
Contextualizing Corruption: Politics and the (un)Rule of Law in Mexico

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Introduction

Government faces two major dilemmas: how to control society, and how to control itself (Escalante 2006). As James Madison put it, “In framing a government which is to be administered by men over men, the great difficulty lies in this: You must first enable the government to control the governed; and in the next place, oblige it to control itself” (Federalist No. 51, Hamilton, et al. 1982, 262). Today, we recognize that while the first task generally falls to state institutions asserting control over society, the latter task reaches beyond trying to get the government to control itself, as Madison suggested, and relies more on society controlling government. Though analysts normally treat these two vast realms -- crime and corruption/ law enforcement and accountability institutions -- separately, both rest on the rule of law: the effectiveness of legal norms and rules (embedded in institutions) to determine the behavior of citizens and rulers.¹

In an effort to assess the links between these two tasks and to contextualize corruption this essay explores the rule of law in Mexico broadly conceived. Following an overview of the scope and depth of the problems facing the country along the two dimensions -- denoted here as societal forms of illegality and state forms -- I examine the direct and indirect relationship linking the two. I then proceed to highlight common foundations affecting both, explore the nuances, and offer some observations about the nature of the relationship linking the rule of law to democracy. The essay concludes by briefly discussing common approaches to addressing these twin problems.

The Unrule of Law in Mexico

It is no secret that the Mexican government faces severe challenges in controlling society and itself. As Fernando Escalante (2006, 23) notes, “El Estado mexicano no ha sido capaz nunca de imponer el cumplimiento de la ley, ni siquiera a los funcionarios.” Jorge Zepeda Patterson similarly concludes: “No vivimos en un estado de derecho. Todos los días miles de mexicanos humildes son víctimas de tribunales y autoridades que operan a favor del poderoso o del que ofrece más” (cited in Sefchovich 2008, 277).

The pervasive societal forms of lawlessness include the growing drug- and gang-related violence that dominates the daily newspapers. In 2008, the country suffered 6,290 homicides, mostly drug-related, roughly double the amount in 2007.² The violence includes dramatic public acts, such as the grenade attack in Morelia during the 2008 *Grito* (independence day celebration), gruesome methods, including the beheading of rival gang members, the targeting of public officials and journalists, a rise in kidnappings in broad daylight, and shakedowns of local businesses in some cities.³ In early 2009, organized crime forced the chief of police in Ciudad Juárez to step down after threatening to kill a police officer every two days. Besides law enforcement officials, Mexican journalists also suffer under these brutal conditions. In 2006, the French based *Reporters Sans Frontiers* ranked Mexico as the second-most dangerous country for journalists after Iraq, with nearly two dozen journalists losing their lives during the Fox *sexenio*.⁴

Beyond the high-profile crimes orchestrated by ever more sophisticated networks of organized crime, which represent perhaps the most serious threat facing the government of

Felipe Calderon and nurturing a debate in Mexico and the U.S about state failure (see Rubio 2009; on the concept in general see Call 2008), other forms of conduct designed to evade the law seem equally pervasive. Mexico has long featured a booming informal economy encompassing not only the drug trade, but extensive contraband markets in everything from textiles and guns to pirated DVDs, *chocolate* cars, and pirated taxis.⁵ Businesses routinely seek avenues of noncompliance to escape environmental, health, safety, labor⁶ and fiscal regulations⁷ or to undermine their competitors.⁸ At the same time, they face internal problems. A study on Mexico by the international accounting firm KPMG found that 77 per cent of businesses reported at least one case of fraud inside their operation during the prior year with Mexico ranking high in cross-national comparisons (KPMG 2008). The Mexican border itself has become virtually synonymous with illegality and lawlessness (drugs, smuggling, illegal immigration).

In controlling the state, the second dilemma facing government, the record is equally dismal. Transparency International's widely-known and used Corruption Perception Index based on expert opinion has classified Mexico among the high corruption countries since the poll began in 1995. Public opinion polls similarly show that like the experts, the public routinely considers politicians, bureaucrats, and particularly the police to be corrupt (see Morris forthcoming 2009). When asked to agree, disagree or neither with the statement "all politicians are corrupt," 79 per cent of respondents in 2001 and 78 per cent in 2003 agreed, while only 11 per cent and 10 per cent disagreed (Encuesta Nacional de Corrupción y Buen Gobierno [ENCDBG]). Discriminating between total and partial agreement/disagreement in their 2005 poll, 66 per cent of respondents totally agreed, while another 24 per cent partially agreed. Using a slightly different yardstick, the 2005 poll also asked respondents to rate the level of corruption in the government on a scale of 1 (low) to 10 (high). Amazingly, a slight majority (50.2 per cent) selected the highest possible rating (10), while another 29 per cent offered ratings of eight or nine. Both the seemingly routine payment of bribes (*mordida*) to police, bureaucrats or even judges to the scandalous revelations involving top law enforcement figures working for drug-trafficking organizations play a major role in sculpting these deeply held views among the public.⁹ Numerous cases confirm the intimate involvement of police and prosecutors in kidnappings and drugtrafficking operations.¹⁰ In fact, in 1995 the Attorney General Antonio Lozano estimated that as much as 70 per cent of the nation's police worked for drugtraffickers (Global Integrity Report 2004).¹¹ To be sure, corruption is not limited to law enforcement. The study by KPMG noted above also shows that 44 per cent of businesses made extra-legal payments to public officials, spending an estimated 5 per cent of their annual income on bribes. Similar studies among the public confirm their routine participation in corruption. According to Transparency International's 2005 Global Corruption Barometer, 31 percent of Mexican households paid bribes during the year.

State illegality, however, goes beyond what we normally consider corruption to encompass other illegal and non-institutionally sanctioned forms of conduct. Among these are torture and the abuse of human rights,¹² the lack of compliance with basic bureaucratic procedures and norms within state agencies, the informal deals and *arreglos* that take place daily within the government, state complicity with the private sector to evade the law, and even inefficiencies that prevent the law or rules from being enforced.¹³ Indeed, descriptions of Mexican politics often point to the central role that such informal institutions based on friendships and connections, *compadrazco*, and client politics play. Fundamentally, such failures

of the rule of law include the inability of the government to protect citizens' from the abuses of government and to provide equal protection to all.

In assessing this situation of relative lawlessness, it is important to stress, first, that while in some sense everyone (state officials and citizens) may at times be involved in this type of activity, this does not mean that such behavior is accepted or considered appropriate. According to polls, Mexicans firmly feel that the law ought to be obeyed and that the government should be held accountable. In fact, Mexicans are quick to condemn corrupt behavior (see ENCBG). Moreover, if corruption were socially acceptable, then the public would not rank corruption among the major problems facing the country. The high level of illegality therefore points to a system in which this type of behavior occurs and is expected – itself shaping behavior -- but is not accepted.¹⁴ Second, it is also crucial to recognize the non-monolithic nature of both state and society. Neither operates as a sole entity, so just as most cases of lawless conduct involve state and societal actors colluding, so too do efforts to assert the rule of law. In reality, it is not as simple as having the state control society and society control the state as pointed to earlier; instead, it entails complex, intricate state/society webs involved in both bending the law and trying to strengthen it.

Linking Societal and State Illegality

As noted, the vast literatures on crime, corruption, and the rule of law rarely seem to overlap or address the inherent linkages among these forces. Studies on crime tend to address the weakness of law enforcement agencies and the courts, but rarely focus on the issue of corruption outside of those domains. Studies of corruption likewise tend to adopt a broad systemic approach and while they treat rule of law issues, rarely incorporate much of a concern for generalized crime. While rule of law studies address the operation of the judiciary, they often neglect the broader issues of compliance within other realms of the state and society. This lack of overlap leaves open questions about the ties linking societal and state forms of illegality or the dual tasks facing government.

Our initial look at this question focuses on the direct causal linkages. At a somewhat more inductive level, there would seem to be no *a priori* reason to expect a strong relationship between the two. One can easily imagine a society facing a high crime rate, but not necessarily extensive corruption, or a society with ample corruption that does not suffer a high crime rate -- though the latter scenario seems less likely. From a more practical and deductive level, however, numerous scenarios and cases suggest that the two go hand-in hand, that crime in fact facilitates corruption and *vice versa*. Drug trafficking organizations and other organized contraband activities clearly could not operate without corruption, for instance (see O'Day and López 2001). Businesses seeking to evade the tax law or the labor law similarly rely on corrupt payoffs to ease the way. Even the sale of pirated movies in the local marketplace relies on deals made with local officials and the police.¹⁵ Of course, as always, deciphering cause and effect here is rather tricky. Some analysts, for instance, point to lack of respect for the rule of law within society (social illegality) as the independent variable that in turn generates corruption (see Catterberg and Moreno 2007), while others reverse the causal arrow and point to the pervasive corruption as creating a culture of disrespect for the law (Anderson and Tverdova 2003). During the public meeting of the *Consejo Nacional de Seguridad Publica* in August 2008, for example,

President Felipe Calderon sided with the latter argument: “El crimen no puede entenderse sin el cobijo de la impunidad y la corrupción de las policías” (*Milenio* August 27, 2008). The president reasserted this view in a statement following the revelations of the infiltration of drug trafficking high within the ranks of the office of the Attorney General (PGR): “I’m convinced that to stop the crime, we first have to get it out of our own house” (Lacey 2008).¹⁶

Somewhat surprisingly, few cross-national studies explore the direct relationship linking crime to corruption, the abuse of human rights, or other forms of institutional failure. One study by Van Dijk (2007) uncovers a strong correlation linking measures of organized crime to the lack of an independent judiciary and corruption, but finds no correlation to common crime. He concludes: “The critical factor determining the extent of organized crimes is the quality of institutions responsible for the rule of law, including competent police services and independent courts complying with standards of professional integrity” (Van Dijk 2007, 46). A quick and simple cross-national exploration based on available data for thefts, murder and drug convictions per 100,000 population reported by UNCRIME (1998) and the World Bank’s control of corruption (1996) and the CPI (2003) reveals a statistically significant inverse correlation tying corruption to theft (.59 for control of corruption; .71 with the CPI) and to drug crimes (.43 for control of corruption and .57 with the CPI), and a weaker positive correlation linking it to murder (.23 and .31 respectively)(n=56-61). In other words, contrary to expectation, countries with higher levels of corruption actually exhibited lower levels of theft and drug crimes, but slightly higher murder rates. A different model, however, using the World Bank’s 2004 measures for control of corruption and rule of law (a measure of contract enforcement and the likelihood of violence and crime) produces a stunningly high correlation of .96 (n=171).¹⁷

Looking beyond potential direct linkages -- which I believe merit much more serious discussion and attention – a second approach to understanding the relationship between societal and state legality centers on exploring the likely third factors that shape both. Four such factors are reviewed here: legitimacy, enforcement institutions, structural factors, and the strength of alternatives.¹⁸

Legitimacy

Whether we are referring to the public or their servants, as Immanuel Kant clearly recognized, compliance to rules and laws depends largely on individual notions of legitimacy. “Authorities need for people to take the obligation to obey the law onto themselves and to voluntarily act on that perceived obligation” (Tyler 2000, 985).¹⁹ According to Tyler (2000, 985, 991), this occurs when people believe the legal decision to be morally right, when they feel the decisions have been made in a fair and impartial way, when they trust the motives of the decision makers, and when they feel they are being treated with dignity and respect. Voight (1998) adds that individual attitudes must be compatible with the rule of law for there to be an effective opposition to crossing the line: “attitudes incompatible with the rule of law,” he notes, “will make it less likely for a constitution based on the rule of law to be enforced effectively.” This means that when the perception that the rules serve the interests of the powerful rather than the general interest and that they fail to apply equally to all prevails, then compliance comes to rely more on the fear of punishment than voluntary compliance. In this context, citizens or public

servants will obey, but not comply (*obedazco pero no cumplo*): a clear bow to power differentials, but not to vested authority.

Evidence from Mexico confirms the weak respect for the rule of law and lack of faith in public institutions. The 2005 survey of Mexican political culture conducted by *Gobernación*, for instance, showed 61 per cent of respondents believing that officials use the law to defend the interests of those in power or to commit *arbitrariedades* (Encuesta Nacional de Cultural Política [ENCUP]). As Elizondo (2006, 45) contends, the perception is widespread among citizens that the law, rather than promoting public order or wellbeing and therefore should be respected, serves as “un recurso a la disposición del político para combatir a sus enemigos o cobijar a sus amigos.” Consequently, as shown in recent surveys by Transparencia Mexicana and UNAM, citizens tend to abide by the law to avoid punishment, rather than because of the law’s fairness or for any moral reason. In fact, the UNAM study found that a majority of respondents did not consider violating the law a serious matter, that the problem is getting caught (cited in Sefchovich 2008, 316). This lack of legitimacy applies at various levels. A 2007 survey conducted among 60,000 teachers in the national union (SNTE), for instance, showed 98 per cent of respondents believing that the priority of their union leaders was to enrich themselves and garner power, while 87 per cent believed that their union dues remain in the hands of union leaders or are used by the leaders to buy political support. Even among politicians and officials – individuals drawn from the same cultural milieu -- state legality suffers when there is a sense that the law is used and abused by others for political ends. As Rubio and Jaime (2007, 25) note, “muchos actores políticos, así como una porción significativa de la sociedad, ven el marco legal no como norma de comportamiento sino como un instrumento moldeable a los objetivos del caso.”

Such low levels of legitimacy reflect and inform popular perceptions regarding public institutions charged with implementing the law. In the 2005 ENCUP study, for instance, over 60 per cent of respondents expressed little or no confidence in the Supreme Court and Congress, while more than 75 per cent had little or no confidence in the police and political parties (see also Brown, et al. 2006; and Fondevila 2008). When asked about their image of judges and the courts, 40 per cent of those responding chose “mala” or “muy mala” compared to a mere 17 per cent selecting “muy buena” or “buena.” When prodded as to why, 31 per cent selected the option “don’t work, there is no justice,” while another 34 per cent cited “corruption and impunity” (see also Carbonell 2007). With respect to political parties, the key institution providing representation, a 2007 poll showed around 40 per cent of those questioned did not believe that any party represented the interests of the people (*Milenio* December 3, 2007). It is therefore not surprising that when asked the first word that comes to mind upon hearing the word politics, “corruption” ranked as the top response (selected as the first response by 21 per cent of respondents and as a second choice by another 13 per cent) (ENCUP 2001).

Subsumed within this framework is a certain hierarchy of legitimacy that privileges the rule of law within the state above the rule of law within society. In other words, if the rule of law does not apply to those empowered by the law (i.e. state officials) in the first instance, then this spills over, effectively undermining the legitimacy of the rule of law within society and the operation of state enforcement institutions. Because of this hierarchy, rulers must set the example. In short, it is easy to justify illegal conduct if state officials do not abide by the law.

Indeed, why pay taxes if you are certain that they are simply going to pocket the money? “Los abusos policíacos, la corrupción, la extorsión y otras arbitrariedades contribuyen a que los ciudadanos consideren los impuestos como una confiscación de sus ingresos” (Aguilar 2006, 108-109). This is precisely how the perception and the reality of corruption undermine the public’s respect for the rule of law and thus contributes to illegal behavior. Turning the equation around, however, seems far less applicable. Political leaders, it would seem, are less likely to justify their corrupt conduct based on the high level of illegality in society (though certainly they can be forced into participating in corruption by societal illegality). Public officials, in other words, do not look for society to set the example to emulate.

Fundamentally, viewing the law as oppressive makes abiding by the law – despite acknowledging its normative virtue – difficult. “Los ciudadanos no se sienten con la obligación ni con el deseo de respetar ni a la ley, ni a las instituciones, ni a las investiduras, ni a las autoridades, ni a las personas” (Sefchovich 2008, 316). Indeed, a narrative that envisions the law and its exercise as oppressive makes compliance a form of submitting to that oppression. While on the one hand this means obeying the law and authorities when it is necessary for practical and instrumental reasons – to avoid punishment or to enjoy the benefits – it also means, on the other hand, taking advantage of the system’s flexibility and failures whenever possible, just like everyone, particularly the powerful, presumably do. In this sense, avoiding the law, manipulating it, or getting around it (through bribery or any other means) thus becomes a form of protest, of political contestation, of everyday resistance.²⁰ Not only does corruption thus become a part of survival (Uslaner 2004, cited in Catterberg and Moreno 2007, 6), but it also becomes a mechanism used to get ahead and exploit the system’s weaknesses for personal gain. So while the public may condemn corruption, they nonetheless are quick to engage in it when the course lays open to them, justifying their actions by pointing to the fact that public officials and others engage in similar conduct. This interpretation helps the citizen guard his/her sense of personal integrity and assign blame to greedy politicians. From this perspective, even social tolerance toward corruption becomes a consequence of widespread corruption rather than a cause.

A wide assortment of consequences fastens onto this fundamental lack of legitimacy of the law and distrust of those making and enforcing it. Among these, it feeds a tendency on the part of the public to assume corrupt behavior and corrupt motives and to reject pro-systemic, normative-based interpretations of events in favor of those rooted in avarice. When one assumes the powerful abuse and manipulate the law, then one tends to interpret the rhetorical promises to address corruption or even the occasional prosecution of a corrupt official not as a counterstrike, but rather as part of the same abusive pattern.²¹ “Official versions are dismissed beforehand and the promises to follow an investigation to its ultimate consequences are received with general skepticism” (Aguilar 2000). This means that speculations, accusations, rumors, etc. of corruption are usually accepted as truth (unless targeted at partisans) regardless of the outcome of the investigation or the resolution of the case simply because it rings consistent with the political narrative. The public then sees the subsequent failure to prosecute an official already tried in the court of public opinion as further proof of impunity – rather than as perhaps an indication of the effective pursuit of justice. Even when the system successfully prosecutes “corrupt” officials, it is often seen not as a conquest in the battle against corruption, but as a manipulation of the law orchestrated by those in authority to eliminate opponents, consolidate power, or simply for show or to hide what they are really doing. Meanwhile, the public dismisses accusations against

partisans and allies as politically motivated, again as part of this narrative rather than an affront to it.²²

The lack of legitimacy, moreover, breeds pessimism regarding the potential for change, nurtures alienation and atomization, and suffocates the public's "commitment to collective projects [and] civic behavior" (Doig and Theobald 2000, 6, cited in Seligson 2002a). This is illustrated in polling data in Mexico showing almost a third of respondents believing that it is impossible to curb corruption, a widespread lack of interest in politics, and exceedingly low levels of interpersonal trust.

This lack of legitimacy in the rule of law and faith in institutions also divorces the law from justice. If the law itself or its implementation is seen as serving the interests of the powerful rather than serving some concept of justice, then not only does compliance become problematic, but it also justifies the use of other avenues in the pursuit of justice.²³ This relates to a factor developed later: the use of alternative paths to pursue demands before the government. Though in some cases individuals employ illegal means for individual gain, this factor also encourages the use of collective means to pressure the government for justice. Such actions range from the privatization of security (from lynching of police officers to gated communities)²⁴ public protests and sit-ins to demand the reinstatement of a union leader accused of corruption or to reverse a reform agreement signed by a corrupt union leader or a fraudulent election (drawing on recent examples), and even neo-populist government officials using extra-institutional means to pursue their political objectives.²⁵ This tendency intensifies the degree of politicization within society which probably further undermines compliance.²⁶

In Mexico, a fundamental anti-state/pro-society bias underlies this tendency. On one side of the equation, the lack of faith in the state undermines the ability of the state to deploy its instruments of coercion to enforce the rule of law. As noted earlier, citizens tend to reject official interpretations out of hand, seeing these as hiding rather than revealing the true motives of the political actors. Hence, the 2001 ENCUP found 68 per cent of respondents disagreed with the use of public force to resolve conflicts, and only 18 per cent agreed. President Fox acknowledged this view and equated the use of repression to the old authoritarian regime. This sentiment, moreover, prompted him to consciously shy away from using force to handle certain problems in society. In an interview with the *Wall Street Journal* in October 2006 (cited in Crespo 2007, 24), the president stated: "Cuando alguien rompe el orden institucional, aunque sea con la toma de una calle o carretera, el use de la fuerza es legítimo. Sin embargo, en la sociedad mexicana no existe la cultura política para aceptarlo. Por eso no se lleva a cabo." The flip side of this anti-state bias is a pro-society bias: the sense that "la sociedad civil era todo lo que no se había contaminado de la política" (Escalante 2006, 33). Escalante (2006, 27) characterizes this as "un nuevo 'código de pureza' que exigía estar contra el gobierno, contra el partido, contra el Estado, para significar que se estaba en contra de la corrupción y el atraso." On the more positive side, seeing citizens as pure and less corrupt than those in government, this bias informs efforts to mobilize society to control the government and to empower citizen counselors to staff accountability institutions like the IFE or conduct oversight through *contralorías sociales*. Indeed, many in Mexico pin their hopes on citizen-led social movements to take control of the state from below or *ciudadinización*. This pro-society bias also feeds a tendency for people to side with societal actors in the streets, to assume that their cause is just and that they suffer at the

hands of repressive state authorities. Such a posture not only delegitimizes the use of state force, but also helps justify even the illegalities committed by such groups in asserting their demands in the name of justice.

Coming to grips with this political reality, finally, also informs tradeoffs in which people are willing to accept a certain level of corruption on the part of their officials as long as the officials address their needs or critical societal problems.²⁷ In one poll, 59 per cent of those surveyed agreed with just such a statement (ENCBG 2005). This contrasts the huge majorities in the same poll who rejected specific types of corrupt conduct when asked directly. While again some might interpret this acceptance of corruption as a measure of social tolerance – considered a key cultural determinant of corruption – it can also be seen as a Hobbseian deal with reality.²⁸ If corruption is widespread, the norm, and one feels that little can be done to truly address it, then getting something along with it is better than nothing.²⁹

Enforcement Mechanisms

The second major factor underpinning both societal and state forms of illegality is weak enforcement mechanisms. Whereas legitimacy relates more to the cultural side of the equation, enforcement attends to the institutional side. The abundant literatures extensively develop this terrain, but tend to focus on distinct institutions. Studies on the problems of societal illegality emphasize law enforcement agencies and the judiciary, while those on state illegality also focus on other forms of horizontal accountability and society's ability to control the state through vertical and societal accountability mechanisms (Mainwaring and Welna 2003; O'Donnell 2004; Peruzzotti and Smultovitz 2006; Przeworski, Stokes and Manin 1999; Schedler, Diamond, and Platter 1999)³⁰

In Mexico, enforcement institutions face significant challenges. Detailed studies focusing on crime, for instance, point to the excessively high rates of impunity, the ineffectiveness of the police to conduct investigations or carry out arrest warrants, the weak prosecutorial system, the almost non-existent system of public defenders, the failures of the judiciary to process cases, and the inability of the prison system to rehabilitate (see, for instance, Cornelius and Shirk 2007; Carbonell 2004, 2007; Beer 2003, 2006; Domingo 2000; Fix-Fierro 2003; González 2005; Inclan 2004; Kossick 2004; López-Ayllón and Fix-Fierro 2003; Magaloni and Zepeda 2004; Taylor 1997; Vásquez 2004; Zamora Jiménez 2003; Zepeda 2004, 2007). Zepeda (2004), for instance, found that only 3.3 per cent of criminal complaints result in a suspect ever coming before a judge and being sentenced. This is on top of the fact that owing to the lack of legitimacy among the public only 25 per cent of crimes are even reported. And even the small proportion prosecuted were either caught in the act or, as Magaloni and Zepeda (2004, 176) contend, “unable to bribe authorities in prosecutors' offices to secure their release. As Miguel Carbonell (2004, 8) concludes, “the criminal justice system is a wide network of ineffectiveness and corruption that can trap and process very few criminals.”

Of course, the scope of societal illegality is much broader than what some refer to as blue-collar crime and touches on more than the criminal justice system. As noted, it encompasses the lack of compliance with a range of government laws and regulations. Hence, the lack of compliance with labor and environmental laws among businesses reflects the weak enforcement

tools within the Secretary of Labor and the Secretary of the Environment and National Resources (SEMARNAT), tax evasion stems in part from the institutional weakness within the Tax Service Administration (SAT), the continued problem of violations within the electoral arena points to the weaknesses within Federal Electoral Institute (IFE), etc.

These problems extend as well to the inability of the judiciary to control or regulate the state and state officials. Of course, if impunity for societal crime stands at 97 per cent, it cannot be much higher when it comes to prosecuting public officials or constraining the state in order to protect the rights of citizens. Despite clear indications of high levels of corruption,³¹ the abuse of human rights or the denial of fundamental legal rights, few officials have ever been prosecuted for such wrongdoing. According to Morris Tidball-Binz, “nadie ha sido condenado por ejercer la tortura a pesar de las miles de denuncias de tortura que han existido en México” (cited in Sefchovich 2008, 118). A historic pattern of impunity survives.³² Controlling the state, of course, again goes beyond judicial mechanisms to encompass a range of horizontal controls including internal administrative controls by internal auditors (the Auditoria Superior de la Federación [ASF] and the Secretaría de la Función Pública [SFP]), corporate governance bodies such as the securities and exchange commission (CNBV), the Federal Electoral Institute (IFE) in the electoral arena, and the National Human Rights Commission (CNDH) in the area of human rights.

There are also a number of institutions promoting vertical and societal accountability.³³ As noted earlier, today most acknowledge that state legality rests largely on the society’s ability to control state officials rather than relying on internal governmental controls. As Voight (1998) notes, “a constitution will only be enforced effectively if government is confronted with a credible threat by a sufficiently large number of citizens in case it tries to cross the constraints of the constitution.” Within the current literature, such citizen-led constraints span from free and fair elections, a free press, and transparency laws to social watchdog organizations that participate in the making of decisions and oversee government operations. The work of Transparency International and its hundreds of country chapters, including *Transparencia Mexicana*, and the World Bank’s governance division focus precisely on the development and refinement of such tools.

In Mexico, despite the limited results, incredible changes have occurred in both these areas. In striking contrast to just a decade or so ago, internal accountability institutions have taken on a much greater role in the government enjoying increased funding and growing levels of professionalization (see Diaz-Cayeros and Magaloni, forthcoming). Similarly, and due in part to these trends, elections have become more credible and competitive, thereby giving the voter the ability to reward and punish; the Mexican press has become more critical of the government, embracing its social watchdog function (Hughes 2006; Lawson 2002); Mexicans now have access to government information thanks to the 2003 transparency law; and numerous social organizations operate that, often working together with the accountability institutions in co-government arrangements, seek to hold officials accountable (see for instance Ríos Cázares and Shirk 2007).³⁴

Yet despite such institutional progress -- and acknowledging the difficulties of measurement -- the high level of state illegality remains. Though the SFP sanctioned 39,950

federal officials during the Fox era, measures of the perception of corruption and participation in corruption hardly budged during that time.³⁵ Despite the work of IFE and its huge budget, bringing much-needed credibility to the electoral process, the 2006 presidential election proved sloppy at best,³⁶ fraudulent at worse, and political parties continue to be seen as one of the most corrupt institutions in the country, routinely seeking ways to evade the campaign finance laws (on the election see Crespo 2008 and Eisenstadt 2007). A report by Human Rights Watch (2008) similarly criticized the CNDH for its limited impact despite a large budget (US\$73 million in 2007) and staff (1,000 plus employees). While the institution does a good job of uncovering and detailing human rights abuses as in the case of Guadalajara in 2004 and Atenco in 2006 and the conditions in the nation's 191 prisons in 2006, it fails to follow up on cases, pressure authorities for results, share information with the public, promote reforms, use its power to "name and shame," remedy past abuses or prevent future ones.

Given the distinct sets of institutions within the two realms, it is possible to raise questions about the relationship between the two. Assuming that not all institutions develop or function at a similar pace or rate, then what linkages might exist between the traditional law enforcement institutions (police, prosecutors, courts, prisons) and accountability institutions (elections, checks and balances, internal controls, societal controls)? Here, Rothstein (2005) contends that law enforcement and the judiciary constitute priority institutions, noting the strong connections linking law enforcement and social trust. If police perform their task effectively and fairly, the broader community will more likely believe that offenders cannot get away with criminal activity, prompting most people to refrain from criminal acts. Put negatively, where the public sees the police and judiciary as ineffective or—worse—corrupt, then people are less likely to trust others or to trust the broader political system. MacCoun (2005, cited in Karstedt and LaFree 2006, 12) similarly shows how encounters with the police go a long way in instilling trust in government among citizens.

Structural/Environmental Factors

Another common ingredient behind the dual problems of societal and state illegality involves structural and societal conditions such as inequality and poverty, and the level of political polarization. Indeed, a substantial literature ties virtually all the factors discussed above to poverty and inequality. Poverty not only prompts people to turn to crime, but high levels of inequality exacerbate this tendency (see Fajnzylber et al 1998). Poverty and inequality similarly force people into the informal market and lay behind cultural patterns of amoral familism and clientelism: personalistic approaches to address political needs that reach beyond the institutional and legal avenues. Poverty and inequality also create weak societies that lack the organizational tools or the social capital needed to effectively hold government accountable (Knack and Keefer 1997). Even in a more practical sense, as Prezeworski (1998, cited in Aguilar 2006, 108-109), notes, in poor and unequal societies the state is simply too poor to make the law apply equally and everywhere: the impediment, in short, is fiscal, not institutional. Studies also show that poverty and inequality feed corruption. In fact, the most robust cross-national finding of the new corruption literature shows that poor countries exhibit higher levels of corruption than wealthier ones. Reflecting this relationship, O'Donnell (2004, 39) calls it a "sad law of human nature" that when individuals are in a position of authority they forget that their right to exercise authority

comes from those below and thus fail to treat them with respect, noting that severe poverty and inequality breed this form of “social authoritarianism.”

In addition to poverty and inequality, intense levels of polarization also affect state and social illegality. This occurs in two ways. First, polarization leads people to see behavior in an overly partisan way and hence contributes to the lack of legitimacy. In a polarized setting, people often interpret ostensibly reformist moves as mere political posturing; they judge efforts to enforce the rule of law as merely the abuse of the law for political ends. Second, intense polarization renders reforms difficult. In her analysis of police reform in Mexico City, for example, Diane Davis (2006) attributes the failure to reform the police to the level of political polarization. As suggested again by Madison in the Federalist Paper No. 10, factions are prone to “vex and oppress each other than to cooperate for their common good” (González 2005, 578), thereby undermining respect for the rule of law.

The Effectiveness of Alternatives

The high level of state and societal illegalities in Mexico may give the false impression of total anarchy. It is not that no one complies with the law, that institutions never function as designed, or that Mexico suffers a breakdown of the state, nor is it the case that behavior is unpatterned or not shaped by other, non-legal mechanisms. As documented by scores of analysts over the years, an elaborate network of informal rules prevails rooted in easily identifiable power relationships, friendships, and economic incentives that supplant or supplement the legal and institutional avenues.³⁷ The Mexican government may not operate as a government of laws, but it does often operate as a government of friends; the legal system may not function in accordance to the principle of innocent until proven guilty, but rather innocent until proven rich. Elizondo (1996, cited Jones 1998, 501) notes, for instance, that the Mexican system thrives on the ability to create ambiguity, competing legal claims and different hierarchies of power that in turn provides the space for negotiated solutions. Indeed the real order attaches to the normative order of the state with key intermediaries operating between the two. They take into account the normative state, negotiate exceptions and justify them in the name of the state and the normative order. They are able to produce order without undermining the state or threatening its legitimacy directly (Escalante 2006). “Whatever formally sanctioned law exists is applied intermittently, if at all...” and is encompassed within the informal law determined by the “privatized – patrimonial, sultanistic, or simply gangster-like – powers that actually rule those places.” O’Donnell (2004, 41) calls these “brown areas.”³⁸

The existence and effectiveness of these alternative paths represents what can be considered a fourth factor behind the high levels of both state and societal illegality. In other words, part of what we refer to as a strong institution may reflect the fact that it represents the only viable route to press demands or resolve conflicts authoritatively. If no alternative avenues exist, then the public may tend to grow to accept the results coming from these institutions, bolstering their legitimacy almost out of habit. Under such circumstances, people tend to focus their energies on perfecting the institution, working within the system, rather than around it to achieve their objectives. In short, the strength of institutions is a function of the weakness of alternative informal institutions.

In Mexico, however, alternatives to legal routes continue to prove their effectiveness, thereby eclipsing the use of more legal routes. Contacts and friendships, clientelistic *quid pro quos*, bribes, and even societal pressures still offer effective paths to obtain favor or pressure the government. In this context, as noted earlier, the law and the legal route represent but one course of action that can be pursued simultaneously to others. Zamora et al. (2004) refer here to a thin version of the rule of law in which the law provides merely a framework structuring the negotiations. So while the population may show little faith in the rule of law, the numbers applying for *amparos* – the legal route to assert one’s constitutional protection against government action – remains high.³⁹ Indeed, social movements and NGOs normally use the legal channels to assert their claims over citizenship (Jones 1998, 500). Of course, given the presence of alternative means, exhausting or failing to gain a satisfactory outcome using the legal routes is not the end of the matter.⁴⁰ Just as Lopez Obrador and the PRD pursued public tactics like chocking off *Paseo de la Reforma* to push for a complete recount of the 2006 vote, his team also mounted a serious and concerted legal challenge through the electoral tribunal.

Rule of Law and Democracy

Writings on the rule of law emphasize its importance to democracy.⁴¹ O’Donnell (2004, 33) draws a distinction between a minimal definition of the rule of law and democratic rule of law. The minimal definition refers simply to the existence of law that is made public by an appropriate authority and is fairly applied; that “it is established in and by legal rules that are valid in that they have been sanctioned following previously and carefully dictated procedures” and that the rights and obligations are universal. Democratic rule of law, by contrast, “ensures political rights, civil liberties and mechanisms of accountability which in turn affirm the political equality of all citizens and constrain potential abuses of state power.” For most, establishing democracy rule of law constitutes the key to democratic consolidation.

On the one hand, the prevailing explanation for Mexico’s weak rule of law cites the nation’s authoritarian past. Philip (2003), for instance, calls overt rule breaking a political strategy of the one-party regime (see also Gonzalez 2005). Zamora et al. (2004, 35) similarly note, “the PRI’s monolithic political power made application of the law an arbitrary matter.” Aguilar (2006, 102) refers to the lack of confidence in politicians and the government in Mexico as democracy’s birthmark. And yet, on the other hand, if authoritarianism were the true culprit, then democratization should improve the situation even if at a slow, glacial pace; however, this does not seem to be occurring. The levels of state and societal illegality have arguably climbed since democratization as confidence in the law and institutions have deteriorated. During the key period of democratization, for instance, confidence in the government actually fell from 30 per cent in 1998 and 36 per cent in 2000 to 23 per cent by 2003, while confidence in the police dipped consistently from 33 per cent to 28 per cent to 16 per cent during those years (Walker and Waterman 2008). Diaz-Cayeros and Magaloni (forthcoming) note that despite the institutional changes supporting accountability during these years, behavior has not been in the direction lawmakers intended. Rather than limiting discretion and the arbitrary use of power, the changes have seemingly enhanced both. Sefchovich (2008, 164) offers a similar argument. She notes that the political changes “resultó ser la reproducción de un modelo viejo y bien conocido por la sociedad mexicana: el de un Estado paternalista y ciudadanos que esperen todo de él.” Rubio and Jaime (2007, 19-20, 25) similarly show that despite the changes in the nature of elections in

Mexico, “they did not change the perception of illegitimacy that characterizes the concept of legality in the country” producing, instead, a sort of a Hobbesian pact wherein the actors may enter the electoral process under certain rules, but “only accept rules to the degree it serves their interests.” So while authoritarianism may have created this state of unruly law, democracy as practiced thus far has not only failed to reverse the course, but seems to have exacerbated it. As Miguel Angel Granados Chapa, the recipient of the government’s Belisario Domínguez award, noted during his acceptance speech before the Senate:

El poder del dinero y el poder criminal de las armas sustraen ahora con marcas crecientes de la vida en común al imperio de la ley y la capacidad rectora del Estado... Los poderes fácticos, los que gobiernan sin haber sido elegidos, los que buscan y obtienen ganancia de negocios que atentan contra el interés general gobiernan en mayor medida que los gobiernos; la lucha de unos y otros poderes ilegítimos contra la sociedad, su éxito en el propósito de dominarla es favorecida por una situación económica, material cada vez más adversa, menos propiciatoria que la prosperidad y la expansión de la potencialidad humana.

Indeed, the sense that things have gotten worse points to a major paradox: while in the past governance occurred in the absence of rule of law, today, the absence of rule of law seems to complicate governance.⁴²

A key dimension to the relationship linking the rule of law to democracy involves the detrimental impact the unruly law has on satisfaction with democracy. Most agree that the lack of legitimacy, the weak enforcement mechanisms, high crime and corruption all work to undermine the public’s satisfaction with democracy (Cruz 2008; Zéphyr 2008).⁴³ Cross-national research by Donoso (2008), for instance, finds that the greater the support for institutions of the rule of law (fair trial, trust in judicial, trust in police, trust in supreme court), the higher the satisfaction with democracy, and the lower the levels of corruption victimization, perception of corruption and crime victimization. According to Karstedt and LaFree (2006, 12) encounters with the criminal justice system is crucial part of the lived experience of democracy. In Mexico, the level of satisfaction with democracy in Mexico remains quite low. The 2005 ENCUP found 47 per cent of respondents dissatisfied with the state of democracy and only 26 per cent stating some level of satisfaction. So, as with corruption, while democracy may hold the promise of strengthening the rule of law and compliance, the lack of compliance prevents the consolidation of democracy.

Approaches/solutions

Without doubt, the factors identified here play off on one another in complex ways rendering it difficult to recognize causal relationships and hence pinpoint starting points for reform.⁴⁴ Weak enforcement of the law undermines legitimacy in the law, just as the lack of legitimacy weakens enforcement (Karstedt and LaFree 2006, 9),⁴⁵ while inequality and poverty weaken support for democratic institutions and the rule of law. This means that any effort at bolstering legitimacy without attending to the other two are limited and probably temporary, just as any effort to strengthen institutions without addressing questions of legitimacy and poverty and inequality will likely prove problematic. Privileging a certain area, moreover, has the

unanticipated tendency to lead to trade-offs that in the end may undermine or limit progress even in the priority area. Stressing socio-economic issues through neo-populist solutions, for instance, often leads to the use of extra-institutional tactics and a Hobbesian pact in which the corruption or excesses of supporters is overlooked in the name of some greater good.⁴⁶

Given the interactive nature of the variables and trapped in a low level of equilibrium, solutions are often marred in Catch-22 dilemmas. While viewed from one angle, more police and more security forces might seem to be the obvious approach needed to restore order and establish the rule of law within society – the strategy adopted by recent governments in Mexico; but when viewed from a slightly different angle becomes problematic.⁴⁷ If government and society are unable to control the police, then more police will not solve the problem but exacerbate it. Indeed, over the past decade, public security budgets in Mexico increased 565 per cent, the number of federal police climbed 51 per cent (between 1999 and 2007), and the number of agents within the Agencia Federal de Investigaciones shot up almost 100 per cent. The budget for the federal public security ministry doubled from 2000 to 2008 and the PGR budget increased 94 per cent over a decade. And yet, despite the resources, the number of crimes rose by 8.6 per cent between 2006 and 2007 and the number of reported kidnappings climbed 45 per cent over the past 3 years (Latin American Mexico & NAFTA Report, September 2008 RM-08-09). More troubling, the deployment of military forces to contain drug trafficking have wrought an increase human rights abuses. “Troops dispatched to try to wrest control of states where the drug trade has escalated are also accused of violations against the very civilians they are sent to protect” (*SourceMex* March 4, 2009).⁴⁸ A recent report by El Centro de Derechos Humanos Miguel Agustín Pro Juárez highlights the rise in reported abuses since the start of the Calderon administration. It also questions the impunity (fuero) enjoyed by the military and civilian control over the military forces (Carrasco 2009).

A similar dilemma relates to recommendations for more laws, greater judicial independence, and even more taxes. If the lack of compliance and enforcement of laws is the problem, then more law is not a solution: it would simply mean more laws to ignore or abuse. Rather, the problem may be too many laws or conflicting laws, which broadens the range of discretion (Merino-Dirani 2004, 331). Greater judicialization similarly does not necessarily mean greater respect for the rule of law (see Domingo 2004; Whitehead 2002), particularly if the resulting judicial decisions are seen as partisan, of protecting the government or the ruling elite, or remain unenforceable. This point is even clearer when it comes to taxes: if tax evasion is pervasive, increasing taxes will not fix it. Even increasing the policing ability of the state to force taxes will not tackle the underlying problem of the lack of legitimacy. Forcing greater compliance while those in power are believed to be putting the extra revenue in their pockets will probably deepen the resentment and further weaken respect for the rule of law. Enhanced oversight without strengthening legitimacy and the voluntary foundations of compliance seems to have at best only a short-term effect. A study by O’Day and Lopez (2001, 240) on contraband trade from the north showed how a scandal brought attention to the issue and a crackdown that paralyzed the industry, but only for a short time: “Within no more than a month and a half, however, the public’s attention began to focus on other things, and in short order, the fix [corrupt deal] was back in.”

While most emphasize the role of the state in addressing these problems, others stress solutions focusing on society. At the broadest level, this approach emphasizes the need to strengthen civil society in order to bolster accountability mechanisms and thus force the government to respect the rule of law (see Peruzzotti and Smultovitz 2006). Carlos Monsiváis in one interview following a lecture at NYU expressed hope in the social movement centering around López Obrador, calling it democracy from below. Yet, as noted earlier, this too tends to be a double-edged problem in that minority groups can press government for particularistic solutions, holding the state – and the rule of law -- hostage in the process. Of course, as occurs with respect to the state – and despite the anti-state/pro-society bias -- it is difficult to know whether social organizations are really any better at pursuing justice or the common good than the government. In what Aguilar (2006, 115) denotes as the dark side of social capital, there is a growing sense that social protests, taking advantage of this pro-society/anti-state bias and attempting to fill the vacuum left by a weak state, employ illegal methods to essentially blackmail and extort concessions from the government (Sefchovich 2008, 165).⁴⁹ One observer of the violent social protests against the construction of the airport in 2001, for instance, commented that “Lo malo es que, decidida a participar, la sociedad civil aparece de pronto armada de machetes en el centro de la ciudad de México, para impedir la construcción del nuevo aeropuerto en Atenco” (Escalante 2006, 33). Hector Aguilar Camín seems to agree. Commenting on the arrest of the leader of the social movement in Oaxaca in 2006, he asserted that the activists were not breaking the law to defend justice, but were actually irregular clients who abused the law to negotiate impunity with the government (cited in *Milenio* December 6, 2006).

A related approach focuses on education: an approach that rests on the assumption that cultural change is necessary to instill respect for the law. Indeed, a large component of the Fox government’s massive anti-corruption campaign sought to educate the public through a variety of mechanisms and thus alter the underlying culture that accepts and perpetuates corruption (see Morris forthcoming 2009). Following the Morelia attacks, the PRI, PAN, PRD broached a similar strategy, signing a joint statement demanding that the government “apueste por la educación para generar una cultura de la legalidad que censure el crimen y haga incuestionable el derecho de las y los mexicanos a la seguridad. Las condiciones estructurales del desarrollo deben orientarse para generar mayor tranquilidad en la sociedad” (*Milenio* September 18, 2008). Whereas more education is always considered a good thing, education alone may have limited effect if it is not combined with other reforms. In an imaginative study by Corduneanu, Guerrero and Rodríguez (2004) seeking to gauge the impact of viewing the *Cineminutos por la Transparencia* – a short public service film seeking to instill a sense of ethics -- on attitudes toward corruption, found a statistically significant increase in dishonest behavior after having watched the film rather than a reduction. Based on focus group discussions, the researchers explain this anomaly based on the perceived propagandistic nature of the production, its tendency to blame individuals rather than the government, and its lack of any real solutions focusing on government and corrupt politicians.

Clearly, the complex interactions weaving these problems together makes it necessary to adopt a multitiered, integral approach: one that simultaneously addresses the questions of legitimacy, weak enforcement institutions, and the underlying structural problems. To be sure, that is no easy task. Even so, the above discussion does seem to point to three priority approaches. First, owing to the hierarchy of legitimacy, establishing the rule of law vis-à-vis the

state would seem to be more important, offering spillover effects on crime and compliance within society. Of course, any concerted attack on state illegality must rise above the political fray and not be used or abused for political goals (or be seen as such); otherwise, it too will be absorbed as simply “politics-as-usual.”⁵⁰ Second, as Rothstein (2005) shows, law enforcement and the judiciary constitute priority institutions and are critical in the overall equation. Finally, given the anti-state/pro-society bias, strengthening rule of law must rely on the institutionalized empowerment of citizens through various co-governance arrangements. Citizens have a greater reservoir of legitimacy than do government officials, offering a small window of opportunity to strengthen oversight and accountability of rule of law institutions. The dangers, of course, are that such empowered citizens are pulled into partisan politics and in a sense lose their neutral, citizenship status, or they become irrelevant.

Conclusion

Despite Mexico’s remarkable progress in terms of electoral democracy, the nation struggles to establish the rule of law. The depths of the problem of societal and state illegality not only appear on the nation’s newspapers daily, but may be best illustrated by the challenges to state legitimacy represented by the drug traffickers in certain parts of the country, and the existence of a self-designated “*presidente legítimo*” who, along with his millions of supporters, refuses to accept the outcome of the 2006 election.

The purpose here has largely been to contextualize corruption. The broad-brush stroke incorporates corruption, first, within the broader realm of state illegality, viewing it alongside the lack of compliance with rules regarding the treatment of prisoners or citizens (human rights), the failure of the judiciary to protect citizens’ constitutional rights, and the violation of norms within the state for reasons that go beyond personal gain. In short, it casts corruption as part of weak institutions of the state. Second, it encases corruption within an even broader context of the rule of law, linking corruption directly and indirectly to noncompliance with the rule of law within society at large. This perspective, moreover, helps illuminate the complex interaction of rule of law concerns with cultural (legitimacy, the political culture and even the role of perception), institutional (enforcement and accountability mechanisms), and structural (poverty, inequality) determinants. It also points to how, given the current situation, addressing the rule of law within the state can have important spillover effects and enhance the level of compliance with the rule of law within society, but that given the depths of distrust toward politicians, addressing state illegality must remain above partisan politics, relying on co-governance arrangements. In the end, such complex nexus helps us understand and conceptualize the nature of the problems, identify new ways of thinking about these problems, and helps account for the persistent failures of reforms.

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Endnotes

¹ The literature on the rule of law is quite extensive. Domingo (1999, 154) defines rule of law as "the existence and real application of a body of rules and rights which regulate the relationship between the state and the individuals in a society and between the individuals themselves." Voight (1998) considers the key trait to the rule of law to be whether the law is applied equally to all, including government leaders. Reflecting the views of Kant, the law should fulfill the criteria of universalisability, meaning that the law should be general (applicable to unforeseeable number of persons and circumstances), abstract, certain (clear to all), and justifiable (based on reason). Though most studies on the rule of law concentrate on the judiciary, pinpointing, for instance, the need for an independent judiciary to enforce restrictions on the state and protect individual freedoms, O'Donnell (2004) offers two important distinctions for analyzing the rule of law in Latin America. First, he distinguishes "*estado de derecho*" from "rule of law" with the former referring more broadly to state agencies beyond the courts. Second, he contrasts a minimal definition of the rule of law with democratic rule of law. The minimalist view refers simply to the existence of law made public by an appropriate authority, that it is fairly applied (consistent across equivalent cases without taking into consideration status, class, etc), and that it followed procedures that are pre-determined, knowable, and which allow a fair chance for different views to be heard. Democratic rule of law, however, goes beyond this to ensure "political rights, civil liberties and mechanisms of accountability." Defended by an independent judiciary, democratic rule of law establishes networks of responsibility and accountability so that everyone, including the government, is subject to legal controls over their behavior.

² According to data from the UN Office on Drugs and Crime, Tenth United Nations Survey of Crime Trends and Operations of Criminal Justice Systems, Mexico's murder rate in 2005-2006 (per 100,000 of population) stood at 10.91 and 10.07. Though high, almost double the rate in the US, it was not the highest in the region surpassed by El Salvador at over 50 and Ecuador, Dominican Republic, Panama and Paraguay.

³ In just a two week period in December 2008 in Ciudad Juárez, 444 charges of extortion were filed (see Turatim 2009).

⁴ According to Adela Navarro Bello of the newspaper *Zeta*, 73 journalists were killed between 2000 and 2007 and that 98 per cent of the cases remained unresolved ("Ni chalecos ni autocensura," *Proceso* November 4, 2007).

⁵ Brambila (2008) estimates the size of the informal economy at around 30 per cent of GDP. A 2005 congressional report found that illegal channels supplied 58 per cent of the national clothing market (Ochoa León 2005).

⁶ A report in *Milenio* (February 3, 2008) cites a study by María Xelhuantzi López of UNAM showing that approximately 20 million private sector workers in Mexico are covered by protection contracts. These are secret arrangements management signs with a pseudo-union thereby preventing real unions from offering the workers representation. The study notes that companies like Wal-Mart and Sam's Club sign protection contracts and that these are supported by the official Labor Boards within the Labor Department. According to Carberry (2006) such white union contracts constitute a form of labor racketeering.

⁷ The World Bank (2007, 50) study notes that Mexican billionaires gained their wealth through "political connections and privileged access to markets rather than through the innovation and competitive effort that are associates with growth." The Nobel economist Gary Becker refers to the Mexican economy as "capitalismo de compadres" (cited in Sefchovich 2008, 43).

⁸ According to reports, Televisa and Azteca used an assortment of dirty tactics to undermine the bid by Grupo Saba and GE (Telemando) to establish a third national television channel, including a series of investigative reports suggesting that Saba's pharmacy company had manipulated the market hurting the poor. This effort to discredit its potential competitor took place on the heels of NBC asking the FCC to deny the renewal of Azteca's affiliates' license invoking a "morals clause" and claiming that Azteca was corrupt. NBC Universal alleged that Azteca used strong-arm tactics including armed raids against US companies to block competition (*SourceMex* January 10, 2007). In another case, a published recording featured Kamel Nacif discussing ways to destroy Javier Moreno Valle, the owner of CNI/Canal 40. The strategy being discussed on the tape involved coaxing the CTM –affiliated union to strike, thereby provoking bankruptcy. In May 2005, this is precisely what occurred: the union struck and 6 months later the union ended the strike with money from TV Azteca, which began to broadcast on channel 40 (*Milenio* September 21, 2006).

⁹ Though hardly unprecedented, in October 2008 the government revealed that SIEDO (Subprocuraduria de Investigacion Especializada en Delincuencia Organizada within the office of the Attorney General- PGR) was riddled with spies. Initially, some 35 officials were implicated, including six senior level officials who reportedly had been receiving payments from US\$150,000 to US\$450,000 a month in return for providing confidential information to drug trafficking organizations (Latin American Mexico & NAFTA Report, November 2008). A few weeks later, the Federal Preventive Police announced that two of its agents had been turned over to prosecutors for their links to drug trafficker (*SourceMex* November 5, 2008)(see also Lacey 2008).

¹⁰ The newspaper *Excelsior*, citing statistics from the Department of Public Security (SSP), noted that 56 of the kidnappers arrested since 2001 were active or former members of a police department or the military. Of the 101 kidnappers arrested in the first six months of 2008, 12 were police or military affiliation (*SourceMex* September 24, 2008).

¹¹ A report by Federal Deputy Eduardo de la Torre presented to Congress reported that at least 300,000 of the country's 377,000 federal, state, and municipal police had been corrupted by organized crime (*SourceMex* September 24, 2008). On the police and police corruption see Uildriks (forthcoming 2009).

¹² According to Domingo (1999, 183), the worst abuses of human rights occur at the level of criminal law procedures.

¹³ A January 2007 report by the *Comisión Civil Internacional de Observación de los Derechos Humanos* accuses the government of pursuing a strategy to paralyze the population through fear. "La comisión considera que los hechos ocurridos en Oaxaca son un eslabón de una estrategia jurídica, policiaca, y militar, con componentes sicosociales y comunitarios cuyo objetivo último es lograr el control y amedrentamiento de la población civil en zonas donde se desarrollan proceso de organización ciudadana o movimientos de carácter social no partidista." The reports refers to violations of the rights of labor unions, of freedom of expression, and even academic freedom, and points to arbitrary and illegal detentions by federal and state police (*La Jornada* January 22, 2007)

¹⁴ Formal mathematical models by Mishra (2006) and others show how the pervasiveness of corruption contributes to the persistence of corruption (see also Bardhan 2006). This reflects not only the role of expectation, but also that "those who comply with the law or social standards often become victims of harassment, extortion, and alleged corrupt behavior" (Mishra 2006, 350).

¹⁵ Luis Gonzalez de Alba, in *Milenio* (October 27, 2008) notes how illegal street vendors are allowed to operate in exchange for political support.

¹⁶ Perhaps the best example of the complex interrelationship is the *plomo o plata* ultimatum that drug traffickers use to recruit law enforcement officials.

¹⁷ Of course, both models fail to capture the obvious problems of endogeneity. For the first model, the results may be distorted by the fact that corruption undermines the ability of law enforcement to apprehend criminals and the capacity of the judiciary to prosecute and the public from reporting crime in the first place. A cross-national study looking at this problem by Rodrigo Soares (2004) finds a significant inverse correlation between the reporting of crime and aspects of institutional development including corruption (as well as confidence in the system, efficiency of public services, and sense of civic duty), noting that where corruption is high, crime often goes unreported. The exceedingly high Pearson's correlation using the World Bank variables in the second model also suggests a problem of endogeneity.

¹⁸ Polls gauging the public's perception of the major issues facing the country illustrate the seriousness of the problems described here. In the 2004 *Reforma* poll, for instance, the three top issues were insecurity (33.8 per cent), followed by corruption (33.5 per cent), and poverty (11.8 per cent). Other polls usually highlight these same factors though the order sometimes varies.

¹⁹ MacCoun (1993, cited in Tyler 2000, 985) suggests that at best five per cent of the variance in law-related behavior can be explained by the perceived certainty and severity of punishment. In other words, deterrence plays only a minor role in compliance.

²⁰ Bribery as a form of resistance fits within Scott's (1990, 17) description of resistance wherein subordinate groups use disguise, deception and indirection while maintaining an outward impression of willing consent.

²¹ One prominent example involves the attempted removal of the immunity of Mexico City Mayor Andrés Manuel López Obrador by the Fox government in response to the mayor's temporary failure to abide by a judicial injunction. Had the move succeeded, it would have prevented the then front-runner in the polls from running for the presidency. The effort, however, was widely perceived not as the application of justice or the rule of law – as Fox initially claimed -- but as political maneuver (Crespo 2007, 28).

²² This situation crystallizes an epistemological dilemma. Given the sense that politicians use and abuse the law for political ends, it becomes difficult to know whether a given reason for a particular act is indeed valid or not. We know the brother of the former president, Raul Salinas, for instance, was found to have numerous false passports and multi-million dollar bank accounts under different names in the US and Switzerland. In the early days of the Zedillo administration, Salinas was arrested and convicted for the murder of the PRI legislative leader Francisco Ruiz. Salinas, to be sure, insisted on his innocence, claiming that the move was politically motivated and targeting his brother. Indeed, years later, after Zedillo left office, the courts exonerated Salinas, failing to find sufficient evidence for his original murder conviction or any firm evidence of money laundering or corruption. This turnabout leaves any observer questioning which of the two sets of contrasting legal actions was valid and which represented political considerations. With limited faith in institutions, a person's determination of truth therefore must come to rest more on partisan or political loyalties and attachments. This is consistent with the finding of Cleary and Stokes (2006) that associates a low level of trust in institutions, with trust in individual politicians and *vice versa*.

²³ In the 2001 ENCUP poll, when asked whether one should always abide by a law even if it is unjust, 72 per cent said no. In a separate question, 56 per cent agreed that people should disobey unjust laws. The notion that the law is flexible, in short, seems widespread both in thought and particularly in deed.

²⁴ According to González (2006), there were almost 100 cases of lynchings in Mexico between 1987 and 2001. He characterizes these as an alternative to the incapacity of the institutions to punish and guarantee justice. He adds that no one was prosecuted for the lynchings.

²⁵ According to Davis (2006), López Obrador draws extensive support from lower-income citizens engaged in the informal sector with police complicity and linked to contraband and drug involvement of the police.

²⁶ Ideally, the rule of law depoliticizes in that it builds on past decisions. An institutional solution means, in short, not having to renegotiate a procedure or decision-making rules every time a given situation arises. Similarly then, in the absence of rule of law or with weak institutions everything becomes subject to negotiation and the demonstrations of power such a situation demands.

²⁷ Again, the finding of Cleary and Stokes (2006) noted earlier is relevant here. See also Manzetti and Wilson (2009).

²⁸ Catterberg and Moreno (2007) link corruption to permissiveness and transgressions against the law. Lending support to the cultural argument, they find corruption more likely in societies characterized by particularized trust and privatized citizen politics (tolerance toward elite corruption and higher dissemination of “informal practices” for daily life survival).

²⁹ This tradeoff coupled with the notion of resistance found in the ideas of *machismo* in the Mexican culture may relate to the manner in which drug traffickers are sometimes admired and emulated by the public (see Edberg 2001; Hobsbawm 1969).

³⁰ Accountability has emerged as a key issue in the post-transition period in Latin America (see for example, Mainwaring and Welna 2003; O’Donnell 1999, 2003; Przeworski, Stokes and Manin 1999; Schedler, Diamond, and Platter 1999). Schmitter (2004, 47) describes political accountability as “a relationship between two sets of persons or organizations in which the former agrees to keep the latter informed, to offer them explanations for decisions made, and to submit to any predetermined sanctions that they may impose. The latter, meanwhile, are subject to the command of the former, must provide required information, explain obedience or disobedience to the commands thereof, and accept the consequences for things done or left undone.” -- an “exchange of responsibilities.” This includes mechanisms of horizontal and vertical accountability mechanisms (O’Donnell 1999, 2003) and societal accountability (Smultovitz and Peruzzotti 2000).

³¹ On complicity leading to impunity, Adela Navarro Bello of the newspaper *Zeta* tells the story of publishing a video from an excomandante of the ministerial police in Baja California detained by drugtraffickers. Under duress, the official gives the names of police serving the cartel, including the name of the state attorney general. The paper confirms the names and publishes the video, but nothing happens. This leads Navarro to conclude: “Entonces, más que una unión entre el crimen organizado y grupos políticos, lo que hay es una vinculación entre el crimen organizado y el poder público” (“Ni chalecos ni autocensura,” *Proceso* November 4, 2007).

³² This pattern is nothing new and carries the heavy weight of history. The special prosecutor for past state crimes, FEMOSPP (Fiscalía Especial para Movimientos Sociales y Políticos del Pasado) created amid great fanfare by President Fox early in his term, was eliminated in December 2006 leaving more than 85 per cent of its cases unresolved. During its 5 year existence, the office conducted a total of 556 *averiguaciones previas* (investigations), issued 21 arrest warrants though only 8 were executed, and obtained the indictments of only 4 officials (*Milieno* January 1, 2007, p 20). Other critical cases from the past that remain unresolved

include the bank bailout Fobraproa, which is “considered by many as the biggest corruption scandal in Mexico’s history” (*SourceMex* August 15, 2001).

³³ Peruzzotti and Smulovitz (2006) prescribe social participation to overcome delegative democracy. This includes decentralized and disorganized mobilizations, particularly the mobilization of the masses demanding rule of law and justice.

³⁴ On co-governance see Ackerman (2004), and Ward and Rodriguez (1999).

³⁵ Data obtained from the SFP through a freedom on information request.

³⁶ The perception of fraud in the 2006 presidential election was widespread, despite the initial legitimacy of the IFE. Asked in November 2006, 29 per cent of those supporting Calderon believed there was fraud while 50 per cent of those supporting López Obrador believed so (Crespo 2007, 44). Owing to their handling of the election, legitimacy of IFE dipped about 20 points (Crespo 2007, 46)

³⁷ What analysts refer to as *privatism* arises from particularized trust or sense of obligation to family or friends. This includes a strong sense of solidarity with the extended family and hostility to the outsider (Lipset and Lenz 2000) and is closely associated with Banfield’s (1958) notion of amoral familism.

³⁸ The anthropologists Kyle and Yaworsky (2008) show how rights in Mexico relate primarily to one’s socioeconomic standing within the community. “Life in Mexico has traditionally been, and to a great extent remains, regulated not with reference to constitutional rights and by means of universally applied legal procedures but through participation in hierarchically structured and sharply stratified patronage networks” (p. 69). The study also finds that “instead of equitable treatment and dispassionate justice, government functionaries dispense *mercedes* in accordance with rules that rarely have much relationship to codifications and that instead accord a decided advantage to those of higher social standing... Whereas the winners to such interactions see ‘justice’ done, the losers experience the sting of *impunidad*” (p. 83).

³⁹ Mexicans file *amparos* – individualized legal injunctions against the abuses of authority by the government – in what seem to be large numbers. In 1997, for instance, there were 343,162 *amparo* suits, up from 22,748 in 1990 (Zamora et al. 2004, 258n).

⁴⁰ Harvey (1995, cited in Jones 1998, 500) notes that the Zapatista uprising came after frustration over the backlog of land claims filed in in legal tribunals.

⁴¹ Despite many differences, most discussions on the rule of law tend to agree on its centrality to democratic consolidation. According to Schmitter (2004, 52), democratic consolidation means “getting people to compete and cooperate according to rules and within institutions that citizens, representatives, and rulers alike find mutually acceptable.” By contrast, non-consolidated democracy exists where the rules of the system are not the only rules that operate and where public opinion may not always uphold them (Philip 2003). The chief concerns in rule of law

discussions focus on how to achieve this ideal state. This includes limited government, the institutional mechanics of accountability, the effective protection and advancement of civil and political rights, and the role of the judiciary in enforcing these rights and ensuring access and equality. Various institutional provisions exist to help achieve rule of law, including separation of powers, elections, judicial review, prohibition of retroactive legislation, prohibition of expropriation without just compensation, habeas corpus, trial by jury, etc. On the challenges to the criminal justice system during democratization see Karstedt and LaFree (2006)

⁴² Elizondo (2006) draws a distinction between democracy and governance, noting that just because Mexico is democratic does not mean that it is capable of governing itself. Part of the problem, he contends, is that the reforms of the past reduced the size and power of the state thereby making governance difficult.

⁴³ Canache and Allison (2005) found popular perceptions of corruption had no effect on support for democracy as a form of government in their study on Latin America. Looking at 11 countries, however, Kite and Sarles (2006, 350) conclude that “corruption, along with citizen security concerns, has the most detrimental impact on citizens’ confidence in democracy and democratic institutions.” Empirical analysis by Cruz (2008) finds that while perceptions of insecurity have a negative effect upon attitudes of stable democracy, crime victimization plays no role on attitudes of support for democracy.

⁴⁴ Bailey and Cornelius (2007) explore the difficulties of reforming the criminal justice system in Mexico. They highlight, for instance, the lack of a political coalition and political will to explain the absence of reforms and emphasize more targeted reforms rather than broad-based approaches.

⁴⁵ Bergman (2002), for instance, notes how the lack of confidence translates into higher costs because of the need for monitoring mechanisms.

⁴⁶ O’Donnell (2004, 37) refers to “interinstitutional” interactions and weak links. Above all, he suggests that the effectiveness of the legal system hinges on the interactions among various institutions (i.e. the judiciary depends on police, prosecutors, etc..)

⁴⁷ Early in his term, President Calderon deployed 27,000 troops to engage in joint efforts with police in regions hard hit by drug-related violence. According to Jose Miguel Vivanco, director of Human Rights Watch, “This is a sign that the normal channels of administration of justice, the courts, and police departments have failed” (*SourceMex* January 24, 2007). Sefchovich (2008, 251) is quick to note that Fox also began his term promising the intensive use of force to restore security, militarizing security institutions.

⁴⁸ While the headlines in the March 2, 2009 newspaper *La Jornada* described the increasing levels of lawlessness in the city of Reynosa, Tamaulipas and the arrival of more troops to try to control the situation, the accompanying photo depicted a protest against the military for human rights abuses.

A more serious concern is that the government uses the military and security forces to stifle social participation and protect those in power. In the case of Oaxaca, the corruption and abuse of power on the part of the governor and the security forces were both part of the problem

triggering the social protests, and yet the government used these institutions to restore order. While they effectively repressed the social movement, they abused human rights in the process and left the governor in power.

⁴⁹ This pattern occurs off the streets and, as noted, among businesses seeking to undermine competitors.

⁵⁰ This danger is illustrated in two critical areas: in the growing corruption within the military as its role in fighting drug trafficking has increased (see O'Day 2001), and the concerns about the politicization of the ostensibly independent citizen counselors in IFE (see Rosas et al. 2005).