patricio Martínez (Calderón, 2002). PAN president Luis Felipe Bravo Mena even argued that "it is clear that Martínez's government has not been able to guarantee the correct functioning of democratic institutions, nor the rule of law...The democratic future not only in this region but also in the country is worrying" (*El Universal*, 11 July 2002). What started as a legal problem ended with civil resistance movements, causing serious political instability in the region. A day before the final ruling was announced PAN secretary general Manuel Espino warned about the high risk of social rebellion in the state and referred to Martínez as an authoritarian governor (*Diario de Juárez*, 24 July 2002).

The PRI meanwhile accused the PAN of deliberately stirring up trouble to put pressure on the TEPJE to rule in its favour (*Milenio*, 24 July 2002).[108] Once again the TEPJF had the last word; it overturned the decision of the local tribunal and ratified unanimously the PAN victory (24 July 2002). Delgado was inaugurated into office by a margin of just 2,229 votes.

PRI members gave assurances that they would abide by this ruling, but nevertheless continued to argue that the situation of social unrest created by the PAN had influenced

[108] Also author interview with Jesús Aguilar Bueno, PRI federal congressman (2003–06) from Chihuahua and from the SNTE (Teachers Union), 2 October 2003, Mexico City.

the federal institution. Barraza warned about the risk of judicial authorities giving in to pressures from the political parties:

> The political risk is that Mexico's electoral system should lend itself to such frauds and give weight to political pressures and blackmailing ... those of us who do not agree with the actions of an authority figure could go and carry out our own lynch-mob version of justice or exercise violence in order to demand our rights, and then we would reach a point where the social stability of our country is at risk" (*Reforma*, 25 July 2002)

It was not only PRI members, but also political commentators who maintained that the TEPJF had ceded to political pressures (Fernández, 25 July 2002; Cansino, 28 July 2002). In the final analysis, in spite of all of the improvements and money that has been spent on reinforcing the electoral system, in mid-2003 there was still a lack of trust in the impartiality of the TEPJF. Yet, most actors did abide by the institution's rulings.

In October 2003, the TEPJF annulled the second PRI gubernatorial victory, this time in the state of Colima, on the grounds that the outgoing governor had intervened in the election of his successor. In a divided decision (four votes to three), the Tribunal anulled the PRI victory and requested that the local congress call an extraordinary election within a two-month period. Among the irregularities highlighted in judge Orozco's ruling were statements made in the media by the outgoing governor against the PRD and PAN candidates, his failure to respect the state's 25 day pre-election freeze on campaigning and his active participation in the PRI candidate's closing campaign event.

Table 5.7 Elections annulled by the TEPJF (1996–2005)

Year	Municipality / State	Type of election
1997	Santa Catarina, San Luis Potosí	Municipal
1997	Aconchi, Sonora	Municipal
1998	Chamula, Chiapas	Local District, Relative Majority
1998	Santo Domingo Tonalá, Oaxaca	Municipal
2000	Rosario, Sonora	Municipal
2000	Ocuituco, Morelos	Municipal
2000	**Tabasco**	**Governorship**
2001	Juárez, Chihuahua	Municipal
2001	Molcaxac, Puebla	Municipal

2001	Zacatelco, Tlaxcala	Municipal
2001	Ixtenco, Tlaxcala	Municipal
2001	San Pablo del Monte, Tlaxcala	Municipal
2001	Huamantla, Tlaxcala	Municipal
2003	Tepotzotlán, Estado de México	Municipal
2003	Torreón, Coahuila	Federal District, Relative Majority
2003	Zamora, Michoacán	Federal District, Relative Majority
2003	**Colima**	**Governorship**
2003	Tamazula, Jalisco	Municipal
2004	Quintana Roo, Yucatán	Municipal
2004	Tahmek, Yucatán	Municipal
2004	Akil, Yucatán	Municipal
2004	Landero y Coss, Veracruz	Municipal
2004	Tumbiscatío, Michoacán	Municipal

Source: Created by the author using data available from the TEPJF

In 2004, the Electoral Tribunal refused to accede to the PRI's request that it void the local election in the capital of Yucatán, Mérida because the winning PAN nominee allegedly benefited from the expenditure of money from the Federal Disaster Fund. Also that year, the Tribunal reversed a state electoral court ruling that had voided a PAN victory by a mere 12-vote margin over the PRI candidate in the municipal election in Chochola, Yucatán.

In sum, these cases demonstrate the potential impact of electoral institutions and the judiciary on the fragile process of democratic consolidation. Despite significant advances in the TEPJF's role, events in the southeast and in Ciudad Juárez cast a shadow over is reputation as an impartial electoral justice system that resists political pressures. Indeed if the TEPJF's rulings—in theory definitive—are not recognised and followed, the institutional framework could be profoundly affected. In any case, there is considerable improvement since in the past disputes like these would have been resolved by presidential fiat.

"Amigos de Fox" and "Pemexgate"

In this section I refer to a crucial feature of the TEPJF's new role in the institutionalisation process: the regulation of political party and campaign financing. In August 2001, the TEPJF revoked an IFE resolution (CG79/2001) related to allegations by the PRI and the PRD that Vicente Fox's coalition accepted illegal foreign contributions during the 2000 campaign (SUP-RAP- 050/2001, 7 May 2002). The allegation was first made on 22 June 2000 by Senator Enrique Jackson, who accused the Alliance for Change of receiving illegal resources from abroad for Fox's campaign. By showing photocopies of cheques used in Mexico and the United States, as well as bank statements of the Belgian company Dehydratation Technologies, Jackson even suggested a possible link with money laundering. The next day, the PRI representative at the IFE, Jaime Vázquez, presented a formal complaint (Q-CFRPAP 19/00) against the PAN and the Alliance for Change for violations of the Cofipe (IFE, 23 June 2000). The PRD also presented various complaints against the Alliance for Change. A year later, the IFE Fiscal Commission dismissed the PRD and PRI claims (26 July 2001).

The TEPJF ruled that IFE should reopen the investigation. This caused tension with the federal government as Francisco Gil Díaz, then Finance Secretary, argued: "it is not clear for us how to deal with 'banking secrecy', although parties are willing to open their archives."[109] TEPJF judge Leonel Castillo argued that "banking secrecy" should not apply to the electoral institution's examination of the budget assigned to political parties (*Reforma*, 8 May 2002), even though several of the "Friends of Fox" had won *amparo suits* to protect their "banking secrecy". They included Lino Korrodi (702/2002), Carlota Robinson (972/2002) and Carlos Rojas (1066/2002). The IFE presented a series of recourses before the TEPJF criticising the amparos, but the electoral judges ruled unanimously that although IFE's case was "partially founded" the Tribunal could not force district judges to revoke the amparos, nor could it declare the decisions invalid (TEPJF, 25 September 2002). In March 2003, Eduardo Fernández, the ex president of the Banking and Securities Commission (CNBV), was detained by the Attorney General's office, "for the possible violation of banking secrecy in relation to Lino Korrodi's denunciations of 6 June 2002" (*La Jornada*, 5 March 2003).

Once again, criticisms were levied at the TEPJF that it was exceeding its constitutional attributions by ordering the IFE to reopen the case, particularly since there had been a violation of Article 17 which requires political parties claiming electoral results to present a previous written complaint. Juan de Dios Castro, judicial advisor to President

[109] Author interview with Francisco Gil Díaz, 16 May 2002, London.

Fox, argued that the TEPJF had invaded the Supreme Court's jurisdiction, though he did acknowledge that the IFE was constitutionally recognised (Art 41) to carry out the investigation (*Reforma*, 11 June 2002).

The other campaign financing case of note was Pemexgate, which involved an investigation launched by the federal government into the possible use of public resources from the state oil monopoly by the PRI for its 2000 campaign. The Pemex labour union was alleged to have illegally funnelled MXN 120 million (USD 13 million) to Francisco Labastida's campaign. Gil Díaz highlighted the significance of the IFE ruling that any person could access the financial statements of political parties from 17 July 2002.[110] This resolution was confirmed by the TEPJF on 19 June 2002, after the newspaper *Reforma* demanded access to the PRI's file (Granados Chapa, 24 June 2002).

Although this represented a significant step forward in terms of transparency of party financing, the TEPJF had to resolve further recourses to force the CNBV to hand over bank records relating to the campaigns of the PAN and PRI in 2000; banking officials had refused to release these records, arguing that investigators had overstepped their authority by asking for too much information. On 14 March 2003, the IFE fined the PRI a historic MXN 1 trillion (USD 92 million) (Q-CFRPAP01/02 PRD VS PRI). The PRI filed a formal complaint against the resolution before the TEPJF (SUP-RAP-018/2003). Two months later the TEPJF confirmed the fine imposed, by four votes to three. The opponents of the ruling, TEPJF President Ojesto and judges Fuentes and Navarro, criticised the IFE Fiscal Commission, arguing that there was not enough evidence that MXN 500 million had reached the PRI. The PRI was vocal in criticising the divided Tribunal, the IFE and the interior minister, but eventually accepted the Tribunal's ruling, no doubt to ease the political situation ahead of the July 2003 election (*El Universal*, 14 May 2003).

While these two cases were attracting political attention, the Supreme Court took a decision that consolidated its role as a constitutional court: it ruled, in a case about the distribution of proportional representation seats that the TEPJF cannot interpret the constitutionality of the electoral legislation (23 May 2002).[111] The ruling put an end to the uncertainties that had prevailed since the 1996 reform regarding which institution

[110] Author interview with Francisco Gil Díaz, 16 May 2002, London.

[111] Nine Court Ministers dismissed a *'thesis contradiction'* (2/2000) while revising the recourse SUP-JRC-209/99 and the unconstitutional action 6/98. This was a dispute between the different interpretations of the Court and the TEPJF.

would have the final word in electoral matters. However, it also prompted criticisms about the politicisation of the Supreme Court. According to IFE electoral councillor José Barragán, "this move could affect the Court's main role: its impartiality" (*La Jornada*, 19 August 2002). In his view, the Court ruling "almost killed the TEPJF" even though constitutional Article 99, paragraph 5 clearly grants the Tribunal the power to decide on the unconstitutionality of a specific act or resolution related to electoral matters.

The ban on the TEPJF from ruling in cases related to the constitutionality of local and federal laws and regulations has clear implications for the future roles of both the Electoral Tribunal and the Supreme Court. It was clear that many actors preferred having the highest level of justice resolving electoral disputes, but this meant that the Supreme Court became more involved in a number of political and electoral issues as the TEPJF started to reject ruling on cases dealing with constitutional matters. On 19 August 2002 the TEPJF refused to examine a recourse presented by the civil society grouping Cambio Ciudadano calling on it to review the validity of a part of the Cofipe. This was the first time in its six years of existence that the Electoral Tribunal was unable to rule on a specific case dealing with political rights due to the "lock" imposed by the Supreme Court in May 2002.

It was the Supreme Court that, as the highest level of the justice system, was going to have once again the last word on the amparo suits (discussed earlier) granted to the "Friends of Fox" by two federal judges. On 29 July 2002 the judges had suspended definitively the investigation of the financial contributions to the 2000 campaign, sparking outrage among different sectors, including IFE electoral councillors Jaime Cárdenas and José Barragán, who criticised the judiciary "for not respecting the Constitution, as it clearly specifies in its Article 41, paragraph 4, that no amparo can be granted in electoral matters."[112] In a surprising move announced on 7 April 2003, the Friends of Fox decided to give IFE all of the information related to the 2000 campaign and confirmed they had contributed MXN 125 million to it (Miguel Angel Granados Chapa, 'La eficacia del dinero' in Reforma, 8 April 2003). Six months later, the General Council of the IFE resolved that the Alliance for Change had not only exceeded campaign spending limits, but had received donations that were never reported. The PAN was fined MXN 360 million, while the PVEM was fined MXN 184 million (IFE, 10 October 2003).

[112] Author interview with Jaime Cárdenas, July 2005. *La Jornada*, 16 and 18 August 2002.

2006 presidential election

According to all interviewees who eventually worked in the Electoral Tribunal (Acuña; Pérez-Suárez; Zuckerman, 13 August 2006), one of the most difficult moments for this institution was certifying the results of the closely contested 2006 presidential election. For the first time in Mexican history, the margin between the winner and runner up was little more than 250,000 votes. The IFE declared the preliminary winner to be PAN candidate Felipe Calderón with 15,000,284 votes. Immediately afterwards the candidate of the "For the Good of All" coalition, Andrés Manuel López Obrador (14,756,350 votes), cried "fraud" and announced he would challenge the electoral results before the TEPJF.

Lopez Obrador's lawyers prepared an 826-page brief of alleged illegal actions taken before, during, and after the 2006 presidential election. In his quest for a vote-by-vote recount and the possible annulment of the election, López Obrador relied largely on the precedents set in cases where the TEPJF had invoked the "abstract cause for annulment", first set in the Tabasco ruling discussed above. His arguments against the election results centred on the fact that there was no PRD councilor on the IFE's General Council; that President Fox, whom he derides as a "traitor to democracy," violated the prohibition on participating in political campaigns by blatantly promoting Calderon's candidacy while at the same time openly criticising the PRD candidate; that the IFE manipulated the preliminary results (Programa de Resultados Preliminares, PREP) to assist Calderon; and that errors had marred the results in 72,197 voting stations.

Table 5.8 2006 presidential election results (IFE-TEPJF)

Candidate Party / Coalition	IFE's result	TEPJF 5 September 2006
Felipe Calderón PAN	15,000,284 35.89%	14,916, 927 35.9%
Roberto Madrazo PRI-PVEM	9,301,441 22.26%	9,237,000 22.2%
Andrés Manuel López Obrador PRD-PT-Convergencia	14,756,350 35.31%	14,683, 096 35.3%
Valid Votes		40,657,057
Nulos		900,373
TOTAL VOTES		41,557,430

Source: TEPJF (2006) 'Aprueba Sala Superior del TEPJF, dictamen relativo al cómputo final de la elección de Presidente de los Estados Unidos Mexicanos,' Boletín de Prensa No 081/2006, 5 September.

In the end, the Electoral Tribunal did recount some 9 percent of all ballot boxes, annulling a total of 234,574 votes and rendering a final tally of 41,557,430 votes. The TEPJF subtracted 80,601 votes from Calderon's total, 75,355 from López Obrador's total and 62,235 votes from Madrazo's total, which gave victory to the PAN with only a 233,831-vote margin.

López Obrador warned that he would not respect TEPJF's judgment unless the body declared him the winner. Meanwhile, PRI candidate Roberto Madrazo, who finished a distant third, announced that he would support the TEPJF's verdict. The seven electoral court judges voted unanimously to confirm Calderón's victory, though they did acknowledge certain irregularities in the electoral process, including the "inappropriate intervention" of President Vicente Fox (TEPJF, 5 September 2006). According to Eisenstadt and Poiré (2006), while none of the vote annulment claims made by López Obrador were backed by reliable evidence, he did raise valid questions about the credibility of the election.

The 2006 presidential electoral and legal outcomes reflect the type of democratisation that Mexico has experienced throughout the past decades: democratisation within institutions. Even though the election was extremely close, the results were challenged through political and legal channels, the electoral institutions were criticised and the losing party went as far as to form a "parallel government", all parties did eventually abide by the resolutions of the electoral institutions. These institutions withstood an extremely difficult moment in the country's political history and emerged as strong pillars of the Mexican political system. The next elections to be overseen by the IFE and TEPJF were the 2009 mid-term elections, which took place within the framework of electoral reforms approved in 2007, discussed briefly below.

2007 electoral reform

A comprehensive electoral reform was ushered in on 13 November 2007 as a reaction to the widely criticised 2006 presidential elections. The reform involved eight constitutional amendments, which were supported by all three major parties and passed fairly quickly without much debate in Congress.[113] In January 2008 a new Cofipe entered into law and by July 2008 the Organic Law of the Judicial Power of the

[113] The reform was approved in the lower chamber by 408 votes in favour, 33 against and nine abstentions, while in the Senate the vote was 110-11 in favour. The PVEM and Convergencia objected to some of the amendments because, in their view, they favoured the three main parties at the expense of smaller ones.

Federation and the General Law on the System of Means of Challenging Electoral Issues were also reformed.

The 2007 electoral reform contained two key changes: a ban on individuals, candidates, political parties and other interest groups from buying political advertisements on radio and television, and the restructuring of the IFE. In terms of advertising, the following was introduced:

- IFE is given sole control over the administration of radio and television campaign advertisements;
- Each broadcaster has to give 48 minutes per day to the IFE, 30 percent of which is to be distributed equally among the parties with the remaining 70 percent allocated in line with each party's vote in the previous federal election;
- A constitutional prohibition of negative advertisements;
- Presidential campaigns are now limited to 90 days and mid-term elections to 60 days.

In terms of the IFE, the reform called for the wholesale replacement of the electoral councillors, headed by Luis Carlos Ugalde. Indeed, although the 2007 electoral reform represented important advances in relevant topics for future democratic consolidation in Mexico, most interviewees coincided that the new law would erode IFE's independence.

Overall, the main changes that had an effect on the electoral justice were:

- Annulment of elections
- Internal party democracy
- Validation of elections
- Judicial Career
- Supremacy of the Constitution over all other laws, in cases where there are contradictions between the laws
- Authority to exert jurisdiction over election disputes

Conclusions

The 1996 reforms reversed almost 150 years of Vallarta's thesis of non-intervention by the judiciary in electoral conflicts. Up until then, local PRI elites were generally able to influence state electoral courts. The TEPJF has now been granted the power to review cases that have been resolved at the subnational level and opposition parties have started to follow legal procedures rather than accepting the concessions won in political negotiations, which maintained their aspirations of sharing power. Even though the cases studied in this chapter reveal a tendency to question the impartiality of the TEPJF, most actors are following the formal electoral complaint process and in the end are abiding by judicial rulings.

Over the past decade, the TEPJF has received hundreds of local and state appeals and for the first time reversed a PRI victory in the 2000 gubernatorial election in Tabasco. The TEPJF also reversed a number of municipal victories and thus finally put an end to extra-legal negotiations as a means of settling post-electoral conflicts by becoming the final instance venue for resolving such cases through the proper institutional channels. The historical intention that the judiciary should remain the "apolitical branch" of government has proved difficult to fulfil, however, as the Court is increasingly defining the way most political processes work. In Tabasco and Yucatán, the Supreme Court had to intervene to resolve local electoral conflicts. Moreover, in issuing rulings related to the financing of the 2000 presidential campaigns, the Supreme Court ended with the uncertainties that had prevailed since the 1996 reform regarding which institution would have the last word in electoral matters as it ratified its supremacy as a Constitutional Tribunal.

The 1996 reforms also forced the states to bring their own electoral laws into line with those at the federal level. Nevertheless, there are still evident gaps at the subnational level. In 2002 there were important disputes over local tribunal rulings, as the case of Ciudad Juárez clearly exemplified. Strong local electoral institutions are indeed essential for new federalism, as electoral differences emerge with increasing competitiveness. In this scenario, it is important to acknowledge that not all actors have completely accepted the TEPJF's jurisdiction and absolute impartiality, and have repeatedly taken their cases to the Supreme Court. The post-electoral disputes in Yucatán and Tabasco fed concern about the lack of specific regulation to resolve post-electoral conflicts at the subnational level. If "new federalism" implies giving local and state governments the autonomy to govern themselves for the most part, it is crucial that specific jurisdictional principles accepted by the main political actors are respected, and that federal rulings are based on the law and not subject to political pressures.

After the events in the southeast, the TEPJF faced a crisis of credibility and its powers were finally limited in terms of interpreting the constitutionality of electoral legislation. On the one hand, it is positive that electoral processes no longer have to be just transparent, but also equitable. However, there is still a long way to go to professionalise public institutions, particularly at the subnational level. The judiciary has promoted professionalisation of the judicial career, but it remains to be seen what will come of the Court's increasing involvement in electoral matters, particularly in terms of state and local elections. In the end, credible enforcement institutions are crucial for the

development of a political system based on rule of law. The TEPJF will continue to play a fundamental role in the institutionalisation process, but undoubtedly it will be the Supreme Court that has the last word in an increasing number of electoral and non-electoral cases. This situation could introduce new problems for an institution that for most of the past century played a passive role. The positive aspect to highlight is that after the 2006 election concern has been focused not only on guaranteeing electoral transparency, but also on achieving an active horizontal and vertical separation of powers with political actors preferring to follow legal channels rather than the extra-legal negotiations characteristic of the authoritarian regime.

CONCLUSIONS

Two analytical threads run through this thesis. One concerns federalisation as part of the process of democratic institutionalisation in Mexico. The other is about the increased separation of powers over the past few decades, specifically the enhanced independence and autonomy of the judiciary. It is where these threads entwine that my thesis has focused. As political parties gained ground at the local level, helped by a process of political negotiation that contributed to recurrent electoral reforms, they were able to use the Courts to leverage their demands for greater political and fiscal resources from an authoritarian and highly presidentialist federal government. This deepened the process of federalisation and it is this twin dynamic that I refer to as judicially-created federalism; the pivotal year for this process was 1994.

While no one doubts the profundity of the impact of Mexico's 1994 judicial reform in terms of revitalising the judiciary, there are conflicting views about the motivations behind it and its relevance to broader political trends in the country. The architect of the reform, former President Ernesto Zedillo (1994–2000), made clear in a personal interview in 2001 as I was beginning this project, that federalism of political decision-making powers was the main driver of his reform. Although important—and certainly at the top of the agendas of international agencies involved in institutional design throughout Latin America at the time—the primary aim was not to underpin economic reforms or reduce public insecurity. Others, whom I interviewed, doubt Zedillo's long-sightedness: in retrospect, they contend, the reforms were the most important ever to have affected the judiciary and have had the effect of deepening federalism, but the latter may have been by accident rather than design.

The 1994 reforms introduced many changes aimed at strengthening the independence of the judiciary and expanding its competencies via the introduction or enhancement of judicial review mechanisms, namely amparos, constitutional controversies and constitutional acts. My thesis has focused on one of the modifications introduced by the 1994 reform: the extension to the Federal District and the municipalities of the authority to file constitutional controversies against other branches and level of government before the Supreme Court. By telescoping in on this single aspect of the reform it becomes clear that the reforms have served to drive a federalism agenda from the bottom up. As Jacqueline Martínez, Supreme Court Director of Research, succinctly put it, whereas "the principal client of unconstitutional acts has been the Attorney

General's Office and business in the case of amparos", the main clients of constitutional controversies have been municipalities.[114]

In terms of horizontal separation of powers, too, the Supreme Court is playing a crucial role as it gains confidence in its relatively newfound autonomy. Three historic rulings went against the President of the Republic; against Zedillo over the Fobaproa bank rescue and against former President Fox (2000–06) in cases involving electricity deregulation and a tax on a section of the soft-drinks industry. The Court was also called into disputes between the legislature and the executive over the budget. These were cases with deep repercussions for the country's economic and political standing internationally.

Fiscal versus political federalism: which is in the driving seat?

Whereas a number of scholars argue that fiscal federalism is the key to driving the separation of horizontal and vertical powers, the evidence from my study of constitutional controversies supports arguments made by Riker (1964) that federalism of political power is the most important variable for defining the nature of a federal system. Although I would argue that it is difficult to disentangle the processes of fiscal and political devolution of power in the context of democratisation in Mexico in the 1980s and 1990s, the latter substantiated the former.

My detailed study of constitutional controversies filed in seven case study states reveals that a large number of constitutional controversies involved disputes over the allocation of public (fiscal) resources. Most were filed by municipal governments against higher levels of government (the state or the federal government) and most were unsuccessful. There are some notable exceptions, however. The Supreme Court found in favour of the municipalities in the following cases: Soledad de Graciano Sánchez (CC 3/01), Tecamac (327/01), Mexicali (CC 35/02), Juárez (47/04), Ahumada (45/2005). In a few other controversies the Court partially found in favour of the municipalities but not over the central challenge, e.g. San Nicolás de los Garza (CC18/97) Puebla (CC 4/98 and 6/98) and Zapopan (CC22/00).

There are a number of ways in which the treatment by the Supreme Court of fiscal cases is consistent with the treatment of conflicts involving other types of jurisdictional disputes between different levels and branches of government. Among the main

[114] Author interview with Jacqueline Martínez, Mexico City, 24 November 2009.

empirical findings from my analysis of the constitutional controversies filed in the period 1995–2005 is that some 80 percent were between municipalities and state governments or local congresses, with fewer against the federal government. In most cases the Supreme Court did not issue a ruling, whether because the cases were considered not well founded, because the complainant withdrew or for technical reasons.

During the period under review it took an average of 400 days to resolve each controversy (see Annex 1, which includes the dates when each controversy was presented and resolved). Up until 1998 only 6 percent of constitutional controversies were successful, but since 2001 the Supreme Court has ruled in favour of the claimant in an increasing number. In only a very few cases did the lower level of government prevail against a higher level of government (typically municipality vs. state or, less commonly the federal government). It is notable that the founded cases tend to be over territorial conflicts, the responsibility of public servants or planning issues. The Court found in favour of the complainant in very few cases of real significance. This might be in part because controversies presented by federal powers or by governors tend to attract media attention and are treated differently by the Court, with more care taken over the ruling.

In terms of the political parties involved in the constitutional controversies in the sample states, the majority were filed between government bodies controlled by different political parties, but the Supreme Court dismissed many of them on the grounds that they were politically motivated. Of those cases that the Supreme Court decided to hear, I could not identify any bias towards a particular party or any increased probability that the case would be successful when the complainant and defendant were from the same or different political parties. A large number of controversies over the period in question were filed by the opposition to PRI state and national governments. The centre-right PAN—the first opposition party to experience the responsibility of local and state government—has been particularly active in taking legal action to defend political and jurisdictional disputes.

A high number were presented by northern states (Nuevo León, Sonora, Tamulipas, Chihuahua and Baja California), most commonly by opposition-governed municipalities against the state and federal government in diverse areas. According to Justice Sánchez Cordero, constitutional controversies are "for us [in the Court], a thermometer

of the governability that exists in each state."[115] As can be seen in table 3.5, Oaxaca is the state where the highest number of controversies has been presented in the period in question, even without considering the more than 300 controversies that were filed against the indigenous reform (these are included in Annex 1). One case that drew particular attention from the media and specialist commentators was that involving the repression of teacher protests and political and social unrest in May 2006–January 2007 and July 2008. After two days of deliberations, on 14 October 2009 the Court made public its ruling that Oaxaca state governor Ulises Ruiz Ortiz is culpable for the human rights violations that occurred.

My conclusion that the Supreme Court rulings over constitutional controversies and fiscal challenges in particular have tended to favour the higher authorities and that the political affiliation of the parties involved does not appear to affect the outcome of the case, runs counter to Magaloni and Sánchez's (2006: 6) thesis that Justices appointed to the new Supreme Court in 1995 are closer in the policy space to the PRI than to the "opposition parties". While I agree that the 1995 election was carried out by a Senate with a significant PRI majority, by 2004 three new Supreme Court Justices had been proposed by President Vicente Fox and ratified by a PRI-dominated Senate (José Ramón Cossío, November 2003; Margarita Luna Ramos, February 2004 and Sergio Valls, October 2004). Moreover, in 2006, when President Felipe Calderón had just assumed office, another new justice was elected (Fernando Franco, 13 December 2006). By the end of 2009 two more justices were proposed by President Felipe Calderón and ratified by the Senate without too much trouble, which means six of the eleven justices will have been proposed by PAN presidents. If it is true that the Court has a preference to rule in favour of its appointer, the Court would have shown a different trend in its resolutions since 2004.

I argue that it is not only political fragmentation that has given the Court the confidence to fulfil its role as Mexico's arbiter on constitutional matters. It has actively sought to build political support through strategies to build credibility among opposition parties rather than the population at large. More recently, in an effort to appeal to the general public, the Court has increased its levels of transparency by televising its sessions and publishing hearings and case notes on the Internet, especially in controversial cases.

[115] Author interview with Justice Sánchez Cordero, 24 November 2009, Mexico City.

Although my analysis of constitutional controversies does not look at the decisions of individual judges, my original database did include this information. I also cite a recent study that shows that the proportion of divided Supreme Court rulings has increased since 2000 and more significantly since 2005. This trend could be explained due to the changing composition of the Court, as well its greater transparency. . The public nature of hearings means that justices cannot hide the direction of their vote and the argumentation behind it, especially in controversial cases that attract media attention.

Horizontal separation of powers: the oxygen of fragmentation

A number of the constitutional controversies I analyse involve competing branches at the same level of power, most significantly the federal legislature and executive. In 2001, for the first time, the Supreme Court had to rule on a dispute between both chambers of Congress and the federal executive over a highly emotive issue for the Mexican public: the electric energy sector. President Fox had issued a decree reforming the regulatory framework of the electricity sector in order to allow a higher percentage of privately generated electricity to be sold by the Federal Electricity Commission. According to the Constitution, the energy sector falls under the exclusive competence of the Mexican state. The case was highly controversial and pitted Fox's pro-business stance against the PRI legacy of economic nationalism. The Supreme Court eventually found in favour of the legislature. The case positioned the Court as an effective veto player in the system of government and as a key arbiter of federalism. The case saw the Court fulfil its remit as the interpreter of the constitution and the protector of the jurisdictional boundaries between each branch and level of government.

That the Court was able to play this role effectively was, I argue, directly related to the division of power and alternation of power in office. The Mexican Court has gained independence as power has become more fragmented among political parties. Since 1997, when the PRI lost its majority in the lower chamber, Congress has become much more active in legally defending its constitutional powers. Fox's government was divided—he did not have a majority in Congress and the Senate was still dominated by the PRI—which limited any political pressure on the Court to abstain or rule in a particular direction.

New actors are currently seeking the Court's intervention in matters concerning jurisdictional disputes, which is a marker of the increased confidence vested in the

judiciary. As discussed in Chapter 3, the IFE and the CNDH are two such agencies that have filed constitutional controversies before the Court. The Court determined in both cases that the autonomous bodies do not have the authority to use constitutional controversies. However, at least two congressional initiatives have since been presented seeking congressional debate over the issue of the legal authority of autonomous bodies, which could also include the Banco de México and universities and other higher education institutions that the law considers autonomous.

The Supreme Court: redrawing the boundaries of its own jurisdiction

The comparative material on the independence of the judiciaries in Argentina, Brazil and Venezuela (see Chapter 1) sheds light on the relative success of the process of judicial reform in Mexico. In all four Latin American countries there are more active Supreme Courts as a result of reforms introduced since the early 1990s, but in comparison with Argentina and Venezuela, Mexico's Court has achieved greater autonomy, transparency and public support. Compared with Brazil's, Mexico's Court is less isolated from the other institutions of government and civil society and is more accountable, although both have been the subject of criticism due to the high salaries paid to judges. As opposed to other countries, each year the Mexican Court has to negotiate its budget since it is not pegged to GDP or the national budget, and has to present spending plans for congressional revision. For a number of years Brazil's judiciary has refused to countenance reforms, whereas in Mexico the judiciary was the focus of profound reforms in 1994, in 1999 when the judicial council was revamped, and again in 2008 under President Calderón.

Argentina and Venezuela suffered serious institutional crises in 2000 and 1999, respectively, which affected their Courts. In sum, it is possible to conclude that in Mexico the judicial reform process has been relatively successful since a strengthened judiciary now forms part of and has helped to consolidate a more democratic system with stable institutions. The presidential election in 2006 provided an important test not only of the country's institutions, but of the political actors who complied with the resolutions of the IFE, the Electoral Tribunal and the Supreme Court.

As in other Latin American Countries, Mexico's newly revitalised Supreme Court has become involved in an increasing number of controversial cases of national and international relevance. This carries risks for the Court in terms of its own credibility,

but as cases I analyse show, the Court has been careful to delineate the scope of its jurisdiction.

In the first place, my analysis of constitutional controversies filed in seven case study states (Chapter 5) indicates that the Court has consistently rejected politically-motivated cases between rival parties, typically involving opposition-led municipalities against state governments.

One case of particular note is the legal challenge—or rather more than 300 individual legal challenges—against the indigenous rights law. The Supreme Court eventually decided in a divided (8-to-3) ruling that it does not have jurisdictional control over constitutional changes introduced by the *Constituyente Permante* (the federal and a majority of state legislatures). During the hearing the Court came under intense scrutiny and its resolution was criticised by a number of national and international civil society organisations who said it would set back the stalled peace process in Chiapas. The case set a precedent for the Court's engagement in future constitutional reforms.

The Mexico City airport was another controversial case that was in the national and international public gaze. The Supreme Court was absolved from having to rule on the matter by Fox's U-turn over the decision to expropriate land on a potential airport site, but is widely thought to have contributed to the reversal since Fox might have had more to lose if the Court had ruled against him.

But whereas in the case of the indigenous rights bill the Court was criticised for its conservatism, it came under fire for opposite reasons when it intervened in contested elections in Tabasco (2000) and Yucatán (2001). The Tabasco ruling is especially interesting since the Court had decided not to intervene in the previous gubernatorial elections which were widely held to be fraudulent—that it did so in 2000 is a marker of its increased strength. The Court also intervened in a case related to the financing of the 2000 presidential campaigns, and thereby not only expanded its jurisdiction to areas that the recently created federal electoral tribunal was overseeing, but consolidated its position as a constitutional court. In doing so it ended a tradition of isolating the judiciary from electoral politics in Mexico.

Conclusions can be drawn from all of the above with reference to the definition of judicial independence as hinging on the "authority" of the Court. Richardson (2007) argues that the judiciary can promote its "authority" and consequently its independence

through (i) the making of law, (ii) promoting and maintaining public confidence, (iii) providing accurate information about the workings of the courts and responding to criticism and (iv) participating in administrative law. The cases I analyse show that Mexico's Supreme Court is actively engaged in all four areas.

Fifteen years of judicial reform

While 1994 is the watershed year when it comes to judicial reform in Mexico, efforts to improve the judicial system did not stop there. As mentioned above, subsequent reforms were introduced in 1999 and a new raft of amendments has been tabled by the current president. The more recent reforms take place against a backdrop of the consolidation of democracy in Mexico. The Supreme Court became more proactive as political pluralism increased and especially after alternation of power in 2000. The empirical analysis of the constitutional controversies shows that the type of disputes presented before the Court has also changed as the opposition parties increasingly gained control of municipal and state governments. Theoretically, supreme courts engage in policymaking with fragmentation of power; this has proven to be the case in Mexico.

Between 1994 and 2000, the Supreme Court resolved an average of 27 constitutional controversies per year, while from 2005 to 2009 the average has increased to 87 per year. This compares with only 55 constitutional controversies were presented before the Supreme Court (or less than one per year) presented during the eight decades prior to the 1994 reform (1917–1994). Although unconstitutional actions are not the subject of this thesis, it is worth noting also that in the 15 years since the 1994 judicial reform, the Court has received 707 actions, almost half of which (44 percent) were in connection with electoral issues.

In terms of the Electoral Tribunal, it is important to note that in 2009 more cases were filed before it (21,773) than in the entire preceding decade (a total of 20,982 recourses were filed in 1999–2008). The experiences of 2009 have finally put an end to the notion that the Tribunal is geared towards resolving federal electoral conflicts. Indeed more than eight of every ten complaints received were related to local elections (a total of 18,964, or 87 percent), even though federal elections also took place in 2009. During the period November 2008 to late 2009, 34 jurisprudence texts and 47 theses were approved by the Tribunal.

The number of cases being presented before the Tribunal is evidence of the growing importance of the judiciary in the processes of federalism, increased separation of powers and electoral institutionalisation in Mexico. But it also reflects a growing culture of legality among political actors and citizens: two out of every three recourses filed before the Tribunal were presented by individual citizens in inter-party disputes. As the Tribunal's 2009 report concludes, "Electoral justice has ceased to be the exclusive terrain for resolving disputes among parties and electoral authorities and has crossed over to the protection of political-electoral rights. We register parallels with increasingly active party support. In 2009, 1,391 supporters of all parties requested the intervention of electoral justice to resolve controversies related to the decisions of their political institutions" (TEPJF, 2009).

The year 2009 was particularly relevant for the Tribunal since it was the first time when federal and local elections were scrutinised under new rules introduced via the Constitution in 2007 and secondary legislation in 2008. The changes affected areas such as campaign spots, the promotion of officials and the publicising of the work of the legislature. Under the new rules the federal and local electoral calendars were merged.

Thus, since 1995, the "apolitical" branch of government has been increasingly defining the way many political processes work. It is being called on to resolve all kinds of disputes that emerge between the different levels and branches of government. This is problematic since a true separation of powers requires political agreements between the main political forces rather than the delegation of them to a third party. The recurrent intervention of the Supreme Court in diverse policy areas indicates that what was intended to be a final recourse to resolve specific conflicts related to constitutional matters has become the easy option for many political actors. This has implications for the credibility of the Supreme Court—a situation that might be compounded in the future by the Court's new responsibilities in electoral matters. In other words, while it appears that since the 1994 reform there has been a more visible role for the Supreme Court in political affairs, it is not necessarily a more respected one. Increased Court activism is not equivalent yet to greater political autonomy or better rule of law. The Supreme Court's role in the actual institutionalisation process has become fundamental for the future of Mexico, as public policy is increasingly contested in the Court with less predictable outcomes.

Implications for theory and further research

As one of Latin America's few federal systems, Mexico offers an ideal laboratory for the study of the political conditions that facilitate or hinder judicial reform efforts. By looking at judicial reform from a political science perspective, my study makes clear that the judiciary should not be underestimated in studies of presidentialism, not only for the role it plays as a check on presidential power, but for the leverage it provides other tiers of government to assert claims on the central executive authority.

There are a number of important ways in which my study could be deepened. First, one side-effect of the long period of gestation of this thesis is that much of the empirical material could be updated. My cut-off year is 2005, which leaves four more years of constitutional controversies to be analysed. The study of these would be facilitated by the new Supreme Court database of all controversies filed before the Court.

The analysis of the last four years of controversies would also allow me to look into new areas, in particular whether the Court's new composition is affecting its performance. The retirement from the bench of Justices Mariano Azuela and Genaro Góngora is especially significant since both are former Chief Justices who have been pivotal and represent opposite sides of the political-judicial spectrum (right-leaning and judicially conservative versus left-leaning and judicially activist). A second new issue would be the impact of the 2008 reforms introduced by President Calderón. While many of the reforms are concerned with criminal law and are therefore beyond the scope of my study, they include measure to increase transparency and expediency of the Court. The latter point it particularly relevant since a criticism levied at the constitutional controversy mechanism is that it is too slow to be effective, with cases taking more than a year to resolve.

Second, I have focused on the federal Supreme Court, though referred in a number of places to local justice systems, generally when the Court has been approached to overturn a ruling of the state court. A subnational comparative analysis of judicial reform efforts within Mexico would complete the picture of judicial federalism as it is being experienced at the municipal, state and federal levels.

The study of the judiciary from the political science perspective has resulted in an intriguing and fascinating task. Much remains to be done and the combination of law and politics could become an interesting approach for other political scientists. I have

emphasised the importance of studying the Mexican case not only because of the nature of its gradual democratic transition, but more importantly for the virtues of this type of change for the Mexican political system as a whole and its institutions. It has allowed increasing political inclusiveness without causing serious ruptures of the institutional order. Now that we are well into the 21st century, it is possible to confirm that the post-revolutionary political order in Mexico not only did not collapse as it gave way to democracy, but a gradual political change took place, the product of a combination of pressure, negotiation and agreements among different political actors. This strengthened the institutional framework, including the Supreme Court of Justice and the Electoral Tribunal. Mexico is not necessarily a success story, but the characteristics of its process of democratic consolidation are certainly unique in the context of Latin America.

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ANNEX I
Case-by-case detailed analysis of constitutional controversies, 1995-2005

NUM	*CLAIMANT*		*DEFENDANT*		*RULING*
2/93	MUN San Pedro Garza García, NL	PAN	STATE Governor, Congress NL *Administrative Tribunal	PRI PRI AM	UNF
3/93	MUN San Pedro Garza García, NL	PAN	STATE Congress NL	PRI AM	UNF
1/94	MUN Ciudad Victoria, TAMPS	PAN	STATE Governor, Congress TAMPS *Municipal autonomy: income and tax laws; vehicle licensing services	PRI QM PRI	EXP 31/01/94 10/02/97
2/94	MUN San Luis Potosi, SLP	PAN	STATE Governor, Congress SLP *Invasion of spheres of influence; roadwork concessions	PRI PRI QM	EXP 14/12/94 25/02/97
AFTER REFORM					
1/95	MUN Monterrey, NL	PAN	STATE Governor, Congress NL *Administrative Justice	 PRI PRI MA	UNF 03/03/95 11/01/96
2/95	MUN Monterrey, NL	PAN	STATE Governor, Congress NL *Municipal autonomy (Juntas de Mejoramiento Moral, Civil)	PRI PRI AM	UNF 20/03/95 22/05/97
3/95	MUN Ciudad Victoria, TAMPS	PAN	STATE Governor, Congress TAMPS *Allocation of resources: income and fiscal law	PRI PRI QM	EXP 25/05/95 02/01/97
4/95	MUN San Nicolás de Los Garza, NL	PAN	STATE Governor, Congress NL *Responsibility of public servants (declaration of interests)	PRI PRI AM	DISMISS/ UNF 05/06/95 27/06/96
5/95	MUN Ciudad Victoria, TAMPS	PAN	STATE Governor, Congress TAMPS *Allocation of resources (Regulation of comercial establishments; alcohol licences)	PRI PRI QM	EXP 08/06/95 26/02/97
6/95	MUN Tijuana, BC	PAN	FEDERATION / STATE President / BC *Allocation of public resources: social development agreement and expenditure budget 1995	PRI PAN RM	UNF 09/06/95 27/05/97
7/95	MUN Ciudad Victoria, TAMPS	PAN	STATE Governor, Congress TAMPS *Functioning and organisation of institutions	PRI PRI QM	UNF 12/07/95 05/09/96

8/95	MUN Monterrey, NL	PAN	STATE Governor, Congress NL *Allocation of public resources	PRI PRI AM	UNF 01/08/95 09/07/96
9/95	MUN San Pedro Garza García, NL	PAN	STATE LEG Congress NL *Responsibility of public servants	PRI PRI AM	DISMISS 02/08/95 05/09/96
10/95	MUN Santa Catarina, NL	PAN	STATE Governor, Congress NL *Municipal autonomy: tax office	PRI PRI AM	UNF 15/08/95 20/02/97
11/95	STATE Governor, State Congress President and local Attorney, TAB	PRI	FEDERATION President; Attorney General (PGR) *Responsibility: investigation against Governor Roberto Madrazo	PRI	UNF 21/08/95 30/04/96
12/95	MUN San Luis Río Colorado, SON	PAN	STATE Governor, Congress SON *Allocation of public resources	PRI PRI AM	DISMISS 23/08/95 15/04/97
13/95	MUN San Nicolás de Los Garza, NL	PAN	STATE Congress NL and audit office *Public servant's responsibilities	PRI PRI AM	UNF 25/08/95 31/05/96
14/95	MUN Río Bravo, TAMPS	PAN	STATE Governor, Congress TAMPS *Responsibility: aprehension and detention orders	PRI PRI QM	DISMISS 08/09/95 11/11/96
15/95	MUN Tepoztlán, MOR (Regidor)	--	STATE / Governor, MOR *Geographical: municipality disappearance	PRI	REJECT 11/09/95 22/09/95
16/95	MUN Monterrey, NL (Commerce Director)	PAN	STATE Congress, NL *Administrative justice	PRI	REJECT 27/09/95 10/10/95
17/95	MUN Tepoztlán, MOR Mun president: Alejandro Morales Barragán	PRI	STATE Congress and Governor, MOR *Municipal autonomy (judicial personality)		DISMISS 04/10/95 11/10/95
18/95	MUN Chihuahua, CHIH	PRI	LOCAL JUDICIARY Supreme Tribunal of Justice CHIH *Municipal autonomy: council tax		DISMISS 05/10/95 22/05/97
19/95	MUN Río Bravo, TAMPS	PAN	STATE Governor, Congress TAMPS *Appointment civil servants	PRI PRI QM	FOUN 04/12/95 28/10/96
1996					
1/96	MUN Río Bravo, TAMPS	PRD	STATE Governor, Congress TAMPS *Allocation of resources: income law 1996; water law.	PRI PRI AM	UNF 16/02/96
2/96	MUN Mérida, YUC	PAN	FEDERATION/ STATE President, Lower Chamber Governor, Congress YUC *Allocation of resources: Ramo 026	PRI PRI AM	PAR DISMISS 26/03/96 18/09/98
3/96	MUN Chihuahua, CHIH	PRI	LOCAL JUDICIARY Supreme Tribunal of Justice CHIH *Responsibility of public servants: jurisdictional ruling Finance Director		DISMISS 08/05/96 26/06/97

4/96	**MUN Río Bravo, TAMPS**	**PRD**	**LOCAL LEGISLATURE Congress TAMPS *Planning law; local development councils**	**PRI MA**	**UNF 24/05/96 06/09/99**
5/96	**MUN Tampico, TAMPS**	**PAN**	**STATE Governor, Congress TAMPS *Planning law; local development councils**	**PRI MA PRI**	**DISMISS 31/05/96 19/01/2000**
6/96	**MUN Asunción Cuyotepeji, OAX**	**PAN**	**STATE Governor, Congress OAX *Functioning of institutions: creation of a Municipal Development State Institute**	**PRI MA PRI**	**UNF 16/07/96 20/02/97**
7/96	San Miguel Ahuehuetitlán	PAN	Same		
8/96	San Juan Ihualtepec	PAN	Same		
9/96	Barrio de la Soledad	PAN	Same		
10/96	San Antonio Castillo Velasco	PRD	Same		
11/96	Santo Domingo Ingenio	PAN	Same		
12/96	Villa de Zaachila	PRD	Same		
13/96	Villa de Etla	PRD	Same		
14/96	San Pedro Pochutla	PRD	Same		
15/96	Oaxaca de Juárez	PAN	Same		
16/96	San Pablo Hixtepec	PAN	Same		
17/96	San Juan Bautista Tuxtepec	PAN	Same		
18/96	Huajuapan de León	PAN	Same		
19/96	Comitanallo Tehuantepec	PRD	Same		
20/96	Santa María Petapa Juchitán	PRD	Same		
21/96	San Jacinto Amilpas	PRD	Same		
22/96	Magdalena Tequisistlán	PRD	Same		
23/96	Loma Bonita	PRD	Same		
24/96	Juchitán de Zaragoza	PRD	Same		
25/96	Santiago Pinotepa Nacional	PRD	Same		
26/96	Matías Romero	PAN	Same		
27/96	Santa María Jalapa de Márquez,	PRD	Same		
28/96	**MUN Chihuahua, CHIH**	**PRI**	**LOCAL JUDICIARY: Supreme Tribunal of Justice CHIH *Jurisdcitional ruling**		**DISMISS 13/08/96 26/06/97**
29/96	**MUN Santiago Pinotepa Nacional OAX**	**PRD**	**STATE Governor, Congress OAX *Allocation of resources: Ramo 026**	**PRI PRI**	**DISMISS 29/08/96 05/10/98**
30/96	San Pedro Pochutla	PRD	Same		**DISMISS 29/08/96 05/10/98**
31/96	San Sebastián Ixcapa	PRD	Same		
32/96	Villa de Etla	PRD	Same		
33/96	San Fco. del Mar	PRD	Same		
34/96	San J. Cacahuatepec	PRD	Same		
35/96	Santiago Jamiltepec	PRD*	Same		

36/96	Santa Ma. Jalapa de Márquez	PRD	Same		
37/96	Santiago Miltepec	PRD	Same		
38/96	Juchitán de Zaragoza	PRD	Same		
39/96	Mazatlán Villa de Flores	*	Same		
40/96	Santo Domingo Zanatepec	PRD	Same		
41/96	Ayotzintepec	PRD	Same		
42/96	Guevea de Humboldt	*	Same		
43/96	San Jerónimo Tlacochahuaya	*	Same		
44/96	San Pedro Comitancillo	PRD	Same		
45/96	San Miguel Sola de Vega	PRD	Same		
46/96	San Jacinto Tlacotepec	*	Same		
47/96	El Espinal	PRD	Same		
48/96	San Antonio Castillo Velasco	PRD	Same		
49/96	Santo Domingo Tonalá	PRD	Same		
50/96	Santiago Atitlán	PRI	Same		
51/96	**MUN** **Puebla, PUE**	**PAN**	**STATE** **Governor, Congress PUE** *Municipal autonomy: water law	**PRI** **PRI AM**	**UNF** **10/09/96** **19/02/2001**
53/96	**María Eugenia Guevara**		**LOCAL JUDICIARY** **Familiar Tribunal CHIH** ***Jurisdictional ruling**		**REJECT** **05/11/96** **14/11/96**
54/96	MUN Aguililla and 49 *Síndicos* of other municipalities, MICH	PAN	STATE Governor, Congress MICH *Appointment of public servants	PRI PRI AM	PAR FOUN 24/10/96 11/12/98
56/96	**FEDERATION** **President**	**PRI**	**MUN** **Guadalajara, JAL** **Other: Regulations for the security and bank protection**	**PAN**	**FOUN** **25/11/96** **30/06/97**
56/96	LOCAL CONGRESS 4 Congressmen, CHIS	PAN	FEDERATION President, Senate *Appointment of public servants (Ambassador Robledo, CHIS)	PRI	REJECT 4/12/96 10/12/96
1997					
1/97	MUN Síndico from Tuxtla Gutiérrez, CHIS	PAN	STATE Governor, Congress CHIS *Planning, Infrastructure: urban plan	PRI AM	Not proceed 12/12/96 29/06/98
2/97	MUN Síndico from Tuxtla Gutiérrez, CHIS	PAN	FEDERATION President, lower chamber *Allocation of resources: Ramo 026	PRI AM	Not proceed 12/12/96 08/05/97
3/97	MUN Berriozabal, CHIS	PRI	FEDERATION President, Senate **Appointment of public servants Governor Eduardo Robledo Rincón	PRI PRI AM PRI	DISMISS 17/12/96 26/05/99
4/97	MUN Lázaro Cárdenas, MICH	PAN	STATE *Director del Catastro* *Administrative justice agreement	PRI PRI RM	DISMISS 09/01/97 13/08/97
5/97	**MUN** **Monterrey, NL**	PAN	STATE Governor, Congress NL *Responsibility of public servants	PRI PRI RM	UNF 20/01/97 13/08/98

6/97	**MUN** **Río Bravo, TAMPS**	PRD	STATE Governor, Congress TAMPS *Allocation of public resources: fiscal coordination law	PRI PRI AM	DISMISS 11/02/97 20/02/2001
7/97	**MUN** **Río Bravo, TAMPS**	PRD	STATE Governor, Congress TAMPS *Allocation of public resources: income law	PRI PRI AM	UNF DISMISS 11/02/97 19/02/2000
8/97	**MUN** **Río Bravo, TAMPS**	**PRD**	**STATE** **Governor, Congress TAMPS** ***Municipal autonomy: transit service**	**PRI** **PRI AM**	**DISMISS** **12/2/97**
9/97	STATE Governor, Congress, QROOQRO	PRI	FEDERATION President *Territorial conflict	PRI PRI AM	SENATE 13/02/97 12/12/2005
10/97	**MUN** **Monterrey, NL**	PAN	STATE Governor, Congress NL *Responsibility of public servants	PRI PRI RM	UNF 13/02/97 23/01/2001
11/97	**MUN** **Río Bravo, TAMPS**	**PRD**	**STATE** **Governor, Congress TAMPS** *Planning, Infrastructure: Development Municipal Council	**PRI** **PRI AM**	**DISMISS** **7/03/97** **28/08/98**
12/97	**LOCAL LEGISLATURE** **Congress CHIH**	PRI AM	STATE Governor, CHIH *Internal administrative agreements	PAN	DISMISS 06/05/97 27/11/2000
13/97	STATE Yucatán YUC	PRI	MUN Different municipalities in Yucatán, YUC *Other: local reform to the Const	PRI	UNF 14/11/2005 12/12/2005
14/97	**MUN** **Tlalnepantla de Baz, EDOMEX**	PAN	STATE Junta de Caminos, EDOMEX *Planning, Infrastructure	PRI PRI RM	UNF 06/06/97 15/02/99
15/97	**MUN** **Tenancingo,EDOMEX**	PAN	STATE Governor, Congress EDOMEX *Administrative justice	PRI PRI RM	UNF 20/06/97 12/05/98
16/97	MUN - Síndico San Luis Río Colorado, SON	PRI	FEDERATION / STATE Governor, Congress SON President *Municipal autonomy: water law	PRI PRI RM PRI	DISMISS 26/06/97 04/09/2000
17/97	**MUN** **Juárez, CHIH**	PAN	STATE Congress CHIH *Administrative justice	PRI PAN AM	DISMISS 02/07/97 10/11/98
18/97	**MUN** **San Nicolás de los Garza, NL**	PAN	FEDERATION President; Federal Congress Ministries of Finance and Interior. Governor, State Congress *Allocation of public resources: fiscal coordination law	PRI AM PRI PRI AM PRI	PAR FOUN 04/07/97 05/06/2002
19/97	STATE JUDICIARY Supreme Tribunal of Justice, JAL		STATE CONGRESS Congress JAL *Impeachment: invasion of spheres of influence	PAN RM	FOUN 09/07/97 18/09/98

20/97	STATE Governor, local Attorney PUE	PRI	MUN Puebla, Puebla *Planning, infrastructure: permits for urban development	PAN	Desistió 09/07/97 20/04/99
21/97	MUN Aguascalientes, AGS	PAN	STATE Governor, local Attorney AGS *Municipal autonomy: not complying police and transit regulations	PRI	DISMISS 17/07/97 02/06/98
22/97	ASSOCIATION Asoc Residentes San José Insurgentes		FEDERATION President, Jefe de Gobierno DF *Planning, infrastructure: building decree	PRI	REJECT 04/08/97 13/08/97
23/97	Sistema Intermunicipal de Agua Potable		STATE Governor,Congress JAL *Administrative justice	PRI AM	REJECT 07/08/97 17/08/97
24/97	**MUN Río Bravo, TAMPS**	**PRD**	**STATE Congress, Contaduría TAMPS *Functioning and organisation of institutions: organic law**	**PRI AM**	**UNF 08/08/97 23/01/2001**
25/97	STATE Governor PUE	PRI	MUN Puebla, PUE *Planning, infrastructure: urban development "Tres Cruces"	PAN	PAR DISMISS 14/08/97 10/11/98
26/97	LOCAL JUDICIARY PJ de JAL		LOCAL LEGISLATURE Congress JAL *Impeachment against public servants	PAN RM	FOUN 29/08/97 17/09/99
27/97	MUN-Síndico Tarímbaro, MICH	PRI	STATE Governor, Congress MICH *Territorial conflict	PRI PRI AM	FOUN 19/09/97 23/09/2002
28/97	**STATE Governor, local Attorney PUE**	PRI	MUN Puebla, PUE *Planning, infrastructure: cancel fund for Angelópolis plan	PAN	REJECT 1/10/97 30/04/98
29/97	MUN-Síndico Acteopan, PUE	PRI	STATE Governor, Congress PUE *Appointment of public servants	PRI PRI AM	DISMISS 08/10/97 10/11/98
30/97	**MUN Tenancingo, EDOMEX**	PAN	STATE Governor, Congress EDOMEX *Responsibility: revocation of mandate of the municipal president	PRI PAN RM	DISMISS 13/10/97 26/02/99
31/97	MUN Temixco, MOR	PRI	STATE Governor, Congress MOR *Territorial conflict	PRI PRI RM	FOUN 16/10/97 06/12/99
32/97	**MUN-Síndico Valle de Bravo, EDOMEX**	PRI	STATE Governor, Congress EDOMEX *Revocation of mandate of the municipal president	PRI PRI RM	FOUN 23/10/97 24/09/99
33/97	STATE LEGISLATURE Congress TAB	PRI AM	FEDERATION Lower Chamber *Other: electoral use of public resources (Ramo 026)	PRI AM	UNF 13/11/97 21/09/98
34/97	LOCAL JUDICIARY PJ de GTO		STATE State Congress GTO *Apppointment of a local magistrate	PAN RM	UNF 27/11/97 11/02/2000

35/97	MUN-Síndico San Luis Río Colorado, SON	PAN	STATE Governor SON *Planning, infrastructure: authorisation of development project	PRI PRI RM	FOUN 10/12/97 18/10/2002
36/97	STATE Governor COL	PRI	LOCAL LEGISLATURE State Congress COL *Appointment of local magistrates	PRI RM	FOUN 12/12/97 20/01/99
1998					
1/98	STATE Governor JAL	PAN	STATE Governor, Congress COL *Territorial conflict	PRI	DISMISS 12/12/97 19/08/99
2/98	**STATE** **Local Attorney, OAX**	PRI	MUN Oaxaca de Juárez, OAX *Invasion of spheres of competence: transit and transport regulations	PAN	FOUN 29/01/98 10/11/98
3/98	STATE Governor JAL	PAN	STATE Governor, Congress COL *Territorial conflict	PRI	DISMISS 12/12/97 19/08/99
4/98	**MUN** **Puebla, PUE and others**	PAN	STATE Governor, Congress PUE *Allocation of public resources: "Ley Federalismo Hacendario"	PRI PRI AM	PARFOUN 23/02/98 31/01/2001
5/98	MUN – Regidores Acapulco de Juárez GRO	PRD	LOCAL LEGISLATURE Congress GRO *Appointment of civil servants	PRI AM	REJECT 23/02/98 18/03/98
6/98	**MUN** **Aljojuca, Nealtican and Altepexi, PUE**	PRI PAN PRI	STATE Governor, Congress PUE *Allocation of public resources: "Ley Federalismo Hacendario"	PRI PRI AM	PARFOUN 24/02/98 31/01/2001
7/98	**MUN-Síndico** **Río Bravo, TAMPS**	**PRD**	**STATE** **Governor, Congress TAMPS** *Planning, Infrastructure: Development Municipal Council	**PRI** **PRI AM**	**PAR FOUN** **06/03/98** **13/11/2000**
8/98	**MUN** **Texcoco, EDOMEX**	PRD	STATE. Local Ministry of Urban Development EDOMEX *Planning, infrastructure: Plan Texcoco	PRI RM PRI	DISMISS 09/03/98 10/11/98
9/98	MUN Villa Arista, SLP	PAN	LOCAL LEGISLATURE LVII Congreso SLP *Allocation of public resources: municipal autonomy	PRI AM	UNF 12/03/98 11/03/99
10/98	LOCAL JUDICIARY State Administrative Tribunal , JAL		STATE Governor, Congress *Administrative Justice	PAN PAN RM	REJECT 12/03/98 19/03/98
11/98	**MUN** Oaxaca de Juárez, OAX	PAN	FEDERATION/STATE Ministry of Social Development; Governor OAX *Allocation public resources: Ramo 33	PRI	DISMISS 25/03/98 19/02/2001
12/98	**MUN** Asunción Nochixtlán, OAX	PRD	Same	PRI	DISMISS
13/98	MUN Banderilla, VER	PT	STATE Governor, Congress, VER *Territorial Conflict	PRI PRI AM	REJECT 30/03/98 03/04/98

14/98	**MUN** **San Juan Bautista Tuxtepec, OAX**	PAN	Same		DISMISS
15/98	**MUN-Síndico** **Río Bravo, TAMPS**	PRD	STATE Governor, Congress, Local Attorney TAMPS *Allocation of public resources: public account	PRI PRI AM	UNF 06/05/98 23/05/2000
16/98	**MUN** **Río Bravo, TAMPS**	PRD	STATE /Governor, Congress, Local Attorney TAMPS *Allocation of public resources: public account	PRI PRI AM	UNF 06/05/98 23/05/2000
17/98	LOCAL JUDICIARY Judicial Council GTO		STATE Local Congress GTO *Appointment of Magistrates		REJECT 19/05/98 05/06/98
18/98	LOCAL JUDICIARY Judicial Council MOR		STATE Local Congress MOR *Other: CNDH recommendation	PRI	DESIST 01/06/98 02/09/98
19/98	**MUN-Síndico** **Tultepec, EDOMEX**	PRD	STATE Governor EDOMEX *Territorial conflict	PRI	REJECT 06/07/98 05/08/98
20/98	**MUN** **Tultepec, EDOMEX**	PRD	STATE Governor, Congress EDOMEX *Territorial conflict	PRI PRI RM	DISMISS 06/07/98 23/10/2000
21/98	MUN-Síndico Nicolás Ruiz, CHIS		STATE/FEDERATION Governor, CHIS Federal General Attorney *Responsibility of public servants: warrant for arrest	PRI	REJECT 14/07/98 05/08/98
22/98	**STATE** **Governor, PUE** **Other Associations**	PRI	LOCAL JUDICIARY Superior Tribunal of Justice *Administrative justice		REJECT 19/08/98 27/08/98
23/98	**STATE** **Governor, PUE**	PRI	MUN San Pedro Cholula, PUE *Municipal autonomy: provision of water and drainage services	PAN	DISMISS 02/09/98 24/10/2000
24/98	**MUN** **Ciudad Madero, TAMPS**	PRD	LOCAL LEGISLATURE Congress TAMPS *Responsibility: removal of Regidora	PRI AM	DISMISS 04/09/98 06/09/2000
25/98	MUN Xalapa, VER	PRD	STATE Governor, Congress VER *Municipal autonomy: transit and transport law	PRI PRI AM	FOUN 09/09/98 14/03/2001
26/98	**MUN** **Tultepec, EDOMEX**	PRD	STATE Governor EDOMEX *Territorial conflict	PRI PRI RM	FOUN 18/09/98 13/12/99
27/98	**MUN** **Ciudad Madero, TAMPS**	PRD	LOCAL LEGISLATURE Congress TAMPS *Appointment of an interim municipal president	PRI AM	DISMISS 25/09/98 23/10/2000

28/98	**MUN** **Ciudad Guadalupe, NL**	PAN	STATE Administrative Tribunal NL *Administrative justice		REJECT 03/11/98 11/11/98
29/98	**MUN** **San Pedro Cholula, PUE**	PAN	STATE Governor, PUE *Alllocation of public resources: rulings from the Finance Ministry	PRI	DESIST 11/12/98 22/03/98
1999					
1/99	STATE Governor JAL	PAN	LOCAL LEGISLATURE Congress JAL Internal administrative agreements	PAN RM	UNF 29/01/99 11/05/2000
2/99	MUN Guaymas, SON	PAN	LOCAL LEGISLATURE Congress SON *Geograph:elimination of municipality	PRI	REJECT 10/02/99 18/02/99
3/99	LOCAL JUDICIARY Supreme Tribunal of Justice GTO		FEDERATION President, Lower Chamber *Allocation of public resources: busget expenditure	PRI	REJECT 11/02/99 23/02/99
4/99	**MUN** **Tultepec, EDOMEX**	PRD	STATE/MUN Governor, Congress EDOMEX MUN Tultitlán, EDOMEX *Planning, infrastructure: Tultitlán	PRI PRI RM PAN	DISMISS 26/02/99 26/02/2001
5/99	**FEDERAL DISTRICT** **Head of Government**	PRD	FEDERATION President, Senate, Lower Chamber Allocation of Public Resources: Coordination Fiscal Law, Ramo 33	PRI PRI AM	DISMISS 04/03/99 20/02/2001
6/99	**MUN** **Tultepec, EDOMEX**	PRI	STATE / MUN Governor, EDOMEX MUN Nextlalpan *Territorial conflict	PRI	REJECT 22/03/99 06/04/99
7/99	**FEDERATION** **Executive Power: SHCP**	**PRI**	**STATE** **Governor, Congress CHIH** *Allocation of public resources: use and tax of foreign vehicles "chocolate"	**PRI** **PRI AM**	**DISMISS** **12/04/99** **14/10/2002**
8/99	STATE Governor, Local Attorney, BC	PAN	FEDERAL JUDICIARY Collegiate Tribunal *Appointment of local judges		REJECT 22/04/99 27/04/99
9/99	MUN Tetepango, HGO	PRD	STATE Governor, Congress HGO *Allocation of public resources: public security fund	PRI PRI AM	DISMISS 23/04/99 19/01/2000
10/99	MUN Cosoleacaque, VER	PRD	LOCAL LEGISLATURE Congress VER *Allocation of public resources	PRI AM	DISMISS 08/06/99 26/02/2001
11/99	**MUN** **Tijuana, BC**	PAN	STATE JUDICIARY/ CONGRESS Administrative Tribunal, Congress BC *Administrative justice /jurisdictional ruling		REJECT 08/06/99 22/06/99
12/99	MUN Guaymas, SON	PRD	STATE LEGISLATURE Congress, SON *Responsibility: revocation of mandate of the municipal president	PRI	REJECT 08/06/99 22/06/99

13/99	STATE Local Attorney, NAY	PRI	FEDERAL CONGRESS Federal Lower Chamber *Allocation of public resources. electoral use of public funds	PRI	DISMISS 10/06/99 05/06/2000
14/99	**MUN** **Tultepec, EDOMEX**	PRD	STATE / MUN Governor Cuautitlán, EDOMEX *Territorial Conflict	PRI PAN	DISMISS 10/06/99 23/06/99
15/99	MUN Hermosillo, SON	PRI	FEDERATION President, Lower Chamber, Senate Junta Local de Conciliación SON *Other: federal labour law	PRI	PARFOUN 14/06/99 14/10/2002
16/99	MUN Hermosillo, SON	PRI	STATE Governor, Congress SON Administrative Tribunal, SON *Responsibility of public servants	PRI PRI RM	DISMISS 14/06/99 17/08/2000
17/99	**STATE/MUN** **Governor, EDOMEX** **Cuautitllán, EDOMEX**	PRI PAN	MUN Tultepec, EDOMEX *Territorial conflict	PRD	REJECT 10/06/99 23/06/99
18/99	STATE Governor,SLP	PRI	FEDERATION Servicio Adm Tributaria (SHCP) *Allocation of public resources: fiscal coordination law	PRI	DOES NOT PROCEED 06/07/99 02/04/2002
19/99	**MUN** **Reynosa, TAMPS**	PRI	STATE Governor, Local Attorney TAMPS *Responsibility of public servants: warrant for arrest	PRI	REJECT 12/07/99 14/07/99
20/99	**MUN** **Reynosa, TAMPS**	PRI	STATE Governor, Congress, TAMPS *Elimination of a municipality	PRI	DESIST 12/07/99 26/11/99
21/99	STATE Congress MOR	PRI MA	LOCAL JUDICIARY: President and Superior Tribunal of Justice, MOR *Responsibility/ against Governor's impeachment		FOUN 02/08/99 15/03/2001
22/99	MUN - Síndico Fresnillo, ZAC	PRD	LOCAL LEGISLATURE Congress , ZAC *Functioning of institutions: integration of Social Planning Committees	PRI	DISMISS 06/08/99 10/07/2002
23/99	MUN La Huerta, JAL	PRI	STATE Governor, Congress JAL *Territorial conflict	PAN PAN RM	PARFOUN 11/08/99 03/12/2003
24/99	**MUN** **Oaxaca de Juárez, OAX**	PAN	STATE Governor, Congress OAX *Municipal autonomy: transit law	PRI PRI AM	UNF 20/08/99 11/09/2000
25/99	MUN Jonacatepec, MOR	PRD	LOCAL LEGISLATURE Congress, MOR *Allocation of public resources: public account 1997	PRI AM	DISMISS 23/08/99 17/11/2000
26/99	**FEDERAL CONGRESS** **Lower Chamber**	**PRI MA**	**FEDERATION / President, Ministry of the Interior, SHCP, CNBV** ***Allocation of Public Resources: Fobaproa information**	**PRI**	**FOUN** **09/09/99** **09/08/2001**

27/99	**STATE** **Governor, CHIH**	**PRI**	**FEDERATION: President, SHCP, Lower Chamber, Senate** ***Allocation of public resources: tax of foreign vehicles ("chocolate")**	**PRI**	**DISMISS** **21/09/99** **26/02/2001**
28/99	MUN Cuernavaca, MOR	PAN	LOCAL LEGISLATURE State Congress MOR *Allocation of public resources: Water taxes and quotas	PRI	DISMISS 24/09/99 20/10/2000
29/99	**MUN** **Tultepec, EDOMEX**	PRD	STATE Governor EDOMEX *Planning, infrastructure, public works	PRI RM	DISMISS 27/09/99 24/10/2000
30/99	**MUN** **Guadalupe, NL**	PAN	STATE Governor, Congress *Administrative justice	PAN	DISMISS 01/10/99 06/03/2000
31/99	**MUN / Guadalupe, NL**	PAN	Same		
32/99	**MUN / Guadalupe, NL**	PAN	Same		
33/99	**MUN / Guadalupe, NL**	PAN	Same		
34/99	STATE Governor COAH	PRI PRI MR	FEDERATION Lower Chamber *Allocation of public resources: electoral use	PRI AM	PAR FOUN 05/10/99 06/03/2001
35/99	**FEDERAL DISTRICT** Directora de la Contraloría General del Distrito Federal		FEDERATION/President ALDF *Administrative justice	PRI PRD	REJECT 19/10/99 21/10/99
36/99	**FEDERAL DISTRICT** Directora de la Contraloría General del Distrito Federal		FEDERATION/President / ALDF *Administrative justice	 PRI PRD	REJECT 19/10/99 21/10/99
37/99	MUN Xalapa, VER	PRD	STATE Governor, Congress VER *Responsibility of public servants	PRI PRI AM	UNF 04/11/99 26/02/2001
2000					
1/2000	MUN Atizapán de Zaragoza, EDOMEX	PAN	STATE Governor EDOMEX *Planning, infrastructure	PRI	FOUN 19/11/99 20/08/2003
2/2000	MUN Zacoalco de Torres, JAL	PRI	STATE Governor, Congress *Geographical: desintegration of the *cabildo*	PAN	PARFOUN 15/12/1999 14/11/2001
3/2000	**MUN** **Ciudad Guadalupe NL**	PAN	LOCAL JUDICIARY Administrative Tribunal NL *Administrative justice/jurisdictional ruling		DISMISS 23/12/99 06/03/2000
4/2000	**MUN** **Ciudad Guadalupe NL**	PAN	Same		DISMISS 23/12/99 06/03/2000
5/2000	**MUN** **Ciudad Guadalupe NL**	PAN	Same		DISMISS 23/12/99 06/03/2000
6/2000	**MUN** **Ciudad Guadalupe NL**	PAN	Same		DISMISS 23/12/99 06/03/2000
7/2000	**MUN** **Cuautitlán Izcalli, EDOMEX**	PAN	STATE Governor, Congress, EDOMEX *Territorial conflict	PRI	DISMISS 06/01/2000 27/11/2000

8/2000	**STATE** **Governor EDOMEX**	PRI	STATE Congress EDOMEX *Internal administrative agreements	PRI RM	UNF 24/01/2000 07/06/2001
9/2000	MUN Nativitas, TLAX	PT	STATE Congress, Superior Tribunal of Justice, Local Attorney TLAX *Responsibility:revocation of mandate	PRI AM	FOUN 31/01/2000 23/08/2001
10/2000	MUN Xalapa, VER	PRD	STATE Governor, Congress VER 209 Municipalities *Municipal autonomy:account revision	PRI AM	PARFOUN 28/02/2000 16/05/2002
11/2000	**FEDERAL DISTRICT** **Head of Government**	**PRD**	**FEDERATION** **President, Senate, Lower Chamber** ***Allocation of public resources: budget expenditure**	**PRI** **PRI RM**	**DISMISS** **07/03/2000** **20/02/2001**
12/2000	**MUN** **Tultepec, EDOMEX**	PRD	STATE Governor, Congress, EDOMEX *Planning, infrastructure: Nextlalpan Plan	PRI	DISMISS 09/03/2000 10/01/2002
13/2000	MUN Temixco, MOR	PAN	STATE Governor, Congress MOR *Territorial conflict	PAN PRI RM	UNF 13/03/2000
14/2000	**STATE** **Local Attorney, OAX**	PRI PRI AM	MUN Huajuapan de León, OAX *Functioning: creation of the Human Rights Municipal Commission	PAN	FOUN 15/03/2000 09/10/2001
15/2000	MUN Antigua La, VER	PAN	STATE Governor, Congress VER Other 210 Municipalities *Other: reform to the Constitution of Veracruz (Law 53)	PRI PRI AM	DISMISS 15/03/2000 12/06/2002
16/2000	MUN Córdoba, VER	PAN	Same	PRI PRI AM	DISMISS 15/03/2000 15/06/2001
17/2000	MUN Tomatlán, VER	PAN	Same	PRI PRI AM	DISMISS 15/03/2000 15/06/2001
18/2000	MUN Juan Rodríguez Clara, VER	PAN	Same	PRI PRI AM	DISMISS 15/03/2000 15/06/2001
19/2000	MUN Citlaltépec, VER	PAN	Same	PRI PRI AM	DISMISS 15/03/2000 15/06/2001
20/2000	**MUN** **Valle de Bravo, EDOMEX**	PRI	FEDERATION/ Federal Attorney for Environmental Protection *Planning, infrastructure: suspension of a public work	PRI	DISMISS 05/04/2000 23/02/2001
21/2000	**LOCAL EXECUTIVE** **Governor EDOMEX**	PRI	LOCAL LEGISLATURE Congress EDOMEX *Planning, infrastructure: road law	PRI RM	DISMISS 25/04/2000 26/02/2001
22/2000	MUN Zapopan, JAL	PAN	STATE Congress JAL *Allocation of public resources	PAN RM	PARFOUN 02/05/2000 09/10/2000

23/2000	STATE Governor, NAY	PAN PRD PT PRS	STATE Congress, NAY *Functioning and organisation of institutions: organic law	PRI	DISMISS 11/05/2000 12/12/2000
24/2000	LOCAL EXECUTIVE Governor, MOR	PRI	STATE Congress, Superior Tribunal of Justice, MOR *Responsibility of public servants: impeachment	PRI	REJECT 15/05/2000 24/05/2000
25/2000	MUN Pinos, ZAC	PRI	STATE Congress ZAC *Appointment municipal civil servants	PRI RM	UNF 12/07/2000 26/02/2001
26/2000	Presidente Partido Frente Cívico (CHIS)		STATE Congress, CHIS *Replacement of congressmen		REJECT 12/07/2000 14/07/2000
27/2000	MUN Villanueva, ZAC	PRI	STATE Congress ZAC *Removal of municipal accountant	PRI RM	FOUN 19/07/2000 19/02/2001
28/2000	**MUN García, NL**	PRD	STATE Governor, NL *Allocation of public resources: illegal retention of municipal funds	PAN	DISMISS 02/08/2000 17/04/2001
29/2000	**FEDERATION President**	**PAN**	**FEDERAL DISTRICT Head of Government/Legislative Assembly *Other: education law**	**PRD PRD AM**	**PARFOUN 04/08/2000 23/09/2002**
30/2000	MUN Papalotla de Xicohténcatl, TLAX	PRI	LOCAL LEGISLATURE Congress TLAX *Territorial conflict	PRI AM	FOUN 13/09/2000 31/05/2001
31/2000	MUN General Escobedo,NL	PAN	STATE Governor, Congress NL *Territorial conflicto	PAN PAN AM	FOUN 26/09/2000 21/10/2002
32/2000	FEDERAL DISTRICT Head of Government	PRD	FEDERATION President, Federal Attorney, Congress *Other: general education law	PRI PRI AM	DISMISS 27/09/2000 31/05/2001
33/2000	LOCAL JUDICIARY President of the Superior Tribunal of Justice MOR		STATE Congress MOR *Other: constitutional reform to the local judiciary	PRI RM	UNF 28/09/2000 18/03/2003
34/2000	**MUN García, NL**	PRD	STATE Governor, NL *Allocation of public resources: illegal retention of municipal funds	PAN	DESIST 23/10/2000 24/01/2001
35/2000	LOCAL JUDICIARY Supreme Tribunal of Justice AGS		STATE Governor, Congress, AGS *Other: Ley Patrimonial de AGS	PAN	PAR FOUN 24/10/2000 08/09/2004
36/2000	MUN Hermosillo, SON	PAN	FEDERATION Senate, Lower Chamber Congress SON *Other: tax exemption	PRI RM	PARFOUN 26/10/2000 29/05/2001
37/2000	**FEDERAL DISTRICT Jefe Delegacional de Miguel Hidalgo, DF**	PAN	FEDERAL DISTRICT Jefatura de Gobierno and others *Functioning of institutions: adm	PRD	UNF/ DISMISS 27/11/2000

			agreement which creates Unidad de Parques Urbanos to control the administration of Chapultepec		26/08/2002
2001					
1/2001	STATE Governor DGO	PRI	FEDERATION Comisión Federal de Competencia *Other: administrative decree (Ley de Fomento Ganadero)	PAN	PAR FOUN 26/10/98 06/01/2004
2/2001	MUN Santa Cruz, TLAX		STATE Congress, TLAX *Responsibility of public servants: impeachment		REJECT 18/12/2000 09/02/2001
3/2001	MUN Soledad de Graciano Sánchez, SLP	PAN	STATE Governor, Congress SLP *Allocation of public resources	PRI PRI AM	FOUN 08/02/2001 06/11/2001
4/2001	**FEDERAL DISTRICT** **Head of Government**	PRD	FEDERATION President, SHCP, Lower chamber *Allocation of public resources: expenditure budget	PAN PRI RM	DISMISS 23/02/2001 14/11/2001
5/2001	**FEDERAL DISTRICT** **Head of Government**	PRD	FEDERATION President, Energy Minister, Minister of the Interior *Other: Decree that establishes four zones (husos horarios)	PAN	FOUN 05/03/2001 07/09/2001
6/2001	MUN Juárez, CHIH	PAN	STATE Governor, Congress CHIH *Municipal autonomy: transit law	PRI PRI AM	UNF 14/03/2001 06/11/2001
7/2001	MUN Acapulco, GRO	PRI	STATE Governor, Congress GRO *Allocation of public resources: Ramo 28	PRI-PRS	DISMISS UNF 30/03/2001 03/02/2004
8/2001	**FEDERATION** **President**	**PAN**	**FEDERAL DISTRICT** **Head of Government** *Other: decree in which the Federal District will maintain its *huso horario*	**PRD**	**FOUN** **30/03/2001** **07/09/2001**
9/2001	LOCAL JUDICIARY President of the Superior Tribunal of Justice, CHIS		STATE Governor Pablo Salazar CHIS *Other: occupation of the Tribunal	PRD-PAN (6 parties)	DISMISS 05/04/2001 12/09/2001
10/2001	MUN Hidalgo, MICH	PAN	STATE Governor MICH *Municipal autonomy: public service of transit	PRI MA	FOUN 18/04/2001 26/10/2004
11/2001	STATE Governor, CAM		FEDERATION Comisión Federal de Competencia. Ministry of Economy *Administrative justice: concessions	PAN	FOUN 27/04/2001 28/01/2004
12/2001	MUN Tulancingo de Bravo, HGO		STATE Governor, HGO *Functioning of institutions: municipal organic law	PRI	PAR FOUN 22/01/2009 03/02/2009
13/2001	MUN Guadalajara, JAL	PAN	STATE/FEDERATION Governor, Congress JAL President, Congress *Allocation of public resources	PAN	UNF 22/05/2001 12/03/2003

14/2001	MUN-Síndico Pachuca de Soto, HGO	PAN	STATE Congress, Governor HGO *Municipal autonomy: organic Law: manejo de patrimonio municipal	PRI	PAR-FOUN 25/05/2001 07/07/2005
15/2001	**MUN** **Oaxaca de Juárez, OAX**	PAN	STATE Congress, Governor *Responsibility:revocation of mandate	PRI	DISMISS 07/06/2001 09/09/2002
16/2001	**MUN** **Naucalpan de Juárez, EDOMEX**	PAN	LOCAL JUDICIARY Administrative Superior Tribunal *Administrative justice		REJECT 12/06/2001 18/06/2001
17/2001	STATE Congressman from the State Legislature, ZAC		STATE Congress ZAC *Appointment of the Síndico in the municipality of Luis Moya		REJECT 15/06/2001 20/06/2001
18/2001	**MUN** **Monterrey, NL**	PRI	STATE Governor, Congress NL *Functioning and organisation of institutions	PAN PAN AM	DISMISS 20/06/2001 07/05/2003
19/2001	**MUN** **Santa Catarina, NL**	PAN	Same		
20/2001	**MUN** **Valle de Bravo, EDOMEX**	PRI	FEDERATION Federal Attorney for Environmental Protection *Planning, infrastructure: definitive suspension of a public work	PAN	DISMISS 05/04/2000 23/02/2001
21/2001	Neighbours from the municipality of Luis Moya, ZAC		STATE Congress ZAC *Appointment of the Síndico in the municipality of Luis Moya		REJECT 04/07/2001 05/07/2001
22/2001	**FEDERAL CONGRESS** **Lower Chamber, Senate**	**PRI RM**	**FEDERAL EXECUTIVE POWER** **President, CRE** ***Other: Electricity Law**	**PAN**	**FOUN** **04/07/2001** **16/03/2002**
23/2001	MUN Molcaxac, PUE		FEDERATION: President, Congress **INDIGENOUS LAW**		IMPROCED 27/09/2001 06/09/2002
24/2001	MUN Tulancingo de Bravo, HGO	PAN	STATE Congress HGO *Removal of Municipal President	PRI AM	FOUN
25/2001	MUN Querétaro, Corregidora, El Marqués, QRO	PAN PAN PRI	STATE Governor, Congress *Functioning of institutions: municipal organic law	PAN	PAR FOUN 06/07/2001 26/10/2005
26/2001	MUN Teolocholco, Tepeyanco, Amaxac de Guerrero and others from TLAX		STATE Governor, Congress TLAX *Allocation of public resources	PRD	DISMISS 11/07/2001 14/01/2002
27/2001	MUN Regidor of the Municipality Luis Moya ZAC		STATE Congress, ZAC *Replacement of the municipal president		REJECT 13/07/2001 06/08/2001
28/2001	STATE Governor OAX	PRI	FEDERATION: President, Congress **INDIGENOUS LAW**		

29/2001	MUN Tulancingo de Bravo HGO	PAN	STATE Governor, Local Attorney *Allocation of public resources	PRI	DISMISS 02/08/2001 13/09/2002
30/2001	MUN Texcatepec, VER		FEDERATION: President, Congress **INDIGENOUS LAW**		
31/2001	MUN Copalillo, GRO		FEDERATION: President, Congress **INDIGENOUS LAW**		
32/2001	MUN Comalcalco, TAB		FEDERATION: President, Congress **INDIGENOUS LAW**		
33/2001	LOCAL JUDICIARY President of the Supreme Tribunal of Justice GRO		STATE Congress GRO *Responsibility/Impeachment Magistrates	PRI AM	DISMISS 17/08/2001 02/04/2003
34 -38 2001	MUNICIPALITIES CHIAPAS		FEDERATION: President, Congress **INDIGENOUS LAW**		
34-50 2001	**MUNICIPALITIES OAXACA**		FEDERATION: President, Congress **INDIGENOUS LAW**		
51/2001	STATE Governor TLAX		FEDERATION: President, Congress **INDIGENOUS LAW**		
52 -324 2001	**MUNICIPALITIES OAXACA**		FEDERATION: President, Congress **INDIGENOUS LAW**		
325/2001	**MUN Nuevo Laredo TAMPS**		FEDERATION: President, Congress *Municipal autonomyr: control of border bridges	PRI AM	DISMISS 07/09/2001 08/07/2003
326/2001	**MUN Toluca, EDOMEX**	PAN	STATE Governor EDOMEX *Municipal autonomy: transit law	PRI	FOUN 17/09/2001 22/04/2003
327/2001	**MUN Tecamac, EDOMEX**		STATE Congress GRO *Municipal autonomy: management of the municipal finances	PRI AM	DISMISS – FOUN 13/09/2001 08/07/2003
328/2001	LOCAL JUDICIARY Supreme Tribunal GRO		STATE Congress GRO *Responsbility of magistrates: impeachment procedures	PRI AM	FOUN 18/09/2001 18/11/2003
329-335 2001	**MUNICIPALITIES OAXACA**		FEDERATION: President, Congress **INDIGENOUS LAW**		
336-337 / 2001	MUNICIPALITIES MOR		FEDERATION: President, Congress **INDIGENOUS LAW**		
338/2001	MUN Nicolás Ruiz, CHIS		FEDERATION: President, Congress **INDIGENOUS LAW**		
339/2001	MUN Tlaxiaco, OAX		FEDERATION: President, Congress **INDIGENOUS LAW**		
340-341	MUNICIPALITIES GRO		FEDERATION: President, Congress **INDIGENOUS LAW**		
342-350	MUNICIPALITIES OAXACA		FEDERATION: President, Congress **INDIGENOUS LAW**		
351/2001	MUN Chilapa de Álvarez, GRO		FEDERATION: President, Congress **INDIGENOUS LAW**		
352/2001	MUN Tepalcingo, MOR		FEDERATION: President, Congress **INDIGENOUS LAW**		
353-356/ 2001	MUNICIPALITIES GRO		FEDERATION: President, Congress **INDIGENOUS LAW**		

357-358/ 2001	MUNICIPALITIES JAL		FEDERATION: President, Congress **INDIGENOUS LAW**		
359/2001	MUN Ajacuba, HGO		FEDERATION: President, Congress **INDIGENOUS LAW**		
360/2001	MUN Paracho, MICH		FEDERATION: President, Congress **INDIGENOUS LAW**		
361/2001	MUN Yecapixtla. MOR		FEDERATION: President, Congress **INDIGENOUS LAW**		DOES NOT PROCEED 27/09/2001 06/09/2002
362/2001	**MUN - Síndico Juárez, CHIH**	PAN	STATE Governor, Congress CHIH *Municipal autonomy: transfer public service of water and drainage	PRI	DISMISS 01/10/2001 20/06/2003
363/2001	**Lerma, EDOMEX**	PAN	Same Governor, Congress EDOMEX *Municipal autonomy: transit	PRI	PAR FOUN 02/10/2001 22/04/2003
364/2001	MUN - Síndico Hermosillo, SON	PAN	STATE Governor, Congress SON *Municipal autonomy: transfer public service of water	PRI	DISMISS 03/10/2001 30/08/2002
365/2001	**MUN /Santiago Juxtlahuaca, OAX**		FEDERATION: President, Congress **INDIGENOUS LAW**	PRI	DOES NOT PROCEED
366/2001	MUN -Regidor Nativitas, TLAX	PT	STATE LEGISLATURE Impeachment Commission *Responsibility: impeachment against municipal president	PRD-PT-PVEM	DISMISS 13/10/2001 09/08/2002
367/2001	LOCAL JUIDICARY President of the Supreme Tribunal, AGS		STATE Governor, Congress AGS *Appointment procedure to elect Magistrates. Reestructuring of the judiciary through a local reform	PAN	DISMISS 27/11/2001 29/10/2003
368/2001	**LOCAL JUDICIARY Administrative Tribunal, EDOMEX**		MUN Naucalpan de Juárez, EDOMEX *Revocation of local Magistrates		REJECT 30/11/2001 06/18/2002
2002					
1/2002	**MUN Texcoco, EDOMEX**	**PRD**	**FEDERATION President and other authorities *Other: expropriation decrees to build international airport**	**PAN**	**DISMISS 04/12/2001 13/08/2002**
2/2002	**MUN Acolman, EDOMEX**	PRD	Same		DISMISS
3/2002	**FEDERAL DISTRICT Jefe de Gobierno del DF**	PRD	Same		DISMISS
4/2002	MUN Moroleón, GTO	PAN	LOCAL JUDICIARY Judge (First *instancia*) *Suspension of public work (highway)		REJECT 05/12/2001 13/12/2001
5/2002	**MUN Metepec, EDOMEX**	PAN	LOCAL JUDICIARY Administrative Tribunal *Administrative Justice		REJECT 05/12/2001 10/12/2001
6/2002	MUN San Luis Río Colorado, SON	PAN	STATE Governor *Allocation of public resources	PRI	DISMISS 07/12/2001 27/02/2004

7/2002	**MUN -Síndico Toluca, EDOMEX**	PAN	STATE Governor *Planning: Development Program for Public Transport	PRI	DISMISS 26/12/2001 01/07/2002
8/2002	MUN Aguascalientes, AGS	PAN	STATE Governor, Congress *Allocation of public resources: Law that regulates beverages	PAN	UNF 11/01/2002 20/04/2005
9/2002	**MUN Atenco, EDOMEX**	**PRI**	**FEDERATION President and other authorities * Other: expropriation decrees to build international airport**	**PAN**	**DISMISS 06/02/2002 13/08/2002**
11/2002	LOCAL JUDICIARY President of the Supreme Tribunal of Justice TLAX		STATE Governor, Congress TLAX *Appointment of Magistrates	PRI PRI RM	UNF 11/02/2002 12/03/2003
12/2002	MUN Huixquilucan de Degollado, EDOMEX	PAN	STATE Governor, Congress EDOMEX *Administrative justice	PRI	PAR FOUN 12/02/2002 26/10/2005
13/2002	MUN Hermosillo, SON	PAN	STATE Congress, Governor, SON *Allocation of public resources: municipal treasury law	PRI	FOUN 13/02/2002 17/06/2003
14/2002	MUN Magdalena de Kino, SON	PAN	Same		
15/2002	MUN Cananea, SON	PAN	Same		
16/2002	**MUN Villa del Carbón, EDOMEX**	PAN	STATE Congress, Governor EDOMEX *Allocation of public resources: expenditure budget (Decree 51)	PAN RM PRI	UNF 13/02/2002 11/09/2002
17/2002	**MUN Lerma, EDOMEX**	PAN	Same		
18/2002	**MUN Ocoyoacac, EDOMEX**	PAN	Same		
19/2002	**MUN Tlalnepantla de Baz, EDOMEX**	PRD	Same		
20/2002	**FEDERAL DISTRICT Jefe Delegacional Miguel Hidalgo**	PAN PVEM	FEDERAL DISTRICT Jefe de Gobierno del Distrito Federal *Functioning and organisation of institutions	PRD	DISMISS 14/02/2002 17/09/2002
21/2002	EIGHT MUNICIPAL PRESIDENTS, DGO	PAN	STATE Governor, Congress DGO *Allocation of public resources: income law		DISMISS 15/02/2002 26/02/2003
22/2002	MUN Metepec, EDOMEX	PAN	Congress, Governor EDOMEX *Allocation of public resources: expenditure budget (Decree 51)	PAN RM PRI	UNF 15/02/2002 10/07/2002
23/2002	MUN-Síndico Pachuca de Soto, HGO	PAN	STATE Superior Tribunal of Justice and Congress HGO *Responsibility/Impeachment	PRI AM	DISMISS 19/02/2002 03/04/2003

24/2002	**MUN** **Toluca, EDOMEX**	PAN	STATE Congress, Governor EDOMEX *Allocation of public resources: expenditure budget (Decree 51)	PAN RM PRI	UNF 20/02/2002 10/07/2002
25/2002	MUN San Luis Río Colorado, SON	PAN	STATE Congress, Governor SON *Allocation of public resources: Income Law and expenditure budget / Municipal Treasury Law	PRI MR PRI	PAR FOUN 22/02/2002 03/09/2003
26/2002	MUN Puerto Vallarta, JAL	PAN	STATE Congress JAL *Internal administrative agreements		DISMISS 26/03/2002 08/08/2002
27/2002	**FEDERAL DISTRICT** **Jefe Delegacional Venustiano Carranza**	PRD	FEDERAL DISTRICT Jefe de Gobierno del Distrito Federal *Internal agreement: Social communication		FOUN 02/04/2002 11/11/2003
28/2002	**FEDERAL DISTRICT** **Jefe Delegacional Benito Juárez**	PAN	Same		
29/2002	**FEDERAL DISTRICT** **Jefe Delegacional Cuajimalpa**	PAN	Same		
30/2002	MUN Aguascalientes, AGS	PRI	STATE Governor, Congress *Allocation of public resources: collection of rents alcohol	PAN	REJECT 05/04/2002 11/04/2002
31/2002	**MUN** **San Pedro Garza García, NL**	PAN	LOCAL JUDICIARY Administrative Tribunal *Planning, infrastructure: urban development in Monterrey		REJECT 10/04/2002 18/04/2002
32/2002	**FEDERAL CONGRESS** **Cámara de Diputados del CU**	**PRI MR**	**FEDERATION** **President and other authorities (SHCP), Senate** ***Allocation of public resources: Tax Luxury Goods and Services**	**PAN**	**FOUN** **12/04/2002** **12/07/2002**
33/2002	**FEDERAL DISTRICT** **Head of government, DF**	**PRD**	**FEDERATION** **President and other authorities (Interior, Foreign Affairs), Senate** ***Other: Presidential Decree Desaparición forzada de personas**	**PAN**	**UNF-S** **15/04/2002** **29/06/2004**
34/2002	**MUN** **Ejutla de Crespo, OAX**		LOCAL JUDICIARY First Collegiate Tribunal *Administrative justice/jurisdictional ruling		REJECT 17/04/2002 23/04/2002
35/2002	**MUN** **Mexicali, BC**	PAN	**FEDERATION** **President and other authorities (SHCP), Senate** ***Allocation of public resources: federal participations**		PAR FOUN 19/04/2002 26/04/2005
36/2002	**MUN** **Villa de Zaachila, OAX**	PVEM	STATE Governor OAX *Allocation of public resources: Ramo 028	PRI	UNF 13/05/2002 13/12/2002

37/2002	**MUN / Mihuatlán de Porfirio Diaz, OAX**	PAN	Same		
38/2002	**FEDERAL DISTRICT** **Local Assembly, DF**	PRD	**FEDERAL DISTRICT** **Head of government, DF** *Other: Federal DistrictTransport Law	PRD	DISMISS 14/05/2002 03/04/2003
39/2002	**MUN** **Ecatepec de Morelos, EDOMEX**	PAN	STATE Governor, Congress *Public work/territorial conflict	PRI PAN	REJECT 30/05/2002 11/06/2002
40/2002	STATE Governor, NAY	PAN PRD PT	STATE / Congress NAY *Internal administrative agreements (*comparecencias*)		UNF 03/06/2002 27/08/2003
41/2002	MUN Colima, COL	PAN	STATE Governor, Congress, COL *Municipal autonomy: law which regulates Congress intervention	PRI	UNF 03/06/2002 26/10/2005
42/2002	MUN Juan Aldama, ZAC	PAN	STATE Congress ZAC *Other:municipal electoral results	PRI	UNF 13/06/2002 07/12/2004
43/2002	**MUN** **Juchitán de Zaragoza, OAX**	PRD	STATE Congress OAX *Other: municipal electoral results	PRI	UNF 08/07/2002 07/11/2003
44/2002	STATE Congress, JAL	PAN	MUN Mazamitla, JAL *Revocation of the regidor's mandate	PRI	FOUN 09/07/2002 18/10/2004
45/2002	MUN Tuxpan, NAY	PRD PT PRS	STATE Congress NAY *Other: congressional agreement that forces the municipal president to pay workers' salaries	PRI RM	FOUN 12/07/2002 22/01/2003
46/2002	**MUN** **San Pedro Garza García, NL**	PAN	STATE Congress, NL *Municipal autonomy: legal adequations	PAN	FOUN 01/08/2002 13/06/2007
47/2002	**MUN** **Magdalena Apasco Etla OAX**	PRD	STATE Congress, OAX *Responsibility of public servants: revocation of the municipal president's mandate	PRI	DISMISS 14/08/2002 16/06/2003
48/2002	**MUN** **Chimalhuacán, EDOMEX**	PRI	LOCAL JUDICIARY / MUN Administrative Tribunal Nezahualcóyotl, EDOMEX *Allocation of public recourses: municipal autonomy (Ramo 33)	PRD	REJECT 16/08/2002 26/08/2002
49/2002	MUN - Síndico Tlahualilo, DGO	Local Party	STATE Congress, Governor DGO *Allocation of public recourses: mpal autonomy, imposition of *Regidor*	PRI	DISMISS 22/08/2002 23/11/2004
50/2002	MUN - Síndico Tlahualilo, DGO	Local Party	STATE Congress, Governor DGO *Allocation of public recourses	PRI	DISMISS 22/08/2002 08/09/2004
51/2002	**MUN** **Santiago Amoltepec, OAX**	Usos y costum	STATE Congress, Governor Oax *Elimination of a municipality	PRI	FOUN 28/08/2002 22/0672007

52/2002	**MUN** **San Pedro Garza García, NL**	PAN	LOCAL JUDICIARY District Judge, NL *Jurisdictional order		REJECT 30/08/2002 11/09/2002
53/2002	MUN San Luis Potosí, SLP	PAN	STATE Congress /Governor SLP *Planning, infrastructure: urban development law	PRI	PAR FOUN 03/09/2002 26/10/2005
54/2002	Filberto Zacarías		Collegiate Tribunal XXVII District *Responsibility of public servants: health crimes		REJECT 10/09/2002 23/09/2002
55/2002	**FEDERATION** **President**	**PAN**	**STATE** **Governor, Local Attorney, CHIH** ***Planning, infrastructure: highway**	**PRI**	**DISMISS** **12/09/2002** **17/03/2005**
56/2002	STATE Local Attorney, ZAC		FEDERATION / President, SHCP *Internal administrative agreements: customs (aduanas)	PAN	DISMISS 30/09/2002 04/12/2003
57/2002	**STATE** **Governor, OAX**	PRI	FEDERATION Minister of Agrarian Reform (SRA) *Other: Expropriation agreement		UNF 24/10/2002 02/03/2004
58/2002	**MUN** **Parás, NL**	PRI	STATE/FEDERATION Local Fiscal Auditing Office President, SHCP,SAT *Allocation of public resources: fiscal credit	PAN	REJECT 25/10/2002 08/11/2002
59/2002	**MUN** **Aldamas, NL**	PAN	Same		
60/2002	MUN Soledad de Graciano Sánchez, SLP	PAN	STATE Congress, Governor, SLP *Responsibility: impeachment against municipal president	PRI	DISMISS 28/10/2002 28/11/2003
61/2002	**MUN** **China, NL**	PRI	STATE/FEDERATION Local Fiscal Auditing Office President, SHCP,SAT *Allocation of public resources: fiscal credit	PAN	REJECT 28/10/2002 08/11/2002
62/2002	**MUN** **Amecameca, EDOMEX**	PRD	FEDERATION/STATE President, lower chamber, Senate Governor, Congress EDOMEX *Allocation of public resources: fiscal coordination law	PAN PRI	PAR FOUN 30/10/2002 19/05/2006
63/2002	**MUN** **General Bravo, NL**	PRI	STATE/FEDERATION Local Fiscal Auditing Office President, SHCP,SAT *Allocation of public resources: fiscal credit	PAN	REJECT 28/10/2002 08/11/2002
64/2002	**FEDERAL DISTRICT** **Local Assembly, DF**	PRD	FEDERATION Senate, Lower chamber *Other: agreement which determines that the ALDF does not have power to present reform initiatives	PAN	DISMISS 07/11/2002 26/02/2004
65/2002	**MUN** **Valle de Bravo, EDOMEX**		LOCAL JUDICIARY Administrative Collegiate Tribunal *Administrative justice/jurisdictional ruling		REJECT 15/11/2002 22/11/2002

66/2002	**MUN** **Juárez, CHIH**	**PAN**	**STATE** **Congress, Governor, CHIH** ***Appointment of civil servants**	**PRI**	**DISMISS** **21/11/2002** **18/10/2004**
67/2002	MUN Melchor Ocampo, NL	PRI	STATE/FEDERATION Local Administration President, SHCP *Allocation of public resources: fiscal credit	PAN	REJECT 26/11/2002 02/12/2002
2003					
1/2003	**MUN** **Oaxaca de Juárez, OAX**	**CONV**	**STATE** **Governor, Congress OAX** ***Allocation of public resources: municipal law**	**PRI**	**DISMISS** **28/11/2002** **12/05/2003**
2/2003	LOCAL JUDICIARY Superior Tribunal of Justice YUC		STATE Congress YUC *Responsibility of public servants: case against the governor	PAN	FOUN 13/01/2003 26/08/2003
3/2003	**FEDERAL DISTRICT** **Local Assembly**	PRD	FEDERAL DISTRICT Head of Government *Functioning of institutions: creation of a decentralized body for the Water System in Mexico City	PRD	DISMISS 21/01/2003 11/09/2003
4/2003	MUN Metlatónoc, GRO	PRD	STATE Congress, Governor GRO *Creation of a municipality	PRI	DISMISS 23/01/2003 31/10/2003
5/2003	LOCAL JUDICIARY Superior Tribunal of Justice JAL		STATE Governor, Congress JAL *Allocation of public resources: budget expenditure	PAN	DISMISS 23/01/2003 25/03/2004
6/2003	MUN Ojocaliente, ZAC	PRD	STATE Congress ZAC *Suspension of a municipal president		DISMISS 23/01/2003 02/12/2004
7/2003	LOCAL JUDICIARY Superior Tribunal of Justice YUC		STATE Governor, Congress YUC *Allocation of public resources: budget expenditure	PAN	DISMISS 29/01/2003 22/03/2004
8/2003	Seven citizens		FEDERATION Senate *Other:pension fund		REJECT 29/01/2003 31/01/2003
9/2003	**FEDERAL EXECUTIVE** **President**	**PAN**	**FEDERAL CONGRESS** **Senate** ***Ratification of Magistrates of the Agrarian Tribunal**	**PRI**	**DISMISS** **04/02/2003** **18/04/2005**
10/2003	**MUN** **Teotitlán de Flores Magón, OAX**	CONV	STATE Governor, Congress OAX *Functioning and organisation of institutions: municipal organic law	PRI	DISMISS 07/02/2003 01/12/2003
11/2003	STATE Governor, NAY	PAN PRD PT	STATE Congress NAY *Allocation of public resources: budget expenditure	PRI	DISMISS 10/02/2003 18/09/2003
12/2003	MUN Río Grande, ZAC	PRI	STATE / Congress ZAC *Allocation of public resources: public account		FOUN 10/02/2003 10/02/2004

13/2003	**FEDERAL DISTRICT** **Local Assembly**	PRD	FEDERAL DISTRICT Head of Government *Administrative justice: financial code	PRD	DISMISS 11/02/2003 11/09/2003
14/2003	**FEDERAL DISTRICT** **Local Assembly**	PRD	FEDERAL DISTRICT Head of Government *Allocation of public resources: budget expenditure	PRD	DISMISS 11/02/2003 08/04/2004
15/2003	MUN San Luis Potosí, SLP	PAN	STATE Governor, Congress SLP *Creation of a municipality	PRI	FOUN 12/02/2003 08/09/2004
16/2003	MUN Zapopan, JAL	PAN	STATE Congress, Governor JAL *Allocation of public resources	PAN	DISMISS 13/02/2003 04/12/2003
17/2003	MUN Uruapan, MICH		**FEDERATION/ President, SHCP** *Allocation of public resources (ISSSTE)	PAN	DISMISS 30/01/2003 30/10/2003
18/2003	MUN Emiiano Zapata, MOR	PAN	**FEDERATION** **President, SHCP** *Allocation of public resources: adeudo cubierto con participaciones	PAN	DISMISS 18/02/2003 15/07/2003
19/2003	MUN Jiutepec, MOR	PAN	**FEDERATION** **President, SHCP** *Allocation of public resources: adeudo cubierto con participaciones	PAN	DISMISS 18/02/2003 15/07/2003
20/2003	MUN San Luis Río Colorado, SON	PAN	STATE Governor, Congress, SON *Allocation of public resources: council tax	PRI	FOUN 19/02/2003 18/10/2004
21/2003	**FEDERAL DISTRICT** **Head of Delegation Miguel Hidalgo**	PAN PVEM	FEDERAL DISTRICT Head of Government *Internal administrative agreements	PRD	DISMISS 19/02/2003 10/03/2004
22/2003	STATE Congress, NAY		STATE Governor, NAY *Internal administrative agreements	PAN PRD PT	FOUN 27/02/2003 19/01/2004
23/2003	**STATE** **Governor, CHIIH**	**PRI**	**FEDERATION /President** ***Administrative Agreement of the Communication Ministry about a local highway: Ley General de Bienes Nacionales**	**PAN**	**UNF** **13/03/2003** **18/05/2005**
24/2003	STATE Govenor, TLAX	PRD	**FEDERATION** **President, SHCP, SEP** ***Allocation of public resources: Ramo 33**	PAN	NOT Presented 13/03/2003 01/04/2003
25/2003	STATE Executive, Local Attorney QROO	PRI	**FEDERATION** **President, SHCP, SEP** ***Allocation of public resources: Ramo 33**	PAN	DISMISS 14/03/2003 26/02/2004
26/2003	**MUN** **Juárez, CHIH**	PAN	STATE Governor, Congress, CHIH *Allocation of public resources: income law	PRI	DISMISS 18/03/2003 11/02/2005
27/2003	MUN Calvillo, AGS	PRI	STATE / Governor, Congress AGS *Allocation of public resources: income municipal law (erratas)	PAN	UNF 26/03/2003 05/12/2003

28/2003	**MUN** **Juárez, CHIH**	PAN	STATE Governor,CHIH *Other: Expropriation decrees	PRI	DISMISS 18/03/2003 26/01/2005
21/2003	**FEDERAL DISTRICT** **Head of Delegation** **Miguel Hidalgo**	PAN PVEM	FEDERAL DISTRICT Head of Government *Allocation of public resources: budget	PRD	DISMISS 27/03/2003 27/01/2004
30/2003	STATE Governor, AGS	PAN	STATE /Congress AGS *Functioning of institution: creation of the Gender Institute		PAR FOUN 01/04/2003 24/02/2004
31/2003	**FEDERATION** **President**	PAN	STATE Governor, Congress MICH *Allocation of public resources: budget expenditure (Ley Hacienda)	PRD	FOUN 02/04/2003 03/03/2004
32/2003	**MUN** **San Pedro Garza García, NL**	PAN	STATE Congress, NL *Municipal autonomy: organic law		DISMISS 04/04/2003 20/04/2005
33/2003	STATE Local Attorney GRO		LOCAL JUDICIARY Administrative Tribunal *Administrative justice		REJECT 08/04/2003 11/04/2003
34/2003	MUN Acapulco de Juárez, GRO	PRD	STATE Governor GRO *Other: pension decree	PRI	DISMISS 11/04/2003 19/01/2004
35/2003	STATE Governor NAY	PAN PRD PT	STATE Congress, NAY *Invasion of spheres of competence: auditing practices to the state		DISMISS 14/04/2003 20/05/2004
36/2003	**FEDERATION** **President**	PAN	**FEDERAL LEGISLATURE** **Lower Chamber** **Senior Federal Auditing Body** ***Protección Ahorro bancario**		PAR FOUN 22/04/2003 07/11/2003
37/2003	STATE Congress NAY		STATE Governor, NAY *Allocation of public resources: budget expenditure	PAN PRD PT	DISMISS 28/04/2003 05/12/2003
38/2003	MUN Veracruz, VER	PAN	STATE Governor, Congress VER *Allocation of public resources: código hacendario municipal	PRI	PAR FOUN 30/04/2003 09/08/2005
39/2003	**FEDERAL DISTRICT** **Head of Government**	PRD	FEDERAL DISTRICT Local Assembly *Administrative internal agreement: financial code	PRD	DISMISS 08/05/2003 12/05/2004
40/2003	MUN Benito Juárez, QROO	PVEM	STATE Governor QROO *Functioning of institutions: creation of a security group: "Fuerza Policial"	PRI	DISMISS 12/05/2003 20/02/2004
41/2003	MUN Río Verde, SLP	PAN	STATE Congress, SLP *Allocation of public resources		DISMISS 14/05/2003 07/11/2003
42/2003	STATE Governor NAY	PAN PRD PT	STATE Congress, NAY *Responsibility of public servants: auditing practices to the state		DISMISS 03/06/2003 24/05/2004

43/2003	STATE Congress NAY		STATE Governor NAY *Responsibility of public servants: auditing practices to the state	PAN PRD PT	DISMISS 03/06/2003 01/03/2004
44/2003	STATE Governor NAY	PAN PRD PT	STATE / Congress, NAY *Allocation of public resources: budget expenditure		DISMISS 03/06/2003 18/11/2003
45/2003	LOCAL JUDICIARY Superior Tribunal of Justice TLAX		STATE Congress, Governor TLAX *Allocation of public resources: budget expenditure	PRD	PAR FOUN 12/06/2003 30/01/2004
46/2003	**MUN** **Ensenada, BC**	PAN	STATE Congress, Governor BC *Responsibility of public servants: impeachment municipal president	PAN	DISMISS 17/06/2003 27/02/2004
47/2003	**MUN** **Juárez, CHIH**	PAN	STATE Congress, Governor CHIH *Municipal autonomy: water service	PRI	FOUN 19/06/2003 23/05/2007
48/2003	MUN Teloloapan, GRO	PRD	FEDERATION: President, Lower chamber, Senate STATE: Governor, Congress GRO *Other: tax electric energy	PAN PRI	DISMISS 30/06/2003 15/05/2004
49/2003	**MUN** **San Miguel Quetzaltepec Mixe, OAX**	Usos y costumbres	STATE Congress, Governor OAX *Proposal to disappear the municipality	PRI	PAR FOUN 07/07/2003 02/07/2007 (4 years)
50/2003	**FEDERAL DISTRICT** **Head of Government**	PRD	FEDERAL DISTRICT Local Assembly *Appointment of citizen councilors of the Federal District Public Information	PRD	DISMISS 15/07/2003 25/03/2004
51/2003	STATE Governor NAY	PAN PRD PT	MUN Santiago Ixcuintla, NAY *Municipal autonomy: transit law	PRI	DISMISS 23/07/2003 23/03/2004
52/2003	STATE Governor NAY	PAN PRD PT	STATE Congress, NAY *Functioning and organisation of institutions	PRI	UNF 25/07/2003 31/05/2003
53/2003	Arnulfo González		Local and federal Electoral Tribunal *Other: political and electoral rights		REJECT 04/08/2003 08/08/2003
54/2003	STATE Governor NAY	PAN PRD PT	STATE Congress, NAY *Other: Acquisition law	PRI	UNF 05/08/2003 12/08/2004
55/2003	STATE Governor NAY	PAN PRD PT	STATE Congress, NAY *Allocation of public resources: municipal law	PRI	UNF 05/08/2003 02/08/2005
56/2003	**MUN** **Tepotzotlán, EDOMEX**	PAN	STATE Congress, Governor EDOMEX *Geographical: provisional municipality	PRI	REJECT 11/08/2003 15/08/2003
57/2003	MUN Jiutepec, MOR	PAN	FEDERATION President, SHCP, SAT *Allocation of public resources		UNF 12/08/2003 25/08/2004

58/2003	**MUN** **Tecámac, EDOMEX**	PAN	STATE Congress, Governor, EDOMEX *Responsibility of public servants: administrative justice		Not presented 15/08/2003 10/09/2003
59/2003	MUN Pueblo Viejo, VER	PRD	FEDERATION: President, lower chamber, Senate STATE: Governor, VER *Allocation of public resources: fiscal coordination law	PAN PRI	DISMISS 25/08/2003 19/02/2004
60/2003	MUN Martínez de la Torre, VER	PAN	FEDERATION: President, lower chamber, Senate STATE: Governor, VER *Allocation of public resources: fiscal coordination law	PAN PRI	DISMISS 25/08/2003 19/02/2004
61/2003	MUN Ixhuatlán del Sureste, VER	PAN	FEDERATION: President, lower chamber, Senate STATE: Governor VER *Allocation of public resources: fiscal coordination law	PAN PRI	DISMISS 25/08/2003 19/02/2004
62/2003	MUN Coatzacoalcos, VER	PAN	FEDERATION: President, lower chamber, Senate STATE: Governor VER *Allocation of public resources: CAPUFE programme	PAN PRI	DISMISS 25/08/2003 19/02/2004
63/2003	MUN Cosamaloapan, VER	PAN	FEDERATION: President, lower chamber, Senate STATE: Governor VER *Allocation of public resources: CAPUFE programme	PAN PRI	DISMISS 25/08/2003 19/02/2004
64/2003	MUN Nautla, VER	PRD	FEDERATION: President, lower chamber, Senate *Allocation of public resources: fiscal coordination law	PAN	DISMISS 25/08/2003 19/02/2004
65/2003	**MUN** **Camargo, TAMPS**	PRI	FEDERATION: President, lower chamber, Senate *Allocation of public resources: fiscal coordination law	PAN	DISMISS 25/08/2003 19/02/2004
66/2003	MUN Cosoleacaque, VER	PRD	FEDERATION: President, lower chamber, Senate *Allocation of public resources: fiscal coordination law	PAN	DISMISS 25/08/2003 19/02/2004
67/2003	**STATE** **Governor, EDOMEX**	PRI	FEDERATION: President, Environmental Ministry *Other: water systems	PAN	DISMISS 25/08/2003 10/09/2004
68/2003	MUN Pánuco, VER	PAN	FEDERATION: President, lower chamber, Senate STATE: Governor VER *Allocation of public resources: fiscal coordination law	PAN PRI	DISMISS 25/08/2003 19/02/2004
69/2003	MUN Xicohtxinco, TLAX		STATE Congress TLAX *Allocation of public resources		UNF 27/08/2003 15/06/2004
70/2003	MUN Gutiérrez Zamora, VER	PRI	FEDERATION: President, lower chamber, Senate	PAN	DISMISS 04/09/2003

			STATE: Governor VER *Allocation of public resources: fiscal coordination law	PRI	06/10/2003
71/2003	MUN Tlalchapa, GRO	PRD	FEDERATION: President, lower chamber, Senate STATE: Governor VER *Other: tax electric energy		DISMISS 05/09/2003 15/06/2004
72/2003	MUN Magdalena Tlaltelulco, TLAX	PRI	STATE Congress, Governor TLAX *Territorial conflict	PRD	DISMISS 08/09/2003 12/05/2004
73/2003	MUN Alvarado, VER	PAN	FEDERATION: President, lower chamber, Senate STATE: Governor VER *Allocation of public resources: fiscal coordination law	PAN PRI	DISMISS 10/09/2003 19/02/2004
74/2003	MUN Colima, COL	PAN	STATE Congress, Governor COL *Responsibility of public servants	PRI	DISMISS 10/09/2003 20/02/2004
75/2003	**MUN** **Rayones NL**	PRI	FEDERATION President *Other: protection to a natural park	PAN	DISMISS 10/09/2003 11/08/2004
76/2003	**MUN** **Santiago NL**	PRI	FEDERATION President *Other: protection to a natural park	PAN	DISMISS 10/09/2003 11/08/2004
77/2003	**MUN** **Montemorelos NL**	PRI	FEDERATION President *Other: protection to a natural park	PAN	DISMISS 10/09/2003 09/08/2004
78/2003	STATE Governor, AGS	PAN	STATE Congress, AGS *Other: reform to local constitution	PAN	UNF 18/09/2003 18/05/2005
79/2003	**MUN** **Allende NL**	PRI	FEDERATION President *Other: protection to a natural park	PAN	DISMISS 19/09/2003 09/08/2004
80/2003	**MUN** **Santa Catarina, NL**	PAN	FEDERATION President *Other: protection to a natural park	PAN	DISMISS 19/09/2003 14/10/2004
81/2003	STATE Governor, ZAC	PRD	FEDERATION President, Agrarian Reform *Other: expropriation decrees	PAN	REJECT 19/09/2003 23/09/2003
82/2003	MUN Valparaiso, ZAC	PRI	FEDERATION President, Agrarian Reform *Other: expropriation decrees	PAN	REJECT 19/09/2003 23/09/2003
83/2003	**MUN** **Salina Cruz, OAX**	PAN	STATE Congress, Governor OAX *Functioning and organisation of institutions: creation of decentralised body (*Convenio de Desarrollo Social)*	PRI PVEM	UNF 22/09/2003 02/08/2005
84/2003	STATE Congress, AGS		STATE Governor, AGS *Allocation of public resources		UNF 23/09/2003 24/11/2004
85/2003	STATE Governor NAY	PAN PRD PT	STATE /Congress NAY *Invasion of spheres of competence: auditing public accounts		DISMISS 23/09/2003 26/04/2004

86/2003	**MUN** **Juárez, CHIH**	PAN	STATE /Governor, Congress, CHIH *Allocation of public resources: income law	PRI	DISMISS 18/03/2003 10/03/2004
87/2003	MUN Guadalajara, JAL	PAN	STATE Congress, Governor JAL Other: reforms to the local constitution	PAN	UNF 25/09/2003 24/05/2005
88/2003	LOCAL JUDICIARY President of the Superior Tribunal of Justice QROO		STATE Congress, QROO *Other: judicial autonomy		REJECT 26/09/2003 01/10/2003
89/2003	MUN Cihuatlán, JAL	PRI	STATE Congress, Governor JAL *Territorial conflict	PAN	UNF 29/09/2003 07707/2006
90/2003	MUN Melchor Ocampo, EDOMEX	PRI	STATE Congress, Governor EDOMEX *Territorial conflict	PRI	UNF 29/09/2003 05/10/2004
91/2003	**FEDERATION** **President**	**PAN**	**FEDERAL LEGISLATURE** **Lower Chamber** **Senior Federal Auditing Body** ***Protección Ahorro bancario**		**FOUN** **30/09/03** **02/08/05**
92/2003	MUN Xaloztoc, TLAX	PRI	STATE Congress, Governor TLAX *Creation of a provisional municipality	PRD PT PVEM	REJECT 07/10/2003 09/10/2003
93/2003	STATE Governor, MOR	PAN	MUN Atlatlahuacán, MOR *Invasion of spheres: transport and transit regulations		UNF 10/10/2003 27/05/2004
94/2003	STATE Governor, NAY	PAN PRD PT	STATE Congress NAY *Allocation of public resources auditing public account		DISMISS 13/10/2003 08/02/2005
95/2003	STATE Governor, NAY	PAN PRD PT	STATE Congress NAY *Allocation of public resources: auditing public account		DISMISS 13/10/2003 16/08/2004
96/2003	MUN Tlajomulco de Zúñiga, JAL	PRI	STATE Congress JAL *Allocation of public resources: auditing municipal public account	PAN	DISMISS 15/10/2003 05/07/2004
97/2003	MUN Panotla, TLAX	PT	STATE Governor, Congress TLAX *Responsibility: revocation of the municipal president's mandate	PRD	PAR FOUN 17/10/2003 21/11/2007
98/2003	MUN Oaxaca de Juárez, OAX	CONV	STATE Congress, OAX Senior Federal Auditing Body *Allocation of public resources: auditing municipal public account		DISMISS 22/10/2003 26/08/2004
99/2003	MUN Tuxtla Gutiérrez, CHIS	PAN	FEDERAL AND LOCAL JUDICIARIES First Collegiate Tribunal and local Supreme Tribunal *Administrative justice/jurisdictional ruling		REJECT 27/10/2003 07/11/2003
100/2003	MUN Tuxtla Gutiérrez, CHIS	PAN	FEDERAL AND LOCAL JUDICIARIES		REJECT 27/10/2003

			First Collegiate Tribunal and local Supreme Tribunal * Administrative justice / Jurisdictional ruling		07/11/2003
101/2003	LOCAL JUDICIARY President Magistrate of the local judicial power QROO		STATE Congress, Governor QROO *Appointment of local magistrates: reform to local constitution	PRI	UNF 28/10/2003 12/07/2004
102/2003	MUN Petatlan, GRO	PRD	STATE Congress, Governor GRO *Functioning and organisation of institutions: Municipal Organic Law	PRI	DISMISS 31/10/2003 19/04/2004
103/2003	**FEDERATION** **President**	PAN	STATE Congress, Governor SLP *Other: local education law	PAN	FOUN 04/11/2003 22/04/2005
104/2003	MUN Aguascalientes, AGS	PAN	STATE Governor, Congress AGS *Appointment of public servants	PAN	FOUN 05/11/2003 26/09/2005
105/2003	**MUN** **Río Bravo, TAMPS**	PT	STATE Governor, Congress TAMPS *Responsibillity: revocation of the municipal president's mandate	PRI	Not presented 12/11/2003 02/01/2004
106/2003	**MUN** **Río Bravo, TAMPS**	PT	FEDERATION President, Lower Chamber, Local Attorney *Responsibility: aprehension order against the municipal president	PAN	REJECT 12/11/2003 17/11/2003
107/2003	**MUN** **Río Bravo, TAMPS**	PT	FEDERATION President, Lower Chamber, Senate *Administrative justice	PAN	REJECT 17/11/2003 25/11/2003
108/2003	**MUN** **Río Bravo, TAMPS**	PT	STATE Governor, Congress TAMPS *Responsibility:aprehension order against the municipal president	PRI	REJECT 17/11/2003 24/11/2003
109/2003	MUN Guadalupe, ZAC	PT	FEDERATION /President *Administrative justice: jurisdictional ruling	PAN	DISMISS 18/11/2003 12/08/2004
110/2003	MUN Metlatónoc, GRO	PRD	STATE Congress, Governor GRO *Creation of a municipality	PRI	REJECT 28/11/2003 02/12/2003
111/2003	MUN Yautepec, MOR	PRD	FEDERATION Lower Chamber *Appointment/ Election of Councillors of the Federal Electoral Institute		REJECT 15/12/2003 07/01/2004
112/2003	MUN –President and 3 Regidores Ario de Rosales, MICH		STATE / MUN Congress, Governor, MICH Ario de Rosales, MICH *Responsibility.revocation of mandate of the claimants	PRD PRI PVEM	REJECT 22/12/2003 07/01/2004
2004					
1/2004	MUN Arandas, JAL	PAN	STATE Congress, JAL *Creation of a municipality		DISMISS 07/01/2004 14/07/2004

2/2004	MUN José Azueta Zihuatanejo, GRO	PRD	STATE/Governor, GRO *Functioning and organisation of institutions: organic municipal law	PRI	DISMISS 08/01/2004 04/08/2004
3/2004	MUN José María Izazagao, GRO	PRD	STATE Governor, GRO *Functioning and organisation of institutions: organic municipal law	PRI	DISMISS 08/01/2004 05/08/2004
4/2004	MUN San Luis Potosí, SLP	PAN	LOCAL JUDICIARY Triibunal de Conciliación y Arbitraje *Administrative justice: jurisdictional ruling		DISMISS 09/01/2004 21/11/2005
5/2004	MUN Purépero, MICH	PRI	STATE Governor, MICH *Allocation of public resources	PRD	PAR FOUN 15/01/2004 13/01/2005
6/2004	**STATE** **Congress, EDOMEX**		STATE Governor, EDOMEX *Administrative justice	PRI	UNF 26/06/2007 12/11/2008
7/2004	**MUN** **Tetela de Ocampo, PUE**	PRI	STATE Governor, Congress PUE *Provisional suspension of the municipal president	PRI	DISMISS 27/01/2004 07/09/2004
8/2004	MUN San Luis Río Colorado, SON	PAN	STATE Governor, SON *Allocation of public resources	PRI	FOUN 29/01/2004 22/11/2004
9/2004	LOCAL JUDICIARY President of the Supreme Tribunal of Justice, JAL		STATE Governor, Congress JAL *Functioning and organisation of institutions	PAN	UNF 03/02/2004 19/01/2007
10/2004	MUN Tapachula, CHIS	PRI	STATE Congress, Local Attorney CHIS *Allocation of public resources: fiscal law.		DISMISS 10/02/2004 11/03/2004
11/2004	MUN Martínez de la Torre, VER	PAN	STATE Congress, Governor VER *Creation of a municipality	PRI	DISMISS 10/02/2004 19/10/2005
12/2004	MUN Mérida, YUC	PAN	FEDERATION Lower chamber, President *Allocation of public resources: budget expenditure	PAN	FOUN 12/02/2004 19/01/2005
13/2004	MUN Gómez Palacio DGO	PRI	FEDERATION Lower chamber, Senate, President *Allocation of public resources: income law.	PAN	DISMISS 12/02/2004 09/08/2004
14/2004	MUN Guadalajara, JAL	PAN	STATE Governor, Congress JAL *Allocation of public resources: income law.	PAN	PAR FOUN 13/02/2004 16/11/2004
15/2004	**MUN** **Juárez, CHIH**	PAN	STATE Congress, Governor CHIH *Allocation of public resources: income municipal law.	PRI	REJECT 13/02/2004 19/10/2004
16/2004	MUN Caborca, SON	PAN	STATE Governor, SON *Allocation of public resources	PRI	FOUN 17/02/2004 22/11/2004

17/2004	STATE Governor, NAY	PRI	STATE Congress, NAY *Other: Newspaper Law		PAR FOUN 17/02/2004 30/05/2006
18/2004	**STATE** **Congress, CHIH**	PRI	FEDERATION *Executive: Minister of Communications and Transport *Administrative internal agreements: *Junta Local de Caminos*	PAN	REJECT 26/02/2004 10/03/2004
19/2004	MUN Hermosillo SON	PAN	STATE/ Governor, SON *Functioning of institutions: creation of the local public work council	PRI PVEM	UNF 27/02/2004 28/09/2004
20/2004	MUN Sahuaripa, SON	PAN	Same		
21/2004	MUN Yécora, SON	PAN	Same		
22/2004	MUN San Luis Río Colorado, SON	PAN	Same		
23/2004	MUN Rayón, SON	PAN	Same		
24/2004	MUN Pesqueira, SON	PAN	Same		
25/2004	MUN Átil, SON	PAN	Same		
26/2004	MUN Huépac, SON	PAN	Same		
27/2004	MUN Bacanora, SON	PAN	Same		
28/2004	MUN Santa Cruz, SON	PAN	Same		
29/2004	MUN Villa Hidalgo, SON	PAN	Same		
30/2004	MUN Arzipe, SON	PAN	Same		
31/2004	MUN Aconchi, SON	PAN	Same		
32/2004	MUN Opodepe, SON	PAN	Same		
33/2004	MUN Soyopa, SON	PAN	Same		
34/2004	MUN Banamichi, SON	PAN	Same		
35/2004	MUN Agua Prieta, SON	PAN	Same		
36/2004	MUN Bavaspe, SON	PAN	Same		
37/2004	MUN San Pedro del Cueva, SON	PAN	Same		
38/2004	MUN Bacadehuachi, SON	PAN	Same		
39/2004	MUN Caborca, SON	PAN	Same		

40/2004	MUN Huachinera, SON	PAN	Same		
41/2004	MUN Cananea, SON	PAN	Same		
42/2004	**FEDERATION** **Lower Chamber**		**STATE** **Governor, Congress OAX** *Invasion of spheres:not allowing audit procedures of the public account	**PRI**	**PAR FOUN** **08/03/2004** **22/05/2007**
43/2004	MUN San Pedro y San Pablo Tequixtepec, Huajuapan OAX	Usos y costumbres	STATE Governor, OAX *Functioning and organisation of institutions: suspension of a mpality	PRI	FOUN 11/03/2004 29/08/2005
44/2004	MUN Jaltenco, EDOMEX	PRI PVEM	STATE: Governor, Congress MUN: Nextlalpan, EDOMEX *Territorial Conflict	PRI	REJECT 15/03/2004 23/03/2004
45/2004	**MUN** **Tultepec, EDOMEX**	PRD	MUN Cuautitlán EDOMEX *Territorial Conflict: *Bando municipal*		REJECT 19/03/2004 25/03/2004
46/2004	**MUN** **Tultepec, EDOMEX**	PRD	MUN Nextlalpan de Felipe Sánchez Solís *Territorial Conflict: *Bando municipal*		REJECT 19/03/2004 25/03/2004
47/2004	**MUN** **Juárez, CHIH**	PRI PVEM PT	STATE Congress, Governor *Allocation of public resources	PRI	FOUN 22/03/2004 24/01/2005
48/2004	**FEDERATION** **President**	**PAN**	**FEDERAL CONGRESS** **Senate / Agrarian Tribunal** ***Appointment/ratification of a Magistrate of the Agrarian Tribunal who was not proposed by Presid**		**DISMISS** **29/03/2004** **09/12/2004**
49/2004	STATE JUDICIARY President of the Tribunal of Justice YUC		STATE Congress YUC *Responsibility of public servants: impeachment against Magistrates	PRI	DISMISS 31/03/2004 05/10/2004
50/2004	MUN Orizaba, VER	PRI	MUN Congress, Local Auditing Office VER *Administrative justice		DISMISS 02/04/2004 08/11/2004
51/2004	MUN Cihuatlán, JAL	PRI	STATE Governor, Local Attorney JAL *Territorial conflict =Senate Invasion of spheres of competence	PAN	DISMISS Senate 08/03/2004 13/06/2006
52/2004	STATE Congress TAB		STATE Governor, TAB *Allocation of public resources	PRI	FOUN 06/04/2004 02/06/2005
53/2004	MUN Panotla. TLAX	PT	STATE/ Congress TLAX *Appointment of civil servants: inauguration of the mpal president.		DISMISS 07/04/2004 14/12/2004
54/2004	MUN Tepatitlán de Morelos, JAL (Leonardo García Camarena)	PAN	STATE Congress, Governor, JAL MUN Tepatitlán de Morelos *Territorial conflict / Creation of a municipality	PAN	FOUN 13/04/2004 30/06/2005
55/2004	MUN San Miguel El Alto, JAL	PVEM	STATE/Congress, Governor, JAL MUN Tepatitlán de Morelos *Territorial Conflict / Creation of mun	PAN	DISMISS 15/04/2004 24/08/2005

56/2004	**STATE** **Congress, CHIH**	PRI	FEDERATION President *Invasion of spheres of competence	PAN	REJECT 30/04/2004 09/08/2004
57/2004	**FEDERATION** **Secretary of the Environment**	**PAN**	**FEDERAL DISTRICT** **Head of Government, Local Secretary of the Environment** ***Planning, infrastructure: local water regulation**	**PRD**	**FOUN** **11/05/2004** **06/12/2005**
58/2004	MUN Aguascalientes, AGS	PAN	STATE Congress, Governor AGS *Allocation of public resources: income law	PAN	DISMISS 13/05/2004 02/02/2005
59/2004	MUN Mérida, YUC	PAN	STATE Administrative Tribunal *Administrative justice: jurisdictional ruling		REJECT 18/05/2004 25/05/2004
60/2004	MUN Otepan, VER	PRI	STATE: Congress, Governor MUN: Chinamenca, VER *Territorial Conflict	PRI	DISMISS 18/05/2004 23/11/2004
61/2004	**FEDERATION** **President**	PAN	FEDERATION Lower Chamber, Senior Federal Auditing Office *Other: recommendations to the Energy Secretary and Commission for the permits in the sector		FOUN 19/05/2004 19/02/2007
62/2004	**FEDERAL DISTRICT** **Urban Development Secretary**	PRD	FEDERAL DISTRICT Local Audit Office *Planning: jurisdictional ruling in favour of the Urban Plan El Encino		REJECT 25/05/2004 09/06/2004
63/2004	STATE Governor, MOR	PAN	STATE Congress, MOR Magistrates of the Superior Tribunal *Responsbility: impeachment against Governor	PRI	PAR FOUN 07/12/2004 07/11/2005
64/2004	**MUN** **Tlalnepantla, EDOMEX**	PRI	STATE/Congress, EDOMEX *Responsibility of public servants: suspension of municipal president	PAN	FOUN 01/06/2004 01/08/2007
65/2004	President, Vicepresident and 15 local congressmen QROO		MUN/STATE /Benito Juárez QROO Governor, Congress *Appointment and license of municipal president	PVEM	DISMISS 05/10/2004 23/06/2005
66/2004	President, Vicepresident and 15 local congressmen QROO		MUN/STATE/ Benito Juárez QROO Governor, Congress QROO *Appointment and license of municipal president	PVEM	DISMISS 05/10/2004 23/06/2005
67/2004	President, Vicepresident and 15 local congressmen QROO		MUN/STATE/ Benito Juárez QROO Governor, Congress *Appointment and license of municipal president	PVEM	DISMISS 05/10/2004 23/06/2005
68/2004	MUN Nacajuca, TAB		FEDERATION Federal Attorney of Environmental Protection *Others: agreement that establishes conditions to preserve the *manglares*	PAN	REJECT 29/06/2004 02/07/2004

69/2004	**STATE** **Governor, BC**	PAN	STATE Congress, Local Auditing Office BC *Invasion of spheres of competence: auditing practice		UNF 29/06/2004 15/02/2006
70/2004	**FEDERAL DISTRICT** **Local Assembly**	PRD	FEDERATION President, Lower chamber, Federal Attorney *Responsibility: case against the Federal District's Head of Government	PAN	REJECT 02/07/2004 07/07/2004
71/2004	MUN Huitzilac, MOR	PRI	LOCAL JUDICIARY Administrative Tribunal *Administrative justice/jurisdictional ruling: payment to workers		REJECT 02/07/2004 06/07/2004
72/2004	**MUN** **Ensenada, BC**	PAN PVEM	STATE Congress, Local Auditing Office BC *Invasion of spheres of competence: auditing practice		UNF 07/07/2004 13/01/2006
73/2004	**MUN** **Mexicali, BC**	PAN	STATE Congress, Local Auditing Office BC *Invasion of spheres of competence: auditing practice		UNF 08/07/2004 13/02/2006
74/2004	**MUN** **Tijuana, BC**	PAN	STATE Congress, Local Auditing Office BC *Invasion of spheres of competence: auditing practice		UNF 08/07/2004 13/02/2006
75/2004	**MUN** **Playas de Rosarito, BC**	PAN	STATE Congress, Local Auditing Office BC *Invasion of spheres of competence: auditing practice		UNF 08/07/2004 13/02/2006
76/2004	President of the Political Group Colosio DGO		Federal Electoral Tribunal *Other: ruling related to the candidate nomination process		REJECT 09/07/2004 13/07/2004
77/2004	MUN Miguel Auza, ZAC	PAN	STATE /Congress ZAC *Reinstallment of the municipal president	PRD	DISMISS 15/07/2004 23/11/2004
78/2004	MUN Teapa, TAB	PRD	STATE/Governor, Congress, TAB * Planning, infrastructure and public work	PRI	DISMISS 02/08/2004 08/12/2004
79/2004	**MUN** **Guadalupe NL**	PRI PVEM	FEDERATION President, Water Commission *Planning, infrastructure, public work	PAN	UNF 03/08/2004 02/05/2007
80/2004	**MUN** **Camargo, CHIH**	PAN	STATE Congress, Governor CHIH *Municipal autonomy: omission to regulate municipal public services (water, drainage)	PRI	**NO CONTENT** 12/08/2004 29/09/2005
81/2004	**MUN** **Ecatepec de Morelos, EDOMEX**	PRI PVEM	STATE Governor, Local Environmental Attorney *Municipal autonomy: fine imposed to the municipality	PRI	UNF-DISMISS 06/08/2004 10/02/2006

82/2004	**MUN** **Camargo, CHIH**	PAN	STATE Congress, Governor, CHIH *Municipal autonomy: omission to regulate water, drainage services	PRI	**NO CONTENT** 12/08/2004 29/09/2005
83/2004	**MUN** **Camargo, CHIH**	PAN	STATE Congress, Governor, CHIH *Municipal autonomy: omission to regulate municipal public services (water, drainage)	PRI	**NO CONTENT** 12/08/2004 29/09/2005
84/2004	**FEDERATION** **President**	PAN	FEDERATION Lower Chamber, Senate, Senior Federal Auditing Office *Invasion:Fiscal Superior Law. Comments from Senior Audit Office		FOUN 20/08/2004 15/06/2007
85/2004	**MUN** **San Jacinto, Amilpas OAX**	PRD	STATE Governor, Congress OAX *Allocation of public resources	PRI	DISMISS 22/10/2004 01/04/2008
86/2004	**MUN** **San Jacinto, Amilpas OAX**	PRD	STATE Governor, Congress OAX *Allocation of public resources	PRI	DISMISS 22/10/2004 01/04/2008
87/2004	MUN Tepeji del Río de Ocampo, HGO	PAN	STATE Governor HGO *Other: order to execute an exercise of public force in Tepeji	PRI	DISMISS 09/09/2004 08/06/2005
88/2004	MUN José Azueta, GRO	PRD	STATE Governor GRO *Others: tax recollection	PRI	PAR FOUN 13/09/2004 22/06/2006
89/2004	**MUN** **Amacuzac, EDOMEX**	PRI	LOCAL JUDICIARY Supreme Tribunal *Invasion of spheres of competence		REJECT 17/09/2004 28/09/2004
90/2004	LOCAL JUDICIARY President of the Supreme Tribunal of Justice JAL		STATE Congress JAL *Removal of judicial councillor	PAN	DISMISS 20/09/2004 13/12/2004
91/2004	President, Vicepresident and 15 local congressmen QROO		MUN/STATE Benito Juárez QROO Governor, Congress QROO *Appointment & license of mpal presid	PVEM	DISMISS 05/10/2004 23/06/2005
92/2004	MUN Umán, YUC E. Castillo Ruz is currently federal congressman	PRI	STATE Governor, Congress YUC *Territorial conflict (Mérida)	PAN	FOUN 01/10/2004 17/03/2006
93/2004	President of the Local Commission of Human Rights, CHIS		STATE Governor, Congress, Tribunal CHIS *Temporary removal of the President of the Human Rights Commission	PRI	REJECT 08/10/20041 8/10/2004
94/2004	STATE Governor, MOR	PAN	STATE Congress, MOR Magistrates of the Superior Tribunal *Impeachment against the Governor	PRI	PAR FOUN 07/12/2004 07/11/2005
95/2004	**STATE** **Congress, Governor, Tribunal of Justice EDOMEX**	PRI	FEDERATION Federal Attorney for Environmental Protection *Internal administrative agreements: environmental risk	PAN	UNF 18/10/2004 22/11/2007

96/2004	**MUN** **San Jacinto, Amilpas OAX**	PRD	STATE Governor, Congress *Allocation of public resources	PRI	DISMISS 22/10/2004 01/04/2008
97/2004	**FEDERATION** **Lower Chamber**		**FEDERATION** **President, Ministry of the Interior** ***Other: federal game and ballot regulations**	**PAN**	**PAR FOUN** **03/11/2004** **02/04/2007**
98/2004	**MUN** **Tultepec, EDOMEX**	PRD	STATE Governor, EDOMEX *Planning, infrastructure, highway.	PRI	DISMISS 04/11/2004 30/03/2005
99/2004	STATE Governor, NAY	PAN PRD PT	STATE Congress, NAY *Administrative internal agreements: local organic law	PRI	FOUN 07/02/2005 01/02/2006
100/2004	**FEDERAL DISTRICT** ***Jefe Delegacional* of Gustavo A Madero**	PRD	FEDERAL DISTRICT Head of Government, Local Assembly *Removal of the Jefe Delegacional of Gustavo A. Madero	PRD	REJECT 12/11/2004 11/05/2005
101/2004	LOCAL JUDICIARY President of the Supreme Tribunal of Justice, YUC		STATE Congress YUC *Invasion of spheres of competence: auditing procedures to the judiciary		DISMISS 16/11/2004 23/08/2005
102/2004	Universidad Michoacana de San Nicolás de Hidalgo, MICH		STATE Commission for the Access to Public Information, Executive MICH *Administrative justice: jurisdictional ruling		REJECT 18/11/2004 24/11/2004
103/2004	Senator (substitute) VER		FEDERATION Senate *Replacement of a senatorial position	PRI	REJECT 23/11/2004 25/11/2004
104/2004	**FEDERAL DISTRICT** **Head of Government**	PRD	FEDERATION/ Lower Chamber *Allocation of public resources: local budget to public education (Art 122)		REJECT 26/11/2004 01/12/2004
105/2004	**MUN** **Amacuzac, EDOMEX**	PRI	STATE Congress, Administrative Tribunal, EDOMEX *Evaluation/Appointment of the Administrative Tribunal's Magistrates		REJECT 01/12/2004 07/12/2004
106/2004	STATE Governor, MOR	PAN	STATE Congress, MOR Magistrates of the Superior Tribunal *Impeachment against the Governor		PAR FOUN 07/12/2004 07/11/2005
107/2004	MUN Tecomán, COL	PAN	STATE Congress, Governor COL *Responsibility of public servants (Municipal Treasurer)	PRI-PT-PVEM	UNF 16/12/2004 28/11/2006
108/2004	MUN Benito Juárez, QROO	PRI	STATE Governor, Congress QROO *Responsibility of public servants: aprehension order against the Síndico	PRI	DISMISS 21/12/2004 13/04/2005
109/2004	**FEDERAL EXECUTIVE** **President**	**PAN**	**FEDERAL CONGRESS** **Lower Chamber** ***Allocation of public resources: 2005 budget expenditure**		**FOUN** **21/12/2004** **29/11/2005**

2005					
1/2005	**JUDICIARY** **Magistrate Agrarian Tribunal (District 43)** **Federal District**		**FEDERATION** **Senate, President of the Agrarian Tribunal** ***Non-ratification of magistrate**	**PRI**	**REJECT** **14/01/2005** **20/01/2005**
2/2005	MUN Urangiato, GTO	PRI	STATE Governor, Congress, GTO MUN Moroléon *Territorial conflict	PAN	DISMISS 18/01/2005 26/05/2005
3/2005	LOCAL JUDICIARY Supreme Tribunal of Justice, JAL		STATE Governor, Congress JAL *Appointment-Non ratification of Magistrates of the Administrative Tribunal	PAN	PAR FOUN 25/01/2005 01/02/2008
4/2005	LOCAL JUDICIARY Supreme Tribunal of Justice, TLAX		STATE Congress TLAX *Non-ratification of Magistrates of the Superior Tribunal of Justice		FOUN 29/01/2005 14/11/2007
5/2005	MUN Mérida, YUC	PAN	FEDERATION Lower chamber, Senate, President *Allocation of public resources: IVA decree	PRI PAN	DISMISS 26/01/2005 30/08/2005
6/2005	MUN Tepeji del Río Ocampo, HGO	PAN	Governor, EDOMEX MUN Tepotzotlán, EDOMEX Governor, HGO *Territorial conflict	PRI	REJECT 03/02/2005 11/02/2005
7/2005	MUN Carmen, CAM	PRI	STATE Governor, Congress CAM *Allocation of public resources	PRI	FOUN 07/02/2005 01/02/2006
8/2005	STATE Governor, NAY	PAN PRD PT	STATE/ Congress NAY *Administrative internal agreements: local organic law	PRI	FOUN 07/02/2005 01/02/2006
9/2005	**Electoral Institute BC**		STATE Congress, Governor BC *Allocation of public resources: budget expenditure	PAN PVEM	REJECT 09/02/2005 11/02/2005
10/2005	**LOCAL JUDICIARY** **President of the Supreme Tribunal of Justice BC**		STATE Governor, Congress BC *Allocation of public resources: budget expenditure	PAN PVEM	FOUN 09/02/2005 08/10/2007
11/2005	MUN Teapa, TAB (Rafael Abner)	PRD	STATE Congress, Governor TAB *Planning, infrastructure and supervision of public works	PRI	DISMISS 11/02/2005 05/07/2005
12/2005	MUN Cárdenas, TAB (Tomás Brito: in 2008 misuse of Ramo 033 funds)	PRD	STATE Congress, Governor TAB *Planning, infrastructure and supervision of public works	PRI	REJECT 11/02/2005 18/02/2005
13/2005	MUN Tepic, NAY (Fortunato Guerrero/Ney González)	PRI	STATE Governor, Congress NAY *Allocation of public resources: discount of federal participations	PRI	UNF 11/02/2005 23/04/2008

14/2005	MUN Centro, TAB	PRI PVEM	STATE Congress, Governor TAB *Allocation of public resources: income law	PRI	PAR FOUN 11/02/2005 10/10/2007
15/2005	MUN Guadalajara, JAL	PAN	STATE Congress, Governor JAL *Allocation of public resources: income law	PAN	PAR FOUN 14/02/2005 16/01/2006
16/2005	STATE Governor, NAY	PAN PRD PT	STATE Congress *Appointment of the local Attorney for Electoral Offences	PRI	FOUN 21/02/2005 01/02/2006
17/2005	MUN Zacatecas, ZAC	PRD	STATE Governor, Congress ZAC Other:local touristic law	PRD	DISMISS 24/02/2005 30/06/2005
18/2005	MUN Tecomán, COL	PAN	STATE Congres, COL *Responsibility of municipal president	PRI	DISMISS 03/03/2005 24/06/2005
19/2005	**LOCAL JUDICIARY President of the Supreme Tribunal of Justice BC**		STATE Congress, Governor BC *Allocation of public resources	PAN	PAR FOUN 03/03/2005 08/05/2007
20/2005	MUN Acapulco de Juárez GRO	PRD	STATE Governor (René Juárez Cisneros) and other authorities GRO *Allocation of public resources: federal participations	PRI	PAR FOUN 07/03/2005 18/10/2007
21/2005	STATE Governor JAL	PAN	STATE Congress, Judiciary JAL *Appointment Magistrates	PAN	REJECT 11/03/2005 18/03/2005
22/2005	STATE JUDICIARY Supreme Tribunal of Justice, YUC		STATE / Congress YUC *Responsibility: Impeachment of Magistrates	PAN	FOUN 06/04/2005 23/10/2007
23/2005	**FEDERAL DISTRICT Local Assembly**	PRD	FEDERAL CONGRESS Lower chamber *Responsibility: Impeachment Head of Government */Desafuero* AMLO		REJECT 08/04/2005 02/06/2005
24/2005	**FEDERAL CONGRESS Lower chamber**		FEDERAL DISTRICT Local Assembly *Responsibility: Impeachment Head of Government */Desafuero* AMLO	PRD	PAR FOUN 11/04/2005 09/03/2006
25/2005	LOCAL JUDICIARY Supreme Tribunal of Justice YUC		STATE Congress, YUC *Impeachment /Appointment Magistrates	PAN	DISMISS 12/04/2005 20/05/2005
26/2005	**MUN Cuautitlán Izcalli, EDOMEX**	PAN	STATE Congress and other authorities, EDOMEX *Administrative justice	PRI	REJECT 13/04/2005 15/04/2005
27/2005	MUN Torreón, COAH	PAN	STATE Governor, Congress COAH *Planning, infrastructure	PRI	UNF 18/04/2005 11/01/2006
28/2005	MUN Misantla, VER	PAN	**FEDERATION President, SHCP, IFE** *Other: electoral district delimitation	PAN	REJECT 20/04/2005 25/04/2005

29/2005	MUN Celaya, GTO	PAN	LOCAL JUDICIARY Supreme Tribunal of Justice *Administrative justice: jurisdictional ruling		DISMISS 21/04/2005 09/01/2006
30/2005	**Electoral Institute of Baja California BC**		STATE/ Congress BC *Allocation of public resources: budget expenditure	PAN	REJECT 29/04/2005 03/05/2005
31/2005	MUN Huixquilucan, EDOMEX	PRI PVEM	STATE Governor, Congress EDOMEX *Responsibility of public servant	PRI	DISMISS 04/05//2005 24/10/2005
32/2005	MUN Guadalajara, JAL	PAN	STATE Governor, Congress JAL *Other: Transparency Law Decree	PAN	UNF DISMISS 06/05/1005 11/07/2006
33/2005	MUN Iguala GRO	PRD	STATE Governor and other authorities GRO *Allocation of public resources	PRI	REJECT 18/05/2005
34/2005	MUN San Luis Acatlán, GRO	PRD	STATE / Congress, GRO *Responsibility of public servants: revocation of mandate	PRI	DISMISS 13/05/2005 8/12/2005
35/2005	MUN Querétaro and El Marqués, QRO	PAN PAN	STATE: Congress, Governor and other authorities QRO *Invasion of spheres of competence: creation of youth inst	PAN	FOUN 16/05/2005 17/01/2008
36/2005	MUN Tlalnepantla, MOR	PRI	STATE Congress, MOR *Other: Pension Law		DISMISS 23/11/2005
37/2005	**MUN Reynosa, TAMPS**	PAN	STATE/ Governor, TAMPS *Appointment of the Director of the Municipal Commission of Water	PRI	DISMISS 20/05/2005 29/09/2005
38/2005	MUN Mama, YUC	PRI	STATE Governor, YUC *Invasion of spheres of competence: DIF Family Integral System	PAN	UNF O2/06/2005 02/01/2006
39/2005	STATE Governor, TAB	PRI	STATE / Congress, TAB *Allocation of Public Resources: fiscal law	PRD	FOUN 06/06/2005 17/09//2007
40/2005	MUN Manzanillo, COL	PAN	STATE Governor, Congress COL *Allocation of public resources: fiscal coordination law	PRI	UNF 07/06/2005 22/10/2007
41/2005	STATE JUDICIARY President of the Supreme Tribunal of Justice, JAL		STATE LEGISLATURE Congress, JAL *Resignation of the Administrative Tribunal's Magistrate'	PAN	REJECT 06/07/2005
42/2005	**MUN Amecameca, EDOMEX**	PAN	STATE Governor, EDOMEX *Municipal defense: transit	PRI	FOUN 06/07/2005 17/01/2008
43/2005	MUN José Azueta, GRO	PRD	STATE Governor, GRO *Other: payment of fiscal credit	PRD CONV	REJECT 06/07/2005 08/07/2005
44/2005	MUN Tecomán, COL	PAN	STATE Governor, Congress, Col *Allocation of public resources	PRI	DISMISS 15/07/2005 22/01/2008

45/2005	**MUN** **Ahumada, CHIH**	PAN PRD	FEDERATION/STATE SHCP and local Finance Ministry *Allocation of public resources	PRI	FOUN 10/02/2006
46/2005	**MUN** **Cuautitlán Izcalli, EDOMEX**	PAN	STATE : Congress and other authorities, EDOMEX *Administrative justice: organic municipal law	PRI	REJECT 05/08/2005 09/08/2005
47/2005	**MUN** **Cuautitlán Izcalli, EDOMEX**	PAN	STATE Governor, Congress, EDOMEX *Administrative justice: organic municipal law	PRI	REJECT 09/08/2005 11/08/2005
48/2005	MUN Calvillo, AGS	PAN	STATE Governor, Congress, Tribunal AGS *Other: payment to workers	PAN	REJECT 09/08/2005 11/08/2005
49/2005	STATE JUDICIARY JAL		STATE Governor, Congress JAL *Appointment-ratification of magistrates	PAN	UNF-DISMISS 09/08/2005 14/02/2007
50/2005	**STATE** **Governor, EDOMEX**	PRI	FEDERATION: Executive *Other: agricult normative framework	PAN	DISMISS 10/10/2005
51/2005	**MUN** **Naucalpan de Juárez, EDOMEX**	PAN	STATE Governor, Congress, EDOMEX *Appointment of municipal civil servants	PRI	REJECT 18/08/2005
52/2005	MUN Tecomán, COL	PAN	STATE Congress, Governor COL *Responsibility of public servants	PRI PT PVEM	DISMISS 17/08/2005 30/03/2007
53/2005	MUN San Andrés Cholula, PUE	PAN	STATE Congress PUE *Territorial conflict	PRI	FOUN 17/08/2005 11/12/2006
54/2005	**FEDERAL CONGRESS**		**FEDERAL EXECUTIVE** **President and other authorities** ***Other: Energy Law**	**PAN**	**DISMISS** **25/08/2005** **06/01/2009**
55/2005	MUN Xochitepec, MOR	PAN	STATE Congress, Governor MOR *Other: retirement-pension public servant: civil service law	PRI	FOUN 29/08/2005 24/01/2008
56/2005	MUN Puebla, PUE	PRI	STATE Congress, PUE *Territorial conflict	PRI	FOUN 30/08/2005 16/02/2007
57/2005	MUN Arandas, JAL	PAN	STATE Congress, Governor, JAL *Creation of a municipality	PAN	DISMISS 24/03/2006
58/2005	**FEDERAL CONGRESS** **Senate**	PRI	FEDERAL EXECUTIVE President, Minister of the Interior, Lower Chamber, Federal Tribunal- *Appointment of Magistrate	PAN	DISMISS 22/09/2005 19/09/2006
59/2005	STATE Public security Minister, NL	PAN	STATE JUDICIARY Administrative Tribunal, NL *Administrative justice		REJECT 22/09/2005 28/09/2005
60/2005	MUN Tantoyuca, VER	PAN	STATE Congress, VER *Other: invalidation of the election of a municipal agent.		FOUN 23/09/2005 26/09/2007

61/2005	MUN Torreón, COAH	PAN	STATE Congress, Governor, COAH Transparency Institute *Other: local transparency law	PRI	UNF 30/09/2005 29/02/2008
62/2005	**MUN** **Tijuana BC**	PRI	STATE Governor, Congress BC *Other: political norms/newspaper	PAN	UNF 03/10/2005 24/01/2008
63/2005	MUN Atlixtac, GRO	PRI PVEM	STATE Congress GRO *Revocation of mandate of the municipal president	PAN PVEM	DISMISS 03/10/2005 24/01/2008
64/2005	MUN Tepatitlán de Morelos, JAL		STATE Congress JAL *Creation of a municipality		DISMISS 14/10/2005 13/03/2006
65/2005	MUN Iguala, GRO	PRD	STATE Governor, GRO *Allocation of public resources	PRD CONV	REJECT 21/10/2005 26/10/2005
66/2005	**MUN** **Tecamac, EDOMEX**		STATE EXECUTIVE Ministry Urban Development *Planning, infrastructure: urban project		FOUN 21/10/2005 14/10/2008
67/2005	**MUN** **Tijuana, BC**	PRI PVEM PT	STATE /Governor, Congress, BC *Administrative justice: Tribunal's ruling	PAN PVEM	REJECT 08/11/2005 10/11/2005
68/2005	MUN José Azueta, GRO	PRD	STATE Governor, GRO *Responsibility of public servants: requirement to Finance Subsecretary	PAN	REJECT 09/11/2005 16/11/2005
69/2005	MUN Torreón, COAH	PAN	STATE JUDICIARY Superior Tribunal of Justice, COAH *Other: rejection of recourse within unconstitutional action 1/05		REJECT 16/11/2005 21/11/2005
70/2005	MUN Tecomán, COL	PAN	STATE Governor, Congress, COL *Responsibility of public servants	PRI PT PVEM	DISMISS 19/05/2006
71/2005	MUN Tecomán, COL	PAN	STATE Governor, Congress, COL *Allocation of public resources	PRI PT PVEM	DISMISS 22/11/2005 15/11/2006
72/2005	MUN Tuxpan, VER (Presidente del Comisariado)		STATE Congress, VER *Allocation of public resources: municipal funds		REJECT 24/11/2005 29/11/2005
73/2005	STATE Governor, Congress MOR	PAN	STATE Legislative and Judiciary, MOR *Responsibility of public servants		DISMISS 24/11/2005 04/08/2006
74/2005	**FEDERAL EXECUTIVE** **President**	**PAN**	**FEDERAL CONGRESS** **Lower Chamber, Senior Federal Auditing Office** ***Other: permits to generate electric energy**	**PRI**	**FOUN** **28/11/2005** **15/01/2008**
75/2005	MUN Tecomán, COL	PAN	STATE Governor, Congress, COL *Responsibility of public servants: fiscal revision of municipal account	PRI PT PVEM	UNF 25/04/2005 28/04/2006

76/2005	**MUN Santiago Lachiguiri , OAX**	Usos y costumbres	STATE Governor, Congress *Allocation of public resources: municipal law	PRI	DISMISS 07/12/2005 29/03/2006
77/2005	MUN Huejutla, HGO	PAN	STATE Congress, Local Attorney HGO *Responsibility of public servants: impeachment	PRI	REJECT 12/12/2005
78/2005	MUN Huejutla de Reyes, HGO	PAN	STATE Congress, Local Attorney HGO *Responsibility of public servants: impeachment	PRI	REJECT 15/12/2005
79/2005	MUN-Síndico Huejutla de Reyes, HGO	PRI	STATE Congress, Local Attorney HGO **Responsibility of public servants: impeachment	PRI	REJECT 14/12/2005 15/12/2005
80/2005	MUN-Síndico Huejutla de Reyes, HGO	PRI	STATE Congress, Local Attorney HGO *Responsibility of public servants: impeachment	PRI	DISMISS 15/12/2005 08/02/2006
81/2005	MUN Pisaflores, HGO	PAN	STATE Congress, Local Attorney HGO *Responsibility of public servants: impeachment	PRI	DISMISS 19/12/2005 31/01/2006
82/2005	MUN La Misión, HGO	PRD	STATE Congress, Local Attorney HGO *Responsibility of public servants: impeachment	PRI	DISMISS 14/12/2005 08/02/2006
83/2005	MUN Tianguistengo, HGO	PRI	STATE Congress, Local Attorney HGO *Responsibility of public servants: impeachment	PRI	DISMISS 21/12/2005 08/02/2006

SOURCE: Supreme Court of Justice Data Bases.Actividad Jurisdiccional/Consulta de Expedientes/Textos de Engrose (http://www2.scjn.gob.mx/expedientes/); Alex, Portal de Estadística Judicial, Suprema Corte de Justicia, Controversias Constitucionales (http://www2.scjn.gob.mx/alex/).

Notes:
Cases highlighted in bold are those which are part of the case studies or in which the federation is involved.

Abbreviations:

AGS	Aguascalientes
AM	Absolute Majority
BC	Baja California
CAM	Campeche
CHIH	Chihuahua
CHIS	Chiapas
COAH	Coahuila
COL	Colima
CONV	Convergencia
DF	Distrito Federal (Federal District)
DGO	Durango
DISMISS	Case analysed by the court Court and found lacking in foundation (sobreseido)
EDOMEX	Estado de México
EXP	Expired
FOUN	Founded
GRO	Guerrero
GTO	Guanajuato
HGO	Hidalgo
JAL	Jalisco
MICH	Michoacán
MOR	Morelia
MUN	Municipality
NAY	Nayarit
NL	Nuevo León
OAX	Oaxaca
PAN	*Partido Acción Nacional*, National Action Party
PAR FOUN	Partially founded
PJ	*Policía Judicial*, Judicial Police
PRI	*Partido Revolucionario Institucional*, Institucional Revolutionary Party
PT	Partido del Trabajo, Workers Party
PUE	Puebla
PVEM	Partido Verde Ecologista de México, Green Ecological Party of Mexico
QM	Qualified Majority
QRO	Querétaro
QROO	Quintana Roo
REJECTED	Not even analysed by the court (*desechado*)
SHCP	*Secretaría de Hacienda y Crédito Público*, Finance Ministry
SLP	San Luis Potosí
SON	Sonora
TAB	Tabasco
TAMPS	Tamaulipas
TLAX	Tlaxcala
UNF	Unfounded
VER	Veracruz
YUC	Yucatán
ZAC	Zacatecas