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Sociolegal Studies on Mexico

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Abstract

Mexico has undergone a peculiar transition to a democracy that in some aspects and places still exhibits traits of the authoritarian past. The combination of authoritarian shades and democratic glares, rich diversity in socioeconomic conditions across the country, and the recent availability of a wealth of information and systematized data make for a great deal of research opportunities for sociolegal scholarship. This article reviews recent sociolegal studies on courts and judicial behavior, public security and the criminal justice system, and legal culture, pointing to several empirical puzzles and open questions that are crying out for explanations and systematic empirical analysis.

INTRODUCTION

Over the past four decades, Mexico has gone through a process of deep social, economic, and political transformation. The state significantly reduced its participation in the economy, the population grew considerably and became mostly urban, and the political regime transitioned from a hegemonic party system to a democracy. But Mexico's transformation is peculiar. The gradual melting down of the hegemonic party regime that had characterized the country for most of the twentieth century has produced a young democratic regime that in some aspects and places still exhibits traits of the authoritarian past. Mexico's resilient young democracy operates under conditions of high economic inequality, ethnic heterogeneity, state weakness, and feeble public opinion, but these characteristics vary considerably across the country. Diversity and variation in political, social, and economic contexts are thus a hallmark of contemporary Mexico and make this country fertile ground for sociolegal studies that, among other things, aim to study the law in context.

Mexico has changed, and so have the roles of the law, judges, and courts. Thirty years ago, the *Partido Revolucionario Institucional* (PRI) ruled by law, the Constitution was reformed in ad hoc ways, and even the Supreme Court viewed the President as the ultimate interpreter and defender of the Constitution (Cossío 2001, Domingo 2000). Socioeconomic changes and political competition have awakened the country's Constitution from its lengthy *siesta* (Silva-Herzog 2002), and today there is rule of law (albeit more pronounced in some subjects and geographic areas than in others), and the Supreme Court is the ultimate interpreter of the Constitution. This still incomplete transition from "traditional" to "modern" legal frameworks (López-Ayllón 1997), and from rule by law to rule of law, explains the relatively recent but steadily increasing proliferation of sociolegal scholarship on Mexico.¹ The field

is relatively new, and although a great deal has been accomplished, there is still much to do. Thanks to the efforts of several scholars who have collected data, systematized sources, and described previously unknown processes, there is now a rich source of information for the next step the subfield must make: a move from mainly descriptively rich studies toward more theoretical and empirically systematic analyses. In this article, I posit a series of questions and point to some empirical puzzles that are crying out for explanations and inviting scholars interested in sociolegal phenomena in general, and in Mexico and Latin America in particular, to join this research venture.

In selecting studies to review, I considered Friedman's (2005) characterization of sociolegal scholarship—that is, studies that make explicit use of social science theory to explain legal phenomena and studies that perform an empirical analysis of explicitly legal phenomena. It is worth taking these two dimensions separately because, as is the case with sociolegal studies on Mexico, they do not always come together. The pioneering sociolegal studies on Mexico, the first group of studies I examined, borrow theoretical insights from sociology or political science to explain legal phenomena, and offer descriptive statistics, detailed case studies, and other more or less scattered pieces of data to support specific hypotheses (e.g., Azuela 1989, Gessner 1984, Rubio 1993). A second group of studies, the most populated one addressed in this review, is composed mainly of studies authored by nontraditional legal scholars who, although not explicitly using social science theory to explain legal phenomena, do include propositions (often informed by social science) that are illustrated, to varying degrees, with descriptive statistics, exemplary case studies, and anecdotal references. Neither of these two groups of studies performs rigorous theoretical application or systematic empirical analysis.

¹The existence of an appropriate, though not sufficient, academic infrastructure mostly centered in Mexico City (e.g.,

PhD programs, full-time research professors, and a national system that provides incentives to research) also explains this surge (see Pérez-Perdomo 2012).

A third, smaller set of studies, mostly done by social scientists, such as political scientists, anthropologists, or economists, does use social science theory to explain legal phenomena, and performs systematic empirical analyses to test such explanations. Note that a systematic empirical analysis can be qualitative or quantitative: By systematic, I simply mean that the analysis is carried out to test a hypothesis, considering basic issues such as the representativeness and appropriateness of the data and the evaluation of alternative hypotheses. I do not review some interesting recent sociolegal historical analyses whose objects of study are legal phenomena that took place during the nineteenth century or the aftermath of the Mexican Revolution (for a review of these studies, see Mijangos y González 2011). Nor do I review studies that, although not primarily interested in legal phenomena, at the end reveal that the law or the legal framework is a variable of considerable importance to their subjects (for instance, Bensusán 2000 on labor relations in Mexico) (Antonio Azuela labels this type of analysis “involuntary sociolegal studies”; personal communication, July 13, 2011).

This article is organized around the three topics that have garnered the most attention from sociolegal scholarship on Mexico: (a) the judiciary, the courts, and judicial behavior; (b) public security and the criminal justice system; and (c) legal culture. I do not attempt to review or comment on every single work produced in these areas but instead point to the most important contributions, debates, and opportunities for future research. The review concludes with a summary of the findings. (For an excellent complementary review of sociolegal studies on Mexico, see Pérez-Perdomo 2012.)

THE JUDICIARY, THE COURTS, AND JUDICIAL BEHAVIOR

The Mexican judicial system, as established in the Constitution of 1917, has been reformed several times since the enactment of the Constitution: out of an astonishing total of 397 constitutional amendments between 1917

and 2010, 42 (16.3%) were reforms to the judicial system (López-Ayllón & Fix-Fierro 2010, p. 355). Three sets of reforms can be distinguished: the first set was aimed at politically subordinating the Supreme Court to the executive (from 1928 to 1950), the second set was aimed at increasing the administrative efficiency of the Supreme Court and the judiciary (from 1951 to 1987), and a final set was aimed at empowering the Supreme Court as constitutional interpreter and at making the judiciary more independent from the political branches (from 1987 to 2011) (see Caballero 2009, 2010; Fix-Fierro 2003; López-Ayllón & Fix-Fierro 2010).

The third set of reforms, especially the reform that took place in December 1994, has produced an interesting scholarly debate over why politicians would tie their own hands and empower judges. The debate is dominated mainly by political scientists who have applied the insights of rational choice theory to the case of Mexico. The vast majority of their explanations revolve around a relatively small set of relevant actors who have the capacity to empower and make independent the judiciary and who make decisions based on their ordered preferences and a cost-benefit analysis of possible actions. There are, however, also a number of studies by legal scholars that can be broadly categorized within the law-and-development tradition and that emphasize a paradigm shift with respect to the proper role of the judicial system in a market economy.

The debate over why politicians seemingly relinquish power to the judiciary has so far produced three categories of answers from political scientists. The first are backward-looking theories, which argue that as the era of hegemonic *presidencialismo* was fading and politicians of multiple partisan affiliations began to occupy elected offices, “the president’s leadership was challenged, first by members of different parties, and soon by his own copartisans. The President thus delegated to the Supreme Court the power to rule on constitutional issues as a means of solving this dilemma” (Magaloni 2003, p. 268) and created a neutral

arbitrator to resolve political disputes. The second category are forward-looking theories, which argue that PRI leaders foreseeing their electoral defeat empowered the judiciary in order to tie the hands of the future winner, in a sense buying insurance against an imminent electoral defeat (Finkel 2008). A third category are theories that, rather than focusing on forward- or backward-looking motivations, emphasize the present, the critical juncture during which the reform took place, and the dominant ideology at the time of the reform: These studies argue that in 1994, the year in which the reform took place, several events, including the assassination of the PRI's presidential candidate (Luis Donaldo Colosio), the successful attack by a sophisticated guerrilla movement [the *Ejército Zapatista de Liberación Nacional* (EZLN)] in the south of Mexico, and the entrance into effect of the North American Free Trade Agreement (NAFTA), prompted then-President Ernesto Zedillo to delegate power to the judiciary because he (a) needed legitimacy in order to govern (Inclán 2009) and (b) believed an efficient and independent justice system was a necessary condition for the proper functioning of the market economy (López-Ayllón 1997).

Broader questions—whether empowered judges make a difference and for what, and how we can tell that judges and courts are in fact driving the changes (if any)—have also produced a variety of responses from scholars. Those interested in the Supreme Court can now find a series of rich empirical studies describing important issues and processes such as how justices are elected and how they decide cases (Elizondo & Magaloni 2010) and how many and what type of cases the Supreme Court decides both generally (Bustillos 2009a)² and through specific instruments of constitutional review, including actions of unconstitutionality (López-Ayllón & Valladares 2009) and constitutional controversies (Hernández 2011).

²The Mexican Supreme Court has produced a database of its decisions (@lex) that is accessible via the Internet at <http://www2.scjn.gob.mx/alex/>.

A number of political scientists, most of whom trained in US universities, have advanced and tested a series of hypotheses to explain the behavior of Supreme Court judges, relying on a strategic model of judicial decision making that emphasizes the effects of various nonlegal constraints on judges' decisions (Epstein & Knight 1998). Their studies show that judges rule more often against the PRI when they decide under conditions of divided government (Ríos-Figueroa 2007), that they have been more likely to make findings of unconstitutionality after the PRI lost the presidency in 2000 (Sánchez et al. 2011), and that they have been more willing to check executive power after 1994, in particular by leveling the electoral playing field (Finkel 2003). In a book-length study of Supreme Court judges' strategic behavior, Staton (2010) shows that the Court actively seeks the support of public opinion in order to build its power and authority and to increase the likelihood of compliance with its decisions (see also Staton 2004). Political scientists have also analyzed the behavior of judges in the Electoral Tribunal, the highest court with specialized jurisdiction on electoral matters that was incorporated to the federal judiciary in 1996, emphasizing the ability of this institution both to channel pre- and postelectoral conflict "from the streets and into the courtrooms" (Eisenstadt 2007) and to check powerful interests in some states by nullifying local elections when federal electoral laws are violated (Berruecos 2003). One central lesson from political science scholarship on the Mexican Supreme Court is that, since 1994, the Court has become an effective and quite neutral arbiter of political conflicts, though its record on protecting fundamental rights has been much less impressive (cf. Ansolabehere 2010, Sánchez et al. 2011).

In part as a response to the shortcomings of political science scholarship on the Supreme Court and in part because of the increasing importance of Supreme Court jurisprudence for policies and politics, some legal scholars have begun to produce systematic analyses of jurisprudential lines of reasoning on a variety of topics; this novel (for Mexico) work has started to

produce specialized jurisprudential knowledge in areas such as criminal due process (Magaloni & Ibarra 2008) and the taxing capacity of the state and the just imposition of fiscal burdens (Elizondo & Pérez de Acha 2006). Beyond providing specialized jurisprudential knowledge, this work also engages more or less systematically with theoretical insights from the criti-



cal legal studies movement (Mangabeira 1983), is the case with studies of sexual and reproductive freedom (Madrazo & Vela 2011) and of whether the Court uses a gender perspective when deciding certain civil matters (Pou 2010). In terms of judicial behavior, perhaps the central lesson of these studies is that the Supreme Court is building quite slowly, and in disparate and not always consistent ways, its views on how and when fundamental rights should be protected. An underlying, and not always explicit, explanation for the unsteady and inconsistent jurisprudential construction is the traditional legal training and socially conservative ideology of some of the justices. [Sánchez et al. (2011) provide some evidence on the existence of these two dimensions, traditional legal training and conservative ideology, based on the frequency of voting coalitions in non-unanimous Supreme Court decisions.]

As Mexico is a federal country, the causes and consequences of judicial empowerment at the state level are also crucial topics of study, and they constitute a rich mine that has yet to be fully exploited by sociolegal scholars. For instance, we know that only some states have created local constitutional courts and instruments of constitutional control (Bustillos 2009b), judicial councils and independent higher courts (Concha & Caballero 2001), and independent administrative courts (López-Ayllón et al. 2010). We also know that local public prosecutors' offices are much more efficient in some states than in others (Bergman & Cafferata 2009) and that some states are much more advanced than others in the implementation of criminal justice system reform (see below for more information on national reform of the Mexican criminal justice system) (Shirk 2011). By and large, however, we still do not know

what explains these subnational variations. Exploring possible explanations, Beer (2006) finds that states in which there is more political competition spend more on their judiciaries, and Ingram (2012) finds that, in addition to political competition, ideological preferences of the local government, especially of parties in the left that tend to spend more, also matter for judicial budgets. The rich variation of judicial reforms at the subnational level invites more research that could be enriched by linking different levels of analysis: the subnational, the national (see discussion above), the regional (Pozas-Loyo & Ríos-Figueroa 2010, 2011), and perhaps even the cross-continental.

The role of the Supreme Court and the federal courts in policing compliance with federal law and with the national Constitution has also begun to be studied. We know that state courts' decisions are reversed by federal courts an average of 50% of the time, but this figure varies from 79% (Distrito Federal) to 29% (Veracruz) (Bustillos 2009c). The finding that, on average, only 50% of *amparo* suits (an *amparo* is an individual instrument of constitutional complaint that is heard in federal courts) against final local decisions were affirmed supports an old impressionistic idea that federal justice usually corrects bad state court decisions. But the reasons why some courts' decisions are reversed much more often than others are still unclear (see Cabrera 2010). Unfortunately, looking at specific cases of federal court oversight of state court decisions has not answered the question. For instance, Caballero & Meneses (2010) focus on the phenomenon of drunk driving and find that, despite the fact that drunkenness is a concept defined very differently by state legislatures and courts, federal courts have not established clear jurisprudence on the issue. In fact, when reviewing decisions by local courts from the few states where clear legal rules against drunk driving have been established, federal judges have tended to give local prosecutors wide discretion on whether or not to arrest drunk drivers.

Sociolegal studies on courts other than the Supreme Court and the Electoral Tribunal are

still scarce and tend to be merely descriptive (but see Kaplan et al. 2008 on labor courts). However, efforts at collecting data and presenting descriptive statistics of lower federal courts or state courts have actually refuted commonly held beliefs about courts and raise some interesting questions. For instance, based on interviews of parties in Mexico City family courts, Fondevila (2007) shows that these courts are actually quite good in terms of efficiency, times to disposition, and the legitimacy of their decisions. Hammergren & Magaloni (2001) also empirically contradict the common beliefs that mercantile courts are utterly inefficient, that every decision is appealed, and that they are for the exclusive use of the “haves” and big firms. Interestingly, a study on criminal courts in Mexico City does corroborate the pessimistic popular beliefs about inefficiency, arbitrariness, and court corruption (Pásara 2010). This suggests that the bad reputation of courts in general is due to experiences in criminal courts, which of course receive more attention from the public and the media than mercantile or family courts. But, if criminal courts actually deserve their bad reputation, why is this the case?

Presunto Culpable, Presumed Guilty (<http://www.presuntoculpable.org/>), a 2009 documentary involving a criminal court in Mexico City, dramatically put a spotlight on the shameful state of the Mexican criminal justice system, something that had already been thoroughly documented not only at the federal level but at the state level as well (Zepeda 2004). In a nutshell: Corruption in the police forces is widespread, the public prosecutors have a lot of power and they tend to use it arbitrarily, the criminal courts usually rubber-stamp whatever the prosecutors present to them, and prison facilities barely meet minimum humanitarian conditions. Why is the criminal justice system in such dreadful shape? As will be developed in the next section of this article, one plausible answer is that the criminal justice system is one area in which practices inherited from the authoritarian regime have been more persistent and difficult to change.

PUBLIC SECURITY AND THE CRIMINAL JUSTICE SYSTEM

The push in the fight against drug trafficking since President Felipe Calderón came to office in 2006 has called international attention to the situation of crime and public security in Mexico. But some important changes in these areas predate the recent surge in activity and attention. Actually, the constitutional clauses that regulate criminal procedure and the criminal code have undergone more reforms in the past two decades than in the previous sixty years. For instance, constitutional Article 19 (which regulates procedural rules for prosecutors and judges when a person is detained) was reformed in 1993 for the first time since 1917. Similarly, Article 16 (which establishes the basic rights of due process) was reformed only once up until 1983, but it has already been reformed five times since 1990. According to experts on criminal law, the turning point regarding Mexican criminal procedure was in 1993, when the whole set of articles related to the detention and trial of suspects was changed (García 2001). Since then, reforms related to these issues accelerated until there was a complete overhaul of criminal procedure with the constitutional reform of 2008, which requires an abandonment of the inquisitorial process and a gradual eight-year transition to an adversarial system.³

Despite these reforms, the basic institutional incentives that subordinate the public prosecutors to the executive branch have remained practically untouched since 1917. At the federal level, the Mexican president unilaterally appoints and removes the *Procurador General de la República* (the equivalent of the attorney general of the United States), who in turn freely appoints and removes all lower level public

³The institutions in charge of securing public safety (e.g., the police, the secretary of public security, the investigative police) have also undergone important transformations (Bergman 2007). Many of these reforms are still in the implementation phase at the time of this writing.

prosecutors (*ministerios públicos*).⁴ There are internal mechanisms of control, such as periodic visits and reviews, that allow officials at higher levels to monitor their subordinates, but ultimately all *ministerios públicos* report to the *Procurador General* and face little external accountability. Moreover, the office of the *Procurador General* enjoys a great deal of discretion in the three steps that characterize the prosecutorial process: investigating, charging, and sentencing.

This combination of political subordination and vast legal power for the public prosecutors makes sense once we take into account that it was the cornerstone of the coercive power of the authoritarian PRI regime for most of the twentieth century. The Mexican executive regularly used public prosecutors politically to exert pressure on friends and enemies alike. The popular saying *para mis amigos todo, para mis enemigos la ley* (“everything for my friends, the law for my enemies”) is particularly true regarding the Mexican *ministerios públicos*.⁵ The capacity to unleash the force of legal prosecution on a political enemy served as the proverbial stick that the Mexican executive wielded to induce certain behavior from different actors in the political system. The successive presidents under the PRI regime used this power selectively to signal the expected behavior from all political actors, even against prominent members of the political and entrepreneurial elite who stepped out of the bounds informally established by each president’s administration.

The arbitrary use of prosecution was prevalent and was not reserved only for salient political figures. As Magaloni (2010) explains, in the context of the authoritarian regime, the task of the *ministerios públicos* was not to conduct

a professional investigation of a crime but instead to hide customary police arbitrariness, to detain people, to obtain confessions, and to produce the legal file of the case to be reviewed by a judge. The judge then merely checked to see if the file contained the legal requisites, declared the defendant guilty, and proceeded to sentencing according to the prosecutor’s suggestions (Magaloni 2010, p. 15). Because the Supreme Court had been successfully incorporated into the dynamics of the hegemonic party, it very rarely served as a check on lower judges and prosecutors and instead validated their practices. For instance, in one infamous decision, the Mexican Supreme Court held that confessions extracted by prosecutors through the use of physical force (i.e., torture) were admissible as trial evidence as long as there were other pieces of evidence corroborating the confession.⁶

The performance of the public prosecutors essentially has not changed with the transition to democracy. At the local level, many governors still use the prosecutor’s office to go after political enemies, and even former President Vicente Fox, who defeated the PRI in the executive electoral race of 2000, did not hesitate during his time in office to use this resource to try to get rid of the leader of the opposition, Andrés Manuel López Obrador. In everyday cases, arbitrariness of prosecution and violations of rights by the police and prosecutors are still common, and judges by and large continue to validate them. According to recent systematic empirical studies,⁷ only 25% of all

⁴Since 1994, the executive’s choice of *Procurador General* has had to be approved by the Senate, but the president still freely removes him or her.

⁵Interestingly, different Latin American countries claim original authorship of this popular saying. In Mexico, there is debate as to whether the author was Benito Juárez or Porfirio Díaz. But Brazilians claim authorship by Getúlio Vargas; Argentines by Juan Domingo Perón; and Peruvians by Oscar Benavides. And this is likely only a partial list.

⁶Tesis de Jurisprudencia. Semanario Judicial de la Federación. Amparos Directos 151/90 y 251/90. Primera Sala, Octava Época, tomos VII-Enero y X-Septiembre, pp. 193, 248.

⁷One of the “positive” side effects of the war on drugs is an important increase in the number of organizations and university departments dedicated to studying crime and public security, with a corresponding increase in high-quality empirical data. See, for instance, the studies and data produced by CIDE’s Program of Studies on Public Security and the Rule of Law (PESED) or the GeoCrime Program (<http://geocrimen.cide.edu/>), as well as those produced by the Citizen’s Institute of Security Studies (ICESI; <http://www.icesi.org.mx/>).

crimes in Mexico are reported to the police; of those crimes reported, only 4.5% are investigated; and of those, only 1.6% are taken before a judge (Zepeda 2004, p. 398). Data from a recent series of surveys of prison inmates in Mexico City and the state of Mexico indicate that most inmates were allegedly “caught in the act” (92%), convicted of minor offenses (e.g., theft of objects with values under \$200 USD), beaten by the *ministerio público* and forced to “confess,” and never saw a judge during the whole process (Azaola & Bergman 2007, 2009).

Interestingly, in almost all cases, judges still validate the work of the prosecutors, even though they are aware of the ways in which prosecutors usually conduct their “investigations.” It was not until 2006 that the Supreme Court started to consistently uphold the basic rights of criminal due process, establishing sensitive limits to prosecutorial, police, and military discretion (see Magaloni & Ibarra 2008). In a series of cases, the Court held that prosecutorial accusations based on hearsay, illegally obtained evidence, and other questionable practices are simply not allowed and are thus considered insufficient for convicting defendants. In a 2011 decision, the Court decided to limit the scope of military jurisdiction, complying with a ruling against Mexico by the Inter-American Court of Human Rights. This activity is very recent, and whether it continues or not, it requires further exploration and analysis by sociolegal scholars.

One of the reasons why public prosecutors are extremely inefficient at prosecuting the vast majority of criminal offenses that affect common citizens is their relationship with the police. Although in many countries the investigatory police usually act as a filter for minor offenses and other common cases that do not merit prosecutorial revision, in Mexico the prosecutors deal with every single case, even minor and administrative offenses (Zepeda 2004, p. 212). The consequence, of course, is that prosecutors have immense caseloads, and this generates processing delays. Lost files and very little to no time for attention to the

public are the norm. Interestingly, this inefficiency discourages citizens from reporting crimes, producing “lower” crime rates that are then touted by officials in the executive branch (Pérez 2008). Thus, it is not surprising that some police personnel and prosecutors are not proud of their jobs. Recent anthropological investigations reveal that some of them actually acknowledge that their job is to produce a “file of lies” instead of searching for the legal truth in the cases that reach them (Azaola & Ruiz 2009).

Those citizens who are caught by the police, sometimes simply for being in the wrong place at the wrong time, and those who persist and report crimes face a bureaucratic nightmare that seems set up explicitly to provide opportunities for corruption. Prison inmates report that corruption is at its height when the police make an arrest because at that moment the individual has the greatest opportunity to avoid jail (Azaola & Bergman 2009). After that, suspects face demands for “speed money” for prosecutors, courts, and prison personnel, although levels of perceived judicial corruption vary from state to state and across time as well.⁸ High-level corruption is still whitewashed by the political subordination of the prosecutors’ offices, the typical scenario involving a special prosecutor being selected to investigate a high-level official and concluding that there is not sufficient evidence to charge him, even if the official became ridiculously rich during his tenure in office. In sum, the prosecutorial offices have been shown to be the very “heart of the immunity problem” (Zepeda 2004) and one of the main factors explaining the relatively high corruption levels in Mexico (Ríos-Figueroa 2012).

In July 2008, a constitutional reform was passed with the aim of overhauling the criminal justice system in Mexico. The reform stipulates that by 2016, all criminal trials in Mexico will be carried out in an adversarial, and no longer in an inquisitorial, manner. The

⁸See Transparencia Mexicana’s *Índice Nacional de Corrupción y Buen Gobierno* at <http://www.transparenciamexicana.org.mx/ENCBG>.

reform affects prosecutors, police, and judges and the links among them. At each of the four stages of the new criminal trial process (investigation, pretrial, oral trial, and sentencing), there will be a judge overseeing the performance of the police and the prosecutors (first two stages) and directly presiding over the oral trial and the sentencing stage. Therefore, at least in theory, in the new process there will be no unchecked actors who can abuse their power at their discretion. Although these oversight mechanisms are good news, especially regarding the prosecutors, the basic incentive structure for *ministerios públicos* remains untouched: Prosecutors remain subordinate to the executives at both the federal and the state levels.

To date, the criminal process reform has not made much progress and is in full effect in only a handful of states, the most important of which is Chihuahua (Shirk 2011). The experience of Chihuahua demonstrates the impressive amount of effort (economic, political, and social) that is needed to fully implement the new process. Ingram et al. (2011) document that not only do the degrees of progress in the implementation of the reform vary from state to state, but so do the ways in which the reform is viewed. Having interviewed judges, prosecutors, and public defenders about the reform to criminal procedure, the authors note that more than half of the respondents—especially judges—indicated that Mexico's traditional inquisitorial system was both efficient and effective, although, not surprisingly, public defenders were much more critical of the current system than were judges or prosecutors. The reform of the criminal procedure and its inconsistent application are a great research opportunity for sociolegal scholars interested in studying legal transformations.

LEGAL CULTURE

Legal culture is a topic that is almost always present in sociolegal analyses of Mexico. In a way, there persists a sort of legacy from a line of thought in the essayist tradition of nineteenth

century Latin America according to which a non-Western/legalistic/illiberal legal culture is the favorite scapegoat for the shortcomings of the rule of law in the country (see the discussion in the introduction and first part of Rodríguez-Garavito 2011). However, culture in general and legal culture in particular are very difficult to define and measure, which puts a heavy burden on those who aim to identify either the causes of a particular legal culture or, alternatively, the effects of the persistence of a certain legal culture, on what, and under what circumstances. This difficulty is apparent in sociolegal analyses of legal culture in Mexico, which are mostly descriptive and full of hypotheses that have yet to be empirically tested in systematic ways. Scholars interested in legal culture, therefore, must be very creative in terms of research design when they select legal culture as the outcome to be explained or when they seek to isolate the effects of legal culture on a particular outcome. In what follows, after stating some interesting results from survey studies on legal culture, I review first sociolegal studies in which legal culture is the variable to be explained and then those that posit legal culture as an explanatory variable of other phenomena.

Survey studies on the political attitudes and values of Mexican citizens are relatively recent. Although today they are an integral part not only of the practice of government and political competition but also of social science studies, it is difficult to find survey studies for the period between Almond & Verba's (1963) *The Civic Culture*, which included Mexico as one of its case studies, and the early 1990s when the political and economic transformation of the country were clearly underway (see essays in Flores 2011). After the judicial reform of 1994, survey analysis of the legal and civic culture of Mexican citizens has been more prevalent. Some findings are interesting, but also chilling when linked to the state of the criminal justice system described above. For instance, in 1996, 40% of the Mexican population approved, at least partially, of police torture to obtain a confession from a rapist (Beltrán et al. 1996, p. 47). In 2002,

39% of the population approved of listening to and taping private conversations in order to combat corruption and crime even if this practice violated citizens' rights (Juárez 2002). In 2004, 80% of the population said that the duty of judges is to sentence criminals; only 5.4% said that their duty is to protect citizens' rights (Concha et al. 2004, p. 69).

In general, the picture that emerges from these surveys is that regard for the Constitution is high in abstract terms but very poor when questions probe practical issues, such as how to protect rights or combat arbitrariness of governmental officials. The gap between the abstract concepts of justice and rights involved in the Constitution and the everyday reality of Mexican citizens is in part explained by their limited access to justice: The *amparo* suit, an instrument designed to challenge government actions that violate individual rights, is technically complex and expensive (see Elizondo & Pérez de Acha 2006), and the support structure for rights litigation (Epp 1998) is rather weak, underfunded, and heavily concentrated in Mexico City. Many, perhaps most, social movements and organizations still prefer to march down *Paseo de la Reforma* (one of the main avenues in Mexico City) or mount a hunger strike in the *Zócalo* rather than sue the government or legally challenge violations of their rights. Often, the leaders of such movements and organizations do not even realize that they can channel their demands through the courts (Rosales 2010).

Most studies that aim to explain legal culture focus on the legal profession. These studies share a diagnosis: Legal professionals in Mexico mostly partake in what can be called a legalistic culture—that is, one centered on memorizing the Constitution and the statutes instead of on legal reasoning and jurisprudence. The studies differ, however, as to the causes of this condition and, interestingly, argue against a simplistic view of legal culture and its causes. Based on official statistics and interviews, Adler & Salazar (2006) and Ansolabehere (2008) emphasize the role of social networks to which lawyers belong and the actual job that lawyers perform, respectively, in order to explain prevailing traditional

legal values. Other authors point to more structural factors to explain the peculiarities of and variation in cultural values of legal professionals. For instance, Fix-Fierro & López-Ayllón (2006) stress the persistence of a traditional curriculum in legal education and point to the fragmentation of the legal profession to account for low quality representation and inertia, whereas Dezalay & Garth (2006) instead stress the impact of economic transformation on the education and role of lawyers.

Beyond those looking to explain the current legal culture in Mexico, there are studies that find legal culture to be an explanatory variable of other phenomena, for instance, judges' decisions. These studies do not have a naïve or simple view of legal culture and do not argue that culture alone determines outcomes. The crucial difference is, again, between a legalistic or traditional judicial ideology, according to which judges simply apply the law, and an expansionist ideology that emphasizes the role of interpretation of the law in deciding specific cases. Along these lines, as mentioned above, Sánchez et al. (2011) find that justices of the Supreme Court seem to cluster along this ideological dimension of legalistic versus expansionist judicial attitudes, and the authors show how these different ideologies play out in specific salient cases. Begné (2007) and Cuéllar (2008), in a series of interviews with federal judges and judges in the state of Puebla, respectively, find that even judges who would be more inclined toward an expansionist ideology recognize that hierarchical relations and a socially conservative ideology within the judiciary exert an important influence on them. Given that the power of the hierarchical superiors over the administration of the judicial careers of lower judges is so important, the almost complete absence of social science studies devoted to the judicial council (but see Pozas-Loyo & Ríos-Figueroa 2011) or to the lower and administrative courts (but see López-Ayllón et al. 2010) is noteworthy.

In contrast, other studies cast doubt on the impact of an allegedly traditional judicial ideology on the outcome of cases, emphasizing instead the role of incentives set by the judicial

hierarchy or the justice system. In an interesting study on federal district courts, Magaloni & Negrete (2002) show that the frequency of legalistic decisions (i.e., those dismissing cases based on formalities) is due more to the incentives set by the system, specifically the career promotion incentives that put a premium on smaller backlogs of cases, than to a particular judicial culture. Similarly, Pásara (2010) finds that the mechanics of the criminal justice system (explored in the previous section) are a better explanation for the large number of guilty findings by judges in Mexico City than is socially conservative law-and-order judicial ideology.

Legal culture, in certain aspects and usually interacting with other variables, also plays an explanatory role in other recent sociolegal studies. For instance, Gessner (1984) finds that social conflicts when taken to the courtrooms reach different outcomes depending on the economic and cultural background of the citizens involved in the trial. Similarly, Azuela (2006) finds that the effectiveness of environmental regulations varies with the cultural background of the citizens and places where the law is being applied, e.g., rural or urban (Herrera 2010). Another interesting and troubling phenomenon is that of community lynching. Official data on the frequency of lynching cases in Mexico City from 1999 to 2005 show a total of 66 cases, many of which (46%) occurred in “rural” areas within the city. In order to explain this phenomenon, Herrera (2010) posits an interaction between the perception of insecurity and what he calls the “quality of the neighborhood organizations,” which is poorer in those city areas populated mostly by recent immigrants from the countryside. Finally, the study by Cáceres & Rodríguez (2008) is also worth mentioning. They are part of a psychology workshop dedicated to the study of legal behavior in Mexico and have found that a logic of anticipated consequences, rather than traditional variables of social attitudes, has the strongest effect on predicting compliance with traffic laws in five Mexican states.

CONCLUSION

These are interesting times for sociolegal studies on Mexico. A wealth of data and information is now available that makes it possible to systematically test existing hypotheses, and numerous theoretical questions and empirical puzzles are waiting for answers. The subfield should take the next step toward studies that explicitly use social science to explain legal phenomena and that also perform systematic empirical tests of the proposed explanations. There is a lot of information, but there is also a conspicuous scarcity of explanations. There is not enough systematic use of existing theories and much less theoretical innovation. With few exceptions, studies focus exclusively on Mexico and do not systematically compare this country with others, not even within the Latin American region. Existing studies cite each other, but again, with few exceptions, facts and ideas are generally not yet disputed (this is what Antonio Azuela calls a prevalence of “isolated production”; personal communication, July 13, 2011). Perhaps the reason is that the subfield is still scarcely populated or that most studies respond to questions of how and not why. Regardless, thanks to the existing descriptively rich studies and the new collections of data, the subfield is ripe for taking the step toward the question of why. The arrival of social scientists to the study of legal phenomena in Mexico indicates a positive development that will hopefully generate virtuous collaboration with the legal scholars who have already opened their agendas and toolkits. In sum, the subfield is young and blooming, and the opportunities for research are enormous.

The stakes are also high. Mexico’s protracted transition to democracy produced justice institutions that lack accessibility and are, in general terms, effective for politicians but not for the vast majority of the people. However, another pair of recent reforms have the potential to considerably expand access to justice for ordinary people. The first reform transforms the human rights regime in the country. Among other things, it recognizes as rights not only

those explicitly included in the Constitution but also all rights present in international treaties ratified by the country. The reform also gives new powers to the Ombudsman's office. The second reform affects the *amparo* suit, the individual instrument of constitutional complaint that is the main tool for the protection of rights. This reform expands the accessibility, scope, and effectiveness of the *amparo*. Whether these reforms will have a positive effect will depend,

in part, on how the justice system processes the expected surge in legal activity. It will also depend on how creatively litigants, lawyers, and judges use the new legal tools and on citizens' and politicians' responses to this new scenario. Sociolegal studies on Mexico could significantly contribute to producing accurate diagnoses of critical conditions and, eventually, better public policies to ameliorate such conditions.

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