Electoral Institutions Casting Shadows:
Legal Versus Extra-Legal Settlement of Mexico's Post-Electoral Conflicts

Quantitative Evidence from 14 States

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Mexico's states have been sites of bold institutional innovations over the last decade, with the complete revamping of electoral laws to convert regional polities from authoritarian electoral machines into bastions of multiparty competition. Following the lead of Mexico's federal electoral reforms of 1987, 1990, 1993, 1994, and 1996, progressive state laws have increasingly wrested electoral institutions from the singular control of the monolithic Party of the Institutional Revolution (PRI), the longest-reigning ruling party in the contemporary world. These reforms have yielded increasing opposition victories at the voting booths, and loosening of the ruling party's grip on governance.

But at least some of these institutions for administering elections have tended to function much better on paper than in practice. The irony is that these expensive[1] and autonomous institutions have been largely ignored when they are most needed, in post-electoral conflicts. Instead of submitting legal complaints to electoral courts, opposition parties and authoritarian incumbents consistently negotiated extra-legal bargains to resolve post-electoral conflicts which occurred in some 13 percent of Mexico's local elections between 1989 and 1994. In this paper, I offer descriptive evidence addressing the empirical puzzle of why the authoritarian incumbents, seeking to control political liberalization "from above," succumbed to opposition demands to resolve post-electoral disputes outside the regime's rule of law, that is, through informal bargaining tables rather than through these enhanced institutional channels, which were so costly to create.

I seek to explain how, at least during the early years of Mexico's ongoing democratic transition (1989-1994), formal institutions to adjudicate post-electoral disputes failed so miserably (at least in resolving post-electoral conflicts), while informal institutions established for the same purpose flourished.

The Rise of Mexico's Opposition: Dueling Focal Points and the Legacy of a Weak Rule of Law

Since the 1940s, the PRI encouraged the existence of "cosmetic" opposition through the appropriation of proportional representation congressional seats which helped mask the one-party state's authoritarian grip. As a result of 1977 electoral reforms which further promoted opposition participation and the widespread 1982 economic crisis, the opposition, and particularly the rightist National Action Party (PAN) actually started to win local elections with regularity. The PRI-state, caught off guard, reneged on its commitments of "moral [and electoral] renovation," and refused to honor victories by the PAN and more isolated social/electoral movements by the incipient left, starting in the early 1980s.

[1]The 1997 budget for administration of federal mid-term congressional elections was approximately $810 million (Finance Secretariat), which is over twice the sum of the entire legislative branch budget, and three times the federal judiciary's allocation during that year.

Business leaders who had been charter members of the PRI-state's coalition grew disenchanted with government in the face of bank nationalizations, the international debt crisis, and profligate public spending, exited the party in favor of the previously genteel opposition PAN. And after the conservative opposition spent its first 45 years patiently proposing gradual reforms, a new generation of activists demanded deeper changes, and complemented the party's platform of gradualism and debate with more impatient demands, accompanied by anti-election fraud mobilizations and civil disobedience. However, the party developed a "patronage-seeking" imperative which contradicted its more radical "transition-seeking" objective. A pattern developed whereby the PAN mobilized after losing fraudulent elections only to be silenced by minor concessions from the PRI-state in exchange for silent complicity. The practice, known as *concertacesión* ("concertation" plus "concession") also gained currency on the left, which was much less successful at negotiating with the authoritarian regime. The nascent leftist parties of the early 1980s left, launched *segunda vuelta* ("second time around") mobilizations - to win through mobilization elections not recognized at the polls.

The disciplined PAN's combination of legal and extra-legal contestation strategies pioneered the move to "juridicize" electoral accountability, starting in the 1950s. Ironically, however, the PAN's concurrent ventures into civil disobedience and extra-legal mobilization culminating in Chihuahua 1986, also provided a precedent for the left's most successful extra-legal mobilization ever, after the fraudulent presidential election of 1988. Indeed, the PAN served the Party of the Democratic Revolution (PRD) as a better model of sympathy-grabbing post-electoral conduct than did the tiny parastatal and leftist parties which comprised the pre-1988 left. But it was the PRD activists who walked the post-electoral conflict gauntlet in 1988,[2] before their candidate backed down from the brink of undermining the regime's stability once and for all. Both opposition parties dramatically changed tactics from those that were *de rigour* in the early 1980s. The five-year period considered represents the zenith of post-electoral negotiating, but also the launching of functional electoral courts in most states. It is important to note that both opposition parties' efforts to "win" consolation posts at the bargaining table prompted PRI-state acquiescence to both the granting of spoils and the institutionalization of electoral courts that worked.

Clearly, in the late 1980s and early 1990s, there were two separate and divergent focal points (Schelling) of actor behavior. The first was that of the informal bargaining tables, where the opposition parties sought to extract what they could from the regime and the PRI-state sought to fill the demands they could meet without jeopardizing control of the regime-controlled electoral opening. The second was the convergence of expectations around the regime's nascent, but utterly biased formal electoral institutions.

Here, the authoritarian incumbents sought to channel post-electoral contestation through rigged electoral institutions, which were, at least in the most blatant cases, intended to diffuse tempers while adhering to the PRI-state's pre-determined outcomes, whether executed by the governor or the federal interior secretary.

As they acknowledged in interviews cited elsewhere in my dissertation, the opposition parties felt compelled to at least pay "lip service" to the formal institutions, as post-electoral protocol for informal negotiations with the PRI-state required the opposition to have tried and failed through institutional routes first. By a similar logic, PRI-state officials claimed that they had no choice but to perpetuate the granting of post-electoral concessions as the only way to keep the heightened expectations of the opposition parties at bay and prevent them from fomenting ingovernability or even violence. How could this dual cycle of high expectations from extralegal bargaining and low expectations from legal proceedings be broken? When did the opposition stop manipulating the courts and actually use them, and when did the PRI-state stop manipulating the post-electoral bargaining tables and disband them? The legal and extra-legal routes to post-electoral conflict resolution started to diverge in the early to mid-1990s, but only after Mexico's weak rule of law suffered through several years of direct competition between these two competing focal points.

Specifying Key Micro-Institutional Actors in Protracted Democratic Transitions

Considering a cross-section of authoritarian regimes renders the conclusion that lines of delegation in such regimes are not transparent. Those authoritarian regimes which do allow opposition parties a degree of electoral expression are the ones offering greater external indicators of the ruling coalition's composition and its reaction to the opposition. The Lamounier (1984) "opening through elections" typology describes the importance of electoral authoritarianism once the regime is sufficiently liberalized to have commenced the path toward democratization.[3] Here I consider a prior moment. It is the "setting up" of the surprise opposition strength, that is, the opposition-induced "leveling of the playing field," which

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[2] Actually the PRD was not registered as a party until 1989, but it emerged out of the post-electoral movement of 1988. See Bruhn.

[3] Inspired by the Brazilian opening (1974-1988), this label covers cases in which the opposition surprises the authoritarian incumbent through electoral performance which exceeds expectations. The opposition leverages this popular support into legal demands on the setting of government policy (such as participation in electoral administration). The authoritarians responded in the Brazilian case through the imposition of "*cassuismos*" (arbitrary electoral laws to limit opposition access to power), even though this partial reneging on political opening came too late for the authoritarians to stop the momentum of democratization. When the electoral snowball had started rolling, the authoritarians tried to control the opening through a "calculus of decompression," and at this point, the Brazilian case became exemplary of tightly controlled "opening from above" (Lamounier 1989, 51-69).

makes it possible for the opposition to extricate the electoral apparatus from the authoritarian incumbents' control sufficiently to initiate "opening through elections." These processes all transpire behind the curtain before democracy's opening act, and are thus not visible to observers focusing instead on democratization's debut. Indeed, it is at this pre-curtain moment of incumbent-opposition bargaining that the opposition tries to "hijack" the state-created electoral institutions, while the authoritarian incumbent seeks to mediate within its ruling coalition between soft-liner proponents of slow liberalization at the national level, and hardliner machine bosses seeking to retreat back to authoritarian practices more favorable to their particular political machines.

The most logical unit of analysis of pre-transition bargaining, then, is electoral institutions, which are among the more transparent institutions in electoral authoritarian regimes, as information about their evolution must by definition be available to opposition parties. Electoral institutions are frequently the major legal arena of power struggles in the opening of such regimes, and pre-liberalization opposition gains can lead to regime-toppling changes. In cases where opposition gains in electoral institution configuration **do not** lead to full-blown pacted democratization, it is worth noting how the incumbent authoritarians manage to re-capture the institutions, or at least guide them away from unfavorable liberalization and how long the regime can endure the political and social strain of the authoritarians' reigning in of liberalization.

Within the set of electoral institutions, electoral courts are a worthy focus in the Mexican case, as opposition parties' decisions to use them represent their last opportunity in the electoral contestation cycle to undermine the entire process. From the perspective of opposition party strategy, using the electoral courts to resolve *ex post* electoral conflicts is tantamount to accepting the regime's decisions leading up to that moment. More than a decision about whether to use the electoral court, it is a strategic decision about whether to accept or reject the entire bundle of procedures and outcomes the election encompasses. A decision to appeal to the electoral courts is a tacit acceptance of their credibility, unless the opposition party rejects the court's verdict and subsequently discredits the institution to bolster its own position through extra-legal mobilization. In my research design, compliance with the electoral courts (i.e. the channeling of all complaints through them without recurring to mobilization) will be the null hypothesis for actor compliance with the rule of law. Hence deviation from these established legal procedures, that is the resort to political mobilizations instead of or in addition to the use of electoral courts, will be the dependent variable.

State electoral courts are classified into institutional failure types, and ideal types are then illustrated with examples. I measure opposition parties' extra-legal behavior in a 14-state sample, and

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The theoretical critique of Lamounier's typology, is that for elections to be such an important arena for contesting

divide the number of post-electoral conflicts they stage into the best measure of their legal route behavior (number of electoral court complaints filed), to derive an illustrative "rule of law" ratio. I discuss selection of the 14 states comprising my post-electoral conflict data set and how I coded the data. While this work is a comparative endeavor, the explicit comparisons made are to states within one country. So before reporting the results of this inquiry, I briefly consider the relevance of my Mexico-based results to other members of the protracted transition cohort (such as Brazil, South Korea, and Taiwan).

Measuring Electoral Fraud: Specifying the Conundrum and a Solution

In more theoretical terms, the question is what causes institutions to succeed, or from the actors' perspectives, what prompts their compliance with some institutions but not with others? Full compliance is hard to measure, as it is a static phenomenon with no measurable deviation from a regime's baseline norms or rule of law. Non-compliance is empirically much more evident, as deviation from these established patterns. The question is reducible to one of measuring deviations from the authoritarian regime's rule of law, and discerning the causes of these deviations.

Sticklers for formal evidence of institutional inefficiency might seek, instead of measuring behavioral compliance by actors external to the institutions, to measure institutional performance itself. In other words, they would seek a means of directly assessing the institutional "slack" available for authoritarian manipulation, or with reference to the specific institutions under consideration, the amount of electoral fraud committed even under Mexico's reformed electoral system. While direct evidence of electoral fraud is ample in anecdotal cases, it is much easier to cite incidents of fraud then to aggregate them together into any meaningful "sum" of the effects of this elusive phenomenon. Suspicious electoral trends (such as a 100 percent vote for the PRI in districts where there are three candidates), blatant incidents of crooked election day ballot-tallying and flagrant campaing overspending fill my dissertation, and such testimonials from participants in negotiations to subvert the electoral "will of the people" to pre-negotiated outcomes offer compelling evidence in isolated cases. However, as also found by other researchers seeking to quantify electoral fraud (Choe 1997, Lehoucq 1997, Roeder 1998, Sadek 1995), it is very easy to suspect, and very difficult to verify. One solution, the one undertaken in this work, is to accept that institutional failure may be measured with a less direct but more accurate indicator, actor compliance with the institutions. The result may be less micro-analytically rigorous than a hypothetical

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power, the opposition must already have attained a degree of opening.

direct measure of institutional inefficiency (in the form of electoral fraud), but it is a much more tractable research strategy.

Hence, this is an electoral politics study, but it is unlike other studies of elections in that I do not assume the official electoral results to be the final outcome or dependent variable. I argue that in the Mexican case during the protracted transition, such standard approaches miss many of the strategic interactions yielding post-electoral results, which in many cases vary from the outcome of the actual election. I directly compare the difference between "legal" and "extra-legal" post-electoral resolutions by contrasting these outcomes in a representative sample of municipal elections in 14 of Mexico's states over three local electoral cycles (spanning from 1989-1992, 1992-1994, and 1995-1998). While calculations for the 3rd electoral period (1995-1998) cannot be concluded until after the last round of elections from my sample in November 1998, I project a dramatic decrease in post-electoral conflicts and concurrent increase in the utilization of electoral courts, but not, I assert, because of any increase in the strength and autonomy of the state electoral institutions themselves. Rather, I argue that it is actors' decisions to comply with these electoral institutions, based on self-interest calculations, which determines whether they are actually used. Without actor compliance, particularly by the opposition, the institutional strength of an electoral court is irrelevant. This is not a trivial point, but it is one which is constantly taken for granted in the "pacted transitions" literature, where the time differential between the creation of institutions and compliance with them is sufficiently small that these two separate steps are conflated into one by most observers.

Obviously, electoral courts and party compliance with them are far from the only institutions important to the increasing electoral competitiveness of opposition parties and their acceptance of the regime's liberalizing "rules of the game." Reforms mandating greater opposition proportional representation, increased transparency of the electoral lists and balloting stations, the creation of a more plural and autonomous national electoral commission (and subsequent reforms in the states), and limits on campaign contributions and media exposure have all positively impacted parties' decisions to participate in the process, and "run to win." In fact, the electoral court reforms were one of the last and arguably least important of these reforms. However, acceptance or contestation of their rulings remains the single best proxy for whether the opposition accepts the "bundle" of practices represented by the official results. Hence this work has focused on this endpoint of the electoral decision tree, rather than looking further up for institutional violations of freeness and fairness.

The broader point, that opposition party participation in electoral institutions leads to these parties' acceptance of the electoral rules, reflects not just on the courts themselves, but on electoral institutions

more broadly. Institutions matter, certainly, but so does the "demand side," opposition parties' acceptance of them. This fundamental point was lost in the exemplar pacted transitions,[4] as they proceeded so quickly that it was impossible to disaggregate them into component processes. Democracy was not courted, but rather ushered in. After the smoke cleared in these transitions, actors were either "in the system" and compliant, or "outside the system" and undermining it. Democracy was a matter of maintaining a ruling coalition with more "ins" than "outs." I proceed now to consider four means through which the authoritarian incumbent retained control over the adjudication of post-electoral disputes.

Ideal Types of Institutional Failure: Phantom, Clipped, Whitewash and Paper Shuffling Courts

Just as the ideal of electoral justice was gaining currency after notorious electoral frauds in several mid-1980s gubernatorial elections and the 1988 federal electoral fiasco, states started to "catch up" with evolutions in federal electoral law. Lagging the federal electoral reforms of 1986 by between two and ten years, at least 16 of the 31 states had legislated the existence of electoral courts by 1989,[5] and by 1996 all had electoral courts, and in approximately half of them, electoral college certification had been replaced by electoral institution judicial certification (Crespo 114-125).[6] However, the introduction of electoral courts **was not** immediately accompanied by the expected reduction in post-electoral conflicts. A standard "institutional strength" argument would ask how autonomous the electoral court was from the executive branch, assuming that the more independent the institution, the greater the likelihood it would succeed in channeling post-electoral conflicts through judicial institutions. However, as shown by a tally of all post-electoral conflicts between 1989 and 1994 in 14 states, the number of post-electoral conflicts was not immediately reduced as electoral courts were reformed and fortified.[7] The number of post-electoral conflicts did drop dramatically during the last three-year period analyzed (1995-1998 - statistical analysis forthcoming), but I argue that this was due to opposition party decisions to comply with electoral

[4] The model case is Spain, where the famous Pact of Moncloa was signed in 1977 between most social groups, laying the groundwork for a quick and peaceful transition from the Franco dictatorship to founding elections. Other "Third Wave" transitions in Southern Europe in the 1970s and 1980s included those of Portugal and Greece, followed by the 1989 transformations in Eastern Europe and South America's democratization in the late 1980s.
[5] Based on author inventory of 30 out of 31 state electoral laws in effect in 1989 (the Aguascalientes electoral law of that time is still being sought by the author).
[6] An October 1996 amendment to the federal constitution gave the federal electoral court jurisdiction over appeals from all the states, thereby effectively forced the eventual harmonization of state and federal electoral laws. As of mid-1998 this process was imminent but far from complete.
[7] The next iteration of this work will include the 1995-1998 local election cycle, where I expect there will be too few post-electoral conflicts for my sample to attain statistical significance.

institutions, however imperfect, rather than continuing to resort to *concertacesiones* and the *segunda vuelta*.

I classify the four most common forms of electoral court failure (as well as characterizing a fifth residual category, "working" courts), and offer illustrative cases of each from the 14-state sample. Clearly, if electoral court success is defined as the channeling of all conflicts through legal (as opposed to extralegal) routes, then failure must be measured in terms of the number of post-electoral conflicts and not by any isolated indicator of electoral court performance apart from the social-political purpose of these institutions. The four ideal types of unsuccessful state electoral courts, to be discussed in turn, are: "**clipped courts**," which are overruled by other governmental actors, mainly the electoral college; "**phantom courts**," which are ignored by all other actors (those in government and those in the opposition parties); "**whitewash courts**," which succumb to informal executive branch pressures for verdicts to legalize informal bargains, and "**paper shuffling courts**," which are inaccessible to political party complainants because their excessively formalistic and rigorous procedures lead them to summarily reject all complaints. A fifth type is the "**working courts,**" those whose legally grounded but uneventful rulings are not attended by drama, intrigue, or extra-institutional challenges, but which are the only ones that serve the interests of electoral justice rather than those of parties or individuals.

<u>CLIPPED COURTS</u> - This class of electoral court failure, characterized by the overruling of verdicts by the state's electoral college (usually under orders from the governor, or the federal secretariat of the interior), or in its lesser form, by legislative decree of the formation of a municipal council in a conflictive municipality, was by far the most common of my sample. Since public records exist of most (but not all) of these acts of institutional disregard for judicial verdicts, they could be easily researched. As the most "legal" means for the PRI-state to deny opposition victories, by acknowledging the substitution of political for legal criteria in decision-making, but fully within the law, this has been the authoritarian incumbents' choice for overturning any adverse electoral results at least from the early days of PRI consolidation in the 1930s and 1940s, through the mid-1990s, when PRI legislative majorities were lost for the first time in several states, and electoral colleges were reformed out of most state electoral laws. Clipped courts almost always benefited the PAN at the expense of the national PRI. Cases in this category include: Sonora 1991 and Yucatán 1990 and 1993.[8]

<u>PHANTOM COURTS</u> - While less numerous than the clipped courts, this is the most dramatic type; courts codified in electoral laws, but which do not exist in practice, at least not in any form memorable to

[8] Outside my sample, the numerous identifiable clipped courts included Coahuila 1990, Puebla 1995, and Sinaloa 1991, all benefiting the PAN.

electoral law specialists from electoral institutions or the political parties. The most dramatic example is the Zacatecas electoral court which was presented with **no** cases in the 1992 local elections, while 32 disputes were taken directly to the electoral college for adjudication (Comisión Electoral del Estado de Zacatecas, 35, 38).[9] The opposition parties had such little esteem for the powers of this institution that they did not even bother using it.

A less transparent but nearly as compelling case of electoral court irrelevance was visible in Veracruz, where only one of the five electoral court magistrates present at a group interview had **any** recollection of the electoral court's 1988 and 1991 post-electoral activities. No pre-1994 records existed in the 1997 electoral court's archives, and the lone recorded history, borrowed from the personal effects of a former magistrate, was a 1988 pamphlet which enumerated the filing of 106 complaints by party, municipality and date of the resolution, offered a 20-page discussion of the role of electoral court complaints, and explained the judicial precedents established in the deliberations, but without communicating the verdicts of **any** of the 106 cases in the entire 83-page document (Tribunal de lo Contensioso Electoral de Veracruz).[10] The pre-1994 Veracruz electoral courts were not recollected by any of the dozen political activists interviewed, and were utterly ignored in press and secondary accounts from the highly conflictive 1988 and 1991 local races.[11] Similarly, in Chiapas 1991,[12] Campeche 1991, and Michoacán 1989, there exist no official records of any electoral court activities in electoral archives,

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[9] The well-informed president of the 1998 Zacatecas electoral court, Octavio Macías Solís, also a professor of electoral law at the Zacatecas Autonomous University, informed me that 1995 was the state's first experience with electoral courts (interview).

[10] Federal electoral court-published reports of local electoral results also committed this error with some frequency, greatly irritating this researcher until he realized that the pattern of missing electoral court verdicts (when other, secondary descriptions of case filings were quite complete) was more significant than the actual missing data could possibly have been. While it may be argued that the omission of verdicts could have been deliberate (especially if none of the verdicts were founded and the federal electoral court did not want to tarnish the image of its state counterparts), this is not likely in the reports published in the states themselves, where neither political party activists nor electoral officials recalled any significant cases. It would have been in the interests of the political parties (and I always spoke to representatives of the three main parties) to recount any electoral court "war stories" favoring them, could they have recalled them, but they claimed to have no direct memories at all of the "phantom courts."

[11] While the *Diario de Xalapa* and the national press were mum, the court's president, Schleske Tiburcio, did of course remember the chamber and its work. While he agreed that the role of the electoral courts was misunderstood and that the institution was transient at that time, he insisted that the court did impact the electoral process, by forcing ill-trained and poorly disciplined parties to abide by state regulations (interview b).

[12] The main opposition in Chiapas starting precisely in 1991, the PRD, used Chiapas' electoral courts for the first time, albeit ineffectively, in the state's 1994 gubernatorial election. The PRD Chiapas' coordinator of electoral affairs, who coordinated the 1994 defense of the vote campaign, had no knowledge of any institutional means of adjudicating post-electoral conflicts in 1991, besides complaining to the state electoral commission (where electoral complaints were filed prior to the construction of electoral courts) which was at that time indelibly linked to the PRI. As in most states at the time, by the governor's top appointee, the state Interior Secretary, headed the Chiapas electoral commission.

activists' memories, nor in printed accounts. But on paper, each of these states had formidable electoral courts. In Campeche, electoral courts were mentioned in the 1987 electoral code, but disappeared from the 1991 electoral code altogether, only to reappear as a juridical figure in 1993.[13]

WHITEWASH COURTS: This form of institutional failure covers cases in which state and/or federal executives intervene in the certification of local elections by imposing their wills on electoral courts, which then "cleanse" electoral fraud through legal institutions. However, as may be imagined, when the executive interference occurred prior to the electoral court ruling, the agreements were made in smoke-filled rooms rather than on the public record. Hence, verifying the existence of such informal pacts to "legalize" electoral improprieties is an understandably delicate exercise. Firsthand interviews, but only if corroborated by at least one other source from a party or political institution or a reliable journalistic account, were used to confirm the status of whitewash courts. This type of institutional failure is no doubt underrepresented in my sample, and in the public record generally; party activists constantly decried the existence of such arrangements, particularly between the PAN and the PRI, but could rarely substantiate allegations except when they intercepted and taped cellular phone conversations of whitewashing operatives or when a negotiator welshed afterwards and publicized the deal-making episode to damage a counterpart's reputation (and frequently theirs in the process).

Like the clipped courts, the few whitewash courts which have been exposed were mostly commissioned by the national PRI-state to sanitize local PAN victories, in places like Nuevo León 1994 (the Monterrey mayor's race), although they are also used in Michoacán 1992 to defuse seven post-electoral conflicts with the PRD. Although there are the only a couple of whitewash courts verified in my sample, whitewash courts would be preferred by the PRI-state to clipped courts, which publicly expose the inconsistencies between the judicial and political verdicts to the detriment of each institution's credibility. The most intriguing case in my entire sample, the 1993 Yucatán electoral court, would have been a whitewash court had it complied with federal PRI-state orders to revoke the PRI's Mérida mayoral victory, and grant it to the PAN. However, the electoral court refused to treason the local PRI, even after the national PRI-state flew the electoral magistrates to Mexico City to personally pressure them, and the *concertacesión* had to be cleansed through the Electoral College, which did dutifully reverse the clipped court's verdict, but which drew extensive adverse publicity in the process.

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[13] Head Magistrate Juan Antonio Renedo Dorantes, a member of the 1991 Campeche electoral court confirmed (interview) that indeed the electoral reform had not been concluded in time to include the electoral court articles in the printed 1991 electoral code. Nevertheless, the electoral court existed, but received no complaints during the legal time frame ("Ninguna queja o recurso en el Tribunal Electoral"). However, the period for accepting complaints was extended a week, yielding 14 complaint filings, which were all accepted for consideration and then all ruled as unfounded ("En el TEE, 14 recursos de inconformidad").

PAPER SHUFFLING COURTS: This is the only category of electoral court failure that represents institutional breakdown due to causes internal to the court, rather than to pressures exogenous to the institution.[14] In these cases, all complaints filed by any political parties are summarily dismissed for procedural reasons, before their arguments are even considered by the magistrates. The court may decide to summarily reject most or all cases for legally-grounded reasons; "legality," within a narrow procedural definition is not at issue. What is being questioned is magistrate flexibility in assuring political parties access to electoral justice (Cappelletti) and the very nature of these rigid laws which preclude election losers from settling their disputes in court. While the lack of preparation and even "bad faith" complaint filings by political parties must also be addressed, the electoral courts' objective of reducing social conflicts by channeling them off the streets and into the courtroom is obstructed in paper shuffling courts by excessively regimented laws and/or inflexible magistrates.

Paper shuffling courts occurred twice in my local election sample: in 1992 Jalisco (where all 63 complaints were rejected) and in 1995 Chiapas (68 complaint rejections).[15] This sample would have been much larger had I selected a broader classification criterion (such as electoral courts where most but not all of the cases were rejected, say more than 80 percent, given the average federal electoral court rejection rate of approximately 55 percent over four federal electoral processes), or by considering the rate of ballot box annulments resulting from "founded" verdicts in those cases which were accepted for full consideration (approaching an average of 4 percent at the federal level between 1988 and 1997). However, by selecting on a much narrower criterion (only electoral courts which rejected **all** cases), I present only the starkest cases, which I believe are beyond question even by electoral experts, some of whom admitted privately that the paper shuffling courts are not serving their broader social-political objectives.

Courts Versus Bargaining Tables: Case Selection and Sub-National Sample Coding

The 14 states incorporated into the statistical model were selected to assure broad variation on the dependent variable - post-electoral mobilizations (see Figure I map of Mexico). Two states with among the

[14] It is possible, given my explanation of whitewash courts, that the paper shuffling courts resulted from informal pacts and were merely instruments of manipulation by higher level authorities. But as I have acknowledged, whitewash courts may be much more pervasive than can be verified. Where no evidence of the application of external pressure on magistrates may be proven (or where such pressure does not lead to clipped court behavior), I could not classify them as such.

[15] Other "paper shuffling" courts exist, such as Tabasco 1994, where magistrates refused to grant me the data needed for inclusion among my cases. This type of institutional failure was much more common in gubernatorial races than in mayoral contests. It is understandably difficult to prove fraud in 20 percent of the ballot boxes across

highest rates of post-electoral conflicts were selected (Chiapas and Michoacán where these occurred in up to 40 percent of the local races during the time period studied), as were several states with among the lowest rates of post-electoral conflict (Campeche, Chihuahua, Nuevo León, and Tlaxcala, with post-electoral conflicts in less than five percent of the races). Variation was also sought to include geographical dispersion, a mix of rural and urban states, and a range of electoral competition between the PRI and opposition. As demonstrated in Figure 2, the series of electoral races considered in each state was that of the reform introducing institutions of post-electoral conflict resolution (the electoral court founding or "second stage") as well as the election prior to this institutional innovation, and the race immediately after this change (which includes 1998 data not yet compiled).

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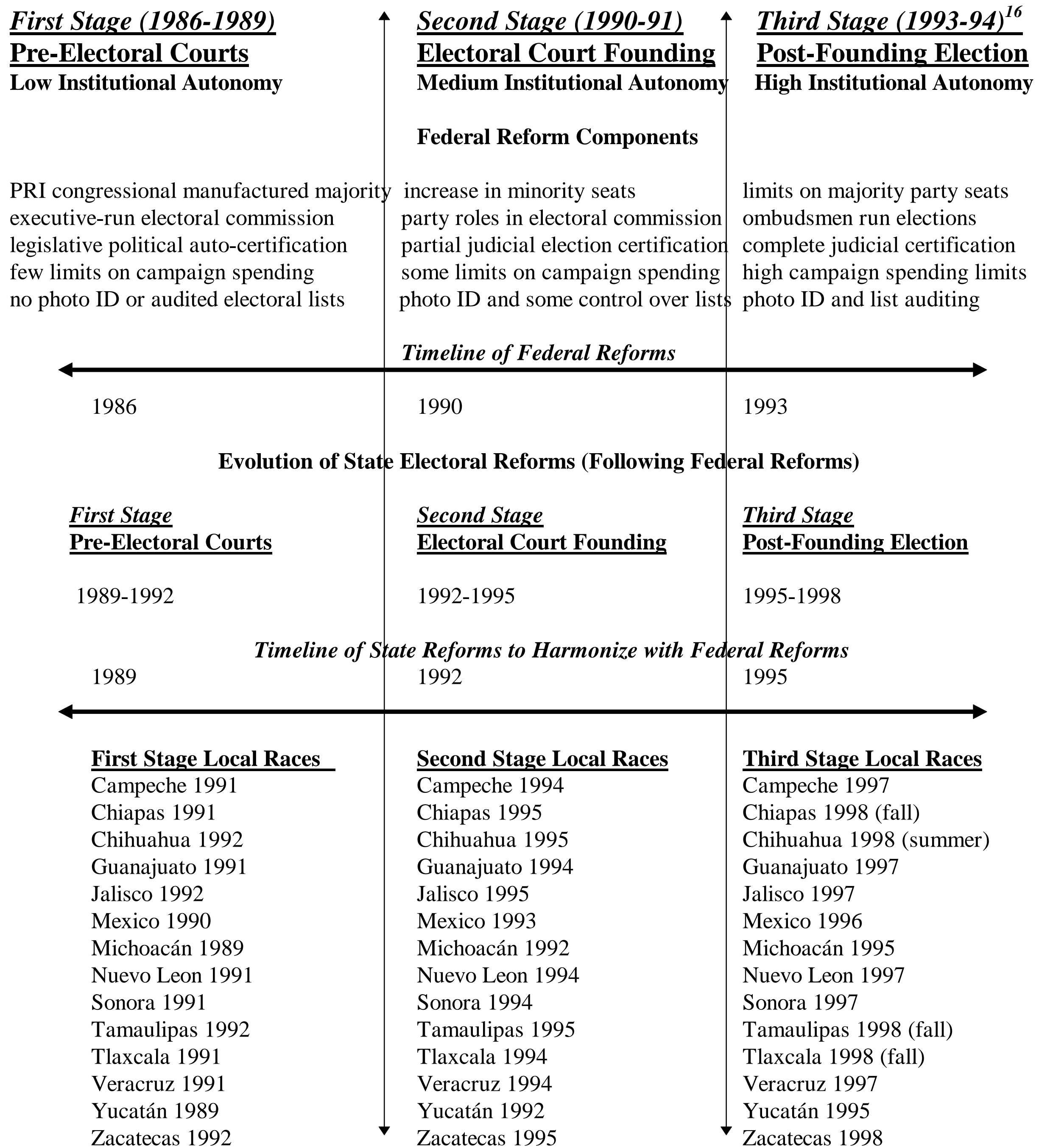
an entire state, so it is not surprising that no gubernatorial races have ever been annulled to date via the judicial route.

Figure 2 - Classification of State Electoral Codes According to Institutional Evolution



[16] The 1996 reforms were quite significant, but added new jurisdictions to existing institutions rather than profoundly altering the configuration of electoral institutions. Analogs to these further reformed federal institutions cannot yet be found at the state level, as state-level "harmonization" has just commenced and will no doubt only be completed within the next three years.

Figure 2 shows that this timeline in the states followed major federal electoral reforms, with an average lag of some two to three years.

In addition to measuring the presence and severity of post-electoral conflicts, the data gathered include local election outcomes, electoral court complaint filings, state electoral law codings, opposition party coverage of ballot boxes, and socio-economic indicators such as population and a standard of living index (tables 1 and 2).

Table 1 - Electoral Courts Versus Local Post-Electoral Conflicts

Part I - First Electoral Period

State and Year FIRST PERIOD	Municipal N	Electoral Court Type	PAN Complaints	PAN Post-Electoral Conflicts	PRD Complaint	PRD Post-Electoral Conflicts	Rule of Law Ratio (conflicts/cases)
Campeche 1991[17]	9	phantom	0	0	0	1	0
Chiapas 1991	112	phantom	unknown	2	unknown	4	unknown
Chihuahua 1992	67	none	no court	0	no court	1	no court
Guanajuato 1991	46	working	26	8	10	2	10 / 36 = 0.28
Jalisco 1992	124	paper shuffling	18	8	10	6	14 / 26 =0.54
Mexico 1990	122	working	13	4	24	13	17 / 37 = 0.46
Michoacán 1989	113	whitewash	unknown	0	unknown	44	unknown
Nuevo León 1991	51	working	2	0	5	2	2 / 7 = 0.29
Sonora 1991	70	whitewash	unknown	6	unknown	1	unknown
Tamaulipas 1992	43	none	no court	6	no court	4	no court
Tlaxcala 1991	52	none	no court	0	no court	0	no court
Veracruz 1991	207	phantom	unknown	3	unknown	6	unknown
Yucatán 1990	106	clipped	unknown	18	unknown	0	unknown
Zacatecas 1992	56	phantom	0	3	0	3	0
TOTAL	**1170**	**21% working**	**59**	**58**	**49**	**87**	**43/108 = 0.40**

Dividing all post-electoral conflicts by all known court cases yields **145/108 = 1.24**

Source: Author classification using electoral codes and author-constructed data set.

Note: One anomalous case resolution was considered sufficient to alter the court's type from "working" to one of the four categories of institutional failure. Post-electoral conflicts are underrepresented during this period by 5 to 10 percent because prior to PRD consolidation in the early 1990s, the "parastatal" leftist parties often mobilized, especially the PARM and PFCRN.

[17] There were no complaints turned in during the allotted time frame, but after the deadline was extended 14 complaints were filed, mostly by the PARM, which in 1991 was the second force in Campeche.

Table 2 - Electoral Courts Versus Local Post-Electoral Conflicts

Part II - Second Electoral Period

State and Year SECOND PERIOD	Municipal N	Electoral Court Type	PAN Complaints	PAN Post-Electoral Conflicts	PRD Complaints	PRD Post-Electoral Conflicts	Rule of Law Ratio (conflicts/cases)
Campeche 1994	9	working	3	0	3	0	0
Chiapas 1995	112	paper shuffling	5	4	36	44	48 / 41 = **1.17**
Chihuahua 1995	67	working	6	1	14	0	1 / 20 = 0.05
Guanajuato 1994	46	working	16	3	10	4	7 / 26 = 0.27
Jalisco 1995	124	working	6	0	3	0	0
Mexico 1993	122	working	7	6	21	16	22 / 28 = **0.79**
Michoacán 1992	113	whitewash	6	3	46	38	41 / 52 = **0.79**
Nuevo León 1994	51	whitewash	30	4	5	3	7 / 35 = 0.20
Sonora 1994	70	working	10	1	4	0	1 / 14 = 0.07
Tamaulipas 1995	43	working	9	1	3	0	1 / 12 = 0.08
Tlaxcala 1994	44	working	5	0	8	3	3 / 13 = 0.23
Veracruz 1994	207	working	12	0	66	4	4 / 78 = 0.05
Yucatán 1993	106	clipped	13	5	1	0	5 / 14 = 0.36
Zacatecas 1995	56	working	5	2	5	3	5 / 10 = **0.50**
TOTAL	**1170**	**71 % working**	**133**	**30**	**225**	**115**	**145/358 = 0.41**

Source: Author classification using electoral codes and author-constructed data set.

The sample of states is fairly representative, although it was limited by the cooperation of electoral court judges in providing information on cases they heard. I was summarily denied access to the electoral court docket in Chiapas, Tabasco, and Yucatán, which have been, perhaps not surprisingly, some of the most controversial "paper shuffling" and "clipped" electoral courts. These information barriers were overcome, except in Tabasco, allowing the inclusion of Chiapas and Yucatán in the 14-state sample. In Chiapas one of the political parties provided a photocopy of the docket (corroborated by publication two years later of the court's proceedings), and in Yucatán, unusually detailed newspaper accounts provided information about all the electoral court cases presented and their resolutions.[18] In political machine-run Tabasco, suspicious electoral officials refused to share even the most basic "public" information, and the political parties did not bother keeping their copies of electoral court proceedings, although national press accounts exist corroborating their claims that the electoral court rejected all complaints.[19] Hence, while I was able to gather detailed accounts of the gubernatorial race proceedings (presented in Eisenstadt 1998a), neither of the electoral court magistrates interviewed would release court case filings on the mayoral races.[20] I thus had to eliminate Tabasco from my quantitative sample.

[18] Unlike most of Mexico's regional capitals (excepting Monterrey), Mérida, Yucatán has a vibrant free press tradition anchored by the highly PANista *Diario de Yucatán* and the extremely PRIsta *¡Por Esto!*.

[19] Unfortunately, these accounts do not disaggregate data on the rejected filings to a level helpful for this study.

[20] Tribunal President Colomé (interview) said the court did not keep such records and that he knew nothing about his predecessors on the Tabasco electoral court. Magistrate Jiménez Pérez contradicted his colleague (at an

While Chiapas, Tabasco and Yucatán were the only author-visited states which denied access to data, repeated written requests for aggregate information on electoral court complaint filings and verdicts were ignored by authorities in the states of Coahuila, Jalisco, Queretaro, Quintana Roo, and Sonora, although data for Jalisco and Sonora was available in published sources.[21] A slight bias exists in my sample towards larger states with urban capitals (such as Guanajuato, Jalisco, Mexico State, Nuevo León and Veracruz), as electoral officials more readily disclosed information in cities with university research traditions (where electoral officials were frequently also law school professors), where previous interest had been expressed by foreign electoral observers, and where electoral competition was an accepted fact. I did offset this large state bias by including several small and predominantly rural states (Campeche, Chiapas, Tlaxcala, and Zacatecas). Descriptive data averages for my 14-state sample are largely representative of national averages for frequency and intensity of post-electoral conflicts, and in the demographic characteristics of municipalities with such conflicts (population, standard of living index, etc.). My sample deviates by no more than five percent from the national average in most categories.[22]

The sub-sample tested statistically in this work covers local elections from the middle period of my three-electoral cycle study (races concentrated between 1992 and 1994). All processes represent the first local election for which there existed autonomous electoral courts, defined as those possessing the ultimate authority over electoral certification of local races (Table 2).[23] These electoral courts were often not fully independent - as they often relied on the governor for nomination - but at least by the second period of study they could be considered courts, rather than just administrative agencies. As per Figure 2, courts existed in some states during the first period, but with a highly subordinate status. All of the first period courts possessed the authority to suggest resolutions to the Electoral College, but in no case could they impose resolutions with the weight of law.

Tables 1 and 2 classify the electoral courts in my sample according to my four typologies of electoral court failure. It is notable that in the first period, only 3 of the 14 states possessed working courts, and with the caveat that none of the 1989-1992 electoral courts possessed outright legal authority. By the second period, all the courts in my sample were at least partially autonomous of the legislature's

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interview in his private law office rather than at the chambers), stating that "of course we keep records" but that they were kept at the discretion of Colomé (interview).

[21] Data for these states was received by the library of the Federal Electoral Institute, where the extremely helpful staff officially solicited the information on my behalf. However, in each of these cases, state electoral authorities sent information only from the most recent local electoral process which was insufficient for inclusion in my sample.

[22] This is a very rough estimate based on a preliminary tally by the author of local post-electoral conflicts nationwide.

electoral college by definition (in some cases the electoral court could still be overruled, but only by a qualified majority of the legislature), as I selected my sample to ensure that the second period represented the initiation of more autonomous electoral courts. By the second period, 10 of the 14 courts "worked," based on their case records.

In addition to classifying electoral courts into the five ideal types based on their adjudication records, I also used a more subtle but equally revealing indicator of electoral court success or failure (again in political rather than juridical terms), the "rule of law ratio" in tables 1 and 2. This ratio, the total number of post-electoral conflicts divided by the number of opposition party court case filings, offers a rough but vivid indicator of whether the law was followed. The ratio is constant at about 0.4 across the first two periods, but only when the sites of known court filings are considered in the first period. When all states' post electoral conflicts in the first period are divided by the number of known case filings (in four states only), the rule of law ratio climbs to an astronomical 1.3. That is, for every 13 post-electoral conflicts there were only 10 court cases filed. Wherever the true first period rule of law ratio falls between the limits of 0.4 and 1.3 (probably around 0.7), it makes a strong case for the primacy of the dependent variable, post-electoral conflicts.

Descriptive Analysis of the Post-Electoral Conflict Dependent Variable

Even descriptive analysis for the fourteen states in my sample demonstrates great differences in the demographic and socioeconomic characteristics of the municipalities contested through PAN mobilizations as opposed to those contested through PRD mobilizations (Table 3).

Table 3 - Descriptives of Post-Electoral Conflicts in 14-State Sample

Sorted by PAN and PRD post-electoral conflict

CATEGORY AND PERIOD	N	Conflict Intensity	Average Party Ratio	Court Filing Rate	State Party Strength	Average Population	Standard of Living	Electoral Law Rating
1st Period PRD Conflict	86	2.26	0.803	N/A	0.497	68,626	medium	0.188
2nd Period PRD Conflict	115	1.96	0.682	0.591	0.817	55,434	medium	0.650
1st Period PAN Conflict	58	1.22	0.710	N/A	0.417	121,129	high	0.190
2nd Period PAN Conflict	35	1.26	0.774	0.657	0.701	117,520	high	0.600
1st No Conflict/PRD 2nd	323	0.00	0.310	N/A	0.279	35,515	medium	0.252
2nd No Conflict/PRD 2nd	274	0.00	0.462	0.330	0.817	34,309	medium	0.632
1st No Conflict/PAN 2nd	349	0.00	0.359	N/A	0.396	44,539	medium	0.264
2nd No Conflict/PAN 2nd	473	0.00	0.507	0.201	0.813	35,434	medium	0.664

Sorted by PAN, PRD, and PRI wins

[23] In many cases gubernatorial elections were still decided by an Electoral College, to which the electoral court could make "recommendations" (as in the case of the 1988 federal elections).

CATEGORY AND PERIOD	N	Conflict Intensity	Average Party Ratio	Court Filing Rate	State Party Strength	Average Population	Standard of Living	Electoral Law Rating
1st Period PRD win	50	0.38	1.971	N/A	0.670	33,512	medium	0.124
2nd Period PRD win	95	0.22	1.286	0.105	0.861	24,457	med/low	0.632
1st Period PAN win	66	0.32	1.171	N/A	0.500	94,759	high	0.295
2nd Period PAN win	137	0.03	1.348	0.044	0.821	93,742	high	0.731
1st PRI win/PRD 2nd	379	0.18	0.381	N/A	0.316	32,971	medium	0.240
2nd PRI win/PRD 2nd	370	0.50	0.513	0.397	0.819	38,110	medium	0.634
1st PRI win/PAN 2nd	412	0.24	0.393	N/A	0.385	57,714	medium	0.145
2nd PRI win/PAN 2nd	502	0.06	0.526	0.233	0.807	40,661	medium	0.663

Source: Author calculations using using his 14-state post-electoral conflict data base. Population is a growth-adjusted estimate based on 1990 and 1995 census figures. The standard of living estimate, the only variable dropped from the model, is the categorical representation of a numerical classification system (INEGI 1993, 29-33). It is an index of nine variables: illiteracy rate, rate if primary school completion, percentage of homes without drainage, percentage of homes without electricity, percentage of homes without running water, number of dwellers per room, percentage of homes with dirt floors, percentage of residents of towns of fewer than 5,000, and percentage of working population who earn more than two minimum wages.

The variables described by Table 3-b, opposition party victories, are for the most part well known. The PAN tends to win in larger and more affluent municipalities than either the PRI or PRD, while the PRD-won municipalities are smaller and poorer than those governed by either the PRI or PAN. The number of opposition party post-electoral conflicts and electoral court filings are negligible in both PRD- and PAN-won municipalities when compared to the propensity for such conflicts in PRI-won states.[24] The state party organization is stronger where the opposition parties win than where they lose. The only novel finding of Table 3-b is that state electoral laws are weaker where the PRD wins than where it loses to the PRI, while electoral laws are stronger in cases of PAN victory (see Appendix B). This finding is attributable to the PRD's strength in states known for their weak rule of law (those with the highest rule of law ratios in tables 1 and 2 such as Chiapas, Michaocán, and México), compared with the PAN's strength in strong rule of law states (such as Chihuahua, Guanajuato, and Nuevo León). This pattern is illuminated further through comparison with Table 3-a.

The demographic patterns in Table 3-b hold in Table 3-a, and are even more pronounced. As per intuition, the opposition parties' state organizations are weaker on average in the post-electoral conflict cases than in their sample of electoral victories (see Appendix C). Also as expected, the average PAN or PRD mobilization is also characterized by a lower PRI margin of victory than the overall average electoral loss. The novel finding of Table 3-a is that court cases are filed nearly twice as frequently by both

opposition parties in conflictive cases as in elections without conflicts. *In other words, electoral court case filings at worst help provoke post-electoral conflicts, and at best fail to deter them.* It is worth noting two other patterns in these descriptive tables. First, while the rule of law-adhering PAN logically stages more conflicts in municipalities where electoral laws are weaker rather than where these laws are stronger, this pattern does not hold for the PRD. In both periods, the rule of law-ignoring PRD actually mobilizes more frequently under stronger electoral laws. This crucial distinction between the parties is also addressed in my statistical model (Chapter 4 of my dissertation).

The second remaining notable pattern in Table 3-a is the large variance between the average overall PRD conflict intensity of well over 2, as compared with the average overall PAN conflict intensity of just over 1. This difference is great given my coding of post-electoral conflicts in descending order of severity, in which a 4 represents fatal conflicts, a 3 signifies a conflict involving building takeovers of more than 90 days and/or serious injuries, a 2 means the conflict involved a short-term building takeover or other short-term obstruction of governability, and a 1 represents single iteration marches, public meetings, and other forms of mobilization not obstructive of governability (see Appendix C for coding methodology). To further draw out the contrasts between PRD and PAN patterns of post-electoral mobilization, the total number of conflicts staged by each party (from tables 1 and 2) are disaggregated in Table 4.

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[24] That there are any conflicts or court filings at all by the winning opposition party is due to the fact that in this sample, wins granted after post-electoral conflicts are still counted as wins.

Table 4 - Severity of Post-Electoral Conflicts by Opposition Parties in 14-State Sample

First Period PRD	Second Period PRD	**Description of Post-Electoral Conflict Severity**	First Period PAN	Second Period PAN
11	**7**	**Total Number of Deadly Conflicts (Level 4)**	**2**	**0**
10	4	Deadly Conflicts in Lost Elections	2	0
7	1	Deadly Elections With Bargaining	1	0
0	0	Bargaining Elevates Opposition Loser to Power Sharing	1	0
32	**21**	**Extended Ingovernability and/or Injuries (Level 3)**	**0**	**2**
31	21	Extended Conflicts in Lost Elections	0	2
14	8	Extended Conflicts in Lost Elections But With Bargaining	0	0
1	0	Bargaining Elevates Opposition Loser to Power Sharing	0	0
11	**48**	**Conflicts Yielding Short Building Takeovers (Level 2)**	**7**	**5**
10	47	Building Takeovers in Lost Elections	6	5
4	10	Building Takeovers With Bargaining	2	0
0	0	Bargaining Elevates Opposition Loser to Power Sharing	1	0
32	**39**	**Contestation Through Mobilization Only (Level 1)**	**50**	**28**
21	31	Mobilization in Lost Elections	41	23
8	12	Mobilization But With Bargaining	3	10
7 = confirm	1	Bargaining Elevates Opposition Loser to Power Sharing	0	4
86	**115**	**Total Number of Post-Electoral Conflicts**	**58**	**35**
60 percent	**77 percent**	**Share of Overall PAN/PRD Post-Electoral Conflicts**	**40 percent**	**23 percent**
50 percent	24 percent	Overall Severe Conflicts (Deadly or Extended)	3 percent	6 percent
49 percent	32 percent	Severe Conflicts With Bargaining Agreements	50 percent	0 percent
50 percent	76 percent	Overall Lesser Conflicts (Short Takeover or Mobilization)	97 percent	94 percent
12 percent	19 percent	Lesser Conflicts With Bargaining Agreements	9 percent	29 percent
31 percent	3 percent	Overall Significant Bargaining (Yields Power Sharing)	33 percent	40 percent

Source: Author classification of post-electoral conflicts from 14-state sample discussed in Appendix C.

The PRD is characterized by much more severe conflicts. Combining periods one and two, 35 percent of that party's 201 post-electoral mobilizations were coded as level 3 or 4 mobilizations, compared with 4 percent of the PAN's 93 conflicts over the two periods. The PRI-state acceded to post-electoral bargaining tables to distend 32 percent of the PRD's post-electoral mobilizations, and only 17 percent of the PAN's mobilizations. However, the regime's concessions to the PAN involved either ignoring the official PRI victory and naming a PAN mayor, or at least a plural council involving full PAN partnership, in 38 percent of the 16 cases of bargaining (including two of Mexico's ten largest cities). Such significant concessions were only granted to the PRD in 14 percent of the 64 bargaining tables, and in smaller and less significant municipalities (as per the Table 3-a). Clearly, there existed a double standard in the PRI-state's treatment of the opposition parties; an unwillingness or inability of the PRD to negotiate with the PRI-state, and/or a PANista zeal to bargain for generous consolation prizes which the regime willingly granted.

This pattern is also corroborated by tables 1 and 2, reinforcing the need for qualitative assessment of state electoral court performance. In both periods, the whitewash and clipped court forms of institutional failure predominate in states where the PAN is the second electoral force, and paper shuffling and phantom courts occur in states where the PRD is the PRI-state's main competitor. With few exceptions, the interest group-permeable clipped and whitewash courts are conducive to PAN patronage-seeking and *concertacesión*, while the intractable formalism of the paper shuffling courts and utter noncompliance by complainant parties with the phantom courts are consistent with tense PRI-state/PRD post-electoral relations.

Conclusions: Toward a Judicial Behavior Baseline and a Protracted Transition Typology

While only a preliminary and descriptive approach to issues more rigorously addressed elsewhere, this work has sought to demonstrate, in one of the most important but highly specific arenas of transition, the post-electoral bargaining space, that the divergent strategies of the PAN and PRD were instrumental in maintaining pressures for liberalization, while simultaneously collecting sufficient electoral spoils to keep alive their internal aspirations of sharing power. While they occupied different positions along the "transition-seeking to patronage-seeking" continuum, these parties' positions were constantly shifting in response to instrinsic and extrinsic factors. Coding opposition parties' post-electoral mobilizations versus use of legal adjudication institutions, facilitated the observation of generalized patterns about the role of oppositions in political liberalization in the Mexican case.

My most significant finding is that contrary to conventional theories, opposition party compliance with "rules of the game" is far from automatic, even if those rules appear to be equitable. Formal rules are at best only part of the story. Informal practices, typified here as back room post-electoral bargaining tables, often illuminate more of actors' behavior than merely reviewing court dockets visible in broad daylight. The dominance of extra-legal bargaining over legal proceedings was predictably evident in my 14-state sample during "period one" (before the introduction of autonomous electoral courts). However, not so predictably, the dominance of the extra-legal over the legal also prevailed in "period two," when the opposition parties exploited both paths of dispute resolution, maximizing their side payment settlements rather than any norm of electoral justice. Only in "period three" (full analysis forthcoming) was the predictable pattern of formal institution dominance over informal bargaining firmly established. These findings have implications for future research both in micro-institutional studies of judicial institutions generally and in macro-level research on democratic transitions.

What of the lag between the creation of electoral courts and compliance with them, the enigmatic "second period" of my quantitative study? This specification of the period required for the actors to decide to comply is a necessary consideration, one which I assert may be factored in to most studies on the transition to a rule of law (separate but often collinear with democratic transitions). I contend that past studies of judicial institution-building and democratization have failed to formally measure actor compliance for two reasons: they assumed actor compliance because in the pacted transitions they studied, such compliance was largely granted by all actors in the elite settlement pact, and there existed no subtle means of measuring partial compliance anyway. Such compliance was "all or nothing," just like the pacted transition itself.

In general, judicial institutions in established rule of law polities are difficult to model as political actors. As Gillman appropriately points out (1997, 11), the difference between rational judges adhering to strong individual preferences, and those adhering to norms of principled behavior in a set social order is difficult to ascertain. Unlike re-election maximizing legislators or budget-maximizing bureaucrats, judges at least at the highest levels, tend to be appointed for extended terms and into positions where the resources or discretion available for their maximization defy parsimonious models of rational politician incentives. However, in still-consolidating judiciaries, where judges' gowns may not yet be long enough to cover executive branch incursions into judicial decision-making, magistrate incentives may still be laid bare, as they were in Mexico's electoral courts throughout this work. Studying pre-consolidation judicial institutions alone is insufficient for getting to the bottom of magistrate motivations, although it is an effective start towards understanding authoritarian courts and those in new democracies. However, a means of empirically measuring judiciary institutional success must still be derived. But judicial "success" is unobservable in broad political (as opposed to strictly legal) terms except as the affected parties' compliance with decisions. The answer suggested in this work has been to measure judicial success as the null hypothesis of judicial failure. Hence, post-electoral conflicts, an observable occurrence of judicial failure, became the proxy for establishing success. This sleight of hand measurement technique, defining "working" judicial institutions as those that do not fail, may only be feasible under very specific conditions, where all or most incidents of non-compliance are verifiably manifested. But when such conditions exist, such as in "period two" protracted transitions when actor compliance is still not given, this method can quite powerfully identify judicial institutions' level of autonomy.

Appendix A - Measurement of State Electoral Institution Autonomy From Executive Branch

State Electoral Codes and Their Rankings on Scale of Autonomy from Executive Branch
Scale ranges from 0 (unspecified or no autonomy) to 3 (full autonomy) in each category

State and Year	Election Council Make-up	Election Council Selection	Limit on Party Legislators	Electoral Observer Role	Electoral List Audited?	Campaign Spending Regulation	Poll Worker Selection	Electoral Court Autonomy	Executive Magistrate Selection Role	Acceptable Evidence Range	**Overall Average Autonomy (0 to 1)**
Campeche 1991	1	0	2	0	2	0	1	0	0	0	**.20**
Chaiapas 1991	1	0	0	0	1	0	1	1	3	0	**.23**
Chihuahua 1992	1	0	1	0	1	1	2	0	0	0	**.20**
Guanajuato 1991	1	0	3	0	2	1	2	2	2	0	**.50**
Jalisco 1992	1	0	2	0	2	1	1	1	3	0	**.37**
Mexico 1990	1	0	0	0	1	0	1	1	2	0	**.20**
Michoacán 1989	1	0	0	0	1	0	0	0	1	0	**.10**
Nuevo Leon 1991	1	0	3	0	1	2	3	2	3	1	**.53**
Sonora 1991	1	0	0	0	0	1	0	1	3	0	**.20**
Tamaulipas 1992	1	0	2	0	1	1	1	0	0	0	**.20**
Tlaxcala 1991	1	1	0	0	0	0	0	0	0	0	**.07**
Veracruz 1991	1	0	2	0	1	1	0	1	3	0	**.30**
Yucatán 1990	1	0	0	0	1	0	0	0	0	0	**.07**
Zacatecas 1992	1	1	2	0	2	0	1	1	3	0	**.37**
1st PERIOD AVG	**1.00**	**0.14**	**1.21**	**0.00**	**1.14**	**0.57**	**0.93**	**0.30**	**1.64**	**0.07**	**.25**
Campeche 1994	1	0	2	0	2	2	2	1	2	2	**.47**
Chiapas 1995	3	3	3	0	2	3	3	3	3	1	**.90**
Chihuahua 1995	1	2	2	3	2	3	1	2	3	3	**.73**
Guanajuato 1994	1	2	3	1	3	1	2	3	2	2	**.67**
Jalisco 1995	3	3	3	3	2	3	2	2	2	2	**.83**
Mexico 1993	1	0	1	0	2	3	2	2	2	2	**.50**
Michoacán 1992	1	1	0	0	0	1	3	2	3	1	**.40**
Nuevo Leon 1994	3	1	3	0	2	3	3	2	2	2	**.70**
Sonora 1994	0	2	2	3	2	2	2	2	2	1	**.60**
Tamaulipas 1995	3	3	3	3	2	3	2	2	3	2	**.87**
Tlaxcala 1994	3	3	0	3	1	3	2	1	3	2	**.70**
Veracruz 1994	3	3	2	2	1	2	2	2	3	2	**.67**
Yucatán 1993	1	2	2	0	1	2	2	1	3	1	**.53**
Zacatecas 1995	2	2	3	3	2	2	2	2	2	2	**.73**
2nd PERIOD AVG	**2.07**	**1.93**	**2.07**	**1.50**	**1.71**	**2.36**	**2.14**	**1.79**	**2.50**	**1.79**	**.66**

Source: State electoral codes in effect during given election years as coded by author (precise citations in bibliography).

Coding System for Appendix A

I. Electoral Council Make-up?

0 = no ombudsmen (all executive-named)
1 = some executive appointments / some legislator- or party-named
2 = mostly legislatively selected ombudsmen (possible exception of executive-named president)
3 = all ombudsmen selected by judicial branch, parties or civil society, as well as legislature

II. Election Council Selection

0 = minister of interior oversees elections directly
1 = governor names head directly
2 = executive nominates, but subject to legislative confirmation
3 = executive has no role (judicial or legislative nomination and legislative confirmation)

III. Limits on Party Legislators

0 = no specification
1 = "governability clause" inflating seats of highest vote-getter, fabricating majority
2 = no governability clause, but no limit on a party's representation
3 = no governability clause, and limits on maximum number of seats accorded to one party

IV. Electoral Observer Role

0 = no specified role for observers
1 = observers mentioned but rights not specified
2 = observers mentioned, rights specified, but no official role
3 = observers mentioned, rights specified, and role accorded to report irregularities

V. Electoral List Audited?

0 = no mention of electoral list
1 = use of federal electoral list without audits
2 = use of federal electoral list with party access for audits
3 = use of federal electoral list with external (corporate) audit

VI. Campaign Spending Regulation

0 = no mention of campaign expenditures, or only that parties' expenses tax deductible
1 = provision of public funds on a partially proportional basis, but favoring larger parties
2 = provision of public funds on a fully proportional basis
3 = provision of at least partially proportional public funds; limits on privately raised funds

VII. Poll Worker Selection

0 = unspecified
1 = local electoral commission names poll workers directly
2 = lottery of registered voters, plus training, yields poll workers
3 = lottery of registered voters, training, and partisan vetting of list yields poll workers

VIII. Electoral Court Autonomy

0 = no electoral court exists; election certification by electoral institute or legislature
1= "administrative" court exists but only advises certification by electoral institute or legislature
2 = electoral court has judicial authority, but its outcomes may be altered
3 = electoral court is the final authority on electoral outcomes

IX. Executive Role in Magistrate Selection

0 = same officials preside over dispute settlement as over election
1 = special judges appointed directly by executive
2 = special judges appointed indirectly by executive (subject to approval by legislature)
3 = judges appointed by branches or parties with no direct ties to executive

X. Acceptable Evidence Range

0 = no specification of rules governing evidence presentation
1 = rules allow presentation only of "official" documents
2 = rules allow presentation of "official" documents and "private" and technical proof at magistrate discretion
3 = rules allow public, private, technological proof and private citizen testimonials

Appendix B - Polling Stations Covered by Party Representatives by Party, State and Year

State	1991Mid-Term Races			1994 Presidential Races			1997 Mid-Term Races			Three-Election Average by State		
	PRI	PAN	PRD	PRI	PAN	PRD	PRI	PAN	PRD	PRI	PAN	PRD
Campeche	83	1	14	100	58	85	100	71	89	**100**	**73**	**69**
Chiapas	9	22	12*	97	42	78	100	96	93	**69**	**53**	**61**
Chihuahua	90	54	9	100	100	52	100	100	98	**97**	**65**	**53**
Guanajuato	92	70	42*	100	100	68	99	99	85	**97**	**90**	**65**
Jalisco	94	35	14	100	96	58	99	98	87	**98**	**76**	**53**
Mexico State	93	20	28*	100	68	90	97	92	94	**97**	**60**	**71**
Michoacán	98	23	84	100	68	99	100	90	99	**99**	**60**	**94**
Nuevo Leon	85	38	11	100	96	66	100	99	86	**95**	**78**	**54**
Sonora	100	30	10	100	87	68	98	96	95	**99**	**71**	**58**
Tamaulipas	97	21	18*	100	80	83	100	100	95	**99**	**67**	**65**
Tlaxcala	98	6	29	100	60	86	100	95	99	**99**	**54**	**71**
Veracruz	89	11	41	100	55	94	100	98	93	**96**	**55**	**76**
Yucatán	87	60	1	100	99	37	100	100	92	**96**	**86**	**43**
Zacatecas	86	11	20	97	71	86	99	92	90	**94**	**58**	**65**
AVERAGE	86	29	17	100	77	75	99	95	93	**95**	**68**	**64**

Note: * denotes a coalition between the PRD and the PPS.
Sources: Author calculations based on data given by: Federal Electoral Institute (1993) 87, 285; Federal Electoral Institute (1995) 307-309; Executive Directorate of Electoral Organization of the Federal Electoral Institute (1997). The given 1991 data for the number of ballot boxes had to be multiplied by three to establsih a proper proportion of poll workers to ballot boxes (three representatives from each party were allowed at a given poll). For 1994 and 1997, the adjustment was already made. No conclusive data was available for the 1988 federal elections, so the 1991 data was extrapolated backwards using the growth formula EXP [LN(t+1/t)/10] - 1.

Appendix C:
Comments on Methodology and Coding Local Post-Electoral Conflicts

Prior to the 1990s, the lack of credible data rendered the study of elections in Mexico more of an art than a science. Three reasons were lucidly stated by Bruhn (1997, 333):

> First, since one party won every election, many scholars questioned the usefulness of the effort to construct "models" of the vote. Second, most analysts believed that pervasive fraud marked Mexican elections, inflating vote results even when the outcome would have been the same with our without manipulation . . . Third, the limitations of demographic date made the validity of independent variables questionable. . .

Each of these reasons made information shortcomings insurmountable for the period prior to the mid-1980s, and created challenges for researching later elections at the federal level, and especially at the municipal level.

Mere imprecision of information occasionally gave way to obfuscation of the facts by officials, as I sought a disaggregated presentation of the 1988 federal electoral results, including opposition poll coverage data, to improve the accuracy of the calculations presented as Appendix C. The task seemed quite simple, as Baez Rodriguez (1995) asserted that the "close to 55 thousand acts from these elections are available, through a computerized retrieval system, in the National Archive (21)." However, inquiries to over a dozen high level officials involved in Salinas' electoral certification, the Chamber of Deputies' Electoral College of 1988, and the Baez Rodriguez book project, rendered only a written admission by the director of the Central Historical Archive, that " we do not have said items in this institution, and thus cannot provide them for your consultation (personal communication from Hector Madrid Mulia)." Even if copies of these acts had been located, it is widely believed that they would have been altered from the originals. They remain extremely controversial, even a full decade after Carlos Salinas took office under the post-electoral cloud of 1988. The experience taught me that even at the federal level, there would be no gleaning of data from Mexico's pre-transition period; that I would have to make due with the data point variation present since the commencement of electoral opening in the late 1980s.

If the politization of electoral data hindered scholars of federal elections, they were even more of a hindrance in studying local races, for which researchers could never get full information (consider for example the research compromises Arreola Ayala 1985 and Gómez 1991 were forced to make, discussed in Chapter 3 of my dissertation). And if it was difficult just to get electoral results, it was even more of a challenge to gather information about post-electoral conflicts and their legal and extra-legal resolutions. Reconstructing *concertacesión* and *segunda vuelta* negotiations was particularly delicate. Officials often refused to talk about such negotiations, and even directly contradicted other written accounts and interviews. In three such cases, Chiapas, Tabasco, and Yucatán, I sought to corroborate evidence from as many sources as possible, and only made claims as strong as evidence would allow. In Chiapas, the electoral court refused to provide disaggregated data, but the state PRD had photocopies of the electoral court's internal records which they provided and I was able to corroborate upon receiving unofficial photocopies of the vast majority of the complaints (and checking this information against a publication printed a year later which did contain the needed data). In Yucatán the opposition parties did not possess the information, but the independent press covered the electoral courts in sufficient detail for me to glean the data from clipping newspapers and photocopying PAN-provided complaint copies. In Tabasco, the electoral authorities were uncooperative, the opposition parties did not have the information stored, and the local press was poor. Hence, I could not get the information and had to drop the state from the sample. The significant point of this excursus is that, recognizing the imperative of including a representative number of these heavily conflictive states in my 14-state statistical sample, I did obtain sufficiently credible data to include even some of Mexico's most electoral justice-resistant states in my sample.

By standards in comparative politics (and especially by the standards of newly democratizing cases with authoritarian pasts), I do believe the independent variables in Chapter 4 are accurately measured, as there has been a proliferation of socio-economic data at the local level in Mexico over the last several years. However, they are certainly not as precise as data sets American politics specialists take for granted. I did have to construct my own data set of post-electoral conflicts, based on coding national and local news media accounts, which assimilated incomplete political party and government records, but which complemented them extensively.

While the severity coding of post-electoral conflicts is explained in the paper, I explain here which sources I included in my survey. I relied extensively on two national newspapers were consistently at the vanguard of press liberalization at least since the mid-1980s, the politically liberal *La Jornada*, and the conservative *El Norte/Reforma.* Wherever "leads" directed me to particular articles or dates, I followed them. But I also checked CD-ROMs of these two newspapers from the day before each local election process until two weeks afterwards, and then again during the first week of January of the post-election year (when the new administrations took office, barring complications). In addition, local newspaper archives were consulted wherever such archives were open to the public (see bibliography), or if the newpaper was among those collected by the National Autonomous University's National Library in Mexico City. Any press mention of a post-electoral demonstration involving at least dozens (and usually hundreds) of citizens qualified as a mobilization. While some might consider this an excessively "loose" codification, it is further justified by "irrefutable" facts in some 90 percent of the cases, as the demonstration escalated to a "takeover" of the town administrative offices by the party declared to have lost the election.

Multiple opposition party mobilizations in one municipality were rare, but when they occurred, I in every case entered only the mobilization by the non-PRI contender (PAN or PRD), as the STATA statistical package I used in my dissertation Chapter 4 calculations accepts only one value per variable, and there were not enough PRI or third opposition party mobilizations to allow for the model to retain statistical significance when they were included as dependent variables. Among my independent variables, court cases were often filed by more than one party. In such cases, due to STATA limitations, I counted the cases filed by the first runner-up (classifying them as PRI, PAN, PRD, and "other"), as this was the actor whose behavior I sought to measure. I also constructed an "intensity of electoral court filings" variable to try to capture the degree of opposition by opposition parties to electoral outcomes, as a sort of proxy for level of electoral fraud (i.e. if the PAN filed three complaints and the PRD filed two complaints, the election would have considered more dubious than if only the PAN had filed one complaint, etc.). But predictably, I had to cut this variable from the model as it was collinear with the other court case filing variable.

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