REFORMING THE
ADMINISTRATION OF JUSTICE
IN MEXICO

edited by
Wayne A. Cornelius and David A. Shirk

UNIVERSITY OF NOTRE DAME PRESS AND
CENTER FOR U.S.-MEXICAN STUDIES, UNIVERSITY OF CALIFORNIA, SAN DIEGO
NOTRE DAME, INDIANA, AND LA JOLLA, CALIFORNIA

© 2007 University of Notre Dame Press
Reforming the administration of justice in Mexico / edited by Wayne A. Cornelius and David A. Shirk.

Includes bibliographical references.

∞ The paper in this book meets the guidelines for permanence and durability of the Committee on Production Guidelines for Book Longevity of the Council on Library Resources.
CHAPTER 1

Introduction: Reforming the Administration of Justice in Mexico

DAVID A. SHIRK AND ALEJANDRA RÍOS CÁZARES

One of the greatest challenges facing Mexico today and for the foreseeable future is that of ensuring the rule of law through the effective administration of justice. For the past decade, Mexicans have consistently ranked crime, corruption, and injustice among their top concerns. Their preoccupations about public security and access to justice have been partly a response to real increases in crime, especially violent crime. However, they also reflect the public’s enormous frustration with the inability of Mexican government and law enforcement officials to effectively guarantee public security, accountability, and access to justice. Even after the 2000 elections—the watershed event that ostensibly confirmed Mexico’s transition to democracy—the public’s general perception is that lawlessness prevails because government and law enforcement officials remain indifferent, inept, or corrupt.

Unfortunately, all evidence suggests that these negative public perceptions of Mexican authorities are well founded. Poor training, inadequate resources, inefficient procedures, and case backlogs are pervasive throughout the criminal justice system. In addition, official corruption, abuse of authority, limited transparency, a general lack of accountability, and even the direct involvement of public officials and law enforcement agents in criminal activity are sufficiently common to justifiably undermine the pub-

The authors wish to acknowledge the contributions and improvements made by Arturo Alvarado, John Bailey, Wayne Cornelius, David Eisenberg, Barak Hoffman, Pablo Piccata, Benjamin Reames, Allison Rowland, Kathleen Staudt, Brittany Thatcher, Robert Varenik, and other collaborators over the course of several drafts of this chapter.

© 2007 University of Notre Dame Press
lic’s trust. One concrete result of these severe problems is that the vast majority of total crimes in Mexico go unreported, and only a tiny fraction of reported crimes are actually punished.¹ The state’s failure to adequately prevent, prosecute, and punish crime results, in turn, in greater criminal impunity and significant frustration for victims of crime. Meanwhile, too many individuals who are ultimately charged with crimes are themselves deprived of due process, go long periods in jail without formal sentencing, obtain inadequate legal defense, and suffer significant human rights abuses by law enforcement authorities (see Azaola and Bergman, this volume).

Over the last decade, a steadily growing public outcry demanding that authorities address these problems has provoked a nationwide debate on the need to reform the administration of justice in Mexico. Despite the movement toward a more competitive political system and some significant advances in Mexico’s justice system during the last decade—including the restructuring of the judiciary and key agencies, major blows against organized crime, and a number of state-level reform initiatives—there has not been a significant improvement in the overall effectiveness, transparency, and accountability of the system. The slow change from a regime of single-party hegemony to a regime of multiparty competition and political alternation has not been accompanied by an improvement in the real and perceived effectiveness of the state to guarantee order, justice, and government accountability. To continue its democratic consolidation, Mexico needs to secure the protection of citizens’ basic legal rights and personal security, equal access to justice, and an accountable state. Reforming the administration of justice has therefore become an essential task for Mexico’s continued democratization.

**DEMOCRATIC GOVERNANCE AND THE RULE OF LAW IN MEXICO**

During the 1980s and 1990s, the literature on democratic transitions in Latin America and Eastern Europe placed much emphasis on the necessary incentives and conditions for transforming existing authoritarian regimes into democratic systems.² However, as Pilar Domingo points out, in the

---

¹ “[F]ewer than one in five inquires concludes satisfactorily” (Zepeda Lecuona, this volume).

² That is, much of this literature initially focused on identifying the pathways to democracy or the circumstances required for dictators to surrender authority to democratic actors (O’Donnell and Schmitter 1986; Di Palma 1990; Huntington 1991; Mainwaring et al. 1992; Przeworski 1991; Rueschemeyer, Steopheans,
urgency to identify and establish “the minimal democratic rules of the
game,” much of the initial literature on democratization overlooked a cru-
cial element of democracy: the rule of law (Domino 1996: 2). Many newly
emerging democracies experienced a rising tide of crime, violence, and
corruption that ultimately detracted from the performance of democratic
institutions on multiple levels. This was especially true in Latin America,
where a history of weakness and corruption in judicial institutions has
combined with several new trends that are complicating the provision of
order, accountability, and access to justice, including severe economic cri-
eses, rapid social and demographic change (urbanization), and powerful
domestic and transnational crime syndicates. In response, scholars from
multiple disciplinary approaches to social scientific inquiry in Latin Amer-
ica have sought to analyze and find solutions to a wide range of interre-
lated rule of law challenges, including crime and public insecurity, corrup-
tion, unprofessional and ineffective policing, human rights abuses,
vioence against women and minorities, vigilantism, ineffective and
squalid prisons, and criminal recidivism.3

In spite of the agreement on the relevance of the rule of law and the
need to address its challenges, there is no consensus about the definition
of the concept. In this introduction we consider the rule of law to consist of at
least three broad components: the regulation of individual behavior within

and Stephens 1992), and later on the design of electoral institutions capable of
promoting representative and sustainable democratic systems of government
(Grofman and Lijphart 1986; Lijphart and Aitkin 1994; Lijphart and Grofman
1984; Lijphart and Waisman 1996; Taagepera and Shugart 1989). As the proc-
ess of democratic consolidation progressed, scholars began to analyze other
issues of institutional design that would yield greater stability and effective-
ness in democratic governance, including the nature of executive-legislative
relations (Lijphart and Waisman 1996; Linz and Valenzuela 1994; Mainwaring
and Shugart 1997; Shugart 1995), the strength of party organizations (Camp
1996; Di Tella 1998; Mainwaring 1999; Mainwaring and Scully 1995), and the
distribution of national-local power within political systems (Carmagnani and
Bidart Campos 1993; Gibson 2004; Montero and Samuels 2004; Samuels 2003;
Tulchin, Selee, and Clemente 2004). In short, much of the literature on democ-
ratization and democratic consolidation focused on pressing problems of in-
stitutional design that concerned would-be political reformers and newly es-
tablished democratic governments.

3 Domino 2004; Domino and Sieder 2001; Gloppen, Gargarella, and Skaar
2004; Jarquín and Carrillo Florez 1998; McAdams 1997; Salvatore, Aguirre,
and Joseph 2001; Ungar 2001; O'Donnell, Vargas Cullell, and Iazzetta 2004;
Bailey and Dammert. 2006.

© 2007 University of Notre Dame Press
society under the law (order), the accountability of the state and its representatives under the law (accountability), and access to justice through the law (access).4

The first component of our definition of the rule of law is the maintenance of “order” in terms of the provision of security, the regulation of social conduct, and the resolution of grievances according to a previously devised legal code. Order maintenance implies the existence of effective mechanisms for addressing deviant behavior from established law. “Accountability,” the second component, refers to a State that is itself committed to be responsive to its citizens, to protect their individual rights, and to abide by the established legal order. Accountability is crucial to contemporary notions of the rule of law, in which groups and individuals in society must be protected from arbitrary or improper conduct by the State and its representatives. Finally, the notion of “access” requires that the enforcement of the law be efficient and predictable and that people have equal access to justice and equal treatment before the law itself. This component of the rule of law is based on the relatively modern and inherently normative understanding that the law must be effective, swift, and just.5

With regard to this definition of the rule of law, we must make two important observations. On the one hand, as our definition suggests, the manner in which “order,” “accountability,” and “access” are achieved is highly dependent on the nature and conduct of the State. Our definition is intrinsically linked to contemporary notions of democracy, especially liberal democracy. Unlike autocratic political systems, where society is essentially subject to the will of those in power, democratic systems place State power in the service of society through popular sovereignty. Certainly, autocratic political systems often boast a significant degree of “order” and may even achieve a semblance of State obedience to the law.6 However,

4 For a good discussion of these three elements as components of the rule of law, see Kleinfeld Belton 2005.

5 When enforcement of the law is slow, irregular, inefficient, or inherently inimical to basic individual rights, the law is inadequate or even pernicious. Further, when individuals do not have access to justice, they may be inclined to subvert the law by taking matters into their own hands; under the above definition, vengeance and vigilantism are inconsistent with the rule of law.

6 For example, Robert Barros (2003) argues that the collective nature of decision making in the Chilean military dictatorship from 1973 to 1990 was what contributed to a meticulous and rigorously respected institutional order that provided restraints equivalent to the rule of law.
with regard to constraints on State behavior and the provision of access to justice, authoritarian actors are ultimately only as subject to the law as they choose to be. Any restraint they may exercise is ultimately not externally binding or is at best extremely difficult to enforce from outside the State.\footnote{Indeed, even in the case of Chile—where some scholars suggest that the Pinochet dictatorship was a regime “bound by law”—recent revelations suggest that illegal and corrupt government behavior occurred even at the highest levels. In March 2005, a U.S. Senate report produced by a subcommittee of the Committee on Governmental Affairs alleged that General Augusto Pinochet embezzled more than US$13 million, which was deposited to 125 offshore bank accounts, many of them in the United States (U.S. Senate Press Release 2005). Consider also the limits of the rule of law in China as discussed by Turner-Gottschang, Feinerman, and Guy 2000.} Hence, according to our definition, the rule of law is not compatible with authoritarian rule.

On the other hand, we argue that society at large plays a key and complementary role to that of the State in the provision of the rule of law. Societal traditions and norms both guide individual conduct and provide the fundamental basis of the law (Black and Mileski 1973). Likewise, groups and actors in organized civil society—professional associations, civic activist groups, and other self-organizing communities—play a key role in holding the State accountable for its actions and in advocating for access to justice.

To establish the rule of law—through an effective justice system that emphasizes strong preventive institutions, equitable access, effective resolution of grievances, civilian oversight, basic personal security, and the protection of individual rights—is an essential part of democratic consolidation (Ungar 2001). However, to consolidate the rule of law is necessarily an ongoing process and not an end goal, and is therefore one of the most elusive virtues to which any democracy can aspire. Indeed, even advanced, industrial democracies face continual challenges in protecting their citizens from crime, injustice, and inappropriate behavior from agents of the State. For instance, at different times and degrees over more than two centuries of representative government, the United States has experienced significant levels of crime, official corruption, and abuses of state power at virtually all levels of government. Moreover, it was not until the 1960s that the United States established universal access to key protections for the accused (such as the Miranda rights), free access to legal defense counsel, and standards and practices to promote “professional” policing. The rule of law must therefore be understood as a slowly attained and constantly evolving quality.
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Argentina</td>
<td>5.2</td>
<td>3.4</td>
<td>2.8</td>
<td>3.0</td>
<td>3.0</td>
<td>3.5</td>
<td>3.5</td>
<td>2.8</td>
<td>2.5</td>
<td>2.5</td>
<td>2.8</td>
<td>3.2</td>
</tr>
<tr>
<td>Belize</td>
<td>n.a</td>
<td>n.a</td>
<td>n.a</td>
<td>n.a</td>
<td>n.a</td>
<td>n.a</td>
<td>n.a</td>
<td>4.5</td>
<td>3.8</td>
<td>3.7</td>
<td>4.0</td>
<td></td>
</tr>
<tr>
<td>Bolivia</td>
<td>--</td>
<td>3.4</td>
<td>2.1</td>
<td>2.8</td>
<td>2.5</td>
<td>2.7</td>
<td>2</td>
<td>2.2</td>
<td>2.3</td>
<td>2.2</td>
<td>2.5</td>
<td>2.5</td>
</tr>
<tr>
<td>Brazil</td>
<td>2.7</td>
<td>3.0</td>
<td>3.6</td>
<td>4.0</td>
<td>4.1</td>
<td>3.9</td>
<td>4</td>
<td>4</td>
<td>3.9</td>
<td>3.9</td>
<td>3.7</td>
<td>3.7</td>
</tr>
<tr>
<td>Chile</td>
<td>7.9</td>
<td>6.1</td>
<td>6.1</td>
<td>6.8</td>
<td>6.9</td>
<td>7.4</td>
<td>7.5</td>
<td>7.5</td>
<td>7.4</td>
<td>7.4</td>
<td>7.3</td>
<td>7.2</td>
</tr>
<tr>
<td>Colombia</td>
<td>3.4</td>
<td>2.7</td>
<td>2.2</td>
<td>2.2</td>
<td>2.9</td>
<td>3.2</td>
<td>3.8</td>
<td>3.6</td>
<td>3.7</td>
<td>3.8</td>
<td>4.0</td>
<td>3.2</td>
</tr>
<tr>
<td>Costa Rica</td>
<td>n.a</td>
<td>n.a</td>
<td>6.4</td>
<td>5.6</td>
<td>5.1</td>
<td>5.4</td>
<td>4.5</td>
<td>4.5</td>
<td>4.3</td>
<td>4.9</td>
<td>4.2</td>
<td>5.0</td>
</tr>
<tr>
<td>Cuba</td>
<td>n.a</td>
<td>n.a</td>
<td>n.a</td>
<td>n.a</td>
<td>n.a</td>
<td>n.a</td>
<td>n.a</td>
<td>n.a</td>
<td>4.6</td>
<td>3.7</td>
<td>3.8</td>
<td>4.0</td>
</tr>
<tr>
<td>Ecuador</td>
<td>n.a</td>
<td>n.a</td>
<td>n.a</td>
<td>2.3</td>
<td>2.4</td>
<td>2.6</td>
<td>2.3</td>
<td>2.2</td>
<td>2.2</td>
<td>2.4</td>
<td>2.5</td>
<td>2.4</td>
</tr>
<tr>
<td>El Salvador</td>
<td>n.a</td>
<td>n.a</td>
<td>n.a</td>
<td>3.6</td>
<td>3.9</td>
<td>4.1</td>
<td>3.6</td>
<td>3.4</td>
<td>3.7</td>
<td>4.2</td>
<td>4.2</td>
<td>3.8</td>
</tr>
<tr>
<td>Guatemala</td>
<td>n.a</td>
<td>n.a</td>
<td>n.a</td>
<td>3.1</td>
<td>3.2</td>
<td>n.a</td>
<td>2.9</td>
<td>2.5</td>
<td>2.4</td>
<td>2.2</td>
<td>2.4</td>
<td>2.7</td>
</tr>
<tr>
<td>Honduras</td>
<td>n.a</td>
<td>n.a</td>
<td>n.a</td>
<td>1.7</td>
<td>1.8</td>
<td>n.a</td>
<td>2.7</td>
<td>2.7</td>
<td>2.3</td>
<td>2.3</td>
<td>2.6</td>
<td>2.3</td>
</tr>
<tr>
<td><strong>Mexico</strong></td>
<td>3.2</td>
<td>3.3</td>
<td>2.7</td>
<td>3.3</td>
<td>3.4</td>
<td>3.3</td>
<td>3.7</td>
<td>3.6</td>
<td>3.6</td>
<td>3.5</td>
<td>3.5</td>
<td>3.4</td>
</tr>
<tr>
<td>Nicaragua</td>
<td>n.a</td>
<td>n.a</td>
<td>n.a</td>
<td>3.0</td>
<td>3.1</td>
<td>n.a</td>
<td>2.4</td>
<td>2.5</td>
<td>2.6</td>
<td>2.7</td>
<td>2.6</td>
<td>2.7</td>
</tr>
<tr>
<td>Panama</td>
<td>n.a</td>
<td>n.a</td>
<td>n.a</td>
<td>n.a</td>
<td>n.a</td>
<td>n.a</td>
<td>3.7</td>
<td>3</td>
<td>3.4</td>
<td>3.7</td>
<td>3.5</td>
<td>3.5</td>
</tr>
<tr>
<td>Paraguay</td>
<td>n.a</td>
<td>n.a</td>
<td>n.a</td>
<td>1.5</td>
<td>2.0</td>
<td>n.a</td>
<td>n.a</td>
<td>1.7</td>
<td>1.6</td>
<td>1.9</td>
<td>2.1</td>
<td>1.8</td>
</tr>
<tr>
<td>Peru</td>
<td>n.a</td>
<td>n.a</td>
<td>n.a</td>
<td>4.5</td>
<td>4.5</td>
<td>4.4</td>
<td>4.1</td>
<td>4</td>
<td>3.7</td>
<td>3.5</td>
<td>3.5</td>
<td>4.0</td>
</tr>
<tr>
<td>Uruguay</td>
<td>n.a</td>
<td>n.a</td>
<td>4.1</td>
<td>n.a</td>
<td>4.4</td>
<td>n.a</td>
<td>5.1</td>
<td>5.1</td>
<td>5.5</td>
<td>6.2</td>
<td>5.9</td>
<td>5.2</td>
</tr>
<tr>
<td>Venezuela</td>
<td>2.7</td>
<td>2.5</td>
<td>2.8</td>
<td>2.3</td>
<td>2.6</td>
<td>2.7</td>
<td>2.8</td>
<td>2.5</td>
<td>2.4</td>
<td>2.3</td>
<td>2.3</td>
<td>2.5</td>
</tr>
<tr>
<td><strong>Average</strong></td>
<td>4.2</td>
<td>3.6</td>
<td>3.6</td>
<td>3.3</td>
<td>3.5</td>
<td>3.9</td>
<td>3.7</td>
<td>3.4</td>
<td>3.5</td>
<td>3.5</td>
<td>3.5</td>
<td>3.6</td>
</tr>
</tbody>
</table>
Achieving the rule of law is an especially difficult challenge for new democratic governments, given that the process of regime change (the process by which the apparatus of the State itself is reformed or replaced) is often inherently destabilizing, particularly in developing countries. Whether brought about by political negotiation, revolution, or external imposition, regime change eliminates, disrupts, or significantly modifies political institutions and norms. In particular, regime change often involves a transformation of the structure and function of the coercive organizations of the State: the police, the penal system, and the military. The effects of this transformation may be inherently destabilizing for the organizations themselves, may occur too slowly for the needs and preferences of citizens, or may otherwise strain relations between the State and society.

Democratic transitions also lead to increases in both the demand for justice and the public’s intolerance for violations to the law. This is due to: (1) the inauguration of an electoral democracy that increases the expectations of government performance and its ability to provide collective goods, such as access to justice (especially among traditionally neglected groups), and (2) a greater degree of transparency in government performance that affects the information citizens obtain and use to evaluate the government. When new democratic governments are unable to cope effectively with increasing expectations and demands—and when the expansion of basic freedoms (such as freedom of expression) places bureaucratic ineptitude at the center of public opinion—public frustrations are likely to increase. The outcome is a cycle of high expectations, governmental ineffectiveness, media exposure, public frustration, and greater demands. This cycle is of key concern because it threatens to erode support for democracy and increase the appeal of populist or authoritarian formulas that may ultimately work to undermine the rule of law.

These challenges appear to be broadly applicable to countries of the so-called Third Wave of democratization during the last quarter of the twentieth century. In all the regions where the Third Wave had its greatest impact—Africa, Eastern Europe, and Latin America—the new freedoms of democracy were accompanied by significant problems of crime, violence, and disorder, along with poor improvements in combating corruption. Table 1.1 presents some statistics on the perception of corruption for some Latin American countries in the last ten years.8

---
8 See Finn 1991; Godson 2003; Kaufmann 2001; McAdams 1997. On rule of law challenges in post-Soviet Russia and Eastern Europe, especially organized
In Mexico, while official rates of reported crime declined significantly from the 1940s to the 1970s—a period of strong economic growth—a series of economic crises in the 1980s and 1990s was accompanied by sharp increases in certain forms of crime, especially robbery and theft (see figure 1.1).\(^9\) Nationally, Mexicans reported 63 crimes per 100,000 inhabitants each month between 1997 and May 2005.\(^10\) This statistic obscures subnational dynamics, however, because average reported crime rates varied significantly across states during the same period (see figure 1.2). For example, during this period Tlaxcala residents reported 29 crimes per month per 100,000 residents, while Baja California residents reported 218.

Over the last two decades, Mexico’s levels of crime and violence have been accompanied by serious problems of corruption, organized crime (especially narco-trafficking), widespread impunity, and abuse of public authority. As a result and despite Mexico’s democratic transition, there is a lack of public confidence in the Mexican government’s ability to guarantee basic security and the rule of law (table 1.2). In particular, citizens continue to express very low confidence in Mexican police as law enforcement agents (table 1.3).

Furthermore, despite an apparent leveling off—and possibly a slight decline—in Mexico’s crime rate since 2000, citizens’ perceptions of “public security” as a primary national problem have generally increased over the course of recent years (figure 1.3).\(^11\)

---


\(^10\) Sistema Nacional de Seguridad Pública. The data up to 2001 were compiled by Arturo Arango and Cristina Lara; these data are available at www.seguridadpublicaenmexico.org.mx/crisada/estadistica/estadistica.htm. Data for 2002–May 2005 were compiled by the authors from INEGI statistics (www.inegi.org.mx).

\(^11\) There is a lack of public data on how people perceived public insecurity before 1997, and data for the 1997–2000 period are not public.
Figure 1.1. Criminal Charges Filed in Mexico at State-level Jurisdiction, per 100,000 Inhabitants, 1926–2001


These data show that Mexico’s new democratic leaders must respond to public demand by addressing the deterioration of domestic security, by creating better mechanisms to keep public officials under control, and by securing equal access to justice. Otherwise, public officials risk a severe political crisis since Mexico’s real and perceived failing rule of law may undermine support for democratic governance. As then–Mexico City Police Chief Marcelo Ebrard observed in May 2003: “Our justice system does not work. It is clear that if we do not resolve this problem, not only will we have an increasingly difficult situation, we may also provoke political problems of a magnitude that we cannot imagine, because the impression that exists—the public’s perception—is that the legal system does not work.”\textsuperscript{12} This volume scrutinizes the key challenges that Mexico faces in reforming its justice system and identifies possible strategies for improving the rule of law.

\textsuperscript{12} Comments by Marcelo Ebrard, in Conference Report: Reforming the Administration of Justice in Mexico, from a conference hosted at the Center for U.S.-Mexican Studies, University of California, San Diego, May 15–17, 2003.
Figure 1.2. Monthly Average Crime Reporting Rates in Mexico per 100,000 Inhabitants, 1997–May 2005


Table 1.2. Perceptions of Federal, State, and Local Efforts to Fight Crime

<table>
<thead>
<tr>
<th></th>
<th>Good Performance</th>
<th>Bad Performance</th>
<th>No Opinion</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Federal government</td>
<td>31%</td>
<td>45%</td>
<td>24%</td>
<td>100%</td>
</tr>
<tr>
<td>State government</td>
<td>36%</td>
<td>42%</td>
<td>22%</td>
<td>100%</td>
</tr>
<tr>
<td>(includes Federal District)</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Local government</td>
<td>43%</td>
<td>37%</td>
<td>20%</td>
<td>100%</td>
</tr>
<tr>
<td>(municipalities)</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Table 1.3. Rating of Trust in Mexican Institutions on a 10-Point Scale

<table>
<thead>
<tr>
<th></th>
<th>April, 04</th>
<th>July, 05</th>
</tr>
</thead>
<tbody>
<tr>
<td>Universities</td>
<td>n.a</td>
<td>8.1</td>
</tr>
<tr>
<td>Church</td>
<td>7.7</td>
<td>7.7</td>
</tr>
<tr>
<td>Army</td>
<td>7.5</td>
<td>7.7</td>
</tr>
<tr>
<td>National Human Rights Commission</td>
<td>n.a</td>
<td>7.4</td>
</tr>
<tr>
<td>Federal Electoral Institute</td>
<td>6.7</td>
<td>7.1</td>
</tr>
<tr>
<td>Mass media</td>
<td>7.0</td>
<td>6.9</td>
</tr>
<tr>
<td>President</td>
<td>6.1</td>
<td>6.2</td>
</tr>
<tr>
<td>Supreme Court</td>
<td>5.7</td>
<td>6.1</td>
</tr>
<tr>
<td>Businessmen</td>
<td>5.3</td>
<td>5.3</td>
</tr>
<tr>
<td>Political parties</td>
<td>4.7</td>
<td>5.1</td>
</tr>
<tr>
<td>Senators</td>
<td>4.7</td>
<td>5.0</td>
</tr>
<tr>
<td>Police</td>
<td>5</td>
<td>4.9</td>
</tr>
<tr>
<td>Labor unions</td>
<td>4.8</td>
<td>4.7</td>
</tr>
<tr>
<td>Legislative deputies</td>
<td>4.2</td>
<td>4.5</td>
</tr>
</tbody>
</table>

Source: Consulta Mitofsky, “Confianza en Instituciones,” National Home Survey, July 2005, p. 3 The question asked was: In a scale like the one used in the school, where 0 is nothing and 10 is a lot, please tell me how much you trust ....

Figure 1.3. Percentage of Citizens for Whom Insecurity Is Most Important Problem

Source: Reforma newspaper, Mexico City, July 30-31, 2005, national phone survey.
ORDER: REDUCING CRIME AND CRIMINALITY IN MEXICO

Any discussion of crime and criminality must begin with a major caveat: obtaining accurate, reliable, and comprehensive statistical indicators about crime and law enforcement is extremely difficult, particularly in Mexico. In general, there are essentially three kinds of crime: (1) crimes that are unobserved by the victim or authorities, (2) crimes that are known but not reported, and (3) crimes that are known and reported. Many crimes in Mexico fall into the first two categories and—because hard data on such crimes are essentially impossible to obtain—are commonly referred to by Mexican criminologists as “black data” (the cifra negra). Underreporting results from many factors. Although victims or witnesses may feel disinclined to report crimes due to humiliation (a common reaction in rape cases) or indifference (for example, among witnesses to minor traffic violations), underreporting in Mexico is too often related to inconvenience or a lack of confidence in the justice system.

That is, many victims perceive that the process of reporting crimes is highly bureaucratic and time consuming, and may even lead to further victimization by authorities. Furthermore, given high rates of criminal impunity (that is, the improbability of apprehension and punishment) in Mexico—because police and the judicial system are often ineffective or corrupt—victims also perceive that reporting a crime is a futile exercise. A recent survey on crime and victimization in Mexico shows that only 25 percent of those who were victims of crime between 1999 and 2005 reported the crime to the public prosecutor (ministerio público); and of those who reported a crime, 63 percent were disappointed with the performance of the public prosecutor.

When crime data are collected in Mexico, the methods for collection are often significantly flawed in ways that prevent effective investigation or analysis. Thus, not only is there a lack of information about crime in Mexico, there is also a lack of credible information and clear priorities for the data needed to confront the problem of insecurity. For example, Mexican authorities often fail to collect data about the victim (such as age, sex, employment, relation to the offender, and so on) or the circumstances of the

13 Comments by Arturo Arango in Conference Report: Reforming the Administration of Justice in Mexico.

crime (specific location, time of day, damage or loss suffered by the victim, and so on). Moreover, most police units—such as “preventive” and “auxiliary” police (which provide support to banks and private businesses)—do not even collect and report crime statistics.

Additionally, because prosecutors are generally able to obtain convictions with a single charge, crime data are often collected in ways that obscure the multiple infractions that might be involved in a given incident. For example, a homicide suspect carrying an illegal weapon and drugs may only be charged with the most serious offense in order to streamline the process of prosecution. Furthermore, individual police and different agencies have enormous discretion in categorizing a crime; as a result, there is no uniform analytical framework to permit systematic comparison. Likewise, generalization across other sources (such as opinion polls) is complicated by variations in definitions, sample populations, and methodology.

All of these points suggest that crime statistics in Mexico have major flaws. Nonetheless, at a minimum, the imperfect crime data available provide a point of departure for analysis and improvement in data collection. Experts estimate the incidence of crime in Mexico by tabulating: (1) the rate of “known crimes” as indicated in victimization surveys;¹⁵ (2) the “apparent crime” reported and crimes under investigation or “preliminary inquiry” (averiguación previa); (3) “investigated crimes”; and (4) crimes resulting in arrest and sentencing. Agencies of the executive branch (including the police and attorneys general) collect and manage data in the first three categories, while the judiciary (including the courts, magistrates, judicial police, and so on) operate and manage data in the third and fourth categories. Statistics on public security are eventually compiled from state-level attorneys general and published by the National Institute of Statistics, Geography, and Informatics (INEGI) and the Ministry of Public Security (SSP). Data on suspects (probables delincuentes) and convicted criminals (delincuentes sentenciados) are published in judicial statistics bulletins. Reports

¹⁵ The Citizens’ Institute for Security Studies (ICESI) recently published two major surveys on crime and victimization: The International Survey on Crime and Victimization (Encuesta Internacional sobre Criminalidad y Victimización), 1999–2004, and the Third National Survey on Public Safety (Tercera Encuesta Nacional sobre Inseguridad), 2005. ICESI is a civic organization sponsored by academic institutions (Universidad Nacional Autónoma de México, Instituto Tecnológico Autónomo de Monterrey, and the Este País Foundation) and the private sector.
of selected crime indicators can also be obtained from the president’s annual report and those of state and local executives.

The first section of this volume examines notions of crime, historical crime trends, and contemporary patterns of criminality in Mexico. Experts generally assert that our understanding of crime is socially constructed and that the reactions crime provokes from the State and from the general public are shaped by that construction (Buffington 1994; Speckman Guerra 2002). Robert Buffington begins therefore with a detailed discussion of the construction of crime and criminality in modern Mexico, providing a cautionary tale for would-be modern-day reformers. Buffington points out that public and governmental reactions have historically failed to properly diagnose and prescribe solutions to Mexico’s crime problems. Across multiple phases in Mexico’s history, different criminal justice paradigms portrayed endemic social crises as “crime waves”; villainized society’s “undesirables” (from the traditional petty thief or ratero to the modern norteño narco-trafficker); produced concerted efforts to measure public opinion about crime through new methods and technologies; and led to the patchwork construction of new laws and structural reforms. The result of these often misguided criminological frameworks has been the development of suboptimal policy responses, self-perpetuating dilemmas, and the accumulation of anomalies, contradictions, and failures in the judicial system. Thus, from Buffington’s perspective, the problem with criminological paradigms and reform efforts in Mexico is that they have ultimately proved cyclical and self-defeating.

Pablo Piccato’s study of crime trends in Mexico City likewise illustrates the persistence of Mexico’s criminal justice challenges over the better part of the twentieth century. Piccato’s presentation of long-term historical data in Mexico City reveals an apparent contradiction between popular perception and quantitative statistical evidence. On the one hand, multiple testimonies collected throughout the century show that crime (particularly violence, theft, and corruption) was a permanent concern for the inhabitants of the city. On the other hand, despite the noticeable increases in the last two decades, official indicators suggest that (with important exceptions, such as Baja California, Baja California Sur, Quintana Roo, and Yucatán) crime has generally tended to level off or decline over the course of the twentieth century and into the twenty-first century (see figure 1.4).

Piccato blames underreporting for the apparent contradiction between the popular perception of a constant “crime wave” and the declining statistical incidence of crime. Given the corruption and resource limitations of
law enforcement authorities, today’s victims choose not to bring the vast majority of all crimes to the attention of the police.\footnote{Zepeda discusses rates of reporting in his chapter in this volume.}

Figure 1.4. Crime Rates in Mexico City, Baja California, and Nationwide during the Fox Administration


A major contribution of Piccato’s chapter is his discussion of how certain Mexico City communities have been forced to develop their own internal norms for adjusting to crime and other social problems in order to avoid falling into a state of anomie or unfocused collective violence. Indeed, Piccato underscores the way that society adapts in the absence of effective state responses to crime and insecurity, and illustrates that these adaptations can play an important role in promoting the rule of law.

Meanwhile, little is generally known about criminals in Mexico. While the criminal himself is a central focus of criminological studies elsewhere, he is practically nonexistent in studies on crime in Mexico. However, some
important exceptions have helped illuminate the social construction, organization, and individual calculus of crime and criminality. The objective of such analyses must necessarily be to evaluate the extent to which societal transformation and institutional reform can affect the conditions that lead to criminality and the ultimate calculus of choosing to commit a crime.

Accordingly, in their coauthored chapter, Elena Azaola and Marcelo Bergman present the results of the first major study of prisoners in Mexico, conducted by a team of researchers at the law school of the Centro de Investigación y Docencia Económicas (CIDE). Official data on prisoners and incarceration in Mexico are still very rare and contain little detailed information. Hence the authors provide unique insights into the kinds of crimes committed by inmates, personal background and socioeconomic status of prisoners, treatment and access to justice in the course of arrest and prosecution, and prison living conditions.

According to Azaola and Bergman, Mexico’s imprisoned population nearly doubled—from 87,700 to 177,500 inmates—between 1992 and 2003. The authors explain that this increase was partly due to real increases in crimes committed, but was also due to increasing the number and duration of drug-related sentences (as has also occurred in the United States; see Blumstein and Beck 1999). In other cases, where officials have discretion to alter sentences, prison personnel are often too overloaded to allow for review or early release. Some other problematic characteristics of Mexico’s prisons that Azaola and Bergman reveal—such as the large numbers of convicts awaiting court verdicts, due to an unreliable parole system—illustrate unresolved challenges elsewhere in the Mexican justice system. Other patterns—such as inhumanely overcrowded facilities, insufficient basic services such as food, medicine, and clothing, and the overrepresentation of individuals who could not afford adequate legal defense—invoke Dostoevsky’s observation that a society is best judged by the treatment of its prisoners (figure 1.5).

Yet, as Azaola and Bergman point out, these findings do not suggest that Mexico is unique or different from other Latin American countries. Rather, they illustrate the low priority that public officials throughout the hemisphere have placed on using their prison systems to promote rehabilitation and reduce recidivism. Meanwhile, knee-jerk reactions to perceived

---

increases in crime have produced inadequate, counterproductive policies (raising penalties and so on) that will not adequately address the problem.

Figure 1.5. Official Estimates of Prison Overcrowding in Mexico, 1998–2004

![Graph showing overcrowding in Mexico from 1998 to 2005]


ACCOUNTABILITY: LAW ENFORCEMENT AND JUDICIAL REFORM

Recent research published by the Center for U.S.-Mexican Studies at the University of California, San Diego suggests that problems of insecurity in Mexico tend to be more tied to citizens’ “perception of the government’s ineffectiveness in enforcing the law than to perceptions of crime itself” (Bailey and Chabat 2001). Indeed, many analysts contend that Mexico’s public safety “crisis” lies less in the increases in crime and violence of the mid-1990s than in the inability of the criminal justice system to adequately and responsibly address them.

In part, this failure is the result of problems of institutional design and dysfunction, some of which date from the days of Spanish colonial rule and others from more than a century of authoritarian rule under the Porfiriat and Institutional Revolutionary Party (PRI) hegemony. These problems are frequently reflected in the lack of professionalism and improper behavior of actors within the legal system. Indeed, the entire justice system
in Mexico suffers from a poorly trained and weakly professionalized police force and legal profession. While Mexican policing has been one of the few areas of government growth in an era of massive downsizing, these efforts have not been accompanied by significantly greater effectiveness and accountability in the system.

That these are ultimately issues of institutional design means that throwing additional resources at the problem will not provide adequate solutions. Real progress requires comprehensive institutional reforms that increase the integrity, effectiveness, and accountability of the state apparatus itself in order to ensure greater access to justice for Mexico’s citizens. This volume therefore directs particular attention to the organizations and institutional roles of public security and judicial personnel—the military, police, public prosecutors, lawyers, and judges—in the functioning of the justice system.

**Policing and Prosecution in Mexico**

A recent U.S. Department of Justice Report on police reform asserts that “security is important to the development of democracy and police are important to the character of that security.” According to this report, “democratic” police organizations must adopt norms in which police: (1) hold as their primary mission protection and service to individual citizens; (2) are constrained by law, not “by directions [from] particular regimes and their members”; (3) protect human rights, particularly those freedoms essential to democracy; and (4) are transparent in their operations and subject to external review (Bayley 2001: 13–15). According to the author of this report, “promoting police reform is widely regarded as a key element of democratic governance. Assisting in the democratic reform of foreign police systems has become a front-burner issue in American foreign policy” (Bayley 2001: 5).

Major innovations in policing and legal reform began to gain ground in North America and Europe in the 1960s and 1970s and have done so more recently in Latin America with the course of democratization. However, Mexico falls short and has been slow to adopt such standards. In part, the behavior of police organizations in Mexico is the product of decades of rule by a corrupt political system and the selective application of justice dating back to Spanish colonialism and its nineteenth-century legacies.18 During

---

the twentieth century, Mexican police and criminal investigators operated in a context where machine-style monopoly politics encouraged impunity, incompetence, and antagonism, much as they did under entrenched political machines in the United States.\textsuperscript{19} The result has been a significant deviation from the norms of modern democratic policing.

A growing number of scholars have turned their attention to problems of policing and public security in Mexico.\textsuperscript{20} However, until recently, studies of Mexico’s criminal justice system remained relatively isolated and awaiting an integrative theory, comparative insights, and a more comprehensive analysis of the problems at hand. This volume provides a number of studies and recommendations that help to fill this void. In his chapter, Benjamin Reames presents a useful overview of police organizations in Mexico. As Reames discusses, Mexico fits the general pattern in Latin America of having an organizational separation between order maintenance and investigative functions, in the form of the preventive police (policía preventiva) and judicial police (policía judicial).

Moreover, despite having very large numbers, Mexico’s civilian police organizations are generally afflicted by practical human and material resource limitations that reduce their effectiveness, professionalism, and levels of public confidence. Indeed, police salaries are low even by Mexican standards (see table 1.4), and other types of benefits (such as life insurance) and basic equipment (bullets, bulletproof vests, and uniforms) must often be purchased by the officers themselves. Reames argues that, above and beyond these problems, the Mexican system suffers from particularly “confusing organization and inefficient use of personnel,” “frequent internal reorganizations,” and important problems of coordination. Reames explains that the Fox administration sought to overcome these challenges by unifying some of the nation’s police organizations and increasing the investigative capacity of police.

In his chapter, Guillermo Zepeda Lecuona looks explicitly at the problem of criminal investigations and argues that police functions are too limited to properly assist prosecutors, undermining the effective administration of justice in Mexico. Zepeda looks specifically at the role of the public prosecutor’s office in the investigative phase of a crime known as


the "preliminary inquiry." Since most Mexican police have no legal authority to investigate crimes, the public prosecutor’s office plays a critical role. However, because this office is responsible for both conducting investigations and prosecuting crimes, the public prosecutor is considered a "privileged party," with major advantages vis-à-vis the legal defense of the individual accused of a crime. Moreover, given that police do not have investigative capacity, public prosecutors’ offices in Mexico are significantly overburdened because they handle investigations of all reported crimes, rather than dealing only with the subset of crimes that result in prosecutions.

Table 1.4. Daily Average Income by Sector, February 2005
(average daily minimum wage is US$4.05)

<table>
<thead>
<tr>
<th>Sector</th>
<th>Police</th>
<th>Manufacturing</th>
<th>Maquiladoras</th>
<th>Construction</th>
<th>Services</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>$13.45</td>
<td>$35.77</td>
<td>$23.33</td>
<td>$15.27</td>
<td>$22.09</td>
</tr>
</tbody>
</table>


Note: Exchange rate in February 2005: US$1 = MX$11.16.

* Average wage of a policeman in the Preventive Police in Mexico City in February 2005 (Policía Bancaria e Industrial).

Hence Mexico’s prosecutors spend most of their time fulfilling basic investigative functions that might be better done by police organizations, as they are in other countries. The prosecutors’ excessive workload necessitates a high degree of discretion in the selection and investigation of cases, though this discretion is generally unregulated and unsupervised. The result, according to Zepeda, is that a relatively small number of reported crimes for which a suspect is identified (less than one in four) and an even smaller number of suspected criminals (less than half) are brought to trial. But what is especially needed to improve the institutional capacity of prosecutors in criminal investigations, Zepeda argues, is greater independence for units charged with investigating crimes, the creation of a career civil service at the state level to increase professionalism, and the injection of greater accountability through “a clear system of regular and autonomous external supervision” linked to the established system of judicial oversight.
On the other hand, as Robert Kossick and Rubén Minutti argue in this volume, part of the problem is the lack of the competition and balancing power provided by capable defense councilors who are decently equipped to challenge prosecutors.\(^{21}\) Indeed, for many Mexicans the idea of providing law enforcement with more resources and authority is difficult to accept because of the accurate perception that police themselves are so often corrupt and abusive. In his chapter, Carlos Silva develops a classification of the cases of police abuse in Mexico City, focusing particularly on the motivations found in the daily practices of police units. Drawing on findings and recommendations of the Human Rights Commission of the Federal District from its founding in 1994 to 2003, Silva developed a classification that takes into account the legal and organizational factors that contribute to corrupt practices and behaviors among police. He finds three main modalities of corruption and abuse: (1) as a substitute for proper investigation and prevention, (2) as a means of unlawful economic gain, and (3) as punishment for challenging the “power” of the police. Silva then identifies five major contributors to corruption and abuse in Mexico: (1) the characteristics of individual police personnel; (2) the organizational procedures for recruitment, training, and internal management; (3) the particular context of interaction; (4) macro-level socioeconomic factors; and (5) the existing legal framework for regulating police functions. Overall, Silva paints an extremely critical picture of the current state of police behavior in Mexico and illustrates the urgent need for reform in the new democratic context.

All of the above challenges that undermine the overall effectiveness of police have contributed in turn to a troubling trend: the “militarization” of policing. The militarization of Mexican policing manifests itself in at least two ways: a high involvement of former military personnel in Mexican police organizations, and significant involvement of the armed forces themselves in domestic law enforcement activities, particularly with regard to the war on drugs. The prevailing wisdom in Mexico appears to be that involving the highly respected armed forces in the fight against narco-trafficking is a necessary evil.\(^{22}\) This involvement began well ahead of the Fox administration. If it has not existed throughout the entire history of policing in Mexico (Barrón Cruz, Silva, and Yáñez R. 2004), it certainly was in place by the time President Miguel de la Madrid declared in 1986 that

---

\(^{21}\) See also Gilman 2001; Human Rights First 2001; Reding 1995.

\(^{22}\) According to General Alvaro Vallarta Cecena (Ret.), “The army has to take the risks [of corruption], like when a doctor ... attends a sick person. He runs the risk of contracting the contagious disease” (Kraul 2002).
narco-trafficking represented a national security crisis. Later, President Ernesto Zedillo substituted career military officers and soldiers for civilian law enforcement personnel in the criminal justice systems of several states, most notably in Chihuahua and the Federal District (Mexico City).

Yet, according to Sigrid Arzt’s chapter in this volume, during the Fox administration the armed forces in Mexico significantly expanded their role and presence in the distinct areas of security, intelligence, and justice. Indeed, the appointments of General Rafael Macedo and other high-ranking military officers to civilian law enforcement positions at the outset of the Fox administration were evidently intended as part of a serious campaign to enhance the integrity of the Mexican justice system.\(^\text{23}\) The incorporation of military personnel was accompanied by increased U.S.-Mexico collaboration and resulted in major blows against drug-trafficking cartels. Notably, in early 2002 Mexican and U.S. officials accomplished a long-standing goal—the disruption of the Tijuana cartel—when local officials in Mazatlán, Sinaloa, killed Ramón Arrellano-Félix and elite counternarcotics units in Puebla arrested Benjamín Arrellano-Félix. One year later, the Fox administration captured Osiel Cárdenas, head of the Gulf cartel, who was later incarcerated in La Palma, the same maximum security penitentiary holding Benjamín Arrellano-Félix. Unfortunately, despite these accomplishments, Mexico experienced continued violence as remnants of the Tijuana and Gulf cartels—still coordinated by their imprisoned leaders—battled rivals seeking control of lucrative northern drug corridors into the United States.\(^\text{24}\)

In the end, the militarization of domestic security and policing raises serious concerns about the potential for increased corruption within the armed forces and about their overall effectiveness in contributing to public safety. Yet present civilian alternatives do not appear well suited for the challenges at hand. Indeed, the resignation of Attorney General Rafael Macedo—partly in response to public criticism over the attempt to prose-

\(^{23}\) It is worth noting that, prior to taking office, Fox pledged to abolish the Office of the Attorney General (PGR) but instead relied heavily on the agency during his term. See Smith and Ellingwood 2000.

\(^{24}\) The resulting violence included the retaliatory murder of half a dozen Matamoros prison guards, the brazen assassination of Nuevo Laredo’s police chief only hours after being sworn in, and dozens of killings (several of which were perpetrated by masked commando units, or “Zetas,” allegedly coordinated by Osiel Cárdenas and apparently comprising former military personnel).
cute Mexico City mayor and presidential hopeful Andrés Manuel López Obrador for failing to comply with a court order—provoked criticisms that his successor, Daniel Cabeza de Vaca, lacked the experience and credibility to effectively manage the office (Barclay 2005). For Arzt, then, the most urgent priority is to establish institutionalized civilian counterbalances within the executive branch, in other branches of the federal government, and in society as a whole.

Key Actors in the Mexican Legal System

In addition to a focus on police, this volume also places substantial emphasis on the professional role of key actors—including lawyers and judges—in the Mexican legal system. After years of neglect in Latin America, judicial reform and the professionalization of legal actors have become major priorities for strengthening democracy and the rule of law.25 In Mexico, as Schatz, Concha, and Magaloni discuss in their chapter, the last set of major judicial reforms came at the outset of the administration of Ernesto Zedillo (1994–2000). These reforms consisted primarily of top-down initiatives to modestly restructure and increase professionalization at the highest levels of the judiciary, rather than at the level where most criminal justice takes place. Thus the Zedillo-era reforms fell far short of resolving Mexico’s systemic justice-sector problems.

The urgency of deeper and more substantial reforms was made clear by a scathing 2002 United Nations report critiquing persistent problems in the Mexican justice system: the disorganization of the legal profession, problems of lawyer-prisoner accessibility, harassment and intimidation of lawyers and human rights defenders, trial procedure violations (including the use of forced confessions), the inefficiency of injunction procedures (amparo), inadequate access to justice for indigenous persons, the lack of special legal procedures for children and adolescents, the utter failure to resolve the brutal serial murders of hundreds of women in Ciudad Juárez since 1994, a lack of equality and access for women, and a general lack of transparency and accountability throughout the justice system (Cumarraswamy 2002).

Nonetheless, it seems that reform of the justice system will depend on the prevailing theories and arguments of politicians and actors in the legal

system and their ability to convince a skeptical public that they have succeeded in developing viable solutions after many failures. Drawing lessons from a historical perspective, Elisa Speckman Guerra looks at how the connection between statute and the administration of justice is impacted by social change. In particular, Speckman argues that judges, lawyers, and policymakers have been the crucial agents of change in past reforms to the administration of justice in Mexico. The social and political context in which these actors operate is therefore key to understanding the prospects and direction for legal change. Using interviews and public pronouncements of lawyers and judges, Speckman studies the legal codes of 1871–1931 to explain the emergence of the 1931 legal system, which brought about major changes in Mexico’s criminal codes in response to a significant rise in violence and drug-related crime during the 1920s.

According to Speckman, as occurred in other countries, these reforms reflected socially constructed notions of crime and legal theories that predominated at the time. For Speckman, changing legal discourse brought a critical shift that ultimately tended to constrain judicial prerogatives, make punishments harsher, emphasize incarceration, and generally abandon the belief that law enforcement could reform individual criminal behavior. This was the beginning of a new era in Mexican criminal justice that coincided with the consolidation of the state apparatus and the new political context that developed after the Mexican Revolution. Similarly, reforms at the current transitional stage of Mexico’s political development will similarly hinge on the discourse of scholars and legal experts, the theories and priorities that they identify as most germane to Mexico’s contemporary circumstances, and their efforts to integrate these to the juridical status quo.

What is troubling about this prospect is the significant lack of professional standards among Mexico’s 40,000 practicing lawyers, which Héctor Fix-Fierro discusses in his chapter. Fix-Fierro focuses especially on undergraduate legal education, since Mexican lawyers need not obtain a graduate degree in order to practice law. As Fix-Fierro points out, the current state of legal education has been undermined by a veritable explosion in the number of law programs in Mexico and a lack of oversight of them. The diversity and proliferation of such programs have resulted in enormous variation in the quality of legal training. Moreover, would-be lawyers are not required to take a standardized bar examination or any assessment of their qualifications with regard to professional responsibility and ethical conduct in the practice of law. There is also no requirement for
lawyers to belong to a bar association in order to practice law, nor are there any professional requirements for continuing legal education for lawyers and judges.

The lack of regulation by the government or professional associations gives lawyers enormous leeway and little accountability to the public. The deficient oversight of the legal profession leaves practically no defense against a disloyal, negligent, or dishonest lawyer, as such individuals are very rarely prosecuted or convicted for crimes related to their professional practice. As a result, in the above-mentioned 2002 United Nations report, the president of Mexico’s largest bar association (the 2,000-member Mexico City–based Colegio de Abogados) admitted that “the legal profession in Mexico might be one of the worst in the world insofar as disciplinary procedures were concerned” (Cumaranaswamy 2002). According to Fix-Fierro, a decisive factor for reform will therefore be an open and public debate on how to regulate legal education, access to the profession, and the overall role of lawyers in the administration of justice in Mexico.

Complementing Fix-Fierro’s evaluation of lawyers, Jeffrey Staton’s chapter focuses on the role of judges in the reform of Mexico’s justice system. According to Staton, it is obvious that judges intimately affect the success of reform efforts since reform packages are designed to influence judicial performance. However, the exact role judges play in reshaping judicial institutions is less clear. Although judges and the judiciary are traditionally viewed as apolitical, Staton argues that judges can play an active role as “agenda setters” in shaping public debate and initiatives for reform.26 Judges may consult directly with legislative reformers or even influence public opinion by “going public.” Staton argues that this creates a fundamental dilemma for judges as they try to manage the judiciary’s public relations at the same time that they are expected to remain “apolitical.”

Staton focuses on the role of ministers of the current Supreme Court (all appointed with the restructuring of the federal judiciary in late 1994), who engaged in lobbying efforts directed toward national policymakers and

---

26 There are historical reasons for the traditionally apolitical role of the Supreme Court. In 1882, in the wake of the so-called Iglesias-Vallarta dispute, a constitutional reform was passed to prevent members of the Supreme Court from serving provisionally as chief executive. However, the larger implication of the Iglesias-Vallarta dispute was that it institutionalized the notion that the Supreme Court should remain outside of the “political realm.” See Barragán 1994.
mounted an aggressive public relations campaign designed to connect the Court directly to the Mexican public. Their efforts produced mixed results. On the one hand, the Court successfully supported reforms for judicial efficiency and administrative control over the functioning of the court system. On the other hand, the Mexican Congress rejected key proposals to increase the Court’s powers of constitutional interpretation (such as strengthening *amparo* rulings) and judicial independence. Hence, in contrast to Speckman’s findings, Staton concludes that successful lobbying by the judiciary may convince executives or congressional delegates to consider reform proposals, but this does not ensure that those proposals will be enacted.

**ACCESS TO JUSTICE: CIVIC PARTICIPATION AND OVERSIGHT**

In recent years a number of desperate and even extreme reactions from the public have illustrated the severity of Mexico’s rule of law challenges and the need to integrate civil society in the process of justice reform. On June 27, 2004, a quarter of a million Mexicans dressed in white marched in the streets of Mexico City to protest the government’s failure to address problems of crime and violence (Alcaraz and Cortés 2004; Thompson 2004). Four days later, in response to their demands, Fox unveiled a ten-point plan that included an increase in spending on security from US$250 million to $350 million for 2004 and to half a billion dollars for 2005.27

In the weeks that followed, however, capital-city residents took out their frustrations on suspected criminals and even police in a series of vigilante acts and mob lynchings, one of which resulted in the televised beatings and murders of two federal police officers in November 2004.28 While this was the most widely reported incident in recent years, vigilantism and public lynching have been common in Mexico, though predominantly in

---

27 The ten points were: (1) a meeting of the National Security Council (CNSP) to address the issue; (2) the incorporation of state prosecutors in the CNSP; (3) coordination with state governors; (4) more effective coordination of police; (5) greater transparency in the area of security; (6) increased budget for security; (7) a media campaign to promote a culture of legality; (8) total quality and service in attention to reported crime; (9) a new system of attention to victims of crime; and (10) the constant purification of PGR and SSP police forces (Kraul 2004; Ruiz and Arvizu 2004).

28 McKinley and Thompson 2004. In reaction to public outrage over the incident, Fox fired Mexico City Police Chief Marcelo Ebrard.