

# The Missing Reform: Strengthening the Rule of Law in Mexico

EDITED BY VIRIDIANA RÍOS AND DUNCAN WOOD



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BY VIRIDIANA RÍOS

The approval of the package of widely praised structural reforms has not had the effect that observers and policy makers were expecting. It had been estimated that after approval of the reforms Mexico's economy would grow by 4.9 percent by 2016, about 1.2 percentage points above the inertial growth projection of 3.7 percent (SHCP 2013). Yet, Mexico grew just above 2 percent in 2016 (*Banco de México* 2016). The education reform required that all public school teachers be tested to obtain a position, yet in states such as the State of Mexico less than 16 percent of the slots for teachers are subject to testing (Hernández 2016). The Anti-Trust Commission created by the celebrated competition reform remains understaffed and poorly funded, with an annual budget of USD\$25 million, about 14 percent of the resources allocated to the U.S. Antitrust Division (USDJ 2016, SHCP 2016). Furthermore, 52.4 percent of Mexico's labor force is still made up of informal sector workers, more or less the same proportion as in 2012 (54.8 percent) before the labor reform was implemented (ENOE III-2013, III-2016).

The lack of results has been somewhat surprising, given that approval of the structural reforms was taken as an unequivocal sign of fast-moving political and economic development in Mexico. Mexico earned international acclaim for being capable of achieving, in a couple of years, what other Latin American countries had struggled for decades to do: bring together political parties from across the political spectrum to pass deep

structural reforms in several key sectors. The reforms targeted issues such as lack of competition in private enterprise, perverse labor incentives inside the education sector, poor energy infrastructure, widespread informality of labor, monopolistic structures in telecommunications, and inadequate transparency regarding spending at the state level (*Banco de México* 2015).

In retrospect, the approval of the reforms proved to be an easy step. Turning structural reforms into reality, moving them from paper to implementation, was where the real work lay. An anti-trust agency was created as part of the competition reform but the existence of unwritten privileges for some market players have allowed them to ignore its findings and regulations. A labor reform was approved to better incentivize public teachers, but disagreeing on how to measure performance stopped the reform from being implemented in full. The impact of recently approved reforms in energy and telecommunications will remain incomplete as long as insecurity, extortion, and corruption continue to permeate production processes and competitiveness.

This is not the first time in which magnificent reforms on paper have become diluted policies. By 2016, Mexico was supposed to have finished implementing a historical transformation of its judicial system, shifting trials from inquisitorial to adversarial procedures. This transformation, approved in 2008, was meant to apply, among other innovations, oral trials, mediation, and mechanisms of alternative justice. As of now, implementation is far from a reality since only four out of 32 states were able to fully implement the adversarial judicial system by 2016 (*Proyecto Justicia* 2016).

Implementation of the judicial reform is particularly worrisome as impunity, corruption, and other rule of law issues have been systematically identified as the main factors that inhibit the implementation of other structural reforms and also inhibit competitiveness and political and economic development in general. About 28 percent of the adult population is the victim of a crime every year in Mexico, and 92.8 percent of those crimes are never reported because of lack of trust in the authorities

(ENVIPE 2016). That is not surprising given that in states like Sinaloa half of the police force fail integrity tests, and nationwide the figure is 10 percent (SENSP 2016). About 12 percent of Mexicans who had contact with authorities were victims of corruption (ENCIG 2015). In fact, Mexico is ranked in the bottom 10 percent of 138 countries in reliability of police services, business costs required for combatting crime and violence, and ethics and corruption in the Global Competitiveness Index. Furthermore, businesspeople consider corruption the most problematic factor for doing business in Mexico (WEF 2016).

This book explores a new hypothesis as to why the approval of Mexico's groundbreaking structural reforms has not been able to live up to expectations. We argue that the time in which Mexico's structural lags could be tempered by improving legislation and creating new laws has come to an end. To turn approved structural reforms into tangible benefits for all Mexicans, the country needs to transition to performing a much more complicated task: implement the rule of law. Making sure that rules apply to all and everybody in the same way, independently of income, power, or status, is the most imperative pending task of Mexico. Without the rule of law, approved reforms are, in the best scenario, good intentions that cannot materialize and, in the worst case, selective weapons for discretionary implementation with political purposes.

Properly implementing the rule of law requires more than just a functional judicial system. It requires cooperation and commitment from all sectors of society, ranging from workers and businesses to local and federal authorities, to end the privileges long cultivated by impunity. Many groups and sectors are capable of holding political and economic power without being subject to the rules that should apply to all Mexicans. These favored groups include co-opted unions with wealthy leaders and public officials who face ineffective transparency or accountability mechanisms; corporations that benefit from monopolistic concessions awarded by government; economic sectors protected from market competition; and upper classes graced with tax loopholes. Pockets of impunity exist around the country, areas where approved reforms face strong resistance that inhibit or restrict their implementation. If reforms are

not accompanied by blind implementation of the rule of law, legislative changes will remain as paper tools without real impact.

This book is organized into two sections. The first section analyzes the concrete obstacles that Mexico faces to implement the rule of law. Each of these obstacles is described in a long chapter and is summarized below. The second section, also summarized later in this introduction, provides a series of short personal reflections from ten leading Mexican and U.S. intellectuals on concrete recommendations for strengthening the rule of law in Mexico. More than just policy analysis, each of these ten pieces was conceived as a personal exercise in which the author uses his or her main area of expertise to propose viable recommendations for implementing the rule of law in Mexico, while at the same time revealing some of the personal motivations that drove the authors to focus on their respective area of interest.

## **Six Concrete Obstacles to Implementing Rule of Law in Mexico**

Six main areas must be analyzed in order to understand the critical factors that impact the rule of law in Mexico: corruption, the justice system, electoral dynamics, the business environment, citizens' values, and the media. In each of these areas, we can find specific reasons why changing the status quo has proven to be so difficult.

First, corruption severely undermines the capacity of the Mexican state to enforce the law and implement significant changes. Corruption permits the existence of organized crime, reduces citizens' trust in government, compromises the efficiency of public expenditure, and impedes the emergence of a fully competitive business environment. In fact, Mexico's business environment is plagued by corruption, as 44 percent of firms pay bribes and 63 percent consider corruption as a regular part of doing business (International Transparency 2013).

Second, Mexican judicial institutions are incapable of providing order and security, thus affecting the capacity of the state to implement rules and

sanctions. Almost one-third of adults are victims of crimes each year (ENVIPE 2016). Moreover, three in four victims do not report crimes to authorities, half of them because they do not trust the qualifications of justice institutions (LAPOP 2015). More worrisome, in Mexico, justice is provided unevenly across different groups of people and across different geographical areas, with those who can pay for legal representation or bribes receiving better treatment (Bergman et al. 2014). The vulnerable segments of the population face a brutal justice system than exploits them. Currently, about 30 percent of all prison inmates in Mexico City and the State of Mexico have been solicited for bribes by the police, and half of them argue that they were struck or beaten physically to make a deposition or plead guilty (Bergman et al. 2014).

Third, Mexico remains an authoritarian regime, albeit less visibly so and more fractured than during the 90s, making it difficult to translate changes in federal legislation into meaningful rules at the local level. Political alternation in 2000 did not consolidate a representative and functional democracy that was able to create conditions of prosperity for all Mexicans. On the contrary, the structure of power remained in place, with some being the usual beneficiaries but with more partisan factions. This weak Mexican democracy resulted in the creation of two opposing economies, one that gains the benefits of increases in trade, productivity, and growth, and one that has been excluded from these benefits and remains informal, poor, and poorly integrated into modern sectors.

Fourth, Mexico's business environment, particularly production processes, competition, and investment, is undermined by the lack of legal order. Insecurity and extortion affect Mexican companies and create inequality by targeting primarily the small and medium firms that do not have access to private security or special treatment. Drug cartels, for example, assault their trucks, intimidate employees, and force businesses to pay periodical "quotas" to be left in peace to "conduct business." Not only organized crime but also the Mexican state is a constant source of extortion. Municipal building permits are institutionalized forms of extortion created by obscure and exploitative local government officials who create rules and regulations to extract private benefits from non-transpar-

ent public processes. Business owners commonly do not get responses when denouncing extortion because authorities are probably immersed in the same criminal dynamic.

Fifth, surveys of citizens' values seem to suggest that Mexicans prefer economic gains over respect for the law. If surveys are correct, the values of the average Mexican citizen are making long-term structural change less attractive than short-term extractive policies. Indeed, national surveys show that three times more people prefer the country achieve economic development than have a system of government that fully implements the law. Moreover, only nine percent of Mexicans believe obeying the law is necessary to be a citizen and 30 percent believe breaking the law is required to be successful (*Latinobarómetro* 2015). Also, close to 50 percent believe people are not equal before the law, and most do not believe that they can easily express their opinions, especially if they are a minority view (*Latinobarómetro* 2015). Furthermore, Mexicans deeply distrust their government and institutions. In fact, most Mexicans believe whoever gets into politics will become corrupt, only one-fifth trust the police, one-fourth confide in the judiciary system, and half trust the military (LAPOP 2015).

Finally, most Mexican media outlets have long served to legitimize government actions and policies, lacking a necessary critical view that would allow citizens to demand the elimination of impunity for economically and politically powerful sectors. This is because a large percentage of revenues of media comes from government resources. The current federal government has reached historic figures in spending on publicity, with 7.5 billion pesos in 2015 (65 percent more than in 2014) (*Animal Político* 2016). Moreover, media managers often discourage serious journalistic work and undermine the labor rights of the entire media sector. In fact, wages for journalists are extremely low (47 percent earn no more than two minimum wages) even while Mexico is one of the most dangerous countries for the practice of journalism (Hughes and Márquez 2016). As a result, Mexico is an uninformed country where only 29 percent of the population has bought a newspaper in the last three months, compared to Argentina with 40 percent or China with 52 percent (*Parámetros* 2013).

## 2 Recommendations to Implement Rule of Law in Mexico

In order to convert approved reforms from paper to reality, Mexico needs to fully implement the rule of law. There are ten basic requirements for complete implementation of the rule of law, and all are summarized in this section.

**1. Empower citizens to monitor the quality of public education.** As the director of Mexicanos Primero, one of Mexico's most important NGOs specialized in education policy, David Calderón points out the right to education is not met in Mexico. Only 36 percent of children who initiate elementary school conclude their studies without delays, 43 percent of students in the last year of mandatory education do not reach the minimum acceptable level in language arts and communication, and 51 percent do not achieve basic math skills (INEE 2016). Even if children's learning depends on the quality of teachers, Mexico lacks full and complete information on teachers' qualifications and attendance. Furthermore, the National Teacher's Union pays illegal rents to co-opt teachers using federal transfers that should only be used for teachers' salaries.

To implement the rule of law, Mexico needs to support and sustain citizen monitoring such that independent civil society organizations can track the enforcement of the education reform laws and public funds and identify the existence of irregularities. It is also necessary to give families, teachers, and students enough tools to monitor compliance at the level of schools by creating a system for airing complaints and suggestions between them and the authorities. Finally, civic education courses need to change from being classes on the history of national laws to classes that exalt merit and the rejection of corruption.

**2. Transform transparency into an effective tool for policy action.** As a researcher with IMCO (Mexican Institute of Competitiveness), Alexandra Zapata clarifies Mexico's improvements in transparency have not led to reduced corruption or better implementation of the law.

Great efforts have been made to improve access to information and transparency in recent years. Indeed, the Data Barometer Global Ranking ranked Mexico as number 16 in transparency compliance worldwide. However, increasing access to information has not resulted in meaningful improvements in accountability. Recent studies have unmasked the public education sector in Mexico, denouncing payments to teachers in classrooms that did not exist, teachers with inexplicably high salaries, and a payroll that includes 1,440 active teachers all born on the same day and over 100 years old (IMCO 2014). However, in the two years since this information was released, the government has only announced payroll cuts of less than one percent. Transparency rankings position Mexico City as the most transparent Mexican state, while corruption rankings say it is the most corrupt state in the country. Sadly, transparency rules in Mexico seem to be providing citizens only with information about what is wrong and making them aware that nothing is being done to change it. Lack of accountability and impunity allow legislators to pass laws they have no intention of following, exhibiting that public officials consider implementation an option rather than a mandate.

To implement the rule of law, Mexico must find ways to transform the knowledge and awareness gained by transparency into real changes that strengthen institutions. It is also necessary to promote mechanisms of participation such that citizens can work with government, through formal structures, to build and strengthen institutions.

**3. Create an effective competition policy with no prerogatives and no privileges.** As the director of Mexico's Federal Commission of Competition, Alejandra Palacios, shows, behind much of Mexico's monopolistic practices and crony capitalism is chronic impunity towards those who violate free market rules. Impunity affects economic activity through alterations in competition such as entry barriers that reduce the number of market participants and inhibit investment, increase transaction costs that imply the use of resources that could be dedicated to more productive activities, and extend privileges to some market players that allow them to ignore regulations.

To implement the rule of law, Mexico must create an effective competition policy to make it harder to avoid regulations, obtain individual privileges, and reduce discretionary areas and corruption opportunities. It is also critical to eliminate businesses' excessive profits, promote equality, turn consumers into instruments of market discipline and promote innovation or investment in human capital. No other path will lead Mexico to development.

**4. Focus on preventing crime rather than on severely punishing it.** As the director of Violence and Crime Prevention in Chemonics International, Enrique Betancourt, mentions, despite recent efforts to build policies to reduce violence in Mexico, evidence of impact is limited. A Mexican federal program designed to prevent crime, PRONAPRED, lacked strategic clarity and led to diffuse investments. Crime prevention policy and its implementation are deficient in all levels of Mexican government, especially at the municipal level. Furthermore, even if great steps have been taken to identify and understand the characteristics and triggers of previous waves of violence in Mexico, violence prevention is not retroactive, meaning that providing the policy that was needed years ago has scant effects on violence today.

To implement the rule of law, Mexico must create a national strategy for crime prevention that is capable of targeting critical neighborhoods, active violent groups, and triggers of violence. Such a strategy would need to consider local characteristics and neighborhood-oriented solutions to reduce impunity, social disputes, and recidivism. Mexico must also restructure the penitentiary subsystem and other punishment mechanisms with a focus on reducing recidivism and develop alternative judicial measures for youth so that criminal detention is a last resort. An interesting alternative could be to develop measures for "out of jail" supervision led by neighbors or to implement community courts to help crime victims.

**5. Make civil society a whistleblower.** As the deputy director general of IMCO, Manuel Molano, acknowledges, civil society has a prominent role to play in promoting the rule of law. Up to now, the

recommendations of civil society for improving the rule of law have not been converted into actionable policies.

To implement the rule of law, Mexico must allow civil society organizations to identify publicly which rules allow impunity and denounce them. Mechanisms must be designed to allow civil society to help citizens who have been wrongly accused by judicial institutions and to propose institutional improvements to reduce impunity.

### **6. Create a professional Congress that is accountable and transparent.**

As the director of Integralia consultancy and former president of the Federal Electoral Institute, Luis Carlos Ugalde, mentions, the performance and accountability of Mexican Congress must be improved in order to promote the rule of law. Currently, the Mexican Congress is immune to external control and regularly violates internal rules without facing sanctions. Although some progress has been made to publicize personal information and activities of individual legislators, relevant data such as the functioning of congressional committees and expenditures of parliamentary groups is not available. Moreover, as voters barely follow the work and achievements of their representatives, impunity is common in Congress. For instance, legislative omission happens on a regular basis but sanctions are absent as nobody denounces omission. Furthermore, earmarking (allocation of discretionary resources) is common in Congress, creating opportunities for discretionary allocation of resources for private gain.

To implement the rule of law, Mexico must professionalize its congress. A homogeneous set of indicators should be created for assessing legislative achievement, including activities within committees. Civil society organizations must be encouraged to construct independent indicators for analysis of congressional performance and to use strategic litigation to sanction legislators who violate the law or approve unsatisfactory laws. Also, Mexico must work to professionalize media coverage of Congress by reducing media revenues linked to the government that discourage journalists from producing material that would hold elected authorities accountable. The elimination of earmarking, a reduction of

prerogatives of parliamentary groups, and eradication of all cash-in programs of a discretionary nature would also be helpful measures. Punishing legislative omission through constitutional disputes filed by the executive and implementing clear and standardized regulations for reelection of legislators would be critical for promoting accountability.

**7. Drive efficiency in state energy companies.** As the senior analyst of Control Risks, Dwight Dyer, remarks, the energy reform is still missing critical elements for promoting the rule of law. Mexico's energy reform was supposed to transform state-owned oil and electricity monopolies into "productive state enterprises" with the mission of increasing state profits and competing in open markets. However, this has not been accomplished, as both companies still operate under special regimes with federal government officials constantly overshadowing their corporate governance, and Congress and the Finance Ministry controlling their budgets. Moreover, the energy reform did not create energy sector regulators with full political autonomy. Although the new regulators were granted technical competencies, the Energy Ministry shepherds and approves their work, contaminating regulators' decisions with political criteria. Furthermore, the reform did not protect energy regulators from injunctions (*amparo*), which means that every decision made by them may be open to judicial review, slowing the consolidation of an efficient regulatory structure.

To implement the rule of law, Mexico must force state-owned energy companies to follow the same rules as private firms by eliminating all political leverage. Also, competent regulatory agencies must be created to ensure that market rules are correctly implemented and allow state oil and energy companies to go public. Private shareholders will trigger administrators to be more transparent and efficient as they represent a credible threat of disinvestment.

**8. Provide flexibility to land tenants and guarantee legal certainty for them.** As Vice President of INEGI (the National Statistical Institute), Félix Vélez, argues, land tenure in Mexico is challenged by the weakness of the rule of law. Landowners of socially held properties

cannot decide on land use and concessions with as much flexibility as private landowners can. Moreover, Mexico has not been able to attract private capital to socially owned lands because of ignorance of procedures, failure to come to mutually beneficial agreements between *ejidatarios* and corporations, and investors' distrust (RAN 2015). Furthermore, public policies are lacking that would encourage public/private investing in rural areas (e.g. concession rights for land usage are not accepted by development or commercial banks as loan collateral), and incremental public expenditure in rural areas and constitutional reforms to protect social landowners have not resulted in reduction of rural poverty.

To implement the rule of law, Mexico must broaden the legal capacities for members of *ejidos* and *comunidades* to give them as much flexibility on land use and concessions as private owners. The data of the National Agrarian Registry must be enhanced by including information about the land regime that was transferred/sold and the prices for equivalent plots depending on land regime. Legal certainty for property, the correct exercise of landowner rights, and attraction of investment should be fostered by: (1) addressing pending issues to end the agrarian transition; (2) facilitating procedures for private investment in socially owned lands; (3) building funding strategies for agricultural and forest *ejidos*; and (4) ensuring equitable, legal, and environmentally friendly conditions for all agrarian transactions. Also, Mexico must promote development of agrarian settlements by creating public policies that apply the new Special Concurrent Program approach to integrate programs and subsidies of different government agencies. High value-added firms must be developed in the primary sector that target women and young inhabitants of *ejidos* and *comunidades*, and the Rural Development Act should be reformed to sponsor a new model of economic development that guarantees human, social, and economic rights in *ejidos* and *comunidades*.

**9. Aggressively legislate against the roots of corruption: public contracts, fiscal irresponsibility, and electoral procedures.** As director of Transparencia Mexicana, Eduardo Bohórquez, points out, necessary steps must be taken to strengthen Mexico's National Anticorruption System in order to guarantee results. As of now,

corruption inhibits economic development and harms Mexico's international reputation. Moreover, it damages the quality of public services and the implementation of public programs, as it threatens human rights, access to justice, and electoral processes.

To implement the rule of law, Mexico must construct a National Anticorruption System (NAS) that works in an efficient, coherent, and consistent way, not as a combination of many institutions. Mexico must promote a legislative agenda that can threaten the roots of corruption, one that includes the law of procurement, the public works law, the public contracts law, the public property registry law, the fiscal responsibility law, and the codes for electoral procedures and financing. Also, the appointment of NAS directors must be monitored and the creation of a National General Accounting Office should be a priority. Above all, NAS corruption investigations must be complemented with independent and critical media that exhibit corruption cases to all Mexican society. To do this, the independence of media must be assured by regulating government publicity to avoid any attempt to influence media coverage.

**10. Provide police forces with the necessary resources, training, and professional standards.** As director of Justice in Mexico, David A. Shirk, remarks, police forces have limited skills and training, and most officers ignore the laws and procedures they are supposed to uphold. Mexican police departments tend to be under-equipped, lacking even the most basic facilities and supplies (*Justiciobarómetro* 2009). Moreover, police salaries and benefits are so low that officials often seek alternative sources of income.

To move towards professional policing, Mexico's policy makers need to understand that reorganizing police agencies is not enough. Advancing and sustaining an effective police reform is required. Mexican police forces need resources, higher professional standards, better compensation and benefits, and strict surveillance by civil society during the implementation process. Adopting the Civil Police Force that was introduced in Nuevo León by civic leaders and the business community can mean a step forward to achieve a professional model of policing nationwide.

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*Overall, the main objective of this book is not to merely analyze judicial problems, but to urge change in broader sectors of Mexico's society. As shown in this introduction, all of the chapters and reflections tell the story of a Mexico where the failure to see the result of structural reforms is intimately connected to the actions of politicians, business groups, civil society, and the press.*

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*What are the mechanisms recently implemented in Mexico to reduce corruption and what is still to be done?*

## POLICY RECOMMENDATIONS



- Provide the special anti-corruption prosecutor with autonomy from government and other sources of potential conflict of interest.
- Creating new laws alone will not reduce the problem. It is about implementing and setting an example.
- Do not measure anti-corruption success by simple metrics of prosecution, instead rely on financial measures such as “government corruption savings.”

# Mexico's Anti-Corruption Spring

BY MAX KAISER AND VIRIDIANA RÍOS

**M**exico's policy priorities have shifted greatly during the last couple of years, moving from an agenda focused mostly on reducing drug-related homicides to one that places a war against corruption as a requirement for successfully combatting drug trafficking organizations and their violence.

This shift is significant on many fronts. The war against drug-related violence was a war of the government against criminal organizations, a war to try to regain control over the impunity that reigned in territories where drug trafficking operations were conducted. The war against corruption is a war of its citizens against corruption rackets, a war against the illegal arrangements for private gain that pervade business, government, media, and many other sectors of Mexican society, and that have allowed impunity to become systemic. Most critically, the definition of success has changed in nature, moving on from the targeted goal of reducing activities of organized crime to the more general goal of implanting the rule of law.

In this chapter, we provide the reader with an up-to-date recounting of Mexico's most recent efforts to promote the implementation of the rule of law in public affairs, namely the struggle to create a complete legal framework for prosecuting corruption cases. To do this, we describe the roots of this endeavor in a previous war against organized crime, the

principal agents that have pushed this agenda forward, the way this battle has changed the political system, and some expected consequences for the future of public investment, citizen security, and economic issues that could arise if corruption is tackled.

The chapter is organized in seven sections. The first section describes how Mexico came to realize that, in order to be successful in fighting organized crime, the country should first focus its efforts on reducing corruption. The second section describes the Mexican government's insufficient efforts to fight corruption. The third section explains in depth a unique feature of Mexico's corruption reduction efforts: the critical role of some civil society organizations (CSOs) in promoting and lobbying for Mexico's anti-corruption constitutional reform in 2015, in drafting a bill to create the National Anti-Corruption System (NAS) in 2016, and in working to properly implement the reform in 2017. This section also outlines the long-term consequences of the civic fight to legislate anti-corruption measures for Mexico's political system by (a) breaking the monopoly of the Mexican Congress to set the agenda of topics to be discussed, (b) promoting a public discussion of bills, and (c) influencing the timing of legislative debate. A fourth section explains in detail the reform that created the (a) independent and effective authorities coordinated around a common mission to prevent and combat corruption; (b) a system of administrative responsibilities; (c) a criminal regime to fight corruption; and (d) a control and oversight system to coordinate state and local authorities. The fifth section details how Mexican civil society has participated in the implementation of legislation against corruption. A sixth section calls attention to the need to set up tighter and more accessible controls on public procurement and explores what remains to be done to implement and consolidate the NAS, discussing human, administrative, economic, and legal issues that need to be addressed. Finally, the last section describes the benefits that could be produced in society and the economy if corruption is confronted and reduced, analyzing two concrete expected results: improved policing and economic development.

## From a War against Drug-Related Violence to a Battle against Corruption

Mexico's "war against drug-related violence" started in December of 2006, immediately after Mexican President Felipe Calderón took office. As one of his first official actions, he deployed the army in his native state, Michoacán (Jiménez 2006). Homicide rates in Michoacán had increased greatly during the previous years due to the expanding presence of drug trafficking organizations (Coscia and Ríos 2012). Cartels had spread in Michoacán and all over Mexico as a result of the inability of local governments to coordinate law enforcement operations with the federal government due to political differences between federal, state, and local governments (Ríos 2015). Corruption had become more pervasive in an environment where different levels of government could not agree on protecting a single cartel, allowing many to exist in a single territory (Ríos 2012).

Even if the decision to deploy the army was rightly justified, the implementation strategy proved to be unsuccessful. By focusing on capturing the capos of drug cartels, the Mexican government unexpectedly created instability within drug cartel organizations; without visible heads, their members battled each other for turf (Guerrero 2011, Ríos 2013, Calderón et al 2015). Most critically, cartels split into smaller criminal gangs, incapable of engaging in large-scale drug trafficking operations at the U.S.-Mexico border. These smaller criminal gangs, unable to become large drug cartels, started committing other crimes locally, such as extortion and kidnapping (Ríos 2013).

The media and Mexican society were outraged by the short-term effects of the war against drug cartels; from 2007 to 2010, homicides in Mexico doubled (SEGOB 2011). Every day, Mexico's national newspapers would report the number of murders, creating full public awareness of the toll taken by the war against drug cartels. Mexicans increasingly questioned the real benefit of enforcement against drugs, a problem that would not be solved so long as demand for illegal drugs persists in the United States. Indignation increased further when the killing of innocent by-

standers rose. For example, the son of a well-known poet, Javier Sicilia, was assassinated in 2014 by mistake (El Universal 2014), and a raid at a private home killed 14 innocent students in Salvárcar, a neighborhood of Ciudad Juárez (Silva 2010).

Yet, starting in mid-2011, homicides began to decrease (SNSP 2016). A change in government strategy was behind this. Rather than deploying military forces under the command of federal authorities, Mexican authorities at the federal, state, and local levels created new police forces. These forces, hired with greater controls on corruption, established coordinated enforcement operations between all levels of government and worked closely with civil society to prevent crime and increase surveillance trust (Booth 2012, Guerrero 2013). Civil society organizations made proposals, monitored results in reducing violence and crime, and improved social programs in neighborhoods by directly addressing their concerns to the government. In the city of Monterrey, the private sector partially funded the creation of a new police force. As a result of this type of pro-active participation, homicides in cities like Ciudad Juárez, the most violent municipality in the country, were greatly reduced. In Monterrey, the new police force with all new hires, along with close coordination between businessmen's organizations and government, also led to quite a significant reduction in kidnappings and murders.

It became clear that reducing violence and crime was possible as long as government and civil society worked together to create more professionalized police forces, develop a more efficient judicial system, and build better monitoring capacities to bolster crime prevention. The role of civil society proved to be critical for success, not only because it provided extra material resources, but because it made authorities accountable and transparent (Conger 2014). The more accountable authorities became, the more difficult it was for them to engage in corrupt arrangements, and thus, impunity was reduced. The few success stories of Mexico's war against drug-related violence revealed a critical lesson for Mexican society: to properly fight crime we needed to get rid of systematic corruption. The leading lesson of Mexico's war on drugs, then, was that corruption was among the principal factors undermining the capacity of the

Mexican State to enforce the law. Corruption allowed impunity to reign and crime to survive and flourish.

Mexico's realization about the critical role of corruption in fostering impunity and violence was somehow frozen by the arrival of a new federal administration. Most public debates during the first years of the administration of President Enrique Peña Nieto focused on the approval of much needed structural economic reforms to eliminate Mexico's inhibitors to growth. Up to 11 reforms were approved in a period of 20 months, turning the country and President Enrique Peña Nieto's administration into an exemplary case of how to make different political forces agree on approving real, structural changes.

Yet, President Peña Nieto's reform honeymoon was shattered abruptly by the same factor that had worsened Mexico's homicide rates some years ago: corruption. A prominent Mexican journalist, Carmen Aristegui, reported that Peña Nieto had a luxurious home that he had not declared as part of his assets (Aristegui Noticias 2015). The house was registered under the name of one of the most important government contractors who allegedly had purchased the residence on behalf of Peña Nieto's wife. With a value of around USD\$7 million, Aristegui's report raised serious questions as to whether the first lady (a former soap opera actress) could have been able to afford it, and most importantly, whether there was a conflict of interest between President Peña and his favored contractors. Public indignation flared up when Aristegui was fired by her network, and when it was revealed a month later that Mexico's Finance Minister, Luis Videgaray, had also acquired a property from the same contractor, at preferential interest rates, making a down payment with a couple of pieces of art. Both cases were investigated by federal authorities appointed directly by Peña Nieto, and no justification for prosecution was found (New York Times, 2015).

The scandal not only took a heavy toll on the credibility of Mexican authorities,<sup>1</sup> but also an outcry to fight for what was, to the eyes of most Mexicans, the only real structural requirement to make Mexico succeed in defeating crime: the rule of law. In public opinion, the main war to fight

in Mexico changed abruptly. To win the war against drug-related violence, a battle against corruption needed to be waged first.

## **The Mexican Government's "Simulated Battle" Against Corruption**

That corruption was an issue was hardly new. The need to create an entity to fight corruption was among Mexico's policy priorities, at least rhetorically, since well before Enrique Peña Nieto came to power. In fact, the first of the 266 commitments that Peña Nieto had made during his electoral campaign was to create a "National Anti-Corruption Commission" (NAC). The NAC would be a centralized entity, championed by a form of "anti-corruption czar" who would oversee the actions of federal public servants and conduct corruption-related investigations without restrictions.

In September 2014, a bill to create the NAC was first presented to Congress. Yet, that bill was rejected by many civil society groups because it was considered incomplete. Among the most important criticisms they advanced was that the NAC was a hierarchical entity unable to coordinate efforts between the many state and federal entities that already had capacities to audit the actions of public servants and that lacked autonomy from other branches of power. There are no credible international experiences in which one single institution was able to control the entire problem of corruption.

Think tanks, university research centers, and NGOs organized as a coalition and lobbied in favor of a different form of anti-corruption solution, one that did not rely on a centralized agency, but functioned as a coordinated system. Instead of a NAC, the groups proposed the creation of a "National Anti-Corruption System" (NAS), a coordinating entity that would bring together institutions that were already in place and that had mandates to impede corruption, but that were operating in fractured ways, without autonomy or resources. More than being an institution commanded by a "czar," the NAS would be an entity regulated by a board. Furthermore, the proposed system would need to recognize the

role of private citizens in promoting corruption, creating sanctions not only for public servants but also for private businesses that engaged in corrupt practices.

In many ways, if Mexican civil society decided to start leading the fight against corruption, it was not by choice, but by necessity. After the many corruption scandals that erupted in 2015, and knowing the limitations of the NAC, waiting for political parties to take action was no longer a logical option. Authorities seemed to be “just too corrupt to create an anti-corruption law with real teeth,” said Enrique Cárdenas, CEO of Centro de Estudios Espinosa Yglesias (CEEY), a Mexican think tank that participated in the NAS negotiations. Indeed, the legislative agendas of all parliamentary fractions saw corruption as an issue, but no political force seemed to care about hurrying to create a concrete law to regulate it.

## **Mexican Civil Society’s Battle to Legislate Against Corruption**

A first strike of Mexican civil society to reduce corruption was quick to come. In April 2015, just some months after they decided to lobby for creation of the NAS, a constitutional reform to establish the system was approved by the federal Congress and sent to state legislatures for their validation. To become a part of constitutional law, the reform needed to be validated by a majority of all Mexican state legislatures. To pressure for such validation, civil society groups created a digital tool called the “anti-corruptometer,” a digital clock that counted the days that every state legislature took to discuss and approve the constitutional reform (The Economist 2015). The clock went viral on social networks, and the NAS reform was approved by most state legislatures in just some weeks. By May 2015, Mexico had approved the full creation of a NAS (Diario Oficial de la Federación, May 27, 2015).

Once the NAS reform was promulgated, at least seven more secondary laws were required in order to regulate and implement the whole system, thus civil society decided to keep the battle going.

In early 2016, civil society groups, academics, and activists gathered together to design those laws, using a recently created Mexican legal mechanism called a “citizen initiative.” A “citizen initiative” is a bill that originates with citizens and is presented by citizens to Congress, which is legally bound to debate it so long as the draft legislation is backed by 120,000 signatures (0.13 percent of the electorate), each one in hard copy and supported with detailed information from the photo ID of all signatories.

The seven drafted initiatives that citizens’ wanted to be debated were: compulsory publication of assets, tax returns, and conflicts of interest by all elected officials; a new code of ethics for civil servants; a standard framework of responsibilities for public servants at the federal, state and local levels; administrative sanctions for corruption committed by civil servants; new fines for businesses and individuals involved in practices that violate international standards of business ethics; a full mandate and adequate budget for investigative authorities, and efficient coordination of 90 audit and investigative bodies of the national government.

Many thought it would be impossible to gather so many signatures, especially for such dry topics. Yet, civil society groups proved them wrong mainly because students, citizens, and business chambers were on-board. Employers’ associations like the *Confederación Patronal de la República Mexicana* (COPARMEX) asked their businessmen and women members to sign the citizen bill. Important Mexican radio stars like “El Sopitas,” Fernanda Familiar, Pamela Cerdeira, and many more talked about it on their daily shows. Activists, academics, and columnists discussed the bill endlessly in broadcast shows and the printed press. In just a few months, civil society groups managed to collect more than five times the number of required signatures. In April 2016, about 630,000 signatures were presented to Congress.

Amassing five times the number of signatures required to propel the anti-corruption citizen initiative onto the agenda of Mexico’s Congress was historic, not only because of the size of citizen mobilization it required,<sup>2</sup> but also because it meant the de facto destruction of the monopoly of agenda setting by political parties.

Mexico's parliamentary groups used to meet a few days before the start of the legislative session, on a Mexican beach or retreat, to decide on their priorities. After creating their lists of legislative priorities, groups would negotiate them, that is, agree on the method to address the various issues and decide on the timing of the discussion.<sup>3</sup> Also, political parties in Mexico were used to receiving general ideas, academic papers, and generic proposals for discussions. They would mix those ideas with their ideas, and convert them into legal instruments that included the ideas of every party but were technically unfeasible to implement.

When citizens brought to Congress not just an idea but a complete, polished legal product, endorsed by specialists and practitioners and backed by social support, the rules of congressional discussion changed. The anti-corruption citizen initiative showed that the creation of laws in Mexico could become a political response to social demands, and that the Mexican congress could be "the great translator" of these demands into social needs.

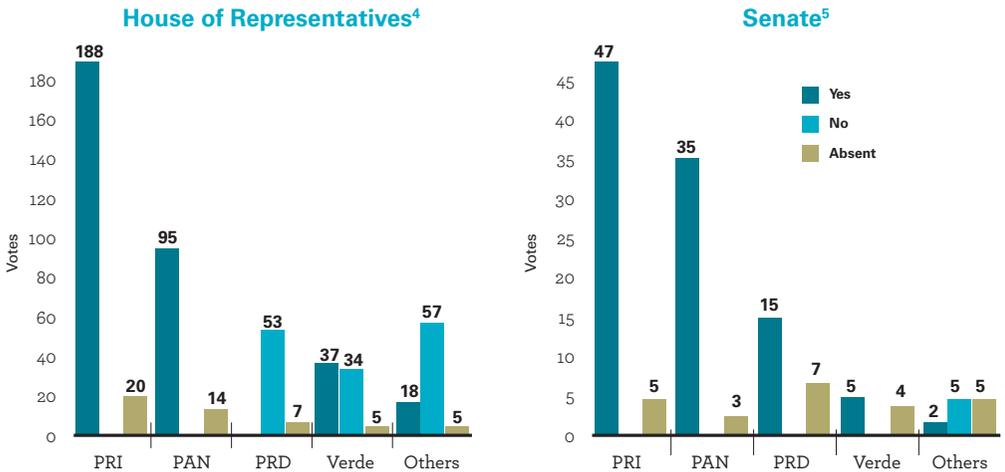
Citizens also demanded that the debates were made fully public, and that civil society groups were allowed to defend their initiative themselves. Opening the legislative discussion to the public marked a change in Mexico's congressional traditions. Senators' discussions are regularly held in private, removed from public scrutiny, and parties were accustomed to establishing politically correct positions in public and negotiating and forging agreements in private to minimize the costs of controversy.

Social support for the citizens' bill was so strong that the Mexican Congress had no option but to accept a public debate. Senators allowed the CSOs that had drafted the bill to participate in the debate of all seven anti-corruption laws and listened to their specific proposals and ideas. With video cameras turned on, the *Canal del Congreso* (Mexico's C-SPAN) recording, and mobile devices following the discussion on social networks, politicians looked uncomfortable and appeared to be outside their comfort zone. For the first time, parties needed to reveal publicly their positions on complex issues such as the organizational structure of the NAS, the coordination and shape of the relationships between various

authorities of the new administrative responsibilities regime (code of conduct), transparency in declarations, and a new model of Administrative Tribunal to sanction violations by civil servants.

After long deliberations and many sessions—and many efforts from political parties to change the content of the citizens’ initiative—on July 18, 2016, the creation of the NAS was approved. The House of Representatives approved the law with 338 votes in favor and 110 votes against. Both PAN and PRI voted in favor, while PRD concentrated almost half of the votes against the law. Other small left parties followed PRD and also voted no, and they accounted for the other half of the votes against the law. The Senate approved the law with 104 votes in favor and only five votes against. The law was approved in both houses of Congress with a clear majority.

**Graph 1. Distribution of votes, approval of Mexico’s anti-corruption federal system**



## **Mexican Legislation against Corruption**

The main objective of the Mexican anti-corruption system was the coordination, collaboration, and systematization of the operations of anti-corruption institutions that were already in place at federal and local government levels. To do this, NAS focused on creating a system composed of (1) independent and effective authorities coordinated around a common mission to prevent and combat corruption; (2) a new comprehensive and integrated code of conduct for public servants with punishments and sanctions for corruption; (3) a new criminal regime to fight corruption; and (4) a new monitoring and oversight system to coordinate state and local authorities.

### **1. Independent and effective authorities**

Three laws were created for this purpose. First, the law that regulates the NAS. A body of five citizens, with no ties to political parties or public institutions, presides over the NAS, oversees its mandate and obligations, and creates public policy to combat corruption. Second, the law of the Federal Court of Administrative Justice. This law gives autonomy to the Court to sanction public servants with administrative responsibilities, promotes efficiency in procedures, and creates organizational capacity to administer thousands of cases. Finally, a specialized section of the Court was created, with regional chambers and specialists in the field. Overall, the Court was redesigned as a strong and independent body to promote accountability for acts of corruption. It was also agreed upon to redesign the Ministry of Public Administration, to give it new capacities and functions required by the NAS, including the ability to audit, investigate, supervise, and sanction cases and offenses.<sup>4</sup>

### **2. A new system of administrative responsibilities**

For its first time in history, Mexico legally defined “types of corruption” for both individuals and corporations, compliance regulation. It also created special investigative tools and capabilities for government authorities and mechanisms to protect witnesses and whistleblowers.

The laws also spelled out codes of ethics for civil servants with specific legal implications. It established penalties graduated by the conditions of the act, the rank of the public servant involved, and established a national registry of sanctioned public servants.

Finally, public servants were required to provide yearly public declarations of (1) assets, (2) tax statements, and (3) conflicts of interest, which must contain all materials necessary to know the origin of the information provided. It became a requirement to install a digital platform to verify the information released to the public.

### **3. A new criminal regime to fight corruption**

The NAS required the creation of an anti-corruption special prosecutor, with full autonomy to pursue criminal offenses, independent appointment and removal processes, clear and complete mandates, autonomy in management, human, material and budgetary resources, and in the provision of pretrial investigations. A revision to the Federal Penal Code was undertaken to establish the offenses that should be considered acts of corruption and would be investigated and prosecuted by this special prosecutor.

### **4. A new type of monitoring and oversight system**

The law on Control and Accountability of the Federation was amended in 68 of its articles with the intention of creating a robust monitoring system able to coordinate internal and external monitoring at all levels of government. The law provided them with broad powers to secure its efficiency. The NAS strengthened the functions of the Ministry of Public Administration and the Chief Audit Office and their relationship and authority vis-à-vis the audited entities. It also created a new, more flexible and effective audit and review cycle, one that allows for auditing programs during their implementation, and not only ex post facto. This measure enabled a more complete and useful exercise of public resources at all levels of government.

## Mexican Civil Society's Battle to Implement Legislation against Corruption

Once the secondary laws were approved, a new battle for implementation began. Implementation is frequently unsuccessful in Mexico. The idea that a new law will be implemented just because it is mandatory seems to prevail among those responsible for creating them. There is often a sense of accomplishment every time a new law is passed as if legal reforms, by themselves, could change a systemic and intrinsic problem like corruption.

In the case of the new anti-corruption laws, several issues needed to be resolved in the implementation phase. The first was to select the five citizens who would serve as presidents of the NAS. The law dictated that these citizens would not be selected by Congress, to avoid partisan quotas, but by a group of nine notables postulated by civil society organizations and academic institutions. This group would be called the NAS' Selection Commission.

After receiving the nominations of 28 candidates to the Commission, and conducting congressional hearings for each of them, the Committee was created with four academicians (José Luis Caballero, Sergio López Ayllón, Viridiana Ríos, and Pedro Salazar), an independent official of a local transparency institute (Cynthia Cantero), and representatives of civil organizations (Antonio Gómez, Edna Jaime, María Elena Morera, and Juan Pardini). The Selection Commission was fully integrated on October 13, 2017, and the search for citizens who would preside the NAS began with a public call issued in November 2016.

The call attracted 70 candidates from various states of the republic and of all profiles, from which 15 were chosen for interviews and finally five were hired. The process was carried out with transparency and with public consultation sessions in Mexico City and Guadalajara, which allowed citizens to provide their opinions on the candidates and the selection process.

The citizens selected to be presidents of the NAS were officially appointed on February 9, 2017. They were Jacquelin Peschard, academic transparency specialist and former electoral counselor, Mariclaire Acosta, Freedom House director and human rights activist, José Octavio López Presa, Luis Manuel Pérez de Acha, an expert in strategic civil society litigation, and Alfonso Hernández, an academic from Jalisco with experience in electoral issues and transparency. Jacquelin Peschard was appointed as the first president, for one year.

Thus, after a long struggle to create a functional, participatory, and autonomous institution to fight against corruption, the NAS was officially born on April 4, 2017, when the NAS officially held its first meeting.

## **Mexican Civil Society's Next Battles**

It would be a poor bet to expect that the political elite, whose way of life is about to be changed by the NAS, will joyfully engage in implementing every aspect of it. A great deal of political will is required, as well as concerted pressure, control, and oversight from civil society.

New institutions are still to be created and the success of the new system depends on them. For example, the new Special Anti-corruption Prosecutor is designed by law to become a pillar in the fight against corruption, with special powers to investigate high-level officials or powerful private companies. For that purpose, this institution must have a special degree of autonomy and independence from government and special interests. It will also need an adequate budget and highly qualified people to become an efficient institution. This prosecutor must be run with very strict integrity standards to ensure honesty and become a respected institution. As of now, there is a lot of skepticism as to whether the special prosecutor will indeed be autonomous.

The war against corruption is a necessary battle that never ends. The aim is not to eliminate the risks of corruption, but to control them. A good anti-corruption system should be able to identify, investigate, and sanction every act of corruption. It should be able to control the presence and

impact of corruption on governmental functions and services, and the anti-corruption system should constantly learn from each case to establish improved preventive measures.

An important next step in combating corruption is to control public procurement. Most of the corruption scandals in Mexico are related to public procurement. Corruption in this fundamental activity can leave a hospital without medicines, a classroom without computers, two towns without a road connecting them, or a police force without the proper equipment.

The high risks derive not only from the enormous budget allocated to public procurement, but also from the quantity of procedures that are performed by the government every year. At the federal level, the Mexican government performs more than 150,000 acquisitions a year worth more than P\$400 billion ([www.compranet.gob.mx](http://www.compranet.gob.mx)). Many of these are for buying standardized products, such as staples, vehicles, blankets, telephones, internet, and parking, yet others are for purchasing very complex and expensive public goods and services. A proper system of control and oversight in public procurement is a great tool for fighting corruption and increases efficiency in the allocation of goods and services and the construction of public works.

Compranet, established in 1997, is an example of the government making an effort to establish transparency and accountability in government purchases by publishing bids online. The platform of bids, purchases, and contracts has been revised three times since then with poor results. The latest iteration of Compranet, called 5.0, is an improvement because it eliminates contact between tender participants and government officials, allows the public to observe every purchase made by the government, and simplifies procedures. However, it still leaves much to be desired because the system has no proper control or oversight, and procurement processes cannot be tracked on the website from beginning to end. The Mexican Procurement Law needs to be revised and reformed in order to reestablish Compranet as the cornerstone of control and oversight in the government's procurement and public works.

The creation of NAS, and its regulatory laws, is only the first of step of the reform process. The most important part is still to follow: implementation and consolidation of a mature NAS.

To consolidate a mature and successful NAS, Mexico will need to solve complicated human, administrative, economic, and legal issues. New institutions are born with high expectations, to solve in a short period of time a highly complex problem that triggered the legislative process. As failure becomes imminent, the immediate response is often to change the law again, which makes it impossible for a public institution to mature.

Finding the appropriate human resources for combating corruption is a particular challenge. There are no real experts in corruption investigations in Mexico. Therefore, a new corps of specialized officials needs to be created and developed. This requires the creation of a rigorous capacity-building policy and program and requires time and patience.

To ensure sound administration of anti-corruption agencies, we need to create conditions for public servants to work in proper environments with adequate procedures. For example, criminal prosecutors in Mexico spend most of their time doing bureaucratic work, in cramped offices, with low budgets, and attending more cases than they can handle properly. If the fight against corruption is going to be successful, it will need specialized servants actually solving cases of corruption, instead of spending their valuable time filling out administrative forms to comply with internal regulations.

An economic commitment must be made to making anti-corruption efforts work. The new institutions to be created must be endowed with adequate economic resources and imbued with political will. This will not be easy because it is difficult to argue that the fight against corruption naturally supersedes health, education, or security. Civil society will need to oversee the allocation of proper levels of resources, at least for a certain period of time, in order to allow the system to mature.

The legal framework for anti-corruption requires further work, and several laws still need to be reviewed and adapted. For example, the Public Procurement and Public Works laws must be reformed to establish better

monitoring mechanisms and enhance transparency and accountability for every procurement process. Also, asset recovery laws need revision to become enforceable. The fight against corruption is incomplete if a convicted felon can enjoy the fruits of corruption after a period in jail or a separation from public service. The law that regulates asset recovery needs to consider the proper mechanisms, procedures, and institutions for engaging in fruitful international cooperation for recovery of assets located overseas. Adding to this, the most complex process will be legislative adaptation at the local level. Governments of all 31 states and Mexico City will need to adopt and adhere to the new anti-corruption system.

In a democratic country in which corruption and impunity have become systemic and intrinsic, a system to fight it in public procurement is a necessity of survival. Overall, as this chapter has shown, the Mexican Spring of 2016 will be remembered as a time in which Mexicans erupted peacefully in their Congress to inaugurate a new version of democracy. Yet, it will also be remembered as the first of many steps to follow.

## **Expected Benefits if Corruption is Reduced**

What are the benefits of approving anti-corruption laws and effectively implementing them? There are powerful arguments in favor of pursuing rigorously to prevent, chase down and punish corruption. Promoting the development of a proper and solid NAS should be a priority of the Mexican state because it could achieve better outcomes in (1) policing, and (2) economic growth. In this section, we describe why this would be the case.

### **1. Police forces**

Trust in police forces in Mexico is among the lowest in the world. Mexico ranks at the bottom, 130<sup>th</sup> out of 138 countries, with respect to the extent to which its citizens believe that police services can be relied upon to enforce law and order (WEF 2016). This places Mexico below countries like Guatemala (128), Pakistan (118), and Colombia (113). Furthermore, about 90 percent of Mexicans believe the police forces are

corrupt, which makes the police not only the institution with the highest perception of corruption in Mexico, but among the highest in the entire world (in 98<sup>th</sup> place out of 106 countries, according to Transparency International in 2013). Indeed, it is estimated that there are about 1.7 million cases of corruption involving public security agents yearly in Mexico (INEGI 2016).

The use of stricter mechanisms to identify, prevent, and deter corruption in police departments could make them work more efficiently to reduce crime and violence. Some empirical evidence seems to support this premise. In Nuevo León, for example, after the creation of “Fuerza Civil,” a new, more professionalized corps of police officers were vetted to be less prone to corruption, and homicides were reduced significantly between 2011 and 2014.<sup>7</sup>

There are at least three channels through which reducing corruption could improve police effectiveness in Mexico:

**1. Improving cooperation between police forces.** It has been proven that lack of coordination between different levels of government creates environments in which crime tends to emerge (Ríos 2012, 2015). When different police forces do not share information, procedures, and objectives, prosecuting criminals is less efficient. Interestingly, corruption is one of the main reasons that police officials cite to explain why cooperation is rare between Mexican federal and state police forces. Indeed, according to INEGI (2016), the incidence of corruption is almost six times greater at municipal levels than with federal authorities.<sup>8</sup> Federal forces, which tend to be much more professionalized than police at lower levels, are wary of the honesty and capacity of state and local police, so they prefer not to share sensitive information with them. As a result, intelligence is either done twice (at the local and federal levels) or is absent at the local level. A positive outcome of reducing corruption would be the promotion of cooperation between police departments at different levels of government and thus better use could be made of information and intelligence. Enhanced cooperation between police departments would be particularly important in fighting crimes like extortion or kidnapping, which are widespread throughout the country but are usually planned at the local level.

**2. Functional implementation of judicial reform.** Mexico's newly implemented judicial system grants much larger investigative responsibilities to police departments (Rodríguez and Shirk 2015). Diminishing corruption will be fundamental to producing investigations that are conducted fairly and professionally and developing a judicial system that Mexican citizens can trust. It is estimated that about half (50.6 percent) of the interactions that citizens have with public security authorities involve some form of corrupt activity (INEGI 2015).

**3. Increases in crime reporting.** The police are the first contact that most people have with the judicial system and represent about five percent of all contacts that Mexicans have on average with authorities.<sup>9</sup> As a result, the interaction with police is decisive in determining the confidence of normal citizens in judicial procedures. Given the widespread perception of corruption among the police, it is not a surprise that out of 33.7 million crimes committed in Mexico every year, only 10.7 percent are reported. The reason Mexicans give for not reporting crimes are distrust of the authorities, in 16.8 percent of cases, and blatant fear of being extorted by authorities in 0.7 percent of the cases. This means that, by reducing corruption, reports of crimes could increase up to 17.5 percent, giving the Mexican State a greater ability to identify when and where crimes occur and to implement plans to deter it (INEGI 2015).

## 2. Economic development

Mexico is not growing to its full potential and is characterized by deep inequality in income distribution. Over the last decade, the average growth of Mexico has been 2.3 percent per year, and social mobility has remained among the lowest in Latin America (Neidhöfer 2016).

Corruption may well be one of the factors contributing to this trend. As Rothstein and Holmberg (2011) have demonstrated, corruption tends to be correlated with lower levels of growth and human development, and this trend is accentuated among lower income countries (Ugur and Dasgupta 2011).

There are at least three channels through which reducing corruption could improve economic development in Mexico:

**1. Cost reduction.** The costs of operating a business increase when corruption is present, particularly due to the amount of informal payments (bribes) that firms are required to cover with some regularity (De Rosa, Gooroochurn and Görg 2010). It is estimated that 44 percent of Mexican firms pay bribes, worth a total of USD\$1.7 billion per year (Transparencia Internacional 2010). Currently, 63 percent of Mexican businesses consider that corruption is simply “business as usual” in Mexico (Rodríguez Arregui 2015). Conservative estimates argue that 4 percent of the average construction contract value is spent in bribes, although some claim that this could be up to 30 percent (Transparencia Internacional 2010). Indeed, tackling corruption would signify large savings for firms in Mexico.

**2. More effective taxation.** Corruption allows loopholes to exist in the tax system that permit powerful interest groups to avoid taxation. This affects not only the size of government income, but its composition. For example, it has been shown that corrupt countries are less able to tax corporations and have bigger informal economies (Kauffman et al. 1999). Furthermore, if corruption facilitates tax evasion, it smooths the way for the existence of less productive underground economies (Nawaz 2010). In general, corruption is correlated with less progressive tax systems and with fiscal prerogatives that favor those that are capable of bribing or well-connected (Gupta et al 2002). Mexico’s fiscal policies are a mix of progressive/regressive taxes that have been difficult to change (Romero 2015).<sup>10</sup> Fighting corruption may lead to creating better taxing schemes over the long term.

**3. More productive public investment and greater private investment.** Countries that are corrupt tend to have lower levels of investment, particularly foreign investment (Sanyal and Samanta 2008, Zurawicki and Habib 2010). The few investments they receive tend to come from more corrupt countries, rather than from countries that, like the United States, criminalize corrupt acts committed outside their borders (Cuervo-Cazurra 2006). Corruption also corresponds to a statistically significant degree to less productive investment. It is estimated that a one-point increase on a scale from zero to ten lowers productivity by minus four percentage points of GDP, and reduces foreign capital inflows by -0.5 percent (Lambsdorff 2003). Given Mexico’s great need for increasing its investment, fighting corruption must be a top priority for the country.

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## Endnotes

- 1 During the six months after Ms. Carmen Aristegui broke the news that the president owned, through his wife, a luxurious home that had not been declared as a part of his assets, approval of the president fell 20 percentage points, sharply decreasing from 59 percent to 39 percent, according to *Parametría*, one of Mexico's leading polling companies.
- 2 According to electoral legislation, 220,000 signatures are required to register a new political party. In this case, Mexican citizens gathered enough signatures to create almost three new political parties.
- 3 Except for budgetary issues, which have an inescapable deadline set by the Constitution, if the regular period ends without enough time to discuss an issue, that topic or legislation is stored in the docket (supposedly slated to be discussed in the next legislative period).
- 4 "Others" refers to one independent congressman and the following parties: Morena, Encuentro Social, Movimiento Ciudadano, and Nueva Alianza (Cámara de Diputados, 2016).
- 5 "Others" refers to one independent congressman and the following parties: Partido del Trabajo and independents (Cámara de Senadores, 2016).
- 6 This Ministry disappeared from the Law when the NAC was proposed and has been functioning without a proper legal basis ever since.
- 7 This was not the only measure responsible for diminishing violence. Among other factors contributing to this was greater cooperation between civil society and government, collaboration between different levels of government, better technology and strategies to track crime, and social cohesion programs. Indeed, it is hard to disentangle the effect that corruption-related measures had on the overall reduction of violence (Conger 2014).
- 8 When dealing with federal authorities, incidence of corruption is 2,729 per 100,000 adult inhabitants, at the municipal level the figure is of 12,645 (INEGI 2016).
- 9 Out of an estimated of 70 million yearly contacts between Mexicans and their authorities (INEGI 2013), 3.6 million are with "public security authorities" or in the form of "emergency calls to the police."
- 10 Measured as the ratio of consumption over property/income taxes, consumption taxes are regressive.

**Q** *What are Mexico's justice system weaknesses and how has the ongoing reform process affected its performance?*

## POLICY RECOMMENDATIONS

- A**
- Formalize or strengthen career structures within the judicial system to promote merit-based placement and reduce corruption.
  - Provide stability to justice institutions by promoting long-term projects of institutional reform, especially in institutions that have had multiple reform efforts (e.g., police).
  - Reduce personnel turnover.

# ON THE JUSTICE SYSTEM

BY MATTHEW C. INGRAM

## Introduction

This chapter identifies obstacles to the rule of law in Mexico's justice system by illustrating how separate obstacles contribute to impeding rule of law in general. While the discussion revolves around the justice system as a whole, I emphasize obstacles to the rule of law with regards to the criminal justice system that was due to be complete in all states by June 2016.

On a methodological note, this chapter is not based on a systematic analysis of all rule of law initiatives in Mexico and their varied strengths and weaknesses, successes and failures. Rather, this chapter is a reflection based on administrative data, public opinion polls, victimization and inmate surveys, other published research, and my own background and experience studying the justice sector in Mexico for more than a decade.<sup>1</sup>

The goal of this chapter is to provide a broad view of obstacles to the rule of law in Mexico—focusing on the justice system—in order to assess the problem, in its multiple dimensions, and to provide an encompassing view of the complexity of the problem.

Lastly, in this chapter, I rely on the United States Agency for International Development's (USAID 2008) definition of rule of law with five components, one of which has four subcomponents. The five main components are: (1) Order and Security, (2) Legitimacy, (3) Checks and Balances, (4) Fairness, and (5) Effective Application. The fourth component—fairness—has four sub-components: (i) equal application, (ii) procedural fairness, (iii) protection of human rights and liberties, and (iv) access to justice. Much of this discussion centers on a recent and ongoing transformation in criminal procedure—a major, revolutionary reform process that touches every corner of the criminal justice system from police to prisons—and that has also begun to affect legal procedure in non-criminal cases. This process was supposed to be complete by June 17, 2016. Some points are relevant to reforms beyond criminal procedure, but much of the discussion revolves around this ongoing reform process.

## Order and Security

An in-depth discussion of patterns of crime and public insecurity is beyond the scope of this chapter, but it is uncontroversial to say that crime and violence—and the attendant fear and insecurity—have been persistently high, even rising, since the mid-2000s. To the extent that crime and violence remain high, and a sense of disorder and lack of physical safety persist, the rule of law will remain weak.

High-impact crimes like homicide, kidnapping, and extortion increased dramatically since 2006. The homicide rate tripled from 2007 to 2011, and has remained at record levels through 2016. Even where there are slight reductions in some places or points in time (e.g., homicide rates from 2012 to 2013), these reversals have been short-lived or are shrouded in suspicion that official statistics are being manipulated for political purposes. For example, data from 2012, 2013, and 2014 suggest the homicide rate appeared to flatten or decrease slightly, but at least three caveats are in order.

First, since 2006, both governing parties – *Partido Acción Nacional* (PAN) and *Partido Revolucionario Institucional* (PRI) – have generated

concerns among observers that authorities are manipulating, or at least withholding, data on crime and violence, which generates measurement challenges. For instance, under the Calderón administration (2006-2012), official data on violence related to organized crime was withheld for four years, and once the data was released to the public the administration announced that it would not be generating similar data moving forward, making comparisons over time difficult (Ley 2012). Under the PRI administration of Enrique Peña Nieto (EPN) (2012-2018), the flattening or decrease in the homicide rate has been accompanied by widespread criticism that official statistics are being altered in order to give the appearance that communities are safer than they actually are, or that the administration's security policies are working. For instance, security analysts have called attention to the government's questionable reclassification of homicides attributable to organized crime and drug trafficking organizations (hereafter, drug trafficking organizations (DTOs); see Hope 2013a; 2013b). As recently as September 14, 2015, major news organizations have challenged the official statistics, saying the homicide count has been rising, not falling, during the first half of EPN's administration. Indeed, after homicides doubled from around 60,000 in the Fox administration (2000-2006) to about 120,000 in the Calderon administration (2006-2012), data from 2013 to 2015 show the homicide rate was trending upwards again in 2015 and that the total for the current administration will surpass the record of Calderon's administration (Hope 2016).

Second, even if the official homicide rate is accurate and flattened or decreased slightly in 2012 to 2014, the rate remained very high at approximately three times what it was in Mexico in 2006. Third, and lastly, the homicide rate began increasing again in 2015. As noted earlier, at the end of 2015, the rising homicide rate put EPN's administration on pace to exceed the record six-year total of his predecessor.

Beyond general homicide trends, the nature of violence in Mexico also bears emphasizing. Many homicides in Mexico are not simple killings, but rather grotesque displays of brutality. Further, there have been at least 24 documented massacres since 1995, 19 of which occurred since January 2010 (MEPI 2014). At least eight people were killed in each of

these incidents, and the largest incident – in the state of Tamaulipas – claimed the lives of 173 confirmed victims found across 40 unmarked graves. One massacre in the town of Allende, Coahuila, is only recently receiving attention even though it occurred in March 2011. In that town, 11 murder victims were confirmed, another 17 people remain missing, and as many as 300 people were reported to have disappeared (*El Universal* 2014).

The massacre that had received the greatest media attention at the close of 2014 and through the first half of 2016 – for the scale and type of violence, the collusion of police and other government officials, as well as the government’s investigative blunders and delay – is the still unresolved disappearance of 43 university students from a teachers’ college in the town of Ayotzinapa, Guerrero, on September 26, 2014. I return to a closer discussion of this case in the later sections on fairness and effective application of laws.

Kidnapping and extortion rates have also been increasing. Both of these crimes are associated with Drug Trafficking Organizations (DTOs), as criminal groups use both activities as part of their business model to raise money. Notably, both kidnapping and extortion are severely underreported. According to the limited statistics that are available, kidnappings increased 15 percent from 2010 to 2011, remained stable through 2012, and then jumped up 22.7 percent from 2012 to 2013, leading security analysts to speak of a kidnapping “explosion” (Hope 2014). Further, estimates show that small fractions of kidnappings (1 percent) and extortions (2 percent) are reported (ONC 2014, 23-26; DOS 2014, 4).

Extortion has increased even more dramatically, rising from a rate per 100,000 people of 0.9 in 1997 to the historical maximum rate ever reached in Mexico in 2013 of 6.97, an increase of more than 600 percent (ONC 2014). Indeed, the extortion rate in Mexico has increased monotonically every year since 2002; that is, it has increased or remained flat every year, but never decreased, for more than a decade. In short, in addition to an explosion of kidnapping in Mexico, we could also speak of an “extortion explosion.”

Lastly, even people in highly visible and prominent positions of power are at risk of this violence. In only the first two months of 2013, 57 police officers and soldiers were killed, including 32 municipal police officers (Milenio 2013). In April 2015, one ambush by drug traffickers killed 15 state police officers (Reuters 2015b), and a separate attack later that month shot down a military helicopter, killing three soldiers (Partlow 2015). These two attacks were seen as evidence of a new spike in violence due to the rising power of a new DTO in that state, New Generation Jalisco (*Jalisco Nueva Generación*). Further, dozens of politicians have been killed at the hands of organized crime in Mexico. These politicians include more than 60 mayors: 30 mayors killed while in office between 2006 and 2014, and an additional 31 former mayors or mayors-elect (killed either before they entered office or after leaving office; Zaval and Nácar 2014). A separate study documented 70 mayors and former mayors killed between 2008 and 2014 (Heinle et al. 2014, 30). On January 2, 2016, just one day after taking office, mayor Gisela Mota was killed; she was particularly notable because she was a former congresswoman who had vowed to fight drug trafficking, so she was a very public and experienced figure, and she was killed about an hour's drive south of the nation's capital (The Economist 2016). Several local legislators have also been killed (DOS, 3), and at least one candidate for governor (in Tamaulipas; ONC, 165). Further, while historically more journalists have been killed than mayors, and even as 2013 was a particularly violent year for journalists, for the first time since 2008, "in 2013 it was more life threatening to be a mayor than a journalist in Mexico" (Heinle et al., 30). In short, where ordinary citizens are extremely vulnerable and insecure, even journalists and people in official positions of power have been targeted.

Data from the AmericasBarometer surveys by the Latin American Public Opinion Project (LAPOP) and national victimization surveys help understand rates of criminal victimization and increasing fearfulness in Mexico.<sup>2</sup> According to data from LAPOP, about 15 to 26 percent of the adult population (age 18 and over) reported being victimized by crime in the preceding 12 months (17 percent in 2004; 20 percent in 2006; 16 percent in 2008; 26 percent in 2010; 23 percent in 2012; 24 percent in

2014). According to ICESI's national victimization survey (ENSI), about one in ten people were victims of crime in the preceding year from 2004 to 2008 (11 percent in 2004; 11 percent in 2007; 12 percent in 2008). This figure remained relatively stable at 10 percent in 2009. However, the newer ENVIPE survey shows that this figure rose to 24 percent in 2010 and 2011, 27 percent in 2012, and 28 percent in 2013, 2014, and 2015 (with a 90 percent confidence interval in 2015 of 27.8-28.6). Thus, the most recent data available from two different sources (LAPOP and national victimization surveys) show a steady trend of increasing criminal victimization in Mexico, rising from between one in seven and one in ten people in 2004-2008, to between one in three and one in four people victimized by crime in 2015. That is, between a quarter and a third of people are victimized each year. Notably, these are all individual responses, so the rates of households victimized by crime are sure to be higher. That is, it is likely that more than a third of the population has either been victims of a crime themselves or live with someone who was a victim of crime. Further, these figures do not capture repeat victimization or victimization outside of the 12 months preceding the administration of the survey.

Moreover, these are all national figures, and there is wide variation at the subnational level. Some states have lower rates of victimization (e.g., Yucatán at 17 percent in 2010, or Chiapas at 15 percent in 2014, according to INEGI data). However, several states have rates that are higher than the national figure. Table 1 below reports states with a victimization rate of 30 percent or more in at least one year from 2010-2015. States are sorted in descending order according to rate in 2015; the top right corner highlights the two most recent years of data for states with the highest rates.



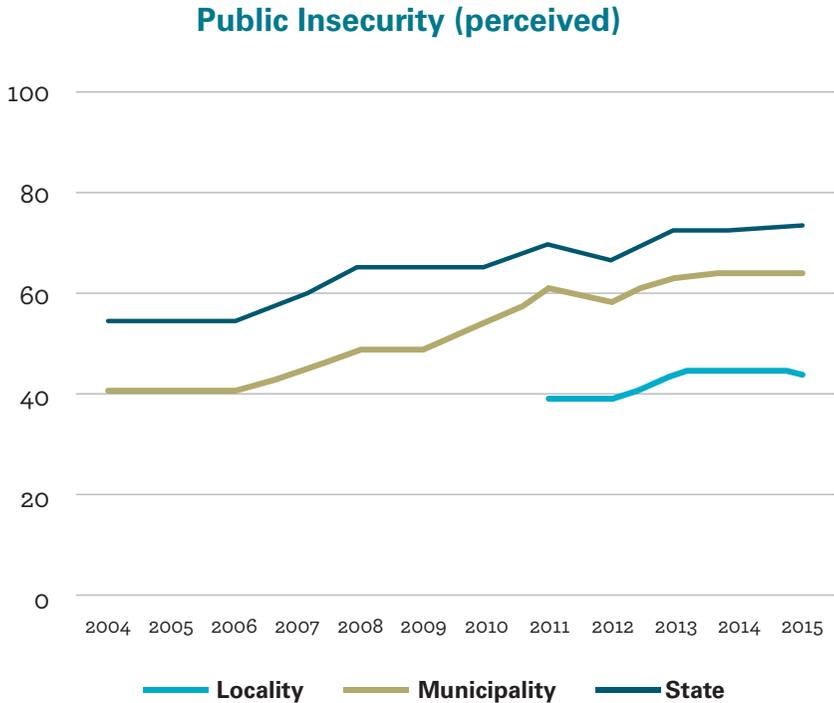
**Table 1. Victimization rates for states with rate of 30% or more in any one year, 2010-2015**

State	2010	2011	2012	2013	2014	2015
Mexico State	28	31	41	48	45	46
Mexico City	32	33	32	33	36	39
Jalisco	25	26	32	33	31	34
Baja California	31	31	37	40	38	31
Aguascalientes	36	26	27	27	33	31
Sonora	29	30	29	27	24	30
Guerrero	20	20	27	26	28	30
Morelos	22	23	29	26	30	29
Quintana Roo	28	27	30	27	29	29
Guanajuato	21	25	29	27	32	28
Nuevo Leon	28	25	31	27	24	25
Baja California Sur	23	27	27	25	30	24
Chihuahua	36	30	33	27	22	24

Source: INEGI

Table 1 reveals several patterns – some positive and some worrisome in an already intense environment of public fear and physical insecurity. On the positive side, victimization rates have dropped in some states, e.g., Chihuahua (from 36 in 2010 to 24 in 2015). In contrast, data from 2015 show extremely high rates of victimization in several states. Specifically, about one in three people are victims of crime in Jalisco, Guanajuato, Aguascalientes, Mexico City, and Baja California, and this rate rises to about one in two people in the state of Mexico.<sup>3</sup> About half of all adults in Mexico's most populous state reported being a victim of a crime in 2015. Again, these are data for only individuals and one year, so the diagnosis is surely worse as the frame of analysis expands to households, beyond one year, and to repeat victimization.

**Figure 1. Perceptions of public insecurity over time (ICESI and INEGI data)**



**(% adult population that feels unsafe)\***

*Note: Data for 2005, 2006, and 2009 are from the nearest preceding year, so changes around these years should be interpreted with caution.*

These same victimization surveys show that perceptions of fear and insecurity have been holding steady at persistently high levels and even rising since the mid-2000s. Figure 1 reports combined data from surveys by *Instituto Ciudadano de Estudios sobre la Inseguridad* (ICESI) (2004, 2006, and 2008) and INEGI (2010-2015) that show the percentage of adults (age 18 and over) that feel unsafe in (a) their home neighborhood

(*colonia o localidad*, available only since 2011), (b) their municipality, and (c) their state. All three lines show an upward trend since 2004, with levels of insecurity increasing as the respondent's reference area changes from neighborhood to municipality to state. Thus, people have felt increasingly unsafe over time, and people feel increasingly unsafe the farther they are from home. Further, the 2015 survey showed insecurity was the top policy priority (including poverty, corruption, jobs, and drug trafficking).

It is also worth noting that fear and insecurity is unevenly distributed across places and the population. For instance, insecurity was the top priority overall and in most states, with the state of Mexico leading the way with more than two-thirds of respondents listing insecurity as their top concern. However, in some states insecurity dropped down below other more pressing concerns about poverty, health, and unemployment (e.g., Chiapas, Oaxaca).

Also, women tend to feel more unsafe than men, and the difference is striking in some places and considering a range of daily activities affected by this physical insecurity. In the state of Mexico in 2015, more than a third of women felt unsafe in their homes, at school, and at work, and more than 80 percent felt unsafe on the street. Also in 2015, due to fears related to personal safety, in Coahuila about 12 percent of women stopped going to school; in ten states (Coahuila, Chihuahua, Guerrero, state of Mexico, Morelos, Nuevo Leon, Tabasco, Tamaulipas, Veracruz, and Zacatecas), about a third of women (in several states more than 40 percent) stopped going out for a walk, to eat, to a movie, or even to visit friends and family. Tamaulipas in 2015 presents an extreme case in this regard; due to fear and insecurity, more than 50 percent of women stopped going out to eat, more than 60 percent stopped using taxis, going for walks, going out to theatre or movies, and going out to visit friends or family, and more than 75 percent of women stopped going out at night entirely. So, at least one out of every three women has stopped routine activities and social interactions outside the house that most people associate with normal, daily life, setting stark boundaries in their lives and increasing their social isolation, and one in eight women abandoned their education, hindering their long-term potential for personal growth and economic opportunities.

A major obstacle to addressing crime and insecurity is the tendency of policy makers to prefer short-term, reactive policies rather than long-term, proactive and preventive ones that address root sources of crime and violence. For example, a large, interdisciplinary literature on the root causes of criminality highlights risk factors like population pressures, poverty, inequality, family disruption, and low educational attainment. However, the security debate consistently emphasizes reactive approaches like kingpin strategies, police reform, or criminal justice reform. To be sure, these are all important efforts, but when these institutional reforms are the sole or main effort at reducing crime and increasing security, the underlying sources of criminality are neglected, perpetuating the problem. Short-term thinking dictated by the electoral calendar or other sources of personal ambition is an obstacle to the development of long-term strategies like those required for truly preventive policies.

## Legitimacy

A common theme from polling data – from both public opinion polls and victimization surveys – is the low trust in justice institutions. Data from both LAPOP from 2004 to 2014 and national victimization surveys from 2004 to 2015 show both general victimization trends and patterns in public trust and confidence in justice institutions.

According to data from the LAPOP, despite the increasing victimization rate discussed earlier, about two-thirds of crime victims do not report their victimization to authorities (65 percent in 2004; 63 percent in 2008; no data in 2010, 2012, or 2014 surveys). Of these people who did not report their victimization, majorities said they did not do so because reporting would not do any good (54 percent in 2004; 59 percent in 2008), and another sizeable portion said they did not report because doing so would expose them to retribution (13 percent in 2004; 10 percent in 2008). Further, about two-thirds of people said that if they were a victim of a violent crime (e.g., robbery or some kind of battery or attack), they would have little or no trust in the system to punish the guilty (68 percent in 2004, 64 percent in 2006, 61 percent in 2008, 69 percent in 2010, 65 percent in 2012, and 68 percent in 2014). In short, according

to LAPOP, two in three victims of crime do not report their victimization either because they see the act of reporting as useless or dangerous, and consistently from 2004 to 2014, about two in three people say that if they were victims of a violent crime they would not have confidence that the justice system would hold the aggressor accountable.

Data from ICESI and INEGI help flesh out this widespread lack of trust or confidence in the justice system. From 2004 to 2008, more than 75 percent of people who had been victims of a crime did not report the crime to authorities. Of these people that did not report, 35 to 40 percent stated that their reason for not reporting was that it would be a “waste of time.” Another 14 to 18 percent said they did not report because they did not trust authorities, and another eight to ten percent said they did not report because the reporting process was too long and difficult. Thus, about three in four crime victims do not report this victimization to authorities, and about half of these people do not report this victimization out of a combination of a lack of trust or a lack of confidence in the competence of justice institutions. That is, *justice institutions are seen as useless or, worse, dangerous.*

The data show a worsening pattern from 2010 forward. From 2010 to 2014, only one in ten crime victims reported their victimization (12 percent in 2010, 13 percent in 2011, 12 percent in 2012, 10 percent in 2013, and 11 percent in 2014). Among the 90 percent of victims who did not report their victimization, the modal reason given for not reporting was that doing so was a “waste of time” (33 percent in 2010, 34 percent in 2011, 32 percent in 2012, 31 percent in 2013, and 32 percent in 2014). Another 15 to 21 percent said they did not report due to a “lack of trust” in authorities, and four to six percent cited hostility on the part of the authorities (other reasons given included fear of extortion and retaliation).

LAPOP’s polling data also show that general distrust of the justice system is increasing. From 2004 to 2008, 36 to 37 percent said they had little confidence in the justice system, rising to about 40 percent in 2010-2012, and then jumping to 50 percent in 2014 (LAPOP, question b10a).

Perhaps most revealing are data from a 2011 survey of justice professionals, including judges, prosecutors, and public defenders (Ingram, Rodri-

guez-Ferreira, and Shirk 2011). In that survey, part of the *Justiciabarómetro* project, 30 to 45 percent of respondents reported having been the victim of a *violent* crime during the previous year, and one in four prosecutors and judges who were victims of crime said they did not report the crime to authorities. If asked to consider a scenario in which they were a victim of a violent crime, about one in three judges expressed little or no confidence that the system would punish the guilty. In other words, even judges and other legal elites – competent, sophisticated legal professionals who are best situated to access and understand the justice system – show some of the same non-reporting and distrust of justice institutions that is seen in the general population.

Data from the *Justiciabarómetro* survey of judges (2011) and police (Suárez de Garay and Shirk, 2009) reveal two other patterns relevant to legitimacy. First, among judges, there is a correlation between older ages and negative attitudes towards the 2008 reform, i.e., older judges tend to dislike the reform more than their younger counterparts. One explanation is that older, more senior judges tend to have more status and prestige, and this status and prestige inextricably linked to the traditional system. Even if they did not rise to a senior position due to merit but rather did so due to political favors or personal connections, their influence is tied to status quo. Thus, all else being equal, an obstacle to the rule of law is the resistance from senior judges who may oppose reform out of fear that the new system undermines their current power or position. Stated more generally, they may oppose the reform out of narrow, self-interested, material motivations. This is surely the case among a subset of senior judges, perhaps more so at the federal level than at the state level given the greater material benefits that flow to the federal judiciary, and deep reform may require patience for a generational shift, i.e., the passage of time.

Another explanation is a cultural resistance to the reform that is less self-interested and more rooted in a sincere commitment to the legal norms underlying the old system. For instance, the old system privileged the principle of legality or legal certainty (*principio de legalidad*). According to this principle, all else being equal, prosecutors have little

discretion and are obligated to investigate and prosecute every violation of the law, and it is this lack of discretion or subjective application of the law that gives the system an overall sense of certainty and predictability. For these reasons, legal actors believe that the Rule of Law is best upheld by the principle of legality. In contrast, the new system introduces the principle of discretion (*principio de oportunidad*), which approaches aspects of the U.S. criminal process by allowing a substantial amount of discretionary decision making at various stages of the legal process, e.g., in alternative exits from the standard criminal process, including conciliation, reparative agreements, suspended sentences, and mechanisms similar to plea bargaining. The opportunity for discretion in the application of the law is familiar to U.S. audiences – indeed, more than 90 percent of criminal cases in both federal and state courts in the United States are resolved by plea bargaining (Devers 2011) – but in the context of a legal system that was previously immersed in the principle of legality, this discretion can seem almost heretical, “a kind of ‘devil’s pact’ that allows guilty defendants to avoid the full force of the law” (Rakoff 2014). Thus, an obstacle to the rule of law is the normative or cultural resistance the new system generates among practitioners brought up under the old system, a resistance that makes it difficult to even teach the new system in the country’s law schools and training academies.

In short, in addition to deep distrust of justice institutions among the general population, obstacles to the legitimacy of the 2008 reform include narrowly self-interested, material motivations held by senior personnel, as well as more general, cultural, non-material, commitments held by personnel who believe in the principles underlying the legal culture of the old system.

## Checks and Balances

One of the major accomplishments touted by the 2008 reform was the introduction of greater independence for judges at different stages of the criminal process. This independence increased the number and diversity of autonomous actors, strengthening checks and balances by providing new opportunities for actors to oversee each other. For instance, the

creation of a new due process judge (*juez de garantías*) separated two key decisions that used to be concentrated in a single person: (1) the decision of whether there was sufficient evidence to hold someone for trial, and (2) the decision at trial about guilt or innocence. The due process judges and the trial judges can now operate as checks against each other, and the due process judge is also explicitly charged with checking other actors, including police and prosecutors. In this regard, checks and balances have strengthened.

However, public defenders are a major neglected area in the recent and ongoing criminal procedure reform. While police, forensic investigators, prosecutors, judges, and court staff have all been highlighted in various ways in the reform process, as of early 2016 public defenders were still largely ignored. This neglect manifests itself in various ways, but one of the main ways is that none of the major groups conducting trainings as part of the implementation of the reform includes public defenders among its participants. Various agencies and organizations train police, forensic investigators, interrogators, prosecutors, judges, and court staff, but public defenders have been left out.

This oversight has two major consequences for rule of law. First, the rights of the accused are vulnerable. Fundamental rights like the freedom from arbitrary detention or arrest and freedom from coerced confessions are unprotected without representation. Second, the system as a whole lacks effective checks and balances if there is no counterweight to prosecutorial power.

In a later section, I address attacks on journalists as evidence of the lack of respect for press freedom, but access to information is a crucial input for accountability, so these attacks are also relevant for checks and balances more generally. As might be expected, the violence directed at the media has led to substantial self-censorship, leading to a reduced availability of information on the real magnitude of problems related to crime and violence in many parts of the country. This has been described as the rise in Mexico of “information blackouts” and “spirals of silence” (Edmonds-Poli 2014, 165; citing MEPI Foundation). This and any related

self-censorship erode access to information, weakening checks and balances and undermining the rule of law.

## Fairness

Recalling USAID's definition of Rule of Law, four sub-components constitute fairness: equal application, procedural fairness, protection of human rights and civil liberties, and access to justice.

## Equal Application

The justice system operates in a highly uneven fashion across different types of people and across different geographic areas of Mexico. This unevenness is itself a form of inequality, and therefore an obstacle to the rule of law. More specifically, uneven institutional strength is an instance of the unequal application of the law, or the uneven effectiveness of justice institutions, and this unevenness makes the real effectiveness of rights and liberties unequal across the population based merely on where one lives. Several studies document the uneven strength of justice institutions across Mexico's 32 states, including my own work referenced in the introduction.

Additionally, other studies document the uneven application of the law across different types or classes of people. For instance, several studies have found that the justice system – and especially jails and prisons – tend to ensnare the “poor and marginalized” in society (Azaola and Bergman 2009). The percentage of those in prison for some form of theft or related property crime is high (at about two-thirds of all inmates from 2002 to 2013 in Mexico City and state of Mexico) and increasing (rising to about eight out of every ten new inmates in custody in 2013), and the value of the property in question is relatively low (half of all cases involve property valued at less than about USD\$1,000, and about a quarter of cases involve property valued at only USD\$100-200). Further, there are clear indications that those who can afford to pay for legal representation receive better treatment, and those who pay bribes receive various favors, including release (Bergman et al. 2014). Thus, the official use of

force in depriving people of their liberty is felt disproportionately by the poor and underprivileged. In short, the law is not applied equally to all people.

The Ayotzinapa case provides a dramatic example of unequal application of law, and also illustrates shortcomings in other areas of fairness. As briefly introduced in the section on order and security, this case involves the still-unresolved death of six people, injuries to more than a dozen others, and the disappearance of 43 university students from a teachers' college in the town of Ayotzinapa, Guerrero, on September 26, 2014.

In that case, the government's version of events was that two municipal police agencies (from the city of Iguala and town of Cocula) and the mayor's office from Iguala colluded with a DTO, "Guerreros Unidos," to shoot at the students in the city of Iguala and then capture 43 of the students and turn them over to the DTO, after which point the students were never seen again. As of May 1, 2016, even sophisticated DNA tests had been unable to identify any of the missing students from charred remains found in the area, and only one of the 43 students had been positively identified via any forensic techniques (Reuters 2015).<sup>4</sup>

The Mexican federal authorities have called the official account the "historical truth," but this account has been seriously undermined in multiple ways by an independent investigation conducted by *Grupo Interdisciplinario de Expertos Independientes*, or GIEI, since January 2015. Due to the initial lack of response from the Mexican authorities, the families of the disappeared victims pressured for an independent panel of experts (GIEI) to be appointed by the Inter-American Commission of Human Rights (IACHR). After negotiations between the Mexican government, the families, and the IACHR, the GIEI panel was appointed and began operating on March 2, 2015. The panel called for the Mexican government to allow 26 infantry soldiers to be interviewed as witnesses regarding the killings and disappearances of September 2014. However, despite being allowed to interview defendants, as well as other witnesses and government officials, on August 17, 2015, the panel reported that the federal government had not allowed the interviews with the soldiers. In addition to criticizing

the lack of access to these witnesses, the panel raised multiple other inconsistencies and criticisms of the handling of the case, including the poor protection of evidence at the scene of the original incident, the lack of attention to the presence at and real-time knowledge of the night's events by federal police and military personnel, the failure to communicate to family members that multiple items of clothing of the disappeared students had been found and collected, the incomplete autopsy of one of the killed students, and perhaps most striking, the disappearance of a surveillance video which had been delivered to the judiciary in Guerrero.<sup>5</sup> Thus, multiple and separate pieces of evidence point to stark failures in the investigation, failures that strongly indicate either extreme incompetence or deeply entrenched corruption and collusion among organized crime and the justice system at several levels of government.

The GIEI submitted its final report on April 26, 2016 (GIEI 2016), and left Mexico in disappointment on April 30 after its mandate was not renewed by the Mexican government. The final report was just as scathing as earlier reports, cutting against the administration's version of events by citing numerous inconsistencies, failures by government authorities, and noting secrecy, failure to share evidence, and failure to make key witnesses available—including the soldiers the GIEI sought to interview in 2015—as among several of the ways in which the federal government obstructed the group's investigation (GIEI 2016). International attention has once again focused on the failing of Mexico's justice system, and Juan Mendez, the U.N. Special Rapporteur on Torture and other Cruel, Inhuman, or Degrading Treatment, expressed his fear that the departure of the GIEI marked the end of any serious investigation into the disappearance of the students (Gomez Quintero 2016).

Thus, while the disappearance of 43 university students is an astonishing tragedy in and of itself, the failures, obstacles, and inconsistencies cited by GIEI combine to give this event a singular intensity in highlighting the gravity of the problem of impunity in Mexico—the inability or unwillingness of authorities to address violence in Mexico. More specifically, in contrast to majorities of prison inmates who are poor and incarcerated

for low-level property crimes, the failure to hold extremely violent offenders accountable speaks loudly and eloquently of the unequal application of laws at best, and of the most severe government abuses at worst.

## Procedural Fairness

While Ayotzinapa was a single event, it was (and remains) a high-profile event that mobilized multiple and sustained mass demonstrations, prompted the involvement of federal authorities, seized national and international attention, and led to the formation of a group of international observers that investigated the incident within Mexico for over a year (January 2015 - April 2016). Further, the investigation into Ayotzinapa took place towards the end of an eight-year effort to improve criminal procedure in Mexico, beginning with the 2008 reform. Under these conditions, Ayotzinapa offers a kind of crucial case for determining the level of procedural fairness in Mexico. That is, if there was any case in recent memory in which we could have reasonably expected procedural fairness to be observed, it would have been a high-profile one like the Ayotzinapa case in which authorities at the highest level were quickly in charge of the investigation, there was massive and sustained public and media attention, international observers were also closely monitoring the process, and a high profile criminal procedure had been underway for six years, including the passage of a new national code of criminal procedure earlier in 2014. Thus, if procedural fairness is not observed here, then the likelihood of procedural fairness is much lower in the larger number of cases that are more ordinary, have a lower profile, and where less competent authorities are involved, and where there is less media attention, international oversight, and attention to due process.

As noted earlier, the best conclusion from the available evidence is that procedural fairness has not been observed in the Ayotzinapa case. Aside from secrecy, obstruction, and mishandling of evidence, the GIEI found that several of the statements obtained by government authorities were elicited by torture or beatings and were therefore unreliable and inadmissible as evidence.

In addition to insights from the Ayotzinapa case, more systematic data also reveals low incidence and low expectations of procedural fairness more generally. A survey of prison inmates in Mexico City and the state of Mexico found that about a third of all inmates reported having been solicited for a bribe by police during the criminal process. Further, about half of all inmates had been physically hit in order to obtain a statement or to change a statement, and an increasing percentage – from about half in 2002 to about three quarters in 2013 – said they understood little or nothing about the reasons why they were found guilty and incarcerated (Bergman et al., 51-52). Thus, in the nation’s capital and in the nation’s most populous state, those who have direct experience with the criminal justice system report the most egregious forms of due process failures (physical violence and coercion) in one out of every two cases, corruption in one out of three cases, and a fundamental ignorance of the process and reasons for one of the worst consequences meted out by the justice system – deprivation of one’s freedom of movement – in fully three quarters of all cases.<sup>6</sup>

A similar diagnosis emerges from LAPOP’s polling data of public trust in the courts’ ability to provide a fair trial (LAPOP, question b1). From 2004 to 2006, about 33 percent expressed little trust in this procedural right, rising to 37 percent in 2008, 41 percent in 2010 to 2012, and then jumping to 50 percent in 2014. That is, about half of the population has little or no confidence in a court’s ability to protect the basic right to a fair trial. Notably, these worrisome data emerge even as the criminal procedure reform had been advancing from 2008 to 2016. If anything, we should have expected confidence in fair trials to be increasing over this time period, not decreasing.

## **Protection of Human Rights and Civil Liberties**

While Mexico formally recognizes human rights and civil liberties, the core issue is that these rights are not respected in practice. Obstacles respecting these rights in practice stem from the previous discussion on order and security, checks and balances, unequal application, and procedural fairness, as well as the next discussion on effective applica-

tion. Persistently high crime and violence mean that large segments of the Mexican population are not secure in their person, i.e., they are not physically safe. In some cases, the physical harm in question comes at the hands of authorities (e.g., Tlatlaya, Tanhuato), or at a minimum from obstacles state authorities place in the path of serious criminal investigations in the aftermath of violence (e.g., Ayotzinapa). Extrajudicial killing and torture arise in several high-profile incidents, including Tlatlaya, Ayotzinapa, and Tanhuato, as well as in the surveys of inmates discussed earlier.

Polling data also show that the general public increasingly perceives basic rights as vulnerable and unprotected. From 2004 to 2008, about 31 to 32 percent said they had little or no confidence that basic citizen rights were protected in Mexico, rising to 37 to 39 percent between 2010 and 2012, and then rising again to about 45 percent in 2014 (LAPOP, question b3).

Regarding civil liberties, under conditions of disorder, fear, and insecurity, core liberties like freedom of expression and association are inhibited, resulting in lower public participation and engagement with the democratic process. A fuller discussion of rule of law as related to democracy and elections is left for another chapter in this volume, but a few observations are in order.

Returning to the discussion of legitimacy, decreased participation in public life and associational activities due to fear and insecurity contributes to lower legitimacy of democratic institutions, including elections and the resultant legislative process. Thus, there is an interactive relationship between order and security, legitimacy, and various elements of fairness, especially when fear and insecurity provide the conditions to reverse advances in criminal procedure reform, thereby not just reducing procedural fairness, but also negatively affecting human rights and civil liberties.

For instance, Mexico is the most dangerous country for journalists in Latin America (Witchel 2014). From 2000 to 2014, a wide range of sources estimate that around 90 journalists were killed and another 20 disappeared (Edmunds-Poli 2014, 144-146). In 2013 alone, there were a total of 330 attacks – lethal and non-lethal – against journalists and

media installations in Mexico, amounting essentially to an attack against journalists every 26 hours (Meyer 2014; Article 19 2014, 11; DOS 2014, 20). For this reason, one organization called 2013 the most dangerous year for journalists in Mexico since 2007 (Article 19 2014, 11; Heinle et al. 2014, 32). Notably, this was the first full year of the EPN administration. In 2014, the number of attacks remained just as high, at 326 for the year (*Article 19 2015a*), and then jumped more than 20 percent to 397 in 2015, or an attack every 22 hours (*Article 19 2015b*). Thus, the first three full years, or the first half, of the EPN administration have been the worst years for press freedom in Mexico in the last 10 years.

## Access to Justice

As noted earlier, rates of crime and violence are persistently high and increasing in Mexico, and fear and insecurity have also been high and increasing. Most crime victims do not even report their victimization to authorities. In this context, even those who can overcome the sense of futility, distrust, or fear, and then seek to report the crime might still be turned away simply because the process is too difficult or long. In this regard, from 2004 to 2008, ENSI data show ten percent of crime victims do not report their victimization because they see the process as too lengthy or difficult. From 2010 to 2014, ENVIPE data show that of those crime victims who did not report victimization to authorities, seven to nine percent said they did not do so because the reporting process was too long or difficult. In short, about one out of ten victims of crime – people who have suffered a clearly identifiable criminal wrong – see justice institutions as simply inaccessible and do not even take the first step to right that wrong.

On the side of the accused, the *Centro de Investigación y Docencia Económicas* (CIDE) survey shows two preoccupying trends. First, inmates increasingly report that they did not understand the legal process, rising from about half of all inmates in 2002 to 76 percent in 2013. That is, three of every four inmates understand little or nothing about why they were found guilty and incarcerated. Second, recalling that property crimes constitute the vast majority of inmate cases, the time to dispo-

sition for these cases increased from 2002 to 2013, and the sentences became harsher (Bergman et al. 2014). Thus, for the majority of cases in the criminal justice system, the process is opaque and increasingly delayed. Notably, delay is already an acute problem in the Mexican criminal justice system, where the accused commonly spend long periods of time in custody waiting for trial and sentencing (Bergman et al., 53-54).

However, this survey also shows some promising areas under the new system in state of Mexico. For instance, in cases advancing under the reformed system, time to disposition is shorter, and inmates reported a better understanding of the process. Still, the serious concerns about the overall population remain.

## **Effective Application**

Effective application is essentially about institutional performance, i.e., the ability of justice institutions to effectively apply laws. There is a large literature on institutional development, and especially in the area of crafting strong justice institutions, from police and other first responders in the investigative phase of the justice process, through courts, attorneys, and other actors and institutions in the adjudicatory phase, to prisons, treatment or rehabilitation centers, and other elements of the enforcement, compliance, or reintegration phases. Two main concerns arise in this arena: (1) the ability of justice institutions to respond to the crime and violence that create the disorder, fear, and insecurity identified earlier, and (2) the ability of institutions to administer justice on an everyday basis for ordinary, routine, daily issues that arise in the population. The two sections below address these issues in greater detail.

## **Ability of Mexican State to Respond to Violence**

The increasing insecurity that results from the violence described above is exacerbated by the weak capacity of the state to investigate, prosecute, adjudicate, and incarcerate those suspected of committing violent crime, due to problems of both incompetence and corruption. In other

words, the environment in Mexico over the last decade is one of increasing insecurity due to both violence and impunity.

One of the most striking and recent events illuminating the weakness and vulnerability of the Mexican security apparatus is the escape of Joaquin “El Chapo” Guzman from a maximum-security prison on July 11, 2015. Although Guzman was recaptured (again) in January 2016, his escape in 2015 was the second time Guzman had escaped from a maximum-security prison in Mexico, even though he was one of the most prominent leaders of a criminal syndicate and among the most wanted criminals in the world. Additionally, Guzman had a long history of building tunnels spanning three decades, including tunnels across the U.S.-Mexico border, yet both of his escapes were via tunnels. The inability of the Mexican state to prevent a second tunnel escape from a maximum-security prison by the leader of the most powerful DTO in the country does not speak well of the capacity of the security apparatus to respond to the patterns of violence documented above.

Recalling the earlier discussion of high-profile massacres in Mexico, another high profile and recent series of events that undermines confidence in the capacity of the Mexican state is the slow and tepid response to the disappearance of 43 students documented earlier as the “Ayotzinapa Case.” Indeed, both the national human rights commission, an international group of experts convened by the IACHR, and the UN’s special rapporteur on torture have criticized the Mexican government’s handling of the case as exhibiting serious failures and even obstruction and secrecy. The Ayotzinapa case initially staggered the Mexican public, and the sheer audacity of the killing of student teachers and other bystanders along with the disappearance of dozens more student teachers sent shock waves throughout the international community, and was seen by many as a crucial test of the capacity of the Mexican authorities—local, state, and federal—to effectively investigate and hold the guilty parties accountable. By any objective measure of the available evidence—including the state’s unwillingness to follow investigative leads—the Mexican authorities have failed that test.

According to recent reports on human rights practices in Mexico from the U.S. Department of State, “widespread impunity and corruption remained serious problems [in 2013], particularly at the state and local levels, in the security forces, and in the judicial sector” (DOS 2014, 1). There are numerous reports of police and security forces committing gross violations of human rights, including homicide, torture, and sexual assault. Notably, many of these reports are corroborated by official authorities. Even the violence against people in highly visible professions and positions of power has gone unpunished. For example, of the more than 60 mayors, former mayors, and mayors-elect who were killed between 2006 and 2014, none of the murders have been solved (Zavala and Nácar 2014).

### **Ability of Institutions to Effectively Administer Justice**

Multiple reforms have transformed the justice sector in Mexico over the last 20 to 30 years, including the 1994 judicial reform, numerous police reforms, a major juvenile justice reform begun in 2006, and a massive criminal justice reform begun in 2008. Despite these efforts, and in part due to them, three main obstacles to the rule of law remain: (1) weak or absent career structures, (2) institutional instability (too much reform and high turnover among personnel), and (3) failure to treat the justice system as a coordinated, interdependent system of police, prosecutors, courts, prisons, and other institutions.

### **Weak or Absent Career Structures**

Career structures consist of rules that govern how people enter, remain, ascend, or descend within, and exit a particular profession. In general, these structures are weak and hurt the rule of law where these various personnel decisions are personal, arbitrary, and/or opaque. All else being equal, there are logical deductive reasons to expect that in such settings corruption and incompetence will flourish given that professional positions are traded as favors, and the placement of friends, relatives, and others via these favors is likely not to place the highest-caliber candidates in these positions, so the efficiency and quality of job performance

will suffer. In contrast, where career structures are transparent, impersonal, objective, and driven by equally clear and objective standards, then merit-based placement is likely to be the modal outcome, resulting in less corruption and greater competence.

In Mexico, career structures have only recently been formalized, and only within some institutional sectors, and even where they are in place they do not always reflect the strongest design, or an irreversible change. For example, in the courts as of the mid-1990s, there is a strong career structure in the federal judiciary and in most state judiciaries. However, even in prominent places like the federal judiciary, the career structure has been vulnerable to interference by senior members of the institution, decreasing confidence in the career structure (Pózas-Loyo and Ríos-Figueroa 2009).

Separately, the *Justiciabarómetro* survey cited earlier also shows that, among police, a majority of respondents see promotion within police organizations as based on personal/political connections, not merit. The absence of merit-based career structures—in police as well as other justice institutions—leaves these institutions populated by personnel of questionable credentials, undermining the competence and capacity to effectively administer justice. Weak career structures also leave the legitimacy of justice institutions vulnerable because of the low trust or confidence that the public then has of the people populating the institutions.

## Institutional Instability

Instability undermines the rule of law. Unfortunately, institutional instability in Mexico manifests in several ways. First, the sheer frequency of reform is a form of instability. That is, institutions that are constantly changing are, by definition, unstable. The clearest case of this kind of instability is police reform; every new administration promotes its own national police reform project. This reform mania can have multiple pernicious effects, including generating cynicism due to reform fatigue or distrust that reform is only about superficial changes that leave core problems untouched. That is, as reforms multiply but the underlying problems persist,

it is easy for the public to lose confidence in justice institutions, perceiving reforms as merely cosmetic window dressing, leading to common sayings that capture this kind of sentiment, e.g., the more things change the more they stay the same.

Aside from the frequency of formal reforms, turnover among personnel within institutions is another source of instability. Frequent turnover means that trained, competent personnel leave and new people need to be hired and trained on a repetitive basis, undermining the accumulation of expertise and efficiency. In some cases, competent individuals will seek better, more lucrative, or higher status positions. In other cases, such as institutions that lack strong career structures, entire cadres of staff or personnel can turn over. For instance, many police ascend and descend in rank and pay with each successive municipal administration, causing massive instability and turnover in positions throughout the institution (see, e.g., Sabet 2012).

## Conclusions

To summarize the main points of the discussion above, obstacles to the rule of law in Mexico's justice system begin with the fact that order and security have deteriorated dramatically in Mexico since 2006. High-impact crimes are more frequent, victimization rates are rising, and fear and insecurity are increasing. Legitimacy is low as there is a deep distrust of justice institutions among the general population, and obstacles to the legitimacy of the 2008 reform also include narrowly self-interested, material motivations held by senior personnel, as well as more general, cultural, non-material, commitments held by personnel who believe in the principles underlying the legal culture of the old system. On checks and balances, a major area of concern is the relatively weak figure of the public defender and the eroding access to information, due in part to the precarious state of journalism and press freedoms. Regarding fairness, the contrast between the large proportion of inmates who are poor and incarcerated for low-level property crimes and the continued impunity of extremely violent offenders signals the unequal application of laws and provides substantial evidence of procedural unfairness, in-

cluding the extreme violations of torture and physical violence in order to extract confessions, that fundamental rights and civil liberties are not respected, including physical integrity rights and press freedoms, and that justice is inaccessible to large majorities as evidenced in part by the low reporting rates of criminal victimization; that is, most crime victims do not even take the first step of reporting the crime to authorities. Lastly, evidence that laws are ineffectively applied include the state's inability to respond to crime and violence and the resulting disorder and insecurity addressed in the first component of rule of law, as well as the justice system's inability to administer justice in routine, ordinary cases, due in part to low legitimacy, weak checks and balances, and systemic unfairness, but also do to key institutional weaknesses in the areas of career structures, instability, and the treatment of institutions in isolation of each other.

The goal of this chapter was to provide a broad view of obstacles to the rule of law in Mexico—focusing on the justice system – in order to assess the problem, in its multiple dimensions, and to provide an encom-



passing view of the complexity of the problem. Doing so, the chapter results in a kind of litany of problems and difficult challenges, leaving a systematic proposal of potential solutions for later work.

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## Endnotes

- 1 I am originally from Mexico, worked in the criminal justice system in the United States (probation and policing) for seven years and began studying Mexico's laws and legal institutions, and especially the political process of justice reform, in earnest with a fieldwork trip to Mexico in 2002 as a graduate student at the University of New Mexico. Through law school and doctoral studies in political science, I focused on judicial reform in Mexico. Since that time, my academic publications include a book (Ingram 2016), as well as article-length pieces on various aspects of the politics of law and courts in Mexico and elsewhere in Latin America, including publications in several peer-reviewed journals. I have also consulted on large-scale justice reform projects in Latin America and the Caribbean, including the 2009-2014 cycle of USAID's Justice and Security Program in Mexico. Throughout my work, I have interacted personally with numerous judges, lawyers, law enforcement officials, and politicians, including over 100 interviews for my book, as well as with other academic researchers, policy analysts, and policy makers, including dozens of officials from Mexico and the United States at the local and federal levels of government.
- 2 I use AmericasBarometer and LAPOP interchangeably throughout, but the source is cited in references as AmericasBarometer. Separately, the national victimization survey was called ENSI (*Encuesta Nacional Sobre Inseguridad*) and was run by a civil society organization (*Instituto Ciudadano de Estudios sobre Inseguridad*, ICESI) from 2000-2008. In 2010, the national statistics office, INEGI (*Instituto Nacional de Estadística y Geografía*) took over the survey and renamed it as ENVIPE (*Encuesta Nacional de Victimización y Percepción de Inseguridad*). This change from ICESI to INEGI generated some controversy regarding the government's motivations for taking over data on victimization from a civil society organization, and the potential exclusion of ICESI also generated some controversy regarding the quality of the study by INEGI if several years of accumulated experience were ignored. INEGI claimed ENSI 2010 was done with participation of ICESI (INEGI 2010). However, ICESI's report for that year (ICESI 2010) notes that INEGI designed and administered ENSI 2010 with only very restricted participation by ICESI, and ICESI was only given data after the fact. Further, while analyzing the data delivered by INEGI, ICESI noted several methodological irregularities, as discussed in ENSI-7, Technical Appendix (*Apendice Técnico*), including issues with non-responses (which were originally excluded from data delivered by INEGI), and the inclusion of data characterized as interviews with homicide victims, even though this would be impossible (ICESI, 165). Even with these criticisms in mind, it should be noted that LAPOP victimization data reveals trends similar to those in the new ENVIPE. The levels of analysis and the questions are different, but the trends are the same across the two sources.
- 3 In 2015, the 90 percent confidence interval in the state of Mexico was 43.9-47.7, and in Mexico City was 36.3-40.1. Thus, the rate is statistically distinguishable and higher in the state of Mexico than in Mexico City. The 90 percent confidence intervals in 2015 for the neighboring states of Aguascalientes, Guanajuato, and Jalisco (all part of the *Bajío* region of central western Mexico) were 28.6-32.9, 26.3-29.8, and 32.0-35.6, re-

spectively. Victimization in Aguascalientes is not distinguishable from that in either of the other two states, but Jalisco and Guanajuato are distinguishable from each other. The 90 percent confidence interval in 2015 in Baja California was 29.0-32.6, in Sonora was 27.5-31.7, and in Guerrero was 29.3-33.4.

- 4 Within one month of the disappearance, a total of 11 clandestine graves with the remains of 38 human bodies were found in the outskirts of Iguala, Guerrero, none of which were related to the case (AP 2014). The fact that graves like this can be found that are unrelated is indicative of the violence and insecurity in this part of Mexico.
- 5 The activities of federal police and military personnel on the night of the events in question are detailed in GIEI 2016 (102 et seq. and 121 et seq.). The court surveillance video was filmed by a courthouse security camera, the video was turned over to the state supreme court, but the video then disappeared (GIEI 2016, 172-173).
- 6 In a larger public opinion survey, LAPOP data show that – when asked whether police must always respect law or can occasionally sidestep the law or act outside the margins of the law – in 2004, 68 percent of respondents said police can occasionally act outside the margins of the law. This percentage fluctuated to 58 percent in 2006, 68 percent in 2008, and 61-62 percent in 2010-2012 (no data for 2014). Thus, consistently for about a decade, more than half the population thinks it is acceptable for police to occasionally act outside the law, essentially condoning the kinds of due process violations reported in the surveys of inmates.



*What are the obstacles to consolidating the rule of law and therefore democracy in Mexico?*

## POLICY RECOMMENDATIONS



- Mexico needs a clear strategy and strong leadership to develop a consolidated, participatory democracy.
- The NAFTA showed us how to develop the rule of law in the economy.
- Strong institutions, and checks and balances, are needed.

# ON DEMOCRACY AND RULE OF LAW

BY LUIS RUBIO

## Introduction

**D**emocracy and the rule of law are two sides of the same coin. Although many countries can legitimately claim to have a democratic political system in place, in the sense that citizens vote and government officials are duly elected, few nations have consolidated the rule of law. The perfect term for such circumstances is “illiberal democracies,” and was coined by Fareed Zakaria long ago.

Historical evidence shows that, at heart, the good functioning of a nation depends on the existence of an effective system of government that operates within a structure of counterweights duly sanctioned by the electorate. Those counterweights are composed of both institutions and rules. Institutions, like the various branches of government, establish mechanisms for the conduct of daily government business and are supposed to check each other’s powers. Rules—both formal and informal—establish what is acceptable and what is not, thus constituting the context within which a society functions. Democracies, with all the differences that they entail, embody these various components that historically have made them thrive.

Democracy, as Churchill keenly remarked, “is the worst form of government, except for all the others.” As such, it is not infallible, perfect or

necessarily permanent. Each democracy is distinct, but all successful democracies share a series of elements that make them work, and the rule of law is foremost among them.

This chapter aims to analyze the complexity of the relationship between democracy and the rule of law in the Mexican context. It also purports to show where these two have advanced and how. The conclusion it reaches is that Mexico's main challenge is its deficit of governance, of basic government capacity to make things happen. The country has adopted several elements of democracy, but it has yet to become a democratic nation with a functioning government and the rule of law.

## The Rule of Law

The rule of law is the principle that governmental authority is legitimately exercised only in accordance with laws that are written, publicly disclosed, adopted, and enforced in accordance with established procedure. The principle is intended to be a safeguard against arbitrary governance. This is the principle that the judicial system exacts compliance with the law. And these are the reasons why it is so difficult to consolidate a nation of laws.

"The decisive step toward democracy," says Professor Adam Przeworski, "is the devolution of power from a group of people to a set of rules." The rules and principles on which the functioning of Mexican democracy is based are many, but they have never achieved the supremacy that is the essential requisite for democracy. This does not imply that power continues to be concentrated in the presidency, but it does imply that in Mexico the transition toward democracy has not yet put into the anticipated port: power has been dispersed but not institutionalized. Rules are not, or at least not yet, the norm that establishes the daily functioning of the country.

These are not mere technicalities; they are the essence of the rule of law. Poor governmental conduct pays a very high price in the form of judicial failure.

Asserting the rule of the law implies a commitment to a distinct social, political, and legal order. In principle, it entails a disposition to accept the law as the norm and mechanism of interaction among persons and between the latter and the government, whatsoever the matter shall be. It implies that the government (including the police and district attorneys) is required to be scrupulous in its acts. Still, it is easy to abuse the concept.

The rule of law is a catch phrase but also a fundamental concept that summarizes a view of the world; unfortunately, there is little agreement on what the phrase means. Lawyers assume one meaning, while economists have developed definitions that are far reaching. Most important, while lawyers tend to see the normative side of the world first, other social scientists tend to go see incentives, procedures, and rules.

Furthermore, the rule of law is not an absolute concept, a zero sum game. It is not that the rule of law is absent one day and present the next one. Rather than being black and white, it is a collection of shades of grey. There are spaces where there is a total absence of rules, enforcement, or legitimate authority, but others in which the law reigns. For example, Mexico City dwellers have witnessed the implementation of an alcoholmeter-based enforcement system that has changed behaviors of drinking and driving. The big question is how to advance Mexico's democracy in the direction of the rule of law.

Mexicans refer to the rule of law using the term "*Estado de derecho*" generously, but mean little by it. For some, it is merely a political slogan, for others a way to justify their actions. In a political system without checks and balances, the president could change the rules on a whim, therefore making a mockery of the very concept of the rule of law. That political reality has changed little; although the presidency is less powerful than in the past, the executive branch still has enough power to change the rules.

It is interesting to note that Mexican political leaders are not unaware of the implications of the absence of counterweights. In fact, they have laboriously developed patches and alternative mechanisms to deal with the absence of the rule of law for foreign investors, who demand to have

proper rules and recourse in case of dispute. In fact, the whole point of negotiating NAFTA back in the 1980s was to find a way to confer guarantees for foreign investors that the rules would not change in a capricious way. And it works: foreign investment is protected and operates within a legal framework that is not accessible to the common citizen.

## **So, How Does Mexico Move Towards a Liberal Democracy?**

In essence, successful democracies are those that “deliver.” According to opinion surveys, most Mexicans have not seen many successful results from democracy, even though some of its accomplishments (starting with a significant reduction in governmental power) are clear for all.

In this, Mexicans are not alone. In her extraordinary book on how the Soviets controlled and imposed their law on the nations behind the “Iron Curtain,” Anne Applebaum analyzes the differences in the evolution of each country. For example, she shows how the countries that have been the most successful after the fall of the Berlin Wall are those that saw the development of an “alternative elite” in parallel to the existing government. There, where there had been active discussions on how to modernize the economy or increase civil rights and collaboration among persons who over time established trusting relationships, the transition to capitalism was easy and almost natural. In Poland, the Solidarity Union, led by Lech Walesa, had been articulating and testing distinct forms of government for a decade; in Hungary, there were groups of economists analyzing and comparing schemes of economic development. On the contrary, in places where there were no pluralistic discussions and collaboration about economic and civic change, the old Communist politicians disguised themselves as democrats and appropriated power once again. Which of the two is more like Mexico?

The return of the PRI party to the presidency in 2012 created an enormous wave of speculation. For some, this constituted the end of the schizophrenia (pretending to govern but unwilling to form coalitions with other parties, aiming for power but often not knowing how to exercise it)

that many attached to the PAN administrations. For others—above all the members of PRI—this signaled the revamping of the wheel of fortune. Above all, Peña Nieto's offer was simple: efficacy, making government work, which is in line with Applebaum's argument.

However, from a democratic perspective, the requisite question for the citizenry must be distinct: What are the implications of the alternation of parties in government for the exercise of their rights, the development of the country, their family income, and their security?

If, as Applebaum affirms, the success of some Eastern European countries was due to the existence of the alternative elites' capacity for governing, the question is how is Mexico similar and how may it be differentiated from these. On the one hand, Mexico has for decades been developing an extraordinary technical capacity for conducting governmental affairs. Legions of professional and well-groomed economists have become the "platform" that permits the government as well as the parties in power to function. Civil society grows and comes to adopt ever more sophisticated forms. These examples could make one think that Mexico is similar to successful countries.

On the other hand, there are traits, such as the dysfunctional nature of the country's politics of recent years, which suggest a resemblance to less successful nations. In contrast with Soviet totalitarianism, the Mexican political system allowed—in a "limited" manner—the development of opposition parties and, reluctantly, tolerated their victories little by little. Logic would have indicated that, in parallel with their growing presence in local and, eventually, in state governments, these parties would have developed the capacity to govern. However, with few and notable exceptions, this certainly did not occur in the PAN and only took place in limited fashion with the PRD (mostly run by former members of PRI).

So, why is it that the quality of governance deteriorated during the two PAN federal administrations? Part of the reason is simple: prior to the defeat of PRI for the presidency in 2000, the government exercised very tight centralized and vertical control of the country. The power concentrated in the presidency was so great that it imposed itself. When the

PRI was defeated, and the presidency and the PRI got “divorced,” that vast power moved away from the presidency and ended up in the hands of governors, party leaders, and congressional authorities. Hence, aside from the lack of experience, the real power that the PAN administrations could exercise was incomparably smaller than that of their predecessors.

Probably more important, the way Mexican politics has evolved over the past decade suggests that the real problem lies elsewhere: Mexico was governed through authoritarian mechanisms rather than institutional ones. Once the centralized control vanished, the political control as a whole collapsed. The fact that the current PRI administration has been unable to govern more effectively speaks for itself. And yet, there are relevant arguments about the PAN’s failure to exercise power effectively.

There are numerous attempts to explain why this happened. Some assert that the PAN party’s culture is incompatible with the functions of government: the party does not have the malice required to exercise power. Others observe the behavior of the politicians and conclude that the problem is cultural and lies in the absence of democrats. Some, wiser still, recognize that the problem resides in the incentives that exist. For example, Vicente Fox had been so successful because of winning the election (and defeating the PRI after 70 years in power) that his potential for overcoming this feat was small, creating the perverse incentive of doing nothing more once in the presidency.

Applebaum compares the performance of the diverse European countries from the fall of the wall with what took place with the “Arab Spring” nations and infers that alternative elites do not emerge from a vacuum and that, especially in the less successful European countries, they took years to consolidate. The author’s conclusion is that now that many begin to bury the incipient Levantine democracies, it is just when these may have begun to germinate. Could something similar be said about parties like the PAN and the PRD that face fundamental processes of internal redefinition?

These musings on the political moment that Mexicans are living make me think that the country is facing a basic challenge that perhaps will

end up defining its future in coming years. One possibility is that the PRI-ruled government will become established, break through the impediments that have kept the country semi-paralyzed, and the party will achieve its dream of maintaining the power per *omnia secula seculorum*, or whatever this would imply within a framework of democratic competition. Another alternative is that the attempt to govern without assuming the costs produces a mediocre governmental and economic performance that leads the PRI to lose the next presidential election or the following. Nothing is written in stone and anything can happen. That is what creates a dynamic environment.

Recent administrations from the late 90s on pursued their affairs without a plan or a strategy, thus not even attempting to forge political agreements within the ruling party and with other political parties. The results can be observed in the mediocre performance of the economy, and in the advance of democracy, and the level of conflict and political rancor between parties. The best example of this is the *Pact for Mexico* that the current administration set up with the PAN and the PRD. The objective was to build a coalition capable of addressing jointly the reforms that the country needed. It was a great, but flawed idea: it allowed for the passing of legislation but not for its implementation. At the end of the day, it weakened both the PAN and the PRD (because their upside was nil while their downside was enormous) and did not produce favorable results for the administration itself.

What happens in the upcoming years will depend on the summation of citizen acts and those of their organizations, in the way that the political parties evolve, and of the way the current administration manages (or mismanages) its final two years in office.

As the body responsible for governing and conducting public affairs, the government has the opportunity to construct the conditions that lead to the development of this alternative elite of which Applebaum speaks and, with this, to exert an influence on its transformation, instead of letting itself be carried along by the tide of inertia that the old PRI possesses in its entrails, devoting itself actively to constructing a novel political

system, one compatible with the challenges and realities of a global world in the 21st century.

In his history of the fall of Rome, Edward Gibbon describes the way that laws end up being too numerous and the government so arbitrary that everything becomes immobilized. According to Gibbon, the Roman government ended up “uniting the evils of liberty and servitude” to the point that it destroyed its own empire.

Mexico has experienced two alternations of parties in power but has not achieved consolidating a modern system of government. It could certainly continue thriving in a world of mediocrity or move on to a fundamental reform of its governing structures. One of its main challenges in this is the weight of the past.

## Does the Past Matter?

No nation can shed its past. European nations underwent long transitions to democracy while the United States, as the “first new nation,” organized itself from the very beginning as a Republic. Nations with an authoritarian past have their own problems to deal with on the way to democracy.

In one of our first arithmetic lessons, we all learn that the order of the factors does not alter the product. That which is so clear in keeping accounts is not always valid in politics: there it does indeed matter who does what and when. The democratic euphoria of the last decades and its results obliges us to reflect on the conditions that are necessary for a country to achieve the construction of a functional system of government and one that is simultaneously responsive to citizen demand.

In the last half century, a series of transitions toward democracy have come about that have been exceedingly successful (Spain, Korea, Taiwan) but also others that clearly failed. The protests that a quarter of a century ago were violently snuffed out at Tiananmen Square were nothing other than one of the manifestations of attempted transitions, few of which were as successful. Cases such as the Arab Spring, Ukraine, Rus-

sia, Iraq, Thailand, and Mexico, each with its characteristics and circumstances, illustrate the complexity involved in constructing a new regime, at once functional and democratic.

Some of these show the contradiction that frequently lies between the demand for transparency and accountability on the one hand, and the capacity of a government to indeed be transparent and accountable. Beyond the disposition of the government itself to respond to the citizenry, perhaps the main obstacle to a successful democratic transition has less to do with the persons than with the structures of governance that would need to be modified.

The preponderant characteristic (and common denominator) of transitions to democracy is the authoritarian precedent, a circumstance that, as discussed before, explains much about the previous capacity to govern and function. Authoritarianism made governing easy; its disappearance makes it very difficult to govern, as is the case of Mexico at present.

For years now, it has been evident that the “old” system worked in good measure because of its immense capacity of imposition. The PRI-presidency link-up permitted the swift implementation of presidential decisions in a generally effective manner, while the system of control that the party and diverse instruments of the government had made it possible to avoid repression or “pacify” unmanageable dissidents. Time eroded the system of control and the first alternation of parties in the presidency “divorced” the PRI from the government. What followed was not a seamless transition but rather a partial collapse of the functions of government. It is possible that more skillful hands would have been able to drive a process of change with greater success, but what is clear is that, instead of focusing on construction of a new political and institutional regime, the country entered into a downward spiral of progressive deterioration. In some spheres, the deterioration was partial, in others dramatic (e.g., security). The whole gave rise to a disorderly country that constituted the very invitation that the PRI needed to be able to affirm, “We may be corrupt but we know how to govern,” in the words of one of the party’s lofty personages.

Recent times have not proven the veracity and validity of the second part of that statement, and perhaps that is where part of the explanation of the country's current difficulties lies. The problem is not one of persons but rather of structures. Although it is persons who shape the institutions and structures of the government, the relevant fact is that, during recent decades, little has been done to construct government capacity which is, at the end of the day, the key for the country (any country) to be able to function and for a democracy to thrive.

In recent decades, multiple governmental or State institutions have been constructed: from electoral and economic regulatory entities to human rights commissions and those devoted to access to information. Each and every one of these institutions have been advancing within their field and mandate and are creating new political realities, enlarging spaces of citizen participation, and obliging the diverse levels of government to respond. What those institutions do not do—were not designed to do—is to improve the capacity of the government, which is the essence of a properly working government in key areas such as security and justice.

The case of transparency and access to information is suggestive. The IFAI (Federal Institute of Access to Information), today INAI, was created as an entity dedicated to guaranteeing access to information, a necessary condition for political development in every democratic society. What it did not do was create the necessary mechanisms within government agencies so that the government could respond. The result was a clash of paradigms: the existing system of government, constructed to control the population and not to inform it, did not possess the instruments (or the internal logic) for responding to the citizenry nor the filing systems adequate for doing so effectively. Thus, instead of creating a cooperative system of citizen and institutional development, it triggered a collision between the logic of bureaucrats and that of political activists.

The case of transparency illustrates the nature of the problem: Mexico urgently needs an all-encompassing transformation of its system of government. The present structures derive from the era of the end of the Revolution, a time that is in no way similar to the realities and citizen

demand of today. Where cooperation is required there is conflict; where it is urgent to support adaptation (for example, of teachers fearful of not passing an exam) all incentives favor confrontation. The logic of the control of yesteryear is incompatible with the reality of a globalized economy and a country keen on developing itself. A 21st century system of government, rules-based, is urgently needed.

### **If the Problem is that Obvious, How Can Mexico Go about Solving It?**

There are two ways to focus on the challenges facing Mexico at present. The first is to assume that the rule of law reigns for everybody without distinction. The other is to set out from the recognition that what does exist does not work and requires a transformation. Whichever the preferred perspective might be, both imply insinuating that Mexico is facing fundamental predicaments.

There is no dearth of proposals for a solution. These vary depending on the personal experience or outlook that motivates the proponent: some are radical in content, others ambitious in their reach and some clearly entail a personal interest. Diagnoses also vary, quite paradoxical in a society in which the mantra among many in government and among opinion makers, was that the country's problems were perfectly diagnosed and that all that was required was the approval of a set of reforms ("The Reforms," with capital letters) to attain Nirvana. As it turns out, Mexico underwent the period of greatest legislative "turbulence," a radical re-writing of the laws, to the point of altering the foundations, since the moment the standing Constitution was enacted in 1917 and, however, the problems have not receded from view.

With this, I do not wish to criticize the reforms that have been passed during the Peña administration, but rather the misleading tendency in vogue today of assuming fads are certainties and changes on paper are transformed realities. Thus, the national discussion has become one of diagnoses: whether the problem comprises the reforms themselves or the corruption, impunity, or the political class, the political parties or

the absence of the rule of law. Some are symptoms, others potential causes, but it is essential to determine which is which prior to continue grooming pacts, passing laws, or pretending that the solution to such a complex situation lies just around the corner. The only thing that is evident is that all of these are components of an intricate photograph with which the nation—and, above all the government—must deal.

In his most recent book, *Political Order and Political Decay*, Fukuyama offers some viewpoints that can be useful for understanding the complexity of the moment Mexico is currently traversing. His main conclusion is that the sequence in which components are put in place indeed does change the product, but not deterministically: for a country to achieve the stability and order that allows it to progress requires a competent government as well as an effective system of checks and balances, but if the former does not exist, the latter will only serve to render the functioning of the government impossible.

Countries that first developed competent and efficient bureaucracies and then moved on to establish democracy, argues Fukuyama, are usually more orderly, efficient, and uncorrupt, but their governments tend to be less responsive to the demands of the citizenry. The prototypical case that illustrates this example, says the author, is Germany, a country that he compares with the United States, where democracy preceded the development of a strong state. In the latter, organized citizens have enormous influence on the decision-making process. The first example in the extreme would be China (very effective but not at all democratic), the example of the second Greece (very democratic but terribly dysfunctional). Where would one situate Mexico?

One way of understanding the author's argument is observing systems of patronage: a system devoted to handing out favors ends up drowning in corruption and is highly obstinate to being reformed. Patronage, says Fukuyama, is an "ambiguous phenomenon" because it is "more democratic" but also "systematically corrupting." Governments dedicated to constructing, nurturing and exploiting clienteles generate incentives so that everyone can see politics as an opportunity for personal gain.

When Fukuyama evaluates underdeveloped countries, he says that the difference between nations such as Korea, Vietnam, or China and those of sub-Saharan Africa is that the former possess “competent, high-capacity states,” in contrast with those that “do not possess strong state-level institutions.” The key, says the author, resides in institutional strength and competence, not on any ideological or ethical (that is, cultural) orientation. Where there are strong institutions, there is a competent government, and vice versa.

Whatever the correct diagnosis of the Mexican situation, it is clear that the country’s weakness in institutional matters is legendary, which leads to two crucial questions: first, is the current administration willing and capable to confront the predicament that it did not have on its radar and that changed the coordinates of its original government plan for the worse? Second, will Mexican society have the capacity to accept that some advances in democratic matters are also part of the problem because some of them make impossible the existence of a functional and accountable government?

With respect to the first, the country lacks governmental capacity even for the most elemental: security, justice, infrastructure, and the disposition for generating certainty among the population. Regarding the second, the proven ability of the government to approve reforms might seem sufficient for a great exercise of leadership that permits discerning between the desirable and the necessary. What is not expendable is a functional and functioning government. Up to now, President Peña has basically given up on an attempt to exercise leadership. However, a key question remains: will, or can, society force the president to act?

## **So, Where is Mexico Now?**

Present-day Mexico suffers serious difficulties with growth, stability, and order. These are not new problems yet there is no consensus on how to solve them. There is not an agreement on the origin of the issues or even on the country’s essential features. In this context, any answer provided by the government or society is looked at with suspicion or at least seen as incomplete.

There are many explanations and hypotheses about the nature of the problem that Mexico is experiencing, most of which point to an unresolved political conflict from the 1980s. A part of the country invokes the 80s, arguing that the country has been stagnating since then and proposing to reverse measures and reforms adopted in subsequent decades as well as to negotiate political agreements between political groups and sectors, just as was done in 1929 with the creation of PNR (the predecessor party to the PRI).

The other part of society, the other Mexico, observes an extraordinary yet incomplete transformation within the structure of the economy and the country's way of functioning. This group proposes to accelerate the reform process as well as thorough implementation of the latter. For this sector, the main problem is not the economy itself but the fact that the government—the entire system of government—was never reformed and has not evolved in its conception since the 80s.

Regardless of the stance or perspective one takes, there is no doubt that the characteristics and circumstances of 21st century Mexico are nothing like the ones experienced during the formation of the political system (1929), which more or less remains essentially the same. In other words, the country has changed its economy, demographics, society, and political conflicts, but the system of government and its corresponding culture remain stuck in time.

Changes are real. The Mexican economy today is extremely competitive, and the country is one of the world's largest exporters of manufactured goods. The competitiveness of the modern industrial plant is impressive, especially when taking into account the state of the Mexican economy—which was inward looking and non-competitive—three or four decades ago. An open economy, one that successfully competes and satisfies the needs of its population, constitutes a radical change when compared to the era of crises of the 70s and 80s, with its corresponding unemployment, economic instability, and inflation.

On the political side, electoral competition is equally real and more dynamic every day due to reasons that are external to the political system

(information and technological change). The largest parties have lost their way among voters, and new forces are coming into place seeking the citizenry's preference. The country is open to international scrutiny and responds with more or less promptness.

However, not everything has been transformed or has advanced in a simultaneous way. Some dysfunctional aspects of Mexican public life are not understood for what they are, and they continue to be an obstacle for the country's progress, as well as for the government projects that boost them.

Most of the legal, regulatory, and political apparatus that characterizes the country comes from the "old regime," a sociopolitical structure with characteristics and a way of functioning that ceased to operate after two radical changes: first, the liberalization of the economy, and second, the political change that occurred in 2000. Seen in retrospect, these two factors altered all the vectors that made the country work: the President and bureaucracy ceased to exercise centralized control; the economy of goods and services was liberalized, but only for those that were traded globally; the President's ability to impose his criteria over all national affairs disappeared; and economic and political decisions were, in the broader sense of the word, decentralized.

In other words, the reality of power changed radically: from concentration to decentralization; from control to fragmentation; from imposition to a dependence on the capability and integrity of each of the stakeholders. However, it is observed—in the economy, in local governments, in civil society, or in politics—the country has experienced a radical transformation in the nature and structure of power.

Something that did not change was the institutional, legal, and regulatory framework. With a handful of exceptions—some of them quite important—Mexico is still operating under an institutional and legal scheme that has little to do with current reality. Such is the case with judiciary power, the PGR (the Mexican Attorney General's Office), labor legislation, the police, and the army. The economy operates within the framework of the global environment but it follows the rules of a protected one; political

affairs experience an impressive vibrancy and competition but operate under rules that former President Plutarco Elías Calles (1924-1928) would acknowledge as his creation; society is increasingly diverse and has more cosmopolitan experiences but the regulatory structure is of ancient times. The difference between reality and formality is staggering.

Reforms in the 80s and 90s tried to partially harmonize the new reality with the existing legal framework. There was progress in some instances while others remained paralyzed. The main problem of that time was the eternal inconsistency within the reforms and the privatizations. Rather than following a comprehensive strategy, decisions were made on a case-by-case basis, many of them contradictory, creating the setup for the 1994 financial collapse.

From that time onward, the country has lived through an endless political argument on what course politics and economics should follow. This dispute has created an environment in which the country's development has become impossible because the political system ends up being unable to create conditions for stability and trust that will allow the population to save, invest, and think with a long-term perspective.

In practice, this means that there are two very different Mexicos: one that is focused towards the future, and the other one that is trying to preserve the past. Both experience the uncontrollable force of globalization but neither has a clear path ahead. The "old regime" was based on abusing the right of property, ignoring the rule of law, and imposing the President's preferences. This regime collapsed because it was unable to adapt to the times and to satisfy a growing population. It collapsed, but it never actually vanished. At the same time, no new political order emerged that was able to create conditions of prosperity for the country in the age of knowledge. This is the result of an inefficient political system that does not solve the problem or allow Mexico to progress. This, in short, is the challenge.

## Reforms vs. Reality

For decades, Mexico has tried to change so everything remains the same. It is true that the economy developed a lot, but just like in Il Gatto-

pardo, benefits and privileges of the old system have been preserved at all costs. Although no one can deny the great advances on several fronts, the structure of power is still the same; the only difference is that PAN and PRD are now part of this logic of ancestral corruption: everything changed so nothing could change. Now, the cost is there for everyone to see.

The current government blindly accepted the notion that there was a wide consensus on the need to reform the economy and society and that the required reforms were universally agreed to. In fact, when today's President was governor of the state of Mexico and was building a coalition to win the nomination of his party, he succeeded in staving off many of the reforms so that the previous administration would not get the credit for passing them. Enrique Peña Nieto was so certain of his view on the matter that he never considered that, in order for the reforms to be successful, they would need to modify the structure of power and of each reformed sector. Furthermore, he failed to see that most of the opposition to his reforms would come from his own party (an inevitability given the longevity of PRI rule prior to 2000). Nowadays, it seems obvious that what is missing is to actually govern and that the reforms, as necessary as they are, are not feasible in the absence of a government capable of enforcing them. The current structure of power prevents this "new" system of government from emerging.

The core of this matter is that it is not possible to change the country as the reforms intend to if the function and distribution of power are not on the table. It is impossible to carry out a reform in Mexico—both within a specific sector as well in broader areas—if the number one criterion is not to affect groups in power; one cannot pretend to be successful in reforming if the most significant approach is not to alter the structure of power. Reforming is nothing more than affecting interests; if this is not desirable or feasible, the reform becomes an impossible task.

## **The Economic Impact**

Regardless of the capability or willingness to carry out a reform of power, the consequences of not doing so can be seen in the division that characterizes the current Mexican economy. More than one single

economy, it is actually two different and opposing economies that have the combined effect of decreasing its growth rate. A 2014 report by McKinsey & Company, "A tale of two Mexicos: Growth and prosperity in a two-speed economy," details the dichotomy in the Mexican economy: one high-speed economy enhances productivity growth and the other traditional economy which decreases it. Although the average growth of productivity has been of a meager 0.8 percent, the modern part of the economy has seen its annual productivity increase by 5.8 percent, while the traditional and informal economy has decreased by 6.5 percent. The average is just confusing.

The report begins with a series of contrapositions: "What is Mexico? Is it a dynamic industrial power that builds more cars than Canada and has become a global automobile exporter? Or is it a land of traditional slow-growing businesses and informality? Has it found the right combination of reforms to restore rapid GDP growth and raise living standards? Or is it stuck in a perpetual cycle of economic advances and retreats? Is it a modern, urbanized state that has adopted market reforms and built well-functioning institutions, or is it a place where corruption and crime are tolerated?"

Some figures are revealing. The report argues that there are two economies: one that grows rapidly and another one that tends to shrink. Traditional and informal firms were 28 percent as productive as large modern ones in 1999, but that number decreased to eight percent in 2009. Not only is there a major gap between the two economic sectors, but it is actually widening. Employees in traditional bakeries are one fiftieth as productive as those in modern baking companies; 53 percent of small and mid-sized Mexican firms are underserved by the banking industry; without an increase in productivity gains, GDP growth might not ever rise above the current two percent per year. All in all, manufacturing in Mexico is 24 percent as productive as in the United States, even though many top Mexican plants exceed the U.S. average. In short, to reach a 3.5 percent GDP growth target, productivity growth would need to triple. The big question is whether something like that can be achieved.

Those who have seen the way in which the country functions will immediately acknowledge its contrasts and contradictions. As written in the report, there are two different economies: one that is going at a high speed and another that is being left behind. It is not only that: the country distinguishes itself with situations that would be incomprehensible for foreign observers or investors. Perhaps we as Mexicans—used to surrealism in everyday life—are not surprised at all by cases like the Mexico City Metro’s Line 12, in which poor planning, contentious rules among different contractors, and faulty design led to its being out of service for months; or the Oceanografía scandal involving the defrauding of banks and Pemex by a contractor acting with no supervision. Although not inconceivable in other parts of the world, breaches like these would certainly be prosecuted as criminal offenses abroad. These cases are part of a frequent reality: excesses, frauds, corrupt authorities, absence of a government that will enforce legislation, manipulation of facts and timing for political purposes or to serve private interests, not-so independent regulatory agencies (with an alleged “Constitutional autonomy”), which have contradictory mandates that can potentially hinder their own success.

In a world going forward at the speed of light, Mexico is a country that refuses, or has been unable, to organize and acknowledge its shortcomings, which has resulted in a growing gap in its economy. The modern part accelerated the growth of its productivity and has transformed into a global exporter. The traditional part—which will fight with all it has to prevent even the slightest change—is lagging behind and is impoverishing the country but continues to enjoy the government’s approval.

## **A Democracy that is Not at the Service of the People**

The complex economic panorama has a direct reflection on the political sphere. The political transition experienced by Mexico throughout the last decades has been complex and checkered and has had more shifts and doubts than constants or certainties.

The institutional framework inherited at the end of PRI's tenure does not enable healthy political harmony, alienates the citizenry—in fact, ignores it—while also allowing abuses by the parties and the government. Mexican corporatism did not die, it was simply transformed. Nowadays, the citizenry does not have legal protections and does not have effective rights against powerful interests in every ambit in the country.

There is no doubt that the country has gone through a process of profound political changes. The contrast of the current presidential institution with that of PRI's glorious past should convince even the most skeptical observer. In addition, there is a new prominence for the legislative power, independence for state governors (albeit, it has resulted in overspending and arrogance), and the capacity for blackmail and extortion by the largest unions in the country, it is evident that the old system has ceased to exist, at least in its original form. The problem is that the new system is not democratic, representative, or functional.

When considering its beginning, Mexico's political transition had a fundamental difference with its Spanish counterpart or with those processes of national construction experienced by countries such as the United States in the 18th century or South Africa in the 90s. The aforementioned processes were agreed and negotiated. In contrast, Mexico's was settled "in typical Mexican style." The country's structure of political power (the large concentration of power in the Presidency and PRI) was the factor that enabled the implementation of the least number of changes possible. Everything was done in order to maintain the previously existing privileges, which were also shared with a small group of additional beneficiaries (PRD, PAN, and state governors).

The contrast with the other cases is remarkable. In Spain, political forces born after a brutal civil war decided to avoid a confrontation that would prevent the edification of a modern, democratic, and successful nation. This is what led them to reach agreements, to abandon old disputes, and to head toward the future. A similar situation occurred in South Africa, where the end of apartheid did not result in attacks against the white population, but all the energy was directed towards writing and enforc-

ing a modern Constitution. The United States had a ten-year discussion focused on setting up institutions that would enable effective checks and balances, thus creating a system of government based on a tight balance that would provide stability for the new nation. Despite their major differences, these nations prioritized the citizenry, providing it with all the necessary protections to take action and be placed in the center of institutional frameworks. In Mexico, privileges are based on restricting citizens' freedom and rights.

Each case reflects its circumstances and particular issues, but the lesson to be learned for Mexico is that the country's transition has barely consisted of building new institutions, a system of political checks and balances, or the consolidation of mechanisms for the development of a thriving citizenry that is put at the core of political life. Rather, the transition has showcased a defensive approach: instead of leading the country towards the future, all efforts had been placed to defend the status quo and protect old, acquired rights. Parties and politicians that negotiated the electoral reform of 1996 had more interest in strengthening the three major parties than in representing the citizenry or creating a democratic institutional framework. This deficit remains and needs to be addressed.

Mexico is simultaneously living through two different realities: one of a modern country and one of a traditional one; one of a country that is growing and becoming wealthier and one that is getting poorer and is being left behind; one of a country with opportunities and one without possibilities in the current reality. The core of the problem lies within an obsolete system of government that is unable to adjust itself to the circumstances of a country such as Mexico in the 21st century. The challenge is both institutional as well as cultural.

Of course, Mexico is not the only country in the world that faces this kind of ordeal. Advanced and developing nations showcase similar tensions in their debates as well as their disputes. What stands out about the Mexican case is the absence of a clear and open debate that addresses these challenges and, above all, the system of government that prevents any debate from transforming into public policy to tackle

the issues. As has been argued before, the system of government belongs to a different era in the country's history and is unable to address the challenges that lie ahead. The various parties and political forces are more of a representation of themselves than of the diverse sectors and interests that are part of Mexican society; thus, it becomes increasingly difficult to tackle the country's structural challenges.

## **In Conclusion: Democracy and the Rule of Law**

Democracy is only possible within the context of the rule of law, but that is not enough. A proper system of government is also required.

In its basic form, democracy is fully dependent on procedural rules: rules for electing a government, rules for the daily working of government, rules for the interaction among the branches of government, and rules related to rights and obligations of citizens. These rules may be formal or informal, but the point is that they need to be respected and followed. Mexico has rules for everything; in fact, one of its traits is the fact that there is no issue or problem that does not merit a new law and, many a time, a constitutional amendment. Having rules does not a democracy make.

The existence of rules is not what differentiates liberal from illiberal democracies. It is the rule of law that makes the difference. Spain, Korea, and Taiwan made a successful transition towards democracy, while most Latin American nations advanced but have not yet succeeded in consolidating a liberal democratic regime.

Nonetheless, there are spaces of legality in Mexican society that show how democracy can advance in a rules-based context. When incentives are clear and well-conceived, people respond. Brazil is showing how a strong and independent judiciary can threaten an established order; whether it will deliver a better system of governance remains to be seen. Still, both examples prove that societies can change and adapt.

Just as Mexico developed through NAFTA a uniquely suitable structure of law for foreign investors, it can continue advancing on various fronts, securing spaces of legality in a sea of power plays until it is the excep-

tion that is a lawless space. Of course, for such a process to develop, there would be a need for a clear strategy and strong leadership.

The few, but effective, democratic and law-abiding spaces that Mexicans do have can become stepping-stones towards a consolidated, participatory polity. In addition, to the extent that problems are solved within a context of rules, Mexican democracy can gradually emerge more like the successful examples of Spain, Taiwan, Chile, and Korea than the “illiberal” democracies that Zakaria identified and described.



**Q** *How have private sector-government relations evolved in Mexico and how does the rule of law benefit them?*

## POLICY RECOMMENDATIONS

- A**
- Find mechanisms to promote collaboration between business and government to denounce corruption—consider that businesses may perceive denunciation as a cost without clear benefits because they will not be able to “expedite” paperwork through corruption.
  - Develop homogeneous building permit regulations at the national level; stimulate their application by rewarding those local governments that implement them with federal budget transfers linked to municipal tax collection.
  - Use insurance companies as informal enforcers of regulatory compliance by allowing them to certify full compliance with regulatory standards as a substitute for authorities’ inspections.
  - Socialize the rule of law so it is viewed as a shared asset and responsibility, and not only as a punishment for criminal behavior.

# RESPECTING OTHER PEOPLE'S RIGHTS AS A COMPARATIVE ADVANTAGE: A PRIVATE SECTOR ANGLE

BY LUIS DE LA CALLE

**M**exico has made enormous progress on many fronts in the last 25 years. Yet, the one area where much more needs to be done to complement the various structural reforms implemented is the rule of law as a whole. This article dwells on the evolution of how the Mexican business community relates to the rule of law and on the obstacles that it now faces in this area. The chapter concludes with a reflection on how the rule of law must become one of the country's most relevant and indispensable public goods.

For this, the chapter reflects on how the relation between the private sector and the government evolved from one based on interests and concessions to one defined by economic and democratic principles. Each stage of the relation, and the milestones in the evolving relation, will be described.

The intersection of the rule of law and the private sector is the realm of the still-prevailing presence of interest groups and their relations with the Mexican government. Although significant progress has been made in transiting from an economy based on concessions and cronyism, thanks to trade opening and other important reforms in the last years, these achievements are incomplete as much remains to be done, on the part of both the private and the public sectors.

The chapter also reflects upon two of the main challenges for the rule of law in the country: extortion and corruption. It considers how both factors will not be diminished unless Mexicans—regardless of socioeconomic background—acknowledge the need to abide by regulations without any exemptions or excuses, and that any measure to avoid the law or bend it in one's own favor is nothing short of corruption.

The rule of law must be regarded not only as a desirable public policy in terms of fairness, but rather as the axis on which all policies turn, as well as a structural comparative advantage well worth investing in by both the public and the private sectors. There is no public program, no strategy to attract and foster investment, no cost advantage that can substitute for the rule of law in terms of its impact on economic growth, industrious entrepreneurship, and sustainable human development. It should also be regarded as a shared responsibility in which the Mexican private sector and civil society organizations have an important role to play.

### **Free Trade and Competition, Stepping Stones for the Rule of Law (1994-2000)**

Mexico has undergone an important, albeit partial, transition regarding legality and the rule of law. This incomplete transition has been neither easy nor exempt from political and social struggle. Much remains to be done, particularly in domestic matters, while significant progress has been accomplished in international trade and investment. It can be said that Mexico has imported the rule of law, first in international trade and investment issues, and later in numerous international disciplines that are now part of the body of domestic Mexican law.

As Luis Rubio has argued in *A Mexican Utopia: the Rule of Law is Possible*, this transition is undeniable and Mexico has benefited greatly from it. A crucial milestone was the negotiation, ratification, and implementation of the North America Free Trade Agreement (NAFTA), which in the early 90s forced not only the Mexican government to reflect upon the path it wished to take, but also the private sector and the leading interest groups of the Mexican business community, who had not only

enjoyed privileges and prerogatives, but had also deemed them as permanent and almost as acquired rights.

NAFTA and other trade agreements negotiated by Mexico, such as the Economic Partnership, Political Coordination and Cooperation Agreement between the European Union (EU) and Mexico, rested on general principles of trade and foreign investment.

Both Canada and the United States, as well as the EU, demanded a legal framework that guaranteed equal treatment for their merchandise, service providers, and investors, treatment equal to that given to Mexican concerns and consistent with customary international law. Moreover, disciplines were not only to be adapted, but a dispute settlement mechanism would guarantee adherence to them. This legal framework implied new laws related to intellectual property, government procurement, regulatory reform, antitrust, environmental protection, and other matters. In parallel, Mexico granted the Central Bank (Banco de México) constitutional autonomy and a single mandate to maintain low inflation. All these changes modified, structurally, the relation between the private sector and the federal government, which now would have fewer instruments to deal with powerful economic interests.

For the first time, economic policy would be based on principles rather than interest. For years, Mexico had managed its foreign and economic affairs defensively. Foreign affairs used to rest on principles, not interests, while economic policies rested on interests (those of the elites) rather than on principles to promote inclusion and long-term investment. The trade opening, trade negotiations, and the quest for macroeconomic stability began to change the equation.

The ambitious trade opening and its permanence transformed the unofficial agreement between the *Partido Revolucionario Institucional* (PRI), government, and business leaders which had benefited all. The latter from the lack of market competition and regulatory costs as well as regulatory laxity, while the PRI and government gained from the full support for their policies, practices, and politics.

Implementation of NAFTA was not the only factor that influenced the transition towards rule of law in Mexico. During the 90s, Mexican civil society experienced several changes that contributed to improving the rule of law. Some of these included (1) the demand for a democratic electoral system, that was able to achieve not only transparency and legality in electoral processes but also allowed for the development of new political parties with real possibilities of opposing PRI and which represented tangible political alternatives, (2) the autonomy of the National Human Rights Commission in 1999, (3) a Congress that was no longer controlled by the President, so reaching political consensus was required for the approval of each bill, and (4) competitive presidential elections beginning when the PAN's Vicente Fox won the election in 2000.

Free trade agreements greatly contributed to establishing the rule of law and legislative and regulatory procedures that were based on sound principles (economic, environmental, property protection, legal certainty, etc.), transparency, democracy, and political dialogue. The transition was, for many, a significant challenge and they participated quite reluctantly. Mexican ministers of commerce in the early 90s frequently faced requests from business leaders, analysts, and the media cameras who, while praising the "trade opening" as an abstract idea pushed by the administrations of Presidents Salinas and Zedillo, demanded to preserve protectionism in their own sectors which—they claimed—"were not yet ready to compete."

The trade opening implied not only rules, but more importantly, competition. Mexican companies not only faced the risk of losing profits to competitors, but also the certainty that they would do so if they did not invest in technology, talent, marketing, financial alternatives, logistics, and distribution. Also, they were forced to invest in areas which they previously could refrain from financing: environmental law, industrial security, civil protection, intellectual property, accountability, and transparency.

Quite surprisingly at first (for the Mexican private sector), the benefits of free trade were well over and above its costs. While it is true that the opening caused (as NAFTA's detractors emphasize) the closing of some

Mexican companies, those willing to compete and to invest kept their market share thanks to the new opportunities to compete and the ability to source top quality inputs in an open market. Furthermore, many Mexican companies were literally liberated from pro-government labor unions and government-favored elites that hindered their growth.

Moreover, free trade also allowed Mexican companies to enter international markets and join transnational value chains beyond their borders. It is now common to see Mexican trademarks competing in the United States, Canada, Europe, Central and South America, and even Asia. Contrary to many predictions, successful exporters arose not from labor-intensive activities, but rather company expansion has been based on brands, research and development, logistics, and integration into global value chains.

Free trade and the rule of law implied not only that Mexican companies were able *to increase their sales* but also the opening of *enhanced consumers' choice*. Mexico became a manufacturing destination, and also a market for goods and services that were increasingly complex, sophisticated, and competitive. Consumers became more empowered and demanding. Moreover, a higher-than-average growth rate in states positively impacted by free trade led to more purchasing power, higher wages, and more and better jobs. While low-cost manufacturing is still present in some sectors, Mexico's key competitive advantage is no longer a low-salary workforce but an integrated value-added manufacturing environment that includes infrastructure, qualified workers, and an attractive final market for many goods and services that were usually consumed in developed countries but are now also demanded by Mexicans.

In other words: Mexico's growing middle class deems the rule of law and legality as an indispensable mechanism to protect the assets its members worked so hard to acquire. These assets include property, democratic rights, public goods and services, retirement funds, and education and talent as a competitive advantage in the labor market. As a result, electoral candidates increasingly include, as an indispensable promise, the rule of law, legality, and creating an environment that attracts investment.

Nonetheless, and in spite of this significant progress, a great many challenges remain, many of them related to the rule of law. The country still has an alarming percentage of people who are struggling against poverty, often extreme poverty. Corruption is rampant in all levels of the federal, state, and local governments and is highly damaging to legality, production processes, competition, investment, and growth. Insecurity, extortion, and organized crime are present in many cities and municipalities. Cases such as the disappearance of 43 Ayotzinapa students, the rise in criminality in Michoacán, or the alarming vulnerability of the rule of law in Guerrero speak for themselves: Mexico is not yet able to guarantee security, legality, or even elementary rights in many of its states and cities. These challenges will be further explained below.

### **A New Generation of Mexican Business People (2000-08)**

While many in the Mexican business community of the late 80s and the early 90s viewed free trade, competition, and the rule of law with suspicion, by the late 90s and 2000s they had no choice but to get used to it. This implied important changes in the training and outlook of entrepreneurs willing to adapt to the new environment. These are leading characteristics of the new generation of business people:

- Better educated, both in national and international universities.
- Open markets seen not as an obstacle, but as a catalyst for high-quality production, efficiency, and competitive pricing.
- Business expansion did not depend on protectionism or government favors.
- Competition, while threatening, was based on innovation and efficiency.
- Political pluralism was not seen as a problem.
- Promotion of human rights.
- They increasingly invested in insurance protection as potential

liability grew: while in the 80s a bribe could erase all legal consequences of an accident resulting from lack of adequate civil protection and industrial security, full liability became much more likely. Insurance became not only desirable, but in some cases even mandatory. The earthquake of 1985 in Mexico City and hurricanes in Cancún and Baja California Sur were relevant precedents.

- Environmental responsibility: Not only for environmental harm, but also derived from corporate practices that include:
  - » Investing in innovation related to sustainability.
  - » Investing in the environmental sustainability of the communities where they are located.
  - » Investing in legal counsel and technological advice regarding compliance with environmental law and environmental benchmarking.
- Corporate reputation began to be seen as a relevant asset. Under protectionism, corporate reputation did not seem indispensable. Moreover, it was not relevant for dealings with governments or for building reputation among other audiences (which included consumers with no choice). Open markets, on the other hand, implied scrutiny from the media and public opinion, now aggravated by social networks on the internet and, more importantly, from financial analysts and competitors.

Also, a new generation of Mexican business people became familiar with the standards of foreign companies and began implementing them:

- Compliance with anti-corruption and money-laundering regulations
- Transparency and accountability
- Career plans based on meritocracy and talent
- Competitive procurement practices
- Long-term financial planning

Not all of Mexico's private sector has adopted the above attitudinal changes. It is true, however, that Mexican companies that compete successfully in the domestic market or overseas are very different in terms of values and strategies from what they were 25 years ago. The challenge is that they remain few compared to the large number of business concerns not linked to international trade flows that have yet to modernize themselves.

In 2005, the Organization for Economic Co-operation and Development (OECD) published the first set of guidelines for corporate governance. Several legislative reforms in Mexico and regulatory changes were based on them, such as those to the Mexican Stock Market Law and the General Law of Corporations. Some of the key principles of these guidelines that are now implemented in modern Mexican companies include:

- Guaranteeing shareholders' rights such as: (1) property registry, (2) the right to transfer or donate their shares, (3) the right to have periodical access to accurate information regarding the company's management and expansion plans, (4) voting rights, (5) active participation in the election processes of corporate directors and other key corporate officials, and (6) participation in the company's net profits.
- Equal treatment for all shareholders, including foreigners and minority shareholders.
- Recognition of the rights of stakeholders. This includes promoting collaboration among the company and said parties in order to develop growth and sustainable commercial activities.
- Transparency and accountability regarding the company's financial status and its management.
- Clear operational rules for the Board of Directors for control of the company, but also for full accountability towards shareholders.

## The International Financial Crisis of 2008-10: The First Major Challenge

Although Mexico is a country with a long history of financial crises, the one of 2008-10 turned out to be different for two reasons: first, it was an imported crisis, not a result of homegrown arbitrary management of macroeconomic fundamentals; secondly, for the most part, the Mexican government did not rely on corporate arrangements to implement policies to respond to the crisis. Of course, these two distinctive features of the crisis are tightly knit together.

It is also relevant that, although there were some public policies to assist a number of large companies affected by the crisis, there were no rescue packages, only credits from development banks were given when financial markets closed in New York.

In Mexico, the crisis occurred on the periphery of the financial sector and did not impact its core. Trouble arose in the housing market where a couple of lending non-bank banks were overextended and had dubious accounting, as well as in some private investment vehicles, such as Stanford Funds' offices in Mexico. Another case was the *Comercial Mexicana* supermarket chain, whose CFO and Treasurer speculated with the exchange rate through derivatives to a point where it endangered the survival of the company in 2008. Both cases set the basis for a stronger application of the rule of law in corporate governance.

A turning point was marked by the case of *Mexicana de Aviación*, a national airline that had been rescued on previous occasions and was thus owned by the Mexican government. In spite of pressures and demands from pilots' and stewardesses' unions, as well as from some sectors of public opinion, the federal government did not rescue *Mexicana* and allowed it to declare, in August 2010, the termination of its operations as part of a bankruptcy procedure that concluded in 2014.

President Calderón's decision to allow the bankruptcy procedure for *Mexicana* to go forward sent a clear signal of the definitive change in the relations between the government and the private sector and between

government and strong unions. It was also a clear indicator of the place the rule of law was to play in the management of the crisis: there were to be no more concessions, exemptions, or leniency on time limits for companies that were not able to adapt to market conditions and compete, and the legal consequences of bad management were not to be diminished nor softened by government intervention and subsidies.

In the many previous financial crises in Mexico, there were sectors and interest groups that “survived” thanks to their relations with the government, while the population at large was left to fend for itself and taxpayers had to foot the bill. It is interesting to note that segments of the private sector pushed the Calderón administration and the antitrust commission to facilitate the merger of *Mexicana* and *Aeroméxico* so that consumers would bail out the failing airline through higher prices. In a way, *Mexicana* marked the beginning of a new relationship between government and interest groups, the private sector, and unions that paved the way for significant structural reforms in 2013. This new relationship became no longer centered on defending the interests of individuals or groups through arbitrary decisions—such as rescue packages with public funds—but rather is focused on clear rules aimed to achieve general competitiveness and equal opportunities for growth.

## **The Mexican Business Community of 2010-16: The Structural Reforms**

The administration of Enrique Peña Nieto began with a political agreement between PRI, *Partido Acción Nacional* (PAN), and *Partido de la Revolución Democrática* (PRD) parties known as the *Pacto por México*. Its main objective was to reach political consensus to approve the so called “structural reforms.” Although an undeniable element in favor of approval and implementation of the reforms was, indeed, Peña Nieto’s political ability to build consensus, the reforms were not solely a product of PRI, PAN, and PRD but rather reflected longstanding demands of Mexican civil society, scholars, opinion leaders, non-governmental organizations and, especially, the private sector.

The reforms aimed to achieve competition in areas that are indispensable for industrial and commercial activities, such as energy and telecommunications. Several independent diagnoses, such as the OECD's well-known analysis showing that lack of competition in the telecommunications sector had cost 1.8 percent of Mexico's GDP in 2005-2009, highlighted the fact that companies in Mexico (both national and foreign) faced either excessive prices or deficient supply from monopolistic companies (Pemex, *Comisión Federal de Electricidad*, and the América Móvil Group) of inputs essential for competitiveness. These reports also stressed Mexico's failure to participate successfully in the industrial and energy revolution of North America (in spite of all its obvious competitive advantages). It is not well known, but one of the reasons that explains Mexico's energy reform is that the country began to lose investment prospects, not to China, but to Texas, Louisiana, Alabama, Oklahoma, and other U.S. states able to provide cheaper and more reliable energy. Since Mexico excels in manufacturing, losing plants to the United States sounded all sorts of alarms and helped to make the intellectual case for an energy opening.

The Mexican private sector advocated for the structural reforms in every possible forum and served as a counterweight to interest groups that strived to preserve the *status quo*. They demanded the eradication of the regulatory barriers to entry—a final expression of protectionism—to sectors previously reserved to Mexicans or to the government.

In terms of the rule of law, the reforms implied two new regulatory institutions (a new Mexican Federal Antitrust Agency and the Federal Institute of Telecommunications) both with full constitutional autonomy and independence from the executive, which were created in 2013. The reforms also implied a new set of stricter antitrust and telecommunication regulations in which sanctions of economic agents could reach up to ten percent of annual income and, in the case of cartels, even criminal sanctions. Furthermore, both agencies now have enhanced powers of investigation.

The energy reform, on the other hand, opened the door for investment through contracts between the Ministry of Energy and private investors,

both national and international. The contracts include strict supervision from the National Hydrocarbons Commission and clear regulations, limits, and commitments for private agents.

The reforms went much further than what most analysts thought possible. Nonetheless, their impact is incomplete as insecurity, extortion, and corruption—the three main obstacles to the rule of law in Mexico—are still quite present in areas of the country where energy investment is to take place.

## Insecurity and Extortion

The growing presence of organized crime in several regions of the country and the government efforts to combat them resulted in an increase in violence and insecurity, with a significant impact on businesses.

The effects on Mexican companies were severe in some of the most affected cities: their venues were vulnerable to attacks from drug cartels and other organized crime institutions, their trucks were assaulted on the highways, their employees faced security threats and their commercial activities were endangered. This also brought an important increase in operating costs derived from security measures.

But the greatest threat came from extortion imposed by criminal groups that demanded periodical “quotas” (protection money) from businesses and companies in order for them to be “allowed to conduct business.” These quotas are commonly known as *derecho de piso* and they can be collected either by a criminal group, or by the local police in the form of bribery or protection. The result is the same: businessmen are forced to pay for “protection” against possible “eventualities.”

Small and medium enterprises (SMEs) are particularly vulnerable to extortion, much more so than large companies, including multinationals:

**Table 1. Large companies are better equipped to deal with extortion threats**

<b>SMEs</b>	<b>Large companies</b>
They are not vertically integrated. Supply process vulnerable to insecurity threats.	More vertically integrated (are able to guarantee security in more stages of their production processes).
Business owner answers solely to himself and his partners (if any). Compliance and accountability are relevant only in the face of scrutiny from tax authorities.	Compliance and accountability are part of their reputational assets. They are willing to invest heavily to protect them.
Seldom represented through independent business organizations. They fear any contact with the municipal or city government because it will likely result in more corruption.	Have a strong network of contacts through private business associations, which help to represent their interests and demand action by federal and state governments to combat insecurity and extortion.
No political pressure to protect them.	They account for many jobs and, therefore, the closing of their commercial activities in a given city or state is deemed to have a direct impact on the local economy. The government is most likely to invest in guaranteeing its permanence.
They have little room for diversification.	They are able to diversify processes, products, and clients.

Widespread extortion, not only from criminal groups, but also from unions, inspectors (labor conditions, safety standards, health, taxes, environment, police, and others) functions as a heavy burden on SMEs that prevents their growth. Moreover, as Table 1 shows, larger firms tend to be more immune to extortion. This gives them a significant competitive advantage and leads to market consolidation that might run counter to competition. In other words, extortion functions both as a barrier to entry and as an incentive for the successful few to become even larger and thus more immune.

As the rule of law and competitiveness result in a virtuous cycle, extortion and informality result in a vicious one: since protection has to be paid for, there are scarce incentives for informal SMEs to transition to formality. For them, formality is a state in which (1) they have to pay taxes, (2) contribute to welfare mandates, and (3) be subject to extortion from a coterie of official inspectors of several kinds. Thus, the key to the transit from informal to formal becomes apparent: reduce extortion in the formal sector.

Insecurity and extortion deter investment more than any other economic or social factor. Mexico's achievements in terms of the trade opening, macroeconomic stability, competitive offer of local suppliers, and even as an attractive final market, are easily cast aside by investors in their risk analysis when evaluated against the costs of insecurity.

The question, of course, is if the Mexican business community, both SMEs and large companies, can play any role in eliminating extortion and insecurity. The answer is not easy; extortion is based on fear and threats, and many would rather pay than put their assets, commercial activities, or employees at risk. Furthermore, even when a businessman chooses to denounce extortion, he or she might face a dead end with local authorities who are either facing extortion themselves or are immersed in its dynamics.

Nonetheless, the business community can indeed play a significant role in combating extortion, and some of the key actions include:

- Collaborate with public policies aimed at reducing opportunities for extortion in public services. Some of these policies may imply higher costs for business that are used to “expedite” public services through corruption. Yet, it must be understood that this expediting corruption is, in the end, simply another extortion mechanism.
- Municipal building permits are frequently a locus of extortion. Indeed, many should not be granted on environmental or urban development grounds. However, permitting is used to obtain financial resources for electoral processes or, plainly, for graft. Municipal governments have significant discretion in setting rules and regulations for permitting processes. Private sector associations could propose a set of uniform regulations to be applied to municipal governments willing to join a modernization plan. Federal or state governments could encourage uniform permitting procedures, rewarding local governments that apply them with budget transfers linked to local tax collection. The recent electoral and political reform implied an advance towards the strengthening of efficiency in municipalities, since it has allowed for reelection of mayors for the first time. Moreover, the Municipal Promotion Federal Fund already promotes local property tax collection, but it does not go far enough. An important change would be to use matching funds to reward impoverished municipalities that make an effort to raise local property taxes.
- The role of insurance companies. In many countries, insurance companies serve as catalysts for compliance with many regulatory requirements. From safety standards to equipment and procedures for natural disasters, to operating processes for machinery and vehicles, insurance policies can serve as a guarantee for obtaining compliance from firms. Legal modifications can be envisioned so that firms certified by insurance companies as fully complying with standards could choose not to be inspected by the corresponding authorities.

## Corruption

While insecurity and extortion are based on threats and violence, corruption is based on mutual benefits for the briber and the public official who is bribed. As such, the business community (in Mexico and in any other country) has an important role to play in reducing corruption.

During the decades of the 70s and 80s, corruption was often regarded by the Mexican business community as an operating cost. With NAFTA and other free market treaties, the adoption of OECD codes of conduct and the growth of international companies in Mexico and of Mexican companies overseas, corporate practices against corruption began to spread. Corporate officials employed by these companies were trained in anti-corruption tactics, money-laundering controls, and business ethics that forced them to consider government relations from an entirely different perspective.

Two relevant deterrents of corruption were put in place by President Vicente Fox and his administration. First: the adoption of transparency mechanisms similar to the Freedom of Information Act in the United States through establishing the Federal Transparency Institute (today's National Institute of Transparency, Access to Information and Protection of Personal Data). Second: strong commitment to simplification of government procedures and digitalization. E-government reduces corruption opportunities by limiting human contact between citizens and government officials, by favoring the use of electronic payments (as opposed to cash payments), and—the most relevant of all—it simplifies the procedure and makes it as easy for one citizen as for the other. Digitalization reduces corruption that was previously derived from the need to “expedite” the resolution of a given procedure through bribes.

Nonetheless, corruption prevails in Mexico. Periodically, Mexicans are faced with corruption scandals in the federal, state, and local governments portraying government officials that (1) are rich well beyond their income means, and (2) react aggressively when faced with requirements of enhanced transparency and accountability.

In many ways, Mexico is an over-diagnosed country. Scholars, opinion leaders, non-governmental organizations, and international public and private organisms have all given their analysis and opinion on Mexico's needs and priorities after the structural reforms that many of them have pushed for. All of these diagnoses reach a common conclusion: the need for the rule of law and a tangible decrease in corruption levels.

The private sector coincides with this. Business people and leaders of commercial organizations all agree that, as long as Mexico fails in terms of legality and the rule of law, no structural reform is complete or sufficient to help the country achieve its full potential.



*President George W. Bush spends a moment with Mexico's President Vicente Fox following the opening ceremonies Friday, Nov. 4, 2005*

## Box 1. Morelos license plates case

In Mexico, most states charge an annual property tax on vehicles that is usually *ad valorem*, so that tax grows in value. Many have argued against this particular form of taxation and removing it is a measure that offers a high electoral return. In Mexico City and its metropolitan area (namely, the state of Mexico), a threshold has been set so that cars below certain prices are to be exempted from the tax. Luxury cars continue to pay full annual *ad valorem* taxes.

In the state of Morelos, which borders Mexico City, the state government removed property taxation on cars in 2011. The result is that Mexico City is now full of luxury cars that bear license plates from the state of Morelos.

In order to register a vehicle in Morelos, as stated in the transit regulations (Article 29), the owner of a car must prove residence in the state. The amazing increase in luxury cars with license plates from Morelos suggests three possible explanations: (1) many wealthy citizens from Mexico City have changed their residency to the state of Morelos; (2) many citizens from Morelos have just recently (after acquiring their new luxury cars) changed their residency to Mexico City; or, (3) what seems most likely, residents from Mexico City are twisting the law of Morelos to escape property tax on vehicles.

To have a Morelos license plate, the owner of a car must prove residency. It is very hard to believe that all these '*chilangos*' (as Mexico City residents are commonly known) own a house in that state. Thus, in order to receive the license plates, they must have the willing collaboration of local authorities. Furthermore, Article 31 of state transit regulations specifies that, in a period of no longer than 30 days, residents must notify any change in their address.

This situation reflects realities far beyond the fact that owners of luxury cars, authorities, and car dealers (those who most often get the state plates) are clearly "bending" the rules to enjoy a tax exemption.

As the Morelos case shows (see Box 1), one of the main obstacles to the rule of law in Mexico is that upper classes do not deem corruption and illegality as absolute concepts that must be rejected at all times, but rather as a flexible framework within which their own convenience must be accommodated.

Thus, while vigorously pointing out that corruption is a cancer in Mexico, many remain blind to their own contribution to it. Corruption, it seems, is only what others do (embezzlement by high-ranking officials), but when used as a resource to expedite a procedure or exempt oneself from an “undeserving” tax, it is, apparently, not equivalent, and thus not subject to sanction and public vilification. The same applies to the multinational companies of luxury cars whose franchises openly violate the law. It is fair to ask if they would do the same in the United States, Germany, or Japan. Probably not.

There is no reform more relevant for Mexico than the full installation of the rule of law. Not only is this required for justice and constitutional rights to prevail, but also it is key for achieving competitiveness and sustained growth. True rule of law is not just a matter of solving the most serious crimes or well-known scandals, but also ensuring an agreement within society. To achieve this, apparently minor issues, such as the Morelos license plates, turn out to be crucial for making the transit to a modern country. The rule of law will only be effective when it governs all relations between the government and citizens, and between a given citizen and his or her neighbors.

Moreover, the rule of law will not prevail until Mexicans—both in the private and public sectors—deem it as a common asset and responsibility, not as something that should be adhered to only in the face of sanctions. Mexicans must have an understanding of the advantages of having a proper rule of law, and a shared conviction on the values and institutions it helps to sustain.

## **The Rule of Law as a Public Good**

Acknowledging the rule of law as a public good opens the door for another indispensable link between the private sector and legality, and that is equality. As with many economies in the world (and maybe much more

than others), Mexico has been questioned because of the inequality that prevails in its population.

The rule of law is a public good. This means that it can be enjoyed by many without preventing others from obtaining its benefits. The non-exclusionary nature of an environment where most people are willing to abide by the law implies that the majority enjoys the benefits derived from a society that respects other people's rights. This non-exclusive access to rule of law is a key component to achieve better equality outcomes. As such, it is one of the most efficient tools that both the government and the private sector have to diminish inequality.

The rule of law helps to reduce poverty and increase economic growth by:

- Respecting human rights as indispensable for elementary well-being. Mexico's Constitution is now clearly *pro homine* thanks to the amendment of 2011.
- Guaranteeing access to expedite justice and due process for all individuals, without any distinction due to social or economic background. The Mexican Congress is considering a bill to improve "everyday justice."
- Enforcing clear property rights so that individuals and families can save and invest for their own future.
- Contributing to better salaries by allowing individuals and firms to migrate from low to high value-added activities. The lack of rule of law is a powerful deterrent to take the risk of changing as it forces people to continue defending the scant property they have against the threat of someone taking it.
- Increasing financial access. Access to legal financial services is fundamental to eradicating poverty given the fact that they provide competitive credit alternatives to the vulnerable sectors of the population. Clear property rights are a crucial element to allow SMEs and families to leverage assets and grow.
- Diminishing extortion: SMEs are particularly vulnerable in face of

extortion from unions, inspectors of all kinds, and organized crime. The key to reduce informality and promote SMEs' growth is to ensure a lower level of extortion in the formal market.

- Attracting and retaining investment, which is the cornerstone of competitiveness. The rule of law not only constitutes an indispensable element for production, but also for business relations and certainty regarding investments and acquisitions. Without it, the result of any given legal procedure is left to corruption or, at the very least, to influence and political pressure. The obvious outcome is that any investor will take this uncertainty into account for any risk assessment of a given region, city, or country, and thus demand a much higher return and invest less in the end.

Equality of opportunities, let alone outcomes, is not conceivable in the absence of rule of law.

## Conclusion

The quest for rule of law is necessary for fairness and competitiveness. Stability of laws is a pre-condition to reallocate resources from low to high value-added regions, sectors, and economic activities. Other sources of stability such as sound macroeconomics, a functioning democracy, and international trade rules are also important. The economic reason to pursue stability is to have a framework that allows change and, through it, sustainable growth. Societies that preach immobility end up losing. For a long time, Mexico based its development on rents and thus was prone to promoting the *status quo*. The key to competitiveness is now premised on willingness to invest to generate change. The role of the private sector is crucial but difficult. It implies a long transit from obstacle to catalyst of a system based on principles so that economic change and competition lead to sustainable growth.

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*How do Mexicans perceive the rule of law, and how does this undermine their trust in government, institutions, and other citizens?*

## POLICY RECOMMENDATIONS



- Create laws to effectively fight crime and criminals.
- Regulate government's actions to keep them legal and transparent.
- Understand that perceptions about corruption and rule of law are not fixed cultural traits, but views that are constantly changing in response to information, circumstances, and context, including the legal and institutional framework.

# PUBLIC OPINION, VALUES, AND THE RULE OF LAW IN MEXICO

BY ALEJANDRO MORENO

**H**ow do Mexicans view the law? What are the values on which they base legal and illegal behavior? What are the prospects for developing a culture of legality and adherence to legal principles in the country? Guided by these types of questions, this chapter develops an analytical description of how Mexicans view different aspects of the law, how willing they are to accept illegal behavior by citizens and government, and what features of Mexican political culture strengthen or inhibit the rule of law. It also shows how some of these views have changed over time and offers interpretations of what those changes mean for the establishment and preservation of a culture of legality.

The chapter is based on a wide collection of survey data gathered by different survey organizations over the past two decades. No single survey offers a deep and varied understanding of how Mexicans regard the law, adhere to legal behavior, or allow themselves some degree of permissiveness towards unlawful acts. However, putting together various surveys provides a useful tool kit and material to construct a general portrait of how Mexicans view and value the law. Surveys referred to here include national studies, state-level polls, and international surveys, all of them accessible to interested researchers at different sites. Unless otherwise specified, all surveys were conducted with in-home face-to-face interviews. Many of the data have been published previously; other data were collected in the same surveys but remain largely ignored. I

hope that gathering the data in a single chapter provides the reader with a reference document on Mexican public opinion about the law. A list of all surveys referred to can be found at the end of the chapter.

The analytical strategy that I follow is to describe, discuss, and interpret this collection of public opinion data as well trends revealed in the data and comparative references, wherever available. This is not a strictly academic paper, so there is no central theoretical framework or specific hypotheses to test. Neither is there a complex statistical analysis. I offer a simple reading of the data that may be subject to alternative interpretations. I warn the reader that some academic references and concepts may appear here and there without delving into their background or theoretical significance. Those familiar with academic research on public opinion may get some cues for further research questions that could be of interest to pursue with greater detail in the future. My goal and efforts here are to contribute an overview for those more committed to the practical and policy-oriented sides of public opinion and public institutions.

In the following sections, I discuss data on how Mexicans rate the rule of law as compared to other aspects of the country's development, how Mexicans perceive citizens' attachment to the law, whether they believe their government respects and follows the law, how secure they feel in their country and neighborhoods, how permissive they are towards illegal and corrupt behavior, and to what extent Mexicans trust the institutional framework. In each section, different ideas arise about the public and the rule of law, but one of the common findings is that attitudes towards the law do not seem to be fixed cultural traits, but views that are likely to change as a response to information, changing circumstances, and context. The implications of this are discussed at the end of the chapter, taking into consideration the public opinion bases for strengthening the rule of law in Mexico.

## **Rating the Rule of Law**

A first step in the construction of a general overview of public opinion about the law is to see how Mexicans rank-order the rule of law among a series of goals and priorities for the country's development. In other

words, how important is the rule of law in Mexico's public mind? A quick answer is that, compared to bread and butter issues such as the economy, employment, and social security, the rule of law is regarded as secondary. It seems a realistic expectation to find these priorities in a society where poverty and inequality are among the most central features. But this is not to say that the law is insignificant in Mexicans' worldview. As other parts of this book show, impunity and corruption are quite widespread as well, and so is a general sense of insecurity with respect to crime and public safety.

How do Mexicans rate the rule of law against other issues? The National Values Survey about what Unites and Divides Mexicans (ENVUD), conducted in 2010 to measure various attitudes and public views in Mexico in the context of its Centennial and Bicentennial celebrations (of the Revolution and War of Independence) is quite revealing. Asked what they would prefer to be the country's main goal for the next ten years, respondents were given the following options: 1) A strong economy that offers jobs and good salaries, 2) a rule of law (*Estado de Derecho*) in which legality prevails and those who break the laws are punished, 3) a social security system that guarantees health services and people's welfare, and 4) a democracy in which citizens participate and exercise their rights and liberties, and public officials are held accountable (*rinden cuentas*).

Mexican citizens who prioritize the rule of law over other issues are a minority. The majority of respondents (56 percent) chose the strong economy and jobs category, compared to 18 percent who opted for the rule of law, 14 percent for social security, and 12 percent for democracy. Put together, economic and social security issues add up to 70 percent, whereas the rule of law and democracy, combined, total 30 percent. In both meaning and format, this question resembles the conventional way in which political scientist Ronald Inglehart (1997) measured Materialist and Post-materialist values in post-industrial societies, and likewise, the question asked respondents to identify a second priority. Combining the two priorities, Materialists were those who placed emphasis on physical and physiological security, thereby choosing order and economic stability

over freedom and participation. Post-materialists chose the latter over the former. But in this values index, a majority of opinion was always in the middle, the so-called Mixed category.

Replicating the exercise with the question asked in Mexico about the rule of law, that is, considering the first and second priorities, the results show a somewhat different figure from the one above, which was based on a single question. About 31 percent prioritized a strong economy and social security, whereas ten percent prioritized the rule of law and democracy. The remaining 60 percent offered mixed views, combining bread and butter issues with legal and democratic preferences. True, economic issues get three times more weight than the law-democracy pair, but a majority view that combines both broad categories is large enough to show that concerns for the rule of law and democracy are significant. The combinations within the broad mixed category in which the rule of law is either first or second choice add up to 27 percent.

The explanation of these views is probably more rooted in context than in traits of the individual. One might expect that prioritizing the law and democracy over the economy and social security reflects the influence of individual characteristics such as education or income, perhaps even gender and age, or the Materialist and Post-materialist values (also measured in the same survey). Indeed, differences of opinion are to some extent accounted for by these individual-level traits: Mexicans with higher levels of education and income are more likely to give lower weight to economic issues and magnify the importance of the law and democratic institutions and practices. Citizens who hold Post-materialist values do indeed emphasize democracy more than economic and social security, and so do younger Mexicans. But the explanatory power of status, demographic, and even value variables is rather modest, compared to that of context. Differences between states are much more visible, which means that context strongly influences these priorities. And it is not just the economic context: survey results show the poor states of Chiapas and Oaxaca are among those where emphasis on the economy and social security is the most highly ranked (40 percent and 36 percent, respectively). Other more industrialized states, such as Puebla and Gua-

najuato, rank very similarly on these bread and butter issues (39 percent and 37 percent). In contrast, the rule of law and democracy rank comparatively high in Querétaro and Chihuahua (19 percent and 17 percent), in less developed Guerrero (15 percent), as well as in Veracruz and Tamaulipas (16 percent and 17 percent). State-level results remind us that opinions may be shaped by different experiences and circumstances.

There is a significant variation of preferences within the country that reflects not only differences among social and demographic groups but also, and above all, differences caused by context, including socioeconomic development, poverty, and political development and institutions. There are different ways to measure the development of political institutions and the rule of law, but in terms of public opinion we usually are interested in people's perceptions. How developed is the legal system compared to other aspects of government services and the economy? The ENVUD survey asked respondents how they rated the level of development of various aspects of the country, including the rule of law, which scored among the lowest levels of the ranking. On a scale of one to ten, where one is "not at all" developed and ten is "completely" developed, the health system, arts and culture, and education were rated with the highest averages: 6.74, 6.7, and 6.62, respectively. Rights and liberties got 6.14. Government institutions, democracy, and public services got lower scores: 5.96, 5.81, and 5.75, respectively. Both the economy and the rule of law got much lower ratings, receiving the same score of 5.35. The only other aspect below them was public safety, with 5.15. These figures show that Mexicans perceive the rule of law (along with public safety) as one of the least developed aspects of their country.

In sum, the rule of law is viewed as secondary in comparison to economic issues, which are more highly prioritized; but that does not mean the law is viewed as insignificant. In fact, both the economy and the rule of law have something in common for public opinion: they are among the least developed aspects of the country, along with public safety. Strengthening the rule of law certainly seems like a pending task in the public's mind.

## Citizens and the Rule of Law

A second step in this overview is to inquire how Mexicans view the law in regard to citizens' expectations and behavior. Do Mexicans believe that all citizens are equal before the law? To what extent do citizens respect and follow the law? These are fundamental questions, since most legal frameworks appeal to legal equality: "Every citizen, regardless of his or her sex, race, class or other characteristics, shares political rights and responsibilities that are recognized and protected equally under the law. Most constitutions ordain equality among citizens" (USAID 2008).

In Mexico, and in Latin America, more broadly speaking, the public does not perceive adherence to the law as a major defining characteristic of citizenship. The 2010 *Latinobarometer* survey asked Latin Americans from 18 countries which of various responsibilities a person must fulfill in order to be considered a citizen. The highest response centered on voting: 72 percent of all 20,213 respondents interviewed throughout the region thought of citizens as voters. This electoral expectation was followed by a notion of citizens as taxpayers: 11 percent said that citizenship means paying taxes. The fiscal expectation was then followed by a notion of compliance with the law: only eight percent said that in order for a person to be considered a citizen she must always obey the laws. Other responses involved political and civic participation, environmental behavior, social solidarity, and military service, but they add up to seven percent altogether. By 2015, the electoral expectation had decreased slightly but remained the most defining feature of citizenship, with 67 percent mentioning it. Paying taxes was 12 percent and obeying the laws held steady at eight percent. Mexicans clearly follow this regional pattern, but gave slightly less weight in 2010 to the electoral expectation (66 percent), and slightly higher weight to the fiscal and legal expectations of citizenship: 12 percent and 10 percent. In 2015, voting decreased to 60 percent, the taxpayer expectation increased to 15 percent, and the legal expectation stayed at nine percent. Paying taxes and obeying the laws are important but not crucially defining features of a good citizen, at least not among Mexican and Latin American public opinion.

This reality stands in contrast to the theoretical expectation that law-abiding and fiscally responsible individuals make good citizens, as established in the National Elections Institute (INE) country report about the quality of citizenship in Mexico 2015. The report states that “being a citizen is submitting yourself to the law and fulfilling your tax obligations” (p. 21). The same report reminds us that “the rule of law implies that people obey the law and act according to it” (p. 32). Opinion surveys show that those theoretical statements do not necessarily find a practical match in public attitudes and beliefs.

The general perception is that most citizens in the Latin American region, Mexicans included, do not comply with the law. Asked by the 2010 *Latinobarometer* how citizens in their country comply with the law, six percent of respondents said a great deal, 21 percent quite a lot, 56 percent said very little, and 16 percent not at all. Adding up categories to summarize these numbers yields 27 percent who said that citizens generally comply with the law in their country, whereas 72 percent who generally do not. In Mexico, the distribution is even more biased towards non-compliance: 15 percent said citizens comply with the law and 84 percent said they do not. With these numbers, Mexico ranked next-to-last in a tie with Guatemala, Colombia, and Argentina, and only above Peru. The largest proportions of respondents who say citizens comply with the law were observed in Uruguay and Chile. In those countries, 56 percent and 48 percent, respectively, believe that their fellow citizens comply with the law. These numbers show that Mexicans are skeptical of compliance with the law by the majority of citizens. People simply do not obey the law, or so most Mexicans believe.

Public views are sensitive to how the question is asked or framed, and how it is understood, so the majority view may change. The ENVUD study asked respondents whether they think that citizens respect the laws. The emphasis is on respect, not on compliance. And this subtlety may make a significant difference. About five percent of respondents said that Mexican citizens always respect the law, 45 percent said they sometimes do, 29 percent said they rarely do, and 20 percent said they never do. We may be tempted to combine the categories to offer two

more broad perceptions: those who think Mexicans always or sometimes follow the law (50 percent), and those who think they rarely or never do (49 percent). This would be an evenly divided public. But the problem is that “sometimes” following the law does not sound like a very convincing legal behavior. Even the wording “most of the time” would allow some illegality from time to time. It is an unbalanced scale. So it is difficult to read these results as a split public: it is rather a plurality that believes that Mexicans are not respectful of the law, a very small minority who feels that they are, and a large proportion (45 percent) that believes Mexicans may sometimes respect the law. INE’s 2015 country report relied on the 2013 National Survey on Citizen Quality, and it documents that 66 percent of Mexicans think that the laws are respected little or not at all. The surveys coincide: the majority public belief is that respect for the law is scant in the country.

Perceptions about citizens’ respect for the law vary significantly by state, signaling again that context matters. The proportion of respondents who think that citizens always respect the law varies in a range from two percent in states like Morelos and Chihuahua to 12 percent in Chiapas and Veracruz. In contrast, the proportion who believe that citizens rarely or never respect the law varies from a third (33 to 34 percent) in Nayarit and Aguascalientes, to 60 to 64 percent in Zacatecas, Durango, Quintana Roo, and Chihuahua. The differences in perception by state are huge.

Is the law necessary? The majority perception of noncompliance and a plurality who thinks that there is little respect for the law contrast with a majority expectation that the law is actually necessary. Most Mexicans believe, for example, that in order to be successful, people have to strictly follow the laws. About 69 percent of ENVUD respondents supported this view, whereas 28 percent said that to be successful, people actually have to break the laws without others noticing. The belief in breaking the laws as a condition for success reached 40 percent in the state of Morelos, and 39 percent in Chiapas, Tamaulipas, and in Mexico City, all well above the national average. And in this case, education makes a significant difference: Mexicans with low levels of education are more prone to believe that their success requires obeying the law, whereas the more

highly educated are more likely to think that personal success is linked to illegal behavior. Education seems to make citizens more cynical in their views about the law. If we take age into consideration, younger Mexicans were more prone to believe in the positive effects of illegal behavior on success than older Mexicans. This suggests that new generations of Mexicans have the wrong attitude for the establishment of the rule of law. They seem much more cynical.

Are all persons equal before the law? Mexicans are sharply divided in their views about this. The national public splits evenly with the phrase "In Mexico, all people are equal before the law": 48 percent of Mexicans agree and 51 percent disagree, according to the Comparative National Elections Project (CNEP) conducted in Mexico in July 2012. This division was also observed six years before, in the aftermath of the 2006 presidential election: 49 percent said they agreed that all people are equal before the law in the country, while 48 percent disagreed. This seems like a remarkably stable attitude. The Mexico Panel Study conducted in 2012 also asked this question and the results were very similar: 43 percent agreed that all persons are equal before the law, whereas 53 percent disagreed.

Have these views about equality before the law evolved? A similar question asked some years ago by the *Latinobarometer* showed a somewhat different portrait. In 2000, 29 percent of Mexicans believed everyone is equal before the law, and 69 percent believed there was not equality. Two years earlier, in 1998, the proportion that was skeptical about legal equality was 73 percent. *Latinobarometer* has not asked this question again since then, but it is possible that the distribution captured by the 2006 and 2012 CNEP study, and the 2012 Mexico Panel Study, signals a change in public perceptions about equal treatment under the law. A change that in this case goes in the right direction: in recent years, an increasing number of Mexicans believe there is legal equality compared to the past.

These views on legal equality may reflect the influence of socioeconomic and educational status, as more dispossessed Mexicans might

perceive less equality. However, the study shows an inverse relationship: Mexicans with higher levels of education perceive more inequality. The difference in perception is significant: A slight majority of Mexicans (51 percent) with basic education or no education at all believe that all people are equal before the law, whereas only a third of Mexicans (34 percent) with a higher education or a university degree believe that. In this case, differences of opinion by age are less significant, but younger Mexicans are slightly more prone to believe in equality before the law for all citizens. There is also a modest gender gap: men are more likely than women to believe there is legal equality in the country.

In sum, Mexicans do not perceive compliance with the law as a defining characteristic of citizenship. There is a broad perception that most Mexicans do not follow or respect the laws. However, most Mexicans believe that success in their country is linked to lawful behavior. Still, slightly over a fourth of the Mexican public feels that success comes from breaking the law without others noticing. There is a wide margin for illegal behavior based on these beliefs and expectations. Nonetheless, there seems to be an important change in perceptions about people's equality before the law: a decade and a half ago, at least two-thirds of Mexicans did not believe citizens were equal before the law. In 2012, about half of respondents expressed that belief. Although the question was not exactly the same, the more balanced distributions hints that public attitudes about the law are possibly becoming more positive. That would be a good step towards greater public faith in the rule of law.

## **Governments and the Rule of Law**

What about government adherence to the law? A third step in this overview is to analyze how Mexicans regard the law in relation to government behavior. To what extent do governments and public servants follow and respect the law? Do Mexicans believe that the government should have some margin for unlawful behavior if the situation merits it? Surveys offer different indicators about this.

Surveys reveal that Mexicans perceive the government to be less obedient to the law than citizens. ENVUD's question about citizens' respect

for the law was also asked in regard to the government. In this case, only three percent said the government always respects the laws, 32 percent said the government sometimes does, 32 percent it rarely does, and 32 percent it never does. The “sometimes” response option suffers from the same ambivalence discussed above, but it is clear that governments are perceived as less respectful of the law than citizens: a total of 65 percent of Mexicans believe the government rarely or never respects the law, as compared to 48 percent who think the same about citizens. This is a significant difference.

Perceptions about respect for the law by government also vary by state. The proportion of respondents who think the government always respects the law ranges from one percent in Morelos and Quintana Roo to 11 percent in Chiapas, according to the 2010 ENVUD. The proportion of respondents who believe that the government rarely or never respects the laws varies from 44 percent to 46 percent in Chiapas, Sinaloa, and Coahuila, to 85 percent in Quintana Roo and Guerrero. These perceptions may reflect agenda-setting and priming effects, that is, they are sensitive to media content. If so, perceptions may change in each state based on the information flow about government behavior. It is likely that media content shapes public opinion more regarding government than as regards citizens, although social media in Mexico have increasingly highlighted unlawful and corrupt behavior by citizens as well. Examples of exposed citizen behavior have taken the form of #Lady or #Lord in social media, ironically emphasizing undesirable social conduct that, though not necessarily illegal, disregards civic expectations, equality before the law, and respect for other citizens or public services.

Are perceptions about respect for the law linked to perceptions of accountability? The concept of accountability is rarely captured by surveys in Spanish-speaking countries, where the word does not exist (hinting that in the evolution of the Spanish language “accountability” did not find the proper conditions or niche to develop), but an approximation would be the concept of “*rendir cuentas*.” The ENVUD survey asked respondents whether government officials are held responsible (*rinden cuentas*) to citizens. About four percent said they always are, 30 percent

said sometimes, 33 percent rarely, and another 33 percent said never. Adding up, two-thirds (66 percent) of Mexicans do not believe that government officials are held accountable. In 2010, the responses on this varied from 49 percent in Chiapas to 87 percent and 89 percent in Guerrero and Quintana Roo. This means that nine out of ten respondents in those states do not believe that there is "*rendición de cuentas*" by authorities.

The public also conceives of a government that may at times disregard the constitution. The majority of Mexicans expresses concerns about this. During the 2006 presidential campaign, the CNEP study asked Mexicans how frequently the government overlooks the constitution: a total of 65 percent said always (26 percent) or sometimes (39 percent), while 28 percent said the government rarely or never does that, and 7 percent replied simply "do not know." It is reassuring to see that in a different year and using a different question, about two-thirds of the public gave a similar response which confirms the same perception: the government does not abide by the law.

Surveys have also measured whether citizens are willing to allow some degree of unlawful government behavior under some circumstances. The 2010 *Latinobarometer* asked respondents if they agreed or disagreed with different statements, one of which taps the issue of government breaking the law in emergency situations. "When there is a difficult situation in the country, is it fine that the government disregards the law, the parliament and/or institutions with the goal of solving the problems?" About 39 percent of respondents in the Latin American region agreed, and 55 percent disagreed. In Mexico, the level of tolerance for a government's unlawful behavior under emergencies was a bit lower: 33 percent agreed with the statement, and 64 percent disagreed with it. This places Mexico among countries with a higher level of intolerance for illegal behavior by government, along with Bolivia, Venezuela, and Argentina.

Should the government be allowed some degree of freedom in disregarding the law when fighting criminals? About two-thirds of Mexicans believe that authorities should always follow the law when fighting

criminals; but the remaining third feels that, under some circumstances, the government may actually disregard the law for to combat criminal activity. In five national surveys conducted every two years from 2004 to 2012, the Latin American Public Opinion Project (LAPOP) has found that the proportion of Mexicans who support the pro-legal side of this question varies from 58 to 68 percent, averaging 64 percent for the entire period. In contrast, the permissive attitude towards illegality averaged 36 percent, ranging from 31 to 42 percent. A large majority is in favor of the rule of law in this case, but a significant minority is not.

Compared to other Latin American societies, Mexico does not stand out in these attitudes of support for illegal behavior; it ranks near the average. The LAPOP study shows that Mexico's level of support for illegal behavior is similar to that observed in Argentina, Colombia, Panama, Guatemala, and the Dominican Republic, where country averages are 34 to 37 percent. And, it is surprisingly lower than what the survey shows for Costa Rica, Uruguay, and Chile, where democracy is thought to be more consolidated, nonetheless registering averages of 43, 47, and 50 percent, respectively. Acceptance of government's illegal behavior against crime is also higher than 40 percent in Bolivia, Nicaragua, El Salvador, Paraguay, Peru, Honduras, and Ecuador. In contrast, support for illegal government behavior is slightly lower in Brazil (29 percent) and in the United States (30 percent). It is noticeable that even in these cases, the American public's permissiveness toward illegal behavior by government extends to almost one-third of the public. In sum, Mexicans resemble the average citizen in the Americas when it comes to permissiveness of illegal behavior by government against criminals. The level of permissiveness varies in the continent from almost a third to one-half regardless of how democratic the country is.

In conclusion, Mexicans perceive their government as being less respectful of the law than citizens. Perceptions of illegal behavior by government are more likely to reflect media content than perceptions of citizen behavior, though the use of social media may be changing this, as citizens are increasingly exposed when questionable behavior manifests. Surveys provide evidence of Mexicans' skepticism about government ac-

countability. A broad public belief that contemplates overlooking the constitution is recorded in some of those studies. Nonetheless, a significant minority of citizens justify some degree of unlawful government behavior under certain circumstances. It must be noted, however, that the majority of respondents do not find illegal conduct by government as justifiable under any circumstances. Mexicans do not stand out as particularly permissive for illegal behavior in Latin America. Their degree of tolerance on this issue seems to be average.

### **Feeling Insecure: Weakness of the Rule of Law?**

The rule of law should make citizens feel relatively secure about their environment. Thus, evidence of a public perception of insecurity should say a lot about the strength or weakness of the rule of law. How insecure do Mexicans feel? What do they feel insecure about?

The 2015 *Latinobarometer* study asked respondents how frequently they worry about being victims of a violent crime. On average, 41 percent of respondents in the Latin American region said they worry all the time, and 28 percent said they worry about it sometimes, adding up to 69 percent in total. In Mexico, the total was 74 percent, with those worrying all the time representing 46 percent of all respondents. This means that three out of every four Mexicans feel insecure quite often. In this question about fear of being a victim of crime, Mexicans score higher than the regional average. But the concern is even higher and reaches 85 and 86 percent in countries such as Venezuela and Brazil. The sense of insecurity against violent crime is quite pervasive in Mexico and the region as a whole. Mexicans are only part of a broad sense of insecurity.

This general sense of insecurity may reflect what people hear in the news as much or even more than what they may see directly in their communities. The sixth wave of the World Values Survey conducted between 2010 and 2014 asked respondents in various parts of the world how safe they feel in their own neighborhoods. Two-thirds of Mexicans said they feel very safe (30 percent) or somewhat safe (36 percent), whereas a third said they feel not very safe (24 percent) or not at all safe

(9 percent). Compared to the *Latinobarometer* question, the sense of insecurity did not extend to one's neighborhood. The World Values Survey offers a wider comparative framework to put insecurity into perspective. For example, the sense of security is over 90 percent in countries like Qatar, Poland, Sweden, and Australia. It reached 87 percent in Japan, 85 percent in the United States and Spain, 76 percent in Russia, and 73 percent in South Korea. Mexico's response of 66 percent was slightly higher than other Latin American societies: Chile 59 percent, Peru 44 percent, and Ecuador 40 percent. Compared to many other countries, Mexicans feel relatively less secure in their communities, but compared to Latin Americans, Mexicans feel, on average, slightly more secure. The sense of security in their neighborhoods expressed in some African nations included in the study show higher proportions than in Mexico: Rwanda 91 percent, Ghana 86 percent, Zimbabwe 78 percent, and Nigeria 72 percent.

Surveys also show that Mexicans feel insecure not only with respect to criminals but also to government authorities. The 2006 CNEP study showed that 25 percent of respondents said that people "always" feel afraid of being arrested illegally in the country. When the category "sometimes" is added to the proportion of those who fear an illegal arrest, this response totals 76 percent. Again, three out of four Mexicans feel insecure, and this proportion is the same whether the reference is to criminals or government authorities. Only 19 percent, one in five Mexicans, confidently said that people rarely or never have to fear an illegal arrest.

The rule of law should also help citizens feel more comfortable about expressing their opinions and preferences, but many Mexicans actually believe they have to be careful with what they say, especially about politics. The CNEP survey asked how frequently people have to be careful of what they say about politics: 27 percent said always and 35 percent sometimes, adding up to 62 percent. Similarly, a question about how frequently people have to be careful about what organization to join showed that 26 percent said always and 29 percent sometimes, for a total of 55 percent. In all these cases, the majority of Mexicans seems concerned about not having the freedom to express their opinions or

joining groups and associations. As a general rule, Mexicans do not join organizations in high numbers, as the National Survey of Philanthropy and Civil Society (ENAFI) has documented. The ENAFI, conducted in 2005, 2008, and 2013, confirms findings from other surveys that Mexicans tend to distrust others and distrust organizations and tend not to join organizations or groups.

Opinions about freedom of expression may not seem directly related to the rule of law, but they are quite revealing about the environment that Mexicans live and feel. Worries about freely expressing one's opinions are one thing, but thinking that opinions may actually count is another, and they both illustrate the lack of faith in the system. The 2006 CNEP asked respondents if they agree or disagree with the statement "if a person's opinion represents a minority view, it generally does not count": 64 percent said they agreed, and 32 percent disagreed. Six years later, in 2012, this opinion distribution remained basically the same: 63 percent agreed, 35 percent disagreed. So only about a third of Mexicans believe that minority opinions have a good opportunity to be expressed in the country; two-thirds see a restricted environment for that. Regardless of these perceived limitations to freedom of expression, in a 2006 survey eight in every ten Mexicans believed that "freedom to criticize the government" is an absolutely essential (32 percent) or a very important (47 percent) characteristic of democracy. This also seems to be a relatively stable opinion. The 2012 survey showed 36 percent identifying this freedom as absolutely essential and 44 percent considering it very important, adding up to eight in ten Mexicans. In conclusion, Mexicans feel that expressing their opinions is an important democratic practice, but they do not feel that opinions can be easily expressed, especially if they represent a minority view.

In sum, Mexicans do not feel very secure. To what extent this is a reflection of a weak rule of law is something we can only speculate about. Many Mexicans feel afraid of becoming victims of criminals, but they feel relatively secure in their neighborhoods. What is most striking about the data is that the general sense of insecurity is as strong towards crime as it is towards government authorities. Fear of crime is as high as fear of ille-

gal arrest. This translates into a sense of insecurity about expressing one's opinions. Surveys show that Mexicans believe in the importance of criticizing the government as a feature of democracy, but feel that conditions are not the best to freely express opinions, especially minority views.

## Permissiveness towards Illegal Behavior and Corruption

Stereotypes play an important role in shaping public opinion. A common stereotype about Mexico is that people are corrupt, including those in positions of leadership. Media polls about corruption show that politicians are perceived to be the most corrupt, followed by the police, judges, and union leaders. According to the 2013 *Corruptometer* poll, a telephone poll conducted by *Reforma* newspaper, all these categories of people were perceived as very corrupt at least by 76 percent of respondents, and up to 88 percent in the case of politicians. Bureaucrats and businesspeople were a little lower, at 62 and 63 percent; citizens at 48 percent, teachers at 45 percent, journalists at 44 percent, and the military at 38 percent. This study, conducted almost biannually from 2002 to 2013, documented an increase in perceptions of corruption in the country during that period. The federal government was labeled as very corrupt by 63 percent of respondents in 2002, rising to 68 percent in 2009 and 2012, and to 77 percent in 2013. State and local governments earned similar ratings: state government was perceived as very corrupt by 61 percent of respondents in 2002, rising to 73 percent in 2013. Perception of corruption in local government moved from 58 to 74 percent in those same years.

Corruption in government is taken for granted. A question in the same study asked: Do you think that an honest person who gets a government job will remain honest or will become corrupt? The majority of respondents chose the latter. Also, the same study showed a remarkably stable pattern of responses with regard to bribing: in 2001, 40 percent agreed with the statement "in our country, bribes are necessary to deal with authorities." By 2012, the proportion remained at 39 percent. Stereotypes evidently are hard to change. How permissive are Mexicans towards

corruption? The quick answer is that “corruption permissiveness” is a dynamic attitude, which changes from time to time, perhaps as a response to contextual or institutional changes. Survey evidence suggests that corruption permissiveness in Mexico is not a diehard cultural trait. The World Values Survey (WVS) has a very useful set of questions about corruption permissiveness that illustrate this. The study asks respondents on a scale from one to ten whether they think it is never justified (one) or always justified (ten) to do various potentially corrupt things. One of them is claiming government benefits to which you are not entitled. In 1996, 51 percent of Mexican respondents said this was never justified. The proportion decreased in the next three surveys, to 45 percent in 2000, 37 percent in 2005, and 34 percent in 2012. People became more accepting of claiming government benefits without having the right to claim them. As social assistance and social programs have expanded in recent years, it is likely that this attitude reflects governmental efforts (at all levels) to cover as many individuals as possible in their benefits, perhaps expecting electoral favors in return. This interpretation, of course, needs to be tested, but the gradual change in attitudes seems to mirror politicians’ efforts to increase social programs, which, without transparent mechanisms for distribution, may influence people’s perceptions that it is acceptable to get them without a clear entitlement.

Another indicator of permissiveness toward competitiveness included in the WVS refers to how justifiable it is to avoid paying a fare on public transportation. About 49 percent of Mexicans said it is never justified in 1996 and 2000, but the proportion dropped to 37 and 38 percent in 2005 and 2012. People found it more justifiable to avoid fares. Permissiveness of corruption increased. This indicator, and the previous one, show that attitudes towards corruption are moving in the wrong direction, as Mexicans are becoming more permissive of illegal actions. However, there are other indicators that show opinion is shifting in exactly the opposite direction.

Mexicans are becoming less tolerant towards tax evasion. In 1990, 37 percent said that cheating on taxes is never justified. This attitude broadened to 55 percent in 1996, and then to 69 percent in 2000. After

dropping back again in 2005, to 60 percent, the 2012 survey recorded a high 71 percent. In other words, intolerance of tax evasion doubled in two decades. Knowing to what extent this reflects a changing and more efficient tax system has not been measured, but there has to be some institutional and procedural explanation behind the fact that Mexicans are now much more prone to reject cheating on taxes than they once were (and not so long ago). What we know for sure is that these attitudes may change rapidly, suggesting that they are not fixed cultural traits but rather dynamic and malleable views. If so, corruption may not have strong cultural roots after all.

Finally, the WVS also asks whether it is justified to accept a bribe while you are performing your duties at work. Percentages of rejection have varied in each survey, but considering the long run, public attitudes also seem quite stable: In 1981, 70 percent said that accepting a bribe is never justified. In 2000, the survey recorded 73 percent, and again in 2012. So, at least seven out of ten Mexicans feel that accepting bribes is an unjustified type of behavior. If we consider variations in middle surveys, they only show that rejection has grown. This is another trend in which public attitudes seem to be moving in the right direction for establishing an effective rule of law.

Comparatively, Mexicans are less permissive towards corrupt behavior than many other societies studied through the WVS. Remember that 71 percent of Mexicans said in 2012 that cheating on taxes is never justified. In Japan, 87 percent said this, and in Uruguay 77 percent. But in many other countries, the absolute rejection to cheating of taxes was lower than in Mexico: South Korea 71 percent, Chile 70 percent, United States 69 percent, Spain 60 percent, Australia 67 percent, Sweden 62 percent, China 53 percent, Zimbabwe 53 percent, Singapore 51 percent, Philippines 43 percent, Russia 43 percent, Algeria 39 percent, Iraq 33 percent, and Rwanda 32 percent, just to mention a small sample of countries. These numbers show that Mexicans are less tolerant than other societies of cheating on taxes.

What about bribery? In this case, Mexico scores closer to the international average. With 73 percent of Mexicans in 2012 absolutely rejecting

any justification for accepting bribes, the number is well below societies like Tunisia and Qatar, where 88 percent support such absolute rejection (it is never justified). The Netherlands and Japan record 83 percent each. New Zealand and Australia 79 percent each. The United States is at 76 percent. South Korea and Taiwan show 74 and 73 percent, just as in Mexico. But below that level, more permissive societies towards bribing include, surprisingly, Germany (72 percent), Chile (70 percent), and Sweden (67 percent). More permissive ones are Russia, China, Peru, and Ukraine, each at 62 percent, Zimbabwe at 54 percent, Singapore and Nigeria at 52 percent each, Philippines at 40 percent, and Rwanda at 29 percent. Compared to many countries in the world, Mexicans seem much less permissive towards bribing. So, a big question is why Mexico ranks high in corruption. Are Mexicans simply giving socially desirable responses to these surveys, or are they truly less permissive towards corruption than we imagine?

In sum, we began this section referring to how stereotypes play an important role in public opinion. The stereotype of corrupt people is common in Mexico. Politicians are a particularly good fit for it. However, the survey data discussed here shows that Mexican's views on corrupt behavior are not always tolerant of illegality, and some attitudes are changing dramatically, such as permissiveness of tax evasion. These changes—and the relatively short period in which they have taken place—suggest that permissiveness of corruption or intolerance towards corruption may not be a cultural trait, but a dynamic attitudinal feature that reflects changing circumstances.

## Confidence in Institutions

A final discussion centers on public trust in institutions. The rule of law should provide citizens some degree of certainty about institutional behavior and responsibility. Although citizens in well-established democracies may express some degree of distrust in government institutions and see it as a critical attitude for better performance, a more generalized distrust in countries like Mexico may hint at a lack of faith in the institutional framework.

For example, most Mexicans believe that criminals go unpunished to a great extent. Mexicans have little faith in the judiciary system. Asked by LAPOP if they were victims of a robbery or an assault how much they would trust the judiciary system to punish the criminals, two-thirds of Mexicans (65 percent) said they had little or no trust at all, and about a third (35 percent) said they would trust the system a lot or somewhat. This lack of trust is also visible in many other Latin American countries, so Mexico is not particularly unusual in this regard.

Many surveys such as *Latinobarometer*, LAPOP, and the World Values Survey, among others, have documented Mexicans' lack of trust in political and government institutions. Of particular interest is confidence in the laws and in the judiciary system. According to the *Latinobarometer* study, from 1995 to 2011, roughly one in four Mexicans, on average (27 percent), said they have a lot or some trust in judiciary branch. The highest percentage was observed in 2000, the year of political alternation, when trust rose to 40 percent—but it decreased to 17 percent in 2002, perhaps as part of a general disenchantment with democratic change. In comparison, confidence in Congress averaged 29 percent for the same period, but trust in the legislative branch seems more stable, as it did not record any percentage above 40 percent nor below 20 percent in the same years. Opinions (trust, in this case) about the judiciary seem more volatile and do not seem to be getting better in the long run. Mexicans suffer from a deficit of trust in the judiciary system.

Trust in the police is also a relevant measure for the rule of law. *Latinobarometer* data show that the average for the 1995-2011 period was 22 percent, that is, one in five Mexicans have expressed confidence in the police. This indicator varies from a high 35 percent in 2000 to a low 12 percent in 2002. The good news is that the trend does not show any decline; of course, the bad news is that it is not improving either. Volatile views indicate that this is not a fixed cultural expression either. Opinions change and they change for a reason. Changing patterns of trust in the police reflect responses to changing circumstances. The question is whether Mexicans can put their faith in the police and other security arms of the State. It is well known that the Armed Forces are more

trusted in the country (*Latinobarometer* shows an average of 50 percent during the mentioned period), but comparatively, Mexicans' confidence in their armed forces is much lower than in many other countries that participate in the WVS. So, trust in the armed forces is higher than confidence in the police, but it is still comparatively low.

In sum, Mexican society is quite distrustful towards institutions, and those that have to do directly with the rule of law are no exception. Police forces only enjoy confidence among one-fifth of the population, the armed forces one-half, and the judiciary system one-fourth. As illustrated by the data trends, the measurements of trust in institutions are changing and that may reflect changing realities. It is possible that the deficit in trust can be changed, but it will not be an easy task. Over two decades, trust in the police has varied, but on average it has remained the same. Four out of five Mexicans do not trust the police.

## Conclusion

Mexican public opinion about the law has many different facets. I have referred to and discussed survey data that show some of them. The findings can be summarized in the following comments.

First, in a society where poverty and inequality are central features, the rule of law ranks as secondary in comparison to bread-and-butter issues. But the sense of insecurity is also extensive, and desires for a strong rule of law can be expected to be widely held. Mexicans believe that the rule of law has not developed at the same pace as other aspects of the country's development. They recognize development in aspects such as health, education, and the arts and culture, but most feel that the economy, the legal system, and public safety are lagging behind.

Second, Mexicans may believe that corruption is a part of everyday life, and they take for granted that it is quite common among citizens and, especially, government officials. But the majority of citizens reject the idea that a person's success is tied to illegal behavior.

Third, despite stereotypes of corruption, Mexicans express less permissiveness towards illegal or corrupt behavior than other Latin Americans,

and they are driven by an expectation that criminals should not benefit from impunity. Although Mexicans value the rule of law, they recognize its weakness and tend to believe in the corrupting power of public service. They are divided on their perceptions of legal equality: about half the population believes people in the country are equal before the law, and the other half does not. But this may be changing, as previous studies using a similar question found only one-third believed people are equal before the law. Good steps towards implanting a culture of legality also include changing views on tax evasion.

Overall, changes in public opinion suggest that illegal or corrupt behavior is not a fixed cultural trait, but rather a dynamic set of attitudes that may change in response to information, changing circumstances, and context. In fact, variations between states (context) seem to explain differences in opinion and attitudes much more than individual-level traits, such as sex, age, education, and political values. Context matters.

This portrait of Mexican public opinion and the law reveals favorable and unfavorable aspects for strengthening the rule of law. On the favorable side, surveys show that:

- Mexicans reject illegal behavior by both citizens and government;
- Permissiveness towards corruption in the country does not particularly stand out as distinct from other nations;
- Permissiveness towards illegality has actually decreased regarding specific acts such as tax evasion; and
- Perceptions of equality before the law seem to be improving.

On the unfavorable side:

- Most Mexicans have little faith in government institutions, including the police and the judiciary system;
- Corruption stereotypes seem well rooted in the public mind and many Mexicans are willing to justify corrupt behavior by the government if circumstances merit it;

- Younger generations appear more cynical about the rule of law than older generations; and
- Mexicans do not tend to see compliance with the law as a defining characteristic of citizenship.

Mexicans' deep-seated feeling of insecurity reveals how weak the rule of law is perceived to be. Even more revealing is the fact that Mexicans feel as insecure towards crime as they do towards government authorities. A good road map for strengthening the rule of law has to take this into consideration: laws have to be effective for fighting criminals but also for keeping government actions within a legal and transparent framework.

The journalist Walter Lippmann wrote in the early 1920s that public opinion is about the pictures we build in our minds. Stereotypes play an important role in that. But stereotypes are about how we may perceive others, not about how we want to conduct ourselves. Strengthening the rule of law is about our conduct, about how to properly orient social, economic, and political behavior, and about how to prevent and punish illegal acts. In that sense, public opinion about the rule of law is not just what we think of it, but what we want out of it. Yes, a significant minority of Mexicans believes that success comes from bending the law, from acting outside the rules without being caught. But the majority believes that success, whatever it means to anyone, goes hand in hand with adhering to the rules and legal principles, not with breaking them. Some may argue that this is a social-desirability-bias type of response, but since socially desirable responses are a reflection of what society values as good at a certain time, then this is a good basis to build upon: in Mexico, for all we can tell, legality is desirable.

## Surveys

**ENVUD.** National Values Survey about what unites and divides Mexicans, conducted in 2010 among 15,910 adults using 32 state-level samples. National-level results are weighted by the size of the state population. Sponsored by *Banamex* and *Este País* Foundation with private donors. Results can be accessed at <http://archivo.estepais.com/site/wp-content/uploads/2011/04/Banamex.pdf>

**Latinobarometer.** Survey of 18 countries from Latin America and the Caribbean almost annually since 1995. About 20,000 interviews per wave. Funded by various international organizations. Methodological details, reports and raw data can be accessed at <http://www.latinobarometro.org/lat.jsp>

**National Survey of Citizen Quality.** Survey reported in the National Elections Institute 2015 Country Report available at <http://www.ine.mx/archivos2/portal/DECEYEC/EducacionCivica/informePais/>

Comparative National Election Project (CNEP). Academic survey to study electoral behavior and attitudes towards democracy. Conducted in Mexico twice, in July 2006 as a pre- and post-election panel design (2,014 interviews in first wave, and 2,1026 in second wave, including 1,516 second time panel respondents and 600 fresh respondents), and in 2012, as a post-election survey (1,600 respondents). The project's description and the data are available at <http://u.osu.edu/cnep/>

**Mexico Panel Study.** Academic panel survey conducted during 2000, 2006, and 2012 presidential campaigns to capture the dynamics of opinion change and also aspects of Mexican political culture. Funded by the National Science Foundation (NSF) in 2000 and in 2006 through the Massachusetts Institute of Technology (MIT); the 2012 study was made possible with the collaboration of the Center for Social and Public Opinion Studies (CESOP) of the Chamber of Deputies, and Mexico's Ministry of Interior (SEGOB) through the *Instituto Tecnológico Autónomo de México* (ITAM). Results at <http://mexicopanelstudy.mit.edu>

**Latin American Public Opinion Project (LAPOP).** Biannual survey conducted since 2004 in Latin America, the Caribbean and the United States. Funded by USAID and LAPOP. Reports, documentation and data at <http://www.vanderbilt.edu/lapop-espanol/>

**Corruptometer.** Media telephone poll to track perceptions towards corruption in Mexico conducted by *Reforma* newspaper in various years.

**World Values Survey (WVS).** International survey conducted by a global network of social scientists in almost 100 countries in six waves since 1981. Its focus on value change includes measurements on religion, politics, economics, work ethics, corruption, and trust in institutions, to mention a few. Data, reports, documentation, and other information can be accessed at <http://www.worldvaluessurvey.org/wvs.jsp>

**National Survey of Philanthropy and Civil Society (ENAFI).** Academic survey to measure Mexicans' patterns of giving and volunteering, social capital, and institutional trust. Sponsored by the Hewlett Foundation in 2005 and 2008, the survey had the collaboration of the Center for Social and Public Opinion Studies (CESOP) at the Chamber of Deputies in 2013. It can be accessed at <http://www.enafi.itam.mx>

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**Q** *How have government-media relations changed over time, and how has media dependence on government damaged the rule of law?*

## POLICY RECOMMENDATIONS

- A**
- Develop sustainable business models and rigorous and ethical journalism in new media outlets that are flourishing thanks to the Internet.
  - Change the media's economic dependence on government resources to allow journalism to become an independent monitor of power.

# THE BIG MISSING LINK FOR PROMOTING THE RULE OF LAW

BY DANIEL MORENO

**I**n Mexico, journalism is not considered a public service. From the dawn of Mexico's newspaper industry in 1896, the media has served those holding political power and received benefits in return. This "officialist," or pro-government, media has reaped resources, tax privileges, and political favors in exchange for its freedom.

The media has barely helped democracy expand in Mexico. Although the practice of journalism would supposedly uphold and monitor the rule of law and institutions, develop an informed citizenry, and promote a culture based on legality, this has not been the case in Mexico. Mexico's journalism would rather keep corruption covert, let those who engage in corruption roam free of legal or social sanction, and let the law be circumvented with no ensuing investigation. Poverty and inequality do not make it onto its pages; violence deserves no explanation; no one is responsible for the violation of fundamental rights; and the absence of everyday justice comes at no cost.

The crisis is even worse at the state level: without public resources, states would be unable to afford radio programs, televised news, newspapers, and magazines, and their reliance on these resources forces them to remain silent. Governments have used the media to legitimize their public policies, spread their versions of the truth, and maintain an authoritarian hold over power. They have taken advantage of the fact that the media echo them rather than monitor their conduct.

Without a doubt, there have been some changes, and there is still room for nuance and exception. The government can no longer dish out orders the way it used to. With the rise of the Internet, social media, and dissident voices—even within Mexico’s main media outlets—there are now more options for obtaining information and, inevitably, press freedom is greater. Nonetheless, the relationship between the powers that be and the country’s top media outlets has not changed at its core.

There is a reason why the media now faces a legitimacy crisis. The public no longer believes the media’s versions of the truth and generally assumes that the media is “playing politics.” As such, the public has gradually turned toward alternative—though not always better voices—in an attempt to understand the truth. Manuel A. Guerrero and Mireya Márquez (2014) call this the “captured-liberal” model. According to their analysis of ten Latin American countries, including Mexico, the media “has a long history of political instrumentalization and ‘capture,’ [both of] which have devalued, impeded, or polluted the media’s informative and scrutinizing roles and enormously limited journalists’ professional independence.”

How can one explain how little the media has contributed to the rule of law? How can one wrap one’s head around the fact that the press and broadcast media actually defend the *status quo*?

## 93 Dead

First, one must note that the issues described above are by no means the only problems Mexican journalism faces today. Violence against journalists—perpetrated by the authorities as well as by organized crime—has put Mexico among the most dangerous countries for the practice of journalism. According to Artículo 19, a civil society organization focused on defending freedom of expression, from 2000 to April 2016, 93 journalists were murdered and another 23 disappeared.

The impunity reigning over homicides and attacks on journalists makes it impossible to claim that these 93 journalists were murdered for reasons

linked to their profession, but there are dozens of cases where there is concrete proof of this link. In at least half of the country, to be a journalist is to risk your life.

It is also worth mentioning that poor business management has traditionally plagued newspaper companies. It is not uncommon for millionaire newspaper chiefs and owners to travel on private jets while their reporters earn 500 pesos a day or less (the equivalent of about USD\$27 in May 2016). According to Mexico's National Minimum Wage Commission, the minimum wage for journalists stands at P\$218, or about USD\$12 a day.

Finally, it would also be necessary—or better yet, imperative—for journalists to engage in self-criticism in terms of the professional quality of their reporting. We journalists must ask ourselves whether we have been up to the task and successfully taken advantage of the spaces of freedom that no doubt do exist.

In a critical essay on the media, Fernando Escalante (2013) writes that, today, “The press is far freer and is capable of confrontations that were unimaginable in the old regime, but it is still no better. It can be raucous, scandalous, intensely political, belligerent to the point of insult, insidious, and aggressively partisan—but also superficial, irresponsible, and ultimately irrelevant at the same time. That is, it is irrelevant to everything except the small business of noise: hiding, insinuating, extorting.” And there are certainly other problems.

Nonetheless, this text insists that the most pressing problem for the Mexican media is its “officialism,” understood here as the alliance between the media and political power, the media's dependence on public resources, the media's decision to bypass the reader to better serve public officials, and its position as the government's echo rather than as its monitor.

Even the facts that media outlets are bad business and that journalists are poorly paid can be partly explained by officialism: public resources flow uncontrolled, such that discovering, denouncing, and casting light

on issues no longer stand at the heart of the business, having been supplanted by silence and complicity. Why should the media seek readers or private sector advertisements if the outlets can get money from the government? “The true client of the press is not the common reader—who, in theory, would buy [the paper] to become informed—but the political class,” says Escalante.

## Captured from Infancy

As in many countries, Mexico’s journalism industry emerged at the end of the nineteenth century. In Mexico, however, this period also marked the birth of the officialist press. Mexico’s historical context explains this: at the time, Mexico was ruled by the dictatorship of Porfirio Díaz, and the first printing press with high print runs was born under this regime. This newspaper was called *El Imparcial* (Ruiz Castañeda 1990) and, contrary to its name, the so-called impartial newspaper prospered thanks to government funding: the government had a clear interest in acquiring an instrument for propaganda. The fact that this newspaper managed to issue record-breaking print runs can be attributed to the official subsidies it received. “Mexico not only helped to give birth to industrial journalism, but also nurtured a model of subordination of the press,” states the journalist José Carreño Carlón (1990).

While the Mexican Revolution put an end to the Porfirio Díaz dictatorship, it did not put an end to the relationship between power and the press. In fact, it did quite the opposite. According to Carreño, this model was consolidated by post-Revolution regimes: “Despite all the changes that arguably took place, it has survived with some of its essential characteristics, [standing,] one hundred years later, as one of the most dramatic setbacks in Mexico’s modernization process at the turn of the century.”

The context that allowed this model of the press to continue despite the change in regime is worth revisiting: “Mexico and its governing class could take pride in having forged a system that worked like an authoritarian republic despite all its problems, with a proclivity for constantly co-opting and incorporating new elements through an institutional sys-

tem and a set of civil leaders who allowed their citizens many freedoms, but did not let them formally compete for power,” notes the historian Arno Burkholder (2009).

The press was part of this system and played according to its rules, supporting factions and governments in turn. The newspaper *El Universal* was created to support President Venustiano Carranza (1917-1920); the Mexican Editorial Organization (*Organización Editorial Mexicana*), publisher of the *El Sol* chain, had ties to President Manuel Ávila Camacho from the start (1940-1946); *Novedades* was closely linked to President Miguel Alemán (1946-1952) —in fact, his family co-owned the newspaper—and *El Heraldo* was linked to President Gustavo Díaz Ordaz (1964-1970).

Some academics mark the close of this first period in 1976, when Luis Echeverría served his last year as president and staged a coup within *Excélsior* newspaper, ousting its director, Julio Scherer. According to Carreño Carlón, Echeverría’s government fiercely intervened in the media, its content, and direction, going so far as to influence its ownership as well. Carreño cites Echeverría’s key role in changing *El Universal*’s ownership, doing the same thing for the Mexican Editorial Organization soon after. Echeverría was behind the forging of Mexico’s main television network, which started as a merger between two preexisting channels and would come to be known as Televisa. He also revoked another entrepreneur’s television channel concession to give way to the state channel, Imevisión.

The *Excélsior* coup stood as one of Echeverría’s most emblematic moves but also marked a milestone in the history of journalism by inadvertently boosting independent journalism in Mexico. The magazine *Proceso* and the newspaper *Unomásuno* were founded by people who once worked in *Excélsior* and who started taking advantage of the smaller spaces of freedom that began to emerge with the 1977 political reform,<sup>1</sup> which legalized the Mexican Communist Party and opened the doors for new organizations to compete in elections.

Nonetheless, these spaces were the exception to the norm. The country’s main newspapers, and radio and television failed to modify their editorial lines. The development of the written press “was conditioned

upon any leeway this authoritarian context would yield —allowing certain things while resolutely denying others,” states Burkholder. Even considering these poor margins for freedom, the twentieth century saw a notable rise in the sheer number of publications. By the end of the 1940s, 98 newspapers circulated in Mexico, climbing to 319 by 1980 (Arredondo and Sánchez Ruiz 1987).

This increase was possible thanks to the fact that media financing and subsidy schemes also multiplied, with favorable loans, fiscal stimuli, debt forgiveness, tax evasion, and, of course, the discretionary distribution of government advertising. The fact that, up until 1992, the government was the only authorized manufacturer and distributor of newsprint and, as such, the only entity that could decide how much it would sell and to whom stands as a case in point. This was possible thanks to *Productora e Importadora de Papel* (PIPSA), founded in 1935 as a mostly state-owned firm, although it was open to industry participation (Zacarías 1995). PIPSA faced no competition from media outlet owners; quite the contrary, media owners demanded low prices at the expense of official subsidies.

The emergence of radio in the first few decades of the twentieth century, and of television post-World War II, did not change the press-power relationship that had marred the previous century. Private television “was born amid a heavy confusion of interests, which marked, as of its first hours, its patterns of subordination to power. The concessions regime allowed the government’s executive branch to arbitrarily grant and revoke media concessions—a direct product of the Mexican media-control model as well as of the complicity between politics and business (or of the bureaucracy and business owners) that framed all eventual electronic media activities. The first television concession President Miguel Alemán granted was XHTV Canal 4, which was registered under a third party but very soon landed on his legendary list of personal and family estate,” as Carreño Carlón notes.

## The End of the (Near) Single Party

A slow process of media liberalization was ushered in with Mexico's democratic transition, breaking the hegemony that reigned in Mexico's political system and media establishment. From the mid-1970s up until the end of the twentieth century, several newspapers and magazines engaged—or tried to engage—in a freer form of journalism, including *Proceso* magazine (1976), the *Unomásuno* (1977) and *La Jornada* (1984) newspapers, and state-level newspapers such as *El Diario de Yucatán*, *El Siglo de Torreón*, and *El Imparcial de Sonora*.

*Reforma* newspaper, launched in 1993, is especially noteworthy. *Reforma* was and still is the only newspaper that has successfully struggled to remain independent of official publicity, relying on readers' subscriptions and private advertising instead. *Reforma* has enjoyed far greater leeway than its competition, and the same can be said of *Grupo Expansión*, which publishes financial and business magazines.

In terms of electronic outlets, radio opened its doors to different voices first, while television waited until the last minute, as the opening in other media outlets practically forced it to follow suit.

Still, we cannot overestimate the facts. Even in these years of political liberalization, the media—especially the electronic media—remained subordinated. In 1988, Emilio Azcárraga, the president of Mexico's main private television network, Televisa, actually articulated Televisa's biased news coverage, stating, "We are with the PRI; we are members of the PRI; and we've always been with the PRI. We do not believe in any other equation and, as members of our party, we will do anything we can to make our candidate win" (Guerrero 2015).

In his text, *Los medios de comunicación y el régimen político* (The Media and the Political Regime), Manuel Guerrero states that, during the 1988 presidential campaigns, the Institutional Revolutionary Party (PRI) took up 69 percent of airtime allocated for parties on Televisa's main news program, *24 horas*, followed by the conservative National Action Party (PAN) trailing with just 5.4 percent. The gap was even wider in public

television owned by the state, with the PRI taking 88 percent, the PAN taking 2.28 percent, and the National Democratic Front (whose candidate Cuauhtémoc Cárdenas actually came in second place in the presidential elections) taking 0.5 percent.

With the electoral authority's new "Guidelines for radio and television news regarding party campaign information," both the government and political parties attempted to curb inequality in airtime through legislation. But this was not enough. In 1994, Guerrero writes, candidates got more balanced airtime (there was "barely" a two-to-one difference between the PRI and PAN parties), but the quality of the content was still largely unequal. In the six main television news broadcasts of the time, comments on PRI candidate Ernesto Zedillo were 53 percent positive and five percent negative, while comments on PAN candidate Diego Fernández de Cevallos were 12.1 percent positive and 35 percent negative. The PAN candidate even complained that, near the end of his campaign, he was "kicked off" television as there was a risk that he could win the election.

In 1997, *Reforma* newspaper published an interview in which Jacobo Zabłudovsky, the anchorman for Televisa's prime time evening news broadcast *24 Horas*, described the control the government exerted on their coverage. "We had limited leeway. This predicament was tied to the country's context, as the presidency had concentrated under the PRI's absolute hegemony. There was a clear sympathy between business and political goals, which were reflected in the radio and television [...] at the time, between 80 and 90 percent of the information newspapers published was related to the President," Zabłudovsky notes (1997).

As for printed media, coverage of the 1988 and 1994 presidential campaigns was quite similar in terms of the PRI's dominance of news, and this led to a marked, though gradual, drop in circulation. Raúl Trejo Delarbre (1995) calculated that only 450,000 copies of 25 different newspapers were sold in Mexico City in 1990, even though the metropolis was home to 17 million people.

While this slow, liberalizing transition began to take hold through the administrations of the last two presidents of the 20th century—Carlos

Salinas and Ernesto Zedillo—a number of clear challenges to freedom remained. In March of 1989, for instance, Salinas’s government ousted Manuel Becerra Acosta from directing the liberal newspaper *Unomásuno*. The rules of distribution of publicity, fiscal favors, and tax exemptions did not substantially change either, allowing near-broke newspapers with very low circulation to remain afloat, as was the case for *Excélsior*, *Cuestión*, *El Herald*, *El Día*, and *Novedades*. The media would not die, but would rot slowly.

Even so, competition did bring about certain changes in other media outlets. The newspaper *Reforma* was founded at the end of Carlos Salinas’s presidential tenure, and its modern, color-print design and far-more liberal journalism pushed other newspapers, such as *El Universal*, to open up their opinion pages to writers espousing a variety of political sentiments. Newspapers started taking in more critical columnists from civil society, academia, and other political parties. With their various inclinations, these columnists began to legitimize media outlets that enjoyed little informative freedom. Opinion pages established themselves as the freest and most pluralistic in newspapers, which is still the case today. In fact, a sharp competition for prestigious intellectuals ensued, and their salaries rose far above those of the average reporter.

Television also became more competitive under President Salinas. When state television was privatized in 1992, the new Televisión Azteca swept in to take over a disgruntled Mexican public that was already tired of Televisa’s old news models. By 1996, mostly due to its flashy formats rather than to its content *per se*, Televisión Azteca’s main news broadcast was already rated better than *24 Horas*. In fact, Jacobo Zabludovsky had to leave his program in January 1998 due to his low ratings.

One of the most notable changes came with the arrival of Emilio Azcárraga Jean as Televisa’s new CEO following the death of his father. At the time, the company was drowning in illegitimacy and financial hardships, to the point that the company was actually at risk. The younger Azcárraga distanced himself from the PRI and, in 1998, when asked whether he would support any particular candidate for the 2000 election, he an-

swered, “absolutely not,” and added that “the relationship between the government and the media has ended” (*Reforma* 1998).

Meanwhile, Mexican journalism still failed to improve significantly. In 1995, Trejo Delarbre wrote that the state of the media was still “one of the main reasons why society was lagging and falling behind.” For instance, only one national newspaper, *El Economista* (founded in 1988), actively fought for its readership. There were no ethical debates on content, and the media generally just spread rumors. *El Universal*, for instance, published a big story blaming the March 1994 assassination of PRI presidential candidate Luis Donaldo Colosio on former president Carlos Salinas de Gortari. Their source: a survey.

In a study of Latin American media outlets, Manuel Guerrero and Mireya Márquez (2014) point out that the market economy would not be enough to end the fact that “the relationships of complicity between the media elite and political groups are ongoing, as is the dependency of many local and regional media outlets on governmental publicity.”

### **“I Will Not Let You Down”**

In the year 2000, almost 70 years of (near) single-party dominance of political power were brought to an end. The PAN’s Vicente Fox defeated the PRI on the promise of change, as well as on the hope that this change would actually take place. “I will not let you down,” stated the newly elected president (2000-2006).

However, in the media-power relationship as in other areas, President Fox (and later Felipe Calderón, also from the PAN) failed. Fox was not on good terms with the media during his electoral campaign, despite the fact that during the campaign period party coverage had been the “most balanced.” As soon as Fox won the election, however, he sought out Mexico’s television companies in an effort to preserve the existing regime. In fact, he markedly increased official publicity in the print media.

There is no doubt that spaces of press freedom did expand, and this can be partially attributed to the fact that, just as in many other areas of Mexi-

co's political scene, the President no longer had the same controlling power over the news as his predecessors. The hegemony had been broken.

This lack of control empowered media entrepreneurs and opened more spaces to freedom of expression. Roundtables and dissident interviews thrived on electronic media outlets. While censorship did lead to the removal of certain newspaper collaborators and radio and television anchors, at that point, most spaces allowed for free opinions, which had not been the case before. Still, it is worth highlighting that this increased freedom of expression did not always come with better journalism.

For the government, the screen became a tool to legitimize its work. Perhaps this marked the main transition in electronic media outlets, which started taking advantage of the situation rather than merely echoing the government. Manuel Alejandro Guerrero notes that, "the largest private media consortiums—especially in television—acquired enormous symbolic power before a fragmented political class that needed a space in the limelight. This situation allowed them [media outlets] to efficiently negotiate any change in the *status quo* in favor of their interests."

For example, changes to the 2002 regulations as well as the 2006 Federal Radio and Television Reform granted privileges to media owners (Guerrero 2015). "Concession holders took the initiative in light of the government's passivity." The 2002 changes, for instance, reduced airtime requirements for eligibility for tax breaks: the law allowed concession holders to air government publicity as a form of tax payment. The law previously required 180 minutes of government airtime to pay for taxes; the reform pushed the threshold down to just 18 minutes, allowing media outlets to use their newfound commercial space to boost their incomes. Meanwhile, the 2006 law actually became known as the "Televisa Law" given all the privileges it gave to concession holders. The law ended up in the Supreme Court, which had to modify half a dozen articles under the realization that the law had excessively favored broadcast media concessionaires.

The best example, though, was the government's inaction before a conflict between two television concession holders in December of 2002,

when Televisión Azteca violently broke into Canal 40's facilities, which were then operated by Javier Moreno Valle (who was actually a Televisión Azteca partner). Azteca took over the channel and ousted Moreno Valle, thus getting hold of Canal 40 with no one to stop it. When asked about what he would do to solve the conflict, Vicente Fox merely replied, "And why me?" (El Universal 2003).

Felipe Calderón acted similarly during his presidency, but with a twist: he arrived amid a legitimacy crisis following an extremely narrow victory, with Mexico's left-wing opposition party, the *Partido de la Revolución Democrática* (PRD), insisting that the 2006 ballot boxes had been marred by electoral fraud. As such, the new president sought out the media's support and multiplied spending on official publicity.

The two opposition governments of Fox and Calderón pushed official publicity expenditures up from P\$1.9 billion pesos in 2001 to P\$8.429 billion in 2012. Only one significant change ensued: Congress approved an electoral reform banning the purchase of radio and television airtime during electoral campaigns, granting Mexico's highest electoral organ the power to distribute evenly the usage and contracts of these spaces. The reform came about in response to the rising accusations that top businesses had paid media outlets to openly campaign against López Obrador, the left-leaning presidential candidate, in 2006.

Calderón's six-year term was also marked by violence against journalists, and especially by the impunity that its perpetrators enjoyed. According to the Artículo 19 watchdog group, 45 journalists were assassinated during the Calderón administration.

## **The PRI's Comeback: Fabricating Presidents**

"If television could make presidents, you would be the president," Enrique Peña Nieto snapped at Andrés Manuel López Obrador in the May 6, 2012, presidential debate. Peña Nieto also claimed that López Obrador, who belonged to the PRD at the time, had spent P\$1 billion on publicity, which López Obrador flatly denied. Contrary to these claims, it was Peña

Nieto who had benefitted from television companies, and accusations of this tarnished his entire campaign. The student movement #YoSoy132, which was founded in the Jesuit-run Ibero-American University in Mexico City and soon spread to other campuses across Mexico, protested against Televisa and demanded fair coverage for all parties.

Though the movement did open some media spaces and its claims against partiality were heard throughout Mexico, with only two months before the election, the damage was already done. The damage had been done years ago, in fact.

Starting in 2005, seven years before the election, Televisa—which dominated 70 percent of the television market at the time—and Televisión Azteca took Peña Nieto under their wing, making him a regular figure in news spaces and entertainment programs. The agreement between these television channels and Peña Nieto, who was governor of the state of Mexico at the time, cannot be understood as a mere monetary pact—despite the fact that López Obrador accused Peña Nieto of spending P\$691 million in media communication throughout his tenure as governor (Animal Político, 2012).

Thanks to these television companies, which would broadcast paid content as news pieces and air “special coverage” from the State of Mexico, by the time Peña Nieto finished his term as governor just a year before his presidential campaign, 90 percent of the population already knew of Peña Nieto, according to a survey published by *El Universal* newspaper in May 2011. Further, 53 percent of opinions on Peña Nieto were positive and only eight percent were negative, while Peña Nieto’s main opponent, Andrés Manuel López Obrador, was reviewed positively by 29 percent and negatively by 34 percent.

Medialog media monitoring company showed that, even when Peña Nieto was “just” another governor, he was the politician with the most hours on Televisa’s news channels as well as the one with the most “positive” media mentions (Vicencio 2012). The result: Peña Nieto launched his presidential campaign with an almost 30-point advantage.

One of the results of this pact between Peña Nieto and the media came to the fore in the midst of the 2012 presidential election, when the two parties backing Peña Nieto—the PRI and the Ecological Green Party of Mexico—nominated 15 deputy and senatorial candidates who were not traditional politicians, but instead came from Mexico’s top television companies. These were called the “*telebancada*,” or the television bench.

The fact is that the PRI’s return to power in 2012 was a step back for Mexico in media. In contrast to the years preceding the PRI’s return, newspapers have fully backed Peña Nieto’s decisions and censured his opponents. Pressures against more critical media outlets have returned, and the first three years of Peña Nieto’s presidency saw an escalation in official publicity.

A case in point: near the end of 2015, a new illness started spreading throughout Mexico. The mosquito-borne Chikungunya put health authorities on the alert, but by the end of 2015, when a total of 180 cases were registered, it was clear that Chikungunya would in no way pose as great a threat as dengue.

Nonetheless, the government’s publicity campaign was one of Mexico’s most memorable, not only because it was more than the sum of the budgets invested in fighting addictions, tobacco use, and teen pregnancy combined.

The official data on how these resources were spent sheds light on the way official publicity is distributed regardless of key considerations such as target audience, ratings, and scope. Print media spaces for Chikungunya were purchased in Mexico City, where the disease-carrying mosquito cannot actually survive the altitude. Televisa, which serves two-thirds of the television public, was given P\$129 million for Chikungunya publicity, whereas Grupo Imagen’s television channel, Excélsior TV, with an audience 20 to 25 times smaller than Televisa’s, was given P\$60.3 million. Capital Media group, which owns 19 newspapers, none of which have print runs above 15,000, was given P\$40 million. Meanwhile, *La Voz de Michoacán*, the leading newspaper in the state where epidemiological warnings were actually enacted, received less than half a million pesos.

“In Mexico, the allocation of official publicity is the most common tool for indirect censorship and is a key component of the national media landscape. The lack of clear and precise rules gives way to the influence and blackmail of journalists and media-outlet owners. Local and federal governments use official publicity to shape media outlets’ editorial lines and push partisan agendas. The opaque and arbitrary assignment of official publicity restricts pluralism and the diversity of voices via the selective financing of media outlets that support officials and their policies,” state Fundar and Artículo 19 in their study, “*Comprando Complacencia: Publicidad oficial y censura indirecta en México*” (Buying Complacency: Official Publicity and Indirect Censorship in Mexico), released in March 2014.

There are no rules or guidelines despite the fact that, on May 21, 2012, then-candidate Peña Nieto made a number of promises in his “Manifesto for a Democratic Presidency.” That Manifesto committed the government to establishing a media communications relationship that adheres to democratic culture. “As President of the Republic, I will launch a constitutional reform to create an autonomous citizen committee to supervise government publicity contracts with media outlets at all levels of government, upholding the principles of public use, transparency, respect for journalistic freedom, and promoting citizen access to information. Only a well-informed country can guarantee democratic culture,” the Manifesto said. This citizen committee still does not exist today.

The 2015 Public Account—the official document with which the federal government announces its public expenditures before Congress—attests that the federal government spent P\$7.574 billion on advertising in 2015, 65.4 percent more than in 2014 and 187 percent more than the budgeted amount for 2015.<sup>2</sup> This was also P\$1 billion higher than Calderón’s expenditures in his third year and P\$4.5 billion higher than Fox’s.

This trend is similar and sometimes worse at the state level. The governors of Zacatecas and Yucatán, for instance, spent seven and nine times their advertising budgets. In total, 27 of the 31 governors reported spending P\$5.639 billion, or P\$1.688 billion more than the budgeted amount—and one-third of the total budget went to print media outlets.

The issue is clearest at the state level: “Media communications with critical editorial lines face innumerable pressures from the authorities: tax audits, police intimidation, and official statements that chip away at their prestige. But the most common threat is that of withholding official publicity,” state Fundar and Artículo 19 (2014). It is worth noting that the above expense is not aimed at making the government’s official message reach the largest audience possible. The budget is simply spent on sympathetic media outlets. Meanwhile, alternative digital media outlets, such as *Sopitas.com*, which are often the most visited according to Comscore’s ratings and serve as the main sources of information for the young public, get nothing at all. The same can be said of *AristeguiNoticias.com* and *SinEmbargo.com*, two politically informative websites with a clear anti-government stance, which are also rated among the top ten newspapers and sites in terms of readership.

Official publicity has accounted for an ever-increasing percentage of the country’s publicity market, to the point that it has become absolutely indispensable for print media outlets. According to the Media Agencies Association (*Asociación de Agencias de Medios*), in 2012, the publicity market was worth P\$65 billion. The federal and state governments spent P\$13 billion on publicity that same year, accounting for almost 20 percent of the market. If we consider the funds allocated to print media outlets alone, official publicity would account for almost 50 percent. A total of P\$3.25 billion were spent on official publicity in the print media, while the total publicity market for newspapers and magazines stood at P\$6.836 billion.

Further, the media outlets receiving these funds did not report their circulation, as this data is considered “secret” in Mexico—in contrast to other countries. The Ministry of the Interior’s Census of Print Media is the only place where the media’s official print runs can be accessed. But its numbers stand in sharp contrast to media directors’ statements. According to the previously cited report, Fundar and Artículo 19 interviewed four print-media directors in León, in Guanajuato State. The four directors declared that their circulation was actually half of what they had reported to the Ministry of the Interior.

These funds also allow media to flourish as businesses in Mexico, standing in sharp contrast to the industry's situation in other countries. No less than 102 newspapers are registered in Mexico City alone, almost one-sixth of the national total (618)—and another 21 spoken radio stations plus ten informative television channels (both public and private) can also be added to the list. Televisa and TV Azteca house open (free, non-cable) channels that air informative programs exclusively (Foro TV and Canal 40) as well as three news broadcasts on its main channels (Channels 2 and 13). Meanwhile, Milenio TV, Excélsior TV, and Efekto TV are privately held.

As such, there is a surplus of information outlets for this widely uninformed country. According to a 2013 survey conducted by the Mexican pollster Parametría, only 29 percent of the population had bought a newspaper in the three months prior to the survey, standing in contrast to Argentina (with 40 percent) and Chile (with 52 percent).

The official funds that circulate among media outlets only benefit a small group of owners, directors, columnists, and radio and television anchors—with salaries of anchors a lofty half a million pesos a month. A nationwide survey of journalists revealed that 47 percent of Mexican reporters earn no more than the equivalent of two minimum wages (Hughes and Márquez 2016).

## The Quality of Journalism

Considering that the meager circulation of newspapers and the poor ratings of radio and television news broadcasts stand in sharp contrast to the funds that pour in from official publicity, it would appear clear that journalism is not at the heart of the business. The media barely invests in professional investigative journalists: prestige and circulation are not matters of concern.

According to the Hughes and Márquez survey, which is being used prior to publication with the authors' permission, only one-fifth (21.5 percent) of Mexico's journalists can afford to specialize in a particular topic. The rest have to cover a variety of beats, and their work is often limited to transcribing politicians' statements.

"From the logistics of assigning sources and divvying up research, to the process of collecting information from sources generating larger volumes of significant information, such as Congress or the Office of the President, information routines are designed to maximize the visibility of the political elite, or of any actors exerting power, and are not necessarily designed to monitor or question them," states Mireya Márquez (2012). As such, the media does not work for the reader, but for the very political class that funds it. The political class is also the media's main source of information, and investigating corruption or the efficiency of public policies would put the media's income at risk.

There is only one quantitative study available on newspaper sources, which was conducted by Artículo 19 and the company Data4 in 2013 and published in the magazine *Nexos* in February 2014. The study analyzes the information sources used by the six main newspapers being published in Mexico City during the first year of Enrique Peña Nieto's presidency and the study casts light on the type of journalism being done in Mexico: "More than half of all front-page space (52.4 percent) was used for articles that relied on the statements of a single person, institution, or organization, with no additional informative element used to contextualize or question said statements." In terms of the topics covered, "despite the fact that 17,000 homicides took place that year, violence virtually disappeared from front pages, and of a total of 2,190 front pages analyzed, only 437 (or one in five) touched upon violence-related topics. In contrast, Mexico's executive branch got space on 1,417 front pages (or in two out of three)."

According to the authors, journalism in Mexico is "mostly based on statements (with no context or questioning), making the executive branch heavily present while omitting the legislative branch and local governments. We believe this yields current-events coverage based on the agendas imposed by the dominant actors, leaving no room for violence and homicide, for instance."

## The New Power

On Monday, December 7, 2015, the traditional holiday party of Televisa ended up somewhat different than usual. Besides the expected anchors, producers, and directors, Minister of the Interior Miguel Ángel Osorio Chong and Presidential Legal Counselor Humberto Castillejos were also in attendance. The two were invited by Televisa's vice presidents, Bernardo Gómez and Alfonso de Angoitia, who stated that the two top-ranking officials, "Miguelón and Beto" as they called them, had been invited just a few minutes before the party had started.

According to the attendees, the party thus met two goals. First, it showed muscle: two of the executive branch's top officials had changed their agendas to show up at the party after being invited at the last minute. Secondly, the party honored Joaquín López Dóriga, Televisa's leading anchor from 2000 to 2016.

Just weeks before, López Dóriga had been involved in a scandal, when the wealthiest woman in the country and former Televisa partner María Asunción Aramburuzabala accused him of extortion. According to her report, López Dóriga's wife had asked for USD\$5 million to prevent blocking the construction of her 122-apartment tower development in the wealthy Mexico City neighborhood of Polanco. "He threatened that if I talked, I would know what it was to have the entire media on top of me and that he would destroy me," Aramburuzabala stated in an interview published in *Reforma* on August 26, 2015.

This was not López Dóriga's first scandal. *Proceso* magazine wrote that the news show announcer owned the Akron and Ancla companies which sold publicity to the radio program López Dóriga anchored for Radio Fórmula. According to *Proceso* (2015), from 2000 to 2015, both advertising companies received more than P\$200 million in publicity contracts with the federal government.

Furthermore, the researchers Rosalba Mancinas, Ana Ortega, and Francisco Vidal (2016) state that, in contrast to its first few years, today, "Televisa's Board of Directors includes 13 people representing 43 company

brands and, in some cases, industrial conglomerates including a variety of business groups from several industries,” including beer, construction, and mining companies, the world’s two main soft-drink brands, investment funds, and top food companies. The researchers conclude these connections imply restrictions on coverage. “Understanding this media network is fundamental to understanding the complexity of the interests hiding behind communications groups. With all of this in mind, one must ask where and how journalism ends up. To what extent are Televisa’s journalists free to cover topics such as energy, mining, construction, real estate, food, ecology, climate change, etc.?”

Today, the Azcárraga family controls the company but owns only 14.7 percent of its shares. In the context of today’s credibility crisis, the Azcárraga family has been forced to make changes and place the company’s most popular and credible journalist, Denise Maerker, as anchor of the nightly news slot in a clear-cut strategy to reverse this crisis. An annual survey conducted by Consulta Mitofsky (2015) shows that, from September 2010 to September 2015, Televisa’s credibility fell from 7.5 to 6.2 on a scale of 10.

This drop in prestige was not exclusive to television. Another survey, conducted by the Center for Social Studies and Public Opinion (*Centro de Estudios Sociales y de Opinión Pública*) of the Chamber of Deputies, shows that 61 percent of respondents either trust the press little or not at all, while 67 percent said the same of television.

In 2013, *Este País* magazine published a survey comparing trust in television and newspapers in Mexico to Latin America as a whole. While 47 percent of the Latin American population trusts newspapers somewhat or highly and 51 percent trusts television, in Mexico, only 33 percent trust newspapers and 36 percent trust television (Moreno 2013).

Meanwhile, the Mexican government’s social communications expenditures have done little to improve the government’s image. Enrique Peña Nieto is the worst rated president of the last 20 years, according to a quarterly survey published by the newspaper *Reforma* (2013), which states that 66 percent of citizens disapprove of his administration.

## Conclusion

To understand the media's role in Mexico's rule of law would warrant an analysis of a number of other topics whose scope would exceed the limitations of this text, but still deserve attention. I will outline a few of them here:

The new surge in anti-government or "committed" media outlets cannot be overlooked: their influence has flourished outside the system and without public resources, mostly thanks to the Internet. These outlets have taken advantage of the lack of credibility of their competitors and provide another version of reality, landing a place among the most-read outlets for general information.

However, a review of their content would show that they suffer from many of the vices affecting Mexico's officialist press. Rather than relying on research, they prioritize belligerence such as gratuitous criticisms, leaving accuracy aside as they deal their blows. Their goal is to accumulate site visits (under a model known as clickbait), and they use unfounded information which serves as fodder for anti-government argumentation to do so. In the face of an undemanding public in dire need of alternative information, these outlets have found their niche.

Shortly after entering office, Nuevo León governor Jaime Rodríguez, the first independent candidate to win a governorship in Mexico, launched accusations at his predecessor, Rodrigo Medina of PRI. He alleged Medina granted an affiliate of Grupo Multimedios (which owned a local television company, newspapers, and the Milenio TV news channel) a contract to install "a mud-drying system in a wastewater treatment plant." The company, Comercializadora Jubileo, used to "buy and sell equipment and amusement rides for fairs" shortly before they received this contract (*Reforma* 2015).

This case illustrates another phenomenon: media groups owned by entrepreneurs who are also involved in financial groups, or which offer services ranging from construction to public-works maintenance, have been accused of using journalism to feed into other businesses. They receive

contracts from federal and state governments in exchange for seeing that their editorial board treats government with kid gloves.

Why are there not more private initiatives to support independent journalism? Considering the sheer amount of publicity funds that have been invested so far, and especially considering the lack of funds received by media outlets committed to free journalism, we can only assume that entrepreneurs have only taken baby steps to improve journalism. We could formulate a few hypotheses to explain this. We could suppose that entrepreneurs are simply not convinced that journalism is a useful tool to call out those who break the law or abuse their power. Or, alternatively, businesses may be unwilling to put money into independent media considered overly critical of government or concerned the media covers “hard” issues such as violence and organized crime. Perhaps, however, this sector actually depends on government contracts and even benefits from the corruption in the political class that journalism would allegedly denounce. Still, research on this topic has yet to be done.

Despite the fact that some investigative pieces have documented failed public policies, human rights violations, and corruption, these pieces have not had a significant effect on public opinion and have not yielded sanctions for the people they investigate. Are we used to scandal? Some investigative pieces have shown concrete proof of diverted government funds, excessive debt, conflicts of interest, failed legal investigations, or contracts being granted to friends or relatives. However, these publications have not been followed by the repercussions one would expect.

Two former spokespersons for the Office of the President, who were consulted for this work and asked for anonymity, insisted that the media exert self-censorship, making censorship unnecessary. “It is easier for your director (editor) to censor you than for the chief of the press to do it,” said one, referring to press chiefs at all levels of government. This can actually be corroborated in a number of media outlets: journalists themselves have complained that, under the direct orders of media owners or directors, their pieces have not been published. Fearing sanctions, media owners and editors would rather stand as the first line of defense for the *status quo*.

With all of these problems, our “hope” lies in social media and in other new media outlets that have opened their spaces to new voices and new content, despite the challenges they face in developing sustainable business models as well as rigorous and ethical journalism.

A review of Mexico’s media system will always lead to the same conclusion: in this 100-year-old model, something has to give. “Good governance is expensive; buying the media is cheaper,” write Fundar and Artículo 19. But, this strategy is yielding less and less as time goes by.

Journalism needs to impose itself, and the media’s model based on economic privilege needs to change first. The purpose of journalism is to give citizens the tools they need to be free and able to govern themselves, and as a monitor, journalism creates community and democracy at the same time, according to the journalists Bill Kovach and Tom Rosenstiel (2007). The Colombian journalist Javier Darío Restrepo (2014) states that “journalism’s first obligation is to the truth; its first loyalty is to citizens; it should be a monitor for power.”

Viewed from their perspectives, it would seem that journalism in Mexico —I am both generalizing and assuming that all generalizations are unfair— has failed. This matter is of utmost importance because the absence of journalism has stopped democracy from consolidating itself in Mexico. It has not given society the resources it needs to understand reality and make decisions freely, and it has not become an independent monitor that could attest to the fact that the rule of law in Mexico is still a mere aspiration.

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## Endnotes

- 1 The “official” story on the *Excélsior* case can be found in the novel *Los Periodistas*, by Vicente Leñero. Other opinions can be found in books including *Mediocracia sin mediciones. Prensa, televisión y elecciones* by Raúl Trejo, Cal y Arena, 2001.
- 2 This report was presented before Congress (Cuenta Pública 2015). Comparisons with previous years can be found in (Animal Político 2016)





**Q** *Why is the right to education not met in Mexico, and what is the role CSOs can play?*

## **POLICY RECOMMENDATIONS**

- A**
- Support and sustain citizen monitoring so that independent civil society organizations can oversee the enforcement of education laws and public spending, and identify the existence of irregularities.
  - Give families, teachers, and students enough tools to monitor compliance at the level of schools by creating a system for transmitting complaints and suggestions from them to authorities.
  - Change civic education courses from being classes on the history of national laws to classes that exalt merit and reject corruption.

# EDUCATION

BY DAVID CALDERÓN

I want a school where teachers are teachers, where families care, and where kids can learn. I want it because I am a son of Mexico's public school system, in all grades from K to 12. Some of the features of my life and work of which I am most proud were nurtured there, and some of my limitations too—my broken English, for one. The law gave me the opportunity of free education. Nothing else could have given that to me.

I am not alone in experiencing a lack of opportunities. Nevertheless, I am one of the happy few who was able to complete my education in a timely fashion and even managed to learn. Out of every hundred children who initiate elementary school in Mexico, only 36 conclude their mandatory education without delays.<sup>1</sup> Most of the rest either leave school entirely or—just a tiny fraction—finish 12th grade with a delay and with terribly diminished possibilities of going on to pursue higher education.

In terms of learning outcomes, by the end of compulsory education (12th grade), according to Mexico's student achievement learning assessment (PLANEA), 43.3 percent of the soon-to-graduate students do not reach the minimum acceptable achievement level in language arts and communication, and a massive 51.3 percent do not reach the most basic threshold for math.

Thus, even if a reduced number of children will graduate and be able to aspire to attend college, the limitations faced by between four and five out of every ten students are clear proof of how ill this education system is: few students make it to 12<sup>th</sup> grade, and for those who do, almost half do not learn what they were supposed to learn according to the law.

The actual data for both indicators (i.e., uninterrupted grade advancement and learning achievement) strongly suggest a major flaw in the Mexican school system. If the right to education means assuring the completion of mandatory schooling at 17 years of age with basic learning expected to be available for all, then we are not there yet. If, as the Constitution currently establishes in its third article, "...materials and methods, school management, infrastructure and suitability of teachers and school leaders are an explicit responsibility of the Mexican State so as to guarantee the maximum possible learning achievement for students," then the law is not applied to all, or at the very least, it is not applied with the same force for all.

In my experience, as front liner of a Civil Society Organization (CSO) devoted to promoting education in Mexico, I am convinced that, for the Law to rule (Law, with an uppercase L, referring to Mexico's Constitution) it is necessary that all minor laws and regulations be properly enforced. If there is not a connection between Law and reality, we must push for the formulation, approval, and implementation of rules with close monitoring from citizens.

In present-day Mexico (but I suspect this is also true for most nations around the globe) for the rule of law to prevail, active democratic enforcement by citizens is needed. The classic formula of checks and balances between government branches is not enough, nor is the work of new independent public agencies. It is of the outmost importance that activists play a major role in making the law count and be respected to deliver decent education.

In Mexico, CSOs have been publicly demanding that authorities comply with the law, fighting for transparency and accountability in the public school system in which more than 90 percent of Mexicans are enrolled by first grade. As has been stated by international and domestic studies (Bruns and Luque 2015; Calderón 2016), one crucial—if not the main—factor for compliance with the right of children and youth to learning is the suitability of their teachers, their mix of acquired skills, sound classroom practices, determination, and continuous professional learning in a community of practice with their peers. Yet, in Mexico, we are often unable to discern who, as a teacher, is facilitating true learning and who is in need of urgent support and orientation to become one. Furthermore,

we are not entirely capable of determining, at a systemic level, those teachers who show up to work and those who do not. We are not able to identify even who is a teacher in the most basic sense of being willing to serve students, versus who is simply usurping a teaching position, receiving a salary (in fact, the best salaries) not for being in front of a class but for performing political work for the Teacher's Union, the governor, or the dominant political party of their state. It is common for the national Teacher's Union to pay rents, travels, gifts, propaganda, and more, to these usurpers of teaching positions, relying on federal transfers that according to law should only be spent on teacher salaries.

In the last five years, a combination of imaginative media campaigns promoting social awareness (i.e., "Where is my teacher?"; "Barely passing!"; "Stop the Abuse") alerted public opinion and helped channel messages from hundreds of thousands of citizens to education officials and legislators, demanding that presidential candidates sign commitments to address these issues. After the publication of in-depth studies on comparative educational outcomes and constant misspending, the creation of a calendar of targets to meet over a timeframe of 12 years, and the battles waged in a handful of difficult strategic litigations, some terms in the equation are changing.

There is now in effect a national law, passed in 2013, that sets out new rules for administering the teaching profession. The law includes the requirement that all new appointments—from the entry level and any promotion to school principal, supervisor, or technical pedagogical advisor—must be won in public competition, and prohibits and overrides any promotion gained through any other process. (In the very recent past, appointments were made by political recommendation, street pressure, purchase in cash or in kind, or even inheritance.) The same law establishes that all teachers must be evaluated every four years to determine their knowledge and capacity and provide support in their professional development. Those who are found to have major difficulties must be offered remedial activities and courses as well as close mentoring. Another law gave complete autonomy to the National Institute for Education Evaluation and Assessment (*Instituto Nacional de Evaluación Educativa*, INEE), thereby determining that student learning outcomes and teachers' professional capabilities should be assessed independently of the current administration. This agency was provided with the faculties to make

recommendations for education policy to the executive branch. In 2015, the Mexican Supreme Court granted the CSO I work for, *Mexicanos Primero*, “legitimate interest,” recognizing, for the first time in Mexico, that a CSO could litigate in defense of the constitutional right of children to education. The Court also ruled in our favor, compelling the National Auditor to proceed with judicial complaints against those who either illegally paid or received wages as if they were teachers, and also for the proven diversion of funds to the chapters of the Teacher’s Union.

These are promising developments, but the work is just beginning. At the ground level, the forces of simulation, delay, cowardice, and disorganization can harm this rather optimistic big picture.

What can we all do to go further and prevent setbacks for implementation of the rule of law in education?

- Support and sustain—politically and economically—the pathway of citizen monitoring. We need to count on the fact that somebody is watching, verifying, and studying—not occasionally, but professionally—what is happening with the right to learn and what is not being done. Monitor the passage and enforcement of laws, follow the trail of education funds, denounce irregularities in the press and in the courts. As proclaimers of transparency, we all must be strict in terms of the accountability and independence of CSOs, as well as demand that civil organizations develop greater rigor in their studies, clarity in their communication, and endurance so as not to be intimidated when confronting those who will lose out on the way to making it possible for children and teachers to win.
- The authorities, as well as the CSOs, ought to offer simple but feasible opportunities for families, teachers, and students to monitor compliance with the law at the level of schools, making each community a respected mouthpiece responsible for reporting the local reality to authorities and organizations and bringing forward, through a flexible system, complaints and suggestions. This must be done with dedication and seriousness, but do not fear: what could happen is that every school may become a focal point of civic demand. Was that not precisely the original vocation, the school as a laboratory for “democracy understood as a form of life?” At least,

that is what the Constitution says, and the law specifically creates a modern structure for this concept.

- We need to begin where implementing the education law ends, in the school itself. If we do not want civic education courses to continue being a bad joke, courses must be changed 360 degrees and become active programs that go beyond teaching the history of national laws and making vague, abstract calls for respect and commitment. Courses must be a credible testimony of teachers who are in office due to merit, who do not let themselves be bent before corrupt leaders and opportunistic officials, and who can, with politeness as well as authority, call upon families, urging them to be not subjects of a regime but citizens under the rule of law.

I want a school where teachers are teachers, where families care, and where kids learn.

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## Endnotes

- 1 Calculation made by my colleague Pablo Velázquez with data from INEE (2016).

**Q** *Why have Mexico's improvements in transparency not led to stronger exercise of the rule of law?*

## **POLICY RECOMMENDATIONS**

- A**
- Find ways to transform the knowledge and awareness gained through transparency into real changes that strengthen institutions.
  - Promote mechanisms of participation so that citizens can work with government, through formal structures, to build and strengthen institutions.

# SHAMING THE SHAMELESS<sup>1</sup>

BY ALEXANDRA ZAPATA HOJEL

In May 2014, the *Instituto Mexicano para la Competitividad* (IMCO) published a report that became the center of a national corruption scandal. By correlating newly available school census data with the official teacher payrolls, the study offered a glimpse into a “black hole” in Mexico’s public funding of education. The report found massive irregularities, including payments to “ghost” teachers in classrooms who, it turned out, do not exist. IMCO also found teachers receiving inexplicably high salaries, some of which even exceeded that paid to the President of Mexico. In the state of Hidalgo, the report pinpointed 1,440 teachers all born on the same day (December 12, 1912) who were still on the payroll of active teachers at over 100 years of age.

The report’s findings did not represent an isolated accusation. Colleagues in two other civil-society organizations, *Mexicanos Primero* and *México Evalúa*, have been equally vocal about similar findings suggesting that at the very least ten percent (*Mexicanos Primero* 2014), and perhaps closer to 30 percent (*México Evalúa* 2014), of the country’s education payrolls are being diverted away from real teachers. I would venture to say that after the disclosure of this body of work that offers a diagnosis of problems, Mexicans today regard the public education sector as one of the strongest examples of pervasive and harmful public corruption in Mexico. The resulting impact on public perception? Massive. The impact in terms of combating corruption? Limited.

The initial government response, following the publication of over 1,000 press-mentions of our report and a public reaction of generalized social outrage, was intimidation. Congress called a special commission to investigate the findings and it led to no tangible action, perhaps because the problems identified occurred in states ruled by the party in power as well as the opposition. In the two years since these reports were published, the federal government has announced payroll cuts of less than one percent (SEP 2016).

At the same time, Mexico has made significant strides in advancing availability of data in Mexico as a whole. The General Transparency and Access to Information Law, issued in May 2015, incorporates transparency obligations for all three branches of government at the federal, state, and municipal levels, as well as for autonomous agencies, political parties, and other entities that receive public funding—including several infamously corrupt unions. The law sets out a series of steps to follow that have allowed Mexico to position itself in 2017 as the regional leader in the Open Data Barometer Global Ranking, moving up to 11<sup>th</sup> in worldwide global transparency compliance.

Transparency is a prerequisite in efforts to fix imbedded institutional problems, but despite the apparent progress noted above, Mexico is getting very little “bang for the buck.” Why? Because of the popular belief that by merely increasing access to information, meaningful improvement in accountability will automatically occur.

Unfortunately, the evidence shows quite the opposite. The Transparency Reform (and the Anti-Corruption Reform also passed in 2015) did nothing to change Mexico’s position in Transparency International’s 2016 Corruption Perceptions Index. Similarly, Mexico City has been ranked—over the past seven years—as the most transparent Mexican state (CIDE 2010 and CIDE, INAI 2017) while simultaneously suffering from the highest perceived frequency of corruption (Transparencia Mexicana 2010 and INEGI 2015). Despite improvements in transparency, continued systemic impunity creates an institutional roadblock that prevents these gains in

transparency from evolving into tangible improvements in Mexico's anti-corruption efforts.

Serious and well-founded accusations that arise from dissemination of information by citizens engaging in transparency efforts seem to face a similar fate. In the best case, the official response is a dismissal of the findings provided. In the worst case, no official reply is even proffered. Thus does newfound knowledge lead to increased frustration: we know what is wrong but we also know nothing is being done to resolve it. More ominously, the frustration evolves into a pervasive cynicism perhaps best described as "we already know that they will not do anything about it." That type of cynical response from the public, in turn, spawns a continued stream of corrupt behavior on the part of government. This unintended result of transparency gains leads to an escalation of public apathy, thwarting much-needed legal responses in the public's interest.

Unfortunately, all too often public officials in Mexico perceive the rule of law as optional. Widespread impunity from legal consequences has created a system that allows legislators to pass laws they have no intention of following because they will be able to get away with doing whatever they want. The Senate waited—in blatant violation of the Constitution—until after the June 2016 elections to pass the necessary secondary laws to the anti-corruption reform. This behavior has become so common that CIDE's legislative "Violation-Meter," a tool that counts the time that Congress takes beyond the legal limit to push through necessary legislation, has the clock running on 25 different laws. Eighteen of them are over a year behind schedule.

It is in this context that the State does not see itself as being accountable to its citizenry. Rodrigo Canales (2014) argues that Mexico's historical evolution has resulted in a political culture where the main loyalty and accountability is to the party structure and not to citizens. As a result, social outrage generates neither acknowledgment nor proper response from many public officials. Over the past two years, we have seen our government shamelessly decide to wait out the media storm instead of standing up to face its citizens. In April of last year, citing press reports

and commentary about a discouraged atmosphere in the country, the President actually had the nerve to publicly ask Mexicans to cut it out with the bad mood (Animal Político 2016). “There are many reasons and arguments to show Mexico is advancing, is growing,” Peña Nieto said.

Transparency without accountability is not only unhelpful; it undercuts government credibility and erodes citizen trust. In the end, such increased apathy actually worsens the situation. The great curse of ignored transparency is the risk that an ever-deepening cynicism permeates every level of society, making a needed reform more difficult to accomplish. That is something Mexico simply cannot afford. Matt Ridley (2010) cites Austrian economist Friedrich Hayek who wrote in the 1960s that, “in social evolution, the decisive factor is selection by imitation of successful institutions.” Mexico is imitating international best practices in transparency but lagging far behind in utilizing the knowledge gained by that transparency to strengthen the institutional frameworks we so desperately need.

As Mexicans, we urgently need to demand the rule of law be enforced and, more importantly, agree to abide by the law. On this point, I am optimistic. From February to April of 2016, over 630,000 Mexicans signed an initiative to push forward a legally binding anti-corruption bill, nicknamed “Law 3de3.” The law, passed by the Senate in July, created an entire framework to prevent, denounce, investigate, and punish corruption of the federal government (*El Daily Post*, 2016). Mexico had never before seen such a widespread and well-constructed citizen response demanding legislative changes.

Support for the “Law 3de3” provides dramatic proof of two things: first, the level of anger and frustration that Mexicans feel over the consistent cynicism with which government treats and responds to its citizens. Second, that in spite of this, over half a million citizens are willing to work with government through formal channels and organized strategies to build and strengthen institutions. This route is long and, at times, lacks the immediate gratification that calms desperation, but is the one that will produce lasting change.

In a visit to the University of Chicago last year, U.S. President Obama argued, “The most important office in a democracy is the Office of Citizen.” As we continue to “shame the shameless,” it is slowly becoming impossible for the government to remain unaffected by this call for change.

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## Endnotes

- 1 “You are trying to shame the shameless” is how my colleague, Alejandro Hope, described our team’s attempts to expose the Senate’s lack of interest in advancing the anti-corruption agenda. This was an extremely accurate description of what has been happening in Mexico over the last year.



*How has the absence of rule of law impaired competition?*

## POLICY RECOMMENDATIONS



- Create an effective competition policy to make it harder to avoid regulations.
- Eliminate privileges for certain individuals.
- Reduce discretionary areas and corruption opportunities.
- Reduce businesses' excessive profits.
- Fight inequality.
- Turn consumers into instruments of market discipline.
- Promote innovation and investment.

# COMPETITION

BY ALEJANDRA PALACIOS

I am a woman who has devoted many years of her professional life to work in academic institutions and think tanks evaluating technical alternatives to improve Mexico's economic performance on strategic markets. Now, as Chairwoman of the Federal Economic Competition Commission (COFECE), I enforce the Mexican Competition Act in key national sectors in order to make these markets a motor of sustained social well-being for the Mexican people.

I do it because the rule of law is essential to guarantee economic competitiveness and to secure the social benefits that it gives rise to. By "rule of law," I mean the full complement of rules and institutions that regulate human relations and imprint order on a given society. The rule of law is the support that defines a nation's long-term growth and development.<sup>1</sup> A strengthened rule of law implies various interrelated elements such as a climate of legal certainty, respect for human rights, clear limits on State actions, an efficient system for the administration of justice, and rules for the game that respond to common interests.

Free markets could not function without the rule of law. Even under the most reductionist version of the State's role, government must necessarily intervene in the economy to define property rights, resolve controversies, as well as to physically and legally protect individuals and their holdings.

It is clear that an absence of the rule of law, alongside corruption and government inefficiency, are Mexico's Achilles' heel.<sup>2</sup> Thus, for every public servant, like myself, the first and most important obligation is to

conform to and enforce the law—in my case the Competition Act—not merely for the sake of adherence to a legally binding code of ethics, but because of the grave economic consequences that illegal conduct gives rise to.

## How Does the Rule of Law Influence Competition?

An absence of the rule of law affects economic activity both quantitatively and qualitatively, as it shrinks domestic markets, feeds unequal advantages among businesses, and preserves unduly privileges for some. Speaking strictly of competition, major alterations can take a number of forms, as I explain with examples below.

### Entry Barriers

One of the biggest determining factors behind decisions to enter markets—particularly in the long-term—is certainty. A country that does not offer a stable, predictable business climate ceases to attract and promote investment commensurate with its potential. As the Organization for Economic Cooperation and Development (OECD 2015) notes, “investment policy should be supported by solid institutions and an effective public governance system. Key prerequisites include respect for the rule of law, quality regulation, transparency, and integrity. Effective actions in these areas foment investment and reduce the cost of doing business.” The rule of law is therefore a crucial factor for competition because to a great degree it determines a given market’s overall participant numbers. Mexico would doubtless be the object of more investment, both domestic and foreign, if we had better institutions in all branches of government.

### Transaction Costs

Sub-optimal institutional conditions do not necessarily constitute an insurmountable barrier to investment and new business market participation. There are examples of countries that attract investment despite precarious institutional environments. The explanation is that at times certain factors exert more weight than others, as might be the case with

internal market size or production costs. This however does not rule out that businesses must take on major costs to make up for the lack of institutional reach—resources that could be dedicated to more productive activities.

## **Favoritism and Insider Privilege**

The absence of the rule of law cripples rights and opportunities. Such a situation can make it impossible for individuals and enterprises to effectively exercise certain rights that are key to competing (rights such as private property, judicial security, or the freedom to exercise a profession or run a business). At the same time, certain economic stakeholders may not be playing by the rules or may be lobbying for government decisions that unduly favor them. These artificial advantages utterly pervert the competition system, which is based on legitimate rivalries between businesses that seek to gain customers, a system that rewards hard work and merit.

In general terms, the absence of the rule of law diminishes competition because it disrupts economic stakeholders' incentives to compete to win clients, which, when present, generates investment, innovation, and productivity. A system where neither the rule of law nor competition exists can only produce a vicious cycle of economic inefficiencies and damages to the social fabric.

## **Using Competition Policy to Strengthen the Rule of Law**

The relationship between rule of law and competition is not a one-way street. A vigorous and effective competition policy can play an important role in strengthening the rule of law. Why? Among other reasons because where competition is greater:

- There are more players and individual power is diluted. With more players, it becomes harder to hold sway over regulators or obtain individual privileges through lobbying.

- There are more open and transparent regulatory systems as well as fewer means of government control, which together reduce discretionary areas and corruption opportunities.
- Certain businesses' excessive profits—the outcome of anomalous market structures or anticompetitive behavior—disappear, generating enhanced equality.
- Consumers gain greater power and become a disciplinary instrument within the market.
- Economic incentives expand, making it more profitable to compete via legitimate means, such as by innovating or investing in human capital.

In recent decades, one of the Mexican government's challenges has been building capacities to investigate, prosecute, and sanction those who engage in anticompetitive practices. The competition law has been strengthened over time, in parallel with a deeper commitment by COFECE to enforce the law. Businesses must now consider that, in addition to fines, executive disbarment, and, in some cases, prison sentences, competition legislation violations bring on irreparable damage to corporate reputation.

Thus, guaranteeing market competition is a powerful tool for increasing and equalizing opportunities among Mexicans, putting big corporate goals to work in favor of social interests, and expanding supply of best-quality and best-priced products to families living in conditions of poverty. Overall, competition is a key element to consider in Mexico's urgent struggle to solidify the rule of law.

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## Endnotes

- 1 Douglas North (1990) defines institutions as "a society's rules of the game or, more formally, as the limitations man comes up with to lend form to human interaction."
- 2 (1) According to the WEF (2015), factors that make doing business in Mexico more problematic are (in the following order): corruption, bureaucracy, inefficient government, and crime. In the "institutions" column, Mexico occupies some of the lowest positions with regard to trust in politicians, regulation-based administrative burdens, and favoritism when it comes to government decisions. (2) According to the Corruption Perception Index, Mexico ranks 95 out of a total 168 nations surveyed (the nation scored 35 points). Its score for this indicator (where 0 is highly corrupt and 10 is very clean) has varied very little over time: 3.2 in 1995 and 3.5 in 2015. (3) According to the World Bank's *Worldwide Governance Indicators*, from 2009 to 2014, Mexico has lost ground with regard to controlling and combatting corruption.

**Q** *What has been the effect of Mexico's new justice system on reducing crime, and what can be done to make it more successful?*

## **POLICY RECOMMENDATIONS**

- A**
- Strengthen the instrumental role of law enforcement officers as first responders.
  - Restructure the penitentiary subsystem and other punishment mechanisms with a focus on reducing recidivism.
  - Develop alternative judicial measures for youth so that criminal detention is a last resort.
  - Create a national strategy for crime prevention that is capable of targeting critical neighborhoods, active violent groups, and triggers of violence. The strategy would need to consider local characteristics and neighborhood-oriented solutions to reduce impunity, social disputes, and recidivism.
  - Develop “out of jail” supervision measures led by neighbors.
  - Implement community courts to help crime victims.

# CRIME PREVENTION

BY ENRIQUE BETANCOURT

What can we expect in real terms from the arrival of the new justice system with regards to the levels of violent crime in Mexico? The invitation to write these lines implicitly establishes the assumption that in the transition to a new accusatorial system, Mexico could or should experience some reductions in its persistent levels of violence. And it has. Yet, no reduction of violence in Mexico has been directly associated with the implementation of a specific theory of change.

In the following pages, I briefly reflect on the implications of the arrival of a new justice system in Mexico for strengthening the rule of law. I also elaborate on where things stand regarding violence prevention policies and the lessons learned on what works to prevent and reduce violence. Also, I advocate for the adoption of a national violence reduction strategy driven by a collaboration of the justice system on par with social behavior change programs based on targeted places and social groups that disproportionately concentrate violent crime in Mexico's cities.

## Justice System

In theory, a lot could be expected from the strengthening of our justice system. It is observable that as countries strengthen and improve the rule of law they also tend to experience less violent crime (WJP 2015). The formula, which operates as a virtuous cycle, seems to be clear: a strengthened justice system that focuses on reducing impunity rates, in

turn, increases citizens' trust in and collaboration with justice institutions, which in turn regulate behavior by enforcing credible and legitimate disincentives to break the law. This process allows the system to increase its overall effectiveness by smartly deploying limited resources to permanently evolving priorities while expanding the legitimacy of the institutions involved in the cycle. In other words, an effective and legitimate justice system (in the end) operates as a preventive measure for future crime.

Unfortunately, the morning of June 19, 2016, we did not wake up with a new justice system fully equipped and developed to kick-start the aforementioned cycle. The road ahead is, as expected, a bumpy one; hence the importance of this publication.

There are at least three clearly identified pending processes to truly improve our justice system's crime prevention capacity: (1) strengthening the instrumental role of law enforcement officers as first responders, (2) restructuring the penitentiary subsystem and other punishment mechanisms with a focus on reducing recidivism, and (3) enabling the juvenile justice component, particularly fully developing alternative measures so detention becomes a last resort.

Until today, the main focus of Mexico's judicial reform has been to lay the foundations of a new system with clear indicators for the judicial process, such as caseload management, general bureaucratic procedures, and use of electronic records. The next phase of the reform will need to focus on implementation: training police, developing better connections between policing and district attorney's offices (*ministerios públicos*), and smarter investments in treatment. The goal must be to have a justice system that operates as a behavior-change mechanism and is centered on improving institutional legitimacy.

## **Violence and Crime Prevention Policy**

Despite great efforts to build an institutional apparatus to address the underlying causes of violence in Mexico, the supporting evidence of im-

pact achieved by crime and violence prevention policy in Mexico is weak. The national flagship program to prevent crime, known by its acronym of PRONAPRED, is characterized by a lack of conceptual and strategic clarity that often leads to disperse investments in well-intentioned programming that has no grounding in evidence. These policy design challenges are also paralleled by general deficiencies in technical institutional capacity for delivery on policy and implementation in all three levels of government, especially at the municipal level.

Regardless of these problems, during the last couple of decades we have learned a great deal about the observable characteristics of violence in Mexico and elsewhere. We know, for example, that violence does not tend to be distributed evenly across geography and does not affect all demographics consistently. In Mexico, according to official data (INEGI 2016), 80 percent of the total homicide count concentrates in less than 10 percent of the municipalities of the country, mostly in urban areas. Even more so, there is enough evidence to infer that within those cities lethal violence clusters in smaller geographic pockets. Demographically, the biggest potential gains for the reduction of violent crime in Mexico are associated with the capacity to identify and address a miniscule and underserved group of people (mostly young men) residing in these critical neighborhoods which are characterized by the absence of a trusted legal authority.

What works? Notwithstanding the fact that violence prevention is still a field in development, great strides have been made in identifying the manifest characteristics of violence, and even in understanding the root and proximate causes, or triggers, of violence. Unfortunately, violence prevention is not retroactive and the potential solutions are not symmetrical to the causes. Delivering today the services that were needed years ago will have little effect on today's violence. Hence the need to focus on proximate causes in order to pave the way for preventive measures to take root.

Today, based on rigorous empirical evidence, we know that what works to reduce violence is often associated with strategic place-based inter-

ventions that target critical neighborhoods—understood both as physical places and social networks—with coordinated institutional efforts between specific social programs centered on behavior change, strategic law enforcement, and community oriented justice measures. The main focus of these interventions is on nudging particular pro-social behaviors, and deterring those that harm the relationship among neighbors and between citizens and authorities. Embedded in these approaches lies a deep understanding that social behavior change is not a direct function of harsher punishments but contingent on the enforcement of swift and certain sanctions commonly dubbed “smart on crime” approaches.

## Recommendations

Others have already challenged the genuine advantages of defining a grand public security strategy in Mexico. Their valid arguments refer to the vastness and elusiveness of the notion of public security. At the same time, a quick overview of the current debate on the impact of the 1994 crime bill in the United States reveals that the argument is not centered on whether this policy worked or not, because it did. The United States experiences historic lows in crime rates due to measures addressed by the crime bill, according to rigorous analysis. The question today is how to move forward minimizing the collateral damage caused by the bill, such as the disproportionate rates of incarceration, particularly among black men.

I maintain that a national violent crime reduction strategy in Mexico would be an opportunity to strengthen the rule of law by redirecting and genuinely coordinating law enforcement, justice, and social programming to achieve concrete successes that can be measured reliably. This national strategy would have to target critical neighborhoods, active violent groups, and triggers of violence, such as the dangerous combination of alcohol consumption and firearms simultaneously. Due to the tendency of violent crime to concentrate in hot spots in parallel with specific social behaviors, the strategy would need to consider both place-based and people-based approaches to deliver a combination of qualified social services, problem-oriented policing interventions (like focused deterrence)

and tailored community-oriented solutions to reduce impunity, social disputes, and recidivism where it matters the most. Some of these measures should consider the development of out-of-jail supervision measures (such as parole and probation) carried out in the same communities where supervisees reside and the experimentation with community courts (Berman 2014) custom-made to serve anyone affected by violent crime –including defendants, community members, and victims.

The arrival of a new justice system in Mexico may be a catalytic factor to change the scenario of violent crime we have experienced for more than ten years now. In order to do so, it needs to incorporate a problem-oriented framework to deliver at the center of the communities and street corners that concentrate the vast majority of the problem.

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*What can civil society organizations do and not do to help promote the rule of law?*

## POLICY RECOMMENDATIONS

- 
- Mexican governments should ask civil society organizations to publicly identify which laws, discretionary powers, and practices allow impunity and denounce them.
  - Design mechanisms to allow civil society to fund legal counsel and back litigation for citizens who have been wrongly accused by judicial institutions and to propose institutional improvements to reduce impunity.

# CIVIL SOCIETY

BY MANUEL J. MOLANO

I remember this vividly. The Attorney General sat in silence, a smirk on his face. Foreign diplomats were handing him stacks of information. They all looked like subordinates of an Aztec *tlatoani* (like a king). The Japanese ambassador handed him a DVD containing details of Japanese citizens mugged in Mexico. The Attorney General bowed his head. Muttered “*gracias*.” A cryptic half smile was painted on his face. An American marine gave him a brief with a strategy to control crime. I could not interpret the Attorney General’s expression. To me, his face was just frozen and smiling sideways, as cynics do. He was probably close to hideous crimes but, of course, nobody could tell. Nobody could prove it. This was right there, right in front of me, the Mexico of impunity in this century.

Sometimes I wonder whether I should pack my bags, convince my wife, take my children, and leave Mexico. But I will not. I will not because I love Mexico even if I was not born here. I have been a citizen of Mexico for 33 years. I am an immigrant from another country that, at the time I left, was far more violent than Mexico. I left Colombia in 1983 along with my father who thought his Colombia was just too violent and unequal to keep living in it.

When I first arrived in the country, Mexico was a serene place. My high school friends and I could hang out outside, late. There was no fear. Most violence in Mexico took place in rural areas. We could go to places like Acapulco without any consequences, we could go to areas that today feature prolonged shootings in daylight hours and have become no man’s land.

Violence started surfacing in the media at some point during the administrations of Presidents Zedillo and Fox (1994-2000 and 2000-06), but it was under President Calderón (2006-12) that things really got out of control. People spoke of dead and missing citizens in the tens of thousands, and independent statistics attested to it. Nobody is really convinced that violence has receded during the current administration of President Peña Nieto.

Violence is not just a reminder of lawlessness in Mexico, it is overwhelming evidence of it. From the killings at Aguas Blancas, to Acteal, to the massacres of Atenco, San Fernando, and Ayotzinapa, authorities and criminals break the law and show unusual cruelty towards their fellow human beings. In every international index of the rule of law, Mexican rankings are unfavorable. In Mexico, the State is either absent, neglectful, or plainly abusive.

As a member of organized civil society, I ask myself repeatedly what civil society organizations (CSOs) should do to help implement the rule of law in Mexico. The answer to me is clear. We need to be the ones who publicly identify which rules preserve the status quo of impunity. We need to blow the whistle on those who break the rules. But we cannot be the State. We cannot judge, punish, or even alleviate the societal burden of lawlessness. CSOs cannot solve the rule of law issues on their own. When CSOs have tried to supplement, consult for, or fill the space of the government, we have failed. We must understand that CSOs are powerful motors to stimulate social change, but are not the State.

For me, the role that CSOs could play to implement the rule of law in Mexico would depend on which type of offender we think we are dealing with.

Three types of offenders can be defined. One, described by Duke University professor and behavioral economist Dan Ariely (2013), is the citizen who would break rules but refrains from doing so because of moral commitments (type 1). Moral behavior can be encouraged by what Ariely would call *nudges*, conduct-changing mechanisms that keep people in line. This contrasts with Gary Becker's classic analysis of the rationality

of criminal behavior (Becker 1968, 1974). A second type of citizen is described by Dr. Becker, one who follows a perfectly rational, cost-benefit analysis before breaking the rules (type 2). The benefit is immediate while the costs are contingent on the probability of getting caught. Intensity of punishment does not really matter for this second type of citizen, punishment does. Finally, there is a third type of citizen, one who has somehow managed to make criminality and morality coexist in his or her mind (type 3). These people may be devout underage *sicarios* who pray to the Virgin of Guadalupe for help in their next murder, child abusers who believe their conduct is acceptable, and church-going fraudsters, and others. These are people whose moral compass needs some serious calibration.

The role that CSOs can play to foster the rule of law is different for each type. CSOs and government can nudge and re-engineer the conduct of type-1 offenders who make up the large majority of offenders. Yet, CSOs cannot easily nudge the conduct of type-2 offenders. Like *narcos* and politicians (yes, they fall under the same category), this type is a perfectly rational criminal who has rigged the system in their favor. It will take a long time and great effort before we can effectively apply a punishment. An option is to ask for outside help, like the Guatemalan people did when the *Comisión Internacional contra la Impunidad en Guatemala* (CICIG), sponsored by the United Nations, prosecuted and convicted its President for fraud. Mexican CSOs could, for example, hire lawyers in the United States and ask New York and Florida judges to impound the real estate assets of our corrupt politicians, on the basis of U.S. money-laundering provisions. Our laws are useless for punishing and bringing them to justice. Jailing them is a pipe dream. Freezing the assets that they hoard in foreign jurisdictions seems like the only possible option. Last, but not least, CSOs can work on providing adequate psychiatric treatment for type-3 offenders.

More generally, CSOs could also help produce different outcomes in Mexico's judicial system. An example is prisons. Mexican jails are a self-governed disgrace (México Evalúa 2013), and the penitentiary system needs to be scrapped altogether. We do not know how many

inmates we have. We do not even know if the people inside the prisons are the people originally accused of actual crimes, or are just replacements. Due process in our criminal justice system is a fiction. Eight years on from the reform creating oral, adversarial trials, our institutional instincts still bend towards inquisitorial procedures. Mexican think tanks, such as the *Centro de Investigación para el Desarrollo A.C.* (CIDAC) and *México Evalúa*, have provided valuable advice that still needs to be converted into actionable policy measures including lighter prison sentences and alternative service and a more transparent judicial system that adheres to due process and is not a source of injustice in itself.

Specific targets should be set for reducing unreported crimes, following the ENVIPE survey data, and should avoid any attempt of authorities to tamper with the survey. An evaluation should be made at least quarterly of the results of implementation of the revised laws and procedures, and policies should be adapted based on the rate of success of different aspects of the reforms. At the state level, efforts should be pursued to adjust the organizational structure of the delegate of the federal attorney general's office (PGR) and the state's attorney general's office so these agencies respond to the new criminal law requirements, with emphasis on trust control and anticorruption measures.

Mexico should establish and apply the legal concept of faceless judges, just as Colombia did decades ago, when the narco-violence was at its peak there. CSOs need to be bold and focused. These independent organizations should not try to become the State, not try to fill the void of the State, and not try to only alleviate the societal burden of lawlessness. Instead, CSOs need to change the *status quo* by helping honest compatriots change some behaviors by being compassionate with the wrongly accused, and by bringing criminals to justice in less corrupt jurisdictions.

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*How can the performance and accountability of the Mexican Congress be improved in order to promote the rule of law?*

## POLICY RECOMMENDATIONS

- A**
- Create a homogeneous set of indicators to assess legislative accomplishments, including activities within committees.
  - Promote among civil society organizations the construction of independent indicators to analyze congressional performance and use strategic litigation to sanction legislators who violate the law.
  - Professionalize media coverage of Congress by reducing the amount of media revenues linked to the government since this dependency relationship discourages journalists from providing coverage of accountability issues to their audiences.
  - Prohibit earmarking, lower the prerogatives of parliamentary groups, and eradicate all cash-in programs of a discretionary nature.
  - Punish legislative omission with constitutional disputes filed by the executive.
  - Implement clear and standardized regulations for reelection to the Congress to promote accountability.

# CONGRESS AND POLITICAL PARTIES

BY LUIS CARLOS UGALDE

I have made my professional career in government, academia, and now consulting. I have watched closely how Congress works, not only as an external observer but also from my personal experience in government and as the president of Mexico's Electoral Institute (IFE) from 2003 to 2007.

As an observer, I became involved with the Mexican Congress when I began research for my Ph.D. dissertation in political science at Columbia University in the mid-1990s. At the time, nobody cared about legislative politics in Mexico—nor did I. Why study an institution that did not matter politically? My real interest was the presidency—the all-powerful institution that defined Mexican politics for most of the twentieth century. But analyzing power requires understanding how one actor influences another. I could not analyze the Mexican presidential institution in a vacuum—so said Giovanni Sartori, one of my thesis advisors— but only in how it related to other actors, so I chose to analyze the Mexican Congress.

For five years, I conducted research on the oversight capacity of the Mexican Congress between 1970 and 1999. How well did deputies control government expenditures? Brief answer: very badly. One of the explanations was motivational: the prohibition of consecutive reelection, along with the hegemonic position of the Revolutionary Institutional Party (PRI), created a set of incentives for members of Congress to please the executive rather than control it.

As I was finishing my dissertation, PRI hegemony began to change. The PRI lost the majority of seats in the Chamber of Deputies in 1997, and then the presidency of the Republic in 2000 after seven decades of single-party rule. Afterwards, for a short period of time, the logic of executive-legislative relations began to shift, leading to new bargaining terms for the annual budget, and increase of federal transfers to state and municipal governments, and closer supervision of some appointments that required congressional ratification.

But the new system of checks and balances was distorted and even corrupted very soon. By the early 2000s, the new administration headed by President Vicente Fox of the National Action Party (PAN) found it easier to negotiate the budget with PRI governors, and with some organizations like the peasants' confederation (CNC), by exchanging votes for certain public works projects. Then, opposition parties found it rewarding to earmark items in the budget for personal or political gain, thus increasing clientelism and even promoting bribery. Many legislatures increased their budgets and prerogatives, making lawmaking attractive for its personal monetary rewards. All these bargaining schemes weakened the role of Congress as an overseer of the executive, stimulated corruption in many legislative bodies and, as a consequence, the system of checks and balances was severely damaged.

A system of rule of law requires checks and balances among branches of government, and Congress is the key actor in sustaining such a system. But to perform that function properly, Congress needs to be accountable to other actors, be they the judiciary, the executive, or the electorate at large. If Congress is immune to external control—either because it does not have to justify its performance or because it does not suffer the consequences of misconduct or ineffective action—the system of checks and balances is unsustainable and the rule of law is at risk.

As stated above, the Mexican Congress is not answerable to many external actors that demand legislators play a more vigorous role in containing the abuse of power, combating corruption, and making better

legislation. Frequently, the Mexican Congress approves bad legislation, does not act on time to fulfill some obligations (appointments, legislation, oversight of public finances), and even violates its own internal rules. Yet, the Congress barely faces sanctions. Indeed, individual legislators at the end of their term simply jump into another political position without assuming any consequence for their past performance.

Making the national Congress and state assemblies more accountable requires many actions and reforms, but three sets of elements can help us move in that direction: information, performance assessment, and sanctions. The following are some recommendations that may affect one or more of these elements.

### **Create and Standardize Indicators of Legislative Performance**

Legislatures need to provide information on their daily activities in formats, units, and periods comparable across time and across states. Although progress has been made to supply information regarding the work of individual legislators on bills submitted and approved, as well as floor activities, other data remains in the shadows. For example, scant information exists with respect to the functioning of congressional committees, which are the main axis for analyzing and producing new legislation. The same occurs with financial information of expenditures of parliamentary groups (*subvenciones*)—which account for a budget of tens of millions of dollars annually. For years, parties have resisted the demand to inform about their revenues and spending within Congress.

A window of opportunity exists because a new transparency law came into effect in 2016 which establishes more obligations for congressional party blocs to inform on their revenues and expenditures. To comply with the law, the legislative blocs must create indicators to track the legislative process more accurately: following bills from the date of submission through analysis, resolution, and voting. Indicators include attendance and deliberations within committees, resolutions and legal opinions,

fulfillment of timetables, and others. What occurs within committees is frequently much more important than what happens on the floor.

Special work needs be done within state assemblies. They lag behind in transparency —some of them do not even post basic information on their websites. As money and prerogatives constitute instruments of political control and patronage, parties will resist the demand for making financial information transparent, or they may simulate accounting registry practices to hide actual revenues and expenditures on certain items. However, the new transparency law makes state congresses subject to federal legislation and supervision on the part of the National Institute for Access to Information (INAI), thus creating a window of opportunity to level the playing field within the next few years.

### **Promote Citizen Monitoring of Legislative Bodies and Expose Malpractice**

Lack of attention to what Congress does allows lawmakers to act with impunity. Voters rarely follow up on their representatives because the ban on reelection has broken any long-term relationship between them. That has begun to change slowly as new advocacy groups using social networks begin pressing lawmakers to act according to the demand of their constituencies.<sup>1</sup> However, most legislative acts fall outside the realm of public attention, thus stimulating immunity and even impunity. For example, legislative omission is common in Mexico: legislators fail to meet a deadline to approve a bill or simply abstain from performing a duty such as voting on public accounts or confirming appointments of public officials. But sanctions are absent as nobody exposes such omissions. The same occurs when the Supreme Court declares a bill unconstitutional but their sponsors never assume responsibility and nobody demands an explanation, much less a political sanction.

To break such isolation and impunity, external monitoring of Congress is needed. Some monitoring mechanisms already exist, but more are needed. Citizens' organizations and think tanks must build their own indicators to assess congressional performance, expose shortcomings, and

use strategic litigation to promote sanctions when lawmakers or committees perform incorrectly, violate the law, or simply do not take action on time.

## **Professionalize Media Coverage of Congressional Activities**

Lack of information and poor understanding of the proper role of Congress have made journalists pay attention to activities for headlines but those are not necessarily the most relevant. For example, ample coverage is given to events happening on the floor—fights between legislators, political accusations against cabinet members, or blocking the desk of the president and the clerk of the chamber to avoid taking a vote, among others. But much less attention is paid to the functioning of committees, or to assess the quality of bills enacted, or to supervise public finances.

The Mexican press usually pays close attention to travel expenditures made by legislators, the number of cars acquired, or medical insurance expenses. But few analyze individual records—campaign promises, previous performance within congress or state legislatures—or the process of budgetary appropriations, or how well or badly congress supervises government spending. This problem is partially the result of a media industry that increasingly depends for its survival on revenues coming from government advertising, or from illegal transfers from political parties and candidates looking for positive coverage. The press is usually captured by special interests in government and politics and has few incentives for conducting investigative journalism.

## **Ban Any Form of Earmarking or Allocation of Discretionary Funds that Has Given Way to Bribery (“*moches*”) and Weakened Oversight of Public Finances**

Since around 2005, congressional parties began the practice of earmarking items in the federal budget in exchange for giving their support to the executive’s budget bill, creating a kind of pork-barrel politics. As political

alternation occurred in the office of the Mexican presidency in 2000, the new administration, which faced an opposition majority in Congress, realized it was easier to pass a budget bill if it allowed opposition parties to earmark (*"etiquetar"*) public projects that were strategic for their state governors or regional political leaders.

Earmarking is problematic because it distracts the attention of lawmakers from their constitutional duties (budgeting and oversight of actual expenditures) into discretionary allocation of funds for private gain. Earmarking makes Congress a business in which members of the "Budget Committee" sometimes use their influence to allocate resources in exchange for payoffs that may include bribes or other forms of political patronage. Earmarking makes Congress less accountable to the public and more prone to corruption.

## Reduce Prerogatives of Parliamentary Groups

Over the past fifteen years, increasing prerogatives have served as a means to buy party discipline, contain oversight of public finances, and weaken the system of checks and balances. Many governors in Mexico learned in the 1990s, but especially in the 2000s (when the first experiences of divided government began at the state level), that it was easier to increase the budgets and prerogatives of state assemblies to incentivize cooperation than to deal with the perils of active and opposing legislatures. Increases of prerogatives have corrupted many assemblies, distorted their functions, and weakened their role as an external check on the executive branch. Rather than overseeing how governments spend, legislators tend to administer their own fortunes. In doing so, many legislatures have become unaccountable.

Two actions are needed. First, reduce the size of subsidies or prerogatives given to parliamentary groups (called *subvenciones parlamentarias*). It is not justified that party blocs in Congress receive discretionary funds to allocate as they wish, in addition to what they receive for per diem, travel expenses, staff support, and other administrative items. As these funds amount to tens of millions of dollars (in 2015, just for the Chamber of Deputies, they totaled about USD\$85 million) and are discretionary,

they may be used to coopt dissidents, pay external political campaigns, reward loyal supporters, or may be simply pocketed for personal enrichment.

Second, eliminate any form of cash-in programs for community or social support (*gestión social*). Many legislators argue that supporting their constituents with money, building materials, or other forms of patronage (jobs, scholarships) is part of their duties as members of Congress. But rather than raising those resources from the private sector, they simply allocate resources from the general budget of Congress. On the one hand, such provisions distort congressional duties as legislatures are in charge of approving funds for social development, but are not responsible for carrying out “social programs” by themselves. On the other hand, as spending of those resources frequently does not require proof, some lawmakers may simply use those funds for personal gain, thus corrupting even more the legislative process and distracting lawmakers from their original duties.

## Sanctioning Legislative Omission

The Mexican Congress and state assemblies frequently bypass legal time limits for approving legislation, or do not exercise on time their function of oversight of public finances. In many instances, they simply abstain from following up on cases of corruption. In many state assemblies, the approval of municipal public accounts is a matter of bargaining between parties: as each party typically has many observations that could constitute crimes, parties approve each others’ accounts in return for the clearance of their own faults. Impunity is the final outcome.

What to do to combat legislative omission? There are various ways. One would be for the executive to exert its checks on the legislative branch. Executive offices could challenge lack of action by means of a constitutional suit arguing that legislative omission violates the Constitution and interferes with the proper functioning of government. That instrument can also be applied by state and municipal governments. The city government of Tabasco challenged the local congress in 2015 for failing to rule and resolve the initiative to update the tables of unit values of land and buildings that serve as a basis for collecting property tax.

Another means can be exercised by citizens using the “*amparo*,” an appeal mechanism by which citizens could argue that lack of action by Congress affects the exercise of human rights established in the Constitution. If Congress fails to adhere to its obligation to oversee public finances and sanction irregularities in public spending, for example, it can affect the quality and quantity of public services and the resources available to meet people’s demands. If Congress does not approve anti-corruption legislation on time (as was the case in 2015), that affects the people’s rights to an honest and efficient government. Given the impunity present in Mexican politics today, strategic litigation on the part of civic organizations is the most promising possibility for combating impunity and lack of action by congresses.

## Regulating Reelection

Reelection, the so called “mother of political accountability,” will finally be a reality in Mexico beginning in 2021 for federal deputies and in 2024 for senators. (In the case of local deputies, reelection will take effect at various moments over the coming years.) However, lack of adequate regulation and diversion of public funds to finance campaigns could make reelection a nightmare for Mexican politics and be ineffective in terms of promoting accountability.

Banned in 1933, lack of consecutive reelection made members of Congress immune to the will of the people and to any form of political sanction that arises when legislators run for reelection. This immunity was aggravated by the fact that political success of members of Congress did not depend on their performance but rather on their ability to lobby and please the president of the Republic who, in practice, was the main provider of political opportunities in twentieth century Mexico. Responding to popular demands or acting as a check on the executive branch was never a priority for deputies and senators.

Yet, reelection by itself will not make lawmakers accountable to the electorate. If not regulated properly, reelection can simply recreate the regional political bosses or caciques who predominated in Mexican politics

prior to 1933. It is urgent to curb the diversion of budgetary resources to illegally finance political campaigns. It is also important to constrain the use of special funds by legislatures (i.e. *subvenciones*, *gestión social*) to build support for incumbents among constituents. Finally, we need to regulate restrictions for acting legislators who want to seek reelection. Do they have to resign at least temporarily to avoid inequality? How can the use of official resources for campaigning (travel, advertising) be curbed?

Up until now, reelection is only regulated in the Constitution and political parties may do so in their by-laws to create norms regarding how their members may opt for reelection. Will that be by the holding of primaries? Will any legislator have the permission to run for reelection occur just because a lawmaker wants to run again? Can the party block potential candidates based on lack of discipline or bad performance, or should that be left to electors? Amending the electoral code and other government regulations is important to prevent unfair competition and thus keep a healthy completion between incumbents and challengers.

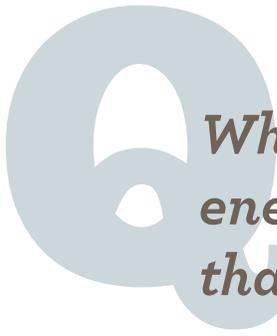
## Conclusion

Indeed, as the above points have shown, Congress has become one of the weakest foundations of Mexico's democracy today, even if it is a central element of it. This can change, but I do not see any incentive for congressional parties to do so in the short term.

This is not a pessimistic comment but a realistic perspective based on the way things have evolved over the past 15 years. However, I believe that some of the recommendations provided above can certainly realign congressional incentives to make Congress a check on the executive and accountable to the general public at the same time. This is not an easy task, but is an urgent one.

## Endnote

- 1 The most relevant experience is that of "Ley 3de3," a citizen initiative submitted to Congress in the spring of 2016 requiring that government officials make public their assets, tax returns, and conflict of interest statements.



*What was missing in Mexico's energy reform, and how does that affect the rule of law?*

## POLICY RECOMMENDATIONS



- Force state energy companies to follow the same rules as private firms by eliminating all political leverage over them.
- Create competent regulatory agencies to assure that market rules are correctly implemented.
- Allow state oil and energy companies to go public, listing them on the Mexican stock exchange at least. Private shareholders will trigger administrators to be more transparent and efficient as they represent a credible threat of disinvestment.

# ENERGY

BY DWIGHT DYER

I am a Mexican citizen, with a strong family heritage linked to the United States, an American Mexican, so to speak. I am also a UC Berkeley-trained political science Ph.D., with an eclectic professional background. I decided to enter journalism, after having worked in the Mexican federal government's civilian intelligence agency and at an international risk consulting firm in Mexico City. In these prior activities, I first came into contact with the energy sector and, gradually, became entranced by it.

In all of my previous positions, my research and analysis of the security threats in the political economy of energy were bounded by strict confidentiality rules. I was able to influence public and private decision-makers, but I was also keenly aware that a public discussion on Mexico's energy reforms was lacking. By joining *El Daily Post's* editorial staff in September 2015, in charge of energy and environment, I have been able to contribute to the public debate, trying to provide a critical, contextualized, and theoretically informed perspective on the progress of Mexico's energy reforms.

In my view, the country's weak rule of law, and politicians' aversion to it, precludes our full transition to democracy. President Peña Nieto's ambitious reform agenda is decidedly less so when you consider his and his party's reticence to decisively part with the institutional remnants of the authoritarian political regime. In the energy sector, all the talk about modernization sounds like empty promises, if the principal players in the new markets, i.e. the state energy companies, are not bound strictly by the

same rules as private participants. Delivering on the promise of energy reform can only be achieved if a stronger rule of law is enforced. Waiting to implement it will only delay the country's progress further.

Overall, Mexico's energy reform aims to create a set of new markets. Their operation may be many times removed from citizens' everyday activities, but it has an immediate effect on their lives. Everybody uses energy, and energy reform is supposed to help deliver it efficiently. The challenge is to create competitive markets where there were state monopolies before. Herein lies a double task that relates to the rule of law. On one hand, the state energy companies must be forced to follow the same rules as private enterprises, that is without recourse or vulnerability to the political leverage they grew accustomed to over decades. Second, the market rules must be implemented and overseen by competent regulatory agencies, so that competition may flourish.

Markets are the most efficient mechanisms we know to allocate scarce resources, if they are competitive. That said, markets cannot work, indeed, have never worked, in an institutional void. They all require the presence and support of the State. Although competition comes in diverse shapes and sizes, markets need, at the very least, clear rules, strong and independent regulators, and fair and knowledgeable courts. Reforming markets implies redesigning the balance of winners and losers, an eminently political endeavor. Therefore, markets are politically charged institutions that must be liable to rules being enforced, and to change such rules if the markets are failing. Regulatory agencies are the institutional actors that sit at the crux of this mix.

Mexico's competitive energy markets must be created from former monopolies dominated by state-owned firms. This implies creating new rights and obligations, reallocating benefits and costs, rebalancing the short and the long term, pondering the needs of small and large consumers, of investors and consumers, of lenders and operators. Competition is unlikely to be perfect, just the same as regulations, yet they two must work together in order for expectations to turn into realities, or for those running the risks and bearing the responsibilities to face the consequenc-

es. If this can be achieved, Mexico's energy markets will have made great strides toward strengthening the rule of law.

## Depoliticizing Former State Energy Monopolies

Since their inception, state oil company PEMEX and power utility Federal Electricity Commission (CFE) were vertically integrated monopolies. They were not, however, constituted as regular companies, but as parastatal enterprises. This meant that they were administrative offices for their respective budgets, which in turn leveraged developmental policies, rather than being firms seeking to maximize profits for their stakeholders. Also, the companies' administrators were political appointees whose principal allegiance was to the president, rather than to consumers or employees. Finally, in the country's corporatist political economy, they functioned as sources of employment for tens of thousands of workers, whose labor unions were intrinsically connected to the then-and-now ruling Institutional Revolutionary Party (PRI). These workers reliably supported the regime, in exchange for generous, targeted social policies (for instance, medical services for PEMEX employees and free residential electricity supply for CFE personnel, among other benefits). Promoting competitiveness was the farthest thing from their mission.

Under energy reform, PEMEX and CFE were legally transformed into "productive state enterprises" which are supposed to deliver profits to their principal stakeholder, the Mexican government, as they seek to compete with private firms in their respective industries. This transformation is an ongoing process. In principle, if they fail to accomplish this, they should be closed and their employees severed. However, both companies still face highly politicized incentives that preclude their operation as profit-making enterprises. In particular, their corporate governance structure is still dominated by federal government officials and their budgets are still controlled by Congress and the Finance Secretariat. Also, the governing party is unprepared to let them fail, as its expectations to hold on to power are dependent to a large degree on the companies' apparent success. In other words, PEMEX and CFE still operate under special regimes.

Energy reform is doomed to fail by not allowing the state energy companies to establish arms-length relations with the government. The new structure of the executive boards of PEMEX and CFE now includes a number of independent members equal to the number of political appointees, and the independent members are ratified by the Senate. (Note that one such independent member from each board has excused himself and not been replaced.) Nonetheless, the Energy Secretary, holds the tie-breaking vote in each board. Also, the fact that the Energy and Finance Secretaries both sit in each company's board implies that they can directly influence each company's directors, nudging them to comply with short-term political directives.

Similarly, the companies' operations are still influenced politically by the federal Finance Ministry. While, in theory, the managing directors are responsible for administering the companies autonomously, in practice, we have witnessed how the Finance Ministry has taken over the administration of PEMEX, pressuring for the ouster of the former director, Emilio Lozoya, influencing the appointment of the new one, José Antonio González, and the company's corporate finance director, Juan Pablo Newman, and mandating budget cuts (P\$162 billion in the last two years) according to the federal government's financing needs, not the company's investment priorities. CFE may not be similarly pressured, yet there is no special reason it could escape a similar fate if its finances deteriorated further.

What I believe would be the best way to help turn PEMEX and CFE into competitive enterprises is to allow them to offer shares to the public at large, at least on the Mexican stock exchange, but maybe also on foreign ones. By letting them answer to private shareholders, the state energy companies would have to be transparent about their operations, reporting diligently about costs, and facing the credible threat of disinvestment if their administrators failed to run them efficiently. Indeed, a general investors' assembly, not the president, should be the one charged with naming the board's members. Government officials and workers' delegates should participate in the executive boards, but not be allowed to hold a majority of votes in them. Looking to Norway's Statoil and Stat-

kraft or Colombia's Ecopetrol might offer alternative models for reform of corporate governance.

## Strengthening Regulatory Agencies

Reforming state energy companies' internal governance is not enough to help Mexico's energy markets become competitive. Political autonomy of regulatory agencies also must be strengthened. The purpose of regulation is to define standards of performance, then to award fair compensation for good performance and impose penalties in the contrary case. Through constant supervision and fine-tuning, regulators are able to align self-interest with the public interest.

In contrast with the simultaneous reforms of the Federal Economic Competition Commission (COFECE, the regulator of the market as a whole) and the Federal Telecommunications Institute (IFETEL, the broadcasting and telecoms regulator), the energy reform failed to grant energy sector regulators full political autonomy. The National Hydrocarbons Commission (CNH, upstream hydrocarbons) and the Energy Regulatory Commission (CRE, mid- and downstream hydrocarbons and electricity market) were recreated under a new legal figure, "coordinated regulatory bodies." This fanciful term is but a way of saying that they may have technical competencies, but that the federal government, particularly the Energy Minister, who presides over the Energy Sector Coordinating Council, is ultimately responsible for guiding and approving their work, and may apply political Body English to achieve its goals.

Having the Energy Secretary preside over the state energy companies' boards and the Energy Sector Coordinating Council is an evident conflict of interest. Regulators should focus on the merits of economic performance, disregarding the incumbency or political connections of market participants. Under the current institutional setup, other factors affecting the federal government's policies and goals may easily contaminate regulators' decisions, affecting whether efficiency is sought only when and how politically expedient.

Additionally, Mexico's reformers also committed a potentially devastating mistake by not protecting the energy regulators' determinations from constitutional appellate review (*amparo*) in the lower federal courts, as was done with COFECE and IFETEL through amendments to the Constitution and the Amparo Act, respectively. This means that market participants and energy consumers can file suits to challenge the authority of energy regulatory agencies, and have already done so against CRE. If challenges are successful, every decision Mexican energy regulators take will be open to review, and consolidating an efficient regulatory framework in the sector will take years, if not decades, to accomplish.

I strongly believe that Mexico's energy regulatory agencies should be granted the same legal status and protections as the regulators of other sectors. Of course, CRE and CNH must be held to the highest standards of transparency, for the threats of undue influence from powerful energy companies, public or private, are too great to risk.

Enforcing an effective rule of law in the Mexican energy sector is bound to have a widespread influence on the country's economy. Forcing the state energy companies to comply with strict market rules may lead to some of their employees and administrators losing their jobs, but the redistribution of benefits from reform is likely to overcompensate for these losses. Having strong and independent regulators to ensure that all market participants face the same sets of rewards and responsibilities, based on merit, will only help consolidate the gains.





## *What are the main challenges of land tenure in Mexico, and what is the role of rule of law in solving them?*

### POLICY RECOMMENDATIONS

- 
- Widen legal powers for members of social lands (*ejidos* and *comunidades*) so that they have as much flexibility on land use and concessions as private owners.
  - Enhance data of the National Agrarian Registry by including information about the land regime that was transferred or sold, and prices for equivalent plots depending on land regime.
  - Promote legal certainty, the correct exercise of landowner rights and attract investment by (1) ending the agrarian transition by finalizing legal and administrative procedures for legal recognition of social ownership of lands, (2) facilitating procedures for private investment in socially owned lands, (3) building funding strategies for agricultural and forest *ejidos*, and (4) ensuring equitable, legal, and environmentally friendly conditions for all agrarian transactions.
  - Advance development of agrarian settlements by creating public policies that apply the new Special Concurrent Program approach to coordinate programs and subsidies.
  - Develop high value-added firms in the primary sector in rural areas that target women and young inhabitants of *ejidos* and *comunidades*.
  - Reform the Rural Development Act to sponsor a new model of economic development that guarantees human, social, and economic rights in *ejidos* and *comunidades*.

# LAND TENURE

BY FÉLIX VELEZ

**E**conomic well-being and property rights are inseparable concepts. Since the beginning of my professional career as a professor of economics, and government official in various departments and agencies of the federal government, specifically as Chief of the Policy and Planning Office of the Ministry of Agrarian Reform, I have always recognized the importance of having adequately defined property rights and ensuring their protection.

The rule of law in land tenure is critical to promote development because having legally protected and secured land is a major source of wealth and welfare. Land is closely related to enjoying fundamental rights such as housing, food security, work, and cultural development. Protecting the access to land emerges from the universal and indivisible nature of human rights and should include access to natural resources and infrastructure as a requisite for habitation and creating livelihoods (for example, access to water in sufficient quantity and quality).

In Mexico, achieving equitable land distribution has been a long and complex process that began with the Agrarian Law of January 6, 1915. From that year until 1992, more than half the national territory was distributed in about 30,000 (Warman 2013, 84-95)<sup>1</sup> agrarian settlements, benefiting, at that time, 3.5 million households subject to land rights. The most important reform to the Constitution after the Mexican Revolution (1910-1920) was the 1992 modification of Article 27. Among other objectives,

this reform sought to conclude the process of land distribution and made it possible for social landholders to assume direct ownership through a process of voluntary regime change. Since its original drafting, this Article recognized three types of property: Public, Private, and Social.

In 1992, when the reform was implemented, about eight percent of the surface of the national territory was deemed Public Property, subject to the provisions and practices dictated by the Mexican government. An additional 40 percent of the territory was deemed Private Property, conferred (by the State) to individuals who assume full ownership and may engage in transfer of rights (sales and bequeathing). The remaining 52 percent of territory was Social Land, a type of land tenure resulting from a very particular evolution of forms of *occupation and ownership* and land use in Mexico. Nowadays, there are 32,015 *ejidos* and *comunidades*<sup>2</sup> (RAN 2015).

The 1992 reform promoted the creation of a new institutional actor in the Mexican countryside, the Agrarian Court Agencies that, while established by the Mexican Government, have autonomy in decision-making. In addition, the Agrarian Attorney's Office was created, dedicated to the defense of the rights of agricultural land inhabitants. However, to this day, there persists a disparity between the tenure rights of private land owners as compared to property owners under the Social land regime. Specifically, Social land owners enjoy less robust rights to decide land use and concessions, outright ownership, or to use land as collateral or bequeath property. Some restrictions prevail with regards to the autonomous decision-making of the agrarian settlements making clear the need to revise legal provisions to expand the margins of decision of the members of *ejidos* and *comunidades*.

The constitutional reform of 1992 also sought to improve the quality of life of those living in the countryside, supposing a priori positive impacts for property rights and productivity. The logic was simple: land reform should promote greater legal certainty to both landowners and investors (Méndez De Lara 2016) and consequently bring more investment to the countryside, positively impacting the living conditions for the inhabitants,

providing more and better jobs, access to credit, and access to food, education, and social security and therefore improving overall health conditions.

Creating legal certainty for the social ownership rights to land in Mexico has entailed the regulated documentation of land title rights implemented through PROCEDE (INEGI 2006), the Spanish acronym for the Program for the Certification of Land Rights and Plot Titles. Nowadays, 94 percent of the agrarian settlements completed the registry and certification process formalizing land plot sizes and boundaries.

Land certification and titling reduced land tenure conflicts in agrarian settlements and promoted forums for discussion and conciliation, as indicated by attendant legal procedures (Méndez De Lara 2016). In addition, the exercise of legal rights provided greater legal certainty in agricultural transactions. Now there is a new relationship between inhabitants of agrarian settlements and the State. However, managing this relationship and preventing future conflicts requires greater dissemination of information and communication with *ejidatarios* and *comuneros* about their rights and the procedures for exercising them.

According to data from the Statistical Report of the Agrarian Superior Court, of all contested cases registered, 40 percent relate to disputes over land boundaries and the restoration of rights within the agrarian settlements; 27 percent relate to disputes over the succession of rights that impact the relationships between family members, inheritors, and dispossessed of land; and 14.5 percent relate to acts that breach annulments of previous agrarian laws (Méndez de Lara 2016). On the other hand, according to the 2007 *Censo Ejidal*, the principal problems cited by inhabitants of agrarian settlements were (70 percent) problems related to access to water for irrigation, and all types of agricultural credit, while those related to land boundaries represent only 20 percent.

The 1992 land reform presumes a direct relationship between exercise of land rights and economic development in the countryside. The challenge now is to ensure that agricultural transactions will occur in conditions equitable for all parties and in accordance with legal procedures,

through mechanisms that reduce environmental degradation. According to data of the National Agrarian Registry, the sale or transfer of land rights is the activity most frequently registered (77 percent) of total registered cases from 1992 to 2015. It would be interesting to know if the transfer or sales was of *ejidatario* or *comunero* land, or land belonging to someone outside the Social Land regimen. For both situations, it would be interesting to identify the motivation of sales related to economic necessity of the seller as well as sales prices for equivalent plots of land (if aligned or not with market values) depending upon the land tenure regime.

Common Usage Lands are ejidal or communal lands that constitute the economic sustenance of the settlements and are not reserved for human settlements or individual lands (Agrarian Attorney's Office glossary). The contribution of Common Usage Lands to business corporations represents one of the clearest options to attract private capital to the countryside in partnership with *ejidos* and *comunidades*. However, the incidence of this type of case in the National Register (for the period 1992-2015) is almost zero (RAN 2015). Among the suspected reasons for lack of success in this area are: (1) ignorance of procedures, (2) failure among agrarian settlement inhabitants to come to agreement on terms of contracts and agreements with corporations, (3) distrust on the part of some investors to partner with *ejidatarios* and *comuneros*, assuming lack of ability to execute decisions made in the assemblies, and (4) obstacles to expedient access to issuance of binding opinions on investments and sustainable utilization of resources, due to excessive bureaucracy.

In addition, there is an identified gap in public policies that would foster bringing public and private investment to the countryside. To mention but one example of this, unfortunately, more than 23 years after the reform, concession rights for land usage are not accepted by state development banks as loan collateral, and even less by commercial banks.

Over time, public expenditure in the Mexican countryside has grown steadily, as evidenced by the budget allocated by the Chamber of Deputies for the Special Concurrent Program for Sustainable Rural Devel-

opment from 2003 to 2015. (This federal program provides a coherent strategy for diverse agricultural policies including financing, productivity, infrastructure, and the environment.) Despite this, evidence of a reduction in rural poverty is lacking. Even if we consider different economic and social indicators, after almost eight decades of agrarian distribution and a constitutional reform of property rights, as well as the implementation of a Rural Development Law in 2001 and the Social Development Law of 2004, poverty among most rural people continues virtually unabated.

To properly promote the full implementation of the rule of law with respect to land tenure, we need to make adjustments to the design and implementation of public policies and to the statutes. The goal in terms of the rule of law is to build a firm legal basis for equitable opportunities for all inhabitants of agricultural land to become full-fledged owners of their lands.

The following proposals offer some recommendations to enhance the rule of law in land tenure. All of them are aligned with the three principal strategies for the 1992 reform of Article 27 wherein *ejidos* and *comunidades* became recognized as Agents of National Development (Méndez De Lara 2016):

### **1) Promotion of legal certainty, the exercise of landowner rights, and attract investment:**

- Finalize the agrarian transition, addressing all administrative and jurisdictional pending issues to complete legal recognition of social ownership of property.
- Simplify procedures for contribution of lands to Business Corporations.
- Establish a differentiated strategy for government and corporate funding for agricultural and forest *ejidos*, and ensure the environmental sustainability of forest projects.
- Design and implement a Land Ordinance Plan that includes *ejido* and communal lands and allows growth areas for human settlements,

specifies how Common Usage Lands can be exploited, and promotes sound environmental practices.

## **2) Public Policy:**

- Establish public policies that promote the development of agrarian settlements applying the new Special Concurrent Program approach to merge programs and subsidies, and develop rural primary production enterprises with value-added, targeting women and young inhabitants of *ejidos* and *comunidades*.

## **3) Legal modifications:**

- Reform statutes on agricultural matters such that citizens can exercise their property rights, and use lands and benefit in conditions equal to owners of private property.
- Reform the Rural Development Act to promote a new model of economic development in *ejidos* and *comunidades* that guarantees human, social, and economic rights.

In conclusion, land is the most important asset for many families in Mexico, so proper implementation of a land tenure system where land is secured and respected by law is critical to creating an economic system that provides certainty and is fair and productive.

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## Endnotes

- 1 According to Presidential Resolutions of land endowment, about 30,000 "ejidos" and "comunidades" (agrarian settlements) that included 3.1 million households were recognized, although according to the 1991 Agriculture Census, 3.5 million individual respondents were considered as "ejidatarios" and "comuneros" (subjects of agrarian rights or land holders).
- 2 Ejido: A population center with legal status; and lands subject to a special social property ownership regime which are farmed cooperatively or individually and the men and women rights holders of those lands (*ejidatarios*). *Comunidades (Agrarian Communities)*: Population center consisting of the set of common lands, forests, and waters that were recognized or restituted by the Government, and which its members (*comuneros*) have presumably had possession since immemorial times, along with customs and communal practices. (Procuraduria Agraria 2009). *Comunidades* are often, but not always, indigenous communities.



*What are the necessary steps to strengthen Mexico's National Anticorruption System to guarantee results?*

## POLICY RECOMMENDATIONS

- 
- Construct a National Anticorruption System (NAS) that works in an efficient, coherent, and consistent way, and not as a combination of many institutions.
  - Promote a legislative agenda that can threaten the roots of corruption. It must include the procurement law, the public works law, the public contracts law, the public property registry law, the fiscal responsibility law, and the codes for electoral procedures and financing.
  - Monitor the appointment of the NAS directors, prioritizing the creation of a National General Accounting Office. Monitoring must continue after the appointees take office to guarantee professionalization and independence.
  - Combine NAS corruption investigations with an independent and critical media that exhibits cases of corruption to the Mexican public. To do this, the independence of media must be assured by regulating government publicity to avoid any attempt to influence media coverage.

# ANTICORRUPTION LEGISLATION

BY EDUARDO BOHÓRQUEZ

**A**s Mexican citizens, we have decided to exercise our right to present a citizen initiative to Congress, proposing that we use institutions to transform the regime under which we live and restore the trust of Mexican people in the authorities. We have decided to actively participate in the legislative process, as we need to mend the wounds in social fabric of the country.

Corruption and impunity tarnish democracy, social development, our country's international reputation, and human rights. Corruption has caused deterioration of the quality of health, transportation, and education services; distorted the implementation of public initiatives and programs; precluded access to justice; and is a direct threat to the safety of citizens. Corruption affects public biddings, licensing, and concessions and is also profoundly detrimental to the character of Mexican political-electoral life, given the illicit financing of political campaigns.

Corruption affects everyone, especially the most disadvantaged sectors of our society. Indeed, corruption has become the heaviest regressive tax on Mexican households: 33 percent of the income earned by families making minimum wage is used to pay bribes for paperwork and services.

This tear needs mending. In order to make our political system sustainable and ensure the continuation of democracy, Mexicans need to see change and action.

Laws will not suffice to transform our reality, but the current design of our regulations and institutions provide the base for the state of impunity that characterizes our democracy. We need to move toward the rule of law, in which rights, in plural, can be exercised on a day-to-day basis. We need a State founded on a new legal and institutional framework that ensures that the rights in our constitution are upheld in people's everyday lives.

In light of the fact that academic and civil society organizations cannot legislate or vote in Congress and are largely non-partisan, we decided to present a Citizen Initiative to combat corruption known as Law 3de3 and share information and insights with any legislator or parliamentary group willing to exchange studies, international experiences, and technical positions.

Over the past year, academics, specialists, and civil society organizations have issued recommendations for the seven initiatives comprising this first legislative package that included issues such as a new criminal regime to fight corruption and an oversight system to coordinate state and local authorities. We should recognize those legislators who opened the doors of Congress to citizen opinions and recommendations.

Beyond heavily publicizing assets, tax returns, and conflicts of interest, we want a National Anticorruption System that acknowledges the citizenry's discontent with corruption and impunity. We want a system that can dismantle the corruption networks operating throughout the country, a system that refuses to leave a single peso unaccounted for nor a single irregularity free of investigation and proper sanction.

The National Anticorruption System may be unable to multiply the government's scarce resources, but it could contribute to ensuring that funds are effectively used for their specific purposes. This new system could free marginalized families living in poverty from using their scarce resources to pay for this backward and painful financial burden.

A comprehensive anticorruption system is imperative for better investing our scarce resources and breaking down the barriers that small- and

medium-sized enterprises face because they suffer extortion constantly from organized crime and corrupt public servants alike.

The seven laws that were passed on July 18, 2016 launched a period of profound change in Mexico's public life.

To continue building the rule of law and ultimately curb corruption and its perverse effects on poverty and income distribution, we need to take several important steps:

First, we have to start from civil society to build a National Anticorruption System that can work effectively, consistently, and coherently throughout the entire country. This system needs to use its own mistakes as feedback and correct them right away. This should not be an amalgamation of fragmented institutions, but an authentic system to prevent, investigate, and sanction corruption among companies and public servants.

Second, academic and civil society organizations need to promote a new legislative agenda that would include, among other regulations, the procurement law, the public works law, the public contracts law, the public property registry law, modifications to the fiscal responsibility law, and the codes for electoral procedures and the financing of political-electoral life. This agenda should continue advancing and consolidating a legislative package that can get to the root of corruption.

Thirdly, we must closely follow the transformation of the institutions that are charged with implementing this new legislation, paying close attention to the appointment of new institutional directors. We should prioritize creating a National General Accounting Office as a central pillar for this new system in which impunity should be the exception rather than the norm. The public servants heading the organs that comprise the National Anticorruption System should be closely observed in order to professionalize the civil service and make it increasingly robust and independent of political whims. Through their professionalism, these public servants can help guarantee that Mexico is efficiently preventing and fighting corruption. We should be close and critical observers of the five citizens who will preside over the System, expecting the same professionalism we would demand of any public servant.

Lastly, in our shared, societal fight against corruption, it is imperative that any investigation of an institution be accompanied by independent, courageous, and timely criticism in the media. Our young democracy needs the press to keep deplorable cases of corruption—both public and private—in our collective memory, ensuring that citizens continue demanding that those who engage in corruption be prosecuted and punished. To safeguard the press's independence, government publicity must be properly regulated, thus avoiding any attempts at influencing media coverage of Mexican public life.

Over 634,000 people signed the anticorruption initiative drafted by civil society, trusting that we can change our country via institutions. These people put their anger, pain, and frustrations aside, investing their time in collecting signatures and inviting others to believe that change is in fact possible. We refuse to let corruption and impunity be seen as attributes of our community. We are here because we do not want corruption to be viewed as part of our values and culture. We are here because we want these burdens to stop dictating our way of life.

Civil society now needs to collaborate with the authorities across all parties to build a comprehensive, prosperous, just, and equal system. This task is in no way exclusive to the government, and we are here as part of a diverse civil society that can get organized and contribute to this task. Mexico's universities, research centers, and civil society house the talent needed to corner corruption in all its manifestations, including paperwork and services, legal procedures, contract bids, permits, and concessions.

We should open the doors of our institutions to our innovative citizenry, which is capable of questioning and building its own government.

We should turn our institutions into open governments and congresses that can sit down with the people and outline the plans our country needs.

Governments and congresses should be open to criticism, informed opinions, independent studies, and to listening to the perspectives of

those who have chosen not to work in government but who remain close to public affairs nonetheless.

Each generation of Mexican citizens has faced a challenge in building our public life. Our generation faces the challenge of uprooting the corruption and impunity that have become a part of our country's day-to-day life.

In any democracy, civil society plays a central role. The package of seven laws that was approved to give way to the National Anticorruption System stands as a milestone in Mexico's fight against corruption. Nonetheless, there is still a long way to go before we can exercise fully the rule of law. The vast and diverse group of Mexican citizens behind this citizen initiative want a lot more for Mexico. Make no mistake: We are going for more. #VamosPorMás



*How can a professional model of policing be created in Mexico?*

## POLICY RECOMMENDATIONS



- Understand that reorganizing and centralizing police forces has not worked in Mexico, because what is required are deeper and more substantive changes to internal police practices and incentive systems.
- Mexican police forces need not only more resources, better compensation, and more benefits, but also higher professional standards, merit-based promotion systems, and the strict surveillance and participation of civil society.
- Promote state and local efforts at innovation and experimentation—like the Civil Police Force model that was created in the state of Nuevo León by civic leaders and business groups—by providing block grants to states and municipalities.

# POLICE FORCES

BY DAVID A. SHIRK

## **Introduction: The Problems of Police in Mexico**

The first time I interviewed real live Mexican police officers was in March 1998, during my pre-doctoral field research in Ensenada, Baja California, which was then still a sleepy coastal town of about 300,000 people. The handful of police officers that I spoke to there were surprisingly open to talking about their work, including their challenges and frustrations as public servants devoted to law enforcement in less than ideal circumstances. They described the resource limitations and dismal working conditions that police have confronted both then and now in Mexico as a result of a lack of adequate preparation, resources, and support for conducting proper law enforcement. Also, in hushed tones, they offered candid commentary on the problems of corruption and abuse that plagued their agency. When I met with my dissertation advisor, however, I received sound advice: better to focus on a topic less likely to get me killed.

Still, these early conversations provided an eye-opening introduction to the problems of local law enforcement in Mexico and planted a seed that has grown into a research agenda of nearly 20 years on democracy and the rule of law in Mexico. What especially fascinated me was that these officers had also experienced something that once seemed impossible in Mexico: political alternation. Since the 1930s, Mexico's Institutional Revolutionary Party (PRI) had firm political control over virtually every political office in the country. However, in the 1980s, the PRI began losing local

elections to a new brand of political reformers who championed the ideas of transparency, accountability, and good government. In Ensenada, local businessmen frustrated by the ineptitude and corruption of PRI governments had joined the National Action Party (PAN), unseated the old ruling party, and began working to transform their local government. These victories were followed by others throughout the state of Baja California, culminating in the 1989 election of Mexico's first opposition governor in over 60 years, Ernesto Ruffo Appel. Soon, the opposition gained ground elsewhere around the country. By 2000, the PAN's wave of victories would rise to the level of the Mexican presidency, as Vicente Fox became the country's first PAN president, ending 71 years of continuous PRI domination of politics.

For a young and perhaps naïve young graduate student, this was a story that resembled or at least rhymed with the narrative of political change in the United States over the course of the 20th century. Arguably, at least from the 1830s through the 1960s, machine politics—a politics of corruption, electoral fraud, and graft—had thrived in many U.S. local and metropolitan areas. However, these urban areas and politics in general became gentrified due to a backlash from elites and business interests who sought to institute “good governance” based on the principles of transparency and accountability in public administration. As a graduate student, I had been fascinated by this transformation, and especially by the work of James Q. Wilson. No relation to the Wilson Center, Professor Wilson was a prolific scholar who analyzed the way that bureaucratic organizations and government institutions adapt in the face of changing political circumstances.

Wilson's work was quite different from the abstract, econometrical “public choice” theorists who dominated the political science literature of the 1990s, in that it was empirically grounded, policy-focused, and intelligible to a broader audience outside of academia. Importantly, Wilson's work on crime and law enforcement in the 1970s and 1980s became a major driver of police reform in the United States, contributing to the rise of “broken windows” and community-oriented policing approaches. As someone trying to understand Mexico, I was also intrigued by Wilson's

earlier work on the dynamics of political change in urban America, and especially the political reforms that replaced the cronyism and patronage-based machine politics of the past with a more modern and professional approach to governance.

In the U.S. experience, political alternation had been key to the process of police professionalization, and so too—I thought—democratic change might bring hope for the rule of law in Mexico. At the initiative of Wayne Cornelius at the UCSD Center for U.S.-Mexican Studies, we launched what is now known as the Justice in Mexico program, a multi-year policy research initiative that works to improve public security, rule of law, and human rights in Mexico.<sup>1</sup> Drawing on this research, we argued in our first edited volume on the subject, *Reforming the Administration of Justice in Mexico*, that democracy and the rule of law go hand in hand: both depend critically upon a basic respect for procedure, the development of effective accountability mechanisms, and an adherence to societal norms regarding justice or “fairness.”

Why then, well more than a decade into Mexico’s transition to democracy, have Mexican police forces failed to make progress from the conditions I saw back in the late 1990s? Why are police ineptitude, corruption, and brutality the subjects of international headlines and part of the daily experience of ordinary Mexicans? What hope is there for promoting reforms for the development of democratic policing in Mexico? The answers to these questions are complex, but we now have a much better understanding, thanks to a growing body of scholarly research. First, it is worth noting that experts and advocates of police reform have produced volumes of evidence over the years about the fundamental flaws of the Mexican law enforcement and security apparatus. For example, probing anthropological fieldwork by able scholars like Elena Azaola, Daniel Sabet, and María Eugenia Suárez provides a disquieting picture of the workplace conditions for Mexican police officers, as well as the structural factors that hinder reform. Cadets are given limited skills-training on the laws and procedures they are supposed to uphold, entire departments are woefully under-equipped in even the most basic facilities and supplies, police salaries and benefits are so paltry that agents often seek al-

ternative sources of income (including bribes), law enforcement officers who perform meritoriously are not rewarded (and are sometimes even penalized) for their efforts, and, in the worst cases, internal systems of graft and corruption require junior officers to pay bribes to superiors.

At the same time, tireless advocates of police reform like Mexican Institute for Competitiveness (*Instituto Mexicano para la Competitividad*, IMCO) Director Juan Pardinás, Institute for Security and Democracy (*Instituto para la Seguridad y la Democracia*, INSYDE) Founder Ernesto López Portillo, CIDE Professor Juan Salgado, and Open Society Program Director Robert Varenik have offered policy recommendations on the need for a greater focus on providing proper training, workplace protections, and professional criteria for police officers. INSYDE, for example, works directly with police agencies throughout the country to provide technical assistance and training in modern policing, including community engagement techniques and the basic rights of crime suspects.

Such efforts have provided an essential foundation for our own work at Justice in Mexico, which includes a series of cutting-edge surveys of police and other criminal justice system operators. Since 2009, the *Justiciabárometro* survey series has surveyed over 8,000 local police officers in eight different municipalities in three states to gain a more systematic understanding of the professional profile, workplace concerns, and societal relations of law enforcement officers in Mexico (*Justiciabárometro* 2009). To our knowledge, there is no larger, publicly available survey database on law enforcement officers anywhere in the world. Moreover, in addition to providing strong quantitative support for the rich qualitative research available on this subject, these surveys have helped to inform policy decisions at the local level.

In the six participating municipalities of the Guadalajara metropolitan area, for example, the first *Justiciabárometro* in 2009 found widespread frustration with the lack of clear and fair criteria for professional advancement on the force, a problem we have since found in police departments throughout the country. In Ciudad Juárez, our 2010 *Justiciabárometro* study helped to draw attention to vulnerabilities in the security protocols

of local police installations that put officers in harm's way. In our 2014 *Justicabarómetro* study in Tijuana, we found that resource limitations remained pervasive even among the highest paid police officers in Mexico, prompting the local government to invest in new uniforms and equipment for officers.

The most important problem is that there is too often a lack of vision or political will to advance and sustain effective police reforms in Mexico. Over the past few decades, when pressed to reform police agencies—usually in the wake of some corruption scandal or atrocity—Mexican officials have typically resorted to sleight of hand and smoke and mirrors. When the corps is rotten, heads of departments or even entire police divisions are publicly shamed and dismissed, but rarely arrested. In the most severe cases, entire law enforcement agencies are dissolved, but are then resurrected with new acronyms and many of the same officers from the previous organization.

Both PRI and PAN administrations have been guilty of this pattern, which stretches back at least to the 1980s. Particularly significant was the Federal Security Directorate (*Dirección Federal de Seguridad*, DFS), the country's primary national enforcement agency and often an instrument of PRI political control from 1947 to 1985. During the 1980s, the DFS colluded with and protected Mexican organized crime groups, until revelations of its complicity in the torture and murder of DEA agent Enrique Camarena led to the dismantling of the agency in 1986. Later, another federal police agency, the Federal Judicial Police (*Policía Federal Judicial*, PFJ), widely regarded to be corrupt, was replaced by the Federal Investigative Agency (*Agencia Federal de Investigación*, AFI) by presidential decree in 2001.<sup>2</sup> Although the AFI was initially touted as having a highly vetted force with capabilities similar to the U.S. Federal Bureau of Investigation, by December 2005 a fifth of its agents were found to be corrupt and the agency was dismantled (Shirk 2009). In 2010, hundreds of officers from the Federal Police—a new agency that supplanted the Federal Preventive Police in 2009—were dismissed and arrested on charges of corruption. In August 2011, PGR sources revealed that eight percent of

the 20,400 agency employees were under investigation for suspected irregularities committed in performing their jobs (Rivera 2009a).<sup>3</sup>

In the spirit of pouring old wine into new bottles, the other major current in Mexican police reform in recent years has been to emphasize the need for greater centralization and coordination of police agencies. In 2005, President Fox advanced a comprehensive criminal justice reform package that laid the groundwork for judicial reform and also sought to create a single national police force. Subsequently, the Calderón administration advanced a similar proposal aimed at centralizing police forces at the national or state level. In the lead-up to his presidency, Enrique Peña Nieto appeared intent on continuing the pattern by proposing the creation of a national gendarmerie that would centralize police functions at the national level. While the proposal for a national gendarmerie was a central element of Peña Nieto's security strategy, in the tripartite talks that resulted in the Pact for Mexico, this initiative was ultimately watered down and his December 2014 proposal for a constitutional reform to centralize all Mexican police agencies under a unified command (*Iniciativa de Reforma Constitucional en Materia de Paz y Seguridad*) floundered, due in part to the parochial opposition of governors and mayors unwilling to cede their law enforcement duties to higher authorities. Since then, the Peña Nieto administration shifted to a different strategy: conditioning federal transfers for security funding on the adoption at the state level of a "unified command" (*mando único*) model of policing. As of December 2015, at least 25 states had pledged to adopt unified command structures, and the vast majority of municipalities in these states had agreed to abide by this new model.

Still, there are well-founded reservations about this strategy. The problem with the prospect of a unified command and other forms of organizational restructuring is that it rests on false assumptions about the core problems of police agencies in Mexico. To be sure, the centralization of command structures can offer certain benefits, insofar as it allows for more unified communications, greater uniformity of procedure, and larger economies of scale in resource management. However, the real problems of Mexican police have much more to do with issues of internal

and external accountability, something that does not necessarily come naturally with the centralization of authority. The problems of low integrity and unprofessional conduct in police agencies in Mexico are a function of the lack of transparency, accountability, and professional standards. As long as advancement on the police force depends more on personal relationships and other arbitrary criteria than on professional ability, Mexico's police agencies will be amateurish at best—and thuggish at worst. In addition, providing greater opportunities and higher standards for educational attainment will be key: police with more education tend to demonstrate greater overall professionalism. Moreover, promoting gender equality on the force may also help reduce corruption and abuse, since female officers in our surveys appear more likely to report such behaviors and view them negatively.

## How to Be An Optimist in Dreadful Situations

In recent years, the most notorious example of Mexican law enforcement gone wrong is the September 2014 police attack on unarmed civilian protestors in the municipality of Iguala, Guerrero. In that tragedy, at least 43 students from the Ayotzinapa teacher's college are believed to have been abducted by police, never to be seen again. DNA testing later confirmed that at least one of the victims was killed and incinerated, and several others are believed to have perished in the same manner. While the available evidence fits with the official narrative based on the federal government's investigation of the case, many details of that investigation have been challenged by eyewitnesses, experts, and international observers. In particular, there are doubts whether all of the abducted students were incinerated, whether the incinerations all occurred in the same location, who was responsible for actually killing the students (police or a local organized crime group), and the specific roles and culpability of the various individuals that were arrested in the months following the massacre.

Also, against all odds, parents of the victims continue to hold out hope that some of the students remain alive. What is not in doubt is that on the night of the disappearance, several individuals—including both pro-

testors and bystanders—were killed by authorities in Iguala. Moreover, what is particularly egregious and concerning is the extent to which local corruption, infiltration, and cooperation with organized crime groups appears to have contributed to events on the ground in Mexico. Clearly, nearly 20 years after my first interviews with Mexican police, many of the worst attributes of Mexican police forces remain unchanged.

What hope, then, can we have for the future of law enforcement in Mexico? I remain an optimist about the prospect for police reform in Mexico, largely because I tend to have more modest expectations and operate on a long-term horizon. More than 40 years ago, the disappearance of student protestors in 1968 was ordered by national level authorities who were able to bury the story in the media and continue to persecute their political opponents with impunity in a dirty war that persisted over the next decade. Today, not even a PRI government can cover up the terrible human rights abuses that happened in Iguala, as victims' families, protestors, the media, and international organizations have maintained an intense and effective campaign to monitor and denounce official ineptitude and even complicity at all levels of government.

Looking ahead over the longer term, my sense is that police reform will come precisely from such public scrutiny and pressure. Also important will be reforms to the Mexican criminal justice system, which are meant to raise the bar of expectations for proper police and prosecutorial conduct. We see this already in states like Nuevo León, where civic leaders and the business community combined forces to introduce a new police model: a Civil Police Force (*Fuerza Civil*). There, the work of a new generation of scholars, like American University Ph.D. student Jeanna Cullinan, may help to identify the keys to successful police reform, which in Nuevo León have included various measures for improved training, salaries, benefits, and officer safety. In other words, the Civil Police Force model illustrates that reorganizing police agencies is not enough: what is needed are resources, higher professional standards, better compensation and benefits, and—when these fail—proper investigation of problems in police agencies. Moreover, the Nuevo León example suggests that political pressure and participation from civil society plays a role in pro-

moting reform and ensuring follow through. The Civil Police model may not be the answer for all police forces in Mexico, but it shows that local innovation and experimentation can provide useful lessons for reformers elsewhere.

That said, we do not see such advances occurring everywhere or as rapidly as we would ideally prefer, so it is easy to be critical of Mexico's police forces. Indeed, every day, we see evidence of their incompetence and corruption. They are reviled and disparaged by the general public. Unsurprisingly, few of Mexico's best and brightest young people are willing to dedicate their lives to becoming police officers themselves. Meanwhile, although there are many police officers who lack professional training and integrity, there are some who sincerely dedicate their lives to protecting their communities, despite low pay, few benefits, and little social prestige. These officers are the hope for improving Mexican law enforcement into the future, and they—like Mexican society—deserve better. What is needed today are substantive changes to internal police practices and incentive systems, including merit-based criteria for advancement and proper internal investigations to ensure that good cops, not bad ones, will thrive and move up the ranks to become the stewards of tomorrow's Mexican police forces.

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## Endnotes

- 1 Now based at the University of San Diego, Justice in Mexico ([www.justiceinmexico.org](http://www.justiceinmexico.org)) promotes analysis, dialogue, and policy solutions to address a variety of urgent problems related to security and violence, transparency and accountability, and justice and human rights issues in Mexico and in the U.S.-Mexico border region.
- 2 The AFI was created by presidential decree in 2001 to bolster the investigative capacity of the Federal Attorney General's Office (PGR). At that time, the AFI replaced the corruption-plagued Federal Judicial Police in order to bring about a more professional, scientific, and comprehensive investigative process that would take aim at the operational foundations of organized crime—similar to the stated goals of the new Federal Ministerial Police. The agency came under fire in 2005 under widespread allegations of corruption, and in December of that year the PGR announced that nearly one-fifth of its officers were under investigation for suspected involvement in organized crime. Agents of the AFI took to the streets in April 2009 to demand that the PGR and Congress not allow the agency to disappear. Nonetheless, the measure was approved by Congress, and President Calderón signed it into law on May 29, 2009. From the date the new law went into effect, the PGR had 30 days to purge its rosters of undesirable personnel. Former AFI agents able to pass toxicology, medical, psychological, and background checks were given priority for hiring in the new agency.
- 3 Rivera (2009b), Notimex (2009), Sánchez (2009), De la Luz González (2009a), De la Luz González (2009b).





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