

Electoral Justice in Mexico: The Role of the Electoral Tribunal under New Federalism

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'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

Abstract. The annulment of the 2000 gubernatorial elections in Tabasco marked a fundamental precedent for electoral justice in Mexico and the role of the Electoral Tribunal of the Federal Judiciary (Tribunal Electoral del Poder Judicial de la Federación – TEPJF) in federal, state and local elections. Successive constitutional reforms that ended with the 'definitive' electoral reforms of 1996 have consolidated a regime of electoral dispute adjudication at the federal level, giving political parties the right to appeal state cases before federal authorities. Whereas a clear tendency exists towards greater decentralisation of power under 'new federalism', in the electoral field centralism concentrated on the TEPJF and the Supreme Court of Justice has been adopted. However, in the context of political pluralism and a more authentic federalism, the TEPJF's new role has caused conflicting reactions. Some sectors are insisting on the need to limit this institution's powers so that in the future it can only rule over subnational elections based on well-defined criteria that respect specific jurisdictional principles.

The 1996 electoral reforms in Mexico, somewhat against the grain of president Zedillo's 'new federalism',¹ not only strengthened the Electoral Tribunal by incorporating it into the judiciary, but also forced the states to bring their own electoral laws into line with the federal standards, in order to guarantee more autonomous electoral institutions. Although significant steps

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¹ President Ernesto Zedillo's 'new federalism' initiative was aimed at reducing excessive centralisation and presidentialism through the devolution of power from the federation to states and municipalities in several policy arenas (Personal interview, November 2001). Although a federal system was established in the 1917 Constitution, the Mexican government has been highly centralised in political and financial terms. It has been only with the coming to power of opposition governments at the state and local levels that the issue of federalism has revitalised. See Yemile Miztahi, *Pressuring the Center: Opposition, Governments and Federalism in Mexico* (Mexico, 1997).

have been taken at the subnational level to improve the electoral justice system, this process is still far from complete. Political parties generally acknowledge that they only present complaints before state authorities in order to comply with legal procedures, but without expecting impartial rulings from institutions that usually respond to the governor's interests.² Thus, the Tribunal has become the final instance for the resolution of an increasing number of post-electoral conflicts.

In disputed subnational elections, such as those in the states of Tabasco or Jalisco during the last months of 2000, the Tribunal played a fundamental role in the legal resolution of disputes between parties, and political actors have since demonstrated increased willingness to abide by the Tribunal decisions. Nevertheless, there is also a clear dilemma associated with federal intervention in local conflicts, especially as the TEPJF has broad scope to interpret local legislation.

Until recently, there were practically no mechanisms for the review of the legality of most local elections, and parties could not legally oppose final outcomes. Opposition parties became used to pressing for post-electoral concessions through negotiations outside any legal framework. Thus, on the one hand, the creation of the Tribunal constituted a fundamental step in the long process of electoral institutionalisation.³ However, on the other hand, there are risks in giving it the power to interpret legal criteria while it rules over subnational elections, as it increasingly decides over political issues from the centre according to criteria that open its authority to contestation.

The 1917 Constitution defined Mexico as a federal republic, but endowed the presidency with considerable discretionary power for ensuring political stability. In the 1950s, federal intervention at the subnational level was justified by the need to control local political structures that were undermining the modernisation process. In the current stage of subnational re-emergence, this intervention is being challenged in the name of state sovereignty, and some authors have argued that authoritarian local regimes could function as obstacles to the completion of democratisation.⁴ However, analysis of the

² According to René Messeguer, PAN's delegate in Tabasco, his party presented an electoral complaint before the local tribunal only because 'we knew that it is a legal requirement in order to present the same recourse before the federal Electoral Tribunal' (*La Jornada*, 12 November 2001).

³ See Soledad Loeza, 'Uncertainty in Mexico's Protracted Transition: The National Action Party and its Aversion to Risk,' *Democratization*, vol. 7, no. 3, autumn (2000), pp. 93–116. She 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. Thus, I agree that the concept of institutionalisation 'captures the profound changes of electoral reforms' introduced during Mexico's 'protracted' transition.

⁴ Wayne A. Cornelius, 'Blind Spots in Democratization: Sub-national Politics as a Constraint on Mexico's Transition,' *Democratization*, vol. 7, no. 3, autumn (2000), pp. 117–32.

post-electoral conflicts in the southern states of Tabasco and Yucatán will show that a variety of actors have expressed their concern over the danger that the Tribunal could become the 'great elector'.⁵

In the first part of this article, I will discuss the evolution of electoral justice in Mexico, offering an account of the Tribunal's background and the refusal of the judiciary in the past to resolve electoral disputes. This is set in the context of the gradual weakening of the authoritarian regime and the process of building electoral institutions in a guided transition. As the hegemonic regime gradually opened spaces for political participation, the creation of impartial electoral institutions became an important opposition demand, especially for the centre-right National Action Party (PAN). Thus I briefly analyse how the reforms implemented since the 1970s related to the electoral justice system. I also show how since the Tribunal was incorporated into the judiciary in 1996, this 'apolitical' branch of government has increasingly come to define the way in which the majority of political processes work.

In this context, it is crucial to assess opposition party compliance with electoral institutions. After analysing the 1996 reforms and the new Tribunal's powers, I present an evaluation of this institution's activities up to the year 2001. This assessment shows the significant increase in cases challenging state court verdicts, reflecting the lack of confidence in electoral institutions at the subnational level. At the federal level, different electoral tribunals created under the PRI government have also been challenged on the issue of their independence from the executive. Up until the 2000 election, the opposition strongly questioned the Tribunal's impartiality as significant decisions still tended to favour the PRI regime. With alternation in power, problems have persisted, as the PRI now also questions the Tribunal's jurisdiction. In addition, the recent conflicts in the Mexican south have raised further issues concerning the authority of federal institutions over subnational processes.

In the final part, I offer evidence of two crucial post-electoral conflicts in Tabasco and Yucatán, typically identified as authoritarian enclaves. These case studies help to explain the importance of the increasing use of judicial rather than political processes to resolve electoral disputes. However, they also exemplify the tension between subnational autonomy and the need for impartial electoral institutions, operating with well-defined criteria. After the events in the southeast, the Tribunal faced a crisis of credibility and its powers of constitutional interpretation were restricted. By analysing some of the most recent rulings related to electoral matters, I show how the Supreme

⁵ According to Arteaga, the TEPJF could gradually become the 'great elector', as it has exceeded its power to interpret local legislation, undermining the role of local institutions (Personal interview, May 2001).

Court has significantly weakened the Tribunal's future role by declaring the Court's supremacy as a Constitutional Tribunal.⁶

Institutionalisation and 'Federalisation' in Mexico

The consolidation of the hegemonic one-party system in Mexico resulted from a series of laws intended to build electoral institutions where non-competitive elections were the ruling party's main tool for maintaining its predominance. The regime was able to institutionalise mechanisms of unequal competition by constantly reshaping the electoral rules. In the context of one-party domination and fraudulent elections, electoral institutions became a central issue of negotiation between opposition parties and the government. A slow process of electoral reform began with the passage of the Ley Federal de Organizaciones Políticas y Procesos Electorales (LOPPE) in 1977, and in the early 1980s opposition victories were recognised in a number of strategic municipalities.⁷

Then, in the wake of the highly controversial election of Salinas in 1988, and the subsequent breakaway of the PRD from the PRI, negotiations between the PRI and the PAN resulted in three electoral reforms and the creation of the Federal Electoral Institute (IFE) in 1990. Nevertheless, the strategy of 'political reformism' continued as the hegemonic party, still in control of power and wide resources, managed to contain the decentralisation of power.⁸ While the PRD faltered, the PAN steadily accumulated an important governing record in a number of strategic states and cities. With the recognition of the PAN's victory in Baja California in 1989 and Chihuahua in 1992, a further stage in the gradual opening of the political

⁶ 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 taken under the recently created category of 'unconstitutional actions'. Since then, eleven unconstitutional actions cases have been presented before the Court, mainly challenging the system used to determine the distribution of seats. In Quintana Roo's case ruling of September 1998, the Court invalidated an electoral law for the first time.

⁷ Between 1980 and 1983 the municipalities governed by the PAN grew from 13 to 31, including the five capital cities of Chihuahua, Durango, Hermosillo in the north and the central states of San Luis Potosí and Guanajuato. See Juan Molinar, *El tiempo de legitimidad: elecciones, autoritarismo y democracia en México* (Mexico, 1997), p. 124. Since the 1940s, the PAN had mobilised to protest against fraudulent elections. While in most cases these demonstrations ended with repression, in others 'interim mayors' were named promising to convene new elections. Since then, the PAN as a 'moderate actor with a consistent risk-averse attitude' began to press for electoral reform from within the system. See Loaeza, 'Uncertainty in Mexico's Protracted Transition,' p. 101.

⁸ Stephen D. Morris, *Political Reformism in Mexico: An Overview of Contemporary Mexican Politics* (Boulder, 1995).

system began.⁹ With the victories that followed in other states the opposition began to press, from the periphery, for democratic change and for an authentic federalism.¹⁰

Against this background, the 1994 presidential elections were widely hailed by foreign observers as a significant advance. The main parties accepted the results as improvements in the electoral process were introduced and high participation was registered. This was the context in which the incorporation of the Tribunal into the judiciary took place.

The History of Electoral Justice in Mexico

The Supreme Court was initially given no role in resolving political controversies in Mexico. With the adoption of a presidential system in 1824, it was decided that the adjudication of membership of Congress would be the responsibility of the legislative power, the 'political power par excellence'. Electoral Colleges were created as a means to protect citizens' political rights, while Article 113 granted the court an incipient constitutional control of a political nature. After the short-lived 1836 Centralist Constitution, the Court's role was actively debated, and the 1847 Reform Act restored the federal system and created the *amparo* suit, to protect individual constitutional rights at the federal level.¹¹ Since that point, there was an increasing need to decide whether the Court would resolve *amparo* suits that protected political and electoral rights.

At the end of the nineteenth century the thesis of 'incompetence of origin' was established with the *Amparo Morelos*. Under the presidency of José María Iglesias (1873–76), the Court resolved an *amparo* suit brought by landowners of Morelos who opposed the Law of Local Property introduced by General Leyva, a governor who had been re-elected even though reelection was illegal. A majority of six out of ten judges granted this suit due to a clear violation of Article 16 of the 1857 Constitution. Some months after this historic resolution, the Court upheld another similar *amparo* suit against the re-election of Puebla's governor. In the same vein, the resolution emphasised

⁹ Salinas' administration was still characterised by a low degree of institutionalisation and strong federal intervention in state affairs, resolving electoral conflicts through political rather than legal mechanisms. Salinas imposed several interim governors as '*concertaciones*' ('concertation' and 'concession') with the PAN in a number of states. These arbitrary interventions, followed by other PRI Presidents, affected the development of the rule of law and the existence of independent institutions at the subnational level.

¹⁰ Mizrahi, *Pressuring the Center*.

¹¹ Ignacio Burgoa, *El juicio de amparo* (Mexico, 1986), p. 135. For a discussion of the *amparo* suit, see Pilar Domingo, 'Judicial Independence: The Politics of the Supreme Court in Mexico,' *Journal of Latin American Studies*, vol. 32, no. 3, 2000, pp. 716–18.

the need to protect individual rights violated by authoritarian acts. With these two consecutive rulings, the Court established the power to hear and resolve suits of a political nature, regardless of whether the violating authority was at the federal, state or local level.

Under Ignacio Vallarta's presidency of the Supreme Court (1878–82), there were increasing criticisms against the excessive interpretative power of this institution. Vallarta considered the position of the *Iglesias* court to be potentially destabilising, and ruled that political issues were not individual rights, excluding them from protection by *amparo* at the federal level. Although the right to be governed by legitimate authorities remained, Vallarta thought it inappropriate that the Court should deal with these issues, and Electoral Colleges were established as the proper place to challenge the validity of political acts. The contrast between *Iglesias*' priority of preserving individual rights and Vallarta's defence of a strictly neutral Court dominated much of the contemporary constitutional debate, and Vallarta's thesis of non intervention by the judiciary in electoral disputes set the limits of the Court's jurisdiction for almost 150 years.

The principle of certification of election by the electoral institution itself established by the 1917 Constituent Congress prevailed until 1976. This principle was intended to protect the judiciary from politicisation due to involvement in resolving electoral disputes. However, in practice, the self-certification process became a crucial feature of the PRI's hegemonic regime, as it gave the majority party the power to confirm flawed elections. With the 1917 Electoral Law, citizens were given the right to plead before the Chamber of Deputies for the invalidation of presidential elections and those of the Chamber itself. Since there was no clear procedure laid down, this right was not used. At the time, responsibility for the organisation of elections was decentralised to the municipal level. There were few restrictions on partisan activity and the registering of new candidates, reflecting the domination of small regional parties.

Successive presidential administrations introduced electoral reforms to reinforce the PRI's position. The 1946 Federal Electoral Law (LEF) centralised the organisation and supervision of the federal elections in the executive. This law also extended to political parties the right to challenge federal electoral results. The chambers were granted the authority to certify elections, while the Court investigated irregularities in the public vote. However, it was the Colleges that determined the scope of electoral certification and these were dominated by the executive. At the same time, with the foundation of the Revolutionary National Party (PNR) by President Plutarco Elías Calles, the executive started to centralise power, redefining its political relations with the regions. With the PRM's foundation in 1938, the hegemonic regime was institutionalised as President Lázaro Cárdenas transformed it into an

inclusionary mass-based party. In 1946, the Federal Commission for Electoral Surveillance was created to organise the federal elections, as specific requisites made it more difficult for new parties to register.

Against this background, the 1977 LOPPE reform gave parties the right of appeal to the Supreme Court against the decisions of the Electoral Colleges. The Court in turn could make a declaration regarding the constitutionality of the actions of the Colleges, which would in their turn decide whether or not to accept the ruling made. Although the need to resolve electoral conflicts through a legal process was clear, however, the Court was not considered to be the ideal institution for this purpose, and attention began to turn to the need to create a tribunal that was independent of the judiciary but that could still resolve these conflicts on legal grounds. The issue became pressing after the Electoral College and the Supreme Court rejected vehement opposition protests over electoral fraud in the 1986 elections.¹² The 1986 reform and the resulting 1987 Federal Electoral Code eliminated the right of appeal to the Supreme Court, and created in its place the Tribunal of Electoral Contention (TRICOEL), an autonomous body with the power to hear appeals and to declare invalid the outcome in any electoral district. However, it was a purely administrative body, and its rulings could be overturned without further right of appeal by the Electoral College. In addition, its credibility was further undermined by virtue of the fact that its members were nominated by the parties and approved by congressional majority. Political reform then accelerated rapidly under Salinas, as a consequence of the controversy over fraud in the 1988 elections which brought him to power. Three electoral reforms ensued in less than five years. A new Federal Code of Electoral Procedures and Institutions (COFIPE) was approved in 1990, and in the same year the Federal Electoral Tribunal (TFE) was created, with the power to rule on appeals and claims of unconstitutionality, and sanction parties that did not comply with its rulings. Even then, though, the Tribunal's judges were proposed to the Chamber of Deputies by the President, and the rulings of the Tribunal could be overruled by a two-thirds majority vote of the Electoral College. Three years later the federal Electoral Colleges were abolished, except that certification of the presidential election by the college remained in place until 1996. With the abolition of the federal Colleges, the power to certify the election of deputies and senators passed to the Federal Electoral Institute (IFE), a body created in the 1990 reforms. However, clear-cut judicial independence over electoral matters was only finally established with the 1996 reforms.

¹² See Juan Molinar, 'Regreso a Chihuahua', *Nexos*, 11 March 1987, and Soledad Loaeza, *El Partido Acción Nacional: la gran marcha, 1939-1954. Oposición leal y partido de protesta* (Mexico, 1999), pp. 393-7.

Zedillo's Administration and the 1996 Reforms

The 1994 elections were widely hailed as a great advance in the competitive character of the electoral system. However, post-electoral negotiations started up as soon as Zedillo was inaugurated. According to Zedillo himself, it was increasingly necessary in the context of political pluralism to resolve political disputes between rival parties through the rule of law, in a manner which avoided the erosion of presidential authority.¹³ With the opposition insisting on the need for a truly independent electoral authority, a reform was unanimously approved in anticipation of the 1997 elections. The 1996 reform not only confirmed the complete autonomy of the Federal Electoral Institute, removing the minister of the Interior from its Council, but also gave the judiciary the authority to resolve electoral disputes. The Electoral Tribunal of the Federal Judiciary (TEPJF) replaced the TFE, and was integrated into the judiciary as the highest jurisdictional authority in electoral matters. At the same time, its jurisdiction was extended to include state and local elections, and the states were obliged to reform their own electoral laws in line with those at the federal level. Among other important changes, the reform created a Federal Electoral Tribunal (*Sala Superior*) comprised of seven judges, and five Regional Tribunals, one in each of the electoral regions; stipulated that electoral judges should be nominated by the Supreme Court and ratified by a two-thirds vote of Senate, with federal judges to serve for ten years and regional judges for eight; and gave the Tribunal responsibility for the final count and declaration of the result of presidential elections, the resolution of complaints related to federal electoral issues, the constitutionality of the rulings of relevant authorities at subnational levels, and the protection of the electoral and political rights of citizens.

On 31 December 1996 the Senate ratified the seven nominees from the Supreme Court for the Federal Tribunal. By September 2000 it had been in place for almost four years, under the presidency of José de la Peza. In what follows, I present an overall evaluation of the performance of the Tribunal to this point, and examine in more detail the two crucial post-electoral disputes in Tabasco and Yucatán.

The Activity of the Electoral Tribunal, 1996–2000

Between November 1996 and September 2000 the Tribunal received a total of 11,906 complaints, of which 99 per cent (11,001) were resolved. Of this total, only 620 concerned complaints by political parties or other associations against IFE rulings, significantly fewer than the 1,526 complaints received after the 1994 elections. In contrast, petitions for the constitutional review of

¹³ Personal interview, November 2001.

Table 1. *Type of Complaint Presented to the Tribunal (1996–2002)*

	Appeals	Protection of Electoral- Political Rights	Constitution Review	IFE	Other	Total
2002	18	772	112	12	2	916
2001	70	142	457	29	38	736
2000	69	1397	491	23	27	2182
1999	25	83	311	54	7	483
1998	25	101	237	58	12	433
1997	38	7501	32	49	1	7971
1996	9	5	6	13	3	36

Source: Electoral Tribunal Reports.

the acts and resolutions of local authorities increased considerably after 1996. In less than four years, the Federal Tribunal received more than a thousand complaints from across the country. Nearly 500 petitions for constitutional review were presented in 2000 alone, revealing that such cases are growing in number. The figures also reflect the willingness of the Tribunal to overrule subnational authorities – in 1997, of the 220 cases in which state court rulings were challenged, 36 rulings altered state-level decisions, municipal victories awarded to the PRI were annulled in Tepetlaoxtoc (Estado de Mexico), Santa Catarina (San Luis de Potosí), Aconchi (Sonora), and Uriangato (Guanajuato), and the composition of the city council in Cadereyta (Nuevo León) was altered. Also, in a ruling that would set a precedent for the Tabasco case, the Tribunal found that in the case of the gubernatorial election in Campeche, the State Tribunal had not properly resolved some of the complaints of the PRD, but that in the particular case the outcome of the election was not affected.

Between November 1999 and September 2000 a total of 2,182 complaints were presented, of which more than 75 per cent (1,668) concerned electoral opposition at the federal level. Only 514 were against acts and resolutions of local authorities and IFE labour issues (another area over which the Tribunal had jurisdiction). In this period the most frequent party complainant was the PRI, which presented 190 complaints, followed by the PRD with 122, and the PAN with 93. Another 154 complaints were presented by coalitions, and 1,448 by individual citizens.¹⁴ More than 9,000 complaints were presented in relation to citizens' political rights between 1997 and 2000, mostly concerning the electoral register or the issuing of voter ID registrations.

The Annulment of the Gubernatorial Elections in Tabasco

In the six gubernatorial elections held after the 2000 elections, the PRI won only in Tabasco. Chiapas and Yucatán went to opposition coalitions, Jalisco

¹⁴ TEPJF, *Informe Anual*, 2000.

Table 2. *Outcome of Complaints (1996–2002)*

	Cases Presented	Resolved	Upheld	Partially Upheld	Not Upheld	Rejected	Others
2002	916	905	48	24	102	714	17
2001	736	734	73	78	372	143	68
2000	2182	2168	1285	126	438	202	117
1999	483	483	83	80	185	95	40
1998	433	433	118	53	179	74	26
1997	8101	7971	7387	133	222	167	61
1996	36	36	4	9	14	6	3

Source: Electoral Tribunal Reports.

and Baja California remained under PAN control, and in November 2001 the PRD would oust the PRI in Michoacán. The Tribunal's decision to annul the October 2000 election in Tabasco – the first time it had overturned the result of a major election – constituted a crucial precedent in the history of electoral justice in Mexico. Announced on 29 December 2000, only two days before the new governor was due to take office, the decision posed a serious challenge for the incoming government of President Fox.

In the 1980s the PRD emerged as the strongest challenger in what had traditionally been a loyal PRI stronghold, led by Andrés Manuel López Obrador, who ran as the FDN/PRD gubernatorial candidate in 1988 against the PRI's Salvador Neme. Following the 1991 elections, in which the PRD was certain it had won in at least three municipalities, López Obrador went to Mexico City to press the claims of the party. With the NAFTA negotiations in full swing, the Salinas administration took a political decision to recognise the PRD victory. The 1994 gubernatorial election also provoked a serious dispute, just days before Zedillo's inauguration. López Obrador ran for the PRD for the second time, against Roberto Madrazo, the son of popular former PRI governor Carlos Madrazo. The official results confirmed a PRI victory with 57 per cent of the vote, compared to 39 per cent for the PRD, amidst complaints of extensive fraud and exorbitant levels of PRI campaign spending. The PRD presented several constitutional challenges to the state tribunal, but most of them were rejected on technical grounds. The Federal government adopted a stance of respect for state-level decisions, and when the PRD took the constitutional case to the Supreme Court the court accepted evidence from the attorney's office that illegal campaign spending had taken place, but upheld Madrazo's contention that campaign spending was an internal state matter outside its jurisdiction.¹⁵ After the judicial

¹⁵ Supreme Court, CC (Controversias Constitucionales) 11/95, 33/97. In 1998 the PAN's Santiago Creel launched impeachment proceedings against Madrazo in Congress, on the basis of the findings of his own independent investigation and report in 1995, but without success.

process proved unsuccessful, the opposition forces organised mass demonstrations to promote their cause, provoking the first major crisis of the Zedillo government. When the ensuing political negotiations suggested that Madrazo would be sacrificed, the local PRI rebelled. Eisenstadt notes that '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 the "new federalism",' but concludes nevertheless that Madrazo's continuation in power demonstrated a failure of the federal government to uphold the rule of law.¹⁶

Six years later, the 2000 gubernatorial election was surrounded by considerable scepticism, even in the absence of López Obrador, who was elected mayor of Mexico City. The Tabasco race took on a high national profile as the final outcome registered a margin of only 8,000 votes in favour of PRI candidate Manuel Andrade. Alleging serious irregularities, the opposition challenged the result, calling on the state Electoral Tribunal (Tribunal Electoral de Tabasco) to annul the election. The PAN claimed that in most districts its election literature sent by mail had been interrupted and opened without justification, while the PRD alleged that irregularities had been registered in 682 ballot boxes, compromising the validity of the election. The opposition's claims were strengthened when the destruction of election literature was uncovered. Although the state Electoral Tribunal recognised irregularities in some ballot boxes, the state Electoral Institute (Instituto Electoral de Tabasco) confirmed the election of Andrade, and the Electoral Tribunal ratified it.¹⁷

The PRD and the PAN strongly contested this outcome, and brought separate cases for constitutional review before the Federal Tribunal.¹⁸ To complicate matters further, Federal Electoral Judge Fernando Ojesto was reported as stating that 'to his knowledge, there have not been serious irregularities in the Tabasco election'.¹⁹ A few days later Ojesto denied the statement attributed to him, in a letter to the newspaper.²⁰ The PRD then sought to impeach Ojesto in the chamber of Deputies, on the grounds of his 'partiality and lack of judicial, documentary and technical knowledge' in his handling of the dispute.²¹ The opposition claim that Ojesto had abandoned his impartiality in this case forced him to abstain on the final vote in the Federal Electoral Tribunal. The Tribunal's ruling came on a split vote, with

¹⁶ Todd Eisenstadt, 'Electoral Federalism or Abdication of Presidential Authority? Gubernatorial Elections in Tabasco,' in Wayne Cornelius et al., *Subnational Politics and Democratization in Mexico* (San Diego, 1999), p. 270.

¹⁷ Instituto Electoral de Tabasco, 22 October 2000.

¹⁸ TEPJF, SUP-JRC-487/2000, SUP-JRC-489/2000, 29 December 2000.

¹⁹ *La Reforma*, 28 October 2000.

²⁰ *La Reforma*, 31 October 2000.

²¹ *La Jornada*, 14 November 2000.

Table 3. Elections in Tabasco, 1994-2001

Candidates (5 August 2001)	Parties	Gov. 2001* (5 Aug.)	Gov. 2000 (15 Oct.)	Fed. 97	Gov. 94
Manuel Andrade Díaz	PRI	50.68% 360,738	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	45% 290,968	40.5% 240,356	38.66% 200,087
Lucio Galileo Lastra/ Jose Pablo de la Vega	PAN	2% 14,794	8.73% 56,463	4% 23,527	2.5% 13,410
Blanca Guerrero	PAS	0.2% 1,595	2% 13,475	4.7% 27,478	1.28% 6,636
Sergio Arias	Convergencia	711,794	659,875	592,773	517,498
	Total				

Source: Tabasco Electoral Institute.

* The 2001 results reflect the state Tribunal (TET) ruling that annulled the results in 20 out of the 339 ballot boxes about which the opposition complained.

four of the six remaining judges voting for and two against annulling the elections. The majority argued that irregularities had invalidated the vote, and revoked the confirmation of Andrade's election. The Tribunal ordered the state legislature to name an interim governor, who was in turn to call a new election within six months. The PRI responded by criticising the Tribunal for its lack of professionalism, alleging that it had given in to strong political pressure, and arguing that as the local constitution did not make provision for annulment, it had acted in contravention of the autonomy of the state. At the same time the PRI questioned the logic of annulling the gubernatorial election, while confirming the results of the municipal and congressional elections held on the same day.

The government of Tabasco finally accepted the Federal Tribunal's ruling and decided not to break with the constitutional order. However, the outgoing PRI-dominated state legislature approved an interim governor, but also passed a constitutional amendment to delay calling new elections. Just a day after the federal ruling, the state legislature approved Enrique Priego as interim governor for a period of eighteen months, rather than the six months established in the local Constitution and stipulated by the Federal Tribunal. The president of the state electoral tribunal, who would have become interim governor in the extreme case of the removal of the elected authorities from office, was also replaced. When the new and almost evenly divided state legislature met, however, it voted to replace Priego as interim governor with Adán López, on the grounds that Priego had not resigned from his seat in the federal Congress. While Priego tried to consolidate his hold on power after days of confusion with two rival appointed governors, López finally declined to be sworn in, arguing that he preferred a negotiated solution.

At this point, the PRD and PRI each presented appeals to the Supreme Court. While the PRD demanded Priego's impeachment, and argued that the reforms approved by the state legislature were unconstitutional, the PRI contested the verdict of the Federal Tribunal, and threatened to initiate impeachment procedures against the four judges who had annulled the elections, arguing that the creation of the Electoral Tribunal had given rise to 'judicial vacuums' that the judges were now using arbitrarily against the rule of law.²² The opposition deputies boycotted the new state legislature, and the PRI deputies ratified Priego as governor amidst fears that instability could break out again. On 10 January 2001, the PRI, PAN and PRD reached an agreement to avoid political crisis in Tabasco by holding a new election on 11 November, with the inauguration ceremony to take place in January 2002. The agreement also included the renewal of the council and the state Tribunal.

²² Manuel Bartlett, Personal Interview, February 2001, London.

Two months later, the Supreme Court resolved the PRD's complaint against the local congress and ex-governor Madrazo, ruling that the extension of the period in which a fresh election should be held was valid, but ordering that a new date be set no later than September. After a prolonged silence and only one day before the deadline set for a response, the state congress brought the election forward to 5 August 2001.

In the meantime, the PRD again selected Raúl Ojeda as its gubernatorial candidate, but their former coalition partners, the PAN, selected their own candidate, while the state Tribunal voted 4-1 to cancel the Green Party's (PVEM) participation in the alliance, leaving the PRD with only the Workers Party (PT) as a coalition partner.²³ When the PRI won the new election the PRD again challenged the result, only to see its challenge rejected by both the state tribunal and the Federal Tribunal.²⁴ While some sources suggested that the federal government might not welcome another PRD governor in López Obrador's territory, especially in view of his combative attitude in the Federal District, the Ministry of the Interior rejected rumours of a pact between the executive and actors in Tabasco.²⁵ It should be noted in this context that the 14,794 votes cast for the candidate of the PAN amply accounted for the difference of 4.69 per cent recorded by the state Electoral Institute between the PRI and the PRD.

Yucatán's Sovereignty

The southern state of Yucatán represents one of the most notable examples of resentment against the centralisation of power. This resentment became translated into a secessionist movement in the nineteenth century, as this state continuously fought to maintain its autonomy. After the revolutionary period, the state company *Henequeros de Yucatán*, the Socialist Party of the Southeast (PSS) and local trade unions became the organisational pillars of hegemonic political control in the state.²⁶ In the 1950s this local structure of political competition was transformed, as the federal government dismantled the PSS, integrating it to the PRI. From that point on, Yucatán became another PRI stronghold with a long history of strong political bosses.

Demands for federal intervention started in the 1950s, when the PAN strengthened its position in the state. In 1958, PAN leaders claimed that the government had stolen the local elections as protests in the capital Mérida left three party supporters dead.²⁷ As a result of political pressure, the Electoral

²³ *La Reforma*, 29 May 2001.

²⁴ TEPJF, SUP-JRC-201/2001, 8 October 2001.

²⁵ *La Jornada*, 17 June 2001; *La Reforma*, 2 August 2001.

²⁶ Luis Alfonso Ramírez, *Sociedad y población urbana en Yucatán, 1950-1989* (Mexico, 1993), p. 83.

²⁷ Donald J. Mabry, *Mexico's Acción Nacional: A Catholic Alternative to Revolution* (Syracuse, 1973), p. 60.

College recognised six PAN federal deputy victories, including one in the district of Mérida. Almost a decade later, in the 1967 municipal elections, the PAN's candidate, Víctor Correa, won the capital. Correa, who became the first opposition gubernatorial candidate in 1969, took advantage of a divided local PRI and criticised corruption by previous governments.²⁸ According to Mabry and Ramírez, abundant evidence supported the claim that the PRI committed extensive fraud in the 1969 election.²⁹ Immediately after the polls closed the PRI candidate, Carlos Loret, announced his victory by a 90 per cent margin. Claims of what was considered a scandalous fraud caused an internal crisis within the PAN, as several regional committees demanded that PAN's national leaders reconsider participation in the 1970 election.

It was two decades before the PAN next won in the capital, when the four main opposition parties formed an alliance. Although a new legal framework was in force in the 1990 elections, following the changes in the federal electoral law, post-electoral conflicts were intense as the state Congress, acting as the Electoral College, annulled the results in four municipalities on grounds of serious irregularities. According to Poot, the regional PRI resented the attitude of the party's central office, from where governor Víctor Manzanilla stated that the citizens of Yucatán were above the PRI.³⁰ In the end, the 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, with less than 750 votes advantage over the PRI. As none of the PAN's candidates won in the state congress, there were allegations that a negotiation had taken place between the PAN and the federal government in order to recognise only the PAN victory in Mérida.³¹ Governor Manzanilla, who was dubbed the 'first Panista of Yucatán', was forced to resign by a presidential decision in February 1991, and was replaced by Senator Dulce María Sauri.³² Two years later, the 1993 local elections were also closely contested and followed by post-electoral conflicts. Once again, these disputes were resolved outside legal channels with the main aim of preserving political equilibrium at the national level.³³

²⁸ Efraín Eric Poot, 'Por segunda ocasión Mérida se tiñó de azul (el triunfo de Acción Nacional en noviembre de 1990),' in Jorge Alonso and Jaime Tamayo (coords.), *Elecciones con alternativas. Algunas experiencias en la República Mexicana* (Mexico, 1994), p. 185.

²⁹ Donald J. Mabry, *Mexico's Acción Nacional*, p. 84; Luis Alfonso Ramírez, *Sociedad y población urbana en Yucatán, 1950-1989* (Mexico, 1993), p. 84.

³⁰ Poot, 'Por segunda ocasión Mérida se tiñó de azul,' p. 204.

³¹ Luis Javier Garrido, 'La negociación,' in *Diario de Yucatán*, 7 December 1990, pp. 2 and 3.

³² Luis Alfonso Ramírez, *Sociedad y población urbana*, p. 85.

³³ Jean François Prud'homme, 'State Electoral Conflicts and National Interparty Relations in Mexico,' in Wayne Cornelius (et al.), *Subnational Politics and Democratization in Mexico* (San Diego, 1999), p. 357.

Following this history of post-electoral conflicts and strong defence of regional sovereignty, the PAN called once again for federal intervention to resolve severe irregularities in the 1995 gubernatorial election. Víctor Cervera Pacheco, the only politician to have governed a state for ten years (having acted as interim governor from 1984 to 1988), was accused of offering bribes and rigging the state's electoral institutions in his favour in order to secure election in 1995. At the end of his second administration (1995–2001), another serious dispute arose from the nomination of the state electoral council members in this southern state. In August 2000, the PRI-controlled local congress reappointed the sitting council members to organise and monitor the gubernatorial election. The opposition strongly criticised the nomination procedure and presented a formal complaint before the TEPJF. According to the PRD's allegation of unconstitutionality, the reappointment of the councillors was voted by simple majority (only 15 of 25 congressmen) and not by the majority of four fifths laid in Article 86 of the state code.

On December 22, the Federal Tribunal ruled these appointments invalid on grounds that not all nominated candidates had been considered. Subsequent legislative manoeuvres were ruled invalid on two further occasions.³⁴ At this point, the Federal Tribunal dismissed the whole local council and selected a new panel from nominees proposed by the various parties and civic organisations. The Tribunal unanimously agreed a final list, and seven councillors were then elected with appropriate congressional approval. At this point, the PRI majority abruptly refused to comply with the Tribunal ruling, and validated the council that had been dissolved, whereupon its members reinstalled themselves in office. Cervera took his stand on the grounds of state sovereignty, defending the importance of the Federal Pact while seeking to maintain the appearance of respect for the local separation of powers, keeping a low profile in the conflict, and deferring most issues to the legislative leaders that he controlled.

On 5 January 2001, Cervera announced the publication in the *Diario Oficial* of Decree 400 approved by the legislature, authorising the original council to use 40 million pesos to organise the May elections. PRI leaders in Yucatán refused to recognise the new council, arguing that the Federal Tribunal had violated the Constitution's division of powers and its precepts on states' rights. PRI state legislator Myrna Hoyos argued 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 unconstitutional'.³⁵

³⁴ *Electoral Tribunal*, Boletines de Prensa No. 62/2000, No. 66/2000, No. 67/2000, 15 November, 11 and 13 December 2000.

³⁵ *Proceso*, 17 December 2000.

Up until March 2001, both councils remained in existence, but neither devoted itself to electoral organisation. To worsen the situation, the PAN candidate, Patricio Patrón, registered with the new council, while the PRI candidate, Orlando Paredes, registered with the old one. In the context of the Tabasco's ruling, an important section of the PRI elite, including seventeen state governors, openly opposed the Federal Tribunal for violating state sovereignty, claiming that it was using discretionary rather than legal powers. The PRI presented an initiative before the Congress to limit the Tribunal's powers, claiming that the 'TEPJF has become an instrument of Fox's government',³⁶ and sought to remove it from involvement in future local elections.³⁷

Early in 2001, the PRD presented another complaint to the Federal Tribunal demanding intervention by force, in response to which the Tribunal decided to delay a decision until 15 January. A deadlock ensued, in which no solution was agreed, and the threat of federal intervention remained. Even President Fox, who had said that he would not intervene in state matters, demanded without success that the local authorities should obey the ruling. The state authorities reiterated that the federal insistence that they should recognise the council selected by the Federal Tribunal constituted a serious violation of Yucatán's sovereignty. According to jurists Burgoa and Carrancá, the Tribunal had exceeded its authority by rejecting a council elected by the local congress.³⁸ In their view, the Tribunal had interpreted too broadly the grounds for this resolution, especially by selecting and trying to impose a completely new council. They argued that as the PRD did not allege any violation of the Constitution, but only of state law, the Congress was not obliged to accept the Tribunal's ruling. In their opinion, while Tabasco's ruling was valid – although it could be said it was badly supported by argument – the Yucatán ruling was invalid as it attacked 'Yucatán's democratic institutions'.³⁹

As the new deadline imposed by the Federal Tribunal expired, the Attorney's office started a formal investigation. The PGR called Cervera to explain why state authorities had disobeyed the final ruling, while the Federal Tribunal demanded that his government should hand over the facilities, economic resources and the official documentation that would allow the elections to be organised. At the same time, local PAN deputies sought to impeach Cervera and 14 PRI legislators. After weeks of uncertainty, Cervera presented a bill to reform Yucatán's Electoral Code.⁴⁰ He proposed the unification of both councils into one 'supercouncil' and the postponement

³⁶ *La Jornada*, 18 February 2001.

³⁷ *Gaceta Parlamentaria*, 15 February 2001.

³⁸ Ignacio Burgoa 'Sentencia Antiyucateca' in *Voz y Voto*, no. 96, Feb. (Mexico, 2001).

³⁹ *Ibid.*

⁴⁰ *Diario de Yucatán*, 9 March 2001.

Table 4. *Yucatán Electoral Results (1995–2000)*

Parties	2000 Presidential Election	1998 Local Election State Congress	1995 Gubernatorial Election
PAN	328,386 (48.05%)	203,249 (35.67%) 8 Deputies (5RM/3PR)	229,034 (45.55%)
PRI	321,170 (46.99%)	309,503 (54.32%) 15 Deputies (10RM/5PR)	251,497 (50.02%)
PRD	27,213 (3.98%)	47,455 (8.32%) 2 Deputies (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.

of elections for three weeks. The 'supercouncil' would be made up of 14 councillors for this one occasion only, the seven from the old council approved by the state Congress through Decree 286, and the other seven selected by the Federal Tribunal in December.⁴¹ In a heated session, the 15 PRI congressmen imposed their majority and created a third council under Decree 412. In spite of Cervera's attempts to promote a convenient political agreement, the opposition considered this 'supercouncil' unconstitutional. The Federal Tribunal judges strongly criticised this reform, as it did not comply with their final resolution. Nevertheless, no formal position was taken and the resolution was temporarily abandoned pending the final decision from the Supreme Court. This silence showed the dilemma that the Fox government faced, having to decide between more aggressive federal intervention or 'respect' for state sovereignty. In the end, it was left to the Federal Tribunal to put an end to the post-electoral conflict.

On 7 April 2001, the Supreme Court ruled unanimously that Cervera's initiative was unconstitutional, and ratified the council appointed by the Federal Tribunal. It argued that Cervera's solution created a council with fourteen members, a number that could cause ties on important issues; that it was out of time, because it had been activated less than ninety days before the election; and that it had been approved by the vote of only fifteen PRI deputies, while the law requires at least twenty. The Court ordered rebellious local officials to accept elections on the terms laid down by the Federal Tribunal. Although Cervera announced that he would respect the Court's decision, he also announced that his government would analyse the resolution in order to ascertain whether it contained more political than legal ingredients.⁴²

⁴¹ Personal Interview, Gaspar Quintal Parra, 1 March 2003.

⁴² *Reforma*, 10 April 2001.

Table 5. *Gubernatorial Election, Yucatán, 27 May 2001*

Governor 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
TOTAL		663,865	100

Source: Consejo Electoral del Estado de Yucatán.

Despite the protracted confrontation, the gubernatorial elections took place peacefully on May 27.⁴³ The opposition candidate's victory was confirmed the same day of the election. By a margin of 52,940 votes (8%), former mayor of Mérida Patricio Patrón was declared the first PAN governor, ending the long PRI hegemony (See Table 5). PRI local members did not accept the official results and PRI candidate Paredes presented a complaint before the local Tribunal, which rejected it unanimously two weeks later. Further appeals at state and federal levels proved fruitless.

Recent Electoral Rulings and the Future Role of the Supreme Court

After the annulment of the gubernatorial election in Tabasco and the creation of a new electoral council in Yucatán, another relevant case decided by the Federal Tribunal concerned the 2001 municipal elections in Chihuahua. On two consecutive occasions, the state tribunal had annulled the results in Ciudad Juárez, a municipality that had been governed by the PAN for three consecutive periods. On 8 October 2001, the Federal Tribunal confirmed the first state tribunal ruling and annulled the PAN's victory.⁴⁴ Two days later, a municipal council with a PRI majority took temporary control of Ciudad Juárez, with responsibility for organising extraordinary elections set for 12 May 2002. The PRI candidate, Roberto Barraza, supported by a coalition of parties, ran for the second time against PAN candidate, José Delgado. After more than 10,000 votes for the PRI were annulled, the PAN was declared victorious with 139,859 votes, against 137,674 for the PRI. The annulment of these crucial votes infuriated PRI supporters, who presented a second complaint before the Federal Tribunal.⁴⁵

On 7 July 2002, the state tribunal annulled the PAN victory for the second time. PAN members strongly criticised this decision, arguing that it had clear partisan features orchestrated by Chihuahua's PRI governor, Patricio

⁴³ Interviewees in Yucatán, Paulino Canul, Gabriel Peniche and Gaspar Quintal, 1 March 2003.

⁴⁴ (SUP-JRC-196/2001).

⁴⁵ *Diario de Juárez*, 15 May 2002.

Martínez.⁴⁶ PAN President 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'.⁴⁷ What started as a legal wrangle ended with movements of civil resistance, causing serious political instability in the region. A day before the final ruling was announced, PAN Secretary General Manuel Espino warned of the high risk of social rebellion in the state and referred to Martínez as an authoritarian governor.⁴⁸ Once again the Federal Tribunal had the last word, overturning the decision of the state tribunal and ratifying unanimously the victory of the PAN.⁴⁹

Although PRI members confirmed that they would abide by this ruling, they still argued that the situation of social unrest created by the PAN had influenced the federal institution. On the eve of the Tribunal's decision, PRI representatives had alleged that PAN politicians had urged their followers to create further conflicts, 'preferably with citizens injured',⁵⁰ and immediately following the verdict PRI candidate Barraza warned of the risk of judicial authorities giving in to pressures from 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 was at risk'.⁵¹ The PRI President of the Justice Commission, Senator Martha Tamayo, commented that 'they had enough evidence to confirm that the electoral area is one of the biggest faults in the judicial system'.⁵² Not only PRI members but also political commentators maintained that the Federal Tribunal had ceded to political pressure.⁵³

Political Party and Campaign Financing

I will finally refer to a crucial feature of the Federal Tribunal's new role in the institutionalisation process: the regulation of political party and campaign financing. In August 2001, the TEPJF revoked a resolution of the Federal Electoral Institute (CG79/2001) related to allegations by the PRI and the PRD that Vicente Fox's coalition had accepted illegal foreign contributions

⁴⁶ Felipe Calderón Hinojosa, 'Nuevamente la barbarie,' in *Reforma*, 11 July 2002.

⁴⁷ Luis Felipe Bravo Mena, 'Ciudad Juárez, víctima de la dictadura del gobernador Martínez', in *El Universal*, 11 July 2002.

⁴⁸ *Diario de Juárez*, 24 July 2002.

⁴⁹ TEPJF, 24 July 2002.

⁵⁰ *Milenio*, 24 July 2002.

⁵¹ *Reforma*, 25 July 2002.

⁵² *Milenio*, 25 July 2002.

⁵³ Fernández, 25 July 2002; Cansino, 28 July 2002.

during the 2000 campaign.⁵⁴ On 22 June 2000, PRI congressman and current Senator Enrique Jackson alleged that Fox's Alliance for Change was receiving illegal resources from abroad for his campaign. Showing photocopies of cheques passed in Mexico and in the United States, as well as bank statements from the Belgium Company Dehydration Technologies, Jackson even suggested a possible link with money laundering. The next day, the PRI representative on the Federal Electoral Institute, Jaime Vázquez, presented a formal complaint of violations of the Electoral Code by the PAN and the Alliance for Change.⁵⁵ Further complaints followed from the PRD, but on 26 July 2001, the Federal Electoral Institute's Fiscal Commission rejected the complaints by a majority of five to one. The Federal Tribunal's ruling, which instructed the Institute to reopen the investigation, generated some political tension with the federal government since 'it is not clear for us how to deal with "banking secrecy", although parties are willing to open their archives'.⁵⁶

Francisco Gil Díaz also referred to the Pemex case, where the federal government opened an investigation of the alleged channelling of \$120 million of public resources from the state oil monopoly via the PEMEX labour union to Labastida's 2000 campaign.⁵⁷ On that occasion the Federal Electoral Institute had ruled that any person could have access to political parties' financial information from 17 July 2002.⁵⁸ The IFE's ruling was confirmed by the Federal Tribunal on 19 June 2002, when the newspaper *Reforma* sought access to the PRI's files.⁵⁹

Electoral Tribunal judge Leonel Castillo argued that provisions for 'banking secrecy' should not apply to political parties.⁶⁰ Most analysts expected that this case would take months to resolve, especially when Lino Korrodi (702/2002), Carlota Robinson (972/2002) and Carlos Rojas (1066/2002), members of 'Friends of Fox', who were seeking to protect their 'banking secrecy', sought protection from district courts through *amparo* suits. The Federal Electoral Institute brought a series of challenges to these *amparo* suits before the Tribunal, but, the eight Tribunal judges ruled that although IFE's case was 'partially well-founded', the Tribunal could

⁵⁴ SUP-RAP-050/2001, 7 May 2002. ⁵⁵ Q-CFRPAP 19/00, IFE, 23 June 2000.

⁵⁶ Personal interview, Francisco Gil Díaz, 16 May 2002, London. ⁵⁷ *ibid.*

⁵⁸ IFE, 17 April 2002.

⁵⁹ Granados Chapa, 24 June 2002. Although this constituted significant progress in the transparency of party financing, the Tribunal had to hear further complaints in order to force the Banking and Securities Commission (CNBV) to hand over bank records concerning the PAN and PRI 2000 campaigns. Banking officials had initially refused to release the records, arguing that investigators had overstepped their authority by asking for more information than they could legally require. In the end, on 14 March 2003, the IFE imposed a fine of one thousand million pesos on the PRI. In response, the PRI presented an appeal to the Tribunal that still awaits resolution. ⁶⁰ *Reforma*, 8 May 2002.

not force the district judges to revoke the *amparos* granted to Korrodi, Robinson and Rojas, nor to pronounce about the validity or invalidity of such decisions.⁶¹ This ruling clearly showed the limits to its jurisdiction that the Tribunal currently faces. In March 2003, Eduardo Fernández, the ex-president of the Banking and Securities Commission (CNBV), was formally detained after his statements linking Vicente Fox's campaign to money laundering. According to the Attorney's office, 'Fernández and other CNBV employees are being investigated for possible violation of banking secrecy in relation to Lino Korrodi's suit of 6 June 2002'.⁶²

Once again, some actors argued that the Tribunal was exceeding its constitutional attributions with this ruling, particularly considering that it violated Article 17, which obliged political parties challenging electoral results to submit a written statement in advance. Juan de Dios Castro, legal advisor to President Fox, argued that the Tribunal had trespassed on the Supreme Court's jurisdiction, but recognised that the Electoral Institute was constitutionally recognised (Art 41) to carry out this investigation.⁶³ In a landmark ruling regarding the distribution of proportional representation seats, the Supreme Court ratified its supremacy as a Constitutional Tribunal, clearly determining that the Tribunal cannot interpret the constitutionality of the electoral legislation.⁶⁴ With this ruling, the Court ended the uncertainties prevailing since the 1996 reform regarding which institution would have the last word in electoral matters. However, it also prompted severe criticism of the politicisation of the Court. According to IFE's electoral councillor José Barragán, 'this move could affect the Court's main role: its impartiality'.⁶⁵ In his view, the Court's ruling 'almost killed the TEPJF' in spite of the fact that the fifth paragraph of Article 99 is extremely clear in granting the electoral institution the power to decide the unconstitutionality of a specific act or resolution related to electoral matters.

The decision of the Supreme Court to deny the Tribunal the right to rule on cases related to the constitutionality of local and federal laws and regulations clearly reduces its role, and in consequence the Tribunal has already started to reject cases dealing with constitutional matters. On 19 August 2002, the Tribunal refused to consider the constitutionality of a section of the Electoral Code (COFIPE) in response to a case brought by Cambio Ciudadano. This was the first time in its six years of existence that the Tribunal was unable to rule on a specific case dealing with political rights due to the block imposed by the Supreme Court three months earlier.

⁶¹ TEPJF, 25 September 2002.

⁶² *La Jornada*, 5 March 2003.

⁶³ *Reforma*, 11 June 2002.

⁶⁴ Review of SUP-JRC-209/99 and unconstitutionality ruling 6/98, 23 May 2002.

⁶⁵ *La Jornada*, 19 August 2002.

With this ruling in place, the Supreme Court proceeded to review the *amparo* granted to the 'Friends of Fox' by two federal judges, who had ruled on 29 July 2002 that the investigation of their financial contributions to the 2000 campaign should be terminated. This decision caused outrage, with Federal Electoral Institute councillors Jaime Cárdenas and José Barragán criticising the judiciary 'for not respecting the Constitution, as it clearly specifies in Article 41, fourth paragraph, that no *amparo* can be granted in electoral matters'.⁶⁶ However, in a surprise move announced on 7 April 2003, the 'Friends of Fox' finally decided to hand to the Electoral Institute all the information related to the 2000 electoral campaign. According to Granados Chapa, with political pressure increasing and probably in the expectation that the Supreme Court would rule against the granting of *amparo*, the Friends of Fox confirmed they had contributed with 125 million pesos to the 2000 campaign.⁶⁷ It will now be for the Electoral Institute to decide this case, ideally before July's 2003 federal election.

Conclusions

The 1996 reforms reversed the practice of almost 150 years in which Mexico had followed Vallarta's thesis of 'non-intervention' by the judiciary in electoral conflicts. Up to that point, local PRI elites were generally able to influence state electoral courts and turn them to their own advantage. The Federal Tribunal has now been granted the power to review cases decided at the subnational level, and opposition parties have started to follow legal procedures rather than accept concessions achieved through political negotiation.

In the context of 'new federalism', it is crucial to acknowledge the dilemma of ending discretionary federal intervention in state affairs, while recognising that there is still a significant gap between federal and subnational institutionalisation. The cases of Tabasco and Yucatán have shown that there is indeed a dilemma in allowing a federal institution to intervene with broad criteria in subnational processes. As Eisenstadt 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 who continue to take electoral matters into their own hands.⁶⁸

Over recent years, the Tribunal has received hundreds of appeals relating to municipal and state elections, and in the 2000 gubernatorial election in

⁶⁶ *La Jornada*, 16 & 18 August 2002.

⁶⁷ Miguel Angel Granados Chapa, 'La eficacia del dinero' in *Reforma*, 8 April 2003.

⁶⁸ Eisenstadt, 'Electoral Federalism or Abdication of Presidential Authority?', p. 288.

Tabasco it reversed a PRI victory for the first time. Having also reversed some municipal victories, the Tribunal has displaced the previous practice of extra-legal negotiation, and has gradually become the final instance for the resolution of post-electoral conflicts through formal institutional channels. Even if in the cases studied in this article there has been a tendency to question the impartiality of the Tribunal, most actors are following the formal electoral complaint process and in the end abiding by its outcomes. The historical tradition in which the judiciary presents itself as 'above politics' has proved difficult to maintain, as it is increasingly called upon to define the way in which political processes work. In Tabasco and Yucatán, the Supreme Court had to intervene to resolve local electoral conflicts. Moreover, after the rulings related to the financing of the 2000 presidential campaigns, the Court resolved in its own favour the uncertainties prevailing since the 1996 reform regarding which institution would have the last word in electoral matters, as it confirmed its supremacy as a Constitutional Tribunal.

The 1996 reforms also forced the states to reform their own electoral laws to bring them into line with those at the federal level. Nevertheless, there are still evident contradictions at the subnational level, as important disputes over local tribunal rulings such as occurred in relation to Ciudad Juárez in 2002 clearly exemplify. Strong local electoral institutions are indeed essential for the new federalism, especially to resolve electoral conflicts that emerge with increasing competitiveness. In this context, it is important to acknowledge that some actors have not completely accepted the Tribunal's jurisdiction and absolute impartiality, and have therefore taken their cases on to the Supreme Court. After the events that took place in Yucatán and Tabasco, there was an increasing concern over the lack of specific regulation to resolve post-electoral conflicts at the subnational level. If the 'new federalism' implies giving local and state governments the autonomy largely to govern themselves, it is crucial to respect specific jurisdictional principles accepted by the main political actors, with federal rulings based on the law and not subject to political pressures.

After the events in the southeast, the Tribunal faced a crisis of credibility and its powers to interpret the constitutionality of electoral legislation were finally limited. On the one hand, it is a positive development 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 the professionalisation of the judicial career, but it remains to be seen what will come of the increasing Court involvement in electoral matters, particularly in terms of state and local elections. The Tribunal will still play a fundamental role in the institutionalisation process, but undoubtedly it will be the Supreme Court that will have the last word in an increasing number of electoral and

non-electoral cases. This situation could bring new problems to an institution that generally played a passive role for most part of last century. Overall, though, the positive aspect is that after the 2000 election there is in place, in addition to the concern for guaranteeing electoral transparency, 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.