Esta obra forma parte del acervo de la Biblioteca Jurídica Virtual del Instituto de Investigaciones Jurídicas de la UNAM
www.juridicas.unam.mx https://biblio.juridicas.unam.mx/bjv Libro completo en: https://tinyurl.com/tpv7rsr

TOWARDS AN ONTOLOGY OF ELECTION LAW

Prof. John M. Ackerman

Institute for Legal Research

National Autonomous University of Mexico

I. INTRODUCTION:

Election law is still in its infancy. It has yet to come into its own as a separate area of law with its own principles, theories of interpretation and autonomous scholarly debates. In most of the "developed" world, electoral disputes are resolved by ordinary tribunals which tend to mechanically apply principles from administrative, civil or criminal law to the electoral arena. In other areas of the world, such as Latin America, specialized institutions have grown up which have carved out a space for a new and flourishing discussion of the "autonomy" of election law. Mexico is particularly important, given the central role that both the autonomous Federal Electoral Institute and the Federal Electoral Tribunal (TEPJF, in Spanish) have played in democratization and political development. Nevertheless, even here the development of election law has been overly "parasitic" on central tenants of other areas of law.

The present paper offers a defense of the full autonomy of election law as an independent branch of scholarship and legal interpretation. Specifically, it takes a Heideggerean "ontological" approach by first characterizing the social sphere of intervention of election law (its "Being") and defining with careful detail the nature and the purposes of the actors which participate in this sphere. The essay proposes a radical transformation of our understanding of basic constitutional principles which are valid in other branches of law (such as the presumption of innocence or the presumption of the legality of administrative acts) when they are applied to the electoral realm. In the paper below I offer the overarching theoretical framework for a larger research project which includes a close empirical/interpretative analysis of a data base of recent decisions of the TEPJF specifically with regard to election annulments and campaign oversight.

DR ©. Tribunal Electoral del Poder Judicial de la Federación-http://portal.te.gob.mx/

Esta obra forma parte del acervo de la Biblioteca Jurídica Virtual del Instituto de Investigaciones Jurídicas de la UNAM
www.juridicas.unam.mx https://biblio.juridicas.unam.mx/bjv Libro completo en: https://tinyurl.com/tpv7rsr

II. STATE OF THE ART

Election law is typically marginalized in law school curriculums throughout the world[1]. Academic scholars and legal practitioners normally see it as simply another sphere of application for the basic principles of "public law". They refuse to conceptualize it as its own "branch" or "subdiscipline" of law of equivalent importance, for instance, to administrative law, criminal law or civil law.

As a result, the existing definitions and understandings of "election law" or the "law of democracy" are typically superficial and descriptive. In their casebook on *The Law of Democracy* Samuel Issacharoff, Pamela S. Karlan & Richard H. Pildes do not even provide a concise definition of the field. Instead, they provide a laundry list of different topics which are related to this area of research, including "the structure of democratic institutions", "the theoretical principles that underlie the choice of different democratic forms", "the practical consequences that follow from different institutional arrangements" and "the way in which the law shapes the kind of democratic politics we experience"[2].

All of these topics are important, but the lack of a precise definition of this branch of law as such leaves the "law of democracy" in the purely descriptive realm defined only by the nature of its object of study: the laws which govern elections and regulate the institutions that organize them. The "definition" offered by Issacharoff, et. al. does not offer a specific theoretical approach or unique principles of legal interpretation for the area of election law. This approach does not conceive of election law as a relatively "autonomous" field of research, but only as an area for the application of principles and theories developed elsewhere.

Dieter Nohlen´s classic formulation does not go much further than the standard U.S. casebook definition. Nohlen has defined "election law" simply as "the group of legal

[1] "Given the longstanding centrality of democratic politics to all aspects of public law…it is something of a mystery that law schools have not typically taught courses in the law of democracy. Conceptions of democratic politics provide the backdrop for many courses, but that is where they remain." *The Law of Democracy: Legal Structures of the Political Process, Revised Second Edition*, Samuel Issacharoff, Pamela S. Karlan & Richard H. Pildes, Foundation Press, New York, 2002, p. ix. This statement also certainly stands for the law school curriculums in Mexico and throughout Latin America.

[2] Ibid.

TEPJF

DR ©. Tribunal Electoral del Poder Judicial de la Federación-http://portal.te.gob.mx/

Esta obra forma parte del acervo de la Biblioteca Jurídica Virtual del Instituto de Investigaciones Jurídicas de la UNAM
www.juridicas.unam.mx https://biblio.juridicas.unam.mx/bjv Libro completo en: https://tinyurl.com/tpv7rsr

norms which regulate the election of representative organs"[3]. Once again, election law is defined exclusively by its object of study and fails to achieve the "status" of a full subdiscipline or branch of law in itself.

Ibero-american legal scholarship broadens the field a bit but generally follows in the same line of thought. Manuel Aragon takes the important step of going beyond the issue of the direct election of representatives to include popular sovereignty and suffrage broadly defined. He defines election law as: "The group of norms which regulate the possession and exercise of the right to suffrage, both active and passive, the organization of elections, the electoral system, the institutions and organs which are in charge of the electoral process, the control of the regularity of this process, and the veracity of its results"[4]. This definition is not restricted to the topic of "representation" like Nohlen´s, since it branches out to include any exercise of "suffrage", as well as the institutions responsible for administrating and regulating the electoral process. Neverthless, Aragón still limits himself to describing the object of study of election law. He does not enter into a discussion of the principles or the scientific nature of electoral law as an academic subdiscipline of its own.

Mexican electoral magistrate Flavio Galván has offered a more robust definition which explicitly looks to go beyond superficial descriptive approaches to incorporate what he calls "reflexive", "theoretical" and "scientific" elements. Galván defines electoral law as "the branch of public law for which electoral matters ["*materia electoral*"] are its immediate, direct and exclusive object"[5]. By explicitly mentioning "public law" and speaking generally of the electoral "*materia*" or "matters", and not only of the specific laws which regulate elections and voting, this definition opens up the debate and discussion of broader issues related to the regulation of democracy as such. Nevertheless,

---

[3] "El conjunto de normas jurídicas que regulan la elección de órganos representativos", Nohlen, Dieter "Derecho Electoral", Centro de Asesoria y Capacitación Electoral (CAPEL) *Diccionario Electoral*, Instituto Interamericano de Derechos Humanos, México, D.F. 2003, pp. 381-382.

[4] "Conjunto de normas reguladoras de la titularidad y ejercicio del derecho de sufragio, activo y pasivo, de la organización de la elección, del sistema electoral, de las instituciones y organismos que tienen a su cargo el desarrollo del proceso electoral y del control de la regularidad de ese proceso y la veracidad de sus resultados" Manuel Aragón, "Derecho electoral: sufragio activo y pasivo", en Dieter Nohlen, Daniel Zovatto, Jesús Orozco y José Thompson (comps.) *Tratado de derecho electoral comparado de América Latina*, 2da edición, , Fondo de Cultura Económica, México, D.F., 2007, pp. 178-197.

[5] Galván, Flavio "Derecho electoral: generalidades y principios generales", en Fernando Serrando Migallón (coord.) *Derecho Electoral*, Miguel Ángel Porrúa-Facultad de Derecho, UNAM, México, D.F., 2006.

DR ©. Tribunal Electoral del Poder Judicial de la Federación-http://portal.te.gob.mx/

Esta obra forma parte del acervo de la Biblioteca Jurídica Virtual del Instituto de Investigaciones Jurídicas de la UNAM
www.juridicas.unam.mx https://biblio.juridicas.unam.mx/bjv Libro completo en: https://tinyurl.com/tpv7rsr

using Heideggerean terms, even this definition still remains at the level of "ontic" or "factical" observation since it still only formally delimits the object of study.

In order to understand more profoundly the specificity and autonomy of election law, we need to go beyond a delimitation of the "matters", the "field" or the specific "characteristics" of its object of study, to explore the way in which its specific "realm" or "area of intervention" behaves and develops. In other words, we should follow Heidegger when he argues in *Being and Time*[6] that true knowledge emerges out of our understanding of the forms of interrelation and existence present in the social world ("Being" with a capital "B"), and not out of the analysis of the behavior of specific material entities ("beings" with a lowercase "b"). This is the key element of "ontological" analysis in contrast with the "ontical" perspective typical of everyday consciousness[7].

From this point of view, it is not satisfactory to define electoral law as simply that part of law which regulates voting, elections and political representation or which deals with "electoral matters". In reality, electoral law is responsible not only for guaranteeing the technical organization of the reception of citizen votes, but also for guaranteeing that society as a whole moves forward in a democratic direction. For example, in Mexico Article 105 of the Federal Electoral Code clearly states that the Federal Electoral Institute is responsible for "contributing to the development of democratic life" and "safeguarding the exercise of citizen´s political-electoral rights and overseeing their compliance with their obligations".

Electoral law is therefore nothing less than the central articulating axis of democracy itself. If Guillermo O'Donnell is right to understand law in general as the "nervous system" of society[8], then electoral law would be literally the backbone of politics. Consequently, the government institutions responsible for applying and interpreting election law are best conceived of as full fledged "*regulatory agencies*" responsible for assuring the healthy

[6] Heidegger, Martin, *El ser y el tiempo,* 4a. ed., México, Fondo de Cultura Economica 2006.
[7] Véase, Dreyfus, Hubert L. *Being-in-the-World: A Commentary on Heidegger´s Being and Time*, Massachusetts Institute of Technology, Cambridge, MA, USA, 1991.
[8] O´Donnell, Guillermo, "Democracia y Estado de Derecho," en John M. Ackerman (coord.), *Más allá del acceso a la información: transparencia, rendición de cuentas y Estado de derecho*, Siglo XXI editores-Instituto de Investigaciones Jurídicas, UNAM, México, D.F., 2008.

DR ©. Tribunal Electoral del Poder Judicial de la Federación-http://portal.te.gob.mx/

Esta obra forma parte del acervo de la Biblioteca Jurídica Virtual del Instituto de Investigaciones Jurídicas de la UNAM
www.juridicas.unam.mx https://biblio.juridicas.unam.mx/bjv Libro completo en: https://tinyurl.com/tpv7rsr

development of democratic competition, and not simply as administrative agencies in charge of organizing bureaucratic voting procedures[9].

Former Mexican electoral magistrate and scholar Jesús Orozco Henríquez has proposed a definition which starts to point in this direction. According to Orozco, electoral law is "the scientific discipline which has come to configure its own autonomous field of study, which consists precisely in the corresponding electoral legal norms, on the basis of specific principles, methods, objectives and characteristics"[10]. Here the author explicitly elevates the field of election law to the level of a "scientific discipline" and explores its unique dynamics by pointing out that it has its own "specific principles, methods, objectives and characteristics". Nevertheless, Orozco does not go on to specify which principles and methods are unique to election law as such or analyze the particular nature of the electoral sphere. This is our objective in the following section.

III. TOWARDS AN ONTOLOGY OF ELECTION LAW:

Elections are not crimes, contracts or administrative decisions. Law is uniform in so far as its objective is always the regulation of human behavior and the resolution of conflicts. Nevertheless, it also changes its purpose and "way of being" depending on the particular sphere of human life to which it is applied. If judges and scholars do not take into account this necessary internal plurality of law, they inevitably face unexpected and undesired consequences when applying it in the real world.

The central principles of each branch of law are necessarily influenced by the nature of the particular "realm" of human and social life in which they operate. Criminal law, for instance, is grounded in the need to maintain basic social order as well as public trust in government authorities. As a result, innocence must be presumed so as to prevent public officials from acting arbitrarily or using the *ius puniendi* of the State for political or sectarian purposes as well as to avoid violating fundamental human rights[11]. In addition,

[9] Ackerman, John "Los mitos de la institucionalidad electoral en México" en John M. Ackerman (coord.) *Nuevos Escenarios del Derecho Electoral: los retos de la reforma de 2007-2008*, Instituto de Investigaciones Jurídicas, UNAM, México, D.F., 2009.

[10] Orozco Henríquez, J. Jesús, "Evolución del derecho electoral en México durante el Siglo XXI", *La ciencia del derecho durante el siglo XX*, Instituto de Investigaciones Jurídicas, UNAM, México, D.F., 1998, p.1029

[11] La formulación clásica de este principio se encuentra en los escritos del jurista romano Ulpiano: "Es preferible dejar impune el delito de un culpable que condenar un inocente" ("*Satius esse impunitum relinqui*

DR ©. Tribunal Electoral del Poder Judicial de la Federación-http://portal.te.gob.mx/

Esta obra forma parte del acervo de la Biblioteca Jurídica Virtual del Instituto de Investigaciones Jurídicas de la UNAM
www.juridicas.unam.mx https://biblio.juridicas.unam.mx/bjv Libro completo en: https://tinyurl.com/tpv7rsr

the justice system must be effective so as to create a strong incentive for potential criminals not to cross the line.

Administrative law, in contrast, looks to guarantee efficient and effective administration of government services. Here, one of the fundamental principles is the initial presumption of validity of any administrative act which has followed a series of basic procedural rules[12]. Without such a presumption of validity, the operation of government would be slowed down to such an extent that it would be virtually impossible for officials to deliver public services.

Elections are different. Social order and effective government are possible positive side effects of elections, but the central, primordial objective of an election is to guarantee that "the people", and not inheritance, money, social power, etc., decide who will govern a particular territory during a specified period of time. Therefore, instead of starting with principles such as the presumption of innocence of the presumption of validity, in the electoral realm the bedrock principle should be something like a principle of "authenticity". From this point of view, the crucial issue is that an election actually be a space for the free expression of popular will, rather than simply a legal and institutional exercise used to legitimate the occupation of government authority by one or another social, economic or political interest group[13].

---

facinus nocentis quam innocentme damnari") Digesto, Ulpiano I.5. Más recientemente, César Beccaria, por ejemplo, establece que la presunción de inocencia es un principio central de todo el derecho penal, manifestando que: "un hombre no puede ser llamado reo antes de la sentencia del juez, ni la sociedad puede quitarle la pública protección sino cuando esté decidido que ha violado los pactos bajo los que fue concedida", Beccaria, César, *De los Delitos y de las Penas*, 2da Edición, Ediciones Jurídicas Europa-América, Buenos Aires – Argentina, 1974, Pág. 119.

[12] De acuerdo con José Roldán Xopa, la presunción de legalidad es uno de los principios fundamentales del derecho administrativo que "tiene como efecto dar firmeza al acto mientras no sea invalidado. Además, su efecto procesal es invertir la carga de la prueba", José Roldan Xopa, *Derecho Administrativo*, Oxford University Press, México, D.F., 2008. Gabina Fraga también señala que ¨ Una vez que el acto administrativo se ha perfeccionado por haber llenado todos los elementos y requisitos para su formación, adquiere fuerza obligatoria y goza de una presunción de legitimidad que significa que debe tenerse por válido mientras no llegue a declararse por autoridad competente su invalidez, es decir, que se trata de una presunción *iuris tantum* ¨ (Gabino Fraga, *Derecho Administrativo*, 38ª. ed. Porrúa, México, 1998 p. 275); Por su parte, José Antonio García Trevijano-Fos indica que el principio de presunción de legalidad ¨ significa que el recurrente, ante un tribunal contencioso-administrativo, deberá probar la ilegitimidad del acto pero no por el juego de la carga de la prueba, sino porque la parte demandada goza de dicha presunción¨ (José Antonio García Trevijano-Fos, *Los actos administrativos*, 2ª ed. Editorial Civitas, Madrid, 1991).

[13] Here there is, for instance, an important literature on "Electoral authoritarianism". See: Andreas Schedler, "The logic of electoral authoritarianism".

DR ©. Tribunal Electoral del Poder Judicial de la Federación-http://portal.te.gob.mx/

Esta obra forma parte del acervo de la Biblioteca Jurídica Virtual del Instituto de Investigaciones Jurídicas de la UNAM
www.juridicas.unam.mx https://biblio.juridicas.unam.mx/bjv Libro completo en: https://tinyurl.com/tpv7rsr

The problem is that in practice such authenticity is normally extremely difficult to achieve. In fact, structurally speaking the electoral realm is almost "anti-authentic" by nature. Specifically, there are at least four elements which characterize the nature of the electoral realm as a space for legal intervention and regulation and which define the autonomous nature of election law:

First: *Structural capture*. Election laws are designed and written by the very same institutions and individuals which they are supposed to regulate: political parties and candidates. In addition, the people in charge of applying these rules, the electoral regulators, are appointed by the very same politicians they are supposed to regulate and keep under control. The situation is analogous to a scenario in which the criminal law was written by convicted felons or financial regulations authored directly by large investment banks.

In other words, using Terry Moe´s language, "statute sabotage"[14] is particularly common and normalized in the electoral realm. During normal lawmaking process, politicians and special interests always seek to, and often succeed in, undermining specific parts of legislative bills. But for the case of election legislation the situation is particularly extreme. It would be safe to assume that the entire package of laws which regulate the electoral arena is "always already" "corrupted" by the very nature of the relationship between the lawmakers and this realm of law. Regulatory capture is built into the very essence of electoral lawmaking, especially in emerging democracies[15].

Second: *Unrule of law*. The benefits and "spoils" which come along with reaching government power are so large, the possibility of getting caught is so small and, if caught, the sanctions are normally so insignificant, that political parties and candidates are normally willing to do literally anything possible in order to be "elected" to government office. Complying with the letter and the spirit of the law is therefore normally not a high priority for a candidate to political office.

---

[14] Moe, Terry, "Political Institutions: the neglected side of the story", *Journal of Law, Economics and Organization*, Vol.6, Número especial, pp. 213-253.

[15] As Josephine Andrews and Gabriella Montinola have argued, "in emerging democracies, agreement on policy is not the only potential obstacle to reform. The more important task for reformers is preventing the passage of corrupt legislation and ensuring proper implementation of genuine reforms" Andrews, Josephine & Montinola, Gabriella, "Veto Players and the Rule of Law in Emerging Democracies," *Comparative Political Studies*, Vol. 37, No.1 (2004): 66.

DR ©. Tribunal Electoral del Poder Judicial de la Federación-http://portal.te.gob.mx/

Esta obra forma parte del acervo de la Biblioteca Jurídica Virtual del Instituto de Investigaciones Jurídicas de la UNAM
www.juridicas.unam.mx https://biblio.juridicas.unam.mx/bjv Libro completo en: https://tinyurl.com/tpv7rsr

The incentive structure in favor of illegality is so strong that it normally sweeps up even the most ethical and honest politicians and creates a self-supporting spiral. When the vast majority of political actors are used to breaking the rules, everyone else also needs to follow suit if they want to have any chance of winning an election. In other words, violation of the law becomes the norm and law-abiding behavior the exception. The dominant tendency is therefore for the electoral realm to be closer to a "law of the jungle" than to a rule of law.

Third: *Social struggle*. When there is a high concentration of economic, political and social power in a particular country or political region, it is simply impossible to fulfill the Schumpeterian dream of elections as mechanisms simply to choose pacifically between different elites groups. In such situations, elections normally tend to become highly charged contests in which social groups with radically different interests and positions enter into total combat. When this occurs, political campaigns typically overheated since what is at stake is not only a menu of government positions, but also the permanence of a system of privileges and interests which depends on the control of state power.

Fourth: *Ambiguous legal nature of political parties.* Strictly speaking, political parties are neither part of the "State" nor the "private sector", nor are they "non-profit" or "non-governmental" organizations. Parties inhabit an uncomfortable limbo between the public, the private and the social spheres. This ambiguity can cause a great deal of problems for institutions and judges who look to control and regulate these hybrid entities. Nevertheless, the ambiguous legal nature of parties also opens up enormous space for creative interpretations of the law and is one of the most convincing reasons for giving electoral law greater autonomy

In Mexico, the Constitution tries to resolve the dilemma with regard to the legal definition of political parties by calling them "public interest entities". This tries to capture the idea that they are citizen organizations but whose central purpose is to compete for public office. But this definition still hovers in the realm of ambiguity since it does not clarify whether parties fall more within the realm of public, private or non-profit law.

The answer, of course, is that we should not try to impose any of these prefabricated frameworks on parties. Electoral law should be understood as its own realm with its particular principles and approaches. We should not try to mechanically force political

DR ©. Tribunal Electoral del Poder Judicial de la Federación-http://portal.te.gob.mx/

Esta obra forma parte del acervo de la Biblioteca Jurídica Virtual del Instituto de Investigaciones Jurídicas de la UNAM
www.juridicas.unam.mx https://biblio.juridicas.unam.mx/bjv Libro completo en: https://tinyurl.com/tpv7rsr

parties into the mold of corporations, families or bureaucratic institutions, but try to create a new interpretative space for analyzing and understanding their special nature.

IV. IN SEARCH OF AUTHENTICITY

The above-mentioned four elements by no means exhaust the nature of the electoral realm. Nevertheless, if we can agree that they are at least an essential part of this sphere, this would require a major rethinking of election law as such. In this final section I suggest three specific ways the "Being" of the electoral realm demands reframing fundamental legal principles.

First, the burden of proof in an election dispute should weigh equally on the side of the "winners" and the "losers". Normally, according to the principle of validity of administrative acts, only the losing party is responsible for presenting evidence to justify possibly annulling an election. The initial election results are presumed valid, as in a criminal trial or administrative litigation, and only annulled if the challenging party can convincingly demonstrate the illegality of an election beyond any reasonable doubt. Just as a person accused of a crime is presumed innocent until proven guilty, electoral results are also presumed valid until proven illegitimate.

Nevertheless, if the central objective of elections is to achieve "authenticity", and not only "legality", the winners and the electoral institutions themselves should also be required to prove the validity of the election beyond a reasonable doubt. They should demonstrate that despite the fact that the electoral realm is full of "structural capture", "unrule of law", "social struggle" and the "ambiguous" nature of the corresponding legal entities, the election has actually been an effective exercise in democratic suffrage and participation. For instance, an extremely low turnout, the lack of vote secrecy or gross inequalities in access to the media during the campaign should all be reasons to anull an election, even if there is no direct evidence of vote rigging or outright fraud[16].

In other words, the starting point should always include a reasonable doubt about the "authenticity" of any given election. We cannot necessarily assume that the winner has used illegal means to achieve his victory, but it would be simply irresponsible not to assume that there

[16] See, for instance, the Jurisprudence of Mexico´s Federal Electoral Court concerning "Abstract grounds for annulling elections" (*Causal abstracta de nulidad*).

DR ©. Tribunal Electoral del Poder Judicial de la Federación-http://portal.te.gob.mx/

Esta obra forma parte del acervo de la Biblioteca Jurídica Virtual del Instituto de Investigaciones Jurídicas de la UNAM
www.juridicas.unam.mx https://biblio.juridicas.unam.mx/bjv Libro completo en: https://tinyurl.com/tpv7rsr

is a highly likely possibility that this may have been the case. As a result, the burden of proof ought not lie exclusively with the losing party, but with all of the actors involved.

Second, the electoral realm demands the full use of investigative and "inquisitory" capacities of both administrative officials and judges. Scholars typically think of electoral institutions as neutral "referees" of electoral competition which should keep themselves on the margins and only intervene when an obvious "foul" has been committed. Such an attitude makes sense if, in general, we can assume the existence of law abiding behavior.

Such a passive approach may also be justified if there is a certain degree of overall transparency and public supervision which guarantees that delinquent activities will be discovered and punished. For instance, the fact that sports matches are normally watched by tens of thousands of fans as well as televised, with constant access to instant replays, implies a significant control on the behavior of all of the actors involved. Sports matches don´t need "regulators", but only "referees", because the level of public observation is so high that we can trust the teams and players to self-regulate their activities to a large extent.

In addition, in criminal or commercial law cases judges generally also need to keep themselves on the sidelines in order to avoid being accused of being partial to one side or the other. For instance, it would be almost impossible for an activist judge in a criminal case to avoid at least the appearance of being partial, in so far as his or her investigations or interventions seemed to follow the lines of the version of one side. In this context, the best strategy is to take a generally passive stance and review in an objective and distanced manner the evidence and arguments presented by both sides.

But election law is different. The electoral realm is so full of illegality, collusion between political actors and overt strategies of simulation and fraud, that electoral authorities must take the initiative if they hope to avoid simply becoming bystanders in the process of electoral competition.

DR ©. Tribunal Electoral del Poder Judicial de la Federación-http://portal.te.gob.mx/

Esta obra forma parte del acervo de la Biblioteca Jurídica Virtual del Instituto de Investigaciones Jurídicas de la UNAM
www.juridicas.unam.mx https://biblio.juridicas.unam.mx/bjv Libro completo en: https://tinyurl.com/tpv7rsr

Either they act aggressively to impose the rule of law, or they are quickly overwhelmed by the situation.

In the end, electoral institutions are best understood as "political regulatory agencies" and not as "referees" or even "judges". Effective regulation requires going far beyond the neutral resolution of disputes to actively intervene in the public sphere in order to impose basic conditions for fair competition.

Third, the fact that electoral laws are systematically and "always already" full of inherent traps, requires electoral authorities to transform their view of bedrock concepts such as the "principle of legality". Specifically, electoral officials simply cannot afford to take a reductionist, bureaucratic approach to the law in which they can only perform those acts which are explicitly authorized by the legal text, since this would imply falling prey to the "corruption" inherent in election legislation.

To the contrary, election institutions have a special responsibility to go beyond the strict letter of the law, and even sometimes in direct confrontation with the "intention" of law makers, so as to fulfill basic constitutional and international principles which should guide any "authentic" election. Otherwise, the action of the electoral authorities quickly and quietly ends up serving as a cover-up for the unrule of law which characterizes the electoral realm, instead of functioning as a countervailing force in favor of legitimate, free, fair and authentic democratic decision making.

V. SUMMING UP AND NEXT STEPS

The central objective of this paper has been to carve out a space for rethinking the central principles of election law through a reconceptualization of the nature of the electoral realm. In democratic systems, elections are simultaneously the backbone of political life and the stage for intense political, social and legal conflict. In order to prevent undue stress to the democratic system as a whole, electoral institutions

DR ©. Tribunal Electoral del Poder Judicial de la Federación-http://portal.te.gob.mx/

Esta obra forma parte del acervo de la Biblioteca Jurídica Virtual del Instituto de Investigaciones Jurídicas de la UNAM
www.juridicas.unam.mx https://biblio.juridicas.unam.mx/bjv Libro completo en: https://tinyurl.com/tpv7rsr

need to fully assume their responsibility of active regulation of the public sphere in order to effectively channel and institutionalize this inherent and constant conflict. Otherwise, the "structural capture" of election legislation will lead to an entrenchment of the "unrule of law" and eventually to the search for extra-democratic means for the resolution of social conflict.

Upon completing this theoretical exercise, the next step in our research is to examine in detail the recent decisions of Mexico´s TEPJF with regard to the possible annulment of elections. Here the central question will be to what extent the actions and opinions of the electoral judges demonstrate a sophisticated understanding of the electoral realm as such, and the role of election law within this sphere, or to what extent they reveal a superficial, mechanical importation of concepts and methods from other branches of law to election law.

DR ©. Tribunal Electoral del Poder Judicial de la Federación-http://portal.te.gob.mx/