The Mexican Kidnapping Industry: Does Federalism Hold the Government Hostage in its Efforts to Combat Such Criminality?

Charles B. Bowers, *Nova Southeastern University*

Available at: https://works.bepress.com/charles_bowers/7/
The Mexican Kidnapping Industry: Does Federalism Hold the Government Hostage in its Efforts to Combat Such Criminality?

Charles B. Bowers

INTRODUCTION

In an article in The Economist magazine in 2009, entitled “On the Trail of the Traffickers”, Mexico’s devolution into lawlessness was attributed, in part, to what the author(s) called “The curse of federalism”\(^1\). As a federal republic, Mexican power is divvied up amongst 31 states and 1 federal district.\(^2\) As a curious result of such a system, drug-trafficking is considered a federal crime while kidnapping remains a state crime.\(^3\) With Mexico overtaking Colombia as the “world leader in reported kidnappings”\(^4\), many blame this disparate mix of state kidnapping laws for having provided a plethora of jurisdictional hideouts. By examining the sentencing guidelines for the crime of “secuestro” (kidnapping) in each of the Mexican states with the highest incidence of narco-inspired violence, I attempt to show that such a criticism of Mexico’s federal system is unfounded. In addition, this article compares successful Colombian anti-kidnapping efforts with current trends in Mexico in an effort to demonstrate that an enforcement initiative, rather than a legislative retooling, is what is needed.

---

1 “On the Trial of the Traffickers”: The Economist March 7\(^{th}\)-13\(^{th}\) 2009 Vol.390 No.8621 p.32
2 CIA FactBook: (accessed 3/19/09)
https://www.cia.gov/library/publications/the-world-factbook/geos/mx.html#Govt
3 “On the Trial of the Traffickers”: The Economist March 7\(^{th}\)-13\(^{th}\) 2009 Vol.390 No.8621 p.32
4 Associated Press, reported on MSNBC (accessed 3/19/2009)
http://www.msnbc.msn.com/id/10546934/
THE CURSE OF FEDERALISM

If such a categorization is accurate; if federalism has indeed paralyzed Mexico from acting to combat its emerging kidnapping threat, that is a very scary proposition. For in addition to soaring crimes rates in Mexico, that violence has spread to its neighbor to the north. In fact, Phoenix, Arizona is now America’s leader in ransom kidnappings, with “most every victim and suspect [being] connected to the drug-smuggling world, usually tracing back to…Sinaloa.” This is especially troubling when one understands that “kidnappers in Mexico are three times more likely to kill their victims than are their counterparts in Colombia…” With such kidnappings linked to the rise in narco-violence generally, one is again prompted to ask whether the federal structure and its myriad “código penales” (penal codes) hinders resolution.

In an attempt to answer that question, your author examined the criminal codes of the Mexican states with the highest rates of narcotics-inspired crime. As a starting point, I focused on Chihuahua, Baja California, Sinaloa, Michoacán, Guerrero, and Coahuila. Chihuahua, Baja California, and Sinaloa were chosen due to the fact that more than half of the 6,268 cartel-linked killings that occurred in 2008 took place in Ciudad Juárez (Chihuahua), Tijuana (Baja California), and Culiacán (Sinaloa). Michoacán and Guerrero were selected for their connections to the Beltrán Leyva organization—headed by Marcos Arturo Beltrán Leyva, an individual designated under the Foreign Narcotics Kingpin Designation Act of 1999. Lastly, Coahuila was chosen for it was here that Felix Batista, an American anti-kidnapping expert with ASI Global LLC, was himself kidnapped in December of 2008.

---

5 L.A. Times (accessed 3/19/09)
6 Associated Press, reported on MSNBC (accessed 3/19/2009)
http://www.msnbc.msn.com/id/10546934/
8 Id. at p.31
9 U.S. Department of State: statement by Ambassador Antonio O. Garza
10 CNN: (accessed 3/19/2009)
Given that no ransom request has, as of yet, been made regarding Mr. Batista’s kidnapping, many are speculating that the ‘take’ was designed to send a message to the U.S. not to interfere. This argument holds some weight, for just days before Batista’s disappearance the former Army major participated in security lectures sponsored by Coahuila’s state public security secretary.\(^{11}\) In addition, the abduction occurred just weeks after the Coahuila Governor, under mounting pressure from the U.S., pushed for the strengthening of anti-kidnapping laws including the reinstatement of the death penalty for kidnappers.\(^{12}\)

The purpose of my examination of the various penal codes was to determine just how drastically the “Código Penal” varied from one state to another. A sizeable difference in the severity of punishment for the crime of “secuestro” (kidnapping) would suggest that state jurisdictions were susceptible to gaming. In other words, one might assume that if kidnapping laws were extremely lenient in a given state, kidnappers might take advantage of this leniency by more aggressively conducting operations in this area. The findings, however, did not suggest the drastic variations that would incentivize this type of behavior.

As per Mexico’s federal system, secuestro is punished according to sentencing guidelines that are published within the penal codes of each state. Mandatory minimum and maximum allowable sentences act as both the floor and ceiling of the punishment structure. Please note: though the presence of mitigating and aggravating circumstances (e.g. the kidnapping of a minor) is taken into consideration, I provide below only the generalized sentencing ranges.

With regards to mandatory minimum sentencing, there is, with two exceptions, little difference amongst the above-mentioned states. In Coahuila, exception one, the minimum sentence one can receive for the crime of secuestro is 16 years\(^{13}\). While in Guerrero, exception two, the minimum possible sentence is 40 years\(^{14}\). Though the difference, 24 years, is quite substantial, this in no way represents the largest variation in sentencing amongst all Mexican


\(^{12}\) Id.


states. In fact, if one were to add to our sample set, the 10 year\textsuperscript{15} minimum sentencing requirement in the Yucatan—where 11 decapitated bodies were found in August of 2008 as a result of the drug war spillover\textsuperscript{16}—the difference could be as large as 30 years.

Now, if the analysis stopped there, a knee-jerk reaction might be to assume that Coahuila’s lax anti-kidnapping laws, comparatively speaking, would lead to higher incidences of kidnappings than in their stricter southern counterpart, Guerrero. The truth of the matter, though no consolation to Mr. Batista either way, is that such an assumption would be incorrect. In fact, despite these harsher sentencing guidelines, the people of Guerrero have been just as victimized by the violence and kidnappings associated with the drug trade. The same holds true for Michoacán, Sinaloa, Baja California, and Chihuahua, where minimum sentencing stands at 20\textsuperscript{17}, 25\textsuperscript{18}, 20\textsuperscript{19}, and 20\textsuperscript{20} years respectively. In fact, in Sinaloa, which has been disproportionately hit by drug-related kidnappings (see above), the 9 year difference in minimum sentencing between Sinaloa and Coahuila has done little, if anything, to curb the *secuestro* business there.

With regards to maximum allowable sentencing, there is very little variation, and only one outlier. In fact, in Coahuila, Michoacán, Sinaloa, Baja California, and Chihuahua the maximum applicable sentence is the same, 40 years.\textsuperscript{21} In Guerrero, again the strictest

\textsuperscript{15} Yucatan Codigo Penal: Capitulo IV; Privacion ilegal de la Libertad, Articulo 242 (accessed 3/19/2009) 
\url{http://compilacion.ordenjuridico.gob.mx/fichaOrdenamiento.php?idArchivo=9917&ambito=ESTATAL}

\textsuperscript{16} L.A. Times (accessed 3/20/09) 
\url{http://www.latimes.com/news/nationworld/world/la-fg-mexdrugs30-2008aug30,0,5217757.story}

\textsuperscript{17} Michoacán Codigo Penal: Secuestro; Articulo 228 (accessed 3/19/2009) 
\url{http://www.ordenjuridico.gob.mx/Estatal/MICHOACAN/Codigos/MICHCOD07.pdf}

\textsuperscript{18} Sinaloa Codigo Penal: Capitulo II; Secuestro, Articulo 167 (accessed 3/19/2009) 
\url{http://www.ordenjuridico.gob.mx/Estatal/SINALOA/Codigos/SINCOD05.pdf}

\textsuperscript{19} Baja California Codigo Penal: Capitulo II; Secuestro, Articulo 164 (accessed 3/19/2009) 
\url{http://www.ordenjuridico.gob.mx/Estatal/BAJA%20CALIFORNIA/Codigos/BCCOD05.pdf}

\textsuperscript{20} Chihuahua Codigo Penal: Capitulo III; Secuestro, Articulo 160 (accessed 3/19/2009) 
\url{http://www.ordenjuridico.gob.mx/Estatal/CHIHUAHUA/Codigos/CHIHCOD08.pdf}

\textsuperscript{21} Coahuila Codigo Penal: Articulo 371; Sanciones y Figuras Tipicas de Secuestro/ Michoacán Codigo Penal: Secuestro; Articulo 228/ Sinaloa Codigo Penal: Capítulo II; Secuestro, Articulo 167/ Baja California Codigo Penal: Capitulo II; Secuestro, Articulo 164/ Chihuahua Codigo Penal: Capitulo III; Secuestro, Articulo 160
jurisdiction in our sample, the maximum generalized sentence for the crime of *secuestro* is 60 years\textsuperscript{22}. 

Bottom line: only low-levels of variance exist within the maximum allowable sentencing guidelines, and no quantitative decrease in the incidence of kidnapping is evident in states where mandatory minimum sentencing requirements are higher. As such, it becomes much tougher to argue that Mexico’s federal structure is a curse with regards to combating narco-violence. Certainly, jurisdictional overlap, and the turf battles that are sure to follow, stifle efforts to combat crime. But, with regards to Mexico’s patchwork of *secuestro* laws, federalism does not appear to be the obstacle.

This diagnosis can be taken as both good and bad news. The bad news is that your author places very little faith in the much touted National Anti-Kidnapping Laws that have been promised for years. While uniformity may very well help with regards to efficiency of process, we’ve just established that state laws, though fragmented, are not the problem. The good news, on the other hand, is that by eliminating this argument from the list of potential obstacles to the restoration of peace, Mexico can focus instead on the revamp of its enforcement apparatus.

As such, it is the opinion of your author that the government is wasting both its time and resources by attempting to push forth uniform *secuestro* laws. Local governments are bound to fight what is likely to be perceived as the plundering of their newly-acquired state sovereignty. Remember, though state autonomy has been present in theory for decades, in reality that power was not effectual until the National Action Party (PAN)—under the tutelage of Vicente Fox—took power in 2000, thus breaking PRI’s dynastic grip on authority.\textsuperscript{23} Such fighting will inevitably slow legislative adoption, and more importantly, enforcement. And, without enforcement, laws (whether federal or state-based) are meaningless.

To illustrate: for years now, Colombia has had laws on its books that were every bit as strict as those in the state of Guerrero. “In 1993, a new anti-kidnapping law [was passed] through Congress, raising the top jail sentence for kidnapping to 60 years—the longest sentence...”

\textsuperscript{22} Guerrero Codigo Penal: Capitulo III; Secuestro 129
\textsuperscript{23} Fox, Vicente: A Los Pinos (Mexico: Oceana, 1999) p.178
allowed for any crime in Colombia.” And yet, without enforcement, kidnapping remained so prevalent that a weekly phone-in radio show, “The Voices of the Kidnapped”, was established in order to communicate with those that had fallen victim. In fact, the numbers of those whom had been taken swelled to such an extent that many radio stations began allowing the families of hostages to record messages that would be played on air late at night.

It wasn’t until a massive crackdown led by Colombian President Álvaro Uribe that results were finally realized. And realized they were: the Uribe administration claims an 88% decrease in the kidnapping business since 2002. The keys to success in Colombia appear to be motivation, both of the government and of the people, and the creation of specially-trained, fully-equipped anti-kidnapping units.

On the motivational front, a better team of Colombian politicians could not have been imagined to lead the charge. President Uribe certainly had his own emotional incentives to act; his father was killed by the Fuerzas Armadas Revolucionarias de Colombia (FARC). The FARC, a Marxist-Leninist guerrilla group that has long since given up its communist ideology in search of an easy profit, makes a killing (quite literally sometimes) by either babysitting drug fields, or through mass kidnappings. Even Uribe’s vice president, Francisco Santos, had himself been kidnapped in 1990 by Pablo Escobar.

As such, it should come as no surprise that once in office, the Uribe administration declared all out war on the “narcotraficantes”. By 2003, Uribe ended all negotiations with the guerrillas and announced that from that moment on, hostages would be freed only by “fuego y

---

24 Chicago Tribune article appearing in the Seattle Times (accessed 3/19/2009)
http://community.seattletimes.nwsource.com/archive/?date=19961225&slug=2366789

25 BBC (accessed 3/19/2009)
http://news.bbc.co.uk/2/hi/americas/3181586.stm

26 Gonsalves, Marc; Stansell, Keith; Howes, Tom: Out of Captivity: Surviving 1,967 Days in the Colombian Jungle (New York: William Morrow/Harper Collins, 2009) p.84

27 L.A. Times (accessed 3/19/2009)
http://www.chicagotribune.com/topic/la-oew-efron24may24,0,5422145.story


29 L.A. Times (accessed 3/19/2009)
http://www.chicagotribune.com/topic/la-oew-efron24may24,0,5422145.story
sangre” (fire and blood). In an interview with the Los Angeles Times in 2007, Vice President Santos claimed that with the support of the United States, Colombia formed “32 special law-enforcement units, each with 50 to 100 officers, dedicated to investigating kidnappings and rescuing victims…” In the same interview, Santos touted the intelligence capabilities of these units as much as he did their brawn.

Kidnappings for ransom have at their core an inescapable vulnerability: the need to make contact in order to secure payment. And, this is precisely where intelligence capabilities, popular support/motivation, and well-drafted anti-kidnapping laws dovetail. Rather than simply being trained to kick down doors, these specialty anti-kidnapping units need both intelligence and counterintelligence capabilities. Units need to be able to trace the inevitable call for ransom, they need to be able to identify major players in the scheme, and they need to be proactive in their analysis of modus operandi in an effort to stave off future kidnappings. In addition, counterintelligence should be utilized to eliminate the corrupting influence, within these units themselves, of large amounts of narco-cash.

Popular support is essential for any such intelligence initiative to gain traction. In Colombia, such cooperation was readily available; the people were more than willing to assist the government. In fact, during the 1990s, when government apathy/ inability was the rule rather than the exception, private military groups fought back in the only way they knew how: they kidnapped the family members of the kidnappers.

In addition to public support, secuestro laws that punish middlemen as severely as the kidnappers themselves are imperative. Middlemen often have an incentive to act more like rampant profiteers than neutral liaisons. In addition, kidnappers utilize middlemen in an effort to hinder the tracing capabilities of law enforcement agencies. Bottom line: this tripartite system of specialty anti-kidnapping units, of popular engagement, and of well-drafted anti-kidnapping laws

---

32 Chicago Tribune, appearing in the Seattle Times (accessed 3/19/2009) http://community.seattletimes.nwsource.com/archive/?date=19961225&slug=2366789
worked so well in Colombia that versions of this system have been exported across Latin America.

Mexico, for its part, is in the process of adopting portions of this model. In an Álvaro Uribe parallel, Mexico has at the helm of this process a character of equal forcefulness, President Felipe Calderón. His administration has vowed, in the words of Mexico’s Attorney General Eduardo Medina Mora, “to take back from the organized criminal groups the economic power and armament they’ve established in the past 20 years, to take away their capacity to undermine institutions and to contest the state’s monopoly of force.”

Following in the footsteps of Colombia, Mexico has created its own specialist anti-kidnapping units. In 2008, Mexico’s Security Council allocated $1.1 million per state to fund the creation of these rapid-response teams. Though a commendable first step, one has to wonder whether such a small budget can compete with criminal groups that control a drug trade that is now estimated to be worth $14 billion per year. A further question involves competency. The bulk of Los Zetas, the drug cartel that runs the Eastern coast of Mexico, is comprised of ex-Special Forces troops that have routinely outgunned both the local police and the army regulars. Can these new units provide a challenge to that kind of dominance?

While your author doesn’t even pretend to know the answer to that question, what I do know is that in order for any such challenge to be viable, the local population must be brought on board. In classical counterguerrilla strategy, one of the main objectives is to remove popular support from the guerrilla group that hides among, and feeds upon, the populace. “If popular support does not exist or is withdrawn, the guerrilla will not be able to conduct operations with any hope of success.”

33 “On the Trail of the Traffickers”: The Economist March 7th-13th 2009 Vol.390 No.8621 p.31
36 “On the Trail of the Traffickers”: The Economist March 7th-13th 2009 Vol.390 No.8621 p.33
Unfortunately, the Mexican population is not as eager as were the Colombians to get involved. Much of this antipathy has to do with the pervasiveness (both real and imagined) of corruption within the ranks of law enforcement officials. Simply put, it is dangerous to report crime to a policeman when that policeman is on the payroll of the very cartel that is being reported. In addition, whereas the average Colombians were themselves affected by the kidnappings and violence in their country, much of the violence in Mexico is contained within the “bad guy” community. “Four-fifths of the dead are members of criminal gangs murdered by other criminal gangs.”38 As long as this battle is continually painted by the press and by the guerrillas themselves as a fight amongst themselves, I fear that the Mexican people will continue to sit this one out.

Apparently, the Mexican government shares some of the same concerns. And, to its credit, has begun a series of initiatives that are designed both to quell perceptions of corruption and to increase popular participation. The mayor of Mexico City, for example, has promised to completely replace the Detective’s Unit39—an infamously corrupt institution. At the same time, Mayor Marcelo Ebrard has expressed his intent to set up an anti-kidnapping hotline and to name as many as 300,000 citizens as “Neighborhood Anti-Crime Representatives”.40

If these initiatives work, and they might—especially the anti-kidnapping hotline which circumvents the fear factor by allowing for the anonymous reporting of crime, and which promises to pay as much $50,00041 for tips—this would go a long way to support the newly emergent intelligence effort, at least within Mexico City. For presumably, these tips would be fed into the National Intelligence Center that is being constructed at the headquarters of the Public Security Ministry downtown.42 A center, which is purportedly to house ‘Platform

---

38 “On the Trail of the Traffickers”: The Economist March 7th-13th 2009 Vol.390 No.8621 p.31
41 Id.
42 “On the Trail of the Traffickers”: The Economist March 7th-13th 2009 Vol.390 No.8621 p.32
Mexico’, “an integrated and searchable national database that will combine criminal records with police operations’ reports…”

These technological and logistical advances aside, the buck stops with the judicial system, the third piece of the Colombian (and hopefully Mexican) success story. Though we have established that there is some interstate variance with regards to the range of punishment in secuestro law, all crucial pieces of successful legislation are present. In addition to substantial prison sentences—even Coahuila, the weakest jurisdiction in our sample, had a 16 year mandatory minimum—most states in Mexico contain provisions which severely punish middlemen as well as the actual perpetrators of the crime. And, in Mexico, even more so than in Colombia, this is an important addition given that historically 7 out of 10 crimes are not reported. By eliminating the middleman altogether, or by creating a disincentive (i.e., jail time) for such a role, two benefits simultaneously occur.

Firstly, in the absence of unofficial negotiations, police involvement becomes virtually assured. This places government muscle at the center of the conflict, and thus prevents quiet, risk-free payments from reaching the kidnappers. Payments, by the way, that would only better equip these criminal organizations for their next unreported kidnapping. Secondly, police involvement produces additional data points for the nascent Platform Mexico. With more police operation’s reports comes a more accurate intelligence picture. And, it is intelligence that is so crucial in this fight.

In concluding, the question remains: once this raw intelligence is collected and collated, will justice ultimately prevail? It has been stated that “the underlying problem in Mexico is not drug-trafficking in itself, but that neither the police nor the courts do their job properly.” In your author’s opinion, this is a rather jaundiced view of a regime that is legitimately trying to fix the problem. It should also be noted that this last quote was taken from the very same article that argued that federalism is responsible for the difficulties that Mexico now faces in combating its blossoming kidnapping threat. An argument that, I hope, has now been dispelled.

43 Id.
44 Id.
45 Id.