

# WHEN THE OPPOSITION TOOK OVER MEXICO: ELECTIONS 2000

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## 1. The historical results of the last election of the Twentieth Century

Elections 2000 were historical in Mexico, not because of the controversies that arose in North America, but because after 71 years of continuous success in the polls, the Partido Revolucionario Institucional (PRI) stepped down from the presidency of the Federal Government, in a highly contested election among five strong candidates <sup>1</sup> but without any prejudice or controversy regarding the results, which were completely and formally accepted by all the contenders.<sup>2</sup> This was exceptional in the rest of North America, where results were highly contested even with prejudice for the judicial system, nobody predicted that the Mexican

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<sup>1</sup> Originally, there were six candidates:

1. Cuauhtemoc Cardenas	Alliance for Mexico	PRD, PT and 3 more political parties
2. Manuel Camacho Solis	Centro Democratico	
3. Vicente Fox Quesada	Alliance for the Change	PAN and PVEM
4. Gilberto Rincon Gallardo	Democracia Social	
5. Francisco Labastida Ochoa	PRI	
6. Porfirio Munoz Ledo	PARM	

This last candidate resigned as candidate from PARM to join personally Alliance for the Change and thus endorsing to Vicente Fox on June 13, 2000, less than one month before the election took place.

<sup>2</sup> Despite the fact that there were 2182 electoral lawsuits during the election process solved by the Federal Electoral Court system, which are classified in the following manner:

<i>Political Party or Organization</i>	<i>Number of lawsuits placed</i>
PAN	93
PRI	190
PRD	122
PT	22
PVEM	14
Convergencia para la Democracia	30
Partido Centro Democracia	12
Partido Sociedad Nacionalista	10
PARM	14
Alianza Social	14
Democracia Social	45
Frente Civico	17
Partido Cardenista Coahuilense	2
Conciencia Popular	3
Other political organizations	11
Candidates	39
Coalitions	154
Community Assemblies	3
Citizens	1448

political system was prepared to give up one of its main features and that the PRI would step down within the framework of legal institutions.

The old cornerstone of the Mexican Politics had been the overwhelming presence of a majority party, called “official party”, that avoided, for most of the XX century, the appropriate checks and balances either in the separation of powers principle or in the federal system. However, since 1988, opposition governments had been a common place in Mexico, but in 1994 this trend began to grow at municipal and State governments and until the year 2000, one of the most prestigious opposition political parties (Partido de Accion Nacional), formed a coalition with another party, the green party (Partido Verde Ecologista de Mexico), and reached the Federal Executive Office for the first time in history.

The first consequence of this opposition success in the year 2000 was the transformation of the opposition concept into a relative one, in the sense that now, the three big parties (PAN, PRI and PRD or Partido de la Revolucion Democratica) and their alliances with other political organizations, are equally “government” and “opposition” at the same time on different branches and levels of government.

We need to remember that before 1988, PAN has had performed a good standing among the cities in Mexico, gathering significant votes from the urban citizens. This party got the first governorship in that year in Baja California with Ernesto Ruffo. Then, the PRD won the first election ever in Mexico City, the federal capital of the country, in 1997 with its founder and candidate Cuauhtemoc Cardenas, and now Vicente Fox is the first President whose political affiliation is not from the PRI.<sup>3</sup>

Fox and Cardenas had been common candidates from alliances made up of different political parties and organizations that they had been approved by the Federal Electoral Authority (IFE) on December 17, 1999, almost two months later than the election process had begun (October 7<sup>th</sup>). The confrontation against the predominant PRI had to be faced in this fashion, otherwise, any victory would have been very difficult. “Alliance for the Change”, the political machine behind Fox, was a well balanced organization: integrated mostly by the most enduring and

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<sup>3</sup> Fox was invited to run for office by Manuel Clouthier, a PAN leader, and an interesting figure in the 1988 presidential elections. In that year, Fox was elected member of the Federal House of Representatives and afterwards he won the race for governorship of the State of Guanajuato, from where he withdrew asking for a leave of absence on August 7<sup>th</sup>, 1999. He was celebrating his 58 birthday on July 2<sup>nd</sup>, 2000 on election day. He won in 19 States (Aguascalientes, Baja California, Baja California Sur, Coahuila, Colima, Chihuahua, Guanajuato, Jalisco, Estado de Mexico, Morelos, Nuevo Leon, Puebla, Queretaro, Quintana Roo, San Luis Potosi, Sonora, Tamaulipas, Veracruz and Yucatan). The PRI candidate won in 11 States (Campeche, Chiapas, Durango, Guerrero, Hidalgo, Nayarit, Oaxaca, Sinaloa, Tabasco, Tlaxcala and Zacatecas) and the PRD and its Alliance won the Federal District and Michoacan.

successful opposition party, PAN, that was joined by a socially oriented, although divided, party: the Ecological Green Party of Mexico; in this way, the alliance focused more precisely on its two great constituencies: cities and environment, leaving behind any criticism for being “corporative oriented”.

In the 2000 Election, it was evident that one of the striking shortcomings of the electoral system was the long period for campaigning that we have in Mexico: almost seven months, which entails a huge public spending for each political party and candidate, in contrast with the rest of North America, where such a period is only 36 days for Canada. On the other hand, Cardenas’ coalition, “Alliance for Mexico”, integrated by PRD, a highly divided PT (Partido del Trabajo), Convergencia por la Democracia, Partido Sociedad Nacionalista and Alianza Social was targeted fiercely by the PRI machinery, because Cardenas had been the ultimate foe to defeat for, due to the fact that his father, Lazaro Cardenas, is still a national symbol. The basis for the PRI criticism and discredit against the PRD candidate had been his performance as Head of the Federal District Government, to which office He was elected in 1997. <sup>4</sup> The public relations and non-confrontational image of his successor as Head of Government, Rosario Robles Berlanga, helped to buttress any attack on his administration in Mexico City and the electorate was not persuaded either by the PRI criticism around Cardenas. Probably at first, Cardenas had made a service to Fox candidacy because the official propaganda directed and concentrated more on the former than on the latter.

Alliances proved to be productive to gather votes rather than disperse them in a multiparty election like the one in the year 2000. The highly criticized PRI stood alone in the process facing the Election Day with a weak candidate like Francisco Labastida mirrored from a weakening President, Ernesto Zedillo, whose conviction towards the organization of fair and clean elections had shattered the structure of the same so called “official party”. There is no doubt that President Zedillo did not want to use any fraudulent technique to make the PRI candidate win against all odds.

Fox had conducted a marvelous preparation for the campaign well in advance before the electoral process began. The turn out voting was impressive on July 2<sup>nd</sup>. 2000, because 63.97% of the registered citizens voted that day. <sup>5</sup> The results were also surprising:

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<sup>4</sup> For the Cardenas performance as Head of the Federal District Government, *Vid.* Peter M. Ward and Elizabeth Durden. “Government and Democracy in Mexico’s Federal District, 1997-2001: Cardenas, the PRD and the Curate’s Egg”. *Bulletin of Latin American Research*. Vol. 21. No. 1. p. 1-39

<sup>5</sup> The registered citizens for the election 2000 were: 58’782,737, which means that 37’603,923 citizens attended the polling stations.

- a) PAN and its “Alliance for Change” received the highest percentage of the votes cast for the Presidency and the federal representatives and senators.<sup>6</sup> However, the votes cast for the presidential candidate were the highest among any other results.
- b) PRI was in the second place with a short but significant difference in the congressional votes, but with a striking difference in the presidential race of 6.42% with respect to Fox.<sup>7</sup>
- c) PRD and its Alliance received less than half of the two parties in the first places.<sup>8</sup>

Notwithstanding these results, the seats assigned to the mentioned three political parties do not show the same proportion as that resulted in the Election Day, because of the deviations forced in the calculations of proportional representation:

- a) PAN and its Alliance had 224 members in the House and 53 in the Senate, which are 44.8% and 41.40% respectively, that are in an upper scale (6.57% and 3.29% of difference) of the 38% level that they received in the popular vote.<sup>9</sup>
- b) PRI got 210 representatives and 58 senators, which represent 42% and 45.31% (6.09% and 8.57% of difference), unmatched with the 36% level they received in the popular vote.
- c) PRD and its Alliance also show a disproportion with its 13.2% representatives and 13.28% senators, with respect to the 18.69% popular vote for the House and 18.85% for the Senate, which represent a -5.49% and a -5.57% respectively

In this way, the 2000 election in Mexico, besides its historical effects on the presidential race, it also helps to support the criticism around the proportional representation system standing in Congress that has benefited to the two largest parties and handicapped to the rest of the other parties, including the PRD, which is the third political force in the country.

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<sup>6</sup> More than the 38% of the votes were for “Alliance for Change”, but the presidential candidate received 42.52%, which are translated into 15’988,544 votes

<sup>7</sup> PRI candidates for federal representatives and senators received more than 36% of the voting, which is less than 2% of difference from those cast for the Alliance for Change, but the presidential candidate, Francisco Labastida, received 36.10% which are 13’576,189 votes, that represented a difference of 2’412,355 votes in respect to Fox’s account.

<sup>8</sup> Cardenas received 16.64% of the voting (6’259,018 votes), and the Alliance for Mexico candidates for the House had 18.69% and for the Senate 18.85%.

<sup>9</sup> When in Mexico it is said “popular vote” it is not a contrasting concept with any “electoral” vote, for in the country, direct elections were adopted since 1917.

## 2. Elections and justice: two independent variables

The electoral system in Mexico moved from a monolithic system controlled by the incumbent President through its political branch: the Secretary of State for *Gobernacion*, that guaranteed for these more than 71 past years a permanent success for the PRI at all levels of public offices,<sup>10</sup> to an independent State Agency, independent from the Executive Branch, when the Federal Electoral Authority (IFE) staffed by 7 members appointed by a special majority of Congress, was created as an outcome of the constitutional reforms approved on August 22 and November 22, 1996.<sup>11</sup> In contrast to the United States, Federal elections are of exclusive competence of such Authority and States or Municipalities do not participate in the process.

The 1996 reform ended a more than centennial era when Congress and State Assemblies had been the final electoral judges for deciding who will be at any public elected office; it represented the end of the monopoly of the electoral colleges in Mexico. Since 1875, nobody had disputed in the country that the congressional electoral colleges were even beyond the reach of judicial review, because elections had been considered as a political question whose cognizance by the judiciary would have been very inappropriate. This also had been the Ignacio Vallarta's legacy as chief justice of the Supreme Court in the country by rejecting the *incompetencia de origen* doctrine sustained by previous Courts and based upon singular interpretation of the due process clause of the Constitution.<sup>12</sup>

The origins of the current political question doctrine have to be traced back to the famous Supreme Court case known as *Amparo Morelos* decided in 1873, when the Chief Justice Jose Maria Iglesias interpreted

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<sup>10</sup> In the 1964 election, for example, PRI attracted nearly the 88% of the total voting in contrast with the PAN that only got the 11%. The 1970 election was alike: PRI got more than 85% and PAN less than 12%. The 1976 election PAN did not have any candidate and PRI was joined with PARM and PPS, obtaining nearly 88% of the voting. The 1982 election showed a declining 69% for the PRI and more than 15% for the PAN and in 1988 the PRI had for the presidential race a little bit more than 50% in contrast with 17% from the PAN. Silvia Gomez Tagle. *La fragil democracia mexicana*. GV Editores. Mexico 1993. p. 197. The 1994 presidential election showed a trend in the PRI slowdown, because it had 48.77% of the popular vote and an increasing popularity of the two stronger opposition parties: PAN with almost 27% and PRD with 17% of the vote. Note that if we compare the 1994 PRI vote with 2000 Alliance for Change vote, they are similar: 42.52% for the latter and the mentioned 48.77% for the first.

<sup>11</sup> This authority had been created since 1990 but with the presidency of the Secretario de Gobernacion.

<sup>12</sup> That doctrine used to distinguish in the constitutional provision regarding "competent authority" for encroaching upon human rights, a twofold concept: The common one in which a competent authority was one with legal powers to act and the "subject or by origin" concept involving that any authority able to exercise legal powers has to be in the first place, a "legitimate" authority, that is elected or appointed in accordance to the Law of the Land. Vallarta reacted and finally settled down the issue by self-restraining Courts from electoral issues, considered as political non-justiciable controversies; his opinions were standing law since 1879.

the due process of law clause of the Constitution (1857), by saying that the phrase “competent authority” stated in article 16, it was meaning not only legal authority but most importantly *legitimate* authority, so whenever an illegitimate governor pretended to act against the rights of the State citizens, the Supreme Court had the powers to declare null and void such acts and decrees and searching into the “legitimate titles” of the power exercised by the so-called “governor”, even the State Assembly had declared him a constitutional governor. In this sense, the rule of law does not only mean the formal competent authority, or whoever acts as an apparent authority following the law, but that the judiciary can intervene in the electoral processes whenever they do not observe the constitutional and legal dispositions applicable.

In 1876, when the revolutionary Porfirio Diaz reached the Presidency, the Supreme Court had open doors to check upon the “legitimate titles” of Diaz, according to the Iglesias’ interpretation and this is why the new Chief Justice, Ignacio L. Vallarta, decided to follow the discredited rule of Roger Taney in the United States, stated in *Luther v. Borden (1849)*, that originated the political question doctrine in this country. In two cases, Vallarta poured the self-restraint idea that politics have to be put away from the Judiciary and that this branch of government is not competent to know anything related to elections. In cases like the *Amparo Leon Guzman (1879)* and *Amparo Donde (1882)*, Vallarta set forth in Mexico the political question doctrine in force ever since, until the 1996 reform.

Up to now, the Supreme Court has declared that: “Infringement upon political rights is not redressed by the writ of Amparo, because these rights are not human rights” (Thesis number 312 SJF. 5th. Period Tomo LXXVI. p. 516) <sup>13</sup> and since Vallarta’s times there is an effort to sustain the difference between human rights on one hand and prerogatives or political rights entertained by citizens on the other.

Despite the fact that the American doctrine has departed substantially from its original version of the political questions; <sup>14</sup> this doctrine is still in force in Mexico and we do not recognize the exceptions made by the American Supreme Court, like in the case *Baker v. Carr (1962)*.

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<sup>13</sup> The writ of Amparo was created by the constitutional reforms undertaken in Mexico in 1847. Its main object is to be the protection of human rights by federal courts exclusively. However, since 1857, the “right to vote” was not included in the constitutional chapter of human rights but in the corresponding to duties and prerogatives of the citizens; from this point on the interpretation has been that the traditional judicial remedy for protecting human rights, the Amparo suit, is not suitable for raising this questions before Courts.

<sup>14</sup> Specially since the civil rights movement from the 1960’s. David K. Ryden, editor. *The U.S. Supreme Court and the Electoral Process*. Georgetwon University Press. 2000.

However, the Mexican 1996 constitutional reform created the Federal Elections Courts in the structure of the Federal Judiciary, and allowed to create similar judicial authorities in the States, helping to retake the Iglesias' ideas on the judicial redress of any challenge to political legitimacy and finding the legal framework to the highly politicized scheme of elections. So even if the traditional writ of Amparo is closed to decide controversies over elections, the 1996 Act for Electoral dispute settlements (Ley General de Medios de Impugnacion Electoral) established seven judicial remedies, different from the traditional Amparo suit, by which parties, candidates and citizens alike may proceed to sue any irregularity in the electoral process, either in local or federal elections, before a court of law.

According to that reform, the ultimate authority to declare the validity of any presidential election is the Federal Elections Court and the 2000 election was the first one to be declared by this judicial authority. Even though, there were electoral lawsuits raised in all the 31 States and the Federal District during the preparation, campaign and certification process of the results of this last election, only 439 votes were declared null without any impact on the final results of the presidential elections.

For the federal level, the Court system worked out very well in 2000; but the problem that is now in progress, deals with the review power of the State electoral authorities for local elections. According to article 99 of the Federal Constitution, the Federal Electoral Court is also responsible for deciding in the last resort all conflicts coming from State Electoral authorities. The achievements advanced in the organization and justiciability of elections for federal public offices are now in peril by the resistance and petty criticism stemming from the vices and frauds committed by State officials at local elections. In other words, the 2000 elections represent a clean example of competitive elections at federal level, but the federal authorities still have to deal with the problems originated in the States with two shortcomings:

- a) The reverse federalist sentiment, that it has been taken in advantage by the PRI governors against the, by now, "oppressive centralist" federal PAN government; and
- b) The lack of judicial respectability that it has been a traditional problem in our civil law system.

For long time we have lived under a centralized federal system when the resources and constitutional powers have been constructed around the Presidential figure. Institutions worked smoothly because the Constitution and legal principles were "among friends", but the new democratic model, with governments and oppositions from all the three main political parties, has forced us to rebuild the constitutional and

political building in a more formal way than before. Nevertheless, the least dangerous branch of government has remained as such, without any important participation in the policies of the country until very recently in a very subtle way.<sup>15</sup>

Since 1994, thanks to the judicial reform in the Constitution, the power granted to the Supreme Court for solving problems derived from the distribution of powers of the federal system is being consolidated; but among these issues, the main confrontation took place in the year 2000 when the State of Yucatan disobeyed expressly and openly a judicial resolution from the Federal Electoral Court that checked upon the State congressional appointment of the would-be electoral authority in Yucatan to organize the local elections next May 2001.<sup>16</sup> In the electoral matters, these Federal Court resolutions are final and according to article 99 sections IV of our Constitution, they aren't reviewable by the Supreme Court, but the PRI State authorities argued that the Court interpretation and jurisdiction are dubious, because local elections are thought to be exclusively State internal business.<sup>17</sup> This is a problem in the making and we need to draft a solution, but the arguments made by the Yucatan Assembly go directly to the heart of our federalism and judicial system and confront us with the lack of structural solutions.

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<sup>15</sup> Precisely derived from the judicial reform of 1994, the Supreme Court has played a major role in developing rules for the federal system through the constitutional controversy remedy and the different kinds of actions of unconstitutionality established in article 105 of the Constitution. In these few years, the Supreme Court has become a fundamental mediator between federal and state powers because of these new remedies.

<sup>16</sup> The facts developed in the following way:

August 31 <sup>st</sup> . 2000	State Legislature voted for the first time the integration of Electoral Council.
PRD challenges the integration	
October 12, 2000	The Federal Electoral Court declares null and void the State Legislative integration of the Council
October 14, 2000	The State Legislature makes a new list of 14 possible candidates to be elected for the Council
October 16, 2000	The State Legislature makes a new designation of the Electoral Council members, but fails again to comply with the State Constitution and Laws pertaining elections
October 18, 2000	PAN challenges the new integration
November 15, 2000	The Federal Electoral Court declares null and void the integration of the Electoral Council. State Congress does not comply the judicial resolution
December 13, 2000	The Federal Court begins its own procedure to designate the Electoral Council
December 22, 2000	60 candidates are selected by the Federal Court for the Council
January 8 <sup>th</sup> . 2001	Designation of the Electoral Council made by the Federal Electoral Court

<sup>17</sup> Also, the Yucatan controversy arose because the PRI dominated State Assembly had appointed a new integration for the State Electoral Council without observing the requirements and procedures prescribed by the State Electoral Code, as claimed by the PAN and PRD. The issue was whether an Act of the Legislature can be considered as an electoral act to be reviewed by the Federal Electoral Court. The State denied of course that the Assembly decision could be challenged before Courts, because the Legislature is not an "electoral authority" any more, so the jurisdiction is invalid in accordance to the same Federal Constitution.

As a civil law system, Mexico does not recognize the lawmaking process through the judicial adjudication; however, because we abolished the political certification of elections by Federal Congress and State Assemblies, we deposited into the judicial hands our democratic regime, without entrusting them all the political powers, and this is a puzzle that we need to solve at once, because all the advancement in the organization of elections will be vane if we do not complement it with the appropriate consolidation of our administration of justice; and in the same way, all the progress we have constructed at the federal elections will fall down if we do not check out with the same scrutiny the State and municipal elections.

Finally, the Federal Electoral Court prevailed based on the guarantee clause of the Mexican Constitution, by which all elections, either federal or local, are entrusted into the republican form of government, so the State sovereignty cannot violate the fundamental principle of Mexico constitutionally structured as a democratic and republican country, in which regular and legal elections are periodically organized. On the other hand, the Court jurisdiction was sustained based on the fact that any act that affects directly the elections, like the integration of the Electoral Authority, should be considered as an electoral act, even though is administrative or legislative in nature.

The Federal Court was right in my opinion, because Mexico cannot avoid responsibility of the State democracies, by defining jurisdictions and barriers between federal and local matters. If the Republican Form of Government means anything, it precisely means that regular elections have to be conducted according to Law, and federal intervention is always a necessary tool to oversee that elections at State level must follow the constitutional and legal prescriptions. In the Yucatan case, some of the appointees for the Electoral Council did not fulfill the legal requirements or their qualifications made them incompatible for the position, so the impartial performance for organizing State elections by the year 2001 was in question.

Whether or not the Legislative body may be reviewed in its acts of electoral content, it was more a formal argument than a substantive one in this debate, because all acts, including Electoral Laws can be checked upon their constitutionality by the Federal Judiciary and by the Federal Electoral Court.

However in this respect, another issue arose against the Electoral Court jurisdiction, but this time from within the Federal Government.

Despite the fact that Mexico has a supremacy clause in the same terms as in the United States, our article 133 of the Federal Constitution has

never been enforced in the same way as article VI of the American Constitution, because the Mexican Supreme Court has never authorized that State Courts can enforce the “Supreme Law of the Land”, being that duty an exclusive task to be performed by federal courts.

The jealousy shown by the Supreme Court in the constitutional control or judicial review has known extremes like the *Amparo Compania Telefonica Sabinas (1942)* in which the bench denied any participation from the higher Federal Administrative Court (Tribunal Fiscal de la Federacion), in deciding the constitutional soundness of the Tax Code in one particular case, despite the convincing arguments made otherwise by the leading Administrative scholar and justice of the Supreme Court at the time, Gabino Fraga, through his minority opinion, which found followers in the Mexican doctrine.<sup>18</sup>

The Supreme Court decided that an Administrative Court, being part of the Executive Branch of Government, could not review on constitutional grounds any law which had not being vetoed by the President and therefore accepted its regularity with the Constitution, because they consider that the court cannot go beyond the powers already granted to the Executive by the Constitution.

Having said the aforementioned, a new issue is under consideration in the electoral puzzle of the country. The Mexican Constitution considers in two different dispositions the constitutional validity of elections: in one hand the acts of electoral authorities covered by article 99, section IV, of the Constitution and attributed to the Federal Electoral Court, and on the other hand, the validity of the electoral laws under the exclusive jurisdiction of the Supreme Court by virtue of article 105, section II, of the same Constitution. But what happens when an electoral act is as unconstitutional as the law that gives its base? This issue was examined by the Federal Electoral Court in the case 209/99 regarding the regularity of the Electoral Code of the State of Guerrero, dealing with proportional representation in the State Legislature, that according to the Federal Court was constitutionally sound, because the rules derived from article 54 of the Federal Constitution were not binding upon the integration of proportional representation of State Legislatures but only upon Federal Congress. This standard conflicted with the Supreme Court interpretation though, because in the case 6/98 decided through the procedure of action of unconstitutionality, the highest court has decided in opposite direction.

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<sup>18</sup> Writers like Antonio Martinez Baez published articles on the *indebido monopolio del Poder Judicial Federal para conocer de problemas de constitucionalidad*.

The problem in substance was whether the Federal Electoral Court could also make constitutional interpretation in respect to declare an electoral law valid or null and void with respect to the Federal Constitution. Because the Electoral Court is part of the Federal Judiciary, the precedent of the *Compania Telefonica Sabinas* did not rule, but the contradiction was focused on the capacity to make constitutional interpretation by enforcing Electoral Laws, or if this capacity is exclusive of the Supreme Court. By deciding the *Contradiccion de Tesis 2/2000* on May 3<sup>rd</sup>. 2002, the Supreme Court declared without jurisdiction a Federal Court to make constitutional interpretation dealing with general norms, depriving the Electoral Court of its capacity to know about the validity of the electoral laws. Even though in the cases involved there was a conflict between the ruling of the Supreme Court and an inferior Court, the final decision comes in broader terms by acknowledging the lack of jurisdiction to address any problems of constitutionality by the Electoral Court, which it is beyond the scope of article 133 of the Constitution.

All the issues above mentioned are just a glimpse of the important outcomes of the election 2000 in Mexico. This historical election helped to develop not only democracy in the country but it is shaping many others fundamental institutions, like the rule of law and human rights. It is a landmark derived from the existence of opposition governments in this North American country.