Sociolegal Studies in Mexico

Julio Ríos-Figueroa
Sociolegal studies in Mexico

Julio Ríos-Figueroa

Assistant Professor, División de Estudios Políticos
Centro de Investigación y Docencia Económicas, CIDE AC
Carretera México-Toluca 3655
México, DF 01210
Tel. (52) (55) 55203852
Email: julio.rios@cide.edu
http://investigadores.cide.edu/julio.rios/Julio_Rios/Home.html

Abstract

This article reviews recent sociolegal scholarship on Mexico related to three topics: (i) the judiciary, the courts, and judicial behavior; (ii) public security and the criminal justice system; and (iii) legal culture. While existing scholarship provides a wealth of information and systematized data on legal phenomena, there is still a conspicuous scarcity of explanations and of systematic empirical analysis. This makes for a lot of research opportunities for sociolegal scholarship in a country that has been under profound and peculiar political, social, and economic transformation in the last three decades.

Keywords

Courts; Judicial Behavior; Public Security; Criminal Justice System; Legal Culture
Table of Contents

Introduction

The Judiciary, the Courts, and Judicial Behavior

Public Security and the Criminal Justice System

Legal Culture

Conclusion
Introduction

Over the last four decades Mexico has gone through a process of deep social, economic, and political transformation. The state considerably reduced its participation in the economy, the population grew considerably and became mostly urban, and the political regime transited 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 Mexico 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 the political, social, and economic contexts is thus a hallmark of contemporary Mexico and make this country a fertile ground for sociolegal studies, which, among other things, aim at studying the “law in context”.

Mexico has changed, and so has the role of the law, the judges, and the courts. Thirty years ago, the Partido Revolucionario Institutional (PRI) ruled by law, the constitution was reformed in ad hoc ways, and even the Supreme Court considered that the President was 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-Hérzog 2002) and nowadays there is rule of law, more 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 production of sociolegal
scholarship on Mexico. The field is relatively new, and while a great deal has been accomplished, there is still a lot 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 for the next step that the subfield has to make: to move from mainly descriptively rich studies towards 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 the studies to be reviewed, I considered Lawrence Friedman’s (2005) characterization of sociolegal scholarship: 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 of sociolegal studies in Mexico, they do not always come together. The pioneering sociolegal studies in Mexico were carried out by sociologists who used the theoretical tools of their discipline to explain legal phenomena and offered descriptive statistics, detailed case studies, and other more or less scattered pieces of data to support a specific hypothesis but did not perform a systematic empirical analysis to test such explanation (e.g. Azuela 1989; Gessner 1984; Rubio 1993). Another group of studies, the most populated one, in this review article is composed of studies mainly authored by non-

1 The 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 forthcoming.
traditional legal scholars who, while not explicitly using social-science theory to explain legal phenomena, do include propositions (oftentimes informed by social science) that are more or less extensively illustrated with descriptive statistics, exemplary case studies, or anecdotal references.

Finally, I sampled a minority of studies, mostly done by social scientists such as political scientists, anthropologists, or economists that use social-science theory to explain legal phenomena and perform systematic empirical analysis to test such explanation. Note that a systematic empirical analysis can be qualitative or quantitative: by “systematic” I simply mean that the analysis is carried out with the aim of testing a hypothesis, therefore considering 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 object 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). I also do not review studies performed by social scientists not primarily interested in legal phenomena but whose work reveals that that the law or the legal framework is a variable of considerable importance to their subject (for instance, Bensusán 2000 on labor relations in Mexico) (Antonio Azuela labels this type of analysis “involuntary sociolegal studies”, personal communication July 13, 2011).

The remainder of this article is organized around three topics that have concentrated the most attention from sociolegal scholarship in Mexico: (i) the judiciary, the courts, and judicial behavior; (ii) public security and the criminal justice system; and (iii) legal culture. This article does not attempt to review or comment on every single work produced in these
areas, but instead to point to the most important contributions, debates, and opportunities for future research. The conclusion summarizes the findings.

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

Why politicians tie their own hands and empower the judges? The third set of reforms, and especially the reform that took place in December 1994, has produced an interesting debate on this question that so far revolves around three types of answers. The first is what can be called a “backward-looking theory” according to which 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 co-partisans. The President thus delegated to the Supreme Court the power to rule on constitutional issues as a means of

---

2 For an excellent complementary review of sociolegal studies in Mexico see Pérez-Perdomo forthcoming.
solving this dilemma” (Magaloni 2003, 268) and create a neutral arbiter to resolve political disputes. The second is a “forward-looking theory” according to which PRI leaders foreseeing their electoral defeat empowered the judiciary in order to tie the hands of the future winner, in a sense buying a kind of insurance against an imminent electoral defeat (Finkel 2008). A third theory rather than focusing on forward or backward looking motivations emphasizes the present, the critical juncture during which the reform took place. The argument is that in the year in which the reform took place, 1994, events such as the assassination of the PRI’s presidential candidate (Luis Donaldo Colosio), the successful attack by a sophisticated guerrilla movement in the south of Mexico (the Ejército Zapatista de Liberación Nacional, EZLN), and the entrance into effect of the North American Free Trade Agreement (NAFTA) prompted president Zedillo to delegate power to the judiciary because he needed “legitimacy” in order to govern (cfr. Inclán 2009).

Do empowered judges make a difference, on what, and how can we tell that it is judges and courts that are driving the changes (if any)? These broader questions have received different types of answers. First of all, someone interested in the Supreme Court can now find a series of richly descriptive empirical studies that unveil important issues and processes such as how the Justices are elected and how they decide cases (Elizondo and Magaloni 2010), how many and what type of cases the Supreme Court decides (Bustillos 2009a)⁴, and how many and what type of cases the Supreme Court decides through specific

⁴ The Mexican Supreme Court itself has produced a database of its decisions that is accessible through the internet (@lex); it can be reached at http://www2.scjn.gob.mx/alex/
instruments of constitutional review such as the action of constitutionality (López-Ayllón and Valladares 2009), and the constitutional controversy (Hernández 2011).

Political scientists have advanced and tested a series of hypotheses aimed at explaining the behavior of the Supreme Court judges. Most of these explanations are centered around the strategic model of judicial decision-making that emphasizes external constraints on judges’ decisions. In this vein, it has been shown that judges decide more often against the PRI when they decide under conditions of divided government (Ríos-Figueroa 2007), that they have been more likely to make decisions of unconstitutionality after the PRI lost the presidency in 2000 (Sánchez et al. 2011), and that they have been more willing to check on power after 1994 in particular by leveling the electoral playing field (Finkel 2003). Strategic behavior on behalf of Supreme Court judges has also been shown by Jeffrey Staton (2010) who in a book length study argues and shows that the Court actively seeks the support of public opinion in order to build its power and authority and increment the likelihood of compliance with its decisions (see also Staton 2004). Political scientists have also analyzed the behavior of the judges in the Electoral Tribunal emphasizing the ability of this institution to channel pre- and post-electoral conflict “from the streets and into the courtrooms” (Eisendstadt 2007), and checking on powerful interests in some states by nullifying local elections when federal electoral laws are violated (Berruecos 2003). One central lesson from political science that works on the Mexican Supreme Court is that, since 1994, it has become an effective and quite neutral arbiter of political conflicts, though its record on protecting fundamental rights has been much less successful (cfr. Ansolabehere 2010; Sánchez et al. 2011).

In part as a response to the shortcomings of political science work on the Supreme Court, legal scholars have begun to produce systematic jurisprudential lines on specific
topics such as sexual and reproductive freedom (Madrazo and Vela 2011), criminal due process rights (Magaloni and Ibarra 2008), taxing capacity of the state and the just imposition of fiscal burdens (Elizondo and Pérez de Acha 2006), and whether the court uses a gender perspective when deciding certain civil matters (Pou 2010). Of course, legal scholars are carrying out this novel (for Mexico) work because of the increasing importance of Supreme Court jurisprudence for policies and politics. In addition to the specialized knowledge on each topic, 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 understanding on how and when fundamental rights should be protected. An underlying, and not always explicit, explanation for the unsteady jurisprudential construction is the traditional legal training, and socially conservative ideology of some of the Justices (Sánchez et al. 2011 show some evidence on the existence of these two dimensions based on the frequency of voting coalitions in non-unanimous Court decisions).

Mexico is a federal country. The causes and consequences of judicial empowerment at the state level are crucial topics that constitute a rich mine yet to be fully exploited by sociolegal scholars. For instance, we know that not all but only some states have created local constitutional courts and instruments of constitutional control (Bustillos 2009b), judicial councils and independent higher courts (Concha and Caballero 2001), and independent administrative courts (López-Ayllón et al 2010). We also know that in some states local public prosecutor’s offices are much more efficient than in others (Bergman and Caferata 2009), and that some states are much more advanced than others in the implementation of the reform to the criminal justice system (more on this reform below) (Shirk 2011). But by and large we still do not know why this is the case, what explains this subnational variation. Caroline Beer (2006) finds that states where there is more political
competition spend more on their judiciaries, and Matthew Ingram (forthcoming) finds that in addition to political competition principled-ideological preferences of the local government also matter. 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 and Ríos-Figueroa 2010) and perhaps also at the cross continental level.

The role of the Supreme Court and the federal courts in policing the federal pact is also partially known. We are aware that states’ courts’ decisions are reverted by federal courts on an average 50% of the time, but this figure varies from 79% (Distrito Federal) to 29% (Veracruz) (Bustillos 2009c). The finding that on an average 50% of amparos against final local decisions were decided in favor of the state courts reverts an old impressionistic idea that federal justice usually “corrects” bad decisions in state courts. But the reasons why some courts’ decisions are reverted much more often than others are still unclear (see Cabrera 2010). Looking at specific cases of federal courts’ oversight of states does not clarify the question. For instance, Caballero and Meneses (2010) focus on the phenomenon of drunk driving and find that despite the fact that drunkeness is a concept defined very differently by state legislatures and courts, federal courts have not established a clear jurisprudence on the issue. Actually, in the few cases where criteria have been written, the tendency of the federal judges is to establish interpretations that give local prosecutors wide discretion on whether to arrest the drunk driver or not.

Sociolegal studies on courts other than the Supreme Court of the Electoral Tribunal are still scarce and tend to be more descriptive (but see Kaplan et al. 2011 on labor courts). However, efforts at collecting data and presenting descriptive statistics have actually toppled common knowledge and pose some interesting puzzles. For instance, based on
interviews to users of family courts in Mexico City, Fondevilla (2007) shows they are actually quite good in terms of efficiency, times to disposition, and the legitimacy of their decisions. Hammergren and Magaloni (2001) also empirically contradict the common beliefs that mercantile courts are utterly inefficient, that every decision is appealed, or that they are for the exclusive use of the “haves” and big firms. Interestingly, a study on criminal courts in Mexico City does ratify the pessimistic popular beliefs about the inefficiency, arbitrariness, and corruption of courts (Pásara 2010). This suggests that the generalized bad reputation of courts is due to experiences in criminal courts, which of course get more attention from the public and the media than mercantile or family courts.

But, if this is actually the case, what are the reasons behind it?

A recent documentary that involves a criminal court in Mexico City, *Presunto Culpable* (Presumed Guilty, released 2009 http://www.presuntoculpable.org/) dramatically put in the spotlight the shameful state of the criminal justice system, something that had already been thoroughly documented not only at the federal but also at the state level (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 the prison system barely meets minimum humanitarian conditions. Why is the criminal justice system in such dreadful shape? As will be developed in the next section of this paper, one plausible answer is that the criminal justice system is an area where 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 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, in the last two decades the constitutional clauses that regulate criminal procedure and the criminal code have undergone more reforms than in the previous sixty years. For instance, constitutional Article 19 (that regulates procedural aspects of the prosecutors and judges when a person is detained) was reformed in 1993 for the first time since 1917. Similarly, Article 16 (that 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 criminal procedure was 1993 when the whole set of articles related to the detention and trial of a suspect were changed (Garcia 2001). Since then, reforms on these issues accelerated until the time of the complete overhaul of the criminal procedure in the constitutional reform of 2008 that implied an abandonment of the inquisitorial process and a gradual eight-year transition to an adversarial procedure.4

Despite these reforms, the basic institutional incentives that subordinate the public prosecution 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 in the United States) who,

4 The 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.
in turn, freely appoints and removes all lower level *procuradores*.\(^5\) 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 *procuradores* report to the *Procurador General* and face little external accountability. At the same time, the office of the Mexican attorney general enjoys much discretion in the three steps that characterize the prosecutorial process: investigating, charging, and sentencing.

The combination of political subordination and huge legal power for the public prosecutor 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 XX century. The Mexican executive regularly chose the political use of prosecutorial power 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 *Ministerio Público*.\(^6\) The capacity to unleash the force of a legal prosecution on a political enemy served as the proverbial stick that the Mexican executive wielded to coordinate behavior of the different actors in the political system. The successive presidents under the PRI-regime did use this capacity, even against prominent members of the

\(^5\) Since 1994 the executive’s choice of *Procurador General* has had to be approved by the Senate, but the president still freely removes her.

\(^6\) Interestingly, different Latin American countries claim the original authorship of this popular saying. In Mexico, there is debate as to whether the author was Benito Juárez orPorfirio Díaz. But Brazilians claim authorship by Getulio Vargas; Argentineans by Juan Domingo Perón; and Peruvians by Oscar Benavides. And very probably this is only a partial list.
political and entrepreneurial elite who “step out of the bounds” informally established by their administrations.

The arbitrary use of prosecution was prevalent, not only for salient political figures. As Ana Laura Magaloni explains, in the context of the authoritarian regime, the task of the Ministerio Público 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, 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 actually validated their practices. For instance, in one infamous decision the Mexican Supreme Court decided that confessions extracted by prosecutors through the use of physical force (i.e. torture) were accepted as evidence in a trial as long as there were other pieces of evidence that corroborated the confession.7

The performance of the public prosecutors has essentially 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 Vicente Fox who defeated the PRI in the executive electoral race of 2000 did not hesitate to use this resource to try to get rid of the leader of the opposition, Andres Manuel López Obrador. In regular every-day cases, the arbitrariness and the violations of rights committed by the police and the prosecutors are still common,

and the judges by and large continue to validate them. Recent systematic empirical studies document these facts\(^8\): only 25% of all crimes 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, 398). Data from a recent series of surveys of prison inmates in Mexico City and the state of Mexico corroborate that most inmates were “caught in the act” (92%), convicted for 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 and 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 they usually proceed. It was not until 2006 that the Supreme Court in a series of decisions started to consistently uphold the basic rights of criminal due process establishing sensitive limits to prosecutorial, police, and military discretion (see Magaloni and Ibarra 2008). For instance, in a series of cases the Court has ruled that prosecutorial accusations based on hearsay, illegally obtained evidence, and other questionable practices are simply not allowed and thus considered

\(^8\) One 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, [http://www.seguridadpublicacide.org.mx/cms/](http://www.seguridadpublicacide.org.mx/cms/)) or the GeoCrime Program ([http://geocrimen.cide.edu/](http://geocrimen.cide.edu/)), and also those produced by the Citizen’s Institute of Security Studies (ICESI, [http://www.icesi.org.mx/](http://www.icesi.org.mx/))
insufficient for convicting the suspects. In a 2011 decision the Court decided to limit the scope of military jurisdiction, complying in this way with a ruling against the Mexican State by the Inter-American Court of Human Rights. This activity is very recent and whether it continues or not, it will demand explanations by sociolegal scholars.

One of the reasons why the public prosecutors are extremely inefficient at prosecuting the vast majority of criminal offenses that affect common citizens is their relation with the police. While 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, 212). The consequence, of course, is that prosecutors have an immense caseload and this generates processing delays. Lost files and very little to no time left for attention to the public are the norm. Interestingly, this inefficiency discourages citizens from denouncing crimes producing “lower crime rates” that are then touted by officials in the executive branch (Pérez 2008). Needless to say, neither police personnel nor prosecutors feel dignified. 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 and Ruiz 2009).

Those citizens who are caught by the police, sometimes simply for being in the wrong place at the wrong time, or those who persist and denounce crimes face a bureaucratic nightmare that seems set up explicitly to provide opportunities for corruption. Prison inmates reveal that corruption is at its maximum when the police make an arrest because at that moment the individual has the greatest opportunity to avoid jail (Azaola and Bergman 2009). After that, citizens find 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 (Transparencia Mexicana, Índice Nacional de Corrupción y Buen Gobierno http://www.transparenciamexicana.org.mx/ ). High-level corruption is still white washed by the political subordination of the prosecutorial organs, the typical plot being a special prosecutor selected to investigate a high-level official who concludes that there is not sufficient evidence to charge him even if he became ridiculously rich during his tenure in office. In sum, the prosecutorial organ has been pointed out 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 forthcoming).

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 process. The reform affects prosecutors, police, judges and the links among them. At each of the four stages of the new criminal process (investigation, pre-trial, oral trial, and sentencing) there will be a judge either overseeing the performance of the police and the prosecutors (first two stages) or directly presiding over the oral trial or the sentencing stage. Therefore, at least in theory, in the new process there will be no unchecked actors who can abuse at their discretion. While these oversight mechanisms are good news, especially regarding the prosecutors, the basic incentive structure of the Ministerio Público remains untouched: they are still subordinated to the executive at both the federal and the state levels.

To date (January 2012), the reform has not made much progress and is actually fully working only in a handful of states, the most important of which is Chihuahua (Shirk 2011). The experience of Chihuahua shows the impressive amount of efforts (economic, political, and social) that are needed to fully activate the new process. Ingram et al (2011) document that not only the degrees of progress in the implementation of the reform vary
from state to states, but also the views of judges, prosecutors, and public defenders.

Interestingly, more than half of the respondents—especially judges—indicated that Mexico’s traditional inquisitorial system was both efficient and effective while, not surprisingly, public defenders are much more critical of the current system than judges or prosecutors. The reform of the criminal process, and its inconsistent application, are a great opportunity for sociolegal scholars interested in the “how”, “why”, and the “so what” of legal transformations.

**Legal culture**

Legal culture is a topic that in one way or another is almost always present in sociolegal analysis on Mexico. There is a sort of legacy from a line of thought in the essayist tradition of XIX century Latin America according to which a non-western / legalistic / illiberal legal culture is the favorite culprit for the shortcomings of the rule of law in the country (see the discussion in the introduction and first part of C. Rodríguez 2011). However, “culture” in general and “legal culture” in particular are very difficult to define and measure, which puts a heavy burden of proof on those who aim to either identify its causes or alternately to identify its effects when it is considered an explanatory variable. This difficulty is apparent in sociolegal analyses on legal culture in Mexico, which are mostly descriptive and full of interesting hypothesis that still have to be empirically tested in systematic ways. In what follows, after stating some interesting results from survey studies on legal culture, I first review sociolegal studies where legal culture is the variable to be explained, and then those that posit legal culture as the explanatory variable of other phenomena.

Survey studies on the political attitudes and values of Mexican citizens are relatively recent. While nowadays 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 and Verba’s *Civic Culture* (1963), which included Mexico as one of the their case studies, and the early 1990’s when the political and economic transformation of the country were clearly underway (see essays in Flores 2011). After the judicial reform of 1994 the production of survey analysis on the legal and civic culture of Mexican citizens has been more consistent. Some of the findings are interesting but chilling if put together with the state of the criminal justice system explored in the previous part of this article. For instance, in 1996 40% of the people approved, at least partially, of police torture to obtain a confession from a rapist (Beltrán et al. 1996, 47); in 2002 39% of the people approved of listening to and taping private conversations in order to combat corruption and crime even if this practice violates citizens’ rights (Juárez 2002); and in 2004 80% of the people said that the duty of the judges is to sentence the criminals and only 5.4% said that their duty is to protect citizens’ rights (Concha et al. 2004, 69).

In general, the picture that emerges from the surveys is that regard for the constitution is high in abstract terms, but very poor when questions get down to practical things 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 actual every-day practices of Mexican citizens is in part explained by the limited access to justice for regular citizens. On the one hand, the *amparo* suit, an instrument designed to challenges state acts that violate individual rights, is technically complex and expensive (see Elizondo and Pérez de Acha 2006). On the other hand, 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 suing the government or legally challenging the violation of their rights. Oftentimes, the leaders of such movements and organizations do not even know 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 the diagnosis: legal professionals in Mexico mostly partake in what can be called a “legalistic” culture, i.e. centered on memorizing the constitution and the statutes instead of on legal reasoning and jurisprudence. These studies, however, differ as to the causes of these characteristics and, interestingly, argue against a simple view of “legal culture” and its causes. Based on official statistics and interviews, Adler and 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, while Fix-Fierro and López-Ayllon (2006) stress continuity in legal education and point to the fragmentation of the legal profession in accounting for low quality and inertia, Dezalay and Garth (2006) stress the impact of economic transformation on the education and roles of lawyers.

There are also studies that take legal culture as the explanatory variable of another phenomenon, 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 this line, as mentioned above, Sánchez et al. (2011) find that justices of the Supreme Court seem to cluster along
this ideological dimension and show how these different ideologies play out in specific salient cases. Begné (2007) and Cuellar (2008) in a series of interviews with federal judges and judges of the state of Puebla, respectively, find that even judges who would be more inclined towards an “expansionist” ideology recognize that hierarchal relations and a socially conservative ideology within the judiciary exert an important impact on them.

Given that judicial hierarchy and the administration of the judicial career is so important, it is noteworthy the almost complete absence of social science studies devoted to the judicial council (see Pozas-Loyo and Ríos-Figueroa 2011), and the lower and administrative courts (see López-Ayllón et al 2010).

Some studies cast doubt on the impact of an allegedly traditional judicial ideology on the outcome of cases emphasizing instead the role of the incentives set by the judicial hierarchy or the justice system. In an interesting study on federal district courts, Magaloni and Negrette (2002) show that the frequency of “legalistic decisions”, i.e. dismissal of cases based on formalities, are due more to the incentives set by the system than to a particular judicial culture, in particular, the career promotion incentives that put a prize on smaller backlogs of cases. 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-sentences in Mexico City rather than a socially conservative law-and-order judicial ideology being the cause.

Legal culture, in certain varieties and usually interacting with other variables, also plays an explanatory role in other recent sociolegal studies. For instance, Gessner (1984) argues that social conflicts when taken to the courtrooms display different outcomes depending on the economic and cultural background of the citizens. Similarly, Azuela (2006) argues that environmental law displays different degrees of efficiency depending on
the cultural background of the citizens where the law is applied, e.g. rural or urban (Herrera 2010). Another interesting and troubling phenomena is that of community lynching. Official data on the frequency of lynching cases in Mexico City from 1999 to 2005 shows a total of sixty-six cases, most (46%) found 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”. Finally, the study of Cáceres and Rodríguez (2008) is worth mentioning. They are part of a psychology workshop dedicated to the study of legal behavior in Mexico, and 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 available now that make 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 towards 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. Existing studies cite each other but, with some exceptions, in general, facts and ideas are 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 perhaps that most studies respond to “how” and not “why” questions, the fact is that thanks to the existing descriptively rich studies and the new collections of data, the subfield is ripe for taking the step towards the “why” questions. The arrival of social scientists to the study of legal phenomenon indicates a positive
development that will hopefully generate virtuous collaboration with the legal scholars that have opened up their agendas and tool-kits. In sum, the subfield is young and blooming, 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. Yet another pair of recent reforms has 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 one is a reform to the amparo suit, the individual instrument of constitutional complaints 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 politician’s responses to this new scenario. Sociolegal studies on Mexico could significantly contribute to producing accurate diagnosis of critical conditions and eventually better public policies to ameliorate them.

References


Azuela A. 1989. *La ciudad, la propiedad privada y el derecho*. México: El Colegio de México


Bustillos J. 2009b. La realidad de la justicia constitucional local mexicana del siglo XXI (a través de sus resoluciones definitivas), *Cuestiones Constitucionales. Revista Mexicana de Derecho Constitucional*. 21: 29-71


Cuéllar A. 2008. Los jueces de la tradición. Un estudio de caso, México, UNAM-SITESA


Juárez L. 2002. El color de la legalidad, según el color del cristal con que se mire. In *Deconstruyendo la ciudadanía. Avances y retos en el desarrollo de la cultura democrática*


