



EVALUATING ACCOUNTABILITY AND TRANSPARENCY IN MEXICO

National, Local, and Comparative Perspectives

A PUBLICATION OF THE TRANS-BORDER INSTITUTE'S JUSTICE IN MEXICO PROJECT

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• San Diego •

The **Justice in Mexico Project**, coordinated by the Trans-Border Institute of the University of San Diego, is a multi-year research project focusing on the administration of justice and the rule of law in Mexico. Five of the papers generated by the project were edited and assembled in this monograph, which addresses government accountability and transparency in Mexico. The editors are David A. Shirk, director of the Trans-Border Institute and assistant professor in the Political Science Department of the University of San Diego, and Alejandra Rios Cázares, doctoral candidate in Political Science at the University of California, San Diego.

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Preface

Over the past decade, the rule of law—understood as the effective enforcement of the law, government adherence to the law, and access to justice through the law—has proved weak in Mexico. The list of systemic failures includes severe underreporting of crimes to authorities, low public trust and approval of public authorities, enormous case backlogs for criminal investigations and the courts, corruption scandals unpunished, and evidence of government opacity. Despite some significant national-level efforts to promote the rule of law—including new federal transparency legislation—such initiatives appear not to have produced significant improvements in the effectiveness of the justice system and the accountability of government officials.

Though much existing research on Mexico's rule of law provides diagnoses of current problems at the national level, there is relatively little analysis of policy alternatives and best practices applied in different states in Mexico and in other Latin American countries where reforms are advancing rapidly. Comparative analysis of innovations, problems, and experiences at the state level in Mexico—and elsewhere in the hemisphere—is needed to identify best practices, foster the transfer of knowledge, and encourage successful replication of justice-sector reform.

In September 2005, the Trans-Border Institute (TBI) of the University of San Diego became the coordinating institution for a multiyear research project focused on the administration of justice and the rule of law in Mexico. The threefold rationale for the TBI Justice in Mexico Project is based on: (1) the need to decentralize analysis and reform efforts in Mexico; (2) the need for a greater emphasis on best practices (particularly with regard to promoting transparency and accountability); and (3) the need for U.S.-Mexican academic collaboration in the study of justice-sector challenges and reform.

With these objectives in mind, in October 2005 the TBI Justice in Mexico Project issued a call for papers to U.S. and Mexican scholars working on a range of topics related to justice-sector reform. This initiative asked par-

ticipants to focus on any of three substantial, understudied aspects of the rule of law in Mexico:

- analyses related to the regulation of individual behavior within society under the law, in particular, the provision of security, regulation of social conduct, and resolution of grievances;
- studies about the responsibility and answerability of the state and its representatives to their constituencies (especially those aspects of government accountability not related to electoral politics, such as access to government information); and
- analysis of the enforcement of the law according to criteria of efficiency, predictability, and equal treatment (especially issues related to irregular, biased, or inefficient enforcement of the law, as well as issues related to systematic violations of basic individual rights).

The result of that call for papers was an excellent selection of works covering a wide range of topics related to the rule of law, several of which were selected for dissemination through the project's electronic archive (www.justiceinmexico.org) in August 2006. In addition, five of these electronically published works were edited to develop this monograph, which addresses a single, common theme of paramount importance: government accountability and transparency.

Publication of the monograph was made possible through the support of the William and Flora Hewlett Foundation, which generously sponsors the Justice in Mexico Project. Copyeditor Sandra del Castillo and translator Patricia Rosas were skillful, patient, and careful stewards of the contributions to the monograph. The editors are also extremely grateful to the authors of the five substantive chapters included here, all well-respected scholars from Mexico and the United States: Yéssika Hernández, Jorge Ibáñez, Mauricio Merino, Nicolás Pineda, Andrea Pozas, Julio Ríos, and Allison Rowland. Special acknowledgment should also be given to Sergio López Ayllón, one of the most recognized Mexican experts and advocates on governmental transparency, who authored the monograph's conclusion. Though the contributing authors address the topics of accountability and transparency in different ways, they all do so with the common objective of alleviating the day-to-day concerns of Mexican citizens about cor-

ruption, political and criminal impunity, and the improper management and distribution of public resources. We hope that this monograph will shed valuable light on these problems and advance the scholarly and public dialogue on promoting the aims of greater accountability and transparency in Mexico.

Alejandra Ríos Cázares

David A. Shirk

San Diego, California

July 5, 2007

1

Evaluating Transparency and Accountability in Mexico: National, Local, and Comparative Perspectives

ALEJANDRA RÍOS CÁZARES AND DAVID A. SHIRK

For most of the twentieth century, the Institutional Revolutionary Party (Partido Revolucionario Institucional, or PRI) dominated the Mexican political arena through careful coordination of elites, well-developed patron-client exchange networks, and the selective use of fraud and coercion. Throughout this period, Mexican politicians and government officials were largely unaccountable to the public because of the particular institutional characteristics of the regime, and because the withholding or manipulation of public information helped to preserve PRI hegemony. For example, mandatory party endorsement and single-term limits for elected officials at all levels of Mexican government ensured that politicians answered to party leaders rather than to their constituents, making it more complicated for citizens to hold individuals accountable for their political performance.¹ Meanwhile, nonelected government officials, largely unprotected by civil service provisions, carried the favor of upwardly mobile politicians more energetically than they pursued their bureaucratic missions to serve the public. Shielded by administrative smokescreens, fiscal opacity, and a government-friendly press, Mexican public authorities long enjoyed wholesale discretion in the management of public resources. In this context, political accountability was inverted: it worked primarily top-down

The editors wish to acknowledge the valuable contributions of translator Patricia Rosas and copy editor Sandra del Castillo, as well as research assistance from Veronica López Arellano and Mayra Pérez.

¹ Nonconsecutive reelection is allowed in Mexico for legislators and local officials, but nonconsecutive reelection rates are relatively low.

rather than bottom-up, and full access to information was restricted to those who controlled or colluded with the system (Nacif 2002; Ugalde 2000). Gradually, over the course of the last quarter of the twentieth century, increased political competition—and the gradual decline of the PRI—shifted the dynamics of political accountability and brought pressure for greater transparency.

Today, Mexicans are in the process of implementing a very different kind of political system, one in which the principles of transparency and accountability are becoming institutionalized at the federal, state, and local levels. Increasingly, thanks to competitive elections, Mexican politics is governed by more effective checks and balances in government, new administrative criteria for public bureaucracies, and—most important—the engagement of civil society and ordinary citizens in the democratic process. Still, as illustrated by the experience of other democratic systems—not least, the United States—institutionalizing transparency and accountability in democratic governance is a constantly evolving challenge. In the Mexican context, the gradual transition to democracy has given way to numerous rapid and important changes on both dimensions. The purpose of this monograph is, therefore, to examine recent efforts to promote greater transparency and accountability in Mexico's emerging democracy at the federal, state, and local levels. In the process, the contributors to this monograph make an important theoretical and empirical contribution to the literature on contemporary Mexican politics and help to gauge a rapidly moving target: Mexico's progress toward democratic governance.

ACCOUNTABILITY, TRANSPARENCY, AND DEMOCRATIC GOVERNANCE

The political meaning and application of the concept of accountability varies fairly widely. Many scholars assert that accountability implies hierarchy, a relationship in which one actor has some sort of authority over another, which necessarily implies some form of delegation of power (Moreno, Crisp, and Shugart 2003). Other scholars (Mainwaring 2003; O'Donnell 1996, 2003) posit a concept of political accountability that need not be hierarchical, but in which there are "formalized relationships of oversight and/or sanctions of public officials by other actors" (Mainwaring

2003, 7).² Some definitions of accountability imply an inherent connection to democratic governance in that they posit a role for civil society in providing “alternative forms of political control that rely on citizens’ actions and organizations” (Smulovitz and Peruzzotti 2000, 147; see also Smulovitz and Peruzzotti 2003).³ Regardless of the interpretation, a common aspect to virtually all conceptualizations of accountability is at least the idea of “answerability and responsibility of public officials” (Mainwaring 2003, 7), if not the potential for some penalty for poor or inappropriate performance (Behn 2001).⁴

Transparency refers to actions toward making public a government’s policy choices and the process of policy making (Fox 2007). Government transparency is a different form of government regulation since it publicizes not only government decisions but also those responsible for those decisions. The assumption behind the benefits of government transparency is that full information about government proceedings allows citizens to hold their representatives accountable.⁵

Accountability and transparency are at the heart of effective democratic governance.⁶ Elections naturally provide a political connection between

² For this perspective, only two types of actors can provide political accountability: elected public officials (accountable to voters) and public officials and bureaucracies (accountable to specific state agencies charged with overseeing and/or sanctioning capabilities). The first set of relationships refers to *vertical accountability*, while the second refers to horizontal accountability or intrastate accountability. See Mainwaring 2003 and O’Donnell 1999, 1994, 2003.

³ See Smulovitz and Peruzzotti 2000, 2003. Still others argue that accountability refers not only to answerability of an actor’s actions but also to sanctions. Sanctions imply that one actor has some sort of authority over another, which means that there is a vertical (hierarchical) relationship among them, such as the relationship between a principal and her agent. (For this reason, the idea of horizontal accountability is an oxymoron.) Our research follows this perspective. See Moreno, Crisp, and Shugart 2003.

⁴ Sanctions can be formal (such as a jail sentence, a fine, or a dismissal from office) or informal (including public disgrace or exposure in the media), but in all circumstances accountability implies some sort of penalty (Behn 2001).

⁵ See Fox 2007 for a critical discussion of this assumption, and see Lupia and McCubbins 1998 for a theoretical discussion about what citizens in democracies *need* to know in order to hold politicians accountable.

⁶ By democratic governance, we simply mean that form of government that allows for popular sovereignty and direct citizen participation in the process

voters and their representatives in public office. Voters require reasonably open access to information in order to make choices in elections and to hold government officials accountable. Hence democratic governments are—by design—susceptible to pressures to function responsibly and openly. Free and fair elections should, in other words, lend themselves to relatively transparent and accountable governments. Nonetheless, in practice, elections do not by themselves necessarily or immediately generate either transparency or government accountability. Indeed, major barriers to “good government” and “openness”—such as clientelistic practices in public administration, institutional protections that provide impunity to elected officials, intimidation of journalists, and other factors—may persist well beyond the introduction of free and fair elections. Without transparency, abuses of the public trust go unpunished; without accountability, the will of the people goes unfulfilled.

In some instances, certainly, both democratic and authoritarian governments may voluntarily provide access to reliable information and hold their public officials accountable because of some perceived gain, such as attracting foreign investment or maximizing public approval for its successes. However, even in a “benevolent” authoritarian regime, the very nature of the political system presents the contradiction that its leaders are only as accountable as they choose to be, and the information they proffer may be selective, manipulated, or both. Meanwhile, ensuring transparency and accountability in democratic systems often requires a combination of factors to oblige public officials to provide the information and mechanisms necessary for citizens and other actors to evaluate their performance and hold them accountable.

Whether public officials commit to providing such information and render themselves accountable is largely a question of political demand.⁷

of political decision making. There are, of course, many diverse institutional arrangements that may achieve this result, and a vast literature explores the various dimensions of democratic governance. See, for example, Dahl 1971 and Diamond 2002.

⁷ It is important to note that demand for political transparency and accountability is not necessarily a given, or at least may not be widespread. While they may be heavily interested and highly mobilized at certain key political moments, ordinary citizens may at other times have little interest in obtaining information about their government or in punishing wayward officials. In-

Yet for such demand to be effective, there must be some consequence—a cost or benefit—for public officials who respond to it. This is more likely to be the case in a more competitive political context, where opposition from key challengers (both in and out of government) increases the costs of secrecy and irresponsible behavior, and offers the potential reward of political support or electoral success.

Transparency and accountability therefore often center on: (1) mobilization of voters (the supreme source of political authority) and civil society (the organized representatives of the public) to influence their representatives in government (through elections and other forms of public pressure); and (2) various forms of mutual or hierarchical oversight, influence, and “separation of powers” among the autonomous governmental branches and multiple subnational jurisdictions within its federal institutional framework. While this logic explains the connection and overlap between electoral democracy, accountability, and transparency, it also explains why gaining access to all three is often slow and irregular.

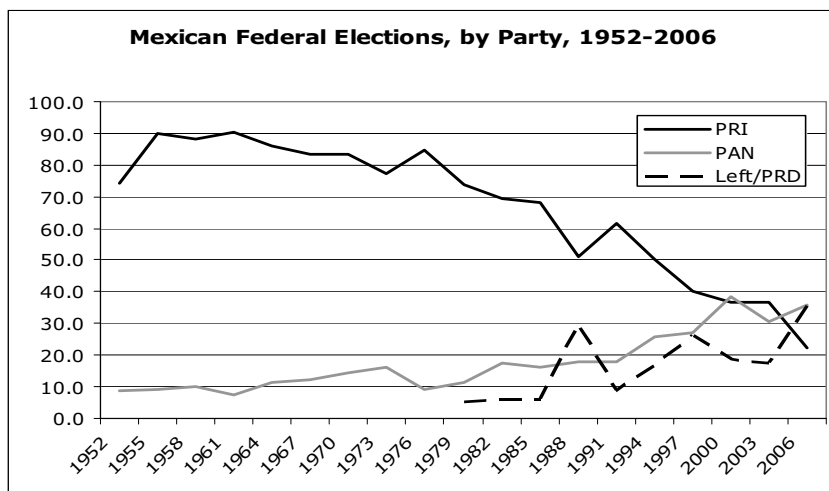
The objective of this monograph is to examine Mexico’s progress toward greater transparency and accountability on both of these dimensions. To be sure, as the authors in this volume illustrate, there are important characteristics of Mexico’s democratic system—such as the existence of prohibitions on consecutive reelection, and historically weak checks and balances between its different branches of government—that will present unique challenges for the promotion of transparency and accountability. However, as all the chapters in this monograph point out, Mexico has made important advancements in constructing systems for greater transparency and accountability, both at the federal and (especially) at the state and local levels, which will have the longer-term effect of strengthening democratic governance. Below we discuss some of the progress that has been made, but also the challenges ahead.

variably, particular interests in civil society (such as nongovernmental organizations, unions, media) are frequently heavily invested in a given issue and have an ability to place pressure on government officials to ensure greater transparency and accountability.

CONSOLIDATING DEMOCRATIC GOVERNANCE IN MEXICO

During the last decades of the twentieth century, the electoral monopoly held by the PRI since its founding in 1929 began to fade, as opposition parties gradually wore away at the ruling party's dominance in federal elections (see figure 1.1) and began to score a handful of victories at the local level. The recognition of the center-right National Action Party's (Partido Acción Nacional, or PAN) gubernatorial victory in the 1989 state-level elections in Baja California was a watershed that gave way to increasing political competition and pluralism in the exercise of power in Mexico. Over the course of the 1990s, the PRI lost control of a rapidly increasing number of state and local governments, as both the PAN and the center-left Party of the Democratic Revolution (Partido de la Revolución Democrática, or PRD) made successive gains. Mexico's democratic story reached a dramatic turning point, of course, with the 2000 elections in which the PRI lost its control of the presidency for the first time in its history.⁸

Figure 1.1 Federal Electoral Trends in Mexico, 1952–2006



Sources: For 1961 and 1988, Gómez Tagle 1993; for 1965–1985, Molinar Horcasitas 1987; for 1991–1997, Sirvent 1997; for 2003 and 2006, Instituto Federal Electoral.

⁸ Arriola 1994; Hernández Vicencio 2001; Loaeza 1999; Magaloni 2006; Mizrahi 2003; Lujambio and Vives Segl 2000; Lujambio 2002; Bruhn 1997; Chand 1991; Klesner 2005; Shirk 2005.

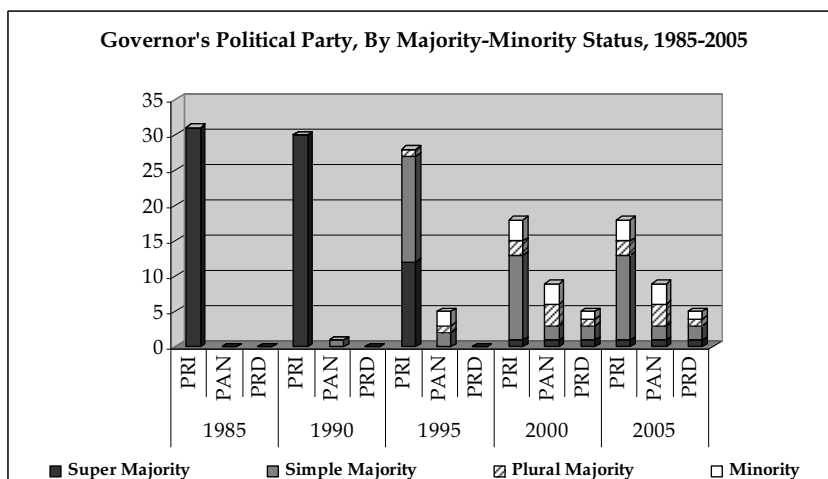
The PAN's ability to retain the presidency in the contentious 2006 election illustrated that electoral competition between Mexico's three major parties—which narrowed in federal and subnational contests over the last two decades—is finally consolidated (Klesner 2005; Solt 2004). What is more, the means to mediate that competition and even major postelectoral crises (like the one that emerged in the 2006 presidential and state races) have benefited from the consolidation of effective and widely respected electoral institutions and procedures. In effect, democratic electoral institutions have become an instrument with which Mexican citizens can punish or reward their political representatives for their performance in office by casting judgment on the party in power at the polls.⁹ The fact that they have done so repeatedly at the state and local levels over the last two decades suggests that Mexicans are actively committed to promoting political change through their vote. The phenomenon of single-party hegemony in state legislatures, for example, has given way to divided (and minority) governments and far more pluralistic representation (see figure 1.2). In short, the end result of Mexico's prolonged political transformation has been a highly competitive electoral and political context at both the national and subnational levels.

Still, as we note above, free and fair elections are not an end in themselves. Despite widespread appreciation for the advances in electoral democracy, critical assessments of Mexico's new political regime—by citizens and scholars alike—have emphasized the ongoing challenges of deepening and consolidating democratic governance. Citizens' top complaints about political life in Mexico's new democracy—alongside major concerns about economic and social development—include grave apprehensions about corruption, political and criminal impunity, and the improper management and distribution of public resources. As electoral competition has grown at all levels, so, too, has public pressure on governments to open up information about public policy and the management of public resources.¹⁰

⁹ This is a debatable assertion in the literature. For an alternative view, see Cleary 2003.

¹⁰ As early as the 1980s, for example, PAN municipal and state governments routinely made financial accounts of their use of public funds widely available to the public, carefully documented and widely publicized their efforts to curb wasteful and illegitimate uses of public resources, and invited city residents to participate in government in new and innovative ways.

Figure 1.2 Legislative Composition in Mexican State Governments, by Political Party 1985–2005



Source: Compiled by the authors.

Note: This table refers to the number of state governorships held by the PRI, PAN or PRD, according to status of the governor's party in the state legislature.

Super Majority: The party in power has a super majority (66% or more) of seats in the state legislature.

Simple Majority: The party in power has a simple or plural majority (50% + 1) of seats in the state legislature.

Plural Majority: The party in power has the largest number of seats but does not have a simple majority in the state legislature. For the purposes of this table, we include cases where the ruling party is tied with another opposition party.

Minority Party The party in power is a legislative minority, with fewer seats than at least one other party in the state legislature.

In response, over the past decade new sources of official information—as well as the emergence of an independent media—have provided the public with much greater access to credible information about the workings of government. These advances in government transparency, although significant, are not faultless and, most importantly, are not homogeneous. The pace to an effective political accountability is uneven across the country.¹¹

¹¹ In practice, the development of mechanisms for greater transparency and accountability in other democratic systems has been a process of constant

For instance, like many aspects of Mexico's democratization, efforts to institutionalize the public's right to access government information began at the subnational level, with the April 2002 approval of the country's first law for access to public information by Sinaloa's state legislature. Sinaloa's pioneering legislation was followed shortly after by the federal government's approval of the Federal Law of Access to Public Information (Ley de Acceso a la Información Pública, LAIP) and the creation of the Federal Institute for Access to Public Information (Instituto Federal de Acceso a la Información, IFAI), an autonomous institution that oversees the enforcement of this legislation at the federal level. By the time this monograph went to press, all Mexican states had passed similar legislation (see table 1.1). However, as Mauricio Merino shows in this monograph, there were important differences with regard to the extent and enforcement of citizens' rights to access information in different states. For instance, by February 2007, twenty-two states had not passed the necessary secondary regulation (*reglamento de la ley*) to support the reforms.¹² In his comprehensive analysis, Merino explains that access to public information is a "public policy" and also a fundamental political right. He concludes that differences between states might be due to the approach each state gives to this legislation: while most of the states undergo the opening of public information as a policy, the characteristics of some local legislation cancel the

evolution. More important, many of the most familiar and effective mechanisms for doing so are of relatively recent origin. In the United States, for example, the late-nineteenth- and early-twentieth-century introduction of new professional requirements for civil servants established technical criteria for persons occupying public posts, and in so doing helped to ensure more responsible public service. Likewise, the notion of transparency as a legal obligation of the state is relatively modern. Indeed, comprehensive freedom-of-information laws passed in Great Britain, the United States, and other established democracies first appeared only in the mid-twentieth century; the U.S. Freedom of Information Act was not enacted until 1966, and only after considerable debate and controversy (Foerstel 1999). In recent years, transparency and free access to information have been regarded as crucial elements to promote economic efficiency and growth (Blanton 2002).

¹² These states are Durango, México, Morelos, Nayarit, Querétaro, and Sinaloa. In Michoacán this secondary legislation was under executive consideration, the last stage of the legislative process. See IFAI 2006.

Table 1.1. Freedom of Information Laws, Auditing and Legislative Oversight Laws, and Administrative Procedures Legislation

State	Date of Freedom of Information Law**	Date of Auditing Law*	Date (Last Reform) of Administrative Procedures Law**
Federal Govt.	06/11/02	12/20/00	06/01/1995 -
Aguascalientes	05/22/06	06/18/81	02/14/1999 -
Baja California	08/22/05	04/28/04	01/02/2004 -
Baja Calif. Sur	03/20/05	02/25/02	2/22/2005
Campeche	07/21/05	06/29/00	n.a.
Coahuila	11/04/03	09/07/89	n.a.
Colima	03/01/03	06/16/88	n.a.
Chiapas	10/12/06	08/18/03	01/18/89 (11/05/2004)
Chihuahua	10/15/05	06/29/95	n.a.
Federal District	05/08/03	02/04/99	12/21/1995
Durango	02/27/03	12//15/01	3/11/2004
Guanajuato	07/29/03	11/07/03	12/18/1998
Guerrero	10/14/05	10/30/02	n.a.
Hidalgo	12/29/06	12/11/71	12/30/2002
Jalisco	01/06/05	12/15/03	7/15/2000
México	04/30/04	03/18/04	2/7/1997
Michoacán	08/28/02	03/27/03	n.a.
Morelos	08/27/03	08/11/03	9/6/2000
Nayarit	06/16/04	10/21/00	8/17/2002
Nuevo León	02/21/03	04/22/92	02/21/97 (07/14/2004)
Oaxaca	09/16/06	08/23/95	12/31/2005
Puebla	08/16/04	03/02/01	n.a.
Querétaro	09/27/02	12/05/86	9/29/2003
Quintana Roo	05/31/04	12/11/03	8/24/2004
San Luis Potosí	03/20/03	11/15/93	3/27/2001 (04/30/2097)
Sinaloa	04/26/02	03/24/97	3/19/1993 (04/16/2001)
Sonora	02/25/05	03/03/85	n.a.
Tabasco	02/10/07	04/29/03	2/19/1997
Tamaulipas	11/25/04	12/12/01	n.a.
Tlaxcala	01/12/07	11/06/01	11/30/2001
Veracruz	02/27/07	05/26/00	01/29/2001 (08/10/2004)
Yucatán	05/31/04	03/30/04	n.a.
Zacatecas	07/14/04	03/30/00	n.a.

Sources: Figueroa 2005; IFAI 2007. Dates are for approval* or publication**.

universality of the political right. As this volume went to press, his conclusions were supported by congressional legislation that mandated that all Mexican states must adopt similar minimum standards to ensure the public's access to these same rights throughout the country.

Another indication of a new attitude regarding government transparency in Mexico is the approval (1994) and reform (1996 and 1999) of the Federal Administrative Procedures Law (APL) to regulate government activities. The passage of the APL is a significant step for a government that has been historically characterized by secrecy. An APL opens the policy-making process to the public and interested parties. In so doing, an APL "not only determines what groups are able to participate in rule-making but also ultimately affects the nature of policy" (Baum 2005, 366; see also Baum 2002). In this monograph, Jorge Ibáñez and Yéssika Hernández briefly examine the history of state regulation at the federal level in Mexico and offer a deeper analysis of the use and limitations of regulatory instruments like the Regulatory Impact Analysis (RIA). Ibáñez and Hernández underscore the importance of regulatory institutions as a tool for the enhancement of democratic governance and the rule of law in Mexico. At the subnational level, only twenty states have legislation on administrative procedures for administrative justice.

A different but quite important indication of government accountability is the consolidation of checks and balances between branches of government. One important contribution to such checks and balances has been the creation of new institutions—and the implementation of new regulations and procedures—for public accounting that aim to reduce opacity in the use of public resources by granting legislative institutions more power to oversee the implementation of public policies. Once again illustrative of a new era of federalism in Mexico, the new trend of legislative reforms started in May 2000 with the passage of the State of Veracruz's General Accounting Law (*Ley de Fiscalización Superior del Estado de Veracruz*), which expanded the oversight capabilities of the state legislature. This reform was followed by similar legislation in the states of Nayarit (October 2000) and Campeche (June 2000). In December 2000, the federal Congress passed the new Federal General Accounting Law (*Ley de Fiscalización Superior de la Federación*), which replaced the *Contaduría Mayor de Hacienda* with a more independent and professionalized auditing institution,

the Federal Supreme Audit Institution (Auditoría Superior de la Federación). The new legislation not only transformed institutions that help the federal Congress keep the actions of the federal bureaucracy in check; it also incorporated contemporary trends on oversight such as the auditing of government performance. By December 2006, eleven state governments had approved legislative reforms that transformed oversight agencies and, sometimes, improved the oversight capacity of state legislators (see table 1.1).

As is the case with access to public information, the quality of these new laws is quite heterogeneous across the country (Figueroa 2005). In some cases, legislative decisions with regard to *fiscalización* of public accounts are unclear while the real ability of state legislatures to enforce sanctions remains problematic (Ríos Cázares 2006; Pardinas 2003). In this monograph, Nicolás Pineda analyzes just one of the multiple oversight activities that state legislatures in Mexico must perform: the *fiscalización* of all state municipal governments' public accounts. Pineda presents case-study analyses of oversight of municipal public accounts in the state of Sonora. His analysis—a detailed study of congressional decisions regarding the evaluation of municipal governments' use and distribution of public resources—shows with extreme clarity the lack of systematic criteria by which to approve municipalities' public accounts. In theory, the goal of these reforms is to empower legislative authorities to oversee the actions of the bureaucracy by holding individual public officials to account and, in so doing, to strengthen checks and balances between government branches. However, the problems and inconsistencies that Pineda notes seem to be common in other Mexican states, sometimes regardless of innovations in the law.

Maybe with a similar goal in mind, the federal government has made important strides at multiple levels toward improving the independence of the historically weak judicial branch. Major reforms to the federal court system under Presidents Zedillo and Fox have raised the role of the Supreme Court as a counterbalance to the executive and the Congress, and also as the last constitutional authority for resolving inter-branch conflicts (Domingo 2000; Zamora and Cossío 2006). This reform trend is not particular to Mexico and has been the focus of multiple analyses of democratic consolidation (Diamond 2002; O'Donnell 2003; Przeworski, Stokes, and

Manin 1999) since, in addition to its role as a check on the routine functioning of the executive and legislative powers, an independent judiciary is critical to the rule of law and the protection of citizens' basic rights. However, much like the concept of political accountability, the concept of judicial independence is under continuous dispute. In this monograph, Andrea Pozas and Julio Ríos propose a new way of viewing and analyzing judicial independence. By developing a typology of different juridical and political scenarios for the exercise of judicial autonomy, these authors are able to identify ideal conditions for different types of judicial independence. In particular, Pozas and Ríos are interested in measuring the judiciary's "independence from" other branches of government and its "independence to" make potentially controversial decisions, such as protecting fundamental individual rights. Their chapter provides useful theoretical insights into the dimensions of judicial independence—and where reality is likely to deviate from the law—but also valuable empirical insights into the emerging power of the courts in the federal systems of Chile and Mexico.

One last indication of this slow movement toward a more accountable and transparent government in Mexico is the promotion of active citizen involvement in policy design and oversight through organized civil society groups.¹³ In this monograph, Allison Rowland examines the impact and function of new mechanisms for civic participation in municipal government. Specifically, Rowland looks at the role of neighborhood committees in monitoring the local government's provision of public services, such as public security. Her findings after extensive field research in two large municipalities in the State of México suggest that neighborhood committees do not presently provide effective channels for autonomous public participation in the oversight of municipal governments because these committees could be easily co-opted by political parties or municipal authorities. Rowland finds that this tendency is exacerbated in lower-income neighborhoods. Her chapter provides an important reminder that ensuring state responsiveness and equitable access to justice for Mexico's poor—

¹³ For instance, civic and governmental associations (like the PAN-dominated Asociación Municipal de México, A.C., AMMAC) promoted policy innovation and constituent outreach programs—such as "Citizen Wednesday" (Miércoles Ciudadano)—to provide greater access to government officials and ensure better responsiveness and more effective service.

especially at the local level—may well constitute the greatest challenge to strengthening democracy and the rule of law in coming decades.

In the concluding remarks to this volume, Sergio López Ayllón knits the previous authors' arguments together with notions of democracy, accountability, and rule of law in the context of current-day Mexico. He contends that the necessary conditions for democracy—that is, the establishment of procedures for popular sovereignty—are not sufficient to ensure the proper functioning and consolidation of democratic systems. In addition, López Ayllón argues, modern democratic governance also requires that citizens have the basic rights associated with "liberal democracy," among which he includes a citizen's right to the information required to make responsible political choices and hold government representatives accountable. However, López Ayllón notes the difficulties associated with notions of accountability, a concept that has diverse interpretations and applications. He helps to clarify the directional lines of governmental accountability—both horizontal and vertical—and the importance of accessible information to facilitate one actor's ability to hold another accountable. As López Ayllón's compelling piece illustrates, despite the accumulation of important gradual advances, there remain significant challenges with regard to establishing effective mechanisms for accountability and transparency in Mexico. The accountability mechanisms introduced in the early 1990s—such as the Federal Auditing Office—lacked mechanisms for citizens to evaluate the performance of public authorities and hold them accountable. According to López Ayllón, democratic competition contributed to the creation of such mechanisms: "It was only after the 2000 elections that the consolidation of formal democracy allowed for the enactment of the Transparency and Access to Information Law." As López Ayllón and other authors in this monograph illustrate, such advances are not only possible but also critical to deepening and consolidating Mexico's democratic governance.

Not only do López Ayllón and the other contributors to this volume generally treat democracy, political accountability, and government transparency as intimately related, but most of them also in some way explore the relationship of these concepts to modern conceptualizations of the rule of law. This is an important underlying assumption that bears some explanation. As we discuss in a separate volume (Ríos Cázares and Shirk 2007),

modern definitions of the rule of law tend to emphasize three key elements. The most basic definitions necessarily center on the notion that actors in society are beholden to the law, either by choice or by some measure of coercion. A second and more modern conception extends this same notion to actors within the state, who are themselves expected to act in accordance with established law. Finally, some definitions of the rule of law presume a certain degree of access to justice under the law, which implies at a minimum that the law is applied consistently, swiftly, and with due process. This last conceptualization of the rule of law arguably derives from inherently—though not exclusively—modern and Western perspectives, such as the classical maxim that “justice is blind,” the Gladstonian notion that “justice delayed is justice denied,” and the Rawlsian view of “justice as fairness.”

We underscore these visions of the rule of law—which we divide into three main components: (1) enforcement of lawful conduct by society (order); (2) enforcement of lawful conduct by the state (government accountability); and (3) just application of the law (access to justice), all of which help us explain the critical connection between the rule of law and effective democratic governance. Specifically, the latter two components of the rule of law—which posit that the law be applicable to its own enforcers and that the law be justly applied—establish accountability as an implicit element of the rule of law. Hence, to the extent that political accountability and government transparency are considered necessary for the consolidation of the rule of law, they are also inherently intertwined with our modern understanding of democratic governance. Our central objective in this volume is to examine the rapidly changing standards for democratic governance in Mexico today.

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2

The Challenge of Transparency: A Review of the Regulations Governing Access to Public Information in Mexican States

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It is generally thought that Mexico decided to adopt the best practices of access to public information as a result of its transition to democracy. And the federal Transparency and Access to Public Information Law, passed two years after party alternation in the president's office, was interpreted as a benchmark in the history of Mexican public administration. From this perspective, beginning the process of opening up access to information was regarded as another stage in the consolidation of this regime. However, this opening has been neither smooth nor homogenous throughout the country. Within the general move toward transparency, there have been problems of institutional design, operational difficulties, and differences in legal viewpoints which, in early 2005, already presented new challenges and a new research agenda.

The aim of this chapter is not to discuss the scope of this process in general, but rather to identify it within the much narrower context of the first regulations issued by Mexican states as they joined the process. Over time, as we shall see, opening up access to the information obtained and produced by the states has become both an individual right and a public policy. In both instances, however, we are barely at the start of a long road, which makes it advisable at this juncture to identify the main features of this process and the status of the related regulations that Mexican states have issued.

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This text is divided into two parts. In the first, I identify the criteria I regard as most useful for studying the way that access to public information has been interpreted. In the second, I use these criteria to undertake a comparative examination of state legislation passed to date in Mexico. I obviously am anticipating the result: the outlook provided by this legislation is still generally incipient, incomplete, and fragmented. One cannot yet speak of a transparency criterion shared by all states or of a mature policy implemented throughout the country. We are literally at the beginning of this road. Yet origins have a profound effect, making it important to determine how this new history has begun in local Mexican government.

IN SEARCH OF CRITERIA FOR ANALYSIS

Opening up public information undoubtedly reinforces the quality of democracy. Access to timely, reliable information not only constitutes a basic condition for exercising fundamental rights, but it is also one of the most effective means of combating acts of corruption, counteracting the arbitrary exercise of political and administrative authority, and giving citizens greater control over public affairs.¹ Transparency is an issue that permeates almost every level of a country's political and economic life. And it also constitutes, in its own right, one of the most important ethical principles for social coexistence.

However, and precisely because of its multidimensional nature, opening up access to public information is not an easy process. The literature on this subject is divided into at least three levels, which are not necessarily complementary. The first refers to the institutions that are essential for guaranteeing the right of access to public information. Simply put, this level concerns the construction of legal regulations that lead to the opening of access and the design of the formal institutions responsible for making this possible. The second, derived from the former, concerns the organizational challenges derived from the law—that is, not only the specific forms that these public institutions must adopt but also the impact of openness on the routines of public organizations. And the third is located at the normative limits of the right of access to public information, which in turn

¹ For more information on this particular aspect, see, among others, Rodríguez Zepeda 2004; Reyes Heroles 2004.

raises at least two dilemmas in practice: one is located at the subtle border separating public from strictly private and even intimate affairs,² and the other is linked to the efficiency of some of the state's main functions, which require discretion and even secrecy in order to be successfully implemented. Each of these levels is important in itself, yet their relationships raise complex problems. Let us examine each one briefly, in search of criteria that will enable us to formulate a review of the current status of local governments in Mexico.

It is essential to recognize that the principle behind the idea of transparency is drawn from the development of liberal democracy.³ No thinking person today would deny the importance of access to public information as one of the main conditions for increasing the quality of democracy and affirming citizens' capacity for control over the exercise of public power.⁴ However, this democratic conviction had not become a fully guaranteed right in most countries with a democratic tradition until the late twentieth century.⁵ Transparency arose as a result of an economic reflection: the fac-

² An analysis of the separation between the public and the private is amply developed in Escalante 2004 and Garzón Valdés 2004.

³ Jesús Rodríguez Zepeda aptly refers to the statement that the liberal state model was "the first to be subjected to citizens' demand for transparency and obedience." I would point out the following statement by this author: "There is a clear demarcation between the liberal states, on the one hand, and absolutist, totalitarian, and authoritarian states, on the other, on issues regarding the restricted use of information, the force given to political secrecy, the suppression of basic freedoms such as those of conscience or expression, or the state's own interests that may counter those of citizens. One could even say that the state can be defined, in its most general terms, as limited or contained by citizens' basic freedoms: in other words, a transparent state" (Rodríguez Zepeda 2004, 25).

⁴ In this respect, although Norberto Bobbio holds that the elimination of invisible power is yet another false promise of real as opposed to ideal democracy, he also reminds us of the obligation to publicize government acts, not only "to allow citizens to find out about the actions of those that hold power and therefore to control them, but also because making these public is in itself a form of control, an expedient that enables one to distinguish what is licit from what is illicit" (Bobbio 1996, 37-38).

⁵ An inventory of the laws of access to information from a comparative perspective is available from David Banisar at www.freeinfo.org/survey.htm.

tor that triggered this process was the globalization of markets and the need for more and better information on market functioning, based on the regulations and probity of each country. Consequently, the main promoters of the best practices of transparency have been, at least in the beginning, large international economic organizations, led by the Organisation for Economic Co-operation and Development (OECD) and the World Bank.⁶

It is no coincidence that, in the late 1990s, World Bank Vice President Joseph E. Stiglitz coined the term “economic policy of information” in the quest for a change in the dominant paradigm based on the balance of markets. For this Nobel laureate in economics, the lack of or deficiencies in the information used to regulate economic relations and make market decisions not only constitute an aggregated cost that cannot be properly calculated, but they also prove that the underlying assumptions of the theory of general equilibrium are false. From this perspective, Stiglitz criticized the so-called neoclassical paradigm on which Western economic policy has been structured, at least since the Washington Consensus, but he also established the theoretical bases for constructing a new economic paradigm capable of assuming the consequences of asymmetries of information in the functioning of markets and in public policy design. This approach to the issue from an economic perspective warrants extensive debate, which lies outside the purview of this chapter. However, I point it out because of its implications for the positions states may take toward the challenge of transparency, given that it is not the same to assume that their intervention can be justified in order to correct flaws in the market as to assume that asymmetries in information are an inevitable cause of public policies. Hence the economic—but, above all, the political—importance of this debate.⁷

⁶ For more on this aspect, see Reyes Heróles 2004.

⁷ Joseph E. Stiglitz states, “The most notable aspect [of this issue] is probably the controversies over development strategies, in which the policies of the Washington Consensus, based on the fundamentalism of the market (the simplistic view of competitive markets with perfect information that is inappropriate for developed countries but particularly harmful for developing countries) has prevailed at international economic institutions since the early 1980s. Elsewhere I have documented the failures of these policies in development, both in the handling of the transition from communism to a market economy and in crisis management. Ideas matter and it is hardly surprising

Nevertheless, during the past fifteen years this issue shifted from economics to political criticism until it virtually became a sign of democratic identity (O'Donnell 1999: 29–51). Couched in these terms, transparency has demanded a far broader discussion, since it gradually stopped being seen as an instrument aimed solely at guaranteeing access to public information in an economic sense, and began to be studied in terms of the responsible use of this information and also as the beginning of a democratic system of control over the exercise of public power. In other words, the original idea of transparency was associated with accountability. And this, in turn, has been linked as much with civil servants' responsibility as with the democratic culture of citizens.

This difficult combination led to the two political dimensions of accountability described by Andreas Schedler: that referring to civil servants' obligation to be answerable for what they do, and that concerning citizens' power to sanction the results of management.⁸ However, the practical implementation of this idea implies extremely difficult conditions. Civil servants' ethical commitment to accountability is not enough. What is required is the construction of rules of the game that promote and guarantee the opening up of access to information, together with the guarantee that these rules will actually be enforced. On the other hand, it is also essential that citizens not only obtain the right to gain access to information but also increasingly use this information to reinforce the means of participation and democratic control over power.

In this respect, Schedler's two dimensions refer both to the formal content adopted by institutions charged with guaranteeing openness and to the way that citizens react to these institutions. Although the principle of transparency lies at the base of this combination, its conversion into legal obligations and procedures can be as casuistic as the circumstances of each

that these policies, based on models that are so far from reality, should have failed so often" (Stiglitz 2001, 518).

⁸ These two dimensions refer to the terms *answerability* and *enforcement*. The former refers to "the obligation of politicians and civil servants to report on their decisions and to justify them in public" (Schedler 2004, 12). The latter describes "a set of activities oriented toward the observance of the law" (p. 16) or "the capacity to sanction politicians and civil servants in the event that they have failed to comply with their public duties" (p. 12).

place and moment. At the same time, the variables that affect the use of public information can be as vast as those that determine political culture and the behavior of citizens in general. Hence the enormous difficulty of establishing finished parameters for rating the validity of a given institutional design above any other since, although the principle may be the same, the way it is translated into legal regulations and institutions may be very different.

Nevertheless, from this first level of analysis, one can gather that compliance with the principle of transparency requires at the very least: (1) the existence of a legal framework aimed at guaranteeing access to public information; (2) a set of information obligations on the part of the civil servants and public organizations that exercise public power; (3) a well-defined system of laws to guarantee that citizens can effectively access public information; (4) a system for sanctioning civil servants who fail to be accountable, at least as regards the information they handle; and (5) citizens and social organizations interested in obtaining public information. This list contains the minimum requirements for assuming that a process of opening access to public information has indeed begun. In the opposite sense, though, it can also serve to indicate that this process has not begun or that, despite having being implemented, it contains obvious shortcomings in terms of a basic institutional interpretation.

The design of the norms, obligations, and legal procedures required to guarantee formal access to public information is not the only problem to be faced in the practical implementation of the principle of transparency. The second level of analysis is of an organizational order; it refers to the difficulties and resistance experienced by organizations bound by regulations concerning access to information. Simply put, compliance measures must be introduced into the routines of public organizations so that they can be in a position to effectively meet the obligation to inform.

From an organizational perspective, transparency poses enormous challenges. It involves not only permitting access to information compiled and produced by public entities, but also modifying the way the public entities work. It constitutes an almost complete break with the traditional bureaucratic model, according to which public administration operates under parameters imposed by rigid legal regulations and performs functions that are only linked with the public in the sense of offering timely results, yet

whose processing belongs to a sphere reserved for those that control this bureaucracy.⁹ In the ideal of transparency, this model must be replaced by one in which virtually all the decisions to be taken by public organizations are placed under public scrutiny, in the widest possible sense. Thus the problem shifts from apparently simple information processing to a complete change in the way public administration operates.

Even in its simplest form, the introduction of the principle of transparency entails a fundamental change in the ways of processing public decisions, from the moment that civil servants know that any document they sign or any statement they make at a formal work meeting can be made public. It is not the same to operate under conditions that are more or less protected by secrecy, with only an occasional need to explain or justify the results of a decision that was taken, as it is to open up the process completely from the beginning.

Virtually all the theoretical formulation conducive to transparency in public administration is based on this point, from at least two perspectives. One involves the study of the negative effect of the information asymmetries that tend to occur in any organization with well-defined aims and fairly stable hierarchies; and another refers to the relationship between government agencies and citizens. These two approaches are complementary in that one underlines the advantages of transparency from within

⁹ According to Max Weber, the purest type of legal domination is that which is exercised through a *bureaucratic administrative cadre*. Only the leader of the association holds a position of empire, either through appropriation, choice, or designation by his predecessor. Yet his ability to command is also a legal "authority." The entire administrative cadre consists, in the purest case, of individual civil servants which "1) personally free, are only beholden to the *objective duties* of their position, 2) belong to a rigorous hierarchy, 3) with rigorously established powers 4) by virtue of a contract or rather (in principle) on the basis of free choice, according to the 5) *professional qualification* that serves as the basis for their nomination – in the most rational case: through certain tests or the diploma certifying their qualification; 6) are paid for in *money* with fixed salaries ... 7) hold the position as their sole or main *profession*; 8) have a "career" or the "perspective" of promotions and advancement in return for years of service or for services provided or both, according to their superiors' criteria, 9) work completely separately from the administrative media, without appropriating the post and 10) are subjected to a rigorous discipline and administrative surveillance" (Weber 1944, 175–76).

organizations, while the other stresses access to information from outside the entities that produce it (see Vergara 2004).

Within organizations, access to information is assumed as an instrument for preventing the problems that usually arise among civil servants and for breaking up the perverse games that prevent the enforcement of their public aims.¹⁰ In this respect, transparency appears as an organizational strategy that prevents the private appropriation of public spaces and therefore places greater demands on civil servants and restricts acts of corruption. And from the outside, access to information not only produces this same effect, but it can also become a privileged means of forcing public agencies to come into contact with society, at least in the specific spheres of the policies for which civil servants are responsible.¹¹

However, both organizational virtues not only break with the tradition of bureaucratic secrecy expressed in the very name of public offices—“secretariats,” meaning the bearers of hermetic knowledge that enforce closed, rigid instructions—but also create extremely wide-ranging organizational problems. Declaring the principle of transparency is much easier than implementing it, beginning with the enormous difficulty of changing established routines in public organizations. Their traditional way of doing things was, until very recently, regarded as habitually correct. Furthermore, the regulations that are conducive to transparency do not always correspond with those that force civil servants to act in a particular way. In short, both the predominant organizational culture and the framework of legal obligations and responsibilities within which civil servants perform their work tend to counteract the principle of transparency. And unless these limitations adapt to meet the organizational demands raised by the openness of access to public information, organizations will probably continue to encounter resistance.

Hence the importance of the first rules in the process of openness, not only in terms of citizens’ right to obtain information but also as regards the way public organizations must process and organize information so that

¹⁰ Compare Moe 1984, cited in Vergara 2004. Two other classics on the relationship between agent and principal regarding the problems of the implementation of public policies are Bardach 1975 and Wildavsky and Pressman 1973.

¹¹ This idea is contained in the highly influential theoretical and practical approach known as New Public Management. See, for example, Ketl 2000.

this right is effectively enforced. The process of opening up information, in its organizational sense, is translated as follows: (1) in the form adopted by the organizations responsible for implementing it; (2) in the rules for processing and filing public information; and (3) in the procedures that must be adopted for ensuring that citizens actually have access to files.

The strength of the culture of administrative secrecy is so obvious that it is striking that issues that previously seemed so inconsequential should have become so important today. Without transparency, the rules for processing and filing information and the means of gaining access to these documents not only seemed to be, but actually were, minor matters for public administration. Who could possibly care whether an official letter was correctly filed, whether there was verifiable history on each decision, whether there were organizations specifically dedicated to this purpose with enough authority to ensure that papers existed, that the evidence remained, that each process was documented, and that everyone could have access to these data? These aspects, formerly overlooked, have now become far more important.

Finally, it is worth considering a third, rarely studied dimension in the process of opening up access to information. It involves the effectiveness of the regulations guaranteeing the right of access to information and the use that will be made of this information. We have already seen that the principle of transparency has been studied as a key instrument in the functioning of democracy and even as a condition for this regime to fulfill its aims.¹² At the organizational level, it has also been accepted that transparency helps solve information asymmetries and therefore facilitates transversal relations between agencies and civil servants—and also enables citizens not only to be aware of decision-making processes and their results but also to participate in them. All these intrinsic qualities at the beginning of the opening up of access to information have developed within the ideal framework of a democratic rule of law, based on the dual assumption that laws are effectively enforced and that the quality of this rule of law is increased insofar as citizens themselves contribute to the public surveillance of their operation.

¹² For more on this topic, see López Ayllón 2005, 10–13.

But it is precisely on the empirical validity of those two assumptions that a broader debate can and must be developed on the true possibilities of reinforcing the use of information—on the one hand, through the recognition of the end users of information, which may be interest groups rather than society as a whole, and, on the other, through the form adopted by the use of the information eventually obtained, through either pressure or legal resources specifically designed for this purpose. Bearing in mind the expectations placed on the principle of transparency, none of these issues is trivial.

As we have seen so far, virtually no one disputes the importance of the process of opening up access to information. However, the amount of data generated by the government would be impossible for an ordinary citizen to process. This is true not only for reasons of limited rationality, as in Simon's classic formula,¹³ but also because the sources are extremely diverse and also reflect equally different interests and purposes. Thus the process of opening up access to public information faces the dilemma of the specific interests of those seeking information, and not just resistance from those providing it. Simply put, there are various "information markets" that are determined as much by the sources that produce data as by groups specifically interested in obtaining them for their own ends. One could rightly argue that the existence of these "markets" is indifferent to the final usefulness that opening access would have in enhancing the quality of democracy, making it difficult to assert that every exchange of information that takes place between government and the various users produces the same social benefit.¹⁴

¹³ The concept of "limited rationality" contributed by Herbert Simon (1976) proved crucial to acknowledging the uses and limits of reason in human but also institutional and organizational issues. According to this author, individuals lack the possibility of having all information, clearly determining their own function of usefulness, coping with a well-defined series of alternatives, and assigning a solid distribution of joint probability to all future series of events, as well as having the capacities for perfect calculability and maximization.

¹⁴ This is another of the arguments wielded by Joseph E. Stiglitz against the notion that any aggregate piece of information produces a benefit to the economy as a whole on the basis of the theory of general equilibrium. Stiglitz argues that we actually make economic decisions and design policies on the

Although transparency is essential to democracy in general terms, it is less clear that all exchanges will produce the same social benefit. Everything depends on the end user and the use made of the information obtained. Hence the importance of faithfully acknowledging these users and frankly admitting the specific interests to which they respond. For the moment, the available statistics on requests for information in Mexico at least allow one to observe general behaviors that already confirm this trend: the most frequent users of the right to access public information have a specific professional interest in obtaining it.

At the same time, the ideal of social control over public administration that underlies the principle of transparency not only assumes a stable, effective institutional framework but also a special type of political culture that requires citizens' active participation and the prior existence of practical instruments for exercising this control in a public space. In other words, in order for public information to play an effective role, it does not suffice for it simply to exist. It is also essential for citizens—once they acknowledge anomalies, false promises, or acts of corruption—to have mechanisms to activate this system of controlling the administration, either formally or informally. Otherwise the information itself could quite simply become a conflict. Hence the importance of having enough legal instruments and public means to ensure that the process of obtaining access to information effectively produces democratic results. It is useless to detect public anomalies if there are no legal means or sufficient forms of publicity and denunciation to correct or prevent them. The assumption of social surveillance is extremely important, but it requires a solid institutional and cultural basis. In this respect, the mechanisms safeguarding access to information constitute the first step toward this positive relationship between openness and the quality of democracy.

These two considerations provide an inverse interpretation of the traditional debate on the borders between public and private (and the intimate, as Ernesto Garzón would point out)¹⁵ and a different way of interpreting the new legislation on this matter. If, on the one hand, one can document public organizations' resistance to opening up access to the information

basis of imperfect information that does not tend toward equilibrium but rather toward inequality and the inefficiency of markets. See Stiglitz 1999.

¹⁵ Compare Garzón Valdés 2004.

they handle, it is also possible to observe that citizens in general still are not clearly involved in this process. Hence the litigious consequence, so to speak, of the start of this new policy.

In the absence of widespread use of public information, the process should have begun as a sort of dispute to determine who can and who cannot classify information as reserved or confidential. As I noted earlier, origins leave their mark, which is why it is no coincidence that access to information should have evolved from the idea of administrative closure until it gradually became a fundamental right. In this respect, two pieces of data are particularly important for comparing the different experiences that have occurred at the state level: (1) the legal authority granted to the organizations specifically dedicated to guaranteeing access to information in each state, and (2) the type of powers granted to these organizations to classify the available information.

For these reasons, it is not by chance that much of the process of opening up access to public information should have been resolved in a litigious fashion. What has happened—and, in light of these reflections, what was inevitable—is that the path of contention is setting the guidelines for the process of openness. But for this very reason, it is essential that the procedures for accessing information and the timeliness and veracity of the resources used for review should be clearly established in the legal norms from the outset. Otherwise, it would be virtually impossible to prevent this principle from being exploited by the interests of the agencies themselves and by civil servants (who would tend to provide as little information as possible), or by groups interested in obtaining specific data on public administration according to their private interests (which would tend toward as much information as possible, within their own areas of interest). The fact that neither of these conditions is fulfilled depends largely on the norms governing the process of appeal and their exact inclusion within citizens' individual guarantees.¹⁶

¹⁶ For a review of the transition from the right to information as a social guarantee to its inclusion as an individual guarantee on the basis of Article 6 of the Mexican Constitution, see the excellent account by Sergio López Ayllón (2005, 34–53).

ANALYSIS OF STATE ACCESS-TO-INFORMATION LAWS

I noted above that state laws on access to public information in Mexico were still incipient, incomplete, and fragmented. Below, I present evidence for my use of these adjectives. The analysis is based on information published by the Federal Institute of Access to Public Information (IFAI) and a review of states' Internet Web pages.¹⁷ A comparison of state legislation, based on the ten criteria outlined previously, may show the varied ways that access to public information has begun to open up in Mexico.

Criteria for the First Level of Analysis: Conditions for Beginning the Process

First Criterion: Existence of a Complete Legal Framework. To date, only twenty-three of Mexico's states have undertaken legislation on transparency and access to public information. This means that nine states have not even joined the process of openness. If we extrapolate to the level of municipalities, we find that 1,495 are governed by transparency laws, or 61 percent of all municipalities in Mexico.

Moreover, it is clear that openness is extremely recent: only three laws came into effect in 2002, nine did so in 2003, eight in 2004, and two in 2005 (see table 2.1). Two others had been published but were not yet in effect. Six states had yet to claim the right to access information,¹⁸ and municipalities in another state will not be obliged to enact such laws for another two years. In short, only fifteen states, just half of the total, had legislation on transparency in force. And only four of these states had also passed specific laws to ensure the timely enforcement of their transparency laws.¹⁹

¹⁷ In particular, the analysis is based on the documents published by the Head Office for Liaising with States and Municipalities of the Federal Institute of Access to Public Information, entitled "Estudio comparativo de leyes de acceso a la información pública." This information includes a comparison of the state laws that had been published by April 2005. I would also like to thank Sergio López Ayllón for the information he provided to me through the organization known as Observatorio Ciudadano de Transparencia, A.C.

¹⁸ According to the data provided by IFAI, they are as follows: Nayarit, Puebla, Sonora, Tlaxcala, Veracruz, and Zacatecas.

¹⁹ The regulations published to date include: México State, October 10, 2004; Michoacán, April 12, 2004, for the Executive Branch; Querétaro, August 15 2003; and Sinaloa, April 25, 2003.

Table 2.1 Date of Passage and Coming into Effect of Laws

Sphere of Application	Date of Passage	Date When Came into Effect
Federal	11-Jun-02	12-Jun-02
Aguascalientes	30-Jul-02	15-Jan-03
Coahuila	04-Nov-03	04-Feb-04
Colima	01-Mar-03	02-Mar-03
Durango	25-Feb-03	26-Feb-03
Federal District	08-May-03	09-May-03
Guanajuato	29-Jul-03	02-Aug-03
Jalisco	06-Jan-05	22-Sep-05
México State	30-Apr-04	01-May-04
Michoacán	28-Aug-02	20-Feb-03
Morelos	27-Aug-03	28-Aug-03
Nayarit	16-Jun-04	17-Jun-05
Nuevo León	21-Feb-03	21-Feb-03
Puebla	16-Aug-04	17-Aug-04
Querétaro	27-Sep-02	28-Sep-02
Quintana Roo	31-May-04	01-Jun-04
San Luis Potosí	20-Mar-03	21-Mar-03
Sinaloa	26-Apr-02	27-Apr-02
Sonora	25-Feb-05	26-Feb-05
Tamaulipas	25-Nov-04	26-Nov-04
Tlaxcala	13-Aug-04	1 year after publication
Veracruz	08-Jun-04	6 months after publication
Yucatán	31-May-04	04-Jun-04
Zacatecas	14-Jul-04	15-Jul-04

Source: Compiled by the author with information provided by the Dirección General de Vinculación con Estados y Municipios, April 2005 compendium, "Estudio comparativo de leyes de acceso a la información pública," Instituto Federal de Acceso a la Información Pública.

This shows that the right to access information is an incomplete right, since not all citizens in the country can exercise it with their governing authorities. And it is incipient, in the sense that not all these laws have come into effect or have the necessary enforcement procedures in place. At the beginning of 2005, over 29 million Mexicans did not have this right in the local sphere.

If the process of opening access to public information were only a public policy, the presence of different models and timetables in the states might be merely interesting, in part because public policies sometimes have better results when they adapt to regional differences and may fail when they adopt homogenous forms that ignore the diversity of Mexico's local governments.²⁰ But in this case, we are also dealing with a fundamental civic right whose enforcement depends on the existence of these specific local legislations. And in this respect, the applicable legal logic is exactly opposite to what is happening in practice: individual rights cannot be reduced or conditioned by the existence of secondary legislation. If indeed there are differences given the country's federal structure, these cannot be used to restrict rights but merely to expand the possibilities for putting them into effect. Nevertheless, the right of access to public information in Mexico still depends on a citizen's place of residence.

Second Criterion: Diversity and Availability of Data on Public Information. The diversity of state regulations enacted thus far not only translates into different rights depending on place of residence but also specifies different obligations for the levels of government in each state. In principle, all of the laws are binding for autonomous constitutional organizations, parastatal and municipal firms, and town councils. This means that a transparency policy, once adopted, implies specific obligations for all of the organizations that exercise public power. And some laws even carry these obligations to two subjects not contemplated in federal legislation: political parties and organizations responsible for handling public resources.²¹ Adding

²⁰ This argument is developed in Merino 2005.

²¹ Under federal legislation, the subject obliged to provide information is the person that has transferred recourses, although in principle those who receive them are under no obligation. The states in which political parties are regarded as under obligation are: Aguascalientes, Coahuila, Colima, Jalisco, Michoacán, Morelos, Querétaro, Quintana Roo, Sinaloa, Sonora (the law regards them as unofficial bound subjects), Tlaxcala, Veracruz, and Zacatecas. On the other hand, the states in which the entities responsible for handling public finances are considered to be under this obligation are: Aguascalientes, Coahuila, Colima, Durango, Federal District, Jalisco, Michoacán, Morelos, Nayarit, Nuevo León, Querétaro, San Luis Potosí, Sinaloa, Sonora, Tamaulipas, Tlaxcala, Yucatán, and Zacatecas.

these two types of organizations raises legal dilemmas that will only be resolved in the courts. Although all organizations that exercise public power must be obliged to provide information to citizens, in these cases state legislations have crossed the line between public space and a sphere in which public and private space are linked.

There are nuances, however. In the thirteen states in which political parties are assumed to be subject to transparency legislation, it is not clear that the state legislation covers organizations that obtained their registration at the federal level. Under the Mexican Constitution, parties that obtain their registration from the Federal Electoral Institute (IFE) can participate in any local election. But the Constitution also allows parties to obtain a limited registration in state elections. Hence the dilemma: parties with local registration clearly are bound by state legislation on transparency, just like other authorities in these thirteen states. But if the registration came from IFE, parties can argue that they are only subject to the corresponding federal legislation. This is not easy legal ground: the Electoral Tribunal of the Judicial Branch of the Federation—the ultimate authority in electoral matters—has determined that there are two legal spaces that regulate political parties and that federal authorities cannot sanction parties for their local activities or financing, while local authorities are unable to do so when the mistakes or monies are derived from the federal sphere.²² Thus, even under the most favorable interpretation of transparency, parties would only have to answer for resources obtained through public financing in the states.

Based on the same legal logic, individuals or corporations that receive public resources in the states, and due to this fact alone become subject to state transparency laws, are only answerable for the use made of public monies that were actually given to them. In this respect, the transparency laws are based on the contractual relationship that private individuals establish with public organizations, but they may not go beyond this limit.

This means that none of the state laws, not even the most boldly designed, has crossed the border of a sphere that is strictly limited by the resources used. This fact is not trivial; even the most advanced transpar-

²² For a fuller development of this idea, see Merino 2003.

ency norms are based on a principle that is budgetary in nature. How far do transparency obligations reach? As far as public monies do.

Conversely, there are notable differences in the authorities' obligations to publish data on their operation, objectives, and results. For example, according to an initial list drawn up by IFAI, which includes twenty-five items that must be published, a citizen in Coahuila is much better informed than one in Veracruz. The former has information on twenty-four issues of public interest, whereas the latter has data on only seven. All states must provide information on the structure of government—a directory of civil servants, monthly salaries for each post, and the normative framework—but only ten states are obliged to provide information on the application of special funds, eleven on controversies that arise among authorities, and twelve on the sentences and resolutions that have definitely ended a case.

Table 2.2 shows the differences in states' compliance with the principle of transparency. For example, only sixteen states are obliged to publish their financial statements and balance sheets; sixteen must publish the results of the annual public account; and eighteen are required to reveal bills submitted to congress, together with the outcomes. Only fifteen state laws include the obligation to publish information on resources disbursed, the recipients of these resources, and the use to which the resources are put.

The data clearly reveal that each state has defined the public information to which ordinary citizens can have access differently. Although the existence of transparency laws assumes that anyone can have access to public information, it is obviously not the same if this obligation is passively fulfilled versus through the activation of requests, resources, and costs. Whether a state's information is freely available on Internet pages or whether citizens must request it reflect very different conceptions of the principle of transparency.²³

²³ In fact, in an analysis of the Web sites of the states and a sample of municipalities, Sergio López Ayllón, Benito Nacif, Mauricio Portugal, Cecilia Toledo, and Adriana Galván found that the passage of laws of transparency and access to public information is not sufficient to guarantee either the quality or quantity of the data published in these pages at no cost. One of the states with the highest ratings, for example, is Chihuahua, which has not passed any laws on this matter, while Nayarit, Puebla, and Tlaxcala's pages were among the ten lowest-rated, despite the fact that these states have transparency laws. See www.observatoriotransparencia.org.mx.

Table 2.2 Compulsory Public Information in the Laws of Access to Information

Compulsory Public Laws	State Laws of Access to Information That Address the Issue	State Laws of Access to Information That Do Not Address the Issue
Powers of each administrative unit	Aguascalientes, Coahuila, Colima, Federal District, Durango, Guanajuato, Jalisco, México State, Michoacán, Morelos, Nayarit, Nuevo León, Puebla, Querétaro, Quintana Roo, San Luis Potosí, Sinaloa, Sonora, Tamaulipas, Tlaxcala, Yucatán, Zacatecas (Total 22)	Veracruz (Total 1)
Address of liaison unit	Aguascalientes, Coahuila, Colima, Durango, Guanajuato, México State, Michoacán, Morelos, Nayarit, Nuevo León, Puebla, Querétaro, Quintana Roo, San Luis Potosí, Sinaloa, Sonora, Tamaulipas, Tlaxcala, Yucatán, Zacatecas, Jalisco (Total 21)	Federal District, Veracruz (Total 2)
Goals and objectives of administrative units	Aguascalientes, Coahuila, Colima, Federal District, Durango, Guanajuato, Jalisco, México State, Michoacán, Morelos, Nayarit, Quintana Roo, San Luis Potosí, Sonora, Tlaxcala, Yucatán, Zacatecas (Total 17)	Nuevo León, Puebla, Querétaro, Sinaloa, Tamaulipas, Veracruz (Total 6)
Services provided	Aguascalientes, Coahuila, Colima, Federal District, Durango, Guanajuato, Michoacán, Morelos, Nayarit, Puebla, Querétaro, Quintana Roo, San Luis Potosí, Sinaloa, Sonora, Tamaulipas, Tlaxcala, Veracruz, Yucatán, Zacatecas, Jalisco (Total 21)	México State, Nuevo León (Total 2)
Paperwork, requirements, and forms	Aguascalientes, Coahuila, Colima, Federal District, Durango, Guanajuato, Morelos, Nayarit, Puebla, Querétaro, Quintana Roo, San Luis Potosí, Sinaloa, Sonora, Tamaulipas, Tlaxcala, Yucatán, Jalisco (Total 18)	México State, Michoacán, Nuevo León, Veracruz, Zacatecas (Total 5)

Compulsory Public Laws	State Laws of Access to Information That Address the Issue	State Laws of Access to Information That Do Not Address the Issue
Budget assigned and spent	Aguascalientes, Coahuila, Colima, Federal District, Durango, Guanajuato, Jalisco, México State, Michoacán, Morelos, Nayarit, Nuevo León, Puebla, Querétaro, Quintana Roo, San Luis Potosí, Sinaloa, Sonora, Tamaulipas, Tlaxcala, Yucatán, Zacatecas (Total 19)	Durango, San Luis Potosí, Sinaloa, Veracruz (Total 4)
Auditing results	Coahuila, Colima, Durango, Guanajuato, México State, Michoacán, Morelos, Nayarit, Puebla, Querétaro, Quintana Roo, San Luis Potosí, Sinaloa, Sonora, Tlaxcala, Yucatán, Zacatecas, Jalisco (Total 18)	Aguascalientes, Federal District, Nuevo León, Tamaulipas, Veracruz (Total 5)
Subsidy programs operating	Coahuila, Colima, Federal District, Guanajuato, México State, Michoacán, Morelos, Nayarit, Puebla, Querétaro, Quintana Roo, Sinaloa, Sonora, Tamaulipas, Tlaxcala, Yucatán, Zacatecas (Total 18)	Aguascalientes, Durango, San Luis Potosí, Nuevo León, Veracruz (Total 5)
Concessions, permits, or authorizations granted	Coahuila, Colima, Federal District, Durango, Jalisco, México State, Michoacán, Morelos, Nayarit, Nuevo León, Puebla, Querétaro, Quintana Roo, San Luis Potosí, Sinaloa, Sonora, Tamaulipas, Tlaxcala, Zacatecas (Total 19)	Aguascalientes, Guanajuato (rules only), Yucatán (rules only), Veracruz (Total 4)
Contracts signed	Coahuila, Colima, Federal District, Durango, Jalisco, México State, Michoacán, Morelos, Nayarit, Querétaro, Quintana Roo, San Luis Potosí, Sinaloa, Sonora, Tamaulipas, Tlaxcala, Yucatán (Total 17)	Aguascalientes, Guanajuato (for public works only), Nuevo León, Puebla, Veracruz, Zacatecas (Total 6)
Reports produced by legal order	Coahuila, Colima, Guanajuato, Jalisco, México State, Michoacán, Morelos, Nayarit, Puebla, Querétaro, Quintana Roo, San Luis Potosí, Sinaloa, Sonora, Tamaulipas, Tlaxcala, Yucatán, Zacatecas (Total 18)	Aguascalientes, Durango, Federal District, Nuevo León, Veracruz (Total 5)

Compulsory Public Laws	State Laws of Access to Information That Address the Issue	State Laws of Access to Information That Do Not Address the Issue
Civic participation mechanisms	Coahuila, Colima, Durango, México State, Michoacán, Morelos, Puebla, Querétaro, Quintana Roo, San Luis Potosí, Sinaloa, Sonora, Tlaxcala, Veracruz, Zacatecas, Jalisco (Total 16)	Aguascalientes, Federal District, Guanajuato, Nayarit, Nuevo León, Tamaulipas, Yucatán (Total 7)
Sentences and resolutions that definitely ended a case	Colima, Federal District, Guanajuato, Morelos, Nayarit, Querétaro, Quintana Roo, Sonora, Tamaulipas, Veracruz, Yucatán, Jalisco (Total 12)	Aguascalientes, Coahuila, Durango, México State, Michoacán, Nuevo León, Puebla, San Luis Potosí, Sinaloa, Tamaulipas, Yucatán (Total 11)
Political party reports	Coahuila, Colima, Durango, Guanajuato, México State, Michoacán, Morelos, Nuevo León, Querétaro, Quintana Roo, San Luis Potosí, Sinaloa, Sonora, Tlaxcala, Yucatán, Zacatecas (Total 16)	Aguascalientes, Federal District, Jalisco, Nayarit, Tamaulipas, Puebla, Veracruz (Total 7)
Financial statements and balance sheets	Aguascalientes, Coahuila, Colima, Federal District, Jalisco, México State, Morelos, Nuevo León, Querétaro, Quintana Roo, San Luis Potosí, Sinaloa, Sonora, Tamaulipas, Tlaxcala, Zacatecas (Total 16)	Durango, Guanajuato, Michoacán, Nayarit, Puebla, Veracruz, Yucatán (Total 7)
Public accounts	Aguascalientes, Coahuila, Colima, Guanajuato, Jalisco, México State, Morelos, Nuevo León, Querétaro, Quintana Roo, San Luis Potosí, Sinaloa, Sonora, Tamaulipas, Tlaxcala, Zacatecas. (Total 16)	Federal District, Durango, Nayarit, Puebla, Quintana Roo, Tamaulipas, Veracruz (Total 7)
Application of special auxiliary funds	Coahuila, Colima, Guanajuato, Michoacán, Querétaro, San Luis Potosí, Sinaloa, Tamaulipas, Yucatán (Total 11)	Aguascalientes, Federal District, Durango, México State, Morelos, Nayarit, Nuevo León, Puebla, San Luis Potosí, Sonora, Tlaxcala, Veracruz, Zacatecas (Total 13)

Compulsory Public Laws	State Laws of Access to Information That Address the Issue	State Laws of Access to Information That Do Not Address the Issue
Controversies between authorities	Coahuila, Colima, Michoacán, Morelos, Nayarit, Querétaro, San Luis Potosí, Sinaloa, Sonora, Tamaulipas, Zacatecas (Total 11)	Aguascalientes, Federal District, Durango, Guanajuato, Jalisco, México State, Nuevo León, Puebla, Quintana Roo, Tlaxcala, Veracruz, Yucatán (Total 12)
Bills submitted to Congress and verdicts	Coahuila, Colima, Federal District, Guanajuato, México State, Michoacán, Morelos, Nayarit, Querétaro, Quintana Roo, San Luis Potosí, Sinaloa, Sonora, Tamaulipas, Tlaxcala, Yucatán, Jalisco, Zacatecas (Total 18)	Aguascalientes, Durango, Nuevo León, Puebla, Veracruz (Total 5)
Announcement of competitions and biddings and their result	Aguascalientes, Coahuila, Colima, Federal District, Durango, Jalisco, México State, Michoacán, Morelos, Nuevo León, Puebla, Querétaro, Quintana Roo, San Luis Potosí, Sinaloa, Sonora, Tamaulipas, Zacatecas (Total 18)	Guanajuato, Nayarit, Tlaxcala, Veracruz, Yucatán (Total 5)
Handing over of public resources, recipients, and use	Coahuila, Colima, Durango, Guanajuato, Michoacán, Nayarit, Querétaro, Quintana Roo, San Luis Potosí, Sinaloa, Sonora, Tamaulipas, Yucatán, Zacatecas, Jalisco (Total 15)	Aguascalientes, Federal District, México State, Morelos, Nuevo León, Puebla, Tlaxcala, Veracruz (Total 8)

Source: Compiled by the author with information provided by the Dirección General de Vinculación con Estados y Municipios, “Estudio comparativo de leyes de acceso a la información pública,” Instituto Federal de Acceso a la Información Pública.

Note: There are another four issues that must be published by these twenty-three states—namely, organic structure, directory of civil servants, monthly salary per post, and normative framework.

Third Criterion: Existence of Agencies Responsible for Guaranteeing Access to Information. The predominant model regarding access to public information is not the one used in Mexico.²⁴ Most freedom of information laws passed elsewhere in the past fifteen years have emphasized the right that citizens acquire to find out about public information, and they have protected this right through established administrative procedures and jurisdictional systems. Special agencies have not generally been created to safeguard the guarantee of this right, and when they do exist they nearly always perform functions of administrative arbitration.

Conversely, access to public information in Mexico has been understood as both a right and a public policy. And in both areas it was considered important to create specialized entities that undertake their functions at both levels. In other words, they operate as administrative courts to determine the validity of the requests for information, and they have simultaneously become public agencies responsible for promoting transparency and access to information as a public policy. The breadth of their functions means that this model is virtually the only one of its kind in the world.

This model was probably designed to counter the distrust that the introduction of new rights tends to elicit in Mexico, the guarantees of which are jeopardized when they have to go through the complex networks of the administration of justice. And in this respect, the creation of the Federal Institute of Access to Public Information would have represented a commitment to make compliance with the new right effective. Further, the recent success with electoral administration probably also influenced the design of the new agency specializing in transparency. Hence, perhaps, the idea of creating a kind of administrative court specializing in the issue which, at the same time, performs the functions of a collegiate agency of an executive nature. Both lines are reflected in the powers given to IFAI. And there is no doubt that this design, in turn, has influenced the way in which several of the states have coped with the challenge of transparency.²⁵

²⁴ For more on this aspect, see David Banisar, at www.freeinfo.org/survey.htm.

²⁵ An excellent description of the way in which the negotiations that led to the passage of the Federal Law of Transparency and Access to Public Information were carried out is provided by Sergio López Ayllón. The remarks in this paragraph can be compared with the following text by this author: "Dur-

In the states, however, there are at least two other alternative models. One responds to the Anglo-Saxon tradition, already discussed, which regards access to information as a right granted to citizens, protected by established administrative course, and compulsorily provided by each of the public agencies. This was the case for the first version of the Jalisco model (which preceded the federal model) and is also the one followed in Aguascalientes and, with variations, in Veracruz and Tamaulipas. It would be unfair to say that this design is insufficient for guaranteeing fulfillment of the right of access to information, or that the absence of a specialized

ing the final draft of the bill for the executive branch, the creation of a new autonomous constitutional entity was seriously considered: an Information IFE. The idea was tempting but it had a number of problems. The main one was that the creation of this organization necessarily implied a constitutional reform, which might significantly delay the passage of LAI. The advisability of continuing to create constitutionally autonomous agencies for each of the country's main problems was also seriously discussed.... Why not have a similar one for indigenous groups, another for the handicapped, and another for regulating energy or telecommunications?... At the same time, the creation of an entity of this nature implied solving the delicate problem of its relationship with the Federal Judicial Branch and the National Human Rights Commission. In fact, as a result of constitutional mandate, the latter was authorized to have information on the complaints against the acts or omissions of an administrative nature by any authority or civil servant that violated human rights. Since the right of access to information is part of a fundamental right, the creation of an agency of this nature would entail duplicating the functions of an existing constitutional agency.

"The relationship between an organization of this nature and the Federal Judicial Branch was even more complex. Due to the design of the Constitution, the latter is responsible, in the last instance, for the interpretation of the Constitution. Therefore, creating an organism whose decisions escaped judicial control would mean profoundly distorting the scheme of the division of powers.... However, in order not to overload the judicial branch, LAI would create an autonomous administrative agency that would have to resolve the conflicts over access that arose between private individuals and the administration. It would be a sort of collegiate administrative tribunal, created with all the guarantees required for ensuring independence in its decisions and subject to judicial control. Consequently, the control of the law is not, as has been said, in the hands of the administrative authorities but rather in the hand of the Judicial Power" (López Ayllón 2004, 15).

agency prevents the states bound by law from complying with their duty to inform. None of these statements can be upheld in an abstract context. In fact, this model has the undeniable advantage of reducing the costs entailed in the creation and operation of a new state agency. But it is also true that this model tends to place more responsibility on citizens and that, at least in principle, it fails to regard transparency as a public policy directed from a single bureau responsible for carrying it out.

At the same time, however, among the agencies that have been created, there are widely differing degrees of autonomy. The option chosen for the federal sphere offered greater joint responsibility for the parties involved: a technically autonomous agency, yet one that is integrated into federal public administration and authorized to regulate the transparency policy within this same sphere and resolve, as a last administrative resort, the resources for the review derived from the decisions made by all legally bound subjects. This option distributes specific powers among all the agencies, yet at the same time guarantees the central supervision of the entire process. If one could extrapolate the terms coined by political science to the theory of organizations, I would say that this is a pluralistic model; each agency has its own responsibility and at the same time there is a normative system of surveillance and control assigned to IFAI.

Some states have chosen to adopt this model, while others have decided to create autonomous constitutional agencies similar to those that regulate electoral matters throughout the country. This difference is by no means trivial: protected by the Constitution of the states, these agencies perform functions that go beyond the sphere of local authorities and become the highest authorities on the matter. In this respect, they not only have the authority to settle the resources for review caused by the refusal to grant access to public information, but they also reinforce their role as agencies responsible for designing and directing transparency policy as a whole. The case of Morelos, for example, includes powers related to the production and handling of statistical information produced in this state. This would be the equivalent to having the powers of IFAI and Mexico's National Institute of Statistics, Geography, and Informatics (INEGI) combined in a single agency which, in turn, was totally autonomous from the state. This is the boldest but also the most risky organizational proposal: confined to constitutional autonomy, the true possibilities of transparency,

such as public policy, depend in this case on the resources and correct decisions of a single agency converted into the last resort, while its jurisdictional decisions will always be subject to the specific content of the applicable legislation, with no possibility of appeal to the judicial branch, or at least not directly.

Fourth Criterion: Coercive Faculties in the Event of the Denial of a Right. A law is regarded as imperfect when, despite creating obligations, it fails to establish sanctions for noncompliance. In colloquial terms, this flaw is comparable to having a wild animal without teeth, although we might also speak of the size and strength of the animal's jaws. This is an important point given that, in relation to this fourth criterion, we have been unable to find a single leitmotiv for the legislations of all the states.

Most state agencies have specific powers for ordering subjects bound by the law to hand over information that citizens request, but only eight of them also have the power to sanction in the event of noncompliance. Here again the difference between the models adopted by the state is crucial. If we begin by assuming that the information produced by public agencies belongs to all citizens and that, therefore, it does not have the characteristics of intellectual property, the criterion to be followed would have to be that of complete openness. And this would have at least two consequences. The first is that restrictions on access would have to be fully justified and be genuine exceptions to the rule. And the second is that civil servants that fail to justify the exception and resist openness will be sanctioned.

Nevertheless, in the models established in most states, state agencies responsible for ensuring access to public information lack the power to go so far. Most follow a pattern similar to that established in federal law; in other words, the agencies responsible for supervising the process of openness can determine that a particular office or civil servant effectively committed an offense by unduly denying access to public information, but their powers are limited to denouncing this type of behavior to the internal control departments of the agency where the offense was committed (see table 2.3). From that moment onward, it is the responsibility of the controllers' offices to compile a dossier and implement sanction procedures in keeping with the laws of responsibilities of each state. It is in this respect that one can speak of toothless lions; although transparency agencies are

responsible for safeguarding citizens' fundamental rights, in practice they are unable to protect them directly.

TABLE 2.3 Coercive Faculties of Agency Responsible for Ensuring Access to Public Information in the Event of Denial of a Right

Powers of the Agency Responsible for Access to Public Information	Agencies Responsible for Access to Information That Address the Issue	Agencies Responsible for Access to
		Information That Do Not Address the Issue
To order subjects bound by law to hand over information	Coahuila, Colima, Durango, Guanajuato, Jalisco, Michoacán, Morelos, Nayarit, Nuevo León, Puebla, Querétaro, Quintana Roo, San Luis Potosí, Sinaloa, Yucatán, Zacatecas	Federal District, México State, Sonora, Tlaxcala
To sanction subjects bound by law	Coahuila, Colima, Guanajuato, Morelos, Nuevo León, Quintana Roo, Sinaloa, Yucatán	Durango, Federal District, Jalisco, México State, Michoacán, Nayarit, Puebla, Querétaro, San Luis Potosí, Sonora, Tlaxcala, Zacatecas

Source: Compiled by the author with information provided by the Dirección General de Vinculación con Estados y Municipios, "Estudio comparativo de leyes de acceso a la información pública," April 2005, Instituto Federal de Acceso a la Información Pública.

It is also true, however, that transparency agencies can and must perform the function of civic education, on the basis of the adoption of transparency as public policy. And in this respect, their most effective weapon could be the dissemination of the data they themselves produce on the development of this process. And yet a quick glance at the Internet pages of these agencies shows that to date we know very little about the way in which civil servants that have denied access to information have been sanctioned. Even at the federal level, it is relatively easy to see which agencies have been most unwilling to comply fully with this new right, and we also know how many requests have been submitted and how many answered.

Yet in order to know how many sanctions have been applied, as well as the reasons, paradoxically one has to implement the same right that was denied: one has to request this information from all federal public agencies and hope that their comptrollers' offices will provide it, the problem being that sanction procedures and the names of civil servants involved will be kept in reserve until the case is solved. As we saw earlier, this complex legal scaffolding that calls to account and simultaneously protects the civil servants who produce and manage information can become a deathtrap for the fulfillment of this new right.

Fifth Criterion: Public Interest in Public Information. The last criterion concerning the first level of analysis proposed here refers to the information users, in other words, to the way citizens have adopted and possibly begun to use the right to access public information. As noted earlier, it is one of the criteria for acknowledging that the process of opening access to public information has actually begun, not only because of the existence of minimum institutional conditions but also because citizens themselves have decided to give this new right validity and a specific use. And in this respect, one can say, once again, that this is still an incipient process.

According to data provided by IFAI, until March 2005 most requests for public information were concentrated in four professional interest groups. Academics predominated, not only as the most active users but also in terms of their increasing relative participation. Whereas in 2003 they accounted for 29 percent of requests, by early 2005 they were responsible for almost 36 percent of the total. The second group is businessmen, whose participation has followed a downward trend. Almost 23 percent of the requests submitted in 2003 correspond to this group, whereas by 2005 they accounted for about 19 percent. The media have also used this new right, totaling 9 percent of all requests during this period. It is striking that civil servants themselves have been more active than journalists in using the new forms of access to public information: of the aggregate total, 12 percent of requests correspond to the government sector itself (see table 2.4).

These data show that nearly 75 percent of individuals who have exercised the new right of access to public information have been concentrated in four sectors with clearly identifiable professional interests—academics, journalists, businessmen, and civil servants—who have found it extremely

useful to have an open door to information that facilitates the performance of their own roles. Yet it would be inaccurate to say that this process of opening up access has elicited an enormous amount of interest among citizens.

Table 2.4 Users of Federal Information, by Occupation (percentages)

Occupation	2003	2004	2005	Overall Total
Business	22.8	19.9	18.8	20.6
Academia	29.0	33.4	35.7	32.5
Government	12.4	12.5	11.5	12.2
Media	10.0	9.0	8.5	9.2
Other	25.8	25.2	25.5	25.5
Total	100.0	100.0	100.0	100.0

Source: Instituto Federal de Acceso a la Información Pública.

Note: Figures correspond to the use of federal information. Data for 2005 correspond to the period until March 31.

Another piece of evidence reflecting this limitation lies in the regional origin of the requests. Most have come from the Mexico City metropolitan area—50.1 percent from Mexico City itself and 13.5 percent from the surrounding State of México (table 2.5). No other state accounts for more than 3.3 percent of the requests. On the contrary, twenty-three states have not even reached the threshold of 2 percent of requests despite the electronic media IFAI has made available to citizens all over the country. How should these data be interpreted?

It is obvious that professional interests have become a key factor, reflecting the origins of the new right: businessmen, who have regarded transparency as an opportunity to perfect their own growth strategies through timely and reliable information, and journalists and academics whose professional trade depends largely on information produced by the public sector. Is this bad news? I think not. These three professional groups perform a not-inconsiderable function of economic, social, and political mediation. These same sectors also perform in nongovernmental public space and in this respect are effective sounding boxes of public information. They are bridges which, through different routes, can and must reach citizens and contribute to the consolidation of the main democratic processes. In this respect, it would be unfair to say that the new right has been used merely to satisfy partial interests and not for democratic purposes. I believe

rather that these figures reflect the professional standards of those who have used the information: the products generated by Mexican academia, the media's professionalism, and the quality of the firms that compete in the country.

Table 2.5 Percentage of Total Requests for Information by State, 2003–2005

Range of Percentages	States	Percent of Total Requests
50.1%	Federal District	50.1%
13.4%	México State	13.5%
2.5–3.3%	Jalisco, Puebla, Nuevo León	9.0%
2.0–2.4%	Chihuahua, Veracruz	4.7%
1.5–1.9%	Tamaulipas, Baja California, Guanajuato, Sonora, Morelos, Tabasco, Coahuila, Sinaloa, Chiapas	3.4%
1.1–1.4%	Querétaro, Yucatán, Michoacán, Hidalgo, Oaxaca, Aguascalientes, Durango, Guerrero, Quintana Roo, San Luis Potosí	11.1%
0.5–1.0%	Colima, Zacatecas	6.9%
< 0.5%	Baja California Sur, Tlaxcala, Nayarit	1.2%

Source: Compiled by the author with information from the Instituto Federal de Acceso a la Información Pública.

A second way of interpreting these data is, however, emblematic of the country's political culture: as long as citizens do not have a real interest in public affairs, it is up to the state to promote their active participation. The same has happened with electoral processes. The most important reforms in this field took place as a result of specific agreements between party leaders; yet once implemented, the electoral processes themselves generated a new political culture among citizens. Practice makes perfect, and it was never true that a lack of democratic culture prevented the success of the transition process. This same lesson should also be applied to the sphere of opening up public information. When will we know that this process has stopped being a policy directed by the state and has become part of citizens' culture? It will not be easy to answer this question. Yet one can predict that the only way to reach this point is by opening up access to information.

Criteria for the Second Level of Analysis: The Form of Organization

So far we have seen the main characteristics of the first steps taken in the process of opening up access to public information in the states: the existence of legal regulations, the obligation to provide information on certain issues of public interest, the agencies designed to guarantee the process of openness, the main powers granted to these agencies in sanctioning procedures, and the way citizens have approached public information—five criteria that reflect the differences and limitations of the initial process of openness in Mexico. In this section, we shall examine three criteria that refer to the second level of analysis, concerning the general organization of the process as proposed earlier in this chapter. In other words, it is an internal view of the institutional design adopted by the states for dealing with transparency as a public policy.

Sixth Criterion: Characteristics of the Agencies Responsible for Ensuring Access to Information. We have already seen that the process of opening up access to public information in the states has adopted different forms. I should add that these have also led to the means of organization adopted by the entities responsible for guaranteeing the success of this process. The most widely used pattern corresponds to the creation of a specialized agency authorized to ensure both the protection of this right and the implementation of public policy. But even this approach has differing versions. Two that I believe are important are, first, the professional or civic nature of those that run these agencies and, second, their powers to have permanent, direct access to all public information.

All state legislations that opted to designate higher agencies for supervising the process have, without exception, chosen the integration of collegiate bodies. This is striking; none opted for the creation of an agency directed by a single person, as used to be the case in Mexican administrative tradition—a tradition interrupted by the creation of the Federal Electoral Institute in 1990 as an agency directed by a collegiate body. It is likely that this latter agency's success influenced the design of those created subsequently to conduct transparency policy. Further, given the dual nature of the latter—as executive agencies and administrative tribunals—legislators preferred this collegiate formula for resolving the kinds of organizational problems that might have arisen in institutions led by a single individual.

Nevertheless, this is not a magic formula: collegiate management raises dilemmas of administration and responsibilities that have yet to be studied in depth.²⁶

The integration of these management agencies may prove useful if one assumes, from the outset, that they perform a jurisdictional function. In other words, they must resolve disputes over access to information in the form of a trial. In this respect, the Mexican judicial experience shows that submitting projects for resolution to a collegiate body comprising peers who must approve or reject these projects tends to favor the quality and honesty of their contents. It is a formula for self-control characteristic of courts of the last instance, which also has the virtue of facilitating the more effective solution of the submitted requests, insofar as the projects are distributed among the magistrates forming part of the agency. Yet executive decision making and the supervision of bureaucratic apparatuses tends to be much more complex and difficult in collegiate agencies than in those run by a single individual. And one should not forget that those dedicated to the issue of transparency achieve both aims.

There is still not enough information to draw definitive conclusions about the operating difficulties this has caused in recently created state agencies. But some testimonies already speak of the emergence of various types of conflict, which nearly always arises in the sphere of administrative operation. Appointments of civil servants, budgetary assignments, and specific executive projects tend to become bones of contention when executive responsibilities are divided among various people. Perhaps none of these conflicts would extend beyond the limited spheres of academic interest or administrative efficiency were it not for the fact that these differences can also influence the votes that are essential for resolving underlying legal issues. In this respect, I can simply assume that the experience of these agencies will gradually lead to the functional separation between these two spheres: that the collegiate nature of the resolutions on access to information will be reinforced while attempts also will be made to find formulas to delegate individual faculties to solve operational problems.

Likewise, there are no conclusive data on whether the honorary nature of the advisers directing the highest-ranking agency in Tlaxcala or Jalisco

²⁶ For the case of IFE, see the chapter on "EL IFE por dentro: algunas zonas de incertidumbre" in Merino 2003.

has proved more efficient than the professional occupation of these posts would have been, as is the case in all other states. Beyond the resource savings that this model supposedly entails, it is not obvious that this formula implies a greater sense of responsibility. Conversely, the personal obligations of this set of citizens may require more attention and time than does their work with the transparency agencies. And it is also obvious that this honorific model fails to eliminate the dilemma of the collegiate bodies themselves and, on the contrary, would tend to emphasize them by destroying the logic of shared professional interest.

The difference becomes much more relevant when one observes the duration of the management period of these agencies and the number of people they comprise. From this perspective, the options opened up by the various state laws range from one to seven years, with a possibility of reelection; and from three to eighteen people as members with full voting rights in the ranks of upper management (see table 2.6). How did legislators in the various states arrive at such disparate numbers? I do not know: answering this question requires detailed knowledge of the contents of the arguments and negotiation used in each particular case—information I do not possess. In light of the results, however, it is obvious that no complete organizational analyses have been formulated to evaluate the discussion of these different designs, which do not have a single dominant pattern. I would like to draw attention to the importance of these combinations. It is by no means trivial that a body should be collegiate, that its members should number anywhere from three to eighteen, or that they should hold the post from between one and fourteen years. Each of these combinations produces a different effect on organizational behavior. And they directly affect the success of the right to public information to the same extent. For the moment, they reflect both the lack of specific studies on this issue and the fact that institutional decisions are based more on budgetary or political considerations or image than on well-founded organizational reasoning.

In addition to these differences, not all commissioners in the states have permanent, direct access to the public information produced so that they can issue their rulings. This restriction exists in thirteen states, where members of the collegiate management bodies are obliged to trust the criteria of the offices of origin in order to grant or deny access to information and, at best, to issue specific regulations to guarantee open access to infor-

mation. This division in the states' experiences verified to date splits the orientation of these organizations into those that operate more as tribunals and those that foster their role as public policy directors. This is no small difference, since an organization's design must include a clear definition of the aims it pursues. If both pieces lose coherence, the organization is unlikely to be successful. And in light of the information available to date, I hold that the internal operating forms of the agencies in charge of ensuring the principle of transparency have been insufficiently studied.

Seventh Criterion: Norms for Organizing Files and Establishing Procedures for Access to Information. The differences observed in the organizational forms adopted by the state agencies created thus far are also expressed in the powers that local laws give them to intervene in the organization of the information produced by public offices. This constitutes the external expression of these criteria for organization. In this respect, there are at least two particularly revealing sets of functions: (1) those that refer to the capacity of the higher managerial agencies to establish the procedures for providing access to information and ensuring compulsory compliance for public administration, and (2) those attributed to them to be able to issue norms on file management. Both issues are directly linked to the way in which the offices in each state administer information; hence their importance. If the transparency agencies are authorized to make these decisions, then their role can be said to extend to the sphere of public information management, through which it is subtly transferred to complex organizational problems. Conversely, if they lack these powers, they can be said to be agencies specifically designed to safeguard the right to access, yet without any influence on the way in which the information that is finally delivered to citizens is in fact produced, processed, and organized. Even at the federal level, one can perceive the importance of these functions: set in the sphere of federal executive power, IFAI can only establish procedures for access to information through federal public administration itself; it cannot force other branches of government or other autonomous organizations to comply. This limitation clearly expresses the constitutional borders between branches, yet it also poses additional challenges regarding coordination, since the implementation of different procedures may act against the effectiveness of a guaranteed right. And if the agency for directing policy

Table 2.6 Characteristics of the Plenary of the Agency Responsible for Public Information

Sphere of Implementation	Number of Plenary Members	Duration of Post	Type of Post	Permanent Access to Reserved Confidential Information
Coahuila	Three councilors, three substitutes	7 years	Paid	No
Colima	Three commissioners	7 years	Paid	Yes
Federal District	Eighteen councilors: three from the executive, three from the judicial, and four from the legislative branch, three from civil society, and one from each autonomous agency	Civic councilors, six years. Councilors from public entities, three years	Paid for citizen councilors	No
Durango	Three commissioners, three councilors	7 years	Paid	No
Guanajuato	One director general	4 years	Paid	No
Jalisco	Four civic councilors, one president, and substitutes	4 years	Paid president and honorary councilors	Yes
México State	Three councilors	4 years	Paid	No
Michoacán	Three commissioners, three councilors	5 years	Paid	No
Morelos	Three substitutes, three commissioners	4 years	Paid	No
Nayarit	Three substitutes, three commissioners, one supernumerary	3 years	Paid	Yes

Nuevo León	Three commissioners	4 years	Paid	Yes
Puebla	Three substitutes, three commissioners	6 years	Paid	Yes
Querétaro	Three substitutes, three councilors	4 years	Paid	Yes
Quintana Roo	One executive secretary	6 years	Paid	Yes
San Luis Potosí	Three commissioners	4 years	Paid	No
Sinaloa	Three commissioners	7 years	Paid	No
Sonora	Three members, five representatives, one technical secretary	6 years	Not established by law	No
Tlaxcala	Three councilors, one executive secretary	1 year	Honorary	No
Yucatán	Three councilors, one executive secretary	5 years	Paid	No
Zacatecas	Three commissioners	4 years	Paid	No

Source: Compiled by the author with information provided by the Dirección General de Vinculación con Estados y Municipios, “Estudio comparativo de leyes de acceso a la información pública,” April 2005, Instituto Federal de Acceso a la Información Pública.

Note: Aguascalientes, Tamaulipas, and Veracruz are not included.

lacks any powers in this matter, the result may be the multiplication of procedures in each of the formally bound offices. I have no empirical evidence through which to study the specific consequences produced to date by this shortcoming. Yet this risk emerges clearly in the legislation of ten states, where the agencies are unable to establish a common administrative criterion.

The same can be said of the norms for handling files, which represent the raw material on which virtually all right of access to public information is based. It is a matter of concern that only seven state laws grant these specific powers to top management agencies in this matter (see table 2.7). Given the importance of these data, I frame the following question: if there is no shared criterion for producing, conserving, and organizing the public information required by citizens, how can its access be guaranteed? As noted earlier, the archives were not important until the beginning of the process of opening access to information. But, once opened, it serves as one of the keys for understanding the organizational scope of this new right.

Eighth Criterion: Different Forms of Access to Information. Finally, it is obvious that the organization of the means of access to public information influences everyday citizens' actual possibilities for gaining access to this information. And apropos of the last point, there are also noticeable differences in the states' legislations in at least two respects: first, as regards the offices responsible in each state for receiving citizens' requests for information and, second, in relation to the deadlines and modalities for obtaining the data requested.

Virtually all the state laws passed to date stipulate the creation of administrative units responsible for receiving information requests. Although the names given to these offices differ, they have very similar functions: receiving and delivering these requests to the center of the offices where they operate. In most cases, the laws themselves order the establishment of specific offices for performing this task; in the cases of Aguascalientes and Colima, they have the power to determine which office will serve as a liaison with the offices that are bound to comply with these regulations. In these two states, it is assumed that the obligation to inform corresponds to all agencies, and there are no internal organizational measures designed to facilitate compliance with this institutional obligation.

Table 2.7 Powers of the Organs of Access to Public Information for Organizing Files and Establishing the Processes of Access to Information

Powers of Agency for Ensuring Access to Public Information	Agencies for Ensuring Access to Information That Address the Issue	Agencies for Ensuring Access to Information That Do Not Address the Issue
To establish procedures for obtaining access to information	Coahuila, Federal District, Jalisco, México State (for offices, auxiliary organizations, and trusts in state public administration, including the Attorney General's Office), Nayarit, Querétaro (suggest appropriate measures to the authorities for guaranteeing access to public information), Quintana Roo, Sonora, Tlaxcala, Zacatecas	Colima, Durango, Guanajuato, Michoacán, Morelos, Nuevo León, Puebla, San Luis Potosí, Sinaloa, Yucatán
To issue guidelines on file management	Coahuila, Federal District, Jalisco, México State, Morelos, Quintana Roo, Sonora	Colima, Durango, Guanajuato, Michoacán, Nayarit, Nuevo León, Puebla, Querétaro, San Luis Potosí, Sinaloa, Tlaxcala, Yucatán, Zacatecas

Source: Compiled by the author with information from the Dirección General de Vinculación con Estados y Municipios, "Estudio comparativo de leyes de acceso a la información pública," April 2005, Instituto Federal de Acceso a la Información Pública.

These differences are accentuated when we examine the powers granted to the offices responsible for providing access to information. If, in the federal system, there are information committees for each agency, whose primary responsibility is to make an initial decision regarding the delivery of the information requested by citizens, in legislation in the various states these committees are more of an exception, stipulated in the laws of only six states. This means that in most cases the right of access to information is

Table 2.8 Characteristics of Appeal for Reconsideration

Sphere of Application	Name of Reconsideration	Person to Whom Reconsideration Must Be Submitted	Deadlines for Requesting Reconsideration (# working days)	Total Length of Response (# working days)
Coahuila	Appeal for reconsideration	Agency director	10	10
Colima	Nonapproval appeal	Agency director	10	15
Durango	Nonapproval appeal	Head of public agency	15	15
Guanajuato	Nonapproval appeal	Director general of institute responsible for providing access to information	15	17
Michoacán	Nonapproval appeal	Agency director	10	10
Nuevo León	Appeal for reconsideration	The authorities	10	5
Querétaro	Claim	Yes	5	5
Sinaloa	Nonapproval appeal	Head of public agency	10	10
Tamaulipas	Nonapproval appeal	Head of this public entity or legal representative if it is a collegiate body	5	No more than 10 from time of receipt
Yucatán	Nonapproval appeal	Executive secretary of state institute of access to public information	15	25

Source: Compiled by the author with information from the Dirección General de Vinculación con Estados y Municipios, "Estudio comparativo de leyes de acceso a la información pública," April 2005, Instituto Federal de Acceso a la Información Pública.

accepted or denied in a single office within the agency, before obliging the citizen to take the path of administrative litigation to obtain the requested information. Consequently, several state laws have stipulated a resource in addition to the one included in federal law: to appeal refusals to provide information with the hierarchical superiors or heads of the offices where the rejection took place. However, these first remedies of appeal (which are generally called resources of reconsideration, nonapproval, or claims) are only contemplated in the laws of ten states (see table 2.8). This means that in the remainder, citizens must resort to the head offices for transparency or to the courts to attempt to reverse the first response obtained.

Deadlines also differ, specifying anywhere from five working days to thirty calendar days in which to respond, although nearly all provide extensions to this deadline, ranging from another five to thirty days. Other state laws require an additional ten days to provide the information.

In the event of a refusal, most local laws establish a deadline for citizens to submit a remedy of appeal, within the same office that rejected their previous request (see table 2.9). The deadlines range from five to fifteen working days. They also establish another deadline during which citizens must be given an answer to their appeal, which fluctuates between five and twenty-five working days. If, after this deadline, the citizen has still failed to receive the requested information, he or she can request a review which, under different names and in different guises, is contained in all the state legislations. In this last case, the deadline for appeals is between seven and thirty working days, while the maximum deadline for the higher levels to provide a definitive reply ranges from ten to fifty working days, although in some cases there is no time limit. The time that elapses from the original request to the final delivery of the information—assuming that the latter was provided—can total up to six months. Based on the preceding, we can assume that, in virtually all cases, citizens must activate their right to information on at least three occasions: when they submit the original request, when they appeal the first refusal in the office where it was denied, and when they request a review from the central agency of access to information, not to mention the strictly legal option. It is also worth noting that if the citizen misses the deadlines established by law for appealing the first or second refusal of information, he loses the right to continue the procedure.

Table 2.9 Characteristics of the Appeal for Review

Sphere of Application	Deadline for Lodging Appeal (# working days)	Minimum Deadline for Attending Appeal (# working days)
Federal level	15	50
Aguascalientes	Not estimated	Not estimated
Coahuila	10	10
Colima	10	15
Federal District	15	10
Durango	15	15
Guanajuato	10	30
Jalisco	7	5
México State	15	30
Morelos	30	30
Michoacán	10	10
Nayarit	10	20
Nuevo León	10	10
Puebla	10	50
Querétaro	15	15
Quintana Roo	15	30
San Luis Potosí	10	Not estimated
Sonora	15	18
Sinaloa	10	10
Tamaulipas	Deadlines will be established by rules issued by tribunal	Deadlines will be governed by rules issued by tribunal
Tlaxcala	10	10
Veracruz	Not estimated	Not estimated
Yucatán	10	40
Zacatecas	10	30

Source: Compiled by author with information provided by Dirección General de Vinculación con Estados y Municipios, "Estudio comparativo de leyes de acceso a la información pública," April 2005, Instituto Federal de Acceso a la Información Pública.

Clearly the state-level transparency laws contain many "padlocks" that affect a citizen's ability to exercise his or her right of access to information. In effect, these laws have achieved a kind of balance between the tradition of administrative secrecy and the new tendency to publicize the actions and decisions of the executive branches. But this equilibrium has also produced complex organizational effects: the more difficult and less transpar-

ent that access is, the more costs are added to the organization—not only in terms of the offices involved in processing the requests, appeals, and appeals for review, but also as regards time and the organizational attention that must be dedicated to this procedure. And although the modalities differ, the rule derived from this criterion is the same: the more confused the original organization of public information and the more unwilling offices are to provide it, the more time, resources, and costs will be added to public administration. In virtually all matters related to public policies, the simpler an agency's organization, the better will be the results it produces. Unfortunately, simplicity is not a characteristic in the present case.

Criteria for the Third Level of Analysis: The Contentious Sphere

The last approach to this comparative analysis of state laws on transparency refers to two final criteria: the legal situation of the authorities responsible for guaranteeing access to public information, and the powers effectively granted to the transparency agencies to classify or declassify public information. I noted earlier that in the absence of a firmly established culture of information in Mexico, the process of opening up access to information has largely developed as a result of public pressure, the demand for specific regulations, and specific legislation concerning specific data. In this respect, the location of the state agencies responsible for ensuring the success of the process is as important as the power conferred on them by local laws to determine whether the information produced by the state should be regarded as reserved or confidential. I hold that these two last features are as important as, and possibly more important than, any of the previous ones, since they determine the implementation of the right to information. Beyond questions of institutional design or organizational problems, what is at stake at the end of the day is the public nature of the information and documents produced by the state—in other words, effective access to information. Hence the powers granted by the legislation to determine who can and cannot restrict access is the most important issue of all.

Ninth Criterion: Authorities' Legal Situation in Transparency Matters. Much of the analysis corresponding to this criterion has been discussed above, particularly in the section comparing institutional design across state laws.

The question now is whether these agencies, dedicated to guaranteeing access to information, represent the last administrative instance to which a citizen can resort to obtain the information he or she has requested. In this case the answer might be deceptive: in principle, all the laws passed to date cite the last point of the process as the decisions made by courts in contentious administrative matters or in recently created transparency agencies. As we have seen, however, not all of them are fully autonomous. Not all have the power to oblige other public offices to make information public; not all can establish norms for the production and filing of public documents; not all are able to establish procedures for access to information; and not all are able to sanction government officials who deny information. I would like to establish the importance of this set of powers, as a guarantee that the process of opening access to information has effectively been implemented.

When the Mexican Supreme Court defined a citizen's right to information as a basic right, it also created a general obligation for all governments, one that cannot be ignored for reasons of institutional design. Nevertheless, we have seen in this review of local laws that this right is limited by the characteristics that compliance with it have adopted, and even overtly denied by the lack of regulatory laws. Hence the importance of the legal situation of transparency laws, which can only be interpreted as a consequence of their specific functions and the way that they can be carried out. It is true that no right is absolute and that laws must establish their limits and the way they are to be carried out in practice. But until there is a state authority that effectively guarantees compliance with the right to public information, the latter will continue to face significant obstacles. And to date, none of the state organs has this power. At best, they must negotiate access, so to speak, through the administrative procedures that involve, throughout the chain of decisions concerning the issue, the governments that produce the information.

Tenth Criterion: Authority to Classify and Declassify Public Information. The preceding criterion, based on the balance negotiated between the opposing trends of the greatest openness or reserve possible, is visible in the powers granted to the agencies responsible for transparency to determine whether information may or may not be given to citizens that request it. This is

central to the entire process: the difference between publicizing and concealing information.

The point to be underlined is that all laws contemplate the possibility of reserving part of the information produced for a number of similar reasons: public safety, safeguarding personal data, deliberative processes that have not yet produced decisions, trials under way, and, in general, the protection of people's assets and lives.²⁷ Nevertheless, none of these criteria is automatic: their application to specific cases always warrants an interpretation. Hence the importance of the powers granted to the various agencies responsible for the process of transparency in making a distinction between public and reserved information.²⁸ Moreover, all state laws—except that of Coahuila—have a third classification concerning strictly confidential information on people's individual data which, in principle, is regarded as the private property of the individuals that have given the information to the state. The best-known case involves the data Mexicans reveal to the Federal Electoral Institute for compiling the electoral roll. This information may only be used for the specific purpose that citizens authorize, and in no case may it be published except for the uses specified by electoral laws. Confidential law raises fewer problems of transparency than does reserved information, in that the criterion for application is much clearer.

The most widespread formula in local legislations consists of a sort of division of roles between agent and principal. With the sole exception of Querétaro, it is assumed that the offices that produce information also have the power to identify and classify that which they consider reserved and confidential (see table 2.10). Legislators acted carefully in this respect, since it would be virtually impossible for the central transparency agencies to assume responsibility for classifying all the information produced every day. Thus this initial function is divided among the very same people that produce public information. It is also the source of the risks of the model: if offices tend toward a lack of openness, they will attempt to find arguments to justify classifying as “reserved” most of the information they are obliged to publish. For this reason, most local legislation grants transparency agen-

²⁷ Compare López Ayllón 2004, 63–64.

²⁸ See the discussion on this issue raised in Marván 2005.

cies the power to declassify reserved information, as a specific result of the appeal for review. Transparency agencies act as the principal in this procedure, which corrects or confirms the decisions made by the agencies. As we saw earlier, however, thirteen of these agencies lack the power to obtain permanent access to previously classified information, meaning that it can only be known when a refusal has already become a remedy of appeal.

Table 2.10 Powers of Agencies Responsible for Ensuring Access to Public Information to Classify and Declassify Information

Powers of the Agency Responsible for Granting Access to Public Information	Agencies Responsible for Granting Access to Information That Address the Issue	Agencies Responsible for Access to Information That Do Not Address the Issue
To classify information	Querétaro	Coahuila, Colima, Durango, Federal District, Guanajuato, Jalisco, México State, Michoacán, Morelos, Nayarit, Nuevo León, Puebla, Quintana Roo, San Luis Potosí, Sinaloa, Sonora, Tlaxcala, Yucatán, Zacatecas
To declassify information	Coahuila, Colima, Durango, Guanajuato, México State, Michoacán, Morelos, Nayarit, Nuevo León, Puebla, Querétaro, Jalisco, Quintana Roo, San Luis Potosí, Sinaloa, Tlaxcala, Yucatán, Zacatecas	Federal District, Sonora

This is undoubtedly a pragmatic procedure. Yet ensuring that its implementation leads to more open access to public information is based on a fortunate combination of variables: (1) that the offices do not use their powers to classify information for reasons other than those established in each law; (2) that if they do so, citizens should act to appeal these decisions

until they arrive at the remedies of appeal; (3) that the agencies responsible for ensuring transparency should not fall into the logic of political negotiations that may lead to justifying refusals for reasons not expressly contemplated in the laws or which have sufficient means and criteria to be able to counteract the technical and legal arguments that will undoubtedly be put forward to keep the information that was denied reserved; and (4) that the result of this litigious procedure, in which the central organs of transparency must act as judges between the offices and the citizens requesting information, should not be mediated by political sympathies, party colors, or private interests. In other words, the general principles of the imparting of justice should be applied with absolute rigor. At the end of the day, the success of the system designed in all the states to begin the process of opening access to public information depends on the ethical probity of those who have the last word on permitting or denying access.

FINAL REFLECTIONS

I have attempted in this discussion to show that the process of opening up access to public information in Mexico is still incipient, incomplete, and fragmented. However, this process has begun and has become one of the signs of identity of democratic consolidation. As in any truly important process, it has good and bad points: states that have refused to adopt transparency as opposed to others that moved more quickly than the federation; systems of openness that have established guidelines for effective behavior as opposed to those that have encouraged the lack of powers and resources for the agencies responsible for implementing the process; genuine innovations as opposed to pretense. But in any case, this process has already become established in Mexico.

In a review of this nature, it is impossible to propose conclusions without reducing the value of the comparison made in the preceding pages. Conversely, I would like to end this discussion with three final reflections. The first is that the issue of transparency, as we saw from the outset, is actually concerned with several levels of the state's social, political, and economic coexistence. It is a topic that has several angles, whose practical expression speaks of the many ways in which the state is linked to society. The tendency toward administrative concealment and secrecy is now encountering an opposing trend, which seeks greater openness of the infor-

mation produced by the state and is committed to the social surveillance of public decisions and policies. Transparency implies a new challenge to the current relationship between the state and its citizens, which also raises new problems of public organization and new legal dilemmas for which solutions have yet to be found. Access to public information is only the tip of the iceberg. Beneath the surface lies an entirely new conception of the rule of law.

The second reflection concerns the very diversity of these laws. It is difficult to imagine a similar situation arising during the twentieth century in Mexico, when the hegemonic party system established homogeneous laws for heterogeneous regions and realities. Conversely, we are now facing a process that has acquired as many nuances as those that each state has sought to give it. In light of the ten criteria for comparison I have used in these notes, one cannot even speak of competing alternative models, since there are in fact many different ways of dealing with the issue. It is no exaggeration to say that transparency policy is the first policy of a genuinely federal scope produced after the transition to democracy. I realize that this statement needs clarifying: when I say "federal," I do not mean the traditional interpretation, according to which the government issued norms that were adopted by the states. I am referring to the original meaning of the term: a policy implemented in the states with as many differences as there are differences between the states. Further, it occurs in this way because it is possible for it to do so in the early twenty-first century, given the plurality of options and powers that have become established in Mexican political life.

Third, transparency is not only a public policy. Access to public information has also become a basic right. This should not go unnoticed: we are dealing with a right and a policy. Hence the difficulty of analysis: while, on the one hand, we should celebrate the fact that each state is adopting a policy in keeping with its priorities, on the other hand, it is unfortunate that a universal right of the citizenry should be limited or annulled by the diversity of local laws. The virtue of federal diversity becomes a vice when it acts against fundamental rights. It is necessary to split hairs here because it is not fair for the federation to become an obstacle to the effective fulfillment of this right. And to prevent this, one will have to assume a minimal definition and procedures to guarantee access to all the public information

produced within Mexican territory. On the basis of this minimum, every state and even every municipality could broaden the frontiers of this right and define its own policies for turning transparency into a local matter that has been fully assumed. If this were the case, federal logic could multiply its virtues in favor of citizens. Nevertheless, the reverse is happening: where transparency is concerned, federalism has become an obstacle.

I would like to end with one last comment. In the debate on the design and development of public policies, there is one common point regarding the gradual conquest of rights: the last word is never said. Conversely, every movement for or against a new democratic idea also produces new knowledge and modifies the original situation. And this is what is happening in the field of access to public information in Mexico: every day more is known about its importance, new possibilities are being opened up for analysis, and new practical challenges are being raised. In short, transparency has gradually become one of the key issues in consolidating our democracy. And the good news is that, despite everything, we are already on the way there.

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3

The Role of the Regulatory Improvement Program in Strengthening the Rule of Law in Mexico

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By the beginning of the 1980s, the model of the state as the provider of goods and services was clearly exhausted, and countries worldwide were undertaking structural reforms of their economic and social systems. In Mexico, reform made it possible to move from a hegemonic party system to a competitive electoral democracy. For the first time, the checks and balances appropriate to a republican regime began to work. The Mexican government went from being the reigning force in the economy to being a regulator of market forces, without forfeiting its role as a lender and producer of services and public goods. To fight the poverty, marginalization, and unemployment that a large part of the Mexican population faces, the government implemented assorted social programs. It also subjected the bureaucracy to a reform process that sought to make its performance as the executor of public policies more efficient.

The debate on state reform has placed the need to strengthen all the institutions of democracy squarely on Mexico's public agenda. As this chapter will show, the existence of political parties, fair competition, and party alternation in power does not necessarily imply a regime of full political freedoms. Mexico's efforts are currently focused on the construction of an institutional framework to strengthen the rule of law and political freedoms in order to enhance the quality of democracy and, with it, the quality of life for the country's citizens.

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In regimes like the Mexican one, the design of a new institutional arrangement seeks to limit the sense of insecurity and impunity that accompanies an evolving democracy. It also seeks to endow the system with the necessary mechanisms for efficiently providing public goods and services, such as education and health care, which can open channels of upward social mobility.

Accordingly, a democratic system is one that not only guarantees its citizens the right to run for election and have access to political power, but it is also one that grants them a series of minimal freedoms so that they can progress socially, politically, and culturally. Moreover, the long-term functioning of democratic institutions requires that the daily activities of the political system be subject to the country's laws. In short, government activities must be subordinated to the rule of law.

In order to achieve this, Mexico needs to design a series of public policies that guarantee, among other things, an impartial judiciary, universal access to justice, a normative framework created with the participation of the affected social groups, a government that is accountable to the citizenry for its daily activities, and so forth. Each one of these public policies also has many pillars of support. This chapter analyzes regulatory improvement as a public policy designed and implemented by the Mexican government to encourage accountability, and through accountability to strengthen the rule of law, which is a necessary but not sufficient element for constructing a fully democratic regime.

The construction of a liberal democracy requires that political actors submit to the rule of law which, among other things, supposes that the government will report on its day-to-day activities. Regulatory improvement is one tool that facilitates that accountability. Mexico began to implement this tool at the end of the 1980s as a consequence of privatization and economic opening. Today, with a few exceptions, the regulatory improvement program has spread to all sorts of regulations that impose compliance costs on private individuals.

This chapter attempts to identify the role that the regulatory improvement program has played in constructing liberal democracy in Mexico. It argues that the use of regulatory improvement tools has strengthened the principle of the rule of law. In other words, the use of instruments like Regulatory Impact Analysis (RIA) helps to build a government that reports

on and explains its decisions. The chapter's first section introduces the analytical framework for evaluating a liberal democracy. The second explains how the regulatory improvement program maintains and encourages the rule of law. The final section evaluates Mexico's experience with this public policy and analyzes some of the mechanisms or instruments that the Mexican government has designed to ensure the program's success.

NEW CHALLENGES TO MODERN POLITICAL SYSTEMS: THE CONSTRUCTION OF LIBERAL DEMOCRACIES

The literature suggests that a democratic political system is one that can incorporate the preferences of its citizenry without establishing political differences among them. In the words of U.S. political scientist Robert Dahl, *democracy* designates a political system one of whose characteristics is the quality of being completely or almost completely responsive to its citizens (Dahl 1971, 13).

That definition still constitutes an ideal type for the nations located in the northern portion of the Western Hemisphere. Dahl suggested that a political system was *democratic* in the degree to which it is capable of providing the following guarantees:

- freedom to form and join organizations,
- freedom of expression,
- right to vote,
- eligibility for public office,
- right of political leaders to compete for support,
- alternative sources of information,
- free and fair elections, and
- institutions for making government policies depend on votes and other expressions of preference (Dahl 1971, 15).

These criteria let us evaluate democracy using the parameters of political representation and societal participation. However, it is a mistake to suppose that the existence of free elections is a sufficient condition to categorize a regime as democratic. In other words, a conceptualization of democ-

racy as a political system based on free and fair elections is a minimalist definition and one that overlooks more important questions (Zakaria 1997).

In consolidated democracies, the design and implementation of certain institutions enables the construction of a type of representation that goes beyond the mere transfer of power from a voting *demos* to a segment of the political elite. Such representation, suggests Umberto Cerroni, “does not boil down to interest representation. Instead, it consists in cobbling together a *lex generalis omnium* capable of stably organizing social coexistence, an acknowledgment of long-term trends in which the entire society recognizes itself” (Cerroni 1991, 122).

Thus we can claim that a first step in constructing a democratic regime consists in having a mechanism that guarantees a level playing field for electoral competition and access to political power. Once all actors in a society respect the channels for electing the government, it then becomes necessary to make the democracy more efficient. This is one of the most urgent problems in contemporary politics. Efficient democracy supposes that laws and formal institutions will be constructed based on a sociopolitical rationale capable of offering what is needed to achieve an acceptable standard of living for the citizenry (Cerroni 1991, chap. 6, sec. 3).

At first, most countries with authoritarian pasts concentrated on the construction of institutions to guarantee the existence of governments elected by the popular will. The literature suggests that this lets us observe the transition of an authoritarian government to a democratic one. Juan J. Linz and Alfred Stepan note that:

A democratic transition is complete when sufficient agreement has been reached about political procedures to produce an elected government, when a government comes to power that is the direct result of a free and popular vote, when this government *de facto* has the authority to generate new policies, and when the executive, legislative and judicial power generated by the new democracy does not have to share power with other bodies *de jure* (Linz and Stepan 1996, 3).

Once a political system has institutionalized the subsystems and mechanisms needed so that governments can take political power through free and competitive elections, it is then necessary to establish other rules

of the game that make it possible to claim that democracy has become “the only game in town.”

In a modern democratic regime, political representation must rest on the general interests of society and translate into institutions accepted by the majority and connected with prevailing long-term interests. Based on that, we can conceptualize democracy as a political system that goes beyond a mere technical mechanism designed to select the elite and form a government.

At stake in incipient democracies—and Mexico is no exception—is the elimination of clientelistic practices that still survive inside the political system. However, achieving this can be difficult to the degree that the system refuses to internalize a series of instrumental freedoms that guarantee a basic catalogue of social, political, and economic rights. About these freedoms, Amartya Sen suggests that “instrumental freedoms contribute, directly or indirectly, to the overall freedom people have to live the way they would like to live” (Sen 1999, 38).

Today, people demand that government design public policies to improve their quality of life. In most nations, the debate over the need for a democratically elected government moves to the back burner once that has become a reality, and the discussion turns increasingly to the need to have the freedoms to which Sen refers.

In a given political system, the conjunction between electoral democracy and liberalism is possible to the degree that the government and citizenry submit to the rule of law. As early as the nineteenth century, John Stuart Mill, in his classic *On Liberty* (1869/1999), suggested that as nations democratize, the citizenry, responding to rules made by individuals whose interests are opposed to popular interests, initially demands that limits be placed on the power of the elected rulers.

A few decades earlier, Emmanuel Kant, in his also classic *Perpetual Peace* (1795), noted that a government that guarantees its citizens the ability to live in harmony has specific characteristics: it is based on the separation of powers; it has a system of checks and balances guaranteeing respect for the rule of law; it protects the fundamental rights of its citizens; and it grants them a minimal level of government representation, conceived of as more than just universal suffrage (Zakaria 1997, 9).

In democracies with an authoritarian past, a principal challenge consists of designing a set of formal and informal institutions that make it possible to allocate political power among the assorted state actors.¹ This is no simple matter, since the sharing of power can occasion policy deadlock or even a situation of ungovernability.

The creation of and respect for an open and fair electoral system is a major public virtue in modern political regimes. However, these are not the only things that guarantee the continued existence of a liberal democracy. In this type of regime, efficiency remains constant to the degree that a process of political engineering functions continuously, permitting the creation of institutions that bind civil society to political society in order to allow for the reproduction of the society and its citizens.

Political systems are a set of agencies, organizations, and institutions that require constant interaction and feedback, and democratic political systems are no exception. Linz and Stepan (1996, 14) suggest that in consolidated democracies, these agencies, organizations, and institutions require the existence of five arenas or scenarios. These five arenas are “civil society” (a free and actualized civil society); a “political society” (a politically autonomous society capable of decision making); the “rule of law” (the existence of a constitutional system that guarantees basic freedoms for its citizens); a “state apparatus” (a bureaucracy under the control of a democratic government); and an “economic society” (the ability to create institutions that mediate relations between the state and the market).

Guillermo O'Donnell (1996) suggests that in Latin American regimes, these scenarios do not interact adequately because of the existence of clientelistic or particularistic institutions, such as patronage, nepotism, and corruption, which to varying degrees inhibit the achievement of the public good. However, the principle of the rule of law makes it possible to endow the political system with a level of governability that is capable of subsisting without clientelistic institutions.

In consolidated democracies, the most effective way to limit these clientelistic institutions involves subjecting the government and citizens to the

¹ Our conceptualization is based on Antonio Gramsci's definition of the state as the sum of political society and the civil society. Accordingly, in a liberal democracy, political power should be dispersed among all actors in the society.

rule of law. In other words, the government exercises its authority only according to previously established laws. This principle also assumes that the interactions between private citizens and even between citizens and the government itself must replicate that condition.

Respect for the rule of law allows for the effective functioning of a system of checks and balances within the state, which reduces the power of the elite in benefit of social sectors with less representation or influence.

Respect for the rule of law lets the state resolve most public problems through peaceful means. Those channels allow incipient democracies to carry out institutional reforms to ensure that the coexistence of Linz and Stepan's five arenas translates into well-being for the society. The rule of law is more than just creating laws so that the citizenry obeys them or establishing mechanisms so that the government functions. It also implies developing an institutional framework in which the people are a central factor explaining the actions of the government.

Mexico's political system has now moved from an authoritarian regime to a perfectly consolidated democracy. Efforts no longer focus on respecting popular suffrage but rather on achieving a comprehensive transformation of the system's other institutions. With the goal of redefining the former state-society relationship, the Mexican government has designed a series of public policies and institutions that are based on innovative principles that seek to form efficient governments which, while limited by the rule of law, can readily carry out the functions entrusted to them. Inside these new institutions, transparency and accountability in government dealings are two aspects that are being encouraged, and these concepts have begun to take root in the way public decisions are made in Mexico.

The creation of an effective, transparent, and responsible government helps to consolidate the rule of law, which, in turn, makes it possible to construct a liberal democracy. However, most governments have found that it is not easy to construct such a government, since there is no linear path to follow or, if one does exist, policymakers have yet to find it.

REGULATORY IMPROVEMENT: AN EFFECTIVE TOOL FOR STRENGTHENING THE RULE OF LAW

Political philosophy notes that governments are established because of the human need to create an entity capable of ensuring peaceful interactions

among individuals. In order for government to fulfill that role, citizens delegate part of their sovereignty to the government, agreeing to submit to its rule with the understanding that government decisions will benefit the general welfare.

As with all human creations, a government can be improved. Some individuals may choose to utilize the power conferred on them to their own benefit, or even to harm the more vulnerable groups in a society. In the eighteenth century, the founding fathers were aware of this when they noted that:

If men were angels, no government would be necessary. If angels were to govern men, neither external nor internal controls on government would be necessary. In framing a government which is to be administered by men over men, the great difficulty lies in this: you must first enable the government to control the governed; and in the next place oblige it to control itself. A dependence on the people is, no doubt, the primary control on the government; but experience has taught mankind the necessity of auxiliary precautions (Hamilton, Madison, and Jay 1961, *The Federalist Papers*, No. 51).

In countries like Mexico, the effort to construct a self-regulating public power that submits to the rule of law continues. However, in the past two decades, the arrival of electoral democracy has functioned as an important element in the design of new rules of the game directed at limiting and improving the exercise of political power.

Faced with the problems that can arise under an all-powerful government, it is necessary to design an institutional framework—a system of checks and balances—to subject government power to the needs of society.

The adoption of a collective life that is subject to the rule of law can bring with it resistance to change, caused by the existence of a clientelistic culture and nonliberal habits. However, to the degree that political systems design new institutions based on new conditions of modernization and democratization, it is possible to alter the cultural and social values, attitudes, and identities of the agents of political change so as to strengthen a system in which democracy prevails within a framework of respect for the rule of law (Domingo 1997).

Thus, to ensure harmonious social coexistence, it is imperative to establish institutions, laws, and rules of conduct that oblige the government to regulate itself. Modern political regimes find in the rule of law an important tool for establishing rules of the game that set boundaries for the participation of social agents.

Confidence in government institutions is achieved when society and government are constricted by the rule of law—that is, to the degree in which daily life unfolds in a setting in which economic, social, and political relations occur in a predictable manner, due to the transparency of public actions and decision making. Respect for institutions is also achieved by establishing clearly delineated arenas for the development of individuals' activities and, in the case of differences among individuals, by establishing clearly delineated rights and duties so that, when disputes arise, these can be enforced by previously established courts.

In countries with an authoritarian past, respect for the rule of law enables a transformation of political institutions and economic structures. To achieve that, the rule of law is developed in two areas. The first involves the existence of a limited government or the creation of a system of checks and balances. The second involves the correct application of a body of regulations and laws that control interactions between private individuals and the government. In other words, respect for the rule of law implies the use of mechanisms through which political power is immersed in a logic of autonomy and control, which itself arises in virtue of the existence of a set of previously established rules. At another level of analysis, the rule of law refers to the effective protection of the rights of citizens as established in the constitution (Domingo 1997, 3).

Thus, as Pilar Domingo (1997) suggests, respect for the rule of law depends on established institutions that make it possible to limit irresponsible government activities and regulate interactions between citizens and government. A trustworthy indicator of the level to which a political system submits to the rule of law is its capacity for accountability to its citizens. Accountability has proven effective in strengthening the rule of law in all public arenas.

Citizens' demand for a government that is accountable does not begin and end with the electoral process. To the contrary, for a government to be sufficiently accountable requires a civil society that participates regularly

in public decision making. Accountability is not a unilateral act of government. Instead, it requires a critical dialogue between social actors. The government reports on and justifies its actions and decisions (whether past or future) in order to get feedback based on that critical dialogue, which can then be used in designing new public policies.

Accountability not only obliges governments to report on decisions made. It also requires that public servants explain those decisions. In the words of Andreas Schedler, "Accountability continues the European Enlightenment project of subordinating power not only to the rule of law but also to the rule of reason" (Schedler 2004, 14). In other words, accountability seeks to chain political power to legal restrictions, but it also seeks to subject it to the logic of collective well-being.

In Mexico, accountability has proven effective in constructing a regime subject to the rule of law, facilitating the transition from a political system characterized by institutional insufficiency toward one based on respect for and protection of basic individual freedoms in a framework of submission to the law. However, breaking with a past marred by opacity in governmental dealings has not been easy; it has required the establishment of new rules of the game as well as new agencies to monitor compliance with those rules.

For accountability to function efficiently, two basic elements must exist. The first is answerability, that is, the obligation of elected politicians and public officials to report on their decisions and to justify them to the public. The second is enforcement, which consists in the capacity of the political system to punish those agents if they violate their public duties (Schedler 2004).

For the sake of analysis and given the complexity of current governments, the need arises to establish an accountability with "adjectives." Sergio López Ayllón and Ali Haddou-Ruiz (2005, 4) suggest that there are at least five types of accountability:

- Political accountability (in a narrow sense) assesses the appropriateness of both substantive policies and policymaking processes, but also judges the personal qualities of political actors.
- Administrative accountability reviews the expediency and procedural correctness of bureaucratic acts.

- Professional accountability watches over ethical standards of conduct, such as judicial, legal, or media professionalism.
- Budgetary accountability subjects the use of public money by public officials to rules of efficiency, austerity, or probity.
- Legal and constitutional accountability monitors the observance of legal rules and evaluates whether acts and decisions are in accordance with constitutional rules.

Answerability and enforcement are present in all types of accountability, but the agents charged with their exercise and application clearly vary. Whereas administrative and financial accountability is entrusted to specialized agents, the judiciary is responsible for the exercise of legal and constitutional accountability. For its part, the citizenry has, through the ballot box, one of many mechanisms with which to demand political accountability.

In short, accountability covers three different ways of preventing and correcting abuses of power:

- by obliging the government to open itself to public inspections;
- by forcing the government apparatus to explain and justify its activities; and
- by subjecting the government to the threat of sanctions.

Accountability goes beyond the obligation of government to make regular reports, since these are often irrelevant or incomprehensible, and beyond explaining their decisions after making them in secret and isolated from public pressure. A truly accountable government establishes a system that obliges it to enter into a dialogue with society when designing, implementing, and evaluating public policies.

Before analyzing regulatory improvement policy, it is pertinent to note some of the causes that have led to its implementation in many Western nations. To do that, we must remember that during the final quarter of the twentieth century, a profound process of administrative reform occurred around the world. This involved, among other things, the downsizing of the public sector and the creation of programs and institutions charged with broad deregulation in major economic sectors.

The reform process endowed government agents with greater decision-making autonomy. However, along with that also came new control mechanisms to avoid opacity in the daily activities of the newly empowered administrative apparatus.

Mexico's new institutional engineering required the creation of a series of agencies isolated from the political process and from interest groups to which public officials and politicians are inevitably exposed (Jacobzone 2005; López Ayllón and Haddou-Ruiz 2005). These institutions had a certain level of decision-making independence and autonomy, which, however, risked degeneration into one of the very vices that people were attempting to eradicate: the capture of the regulator. As occurred with the establishment of states, the creators of these regulatory agencies were also obliged to design a series of mechanisms to control the power granted to those agencies.

Governments have designed an assortment of public policies to avoid the capture of the regulator. Among member countries of the Organisation for Economic Co-operation and Development (OECD), an effective tool—regulatory improvement—has been implemented to achieve accountability and to control public power. Its objectives are:

- to make administrative actions transparent,
- to evaluate costs and benefits of regulation, and
- to increase the level of predictability for government activities.

The terms “deregulation” and “regulatory improvement” are often confused. Deregulation, referring to the partial or total elimination of regulations currently in force in certain economic sectors or specific regulatory areas, is only one component of regulatory improvement. As a public policy, governments implement regulatory improvement in the hope of promoting an institutional framework that goes beyond the mere establishment of a state of legality, that is, the adherence to legal regulations regardless of their efficiency. As a public policy, regulatory improvement strengthens the rule of law by allowing for the inclusion of affected actors in designing regulations, so that their benefits will outweigh compliance costs for society as a whole (Cofemer 2001).

Countries like Mexico have implemented this policy with the support of broad government sectors, major economic actors, and members of civil society. Regulatory improvement seeks to foster better conditions for intra-governmental economic, administrative, and social development, through the use of the following mechanisms:

- Elimination or modification of obsolete, excessive, or cumbersome regulations that are barriers to the proper functioning of markets, the adequate implementation of social policy, or even the efficient functioning of the administrative apparatus.
- Creation of efficient regulation that translates into reduced compliance costs for private parties.
- Improvement in the set of processes that produce new regulations and through which existing regulations are applied (Cofemer 2001).

The policy of regulatory improvement is not an end unto itself. Instead, it lets the government effectively and efficiently protect the public interest by establishing coordination mechanisms among public agencies that share jurisdiction over a given regulatory issue. In other respects, regulatory improvement is a pillar of good government in all spheres of public action and a central element in the concept of the rule of law.

REGULATORY IMPROVEMENT AND THE RULE OF LAW: THE MEXICAN EXPERIENCE

At the end of the 1980s, Mexico's economy was excessively regulated and protected. The political situation was no better: a hegemonic party system and an all-embracing presidentialism, in which transparency and accountability around decision making were the exceptions to the rule. Mexico was also highly uncompetitive, even compared to other developing nations. These three things, coupled with domestic and international pressure, forced the Mexican government to design a series of institutions within a framework of respect for the rule of law. Their purpose was to limit the capture of the regulator, establish accountability mechanisms, modify the government's behavior patterns by implementing public policies, and increase the nation's economic competitiveness.

To that end, at the beginning of the administration of Carlos Salinas de Gortari (1988–1994), the government launched a program of regulatory reform. This program also responded to national and foreign actors, who had been fighting for the establishment of efficient and legitimate mechanisms to increase the competitiveness of the Mexican economy, create accountability in government, and avoid the capture of the regulators.

In Mexico, the regulatory improvement program unfolded incrementally in four stages. The first began in 1989 with the creation of the Unidad de Desregulación Económica (Economic Deregulation Unit, UDE) within the now-extinct Secretaría de Comercio y Fomento Industrial (Ministry of Trade and Industrial Development). At first, the UDE's role was limited, since it concentrated on deregulation or adequate regulation in specific economic sectors. In other words, its goal was to adjust the regulatory framework to an open economy in order to grant a level playing field to companies, regardless of who their shareholders were (OECD 1999).

The second stage began in 1992 with the broadening of economic deregulation to include the revision of obsolete or inadequate regulations and the establishment of macroeconomic conditions to increase efficiency and reduce market costs (OECD 1999). Among other achievements, the Mexican government designed certain legal instruments that laid the foundation for improving the country's level of competitiveness, including:

- Ley Federal sobre Metrología y Normalización (Federal Measures and Standards Act), which established a formal process for creating Normas Oficiales Mexicanas (Official Mexican Standards, NOMs), which includes procedures for detailed public consultation and the presentation of cost-benefit analyses.
- Ley de Protección al Consumidor (Consumer Protection Law, LPC), whose objective was to promote and protect consumer rights and ensure legal safety in producer-consumer relations.
- Ley Federal de Competencia Económica (Federal Law on Economic Competition, LFC), which established anti-monopoly rules and created the Federal Commission on Competition.

The third stage of the regulatory reform program ran throughout the presidential administration of Ernesto Zedillo (1994–2000). Because of Mex-

ico's grave economic crisis, beginning in 1995 regulatory policy became a critical element in industrial policy and an effective tool for helping companies weather the crisis. The Mexican government's efforts focused on the business sector's demand for a new regulatory framework that would be more competitive and would make it possible to take timely advantage of the new export possibilities resulting from the 1994 devaluation (OECD 1999).

The first step in this stage came with the signing of the *Acuerdo para la Desregulación de la Actividad Empresarial* (Agreement for Business Activity Deregulation, ADAE). It broadened the powers of the UDE, created a Deregulation Council, and, most importantly, established a process for analyzing and systematically reviewing existing bureaucratic procedures as well as legislative and administrative provisions proposed by the federal executive.

The regulatory reform process in Mexico during this stage was designed based on OECD (1995) recommendations:

- Government involvement must be justified.
- A regulation shall be retained or enacted only if evidence exists that the potential benefits outweigh the costs.
- A regulation shall exist only if there are no alternatives that could achieve the same objectives at less cost.
- The regulation must minimize the negative impact that it might have on companies, particularly on small and midsize firms.
- A regulation must be supported by the budgetary and administrative resources required for its application and monitoring (Presidencia 1995).

In December 1996, the government amended the *Ley Federal de Procedimiento Administrativo* (Federal Administrative Procedures Act, LFPA) so that it would continue across presidential administrations. The amendment required that a Regulatory Impact Assessment (RIA) be performed on legislative and administrative provisions proposed by the executive. The Federal Measures and Standards Act was also amended to reinstate the requirement that government agencies produce an RIA when issuing a NOM, as a form of cost-benefit analysis. It also required a review of NOMs

every five years, the creation of expedited mechanisms for eliminating or reforming obsolete regulations, and establishment of the equivalence principle to facilitate innovation and compliance with the NOMs (OECD 1999).

Support for a discipline of regulatory improvement soon extended to the local level. Accordingly, the UDE designed mechanisms to encourage the federal government to share information and best practices with the states and municipalities so that they could improve regulatory quality, principally in areas such as land use, urban public services, and local-level business licenses and permits.

As can be seen, up to this stage the reform's emphasis had centered on the economic system. Regulatory improvement had been an important component in industrial policy, but certain regulations, including, for example, those deriving from the design of social policy or the functioning of the tax system, had been overlooked. The most significant advance came during the reform's fourth stage, which began in 2001, when an amendment to the LFPA replaced the UDE with the Comisión Federal de Mejora Regulatoria (Federal Regulatory Improvement Commission, Cofemer). Cofemer was designated as the administratively independent agency that would coordinate and supervise the Mexican government's efforts to achieve high-quality regulations.

The LFPA mandates that government ministries and decentralized agencies of the federal public administration submit to the discipline of regulatory improvement regarding their administrative activities, services that the state offers exclusively, and contracts with private parties that can only be made with the state itself. As can be seen, the LFPA amendments once again emphasized the economic aspect, leaving aside other sectors where the existence of quality regulation is important for the fulfillment of an agency's duties. It is necessary to keep in mind here that some of the entities within the Mexican government that carry out social policy are decentralized and that the regulations they issue can, in a strict sense, be construed not as administrative actions but rather as acts of social welfare or services that the state does not exclusively provide. The LFPA also established exceptions for the Ministries of Defense and of the Navy, as well as in matters relating to taxation, the responsibilities of public servants, agrarian and labor justice, and the attorney general's office in the exercise of its constitutional functions.

Almost simultaneously with the amending of LFPA, the administration of Vicente Fox (2000–2006) issued the 2001–2006 Programa de Mejora Regulatoria (Regulatory Improvement Program). It included the following policy strategies for strengthening the reform process:

- a requirement that government ministries and decentralized agencies of the federal public administration produce Biennial Regulatory Improvement Programs;
- the creation of a Registro Federal de Trámites y Servicios (Federal Registry of Formal Procedures and Services, RFTS);
- the review and improvement of draft regulations that might generate compliance costs for companies and private parties;
- a requirement that Cofemer prepare diagnostics and propose specific regulatory bills; and
- coordination with states and municipalities to implement regulatory improvement in their areas of governance.

Based on the mandate in the LFPA and the Regulatory Improvement Program, the Fox administration designed and strengthened the following regulatory improvement tools: the RIA; the RFTS; the Registro Único de Personas Acreditadas (Sole Register of Accredited Parties, RUPA); the Biennial Regulatory Improvement Programs; and the Sistema de Apertura Rápida de Empresas (System for Fast-Track Business Start-ups, SARE, developed at the three levels of government).

The success of the reform depends largely on a coordinated use of all these tools. The appropriate use of each one strengthens the others. Explained more broadly, public agencies must submit to the regulatory improvement process and produce a plan every two years to identify and design needed regulations. That plan should also identify formal procedures and services potentially entailed in those regulations, in order to design mechanisms to simplify them or, where possible, to eliminate them. The RIA is a tool for basing public policies on rational criteria. In order to achieve that objective, it is the responsibility of those involved to identify formal procedures or services that the new regulations might generate so that they can be listed in the RFTS. The RUPA is the government's electronic tool for facilitating and reducing transaction costs. By assigning

citizens an identification number, it makes it easier for them to apply to the government or to deliver information to the authorities, because each time an accredited citizen is involved in a formal bureaucratic procedure, he or she is verified automatically. Finally, the SARE is an effort that, with the support of these other tools, seeks to heighten the Mexican economy's competitiveness by reducing the length of time it takes to open a business. Next, we analyze separately each of the tools the Fox administration designed to implement the regulatory improvement program.

Besides encouraging the efficient use of public resources, an RIA increases understanding of a public policy's impact, makes public administration transparent, and strengthens the credibility of a democratically elected government. Following public consultation with interested parties, the preparation of an RIA lets us determine the probable consequences and reciprocal effects of proposed regulations. If we assume that regulation is nothing more than a public policy that becomes a law to guarantee compliance by those to whom it applies, it is reasonable to suggest that the RIA is the backbone of public policy since it establishes the mechanisms that are utilized in designing policy and that are necessary to guarantee its adequate implementation. In theory, the RIA should also yield information on the viability of a proposed regulation.

It has the potential to reduce burdens and obstacles, particularly in the private sector. Organizations like the World Bank have suggested that this instrument offers considerable advantages that help in the construction of liberal democracies (Jacobs 2005). The RIA:

- facilitates understanding of regulations that have a strong impact,
- assists in the integration of multiple policy objectives,
- increases transparency and public consultation, and
- increases accountability at all levels of government.

Colin Jacobs has suggested that the RIA has become an effective tool for democratic governance:

RIAs support legal government which observes the rule of law with proportionate and equitable law. An accountable government is promoted through assessing direct costs and

benefits that citizens will incur and selecting policies based on best value for money, taking into account redistribution effects.... Consultation with consumers, business, and civil society also help[s] build legitimacy and promote[s] issues of equity and fairness among citizens (Jacobs 2005, 3).

Mexico's introduction of the RIA has helped to increase trust in the government by broadening the influence that citizens have in the decision-making process. The adequate use of the RIA on the part of regulatory agents can help to build a government characterized by legality, transparency, openness, and inclusion of citizens in the formation of a representative government.

Given the history of the Mexican states, characterized by a high level of opacity, some regulatory agencies have viewed the requirement to produce an RIA as a barrier to implementing government programs. Although that requirement has been part of the regulation-issuing process for several years, most regulatory agencies still do not view it as a helpful tool for validating the effectiveness and efficiency of the public policies that they are trying to implement. Desiring to break down that resistance, the Mexican government designed other policy instruments to oblige regulators to produce RIAs and quality regulations. In 2004 President Fox issued a decree establishing a regulatory moratorium, which sought to:

- improve the way in which RIAs are prepared (which will result, in turn, in better-quality legislative and administrative proposals submitted by the federal government); and
- reduce the issuance of regulations entailing compliance costs for private parties.

Another object of regulatory reform in Mexico has been to lessen the formal procedures that private parties must navigate in their interactions with the government. The normative framework defines these as regulations that entail the exchange of information between the government and private individuals. With the purpose of ensuring that this exchange is transparent and costs private individuals as little as possible, since 2003 the Mexican government has maintained the RFTS, which lists all of the gov-

ernment's formal procedures and services, except for those demarcated in the LFPA (LFPA 2001).

The RFTS is intended as a regulatory improvement tool to continuously monitor the modifications to and quality of formal procedures and services in order to identify the effects that regulations have on economic activity. The RFTS's objective is to compile a comprehensive list of the procedures and services that involve citizens and government, but it is also intended to encourage economic development by systematically improving and, where necessary, eliminating obligations and requirements that the authorities impose on private individuals when they are carrying out their productive activities (Cofemer 2004).

The RFTS will support the regulatory reform process by permitting better strategic planning in the elimination and simplification of formal procedures and services, especially those that carry high compliance costs for citizens and companies. The RFTS has grown since its inception in 2001, when it listed 1,172 formal procedures and services; by June 30, 2004, the number was 2,886. This notable increase in listings does not imply that the Mexican economy is highly regulated. To the contrary, it demonstrates the will of the Mexican government to compile, in one place, the regulations that require an exchange of information between the government and private individuals.

The government and Mexican business associations have worked together to identify and improve certain formal procedures. By providing a space in which the private sector could present proposals to improve those procedures that significantly affect their productive activities, the Federal Council on Regulatory Improvement has played a crucial role. Throughout the Fox administration, based on recommendations from business associations, improvements were made in high-impact business procedures as well as in some involving the general public. Although progress has been made, there is still a long road ahead, since those high-impact formal procedures account for less than 10 percent of the ones listed in the RFTS. This does not necessarily imply that only 10 percent of formal bureaucratic procedures between the government and private parties are efficient, but rather that, because of their importance, a precise diagnosis is available only for that set.

To improve the results of the RFTS, a pending task for Cofemer would be a regulatory audit of the registry that would be made public. This would help to precisely identify response times, reasons for applying, data, and the documents required for transactions between private individuals and the offices and decentralized agencies of the federal government. Such requirements should be contained in a legal regulation; and based on the required procedure, those that are found to be unjustifiable in terms of efficiency or rationality (despite being legally mandated) should be eliminated.

The use of new technologies has been of vital importance in implementing the reform process. A palpable example is the RUPA, which aims to control, standardize, and provide an optional tool to simplify the verification of the identity of those following a formal procedure or using a service listed in the RFTS. It is anticipated that this step will encourage productive activity by private individuals through a process of deregulation and administrative simplification aimed at making the regulation in force as efficient as possible.

The use of the RUPA principally benefits private individuals who are regularly involved in business, industrial, or service activities, and who in attempting to accomplish those activities have had to comply with a multitude of federal government requirements. RUPA's objective is to free those individuals from the need to verify their identity each time they visit a public agency.

As of the first half of 2005, private parties with a RUPA number could complete formal procedures with twenty-nine government offices and decentralized agencies. To achieve this, forty-seven service windows were set up in the Federal District and a total of ninety-six across Mexico's thirty-two states (Presidencia 2005). By itself, that fact does not allow for an adequate evaluation of the merits of having a single registry. For that reason, a pending task is to evaluate the scope of this mechanism so that, if needed, it can be adjusted to the prevailing reality.

The Biennial Regulatory Improvement Programs were intended as an effective planning tool as well as an instrument to encourage transparency, public consultation, and accountability. These programs describe in outline form the regulatory improvement actions that Mexican federal government agencies will take over the following two-year period.

Through this internal planning tool, ministries and decentralized agencies are obliged to present regulatory actions with deadlines and defined goals. This should strengthen transparency and public administration within the Mexican government and, through the establishment of a regulatory culture based on the principles of transparency and accountability, diminish corruption within the state (Salas and Kikeri 2005).

Another tool for regulatory reform in Mexico is the SARE, designed to reduce the costs involved in starting a new business in Mexico. In theory, companies should focus on generating employment and increasing productivity and sales. But in Mexico, lengthy and costly interactions with the federal government dilute those efforts. Based on studies by specialists, at the beginning of 2001 the procedures that private parties had to follow to put a company into operation required up to 112 days and a multitude of cumbersome formal procedures, which translated into an average cost of US\$2,200 (CCE 2000; Cofemer 2001; Djankov et al. 2001).

SARE has spread to the state and local levels. Its objective is to identify the minimal federal, state, and local requirements for starting up a company and to have Mexican officials facilitate the required procedures in a responsive and expedited manner (Cofemer 2006).

The first steps to implement SARE were taken at the federal level. In 2001, Cofemer submitted for President Fox's consideration an evaluation of the high-impact procedures required to establish a company and initiate operations, and the time needed to complete those requirements. An effort was then made to reduce response times and to eliminate federal officials' discretionality in resolving procedures related to the start-up of economic activities considered to be of low risk to the public (Cofemer 2001).

Later, the SARE broadened to include state and municipal jurisdictions, where most of the formal procedures required to open a business are concentrated. This public policy has been well received within Mexico's local governments. It is too soon to herald this program's success, but the results so far have been favorable (see table 3.1 for three successful cases). Thanks to the SARE, simplification and deregulation of state and municipal formal procedures has encouraged investment, job creation, and the establishment of companies that create competitive cities. At the beginning of 2006, one hundred major Mexican cities had or were in the process of implementing the SARE (Cofemer 2006).

Table 3.1 Requirements for Opening a New Business or Company before and after the Implementation of SARE in Three Municipalities

City	Amount of Time Required		Number of Procedures Required		Number of Visits to Government Offices	
	Before SARE	Under SARE	Before SARE	Under SARE	Before SARE	Under SARE
San Luis Potosí	14 days	15 mins	2	2	4	1
Aguascalientes	29 days	1 day	7	2	6	1
Guadalajara	2 days	15 mins	3	2	2	1

Source: Cofemer 2006.

The state and municipal-level regulatory improvement programs went beyond merely implementing the SARE. In a federalist spirit, the Mexican government, through Cofemer, signed thirty-two collaborative agreements with Mexico's states and the Federal District to assist in the adoption of regulatory improvement programs to create transparent and efficient legal frameworks. Cofemer offered expert advice, including encouraging such things as a re-engineering of procedures, the creation of state and municipal information systems, implementation of schemes for fast-track business opening, and adjustments to the normative framework in order to support the creation of competitive cities.

However, the success of state and municipal reforms depends on the maturation of the respective institutional systems. The benefits of regulatory improvement are not obtained by decree. For the program to function, it is necessary that certain conditions exist for its implementation. Although various states have passed laws in this area, it is still too early to evaluate the results.

The systematic use of regulatory improvement tools has allowed Cofemer to move forward efficiently and transparently with the:

- elimination and simplification of formal procedures;
- transparent and analytical review of all draft regulations and their regulatory impact assessments;

- analysis of and proposals to reform existing laws and regulations in specific areas or economic sectors; and
- support for state and municipal regulatory improvement programs (OECD 2004, 24).

These activities have helped to establish a business climate based on the demands of a global economy, while inside the Mexican state they have helped to establish a culture of accountability, transparency, and co-participation between the public and private sectors in the creation of public policy.

As we have seen, the recent advances are important. No one doubts that Mexico currently possesses a regulatory framework and institutions that favor transparency and accountability in government dealings. However, there is still a long road ahead before a scientific claim can be made that the institutional quality of Mexico's democracy is similar to that found in developed nations. Regulatory improvement by itself is not capable of improving the Mexican political system, but it can be of help in specific areas. To enhance the results of public policy, it is necessary to modify the institutional scaffolding on which it rests, including the cultural values of public servants involved in its implementation. This is no easy task. However, it could begin with a new amendment to the LFPA that would grant Cofemer greater independence while also endowing it with broader competence to review the regulatory drafts proposed by Mexico's federal government agencies.

FINAL CONSIDERATIONS

Contemporary democracies are currently being challenged to improve the quality of life for their citizens. An infallible prescription for achieving that end does not exist. However, the task can be made easier to the degree that the interactions between government and citizens occur under the rule of law, which is based, among other things, on a system of checks and balances. For that system to function, it is necessary that government actors report on their activities. Accountability means that anyone can ask for an explanation and participate in public decision making. Decisions then materialize in legal regulations. By granting individuals certainty and confi-

dence about the policy actions taken by their government, the regulatory framework makes government-society interactions more efficient.

Mexico's structural reforms during the 1980s obliged the state to design a new institutional arrangement for the new economy, which meant establishing a series of public agencies with broader powers and more autonomy. But in order to control that power and to avoid the capture of the regulator—while also encouraging accountability and increasing Mexico's economic competitiveness—a policy of regulatory improvement was implemented in 1989.

Regulatory reform in Mexico is not yet complete; there is still a long road ahead. The aftertaste of an authoritarian past marked by opacity in decision making has meant that regulatory improvement has followed an incremental path. In order to consolidate this program, the actions that still need to be implemented include:

- Granting Cofemer greater independence and autonomy to carry out the duties legally ascribed to it.
- Amending the LFPA to grant Cofemer stronger coercive power so that those subjected to the discipline of regulatory improvement internalize this policy. Currently, Cofemer's opinions on regulatory drafts are not binding. Hence the need for a legal reform to harden the agency's enforcement mechanisms.
- Changing behavior patterns of certain federal government agents who still fail to see the merits of regulatory improvement when exercising their daily functions.
- Training public servants in the use of regulatory improvement tools, particularly in how to complete the RIA. This requires raising people's awareness that, in order to evaluate a regulation's economic, political, and social viability, an RIA must be produced during the regulation's design phase.
- Designing stricter evaluation mechanisms for each of the regulatory improvement tools. Among other things, the efficacy of the RFTS should be evaluated in a global manner, based on regulatory audits of the information contained in it.
- Amending the law to include within the administrative process those areas that are now excluded. For example, given that regulatory im-

provement is a tool for increasing the competitiveness of Mexico's economy, there is no justification for exempting taxation matters from compliance with this discipline.

In the long term, it would be desirable to include the legislative branch in the regulatory improvement program. However, the institutional framework on which the policy rests must be adjusted to the realities of that branch. Cofemer should remain outside the inner workings of Congress.

When establishing the discipline of regulatory improvement at the state and municipal levels, mechanisms for intergovernmental relations ought to be designed that align better with local realities.

Similarly, greater institutionalization of the SARE is needed in those municipalities where it has been implemented. In most of those locations, the administrative simplification process has been accomplished but without altering the applicable regulatory framework. Given that, it is uncertain if this deregulation policy can be maintained across governmental administrations.

As we have tried to show, the regulatory improvement program strengthens the rule of law in societies that implement it. Currently, the debate in Mexico on the quality of democracy goes beyond how electoral and party systems are structured. Mexican democracy requires a new institutional arrangement that clearly establishes the rules of the game for political, economic, and social actors. Regulatory improvement is a good tool for creating a more suitable institutional framework.

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4

Accountability and Democratization: Reviewing Public Accounts in Sonora

NICOLÁS PINEDA PABLOS

Once democratizing regimes like Mexico's have achieved free and competitive elections, they face a new challenge: to create a functioning democratic system of accountability. Authors such as Cornelius (1999), Cansino Ortiz (2000), and Aziz Nassif et al. (2003) emphasize that the holding of open elections does not mean that Mexico has reached the end of its democratization process; the country must now consolidate democracy at the local level and, above all, overcome antiquated traditions and vices inherited from the authoritarian governments of the past. The present work follows on this line of inquiry.

The challenge of rendering and investigating accounts raises a number of questions. How can government officials be made to honor their electoral mandate and fulfill existing commitments? What mechanisms or tools can be used to make government officials accountable? When do government documents and reports constitute a genuine rendering of accounts, and when are they merely governmental ritual or rhetoric?

This work approaches the topic of accountability by examining legislative oversight of government accounts. More specifically, it studies the reviews of public accounts conducted by the auditing office of the Sonora State Legislature for six urban municipalities in the state: San Luis Río Colorado, Nogales, Hermosillo, Guaymas, Cajame, and Navojoa. The

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study has a dual objective: one goal is to analyze the normative framework of public accounts in Sonora in terms of transparency and access to information, and the other is to conduct a brief, exploratory review of the decisions issued on these public accounts.

One caveat is in order: the vantage point from which this study is conducted is not a technical/judicial one, but rather the political theory of democracy, which seeks to review and analyze the meaning, appropriateness, and relevance of public accounts as an accountability mechanism within a context of democratic transition.

A NEOINSTITUTIONAL VIEW OF ACCOUNTABILITY

According to March and Olsen (1995, 141), the accounts that government officials render in a democracy are not merely the mathematical calculations of revenues and expenditures. Rather, these accounts constitute a platform on which to build an interpretation and explanation of political reality. This involves a process of constructing a vision of reality in which the interpretation is not imposed vertically from above. Instead, the official government proposal is reviewed and evaluated by independent actors who do not necessarily share the government actors' interests or values. Frequently, the vision that results from this process of interaction and negotiation of reality among political actors is not free from conflict nor exempt from modifications and reconstructions. In fact, political history registers multiple cycles of reexamination and reinterpretation before a consensus judgment is reached regarding any given administration.

The interpretation of reality that emerges from the accountability process can follow two types of logic: the logic of "good practice" or the logic of "correct practice." Good practice is the logic of intelligent actions that obtain good results; it is the logic of efficacy, efficiency, and effectiveness. What is "correct," on the other hand, is the logic of legality, of conforming to prevailing collective methods and norms, of following the rules, and of justifying actions. The challenge is to bring these two logics together, that is, to ensure that whatever is done according to the rules is also the approach that produces optimal outcomes and solves problems. If the two logics are not reconciled, actions that are correct and legal will lack efficacy, and those that are efficacious will be illegal and unacceptable. Another way of approaching this problem is to achieve balance and compati-

bility between discourse and action, between what is said and what is done, between endless deliberation that never leads to action and impetuous action that fails to consider why or on whose behalf something is done.

If we adopt this perspective when examining the functions of government, the legislature appears as the space for deliberation and debate, while the bureaucracy is the appropriate entity for action and implementation. The challenge that faces consolidating democracies like Mexico and most of the countries of Latin America is to develop a political order that can establish the optimal equilibrium between the two spheres and ways of addressing reality. Of crucial importance in this effort is developing the appropriate accountability mechanisms and institutions, as well as mechanisms and institutions that can deliberate and judge government actions and their outcomes.

Although this is quite clear at the theoretical level, it becomes complicated in practice, and it often demands investments of time and resources that governments may be disinclined to make. Moreover, we should note that institutions of this type cannot be imposed from above, nor can they be created from one day to the next. They are the product of a lengthy process of development and social learning. An aim of the present work is precisely to gauge the development of the rendering and evaluation of public accounts at the level of local government on the key issues of fiscal accountability, program implementation, and achievement of objectives.

The prevailing ideology for determining what is good practice and what is correct practice, independent of postmodernist currents of thought, is a commitment to rationality. This implies believing that there is a benefit in anticipating what outcomes an action will produce and weighing the consequences. However, the justification and interpretation of government actions are frequently tied to various normative systems that are not based in rationality, including traditional systems immersed in custom, tradition, religion, or fanaticism, which can distort, bias, or impede a rational interpretation of government actions. Therefore, the threat that hovers over the process of democratic accountability is that the interpretation of political reality could rely on nonrational criteria, misleading numbers, or a poorly informed public opinion—all of which distort, undermine, and cripple confidence in democratic processes. According to the neoinstitutionalist perspective, democracy's defense against these threats is not to be found in

closed meetings of financial experts who impose their decisions and proposals from above. The best defense is an institutional opening to discussion, deliberation, and the association of free and equal citizens in a community of argumentation that debates possible actions.

Therefore, the quality of political life is determined by the extent to which the accounts presented by those vested with authority contribute to improving the collective life. The political intelligence of the government rests on the development of institutions that are capable of generating and employing accounts in ways that lead to sound collective actions. In other words, it depends on developing institutions capable of rendering, evaluating, and sanctioning public accounts. For this reason, being held accountable tends to influence both official behavior and the way in which public authorities justify their behavior. Governing does not take the same form in an autocratic regime as in a regime that must render accounts. Further, when evaluation and sanctioning are properly focused, they tend to contribute significantly to improving government performance and making it more effective.

The foundations on which accountability can be put into practice are information and sanctions (March and Olsen 1995, 162). Those who govern can only be held to account when there is a framework for dissemination, transparency, and critical scrutiny that can be accessed by an informed and vigilant citizenry. These characteristics emerge when the institutional structure is not limited to a review conducted by a single official auditor but that also permits review by multiple and diverse independent investigators. In this way, the legislatures conduct their formal investigations, but independent reviews are also carried out by a free press, civic organizations, academics, political analysts, and diverse actors interacting in the public arena.

The second basis of accountability—enforcement—implies that information that is critical of political actors will result in the imposition of sanctions. But there is a problem with sanctions: they not only encourage officials to conduct themselves appropriately but, because officials know that they will be penalized if any unfavorable information attaches to them, they may also attempt to restrict the flow of any compromising information.

This situation biases all information coming from government offices. On the other hand, if there are no sanctions, accountability becomes noth-

ing more than a political ritual, devoid of consequences. Therefore, there is an enduring concern among the citizens that imposing effective sanctions on government officials and conducting a review and assessment of public accounts necessarily implies a tension between the general citizen interest and the particular interest of politicians and functionaries to avoid being evaluated negatively. Evaluations and the use of sanctions become increasingly complex on par with the size and diversity of the tasks and functions carried out by the government apparatus.

According to March and Olsen, to succeed on this front, democracies rely on two sources of sanctions. The first is institutions of oversight and assessment. In our case, these would be the internal and external auditing offices, legislative oversight, legal proceedings, assessments made by entities at other levels of government, international organizations, and, finally, sanction by the citizens at the ballot box. This last option, electoral sanction, operates when there is the possibility of reelection and of alternation between political parties or groups. In this case, officials are subject to the law and are vulnerable to penalties and even dismissal from office if they do not adhere to the law. By applying sanctions, comptrollers and other formal auditing agents emphasize adherence to legal norms and generally look for a minimum level of performance and quality. In contrast, elections and other forms of citizen consultation are centered on high quality and positive performance. The second source of sanctions is internal to the individual. It lies in an official's sense of moral obligation, honor, and personal commitment. According to this view, an official who behaves inappropriately is punished by his or her own sense of culpability and loss of self-respect. The problem with this kind of sanction is that it assumes the existence of an impressionable conscience and strong moral values.

However, March and Olsen do not discuss the ways in which the mechanisms for assigning and applying sanctions might be improved, especially in a context that has been strongly marked by corruption and impunity among political actors. In this respect, we have to accept that developing the function of imposing sanctions will depend largely on institutional changes in the auditing agencies and the overall process of consolidating and strengthening Mexico's democracy.

In sum, according to March and Olsen (1995, 175), accountability depends on the development of what they call "interpretive communities."

These are interrelated groups organized in networks that reflect differences in location, specialty, expertise, and interest which exercise oversight of authorities and their versions of accounts. Through a pluralistic exchange among various interpretations, these interpretive communities construct political accounts—that is, a judgment, evaluation, and eventual sanctioning of government entities. This “public truth” is constructed through meetings and debates among professional groups, public organizations, and other entities that compete for attention and support.

The aim of an emerging system of accountability like Mexico’s is, therefore, to encourage the existence and effectiveness of these interpretive communities so that they engender mutual understanding and policies that are developed collectively and are understood and accepted by community members (March and Olsen 1995, 177). It is a matter of developing an institutional frame that includes a diversity of actors who compete in building a vision of political reality. The goal is primarily to prevent private interests or officeholders’ interests from dominating. Instead, all interests should be in competition in an open and plural arena that includes the participation of citizens and independent groups. This is the challenge that Mexico now faces.

PUBLIC ACCOUNTS AND THEIR DESIRED CHARACTERISTICS

Among the many accountability instruments and modalities that exist in Mexico, particularly noteworthy is the public account that each administration submits annually to its respective congress or legislature. The public account is an annual report required under Mexican law that obligates administrations to state revenue sources, expenditures, and the reasons for budgetary decisions. It also enables the legislative branch to fulfill its responsibility for investigation and evaluation of the management of public funds. Thus oversight of the public account plays a central role in the accountability process, and the proficiency with which this auditing process is conducted speaks strongly to the level of accountability in Mexico more generally. Even though there are other channels and entities for rendering and overseeing public accounts, the annual report on the public account constitutes the most formal and institutionalized avenue for rendering accounts in Mexico.

Borrowing from March and Olsen's (1995) writings on accountability and using the concepts of governmental transparency, citizen participation, and democratic governance suggested by Fundar et al. (2003, 26), this study aims to operationalize the concept of accountability and analyze concrete cases. To this end, it offers a list of attributes that should ideally characterize the rendering of public accounts in order to make the process an effective accountability mechanism. These characteristics refer both to the information that governments generate and to the decisions or assessments issued by auditing entities, as well as to the investigative process and, more generally, to the system or institution through which accounts are rendered.

I suggest, then, that public accounts *information* should be:

- *Public and accessible.* It should be accessible not only to legislators and officially involved functionaries, but also to the citizenry in general.
- *Clear and understandable.* Its language should be clear and easily understood by the citizenry. It should avoid technical terminology and make the information understandable to the largest possible public.
- *Truthful and trustworthy.* The information, data, and figures should correspond to the facts. This correspondence must be confirmed by supporting documentation but also via a physical inspection and a consensus among the various actors involved.
- *Exhaustive.* It should include information on all revenues and disbursements and provide a complete picture of government finances. That is, there should be no chapters, sections, or line items that are kept secret or are not disclosed.
- *Comparable.* Statements of income and expenditures should be presented in a format that makes them comparable to the budget that was approved for the year and to past years or to other municipalities or levels of government.
- *Presented in both summarized and detailed forms.* The information should include aggregated summaries that permit an overall evaluation using a limited amount of data, and also disaggregations that provide the opportunity to conduct a detailed analysis by sector, program, line item, or even spatial distribution. It would also be advisable that the

level of detail would permit for the corroboration or verification of expenditures and actions undertaken.

- *Reports on the debt.* It should include loans obtained, payments made to the public debt, and future debt commitments, including the corresponding repayment periods and terms.
- *Verifies progress toward and attainment of goals.* It should permit a review of advances in programs and projects included in the development plan and also provide indicators that support a thorough assessment of the expenditures' impacts.

I suggest further that the formal *process* of rendering accounts should possess the following characteristics:

- *Be recurrent, regular, and frequent.* The presentation of reports, bulletins, and documents pertaining to public accounts should occur with sufficient frequency to provide feedback to officials and allow for a timely citizen evaluation of government performance. The process should adhere to a regular yearly schedule, with greater frequency in the case of interim reports or special reports on specific problems.
- *Allow and encourage inspection by citizens and independent entities.* The process should incorporate mechanisms and channels through which the citizenry can express opinions and comments, and challenge or ratify each administration's fiscal performance.
- *Sanction diversions of funds with penalties that emphasize reparation for damages and improvement in governmental management.* The process of overseeing public accounts includes penalizing and sanctioning administrations that, according to audits and investigations of the accounts they present, have made wrongful use of budgeted funds. These sanctions and penalties should promote reparation for damages and the return of diverted or embezzled funds to the public treasury.

The social or institutional *context* within which the accountability process unfolds would ideally display the following characteristics:

- *The governed and beneficiaries of government programs should have the opportunity to express their opinions* about fiscal practices, program implementation, and other elements of the public accounts. This implies

that efforts be made to solicit and obtain target populations' views of implemented programs.

- In addition to the formal scrutiny conducted by the legislature's auditing office, *other organizations, groups, and individuals should review and inspect the public accounts* and issue judgments and opinions about them. These other entities can be civic organizations, political analysts, academics, or the media, among others.
- *There should be a perception that steps are being taken to prevent the diversion of funds and that any such misappropriations are being sanctioned.* This means that mechanisms must be instituted and that the process be socially developed to ensure that impunity gives way to the values of honesty, efficiency, and public service.

Based on the preceding list of attributes, accountability can be categorized in three strata or levels of institutional development: authoritarian, democratizing, and democratic (see table 4.1).

Table 4.1 Three Levels of Accountability

Level	Information	Sanctions	Community of Argumentation
Authoritarian	Technical and inaccessible	Impunity	Does not exist
Democratizing	Gradual or controlled opening	Limited enforcement	Incipient
Democratic	Understandable, open, and accessible	Enforcement	Diversified group of independent reviewers

Source: Developed by the author.

At the authoritarian level, the exercise of rendering accounts, if it exists at all, is merely a pretense in which information on public accounts is not available to the general public and the process takes place behind closed doors. Sanctions for misappropriation of funds or fiscal inefficiencies are not applied or are subject to the discretion of the incumbent administration. Generally there are no independent groups that review and investigate the public account.

The democratizing stratum is a transitional stage between no accountability or simulated accountability and genuine accountability. In this case, the presentation of information may be deficient, but honest efforts are made to improve its content or to make it more accessible to the citizenry. There are also efforts to impose sanctions, although the process cannot yet be fully institutionalized or defined, and there is no vigilant social context to support an independent, diverse, and collective review, discussion, and enforcement of government accounts.

Within the democratic stratum, information on public accounts is clear and easily accessed by any citizen or organization that wishes to review it. Cases of diversion of funds and other irregularities are systematically sanctioned and punished. A variety of groups, organizations, and individuals review, investigate, and sanction the management of public accounts and the implementation of government programs. One could say that there is an interpretive community regarding government performance.

We have defined the set of attributes that should characterize the information in public accounts and the process of rendering these accounts, and also outlined the three development accountability levels or strata that can serve as our frame of reference. We can now proceed to examine concrete cases of the rendering of municipal public accounts in Sonora.

THE LEGAL FRAMEWORK OF MUNICIPAL PUBLIC ACCOUNTS IN SONORA

In order to analyze how the rendering of accounts operates in practice, we should first familiarize ourselves with the frame of reference that March and Olsen call the logic of the correct, which in this case may be understood as the normative framework for the presentation of municipal public accounts. In Sonora, the legal framework for municipal public accounts is composed of the following:

- the Sonora State Constitution,
- the Responsibilities of Public Servants Law,
- the 1999 Municipal Government and Administration Law,
- the 1998 Framework Law on Legislative Power, and
- the 1986 Regulations of the Office of the Comptroller General.

It is worth noting that the 1983 Municipal Treasury Law is mute on the subject of municipal accounts, nor does it even use the term "public account." Let us look briefly at the principal legal rules on municipal public accounts rendered in 2003 and 2004.

Sonora's State Constitution establishes that the *ayuntamientos* (city or town councils) must submit their public accounts from the preceding year for legislative examination and approval. This is done yearly, during the first fifteen days of the second period of the regular legislative session (Art. 136, fracc. xxiv).

Further, it is the State Legislature's duty to review the state's public accounts for the preceding year, which are to be submitted by the governor, and also those of the *municipios* (political/administrative units comparable to counties in the United States) that are to be submitted by the *ayuntamientos*. The purpose of these reviews of public accounts is to determine the results of fiscal measures taken, to assess whether they met the criteria set forth in the approved budgets, and to evaluate the level of success in reaching the objectives defined in budgeted programs. The Constitution of Sonora states: "if the review were to reveal discrepancies between expended funds, approved line items, and attained objectives, or if there were a lack of precision or justification regarding disbursements, responsibility will be determined according to the law" (Art. 64, fracc. xxv).

The law to which the final portion of the constitutional text refers is the Responsibilities of Public Servants Law,¹ though the constitution does not exclude the application of other laws that also assign responsibility or sanctions to the actions of public servants in the exercise of their duties. The law on responsibilities indicates that public servants can be held to account when their actions or failure to act harm the basic interests of the people or their good offices. Among the causes of such injury, there is specific mention of "systematic or grave violations of the plans, programs, and budgets of the state or the *municipios*, or of the laws that govern the administration of state and municipal economic resources" (Art. 8, fracc. viii). In this situation, the State Legislature determines the existence and gravity of the acts or omissions and, when they are of a criminal nature, declares that an ac-

¹ Law 54 on the Responsibilities of Public Servants of the State and *Municipios*, published in the *Boletín Oficial*, No. 29, Section II, April 9, 1984, and reforms and additions of April 26, 1993, and December 14, 1998.

tion can be filed or, if such a declaration is not required, orders that the acts or omissions be made known to the Office of the Attorney General so that it can proceed within its jurisdiction (Art. 9). If the outcome is a determination of guilt, the official will be dismissed from his or her position and may be prohibited from future employment in government service for between one and twenty years (Art. 10).

If, however, the public servant's misdeeds are considered of lesser gravity (administrative errors), the charges are presented before an internal investigative unit in the municipal administration, that is, before the municipal auditor (Arts. 65, 71, 73). The sanctions that can be imposed at this level include a caution or warning, suspension, removal from office, a fine, and disqualification from government employment in the future. These sanctions, imposed by the internal auditor, are to be proportionate to the damage or harm caused.

This, then, is the process for sanctioning and assigning responsibility in cases of poor management of public resources or other failings uncovered during an investigation of public accounts.

The Municipal Government and Administration Law (LGAM)² states that *ayuntamientos* must submit their public accounts from the preceding year to the legislature for examination, evaluation, and approval. This must be done yearly, during the first fifteen days of the second period of the regular session (which begins on April 1 of each year). To this end, the *ayuntamiento* should create a Finance, Patrimony, and Public Accounts Commission (Comisión de Hacienda, Patrimonio y Cuenta Pública), which is charged with ensuring that this obligation is met in an appropriate and timely manner (Art. 61, Sec. iv, clause e; Arts. 68, 77, 78).

The law also dictates that it is the duty of the Office of the Municipal Treasurer to develop trimonthly budget estimates and public accounts. These reports should be presented in a format that facilitates an examination of "assets, liabilities, revenues, costs, disbursements, advances in program implementation, and, generally, an overall assessment of the efficacy of municipal spending" (Arts. 163, 159).

Thus the LGAM defines who within municipal government prepares the municipal public account and who reviews it, as well as specifying that

² Municipal Government and Administration Law, published in the *Boletín Oficial*, No. 31, Section I, October 15, 2001.

these tasks are to be completed between January 1, after the preceding fiscal year has ended, and April 15, during the first two weeks of the first period of the regular legislative session. It also establishes generally that the contents of the public accounts be oriented toward inspection and a review of the efficacy of expenditures.

According to the LGAM, municipal public accounts also allow an entering administration to access and review the accounts of the outgoing administration. The new administration is given 90 days after taking office to conduct this review (Art. 61, sec. iv, clause f). Given that, in Sonora, incoming *ayuntamiento* administrations generally take office on September 16, the period for comments on the preceding administration's fiscal management ends on December 14. This arrangement may be understood as requiring the outgoing *ayuntamiento* to produce a public account for the three years it is in office, a period that terminates on September 15 of the year in which the change of administration occurs. These public accounts serve as financial reports at the point of hand-off between the outgoing and incoming administrations, and they also enable the incoming administration to act as an auditor of the outgoing one.

For its part, the Framework Law on Legislative Power (LOPL)³ establishes that, once the public account has been submitted to the appropriate legislature or congress, the Office of the Comptroller General (CMH) is responsible for reviewing these public accounts of the state and the *municipios*.⁴ This office is under the supervision of the Comptroller General Oversight Commission, which is composed of two deputies from each party represented in Congress. By law, the CMH must include a department of control and evaluation whose duty it is to review and report on each of the public accounts and make relevant observations (see table 4.2).⁵

³ Framework Law on Legislative Power in the State of Sonora, published in the *Boletín Oficial*, No. 44, Section II, June 1, 1998, Article 123.

⁴ On August 24, 2004, the State Legislature approved a reform of and additions to the state constitution in order to transform the Office of the Comptroller General into the Higher Institute for Audits and Oversight, with greater authority and autonomy. In March 2005 this reform had been approved by half plus one of the *ayuntamientos* in the state.

⁵ Agreement that approves the regulations of the Office of the Comptroller General of the State Legislature, published in the *Boletín Oficial*, No. 52, Section xxiii, December 29, 1986, Article 17.

Table 4.2 Legal Procedures for Municipal Public Accounts in Sonora

When	Who	What	How
1 After January 1	Municipal Treasurer	Develops public account for the preceding year	So as to allow a measurement of the efficacy of municipal expenditures
2	Finance, Patrimony, and Public Accounts Commission of the Ayuntamiento	Oversees the fulfillment of this function	In a timely and appropriate manner
3 By April 15	Ayuntamiento	Submits public account to the legislature	
4	The Office of the Comptroller General (CMH) of Congress (through its department of control and evaluation)	Reviews and reports on each of the public accounts	
5	Comptroller General Oversight Commission of Congress	Oversees the CMH and reviews its assessments	
6	General Assembly of Congress	Approves or decides responsibilities	
7	State Congress	Ponders the existence and gravity of acts and omissions	When there are criminal acts, will initiate a political judgment or file suit in the Attorney General's Office

Source: Developed by the author with information from the Constitution of Sonora, LGAM, LOCE, and LOCMH.

Other legal regulations that govern public accounts are: the Framework Law of the Office of the Comptroller General, the State Public Debt Law, and the Public Works Law of the State of Sonora. These laws are not discussed here because they contain very specific regulations that do not generally modify the features or processes that derive from the aforementioned laws. During the period in which this research was conducted, the Access to Information Law, which was approved on February 22, 2005, was not yet in effect.⁶ Nevertheless, this law does not alter the resolutions outlined in the legal framework, only stipulating, in Art. 14, clause 15, that accounts must be made accessible to the public.

When attempting to evaluate this legal framework from a perspective of transparency, accountability, and citizen participation, we find that of the ten "desirable" attributes outlined previously, only three (clarity of presentation, presentation in both detailed and summarized formats, and verification of goals attainment) are explicitly present. Others (truthfulness, exhaustiveness, comparability, sanction, and information on the debt) can be deduced from the preceding texts, subject, of course, to differences in interpretation, or they can be inferred from other laws not included in the present overview. The vacuum that existed because of the absence of mandates making the accounts public and accessible was filled with passage of the Access to Information Law in February 2005. The only attribute, then, that is still absent from the legal framework is scrutiny by the citizenry. The legal framework does not explicitly establish mechanisms that would enable citizens to learn of decisions issued regarding public accounts or to express their opinions on the matter. One assumption that may be drawn from the decisions regarding oversight of public accounts is that their content is considered too technical to be understood by the average citizen and, therefore, is restricted to a select group of auditors and accountants.

Sanctions are mentioned in the constitutional text but not in the more specific laws governing public accounts. The legal texts are meticulously detailed in specifying which parties are responsible for generating and reviewing public accounts, but they are vague, circumspect, or silent on the issue of setting or imposing sanctions. The only law that speaks of sanctions is the law on public servants' responsibilities, but its sanctions are not

⁶ Published in the *Boletín Oficial* of the State of Sonora, February 25, 2005 (No. 16, Section II).

applied by the executive or the judiciary but by the auditors within the municipal government itself, which means that the matter is handled internally or, as the adage suggests, “the dirty laundry is not aired in public.” Generally, the legal framework puts strong emphasis on producing public accounts but pays little attention to transgressions such as diversions of funds or other irregularities, and it makes virtually no mention of reparations.

But beyond identifying the relevant legal norms, it is very important to ascertain how this accountability process operates in practice. To this end, we will examine how audits of municipal public budgets are actually carried out.

PUBLIC ACCOUNTS DOCUMENTATION

According to legal procedure, the public accounts review process involves two documents:

- the public accounts report submitted by the *ayuntamiento*, and
- the assessment issued by the auditing office of the legislature.

The municipal public accounts report comprises a set of documents that the *ayuntamiento* delivers to the legislature. It typically includes summaries and general tabular information as well as more detailed information and verification of revenues and expenditures. Thus, depending on the size of the budget and the level of detail in the reports, the complete set of materials can be voluminous and time-consuming to review. It may be for this reason that the reports are generally not available to the general public but only to the accountants in the legislature’s auditing office and, by special request, to the legislative committee that oversees the public account.

The assessments issued by the legislative auditing office tend to be brief summary documents, and they follow a more systematic and standardized presentation format. The assessments on the public accounts examined for this study, which correspond to Sonora’s largest and most urban *municipios*, contain the following sections:

- an *introduction* that identifies the legal basis of the public account, and
- some *considerations* regarding the documents and reports submitted by the *ayuntamiento*:

1. *Balance*, which presents a summary of revenues and expenditures, as well as the amount of any deficit or surplus.
 2. *Revenues*, which itemizes tax revenues, duties, products, user charges, and special contributions for improvements, and also includes observations on each of these categories.
 3. *Expenditures*, which lists disbursements for personnel, materials, and supplies; general services; transfers; real estate and other real property; investments in development infrastructure; productive investments; and public debt payments.
 4. *Comparison of fiscal performance*, which includes tables that contrast revenues and expenditures during the period under review with those of the preceding period, and registers the changes.
 5. *Running expenses and investment expenses*, which analyzes the composition and relative weight of these two major components of expenditures and the public debt.
 6. *State of the public debt*, which reviews and analyzes the total municipal debt, its creditors, and its terms.
 7. *Attainment of goals, programs, and subprograms*, which presents the public works completed and some acquisitions of real estate and other real property.
- *Conclusion*, in which general observations and determinations are made regarding the *municipio's* finances and fiscal management. The conclusion is, in this case, quite extensive and accounts for approximately half of the document. The observations are divided into the following sections and subsections:
 1. *Direct administration*, which includes conclusions pertaining to evaluation and control, investigation, public works, and use of Ramo 33 funds (transfers from the federal level) by the municipal administration.

2. *Paramunicipal entities*, which presents conclusions regarding the decentralized entities linked to the municipal government, and describes their financial status.⁷
3. *A special section*, which references the obligation of the Office of the State Comptroller General to inform the federal Office of the Comptroller General when Ramo 33 funds are redirected.

Given the academic objectives of the present research, which are to observe and review, the assessments on public accounts are of value for a summarized and comparative study, while the full report, if it were accessible, could support a detailed study of the *municipios'* fiscal management. The following discussion considers the assessments issued by the Office of the State Comptroller General in Sonora in 2004. The review focuses principally on the conclusions and observations that the assessments present for the six *municipios* under study.

CONCLUSIONS OF THE ASSESSMENTS ISSUED

The conclusions are the most important element in assessments on public accounts. They contain observations and commentary on any anomalies or irregularities uncovered. To give some idea of what is contained in the conclusions, I will present a brief summary of the sections on attainment of

⁷ In the decisions of 2003, the following entities were included:

- San Luis Río Colorado: Integral Family Development (DIF), Public Works Coordinating Council, and the Potable Water Authority.
- Nogales: Integral Family Development, Public Works Coordinating Council, and the Industrial Park Trust Authority.
- Hermosillo: Integral Family Development, Public Works Coordinating Council, Water for Hermosillo, TIF Slaughterhouse, Urban Planning Institute, Agency to Promote Home Ownership, and the Public Lighting Trust Fund.
- Guaymas: Municipal Council for the Coordination of Public Works of Guaymas.
- Cajeme: Municipal Potable Water, Sewerage, and Sanitation Authority; Municipal Slaughterhouse; Central Bus Station; and Municipal Council for Public Works Coordination.
- Navojoa: Public Works Coordinating Council and the Potable Water Authority.

goals and on public works projects. I have simplified the language somewhat and have eliminated technical information that is not relevant for the present analysis.

The section on objectives and attainment of goals does not appear in the assessments for San Luis Río Colorado or Hermosillo. The following observations relate to the remaining four *municipios*:

- *Nogales*: For the offices of the municipal representative (*sindicatura*), municipal president, and Municipal Institute for Culture and the Arts, 63 of 73 stated goals were judged as having been met. Of the 10 that were not met, 8 involved oversight of the programmatic content of the budget and 2 pertained to the establishment of a youth mariachi.
- *Guaymas*: Of the 16,198 objectives identified by the *ayuntamiento*, 16,050 were considered accomplished. That is, 148 objectives were deemed unmet; these involved “oversight and evaluation of the various areas of municipal administration” by municipal commissions.
- *Cajeme*: Of 618 objectives outlined in the work plan, 66 had supporting documentation; the remaining 552 lacked documentary verification. The objectives that were confirmed corresponded to the September–December 2003 period (of the new municipal administration that took office on September 16). For the office of the municipal representative, “for 59 objectives reported as attained and supported by documentary verification, the information submitted demonstrates that these actually pertain to the 2003 cycle.”
- *Navojoa*: (1) It was not possible to verify the attainment of the 454 objectives that the municipal representative reported as attained because there was no system of control in place that would allow for corroboration. (2) The Department of Public Services reports that it was unable to meet 45,000 objectives because of a lack of budgetary resources.

The following observations derive from the review of objectives and goals in the assessments. First, it is not clear where the information on objectives to be evaluated comes from. Generally, an evaluation of goals presupposes some prior document (a plan, program, or budget estimate) that indicates the goals that were projected to be met during the year. Nev-

ertheless, the assessments do not specify whether such prior documents exist, and the investigation of the *municipios'* plans and budgets shows that some of these documents do not mention goals. When they do, the majority use imprecise language, fail to employ units of measurement, and, therefore, are not susceptible to precise assessment.⁸ Further, the majority of municipal development plans rarely refer specifically to programs, instead employing terminology such as "key lines of action." Thus everything seems to suggest that the goals mentioned in the decisions are drawn from the public accounts reports themselves. If the auditors have earlier documents that outline programmatic objectives, these documents are not publicly known and are not referenced in the assessments. A recommendation, then, is that the goals of the municipal governments should appear in annual budget proposals, operational programs, or in any other relevant document, and that these should be made public and accessible to the citizenry in advance of the evaluation.

Second, with respect to the criteria used to determine whether a goal has been reached, in all cases the determination is preceded by some variation on the following: "The attainment of objectives was verified, and this attainment is supported by documentary confirmation of this fact, to include: communiqués, records, projects, reports, and so on." This suggests that the criterion for determining the achievement of an objective is whether the municipal government has or has not submitted probatory evidence. There is, then, no physical verification, consultation with beneficiaries, or review of other documentary sources. If an objective carries accompanying documentation, it is judged to have been attained. If it lacks such documentary support, it is assumed to be unfulfilled. What remains unclear is who speaks to the truthfulness and reliability of the supporting documentation in each case. Clearly the exercise loses credibility if the documentary evidence has been produced by the very same office that is being reviewed.

Finally, it would be useful to verify the pertinence of municipal goals and objectives. Apparently some of them refer to internal organizational issues within the municipal administration (such as oversight of the programmatic content of the budget) and do not reflect actions or improve-

⁸ For a review and content analysis of the municipal plans, see Pineda Pablos et al. 2004.

ments to deal with problems in the community or issues external to the municipal administration. This favors the non-use of impact indicators, such as actions taken per thousand inhabitants or percentages by which certain problems, such as robbery or traffic accidents, have been reduced. Moreover, in some cases it would be advisable to reduce the number of objectives; some assessments speak of several thousand objectives, which appears excessive. It would be better to address fewer goals but goals that are verifiable and that have real social impact.

It is clear that the current procedure for verifying the fulfillment of municipal objectives is deficient and that much innovation and improvement is needed before the constitutional mandate is met that municipalities' progress toward programmed objectives be analyzed and verified.

The following paragraphs contain abbreviated versions of the annotations and observations regarding public works that appear in the decisions.

San Luis Río Colorado: Three works were identified as lacking their respective project file (the file that contains technical specifications for a project), nine had incomplete project files, and eight projects had not been budgeted. Further, during the site visit to one work project—a park—inspectors found that the park had no grass, even though there was an invoice indicating that grass had been purchased.

Nogales: Seven works have no project file; sixteen have incomplete files, and five reported works were not budgeted. Further, in the documentary verification of expenditures, it was found that receipts for 186,866 pesos in disbursements did not satisfy fiscal requirements, and expenditures totaling 373,811 pesos lacked any basis on which they could be confirmed. That is, adding these two figures, there were verification problems on a total of 560,747 pesos.

Hermosillo: One work with an associated cost of 252,016 pesos, which is listed in the Appendix on Physical and Fiscal Accomplishments, does not correspond with the facts, since the reported dates do not match with the actual dates of the work's construction. On March 18, 2004, a site visit found that the work was in the early stages of construction. Therefore, the contractual terms for this project are not being met; they state that work was to begin on December 12, 2003, and be completed by December 29, 2003, at the latest. On another project—a park costing 357,021 pesos—at the time of the site visit on February 13, 2004, it was found that the work was

still in process and that the construction had not been completed, as was reported in the Appendix on Physical and Fiscal Accomplishments dated December 2003.

Guaymas: It is reported that project files have not been assembled for three works: 6101-0001, "Provision of asphalt and sealer for street repair"; 6101-0002, "Motor grader service, transport of asphalt mixture and sealant for street repair"; and 6101-0003, "Provision of asphalt mixture for street paving." Upon physical verification of work project 6101-0003, "Provision of asphalt mixture for paving the road to El Varadero from the Cemetery tract to Benito Juárez Boulevard," this stretch of road was found to have several potholes, which reflects an unacceptable quality.

Cajeme: It is noted that five listed works do not have their respective project files and another seven have files that are incomplete. Furthermore, in the verification of other works, there were no receipts for expenditures totaling 4,382,633 pesos.

Navojoa: It is stated that two works lack project files and two works were undertaken that had not been budgeted. Moreover, it was found that expenditures of 496,012 pesos lacked supporting documentation or the receipts did not meet with fiscal requirements.

From the preceding observations on public works, we find that the document-related anomalies are of four kinds: nonexistent project files, incomplete project files, irregularities in verification or receipts, and works that were not budgeted. But the most relevant inference from these observations is that, in addition to the document review, the auditing office of the legislature also conducts a physical inspection of works and sometimes the inspectors' findings do not accord with the information contained in the project files. Such was the result of the inspections reported in Hermosillo and Guaymas. In an interview, officials in the auditing office stated that physical inspections are conducted for major projects with budgets above a certain threshold and are also sometimes carried out on randomly selected minor projects as well.

Clearly, as the preceding discussion illustrates, investigation of public works is a core element in accountability, and it plays an important role in improving the quality of life in the *municipios*. This investigative process does not function only to reprimand after the fact. The foreknowledge that the findings will be disseminated and be open to public scrutiny will

surely encourage officeholders to curb irregularities and improve the quality of public infrastructure.

EVALUATION AND RESPONSIBILITIES

Each assessment concludes with the following paragraph: "Taking the aforementioned results into consideration and acting as the Auditing Office of the Legislature of the State, based on the observations referred to in the conclusions, the decision is made (to approve) (not to approve) the Public Accounts of the Ayuntamiento of _____, Sonora."

Of the six public accounts reviewed here, five were approved and only one, that of Guaymas, was not approved. It is important to note, however, that no explanation is given for the nonapproval of the Guaymas accounts, and, at least based on this review, it is not clear why the Guaymas accounting was not approved—or, for that matter, why the others were approved.

The legislative process ends with the publication of the resolution of the State Legislature in the Official Bulletin of the Sonora State Government. This resolution does not include the assessments, nor the observations or data, nor specific numbers. It only relates the approval or nonapproval of the fiscal accounts of each of the *ayuntamientos*. The resolution pertaining to the 2003 accounts was published on September 20, 2004. It contained two articles: the first reports the approval of the public accounts for the 2003 fiscal year in 49 of the state's *ayuntamientos*, and the second asserts that, based on the findings issued by the Comptroller General, the Sonora State Legislature did not approve the 2003 fiscal-year public accounts for 23 *ayuntamientos*, Guaymas among them.

The resolution offers no justification for the decisions not to approve the public accounts of these 23 *municipios*, nor does it reveal the criteria on which these evaluations were based. Furthermore, a review of a sample of observations regarding three areas of government performance in six of the *municipios* did not indicate that Guaymas had exhibited more irregularities than the other five. In order to discourage such ambiguity in the future, it would be advisable to make public the general criteria on which the approve/disapprove determinations are made, as well as the specific reasons underlying each negative decision. If this is not done, it opens the door to suspicions that decisions may respond to political criteria that are not related to the actual fiscal performance of the *municipios*.

With respect to responsibilities, a second resolution, also dated September 20, 2004, was published along with the agreement discussed above. It instructs the Comptroller General to follow up on each of the reservations and observations made regarding the outcomes of the 2003 public accounts. The instructions specify that the irregularities be corrected and that those responsible be held accountable before the appropriate authorities. They also set December 15, 2004, as the deadline by which these instructions are to be carried out and the legislature informed of the result. In a February 2005 interview, the Comptroller General stated that this information had not yet been presented because several municipalities had not finished addressing the observations.

The procedure is as follows: the observations are turned over to the offices of the municipal auditors so that the irregularities can be corrected. The municipal administration then corrects the documentation and receipts or provides missing information, thereby satisfying the requirements of the auditing office. As a last resort, the irregularities are addressed and resolved by the corresponding municipal office and, if action is to be taken against an official, this is not made public but is handled quietly within the municipal administration.⁹ In this way, even though the general opinion among the citizenry is that many officials inexplicably become rich while in office, legal proceedings against municipal officials for misappropriation or embezzlement of public funds are practically unknown. Even less common are prosecutions for crimes committed against the municipal treasury.

A third agreement published in the Official Bulletin on September 20, 2003, mandates that the assessments on the state and municipal governments be made available to the public and be disseminated via the legislature's Internet Web page. In February 2004, these assessments were posted on the Internet at www.congresoson.gob.mx, making the assessments publicly available and Internet accessible for the first time. This is a clear indication that the old veil of secrecy surrounding public accounts is beginning to lift and holding the potential to encourage many other changes, such as, for example, greater citizen participation in oversight of expenditures and the creation of a community of argumentation around these topics.

⁹ Interview with Comptroller General Eugenio Pablos Antillón, February 2005.

ACCOUNTABILITY AND DEMOCRATIC TRANSITION

Until the 1990s, the review and evaluation of municipal public accounts was a closed process with authoritarian overtones. The formal construction of the vision (or account) of government performance reflected the proposal of the incumbent administration; reports, accounts, and records registered only what the government approved and proposed. Information on government activities was not disseminated, nor was it accessible to the general public. Any interpretation or evaluation fell within the purview of the auditing office of the legislature. And any sanctions were imposed at the discretion of the incumbent administration and needed to adhere, therefore, only to the administration's own criteria. There was no community of argumentation that would review, analyze, and debate the evaluation of government performance.

Accountability, then, was a closed process, restricted to a group that was subordinate to the current administration. This oversight scheme was a corollary of a regime of strong executive power, a subordinate legislature, limited pluralism, and controlled elections with no chance for party alternation in office. The only checks on "the account" that the administration provided were, on the one hand, the subordination of those in power to higher levels of government—*ayuntamientos* to the governor, governors to the president—and, on the other hand, the periodic rotations of political groups in office, such that one administration could investigate anomalies of the preceding government. Granting or withholding approval of a public account was an instrument of political control. There was no room for the visions or opinions of other groups or independent actors. It was an eminently authoritarian process, and any pretense of accountability was a sham.

Nevertheless, propelled by increasing political pluralism and the alternation of parties in power, changes have occurred in the process of reviewing and evaluating accounts. The primary modification is the publication of public accounts and their availability to a broad public. In the case of Sonora, posting the assessments on the *municipios'* public accounts to the Internet in 2004 made these records accessible to anyone who wanted to consult and review them. What is still lacking, however, is to disseminate the public accounts that the municipal governments compile. The substantial size of these reports should not be a reason for restricting access. The

Access to Information Law, passed in February 2005, addresses this shortcoming; it obligates the state legislatures and *ayuntamientos* to develop files for this very purpose. Opening up and publishing the information on public accounts is, then, a strategic advance that can stimulate further reforms.

The other element of change is the surge in the number of entities that review and evaluate public accounts. This means that the evaluation of the government's account is not restricted to the closed arena of an internal audit. Instead, there is an opportunity for the media, academic institutions, and independent civic organizations to participate as well. Using the available information, various Mexican newspapers and other media have taken on the task of government oversight. At the same time, there is an increasingly extensive network of academics and analysts with expertise in government financing and expenditures who are prepared to undertake evaluations and share their findings with the broader public. And there are civic organizations willing to put the actions and operations of government under a magnifying glass. One example is the Citizens Network of Chihuahua (Red Ciudadana Chihuahua), which since 2001 has been dedicated not only to investigating fiscal policy and lobbying for legislative and municipal transparency, but also to building capacity among the citizenry to carry out these tasks.¹⁰ This kind of social development constitutes an institution that is being built on a foundation of experience and social learning.

Nevertheless, democratic progress toward accountability is not restricted to or composed of a simple diversity of actors scrutinizing government. Nor is it illustrated by a convergence of views or an escalation of conflict. Developing interpretive communities implies achieving a delicate balance between unity and diversity: "the modern democratic vision embraces the idea that unity and diversity can be made not only mutually consistent but also mutually supportive through a system of informed, empathic tolerance" (March and Olsen 1995, 169). "The objective of democratic account management is not to secure plebiscitary support for desired actions but to assure the existence of interpretive communities within which mutual understanding and an anonymously authored and generally comprehended policy can emerge" (Habermas, quoted in March and Olsen 1995, 175). The image of an interpretive community is not, therefore, journalistic coverage that stirs up scandal and exaggerates the facts, nor is it an

¹⁰ See www.redchihuahua.org.

irreconcilable and paralyzed rivalry between polarized partisan groups, nor a morbid search for winners and losers. Rather, it is similar to a community of judges and lawyers whose vocation is legal reasoning and the constructive interpretation of judicial decisions. The challenge of the democratic transition is to foster the development of interpretive communities composed of individuals and groups that can communicate with one another within a framework of shared responsibility for developing and exchanging information and for maintaining the collective community (March and Olsen 1995, 177).

In summary, we can state that in Mexico the review and evaluation of municipal accounts still retains some authoritarian features. Nevertheless, there are indications of change and increasing openness. Mexico's democratization will depend on the development of open and plural social networks able to interpret political reality. These institutions will constitute a community of argumentation that observes, reviews, investigates, and judges government performance.

CONCLUSIONS AND RECOMMENDATIONS

In a democracy, accountability constitutes a social process of constructing and negotiating a vision of reality. Unlike authoritarian systems, in which the vision of reality is imposed through a vertical and unilateral discourse, in a democracy accounts are rendered by the authorities; subjected to norms, reviews, and evaluations by auditors; examined and evaluated by a network of actors from social groups and organizations; and negotiated within a multilateral and plural framework. Thus the accounts that the authorities render are subject to multiple cycles of review and reinterpretation.

The report known as the "public account" is one of the primary instruments that governments have for rendering accounts both to the legislature and to the governed. At the same time, public accounts, and especially the assessments issued and disseminated by the auditing office of the legislature, offer a means for citizens to investigate the use of public funds and to ensure that the general interest prevails over individual interests. Nevertheless, in order for this instrument to be truly effective, it must be made public and accessible to the citizenry and not confined to the closed arena of the legislature's auditing office. This office should not be the only entity

involved in review and oversight of the public account; other groups and organizations should be given the opportunity to conduct their own investigations. In this way, the accountability process is directed toward the construction of an interpretive community that reflects the various locations, specialties, expertise, and interests that are affected by government actions (March and Olsen 1995, 175).

The bases for democratizing the presentation and evaluation of public accounts and making these more effective are information and sanctions. This implies that there is a basis of dissemination, transparency, and critical scrutiny, not only regarding the mathematical calculations but also regarding the assumptions, explanations, interpretations, and general vision of reality that the accounts contain. Furthermore, this process of scrutinizing the information should culminate in an assessment, evaluation, and, in the case of irregularities, sanctions for any misappropriations or discrepancies uncovered. Otherwise, the process loses its rationale and runs the risk of being transformed into empty ritual.

To ensure that the submission of reports on the public account functions as a genuine accountability mechanism, this study proposes that the information be public and accessible, clear and comprehensible, truthful and verifiable, exhaustive, comparable, provided in both summary and detailed format, include information on the public debt and other contracted commitments, and confirm progress toward and achievement of target objectives. Further, the process should be recurrent, regular, and frequent, permit and encourage citizen inspection, and impose sanctions for the diversion or misuse of public funds. Also, a democratic process of accountability should give citizens and program beneficiaries the opportunity to voice their opinions and assess the actions of government. In this way, the review and evaluation of the public account in a democratic context is conducted by a network of organizations, groups, and independent actors that constitutes a "community of argumentation."

The legal framework that was in effect in Sonora for the process of rendering public accounts for 2003 did not stipulate that the decisions issued on these accounts would be published or otherwise made accessible to the citizenry. Nevertheless, the decisions on the 2003 public accounts were made public, for the first time, on the Web page of the Sonora State Legislature and thereby made accessible to the general public. Later, the Access

to Information Law, approved on February 25, 2005, mandated that information on public accounts be available to the citizenry.

This chapter's examination of the content of public accounts found that reviews of program objectives and goals reported as met were superficial and insufficient. Among the deficiencies that were detected is that the investigations did not involve consultation of earlier documents in which objectives and goals were laid out. Further, the criterion for determining whether a goal had been reached was the very narrow determination of whether the municipal government had submitted supporting documentation. It would also be advisable to verify the relevance of some of the listed goals. The current situation generally fosters the non-use of indicators such as, for example, actions per thousand inhabitants or the percentage by which a given problem has been reduced. In sum, there is still ample room for improvement and innovation in the review and evaluation of municipal governments' goals and objectives.

Regarding the oversight of public works, decisions on public accounts generally report both documentary and physical irregularities in public works. Documentary problems include the absence or incompleteness of a project file, the lack of verification, and public works that had not been budgeted. Physical shortcomings are noted during on-site inspections conducted by the legislature's auditing office; these include discrepancies between dates appearing in the project report and the actual dates of work on the project, as well as poor quality in work done. The process of conducting physical inspections is one strength of the public accounts review, and it can contribute significantly to improving municipal governments' performance. Nevertheless, the quality of these investigations could be enhanced considerably if the process were opened to include participation by citizens and other interested groups.

In terms of evaluating public accounts, although the assessments record observations of irregularities and anomalies in all of the municipalities, it remains unclear what criteria underlie the determination to approve some public accounts but not others. For this reason, it would be advisable to provide a clearer and more accessible definition of the assessment criteria being employed, and also to explain and justify the evaluations issued in each case. This might even include an assessment scale that is more sensitive, expressive, and qualitative than the simple approved-not approved

dichotomy. Without this, the simple determination of approved or not approved suggests the intervention of discretionary or outside influences that should have no bearing on a strict review of fiscal management and government performance.

A key aspect of the democratization of accountability is the imposition of sanctions when the information generated casts political actors in a poor light and is interpreted as unacceptable. In the case of the municipal public accounts in Sonora, we find a rather confused and poorly defined schema for sanctioning irregularities and diversions of funds based on a logic of what is correct and right. The sanctions structure has not been disseminated, made transparent, or opened up to citizen participation, and these matters are handled in a strictly internal fashion by the auditing office of the State Legislature and by auditors within the municipal governments. There is a need, then, for more clarity, openness, transparency, and institutional pluralism in the processes of determining and imposing sanctions on political actors found to have acted improperly.

Although public accounts are beginning to be made public and accessible, which is an important step toward opening up the accountability process, important features are still absent. One is the failure to incorporate groups, organizations, and the general citizenry into the network of observers and evaluators of government actions, so that the process can become more diverse, plural, and negotiated in the public arena. This is part of a process of institutional development toward creating an interpretive community that makes government action possible and more effective.

In general, it seems that the authoritarian pattern of rendering accounts has begun to break down, and we can see the first steps toward a democratization of the accountability process and toward transforming public accounts into a valuable mechanism not only for oversight to ensure the proper use of public funds, but also to judge the relevance, effectiveness, and quality of the decisions and actions taken. To the degree that this reflects greater openness, pluralism, and civic participation in the process of overseeing public accounts, there will be progress toward the construction of interpretive communities that contribute significantly to improving the performance of municipal governments and the collective good.

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5

When and Why Do “Law” and “Reality” Coincide? De Jure and De Facto Judicial Independence in Chile and Mexico

ANDREA POZAS-LOYO AND JULIO RÍOS-FIGUEROA

Our aim in this chapter is to determine under what conditions constitutional laws are likely to be observed or ignored. We explore this issue by focusing on the conditions under which the constitutional provisions that establish an independent judiciary are likely to be honored. The observance of these provisions is particularly important given that judicial independence is crucial for the establishment of the rule of law (Raz 1977, 198) and of horizontal accountability (O'Donnell 2003).¹ Recent work on countries as disparate as Argentina (Chavez 2004) and Tanzania (Widner 2001) confirms that not only academics but also politicians, judges, and representatives of civil society agree on the fundamental role that an independent judiciary plays. It follows, then, that observance of these provisions regarding an independent judiciary makes the observance of other constitutional

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¹ These are contested terms (see, for example, Carothers 2006; Kenney 2003), but there seems to be a consensus that judicial independence is a necessary condition for both.

provisions more likely, such as those that establish individual rights and the separation of powers.

In Latin America the distinction between formal and informal rules dominates the debate on this topic. While recent work (such as Helmke and Levitsky 2004) has begun to systematize this discussion, there is still a broadly held view that in Latin American “quasi-democratic oligarchies the administration of justice in practice is nearly always worse than the written rule on which it operates” (Groth 1971, 21, cited in Chavez 2004, 23). In other words, the consensus in Latin America seems to be that the level of judicial independence *de jure* is a lot higher than it is *de facto* (see, for example, Verner 1984, 463; Rosenn 1987, 2; Larkins 1996, 615; O’Donnell 1996, 40–1; Popkin 2002, 112; Mainwaring 2003, 5; Chavez 2004, 23).

In this chapter, we challenge this consensus and argue that it is based on an oversimplified look at legal texts. Our first task is to capture the level of judicial independence that the constitution grants. To do so we use a theoretically informed, reproducible, and comparable *de jure* measure of judicial independence that reveals a complex and nuanced picture. Using this measure of *de jure* independence as a premise, we pin down our initial general question: under what circumstances can we expect the measure of judicial independence *de jure* to be a good proxy for what we can expect to happen in reality?

We argue that whether this *de jure* measure can be considered a good proxy or whether we can expect it to overestimate or underestimate judicial independence in reality depends on the political conditions that establish the distribution of power among the ruling political groups. Having identified those political conditions and what Supreme Court judges can expect from them, we explore the likely behavior of these judges regarding decisions on cases where the government violates the rule of law or horizontal accountability. Having laid out our theoretical expectations in six different scenarios, we proceed to illustrate them using examples from Mexico and Chile.

The chapter is divided into three parts. In the first, we provide some clear and theoretically grounded conceptual tools. In the second, we lay out our arguments and theoretical expectations, and we contrast these expectations to our case studies. Finally, we conclude.

CONCEPTUAL CLARIFICATIONS AND DEFINITIONS

Independence To and Independence From

Research on judicial independence can be separated into two types of studies: the first set focuses on judicial behavior and the second, on the institutional framework. In some cases, these are perceived as two competing ways of studying judicial independence. In contrast, we will show that they are interdependent and hence better viewed as two complementary forms of judicial independence.

Research on judicial behavior usually approaches the question of independence through the study of actual decisions. These studies consider that judicial independence exists if judges are *independent to* decide, for instance, against the government if there was a violation of the constitution. From this perspective, the question of whether there was judicial independence in a given context becomes whether decisions in the particular context were independently taken. Hence much of the researcher's effort goes to establish criteria to enable him or her to characterize a given decision as independent or not independent. This is what we call *independence-to*.² In this chapter we focus on judges' *independence to* take decisions against the government in cases that involve the protection of rights from governmental abuses because these cases are directly linked to the rule of law and horizontal accountability.³

² While some scholars argue that the sources of judicial preferences lie in the institutional incentives they face, others argue that they are to be found in judges' ideologies, and still others find them in public opinion. For an extensive list on references, see McNollgast 2002. The main problem these studies confront is the impossibility of inferring independence-to from decisions against the government, since decisions in favor of the government can be made by judges who are free to decide independently.

³ The fact that judges do not have independence to make this type of decisions does not imply that they do not have independence to make other kinds of decisions. In this connection, it is important to note that the judiciary can play different roles and to call into question the image that the judiciary plays no role and the law is of no importance in authoritarian regimes. For more on the roles that constitutional law plays in authoritarian regimes, see Pozas-Loyo 2005. For interesting examples, see Barros 2002 on Chile during the junta's dictatorship and Balme and Pasquino 2005 on the increasing importance of the judiciary and the roles it plays in China.

Having defined independence-to, we rephrase our question. We seek to answer why and under what conditions the level of independence-to can be expected to coincide with the level of judicial independence *de jure* and, further, in cases where such coincidence is not likely to occur, whether we can expect that the degree of judicial independence-to will be higher or lower than the level established by our measure of judicial independence *de jure*.

A second approach to judicial independence is the study of the incentives and limits that judges have vis-à-vis other governmental agents. For this type of study the question is whether there is judicial independence *from* other governmental agencies.⁴ The degree of independence-from in a country can be assessed by looking at the laws that establish the relation between judges and/or the judiciary and other governmental branches. But clearly that is not enough. It is also necessary that those laws are not violated. Therefore, we consider that the degree of judicial independence-from in a given country is, say, high if and only if: (a) there is a high degree of *de jure* judicial independence, and (b) the politicians act in accordance with the legal provisions that determine such degree. We thus need to establish why and under what conditions it can be expected that the members of the other branches act in accordance with the provisions that determine the degree of judicial independence *de jure*.

Therefore, we use our measure of judicial independence *de jure* as a standard against which to compare the expected levels of independence-to and independence-from. One advantage of this way of proceeding is that the whole analysis rests on a *de jure* measure of judicial independence that

⁴ "Independence from what or whom?" is a question that concerns most authors (such as Linares 2004; Pasquino 2003; Burbank and Friedman 2002; Russell 2001; Cappelletti 1985; Shetreet 1985). Some authors make the distinction between independence from political branches and independence from the parties in a case (Cappelletti 1985; Pasquino 2003; Fiss 2000; Larkins 1996). Others argue that it is independence from "undue interferences," without specifying further (Shetreet 1985). And others directly consider only independence from political branches (Landes and Posner 1975; Ferejohn 1999; Rosenberg 1992). Here we focus on external pressures that come from the elected branches of government but acknowledge that a broader notion of independence-from could consider pressures from other external sources such as the media.

is comparable across countries, comparable across time within the same country, and reproducible by any person that looks at the legal texts and follows our coding rules. With this in mind we now describe our measure of judicial independence de jure.

Judicial Independence De Jure

The degree of independence de jure in a given country can be assessed by looking at its constitution. The study of de jure judicial independence in Latin America has been long overlooked because it is commonly believed that the law is largely ignored and does not play any important role in the region. We challenge this view and argue that it is built on an oversimplified look at legal texts. True, in all Latin American constitutions there is an article stating that the judiciary is independent and that judges are bound only by law. But there are many other articles in which the particular institutional mechanisms that would make the preceding sentence a reality are specified, and these articles give a much more nuanced and complex picture of the components of judicial independence according to a pure de jure measure.⁵

We establish the level of judicial independence de jure by unpacking the concept into two of its components, measuring each based on a set of observable institutional variables, and coding the constitutions of the countries according to rules consistent with a precise definition of independence.

We define judicial independence de jure as a relation between an actor “A” that delegates authority to an actor “B,” where the latter is more or less independent of the former depending on how many de jure controls “A” retains over “B.” In the literature there are two important and clear distinctions. The first is between the individual judge and the institution of the judiciary. The second is between pressures on the judge from within and pressures from outside the judiciary. Using autonomy to refer to the judiciary and independence to refer to individual judges, we unpack the

⁵ This seems to be part of a larger set of inaccurate perceptions about institutions in Latin American countries. Another instance is that, contrary to common perception, executives in Latin American countries are subject to more horizontal controls than are executives in OECD countries (Przeworski 2002).

concept into two components: Autonomy, or the relation between the elected branches of government (actor “A”) and the judiciary (actor “B”); and External Independence, or the relation between the elected branches of government (“A”) and Supreme Court judges (“B”).

Autonomy. An autonomous judiciary decides on its own basic institutional structure, in contrast to a heteronomous judiciary, which would have its structure controlled by the other branches of government. The basic institutional structure of the judiciary is composed primarily of courts, their number, location, jurisdiction, the number of judges sitting in them, and whether the judiciary has or does not have the power of constitutional adjudication with *erga omnes* provisions.⁶ We can distinguish between three possible outcomes regarding who controls those variables: one organ (executive or legislative), two organs (executive and legislative), or the judiciary itself. The degree of autonomy would be highest if the judiciary itself controls those variables, lower if two organs control them, and lower still if they are in the hands of only one organ. Then if the constitution⁷ of a country: (a) specifies that the number and jurisdiction of the courts are to be decided by the judiciary itself, (b) establishes the number of Supreme Court judges,⁸ (c) provides a fixed percentage of gross domestic product

⁶ The power of constitutional adjudication can be vested in a special organ outside the judiciary (such as a constitutional court, as is common in Europe) or within the judiciary (in the Supreme Court and all lower federal courts, as in the United States). Latin American countries have created new models with both European and American elements (Navia and Ríos-Figueroa 2005). *Erga omnes* provisions mean that judicial decisions are valid for all, and not only for the parties that are disputing a particular case.

⁷ Assuming that amending the constitution is harder than changing laws, the degree of *de jure* autonomy would be highest when the provisions regarding who decides on the basic structure of the judiciary are written down in the constitution, lower if they are regulated by ordinary statutes, and lower still if they can be changed by, say, presidential decree.

⁸ We take “whether the number of Supreme Court judges is specified in the constitution” as a proxy for who decides on the number of judges. We have two reasons for this: establishing a specific number in the constitution intends to protect the political packing or unpacking of the Supreme Court, and the number of lower court judges usually responds more to practical than to political considerations.

(GDP) for the judiciary, and (d) establishes that effective judicial review lies within the judiciary, the judiciary of that country would have the highest degree of *de jure* autonomy.⁹

External Independence. Whether Supreme Court judges are more or less externally independent can be determined by looking at the institutional variables that regulate the relation between them and the elected organs of government: appointment, tenure, impeachment, and salary. Again, to determine the degree of external independence, one should answer who controls each variable and where we find this information.

If the constitution specifies that Supreme Court judges are appointed by the judiciary or by at least two organs of government, we consider that fact as an appointment procedure counting toward *de jure* external independence. Similarly, if the constitution specifies that Supreme Court judges' tenure is longer than that of their appointing authorities, we count it toward external independence. Impeachment proceedings also relate Supreme Court judges with the elected branches of government. We are interested in the accusation part of the impeachment process, because we want to capture the degree of potential influence over Supreme Court judges. Thus, if the constitution specifies that Supreme Court judges can be impeached by the judiciary or by at least a supermajority of one chamber of Congress, we add that to external independence. Finally, we also add to external independence if the constitution specifies that Supreme Court judges cannot have their salaries reduced while in office.

We can take autonomy and external independence as two distinct components of judicial independence. In our case studies, we measure each component separately and also provide factual information about both. However, for the sake of clarity, in the theoretical arguments that follow, we rely on a rather crude distinction between “high” and “low” *de jure* judicial independence. In particular, when we say that the degree is “high,” we mean that the combined score of autonomy and external independence is at least 4 (out of a possible 8).

⁹ Further justifications, detailed coding rules for each variable, and another component called internal independence can be found in Ríos-Figueroa 2006.

Accordance between De Jure Independence and the Actions of Politicians

The degree of judicial independence-from in a given country is high if and only if (a) there is a high degree of de jure judicial independence, and (b) politicians do not violate these provisions. It is important to note that the expected level of independence-from cannot be higher than the level of independence de jure, although it can clearly be lower. To see why, let us give a more detailed account of what low levels of accordance between the actions of politicians and de jure judicial independence would amount to.

The de jure degree of autonomy is determined by who has control over the relevant variables. Suppose we have a country with a very low level of de jure autonomy, meaning that the elected branches have the legal faculty to change the number of courts, their jurisdiction, the number of Supreme Court judges, and to determine the budget of the judiciary. Suppose further that the politicians have not used these legal faculties to alter the structure of the judiciary. Would we say in this case that the politicians' actions were not in accordance with the de jure autonomy? Clearly not; their acts would have been in accordance with the faculties that the constitution grants them, and hence the expected level of independence-from would correspond to the level of de jure independence.¹⁰

In a nutshell, to violate a legal provision is to act in ways that are explicitly prohibited by it. The executive would violate the provisions that establish autonomy if she did things that she does not have the legal faculty to do (such as to change the number of Supreme Court judges when the constitution gives this power to a judicial council). Therefore, a case where the politicians do not exercise their legal faculties to transform the structure of the judiciary should not be conflated with a case where they do not have those faculties. The former is a case of low de jure autonomy with politicians' actions in accordance with the constitution, while the latter is a case with high de jure autonomy. Cases of low de jure where there are violations of legal provisions are highly unusual. However, it is important to note that, given that a high degree of independence-from requires a high

¹⁰ Note that the expected level of independence-to could be higher than the level of de jure judicial independence. In the next section, we will see under what conditions this would be the case. Chile (1990–2005) is an example of low independence-from but where the level of independence-to is higher than the de jure level.

degree of independence *de jure*, these cases would not amount to a higher level of independence-from than the level of *de jure* independence.

The same reasoning applies regarding external independence. *De jure* external independence establishes the controls that the elected branches have over Supreme Court judges. The fact that politicians do not use these faculties to punish judges (if, for example, they do not use their legal faculties of impeachment) is not the same as to make the judges externally independent-from. To have a generous master is not the same as to be free.¹¹ To see what reasons support our definition of independence-from in this respect, it is useful to note that the sole fact of the possibility to impeach may undercut a Supreme Court judge’s independence, just as the possibility of being punished may deter a child from an action that violates the family’s norms. Clearly, we would not infer from the lack of instances of punishment that a family’s norms do not limit the child’s actions; nor can we infer from the lack of impeachment that there is higher external independence.

In this connection, as we argue in the next section, certain political conditions can have an important effect on the likelihood that the elected branches will be able to act in a coordinated way to grant Supreme Court judges independence *to* make important and controversial decisions they would not otherwise make given that their independence *from* the elected branches is low. Under these conditions, the expected level of independence-to will be higher than the level of independence *de jure*.

Multilateral and Unilateral Constitutional Settings

A given state has a multilateral constitutional setting if and only if there are at least two different political parties in the legislative and no political group has the capacity to unilaterally amend the constitution given the established requirements.¹² Here it is important to note that “political group” refers not only to political parties but also to other types of groups with political power, such as a military junta.

¹¹ For a nice theoretical discussion on the related contrast between freedom as no interference and freedom as no domination, see Pettit 1999.

¹² For the theoretical grounding of these distinctions, see Pozas-Loyo 2005.

A given state has a unilateral constitutional setting if and only if there are not two different political parties in the legislative and/or a single political group has the capacity to unilaterally amend the constitution given the requirements contained in the constitution. For our purposes, it is important to note that if those in power have the capacity to legally transform the provisions that establish the level of judicial independence *de jure*, we are in a unilateral setting.

Divided and Unified Government

A given state has a unified government if and only if a political party or group has the capacity to enact laws, which in most cases is equivalent to saying that a single party controls the executive and has a majority in the legislative. A given state has a divided government if and only if no political party or group has the capacity to enact laws by itself, which in most cases is equivalent to saying that the political party of the executive does not have a majority in the legislative. Note that this distinction only makes sense in multilateral constitutional settings since all unilateral settings are by definition unified.¹³

WHEN AND WHY DO JUDICIAL INDEPENDENCE IN LAW AND REALITY COINCIDE?

To answer this question, we first determine whether we can expect members of the executive and legislative branches to act in accordance with the provisions that establish the level of independence *de jure*. This analysis rests on different combinations of the constitutional setting (multilateral or unilateral) and government characteristics (unified or divided). These conditions, joined with the expected actions of the elected branches, enable us to determine whether we can anticipate coincidence between the levels of independence-to and independence-from and the level of *de jure* independence, and, if not, to establish whether we expect their levels to be

¹³ Notice that this distinction directly applies to presidential systems but not to parliamentary regimes. In the latter, further distinctions between “minority governments” (as those in Scandinavian countries), “*grosse koalitionen*” (as in Germany), and “technical governments” (as the Italian ones) would be necessary. We thank Pasquale Pasquino for this clarification.

higher or lower than the level of independence *de jure*. Our theoretically informed typology is summarized in figure 5.1.

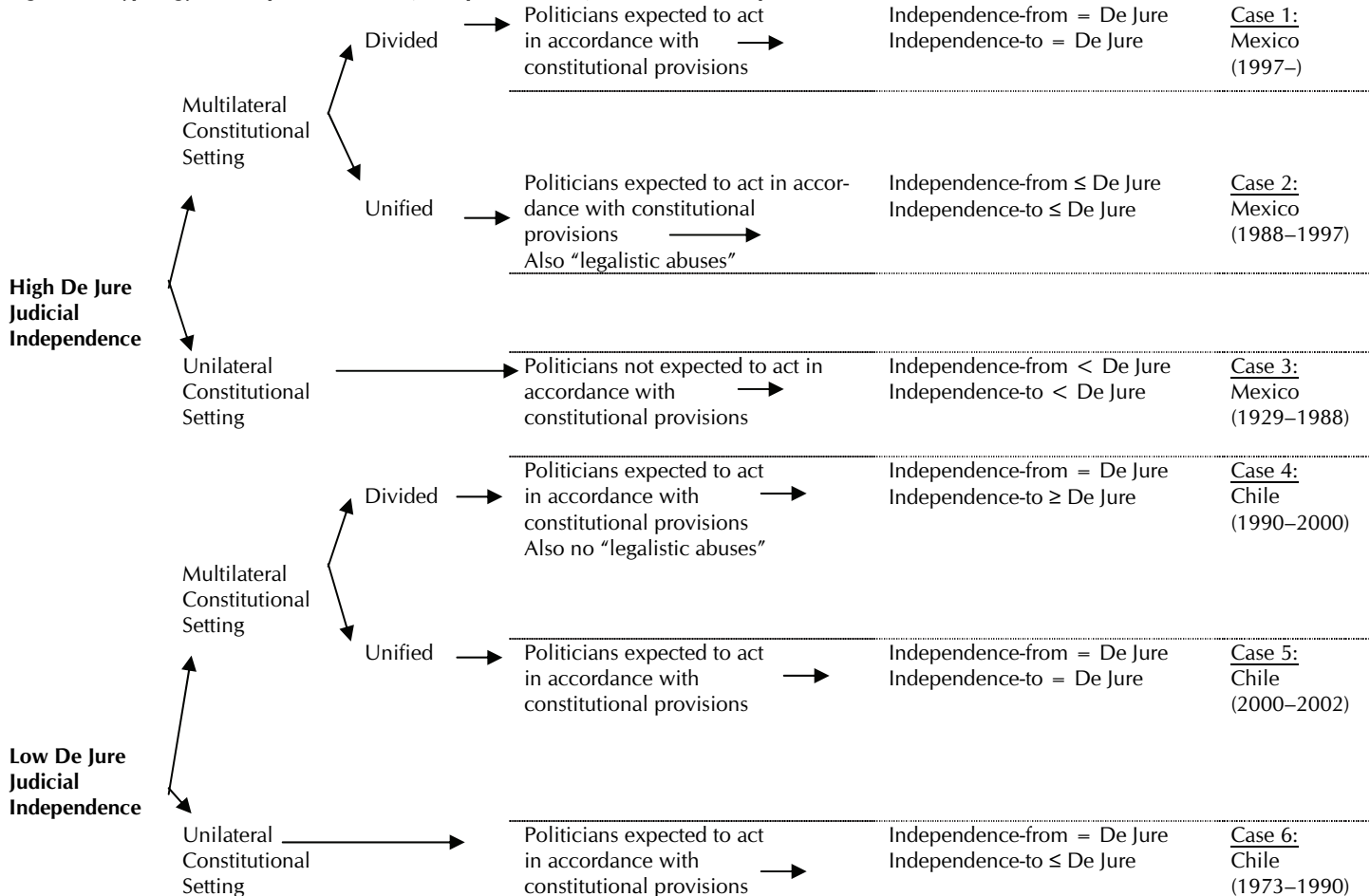
In what follows, we briefly argue what we expect in each of the cases, and we illustrate each case with examples from Mexico and Chile, countries with high and low levels of judicial independence *de jure*, respectively.¹⁴ Within each case we discuss all the elements of our argument and provide an example. Our measure of judicial independence *de jure* is taken from Ríos-Figueroa 2006. For actual judicial behavior we rely on a number of secondary sources and other data we have collected. Our discussion of the cases is not intended as a detailed description of the historical circumstances in the two countries, though we suggest references for the interested reader. It is very hard to conclude unambiguously without systematic behavioral data whether the politicians acted in strict accordance with the constitutional provisions, or whether the judges exercised the expected degree of independence-to. Nonetheless, we believe that with the information at hand we can provide good illustrations of our theoretical expectations.

CASE 1: HIGH DE JURE JUDICIAL INDEPENDENCE, MULTILATERAL SETTING, DIVIDED GOVERNMENT

In this scenario we expect politicians to act in accordance with the constitutional provisions that determine *de jure* independence. Political power is highly dispersed. At least two political groups have veto power, not only over any constitutional change but also over the regular legislative changes. The presence of divided government makes it very likely that the interests of the executive and the majority in the legislative will differ on issues such as the role of the judiciary in horizontal accountability, rule of law, and protection of citizens' rights. This is the case because judicial rulings against executive abuses are likely to be politically capitalized by the party of the majority in the legislative, and vice versa. In addition, since interests between the elected branches differ, a violation of the constitutional provisions for judicial independence by either branch could be capitalized by

¹⁴ We present one example per theoretical case, using Chile and Mexico as case studies. Examples from Argentina in Case 1 (1983–89) and Case 2 (1989–98) can be found in Pozas-Loyo and Ríos-Figueroa 2006.

Figure 5.1 Typology of Independence-From, Independence-To, and De Jure Independence



the other branch, which would probably ally with the judiciary to impose political costs on the transgressor.

Now, given that in this scenario the level of judicial independence is high and politicians are expected to act in accordance with the constitution, it follows that the expected level of independence-from will coincide with the level of judicial independence de jure—that is, high. Regarding independence-to, Supreme Court judges are likely to expect politicians not to violate the independence de jure, and to perceive the fact of divided government as additional protection for those components of judicial independence that are not protected in the constitution but subject to change via the regular legislative process. The reason is that divided government implies coordination difficulties for the legislative and the executive, and it constitutes an obstacle for the enactment of laws and policies that could undermine judicial independence. These expectations will arguably ground a high level of independence-to, since Supreme Court judges would more freely decide against the government in cases that involve, for instance, the protection of rights from governmental abuses. So we expect the level of independence-to to be high, as would be the level of judicial independence de jure.

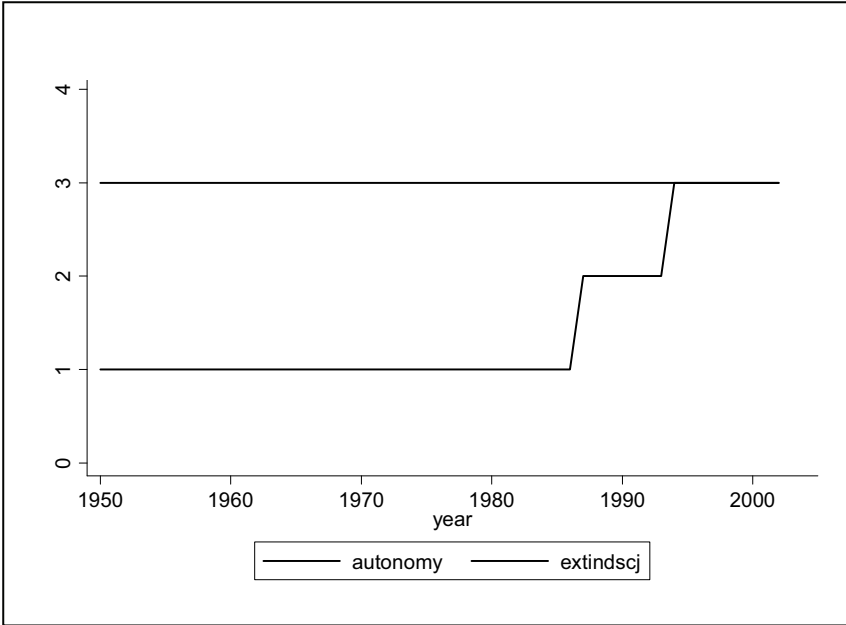
Illustrative Example: Mexico, 1997–today

High De Jure Judicial Independence. During this period, Mexico has enjoyed a high degree of judicial independence de jure, both in autonomy (with 3 out of 4 points) and in external independence (again 3 out of 4 possible points) (see figure 5.2). Regarding autonomy, the number and jurisdiction of the courts are currently under the control of the judiciary through the Consejo de la Judicatura (Judicial Council) with judges in the majority (Art. 94). In addition, the number of Supreme Court judges is specified in the Mexican Constitution, meaning that to alter this number is out of the reach of simple majorities because it entails a constitutional amendment.¹⁵ On the contrary, the budget for the judiciary is determined by the executive and legislative. Unlike constitutions of other countries, the Mexican one does not specify a percentage of GDP for the judiciary, and

¹⁵ The number of Supreme Court judges has been established in the Mexican Constitution since 1944.

each year the judiciary has to bargain for its budget (this takes away the last possible point). Finally, since the judicial reform of 1994, the Mexican Supreme Court concentrates the power to effectively control the constitutionality of laws and acts of government in the country.

Figure 5.2 Autonomy and External Independence in Mexico, 1950–2002



Note: This figure shows that external independence in Mexico has been constant at 3 since 1950, while autonomy increased from 1 to 2 in 1987, and then to 3 in 1994.

The degree of external independence *de jure* in Mexico during this period is 3, as has been the case since 1944 (see figure 5.2). These points correspond to the tenure, salary, and appointment of Mexican Supreme Court justices: (1) their tenure is fifteen years (Art. 94), longer than the six-year tenure of their appointing authorities, the president and the Senate;¹⁶ (2) their salary is protected in the Constitution (Art. 94); and (3) they are ap-

¹⁶ The fifteen-year tenure is a product of the 1994 judicial reform. From 1944 to 1994, the Mexican Constitution granted Supreme Court judges life tenure.

pointed by two organs of government (Art. 96). The only variable that makes justices dependent in Mexico is impeachment since a simple majority in the Chamber of Deputies can initiate the impeachment process.¹⁷

Multilateral Setting. To distinguish the periods under which a single power group was able to amend or change unilaterally the constitutional provisions regarding judicial independence, we look at the constitutional rules for amendment. According to the Mexican Constitution (Art. 135), the amendment procedure requires a supermajority vote of two-thirds in both houses of Congress plus the approval of at least a majority of the state legislatures (via majority vote). From 1929 until 1988, the Institutional Revolutionary Party (PRI) controlled the different organs needed to amend the Constitution, meaning that during those years all amendments (more than 400) were done unilaterally by the PRI. Following this criterion, we suggest that the Mexican Constitution of 1917 started on the mutilateralization path in 1988 when the PRI lost the monopoly over the constitution-making process as it yielded its supermajority in the Chamber of Deputies (see Pozas-Loyo 2005).¹⁸ After 1988, the opposition parties in Mexico also became constitution-makers and have contributed important amendments. Those undertaken in 1994 are of special importance for our purposes; one is the judicial reform that increased the *de jure* levels of autonomy.

Divided Government. It is important to distinguish two periods within the multilateral setting existing in Mexico since 1988. From this year until 1997, the PRI controlled not only the presidency but also at least a majority in both houses of Congress, thus creating a situation of unified government. However, in the midterm election of 1997, the PRI lost the majority in the Chamber of Deputies, and in 2000 the PRI lost the presidency. Hence, from

¹⁷ Although the Constitution establishes that a two-thirds majority in the Senate adjudicates whether an impeached justice is guilty, our rule is that the power to accuse is sufficiently important to exert pressure on judges, so that we add to external independence only when at least a qualified majority has this power.

¹⁸ For an account of the notion and different types of "multilateralization" processes, see Pozas-Loyo 2005.

1997 to date, Mexico has been characterized by a period of divided government.

What Do We Observe? We expect, according to our argument, accordance between de jure independence and the actions of politicians, and that is what we observe in Mexico since 1997. With respect to external independence, two Supreme Court judges have left according to the rules set out in the 1994 judicial reform (Juventino Castro y Castro and Vicente Aguinaco) and one died (Humberto Román Palacios). To fill the vacancies, three new Supreme Court judges (José Ramón Cossío, Margarita Luna Reyes, and Sergio Valls) were appointed as prescribed by the Constitution. In addition, there have been no impeachments. Judges' salaries have not been decreased, and they are now competitive and attractive not only at the Supreme Court level but also for lower court judgeships (Fix-Fierro 2003, 313). Regarding autonomy, we can say that there has been no meddling with the Court's jurisdiction, and the Supreme Court's role of constitutional guarantor has also been respected.¹⁹

Given that the level of judicial independence de jure has been high and there has been accordance between the constitutional provisions and the actions of politicians, the expected level of independence-from in this period coincides with the level of de jure independence. Regarding evidence on the level of independence-to, it is interesting to note that it increased precisely in 1997 when the PRI lost the majority in the Chamber of Deputies and the first divided government appeared in Mexico. Evidence of this is that the probability for the Supreme Court to decide against the PRI increased from a mere 0.04 for 1994–1997, to 0.44 after the PRI lost the majority in the Chamber of Deputies in 1997 and to 0.52 after the PRI lost the presidency in 2000 (Ríos-Figueroa n.d.). These facts seem to support our claim that in this scenario the de jure levels of judicial independence are a good proxy for independence-to.

¹⁹ It is interesting to note that the budget has been increasing significantly, even though the Constitution does not specify a fixed percentage of GDP for the judiciary. The share rose from 0.56 percent of GDP in 2000 to 0.97 percent in 2001 and to 1 percent in 2002 (Fix-Fierro 2003, 285).

CASE 2: HIGH DE JURE JUDICIAL INDEPENDENCE, MULTILATERAL SETTING, UNIFIED GOVERNMENT

In this scenario, although the opposition has veto power over constitutional amendments, the political group of the president has the capacity to make regular legislative changes. Unlike the previous case, a unified government makes the coincidence of interests between the executive and the legislative more likely. In addition, abuses of either branch will hardly be capitalized by the other. However, we can expect that any violation of the constitutional provisions protecting independence by either branch could be capitalized by the minority party in Congress. Admittedly, the capacity of this minority to impose costs on the government will vary depending on context (the “political capital of the government”). However, given that we are in a multilateral setting, we can expect that the minority in Congress would be able to make considerably costly any clear violation of the *de jure* provisions.²⁰

In addition, it is important to note that since a multilateral setting implies that the group in power cannot by itself amend the constitution, if there are attempts to undercut judicial independence we expect them to come in those areas that the unified government can change simply by enacting or amending laws. So we do not expect to see gross violations of constitutional provisions, but we do expect changes in, for instance, organic or framework laws. If the changes are overtly partisan, they would constitute what we call “legalistic abuses.”

Given the above, it follows that the expected level of independence-from will be equal to or lower than the level of judicial independence *de jure*, depending on the expected costs of committing legalistic abuses. Regarding independence-to, Supreme Court judges would expect politicians to use their legal prerogatives if decisions do not favor them.²¹ Also, depending on the context, they could perceive that legalistic abuses are likely to occur. But in a multilateral setting, the costs to Supreme Court judges for not taking action against flagrant governmental abuses are higher than in a

²⁰ To appreciate this point, contrast this setting with a unilateral one where the opposition has no access to the legislative or the ruling group has power enough to unilaterally change the constitution.

²¹ Note that, as we discussed in the first section, this expectation may be enough to deter certain actions.

unilateral setting, so Supreme Court judges would also expect the minority in Congress to denounce and try to capitalize on these non-decisions if they occur.²² Arguably, these expectations will ground a level of independence-to lower than the *de jure* level but not as low as we would expect if we were in a unilateral setting with the same level of independence *de jure*.

Illustrative Example: Mexico, 1988–1997

High De Jure Judicial Independence. During this period the level of autonomy was 2 until 1994, when it increased to 3, and the level of external independence was constant at 3. Regarding autonomy, in addition to having the number of Supreme Court judges specified in the Constitution, the judicial reform in 1994 increased the level one point by granting the Supreme Court the power of constitutional adjudication and providing effective legal mechanisms to challenge the constitutionality of laws and acts of government (see figure 5.2).²³

Unified Government. From 1988 to 1997 the PRI controlled the presidency and also had the majority in the two houses of Congress. Although the PRI had been losing ground at the local level (by 1994 the PRI had already lost the governorships of three states as well as control of many municipalities), there was a unified government at the national level.

What Do We Observe? We argued that in this case we expect the levels of independence-from and independence-to to be equal to or lower than the level of judicial independence *de jure*, depending on the expected costs of committing legalistic abuses. In addition, we argued that in this scenario we expect that if challenges to judicial independence occur, they are likely to come in the form of questionable stretches of the legal provisions granted to the elected branches. This is precisely what we observe in Mexico from 1988 to 1997.

²² In this connection the capacity of the Supreme Court judges to determine what cases to take—for instance, the *writ of certiorari* in the United States—may be of crucial importance.

²³ Good accounts of the reform, as well as alternative explanations for why the PRI delegated such power, can be found in Magaloni 2003; Inclán 2004; Finkel 2004; Fix-Fierro 2003.

Since 1988 the constitutional provisions regarding autonomy and judicial independence have been mostly honored but certainly to a lower degree than after 1997. For instance, regarding judicial appointments and tenure, there is a notable contrast between the administration of Miguel de la Madrid (1982–88), which appointed twenty of the twenty-six Supreme Court judges (80 percent), and the administration of Carlos Salinas de Gortari (1988–94), which appointed eight of twenty-six judges (30 percent) (Magaloni 2003, 288).²⁴ This seems to conform to what we call "legalistic abuses." Now, as part of the 1994 judicial reform that increased the *de jure* level of autonomy, President Ernesto Zedillo appointed all the new Supreme Court judges. This meant that the provisions regarding life tenure for sitting Supreme Court judges in 1994 were violated, although we should note that the change of all justices was part of the bargain between the PRI and the National Action Party (PAN) that made the judicial reform possible. For the judges appointed since 1995, provisions regarding tenure, appointment, salary, and impeachment for Supreme Court justices have not been violated.

On autonomy, the constitutional rules that give the judiciary power over the number of courts and judges, as well as their jurisdictions, have been honored. And the judiciary has been granted the necessary means to carry out its projects. If we look at the budget for the judiciary in these years as a share of GDP, we see that it has been steadily increasing, from 0.13 percent in 1990 to 0.39 percent in 1995 (Fix-Fierro 2003, 285), even though there is no constitutional mandate for a minimum fixed amount.

Regarding independence-to, it is interesting to note again (see Case 1) that, from 1994 to 1997, decisions against the PRI occurred with a probability of 0.04, lower than we would expect given the level of independence *de jure*. Although we do not have data regarding decisions before 1994, this fact is consistent with our expectation that independence-to would be equal to or lower than the independence *de jure*.

²⁴ Every president from 1934 to 1988 appointed more than 50 percent of Supreme Court judges during their administrations, with the exception of Miguel Alemán (1946–52), who appointed "only" 48 percent of the members of the Court (Magaloni 2003, 288).

CASE 3: HIGH DE JURE JUDICIAL INDEPENDENCE AND UNILATERAL SETTING

Unlike previous cases, here the ruling political group has an extraordinary concentration of power. It is the only political group in the legislative and/or has the capacity to unilaterally amend the constitution given the requirements contained in the constitution. In addition, the ruling group does not face an important minority opposition in the legislative—that is, a minority large enough to stop a constitutional amendment. As we argued in the previous case, this fact would reduce the costs of violating the *de jure* provisions of judicial independence. Hence in this scenario we expect to observe violations of the constitutional provisions that grant the judiciary a high level of judicial independence. It follows that we expect the level of independence-from to be lower than the level of judicial independence *de jure*.

Now, in this scenario Supreme Court judges would arguably have the following expectations: first, they will expect politicians to violate the high level of independence established in the constitution; and second, in the unilateral setting the cost for the Supreme Court judges of not taking action against flagrant governmental abuses would not only be lower than in the multilateral setting, but it would also arguably be lower than the costs of taking those decisions. We then expect the level of independence-to to be *strictly lower* than the level of *de jure* independence.

Illustrative Example: Mexico, 1950–1988

High De Jure Judicial Independence. During most of this period the level of autonomy in Mexico was 1, corresponding to the number of Supreme Court judges that is specified in the Constitution. In 1987 the level of autonomy increased to 2 when Miguel de la Madrid delegated control over the number and jurisdiction of the courts to the Supreme Court (see Fix-Fierro 2003). Regarding external independence, the level was constant at 3 (see Cases 1 and 2 above and figure 5.2).

Unilateral Setting. The unilateral setting actually goes back to 1929 and the creation of the Revolutionary National Party (PNR), the predecessor of the PRI. During this time, as we said above (see Case 2), the PRI met the requirements to amend the Constitution unilaterally.

What Do We Observe? We argued that, given the extraordinary concentration of power in this case, we should expect the levels of independence from and independence-to to be lower than the level of judicial independence *de jure*, and this is what we observe in Mexico in this period. Despite the high degree of *de jure* external independence, during this period the constitutional provisions were either violated or ignored. This does not mean that there were constant conflicts between the branches or demonstrations against violations of the law. The Mexican judiciary and Supreme Court judges during this period were politically subordinated. This situation is better understood through the logic of a political system dominated by a single party.

Dominant-party rule secured the complicity of the judicial branch in the construction and consolidation of the Mexican political system under the hegemonic rule of the PRI (Domingo 2000, 726). The Supreme Court was just another stop in a political career, and people coming from an elected office or a bureaucratic post could go to a governorship or a seat in the national Congress after serving on the Supreme Court (see Magaloni 2003, 289–90). Thus, with the judiciary as another building block within the corporatist state structure, it is not surprising that the Mexican judiciary became immersed in a political system characterized by clientelism, state patronage, and political deference toward the regime (Domingo 2000, 727).²⁵

Regarding external independence, even though the Constitution mandated life tenure for Supreme Court judges, every six years the incoming president used to appoint up to 72 percent of the court judges (Ruiz Cortines, 1952–58) and no less than 36 percent (López Mateos, 1958–64), but on average from 1946 to 1988 they appointed more than half the court (Magaloni 2003, 288). As Magaloni notes, from 1934 to 1994, close to 40 percent of justices lasted less than five years, coming and going according to the presidential term: "The president could thus somehow create vacancies to be filled by justices he appointed or, put in other terms, he could either dismiss justices or induce early retirements or both" (Magaloni 2003, 289).

²⁵ An indicator of the low importance of the judicial branch during those years is that its budget from 1970 to 1985 averaged 0.09 percent of GDP (Fix-Fierro 2003, 285).

Regarding independence-to, we do not have much data, but González Casanova (1970) found that among cases involving the president decided between 1917 and 1960, claimants won in approximately 34 percent of all disputes. In a similar analysis focusing on labor cases, Schwarz (1977) found that the courts decided around half the time against the government. It is important to note, however, that these findings were based on a small sample of *amparo* cases which, in addition, reduce the political impact of judicial decisions because in these cases the effects are restricted to the parties in the case. Moreover, the government's responses to social movements in this period without doubt violated individual rights, as in the killings of 1968 and 1971, and there was no judicial involvement in punishing those crimes. We can conclude, then, that the decisions made by Supreme Court judges during those years did not challenge the government in any important way, suggesting that their level of independence-to was lower than the level of judicial independence de jure.

CASE 4: LOW DE JURE, MULTILATERAL SETTING, AND DIVIDED GOVERNMENT

In this scenario political power is highly dispersed. Both constitutional and regular legislative changes require the cooperation of at least two political parties. But it is important to keep in mind that in this scenario the constitution grants to the elected branches important controls over judges and the judiciary. Not to make use of those controls does not constitute a violation of de jure independence. Also, to act in ways that are not prohibited by the constitution does not amount to a violation of it. In this setting, to violate constitutional provisions would mean proceeding in ways that directly contravene such provisions—for instance, if the president appoints Supreme Court judges when the constitution grants this faculty to the legislative. As we said above, these are very rare cases. Hence in this setting we can expect politicians not to violate de jure independence. Thus the level of independence-from will coincide with the level of independence de jure.

Supreme Court judges are likely to expect that politicians will not violate de jure independence. Given the difficulties that divided government imposes on coordination among the elected branches to sanction the judiciary, Supreme Court judges are also likely to expect that politicians will

find difficulties in using the many components of judicial independence that are subject to change via the regular legislative process. These expectations may arguably ground a level of independence *to* take decisions that involve protection of rights from governmental abuses higher than the (low) level of judicial independence *de jure*. We then expect the level of independence-*to* to be equal to or higher than the level of judicial independence *de jure*.

It is important to mention that in cases with low *de jure* judicial independence (Cases 4, 5, and 6) we may also find “behavioral equivalence.” For instance, suppose a case with low *de jure* and with politicians respecting the law—that is, not manipulating judges. This last outcome may be explained either because the law is working or because judges are not challenging politicians. Given that there are three scenarios with low *de jure* and that we know the scenario of a given country, it is noteworthy that our typology allows us to discern the different reasons underlying the same observed behavior.

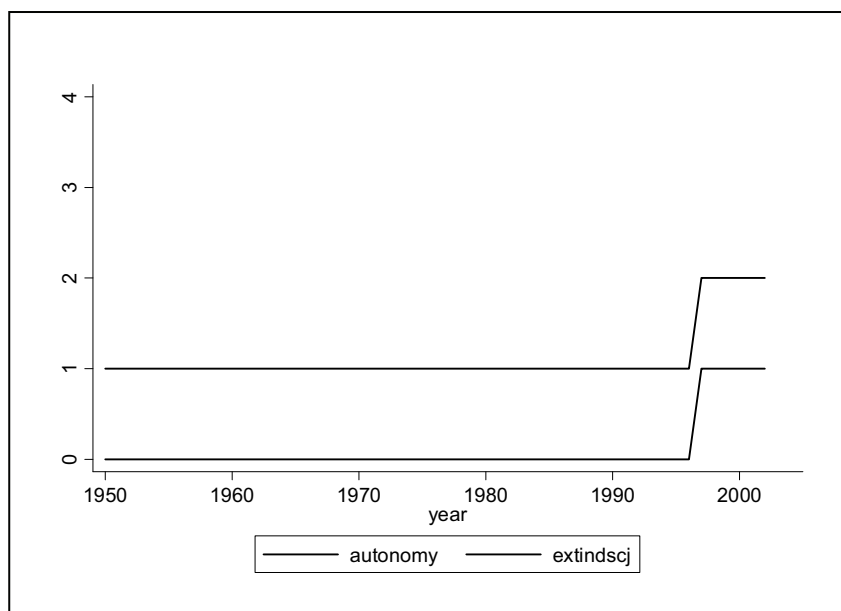
Illustrative Example: Chile, 1990–2000

Low De Jure Judicial Independence. The Chilean constitutions included in our analysis are the Constitution of 1925 with the reforms of 1970 and the Constitution of 1980 with reforms until 2001. The degree of autonomy of the Chilean judiciary was zero until 1996 when it increased to 1 (see figure 5.3). The number and jurisdiction of courts, the number of judges sitting on the Supreme Court, and the budget for the judiciary were under the control of the executive and legislative organs in Chile until 1997, when only one variable changed: the number of Supreme Court judges was specified in the Constitution. The fourth variable, constitutional adjudication, does not add to the autonomy of the Chilean judiciary. For the power of constitutional adjudication to be politically effective, the constitution itself should specify that the effects of decisions in constitutional cases are to be valid for all (*erga omnes*) and not only for the participants in the case (*inter partes*).²⁶

²⁶ While some form of constitutional adjudication has existed in most Latin American countries since their independence, it was only in the last two decades that *erga omnes* provisions have been adopted (Clark 1975; Navia and Ríos-Figueroa 2005).

This is the case of Chile until 1970. In that year, however, the Constitutional Court was created, together with legal instruments with *erga omnes* effects. The reason why this power does not add to the autonomy of the Chilean judiciary is that the Constitutional Tribunal is not part of the judiciary (see Correa Sutil 1993).

Figure 5.3 Autonomy and External Independence in Chile, 1950–2002



Note: The figure shows that levels of autonomy and external independence in Chile were constant at a low 0 and 1, respectively, until 1997, when both increased one point.

External independence for Chilean Supreme Court judges has increased slightly over the period of analysis. Until 1996 its level was constant at 1, corresponding to life tenure for Chilean Supreme Court judges established since the Constitution of 1925. In 1997 a constitutional amendment regarding the appointment of Supreme Court judges increased the level of external independence to 2 (see figure 5.3). Until then, the president had the power to appoint a judge from a list of five names proposed by the Supreme Court. But since 1997 the president nominates one Supreme Court justice out of five proposed by the Supreme Court, and the Senate ap-

proves the nomination via a supermajority (two-thirds) vote. The other two variables do not add to the level of external independence of Chilean Supreme Court judges: their salaries are not protected in the Constitution, and it is quite easy to impeach them. No less than ten and no more than twenty deputies can accuse a magistrate, after which a simple majority of the House determines if he is accused or not. If accused, the Senate adjudicates by simple majority.

Multilateral Setting. To amend the Chilean Constitution of 1925 required that an amendment be proposed and passed by simple majorities in both houses of Congress and then be voted on again without debate after a "cooling down" period of sixty days. Then the projected amendment would be sent to the president to be signed or modified. If modified, the project went back to the Congress, which could approve or not approve the changes. If Congress voted not to approve by a two-thirds majority, the president had the discretion to either promulgate the changes or call a plebiscite within thirty days for ratification. The result of the plebiscite would be final (Arts. 108–110).

The Chilean Constitution of 1980 established a similar procedure, but it requires a supermajority vote of three-fifths (or two-thirds, depending on the issue) in both houses for proposing an amendment. After this vote, the "cooling down" period and the consequent requirements of presidential, congressional, or popular approval are similar though they include more procedural details which may be of importance (Arts. 116–119). The important point here is that both before and after 1980, a two-thirds control of both houses of Congress and control of the presidency were necessary for a single group to be able to amend the Constitution at will. Control of the three branches is essential since the president can call for a plebiscite after two-thirds of both houses have insisted on the amendment.

Based on the previous amending rules, Chile has been living under a multilateral setting both before and after the 1973–1989 interlude when the military junta led by Augusto Pinochet ruled the country. It is interesting to note how the Constitution of 1980, created in a unilateral setting, paved the way to a multilateral setting. Shortly after the coup that toppled Salvador Allende in October 1973, a commission was formed to study constitutional reforms. In October 1978 the commission submitted a draft of the

new constitution and sent it to the Council of State. In July 1980 the Council presented the new draft to Pinochet. Then Pinochet sent it to an ad hoc committee which made “85 important changes and 59 fundamental changes” (Navia 2003, 79). The Chilean Constitution as it stood in 1980 created, according to our classification, a unilateral setting in Chile.

However, Pinochet’s relative power vis-à-vis the opposition changed through time. Of particular importance were the economic crisis of 1982, the results of the 1988 plebiscite, and, of course, the results of the 1989 elections, which created a multilateral setting in Chile. It is interesting to note that such a transformation in the relative power of both Pinochet and the opposition crystallized, in constitutional terms, in the series of reforms the Constitution has gone through (see Pozas-Loyo 2005).

Divided Government. After sixteen years of military rule, “La Concertación” took the reins of government in 1990 and continues to govern today. Mainly because of the Chilean electoral system, which was drafted by the military regime after losing the plebiscite in 1988, the composition of the two houses of Congress has been roughly equally divided between the coalition of parties on the left and the coalition of parties on the right (see Carey 2002, 225). In addition, the 1980 Constitution included a number of nonelected senators that, when added to those from the center-right coalition, effectively eliminated the possibility that La Concertación would control the two houses of Congress and the presidency.

During this period, La Concertación held a majority in the Chamber of Deputies and among the elected senators as well. However, because of the nonelected senators, the center-right coalition enjoyed a de facto majority in the Senate until 1998. That year, Pinochet was arrested and a senator from the right was stripped of his immunity, creating a tie between the two coalitions in the Senate until March 2000. Because a tie is virtually the same as a divided government, we consider the entire period as one with a divided government.

What Do We Observe? In this scenario political power is highly dispersed and the constitution grants important controls over the judges and judiciary to the elected branches. We argued that the expected level of independence-from will coincide with the low level of independence de jure

and that the level of independence-to will be higher than or equal to the level of judicial independence *de jure*. In Chile our expectations are fulfilled.

We identified two periods of multilateral settings in Chilean politics: before and after the military regime that ruled the country from 1973 to 1990. Even though we are focusing on the period after 1990, it is interesting to comment briefly on both. During these two periods, the constitutional provisions regarding the three components of judicial independence were not violated. Hence politicians have acted in accordance with the *de jure* level of judicial independence. But remember that the *de jure* level of judicial independence in Chile is very low.

As we would expect, the facts conform to constitutional provisions. Regarding autonomy, using their constitutional prerogatives, politicians have withdrawn jurisdiction from the courts when they do not want judges to resolve cases in areas that politicians deem important. This was the case with labor disputes in the 1920s (Correa Sutil 1993, 94) and also with the creation of a Constitutional Court in 1970, which was situated outside the judiciary in order to take political cases out of the court's ordinary jurisdiction (Clark 1975, 430). During the government of Salvador Allende, special "neighborhood tribunals"—courts outside the formal judicial system and staffed by Socialist Party militants with little or no legal training—were created to rule on issues ranging from petty crimes and neighborhood disputes to squatters' rights and land confiscation (Prillaman 2000, 139).

Other elements of autonomy, such as the budget, also waxed and waned depending on the interests of the political class, which made use of the prerogatives that the Constitution granted to them. From 1947 to 1962, the budget for the judiciary actually decreased by half, reaching its lowest point in the late 1960s because the political class considered the judiciary more of an obstacle than an ally in their quest for social justice (Correa Sutil 1993, 96; Peña González 1992, 24). In recent years, however, the budget for the judiciary has steadily increased (CEJA 2004). The number of judges in the Supreme Court has also been altered. The last change was an increase from seventeen to twenty-one judges in 1997, which gave the government the opportunity to bring new faces to the Supreme Court (see below). In

sum, we observe that politicians have acted in accordance with a constitution that establishes a very low level of judicial independence *de jure*.²⁷

We observe the same regarding the constitutional provisions that establish the level of external independence. These provisions give substantial power over Supreme Court judges to the executive and legislative branches. Until recently, Supreme Court judges had been traditional lawyers who resisted challenging the government, and impeachment procedures against them were seldom necessary. Since the restoration of democracy, five impeachment proceedings have been brought, one of which was successful (Popkin 2002, 118). For the first time in 125 years, a High Court judge was removed for misconduct. In 1997 a constitutional reform took place in the context of corruption scandals in the judiciary. Claiming that it wanted to address the root of the problem, the government seized the moment to propose fundamental structural changes to the Supreme Court. The bill changed the nomination procedure for Supreme Court judges and expanded the number of judges from seventeen to twenty-one. The year 1998 brought eleven new faces to the Supreme Court, including five lawyers from outside the judicial hierarchy, all appointed and nominated according to constitutional provisions (Hilbink 2003, 84–85). In sum, as expected, politicians have acted in accordance with the constitutional provisions that determine the level of *de jure* judicial independence, and hence it is a good proxy for the level of independence-from.

Regarding independence-to, we expect this to be equal to or higher than the level of *de jure* independence, and that is what we observe. Because of the high degree of legislative fragmentation from 1970 to 1973, independence-to was arguably much higher than the *de jure* level: in June and July 1972 the court issued at least ninety orders against the policies of the government (Verner 1984, 483). Similarly, after the transition to democracy we observe levels of independence-to higher than what the low level of independence *de jure* would suggest. For instance, during Patricio Aylwin's administration (1990–94), the Supreme Court ruled against the ex-

²⁷ We disagree with Couso's argument that Chilean judges' "lack of interest in adopting an activist stance continues a long-held preference for maintaining the very autonomy that historically has allowed the Chilean judiciary to play a crucial role in the promotion and maintenance of the legality that characterizes this country" (Couso 2003, 88–89).

ecutive in 63.3 percent of decisions in cases specifically challenging presidential authority. During Eduardo Frei’s administration (1994–2000), the figure is 62.96 percent (Scribner 2004, 35).

Judicial decisions regarding violations of human rights during the dictatorship experienced a jump in 1998, when Pinochet was detained in London. The timing is explained, in part, because the jurisprudence on human rights had to be changed in order to have Pinochet extradited and judged in Chile. So the Chilean Supreme Court started making these decisions. Also important was the broad alliance, for different reasons, that cut left and right in Chile on this issue. Some backed those judicial decisions because they were pro human rights, while others did so because they wanted Pinochet extradited and judged in Chile.

CASE 5: LOW DE JURE, MULTILATERAL SETTING, UNIFIED GOVERNMENT

In this setting, as in the previous one, the fact that the level of judicial independence is low makes the elected branches very unlikely to violate the *de jure* provisions. However, it is important to note that, unlike the previous case, in this setting the effective use of the many constitutional controls would not be obstructed by problems of coordination between the elected branches. We thus expect politicians to act in accordance with the *de jure* provisions, and therefore the level of independence-from will coincide with the level of *de jure* independence.

Given that the government is unified, Supreme Court judges will arguably expect that the elected branches will find it easier to coordinate and pass legislation in ways that contravene their interests (such as stripping jurisdiction). In addition, the justices would expect that their potential rulings against executive abuses will not be particularly welcomed by the majority in Congress. Given that we are in a multilateral setting, we can expect those rulings to be supported by the minority party in Congress. In addition, if the justices decide not to sanction governmental abuses, this minority would likely denounce and try to capitalize on these actions. Arguably, however, the costs that the government is capable of inflicting on the judiciary are higher than those coming from the minority in Congress. Thus we expect the level of independence-to to be as low as the level of independence *de jure*.

Illustrative Example: Chile 2000–2002 and 2006–

In 2000, former President Eduardo Frei joined the Senate as a lifetime member, giving the Concertación a one-senator advantage for two years until March 2002, when the Senate became tied again (a situation that continued until March 2006). During this brief two-year period, the levels of judicial independence *de jure* and independence-from remained exactly the same as what we have described in Case 4. What about independence-to? We do not have data relative to this specific period to see if our expectations—a slightly lower level of independence-to than in Case 4—are supported by the facts. However, Druscilla Scribner found that in the periods of unified government in Chile from 1933 to 2000, the percentage of court rulings in favor of presidential power for standard decree authority was a rather high 79 percent, while the figure in times of divided government was 51 percent (Scribner 2004, 300). We would expect, then, that decisions against the government would have decreased from March 2000 to March 2002 and risen from this latter date until March 2006, when the Concertación was able to make a unified government, which this time will last until 2009. This seems an interesting avenue for future research.

According to our database on *de jure* judicial independence, the other Latin American countries that have a low *de jure* level and that have lived under multilateral settings and unified governments are Costa Rica from 1982 to 1994 and Guatemala from 1996 to 2003. Further research is needed to see if our expectations regarding independence-from and independence-to are met in these cases.

CASE 6: LOW INDEPENDENCE DE JURE, UNILATERAL SETTING

Finally, in this scenario we expect those in power to act in accordance with the constitutional provisions that not only grant them many controls over judges and the judiciary but that also can be amended by them. Thus the level of independence-from is likely to coincide with the level of independence *de jure*. In a unilateral setting, those in power are legally able to use the mechanisms the constitution grants them without requiring the cooperation of any other political actor, and it is likely that they need not even face denunciations by a legislative minority. As discussed in the third setting, this will negatively affect the level of independence-to. Therefore, the

expected level of independence-to would be equal to or lower than the level of independence de jure.

Illustrative Example: Chile, 1973–1990

Low De Jure Judicial Independence within a Unilateral Setting. After violently taking power in 1973, Pinochet and the military junta clearly violated standing constitutional rules in Chile and arrogated “Supreme Command of the Nation” for themselves, effectively seizing executive, legislative, and constituent power. In the course of 1974, “the manner of exercise of constituent powers and the relationship between the junta and the judiciary were worked out after encounters with the Supreme Court over judicial review of decree laws and Court supervision of military justice” (Barros 2002, 37). By and large, as Correa Sutil notes, the junta “did not overtly intervene in the Supreme Court when he [Pinochet] came to power; he did not replace the justices, he did not threaten them, nor did he, to my knowledge, use corrupt methods to assure the collaboration of the Supreme Court, at least not in the early years of his dictatorship” (Correa Sutil 1993, 89). This meant, in practical terms, that the judiciary and the Supreme Court judges would roughly be guided by the existing institutional framework, which was actually one with a very low degree of de jure judicial independence: zero autonomy and 1 for external independence (see Case 4). The difference is that this occurred within a unilateral setting characterized by a military government.

What Do We Observe? We expect the level of independence-from to coincide with the low level of independence de jure and, given the unilateral setting, the level of independence-to to be equal to or lower than the de jure level of independence. During this period, political officials—the junta—acted in accordance with the legal rules. Regarding autonomy, the military regime stripped jurisdiction for national security crimes from ordinary courts and gave it to military courts (Rosenn 1987, 26). As we saw above (see Case 4), politicians in Chile had used their prerogatives to alter the jurisdiction of the courts when they deemed it convenient for their political purposes. This contributed to make Chilean judges “apolitical” (Correa Sutil 1993 and Hilbink 2003; see also Couso 2003).

Regarding external independence, "because the armed forces needed legitimate collaborators, they did not intervene in the Supreme Court. The military neither removed any Supreme Court Justice nor threatened the Supreme Court in any ways.... Nonetheless, the Pinochet regime committed gross and grave human rights violations, and the judiciary had no impact on preventing these violations" (Correa Sutil 1993, 90). Thus there was accordance between the constitutional provisions and the actions of the group in power, and the level of independence-from was as low as that of independence de jure.

This did not mean that Supreme Court judges were free to decide cases. Looking at what we call independence-to between 1973 and 1983, it is noteworthy that the courts rejected all but ten out of 5,400 petitions for habeas corpus filed by the *Vicaría de la Solidaridad*. In the very beginning of the dictatorship, the Supreme Court managed to send a clear message: those judges who challenge the regime were going to be considered unduly "political" and would face sanctions. "This feeling was particularly strong after the Supreme Court dismissed or forced the retirement of forty judges (15 percent of the total) in 1974, either by giving them poor evaluations for 1973 or by transferring them to geographically isolated posts" (Hilbink 2003, 76). In addition, the percentage of court decisions against presidential authority was 28.63 percent (Scribner 2004, 35). Thus, as expected, the level of independence-to was equal to or lower than the de jure level.

CONCLUSION

Our analysis departs from the premise that law and power are theoretically and empirically interdependent (see Maravall and Przeworski 2003; Ferejohn and Pasquino 2003). Law and reality coincide under some political conditions but may diverge under others. While it is common to perceive that in Latin American constitutions the provisions regarding judicial independence insulate judges to a higher degree than what is observed, our thorough and systematic account of such provisions reveals a more complex and nuanced picture. For instance, the Chilean Constitution actually describes a quite heteronomous judiciary and externally dependent Supreme Court judges. The main advantage of departing, as we do, from a good de jure measure is that it is comparable across countries, comparable

across time within the same country, and reproducible by any person that looks at the legal texts and follows the coding rules. But still, how can we know if this measure is a good proxy for what we can expect to happen in reality?

Our theoretically informed typology allowed us to distinguish the political conditions under which constitutional provisions regarding judicial independence are likely to be a good guide to what to expect regarding levels of judges' *independence from* other government branches as well as their *independence to* decide against the government in cases of human rights violations. In particular, we find one scenario where our *de jure* measure is not a good proxy because it overestimates the *de facto* level of judicial independence: the combination of a high degree of judicial independence *de jure* with a unilateral setting (Case 3). In other scenarios, our measure ranges from being quite a good proxy for independence-to (Cases 1, 5, and 4) to being a fair one (Cases 2 and 6), where it may underestimate.

In the six scenarios, we distinguish between strong and weak inequalities regarding expected levels of independence-to. This is important because it introduces an element of dynamism into an otherwise rather static framework. It also enables us to acknowledge that contextual variables, such as the specific power of the minority in a unified government, may play an important role (as in Case 2, for example). Complementary accounts of independence-to, such as Helmke's "strategic defection" (2005), can be used to introduce more dynamism when analyzing judicial behavior within a country that moves across our six scenarios. For instance, we would expect that Supreme Court judges decide more often against a sitting government when elections are close and the opposition is likely to win, especially if a unified government is likely to arise, since a unified government will more easily punish "non-loyal" judges.

Our theoretically informed typology is also useful for empirical observation. Knowing which scenario prevails in a country can guide the observer to those areas where attacks to judicial independence are more likely to occur. For instance, in a multilateral setting with unified government, one can expect changes in areas that are covered by organic laws but not in those covered in the constitution. Take the case of Argentina, where the number of judges in the Supreme Court, which is not specified in the

Constitution, has gone up or down in unified governments depending on their interests.

The analysis in this chapter can be expanded by looking at a wider set of countries or at different states within the same federal country. It can also be applied to different kinds of laws, not only to those establishing an independent judiciary. Within Mexico, for example, there is interesting variation in judicial independence across the states; some are working with judicial councils and even constitutional courts, while others have not changed their quite traditional judicial system at all (Caballero Juárez 2005). But there is also interesting institutional variation in other areas that are important for the rule of law, such as the laws regarding access to public information, as Mauricio Merino shows in his chapter. In sum, we hope this chapter encourages more research in the fascinating and transcendent analysis of the political conditions that make the rule of law and horizontal accountability a reality in Mexico and other countries.

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6

Neighborhood Organizations, Local Accountability, and the Rule of Law in Two Mexican Municipalities

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Little is known about the way that residents interact with local government authorities in Mexico to express their concerns about public safety and policing in their neighborhoods, as well as their ideas and demands for responses to these issues. This chapter draws from fieldwork in two metropolitan municipalities of the State of México to help understand these processes. It focuses in particular on the role of neighborhood councils¹ as the primary intermediaries between residents and the municipality, including its Department of Public Security.

The argument that arises from this research in twenty-one neighborhood councils is that, with few exceptions, changes in the functions of these councils in the State of México have not kept pace with other processes of democratization under way in the country. Instead, to the extent that councils are relevant at all to the processes and practices of local governments, they tend to operate as a convenience for governments and political parties rather than serving residents. Few have evolved into functioning mechanisms of two-way communication between municipal government and local communities. In addition, the most dynamic and autonomous neighborhood councils found in this study are located precisely in areas where high incomes (and

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¹ I use the term “neighborhood council” to refer generally to all types of sub-municipal organizations that are recognized as having special roles in the relationship between local governments and neighborhoods or communities. Some differences among these in the State of México are discussed later on.

everything else associated with them) are most heavily concentrated. In this sense, an individual's access to many of the recent improvements in accountability of Mexican local governments, as well as the benefits of the rule of law, depends on socioeconomic status.

The implications of these patterns for issues of public security arise from the ways that problems are perceived by residents and how these concerns are communicated to municipal government in each case. To a greater degree than other municipal public services, like street lighting or wastewater service, for which objective information on service coverage and quality is fairly readily available, the perception of public security problems in particular neighborhoods affects both the demands made by councils and the amount of attention that local authorities pay to them. Since few municipal police departments gather and analyze data on crime incidence at the neighborhood level (Rowland 2003), authorities tend to simply react to the demands for action of the most vocal residents, or they design strategies that do not consider sub-municipal variations in crime and fear at all.

This means that neighborhood councils that are better organized and more autonomous from local government are more likely to benefit from police or other government actions. However, the level of council capacity has little to do with the incidence of crime in the neighborhood or the probability of victimization; in fact, social "disorganization" in certain neighborhoods may contribute to both higher crime rates and less effective councils. This type of difficulty, through which the disadvantaged neighborhoods fall further behind as the result of public security strategies that depend to some extent on neighborhood capacities, has been observed in other countries as well (Bursik 1988; Lyons 1999; Reiss 1986).

From the outset it should be understood that this chapter focuses on the perceptions of residents—in particular, neighborhood council leaders—about conditions and circumstances in the places where they live. Those interviewed are not government officials, nor do they necessarily have any detailed knowledge about government programs. For that reason, the information that they offer about certain matters varies substantially from some of the information we received from municipal government officials. Most striking was the relatively low level of familiarity with several programs that municipal officials insisted were in place and operating.

Thus, while local officials may be surprised at the apparent lack of impact of their programs, it should be emphasized that it was not the goal of this research to measure or evaluate the impact of any particular municipal government program. Given the broad range of questions considered, the perceptions of neighborhood leaders and their personal experiences with government programs were the only kinds of information that we sought. Council leaders are clearly more informed than average residents; nevertheless, the information that they provide may not reflect the efforts and accomplishments of local government.

The next section of this chapter sets the context for this kind of neighborhood-level research in Mexico and explains the institutional structure for neighborhood representation in local government. It also introduces the methodology and the cases examined in this study. The third section begins the analysis of survey data, examining the patterns and differences in the organization and activities of neighborhood councils in the two municipalities. The fourth section continues with the analysis of survey responses, concentrating on the perception of crime problems and policing in the neighborhoods. The concluding section returns to the issues of accountability, access to justice, and the rule of law, to consider the implications of the findings of this research for these issues.

THE CONTEXT

The literature on diverse aspects of public security in Mexico has expanded rapidly in recent years (Alvarado and Davis 2004; Alvarado et al. 2004; Arango Durán and Lara Medina 2004; Azaola 1996; Bailey and Dammert 2006; Bergman et al. 2003; González Placencia 2002; Sarre 2001; Shirk and Cornelius 2006; Yañez Romero 2003). Nevertheless, little work has been done on the impacts of crime on neighborhoods and communities. Nor has there been any systematic exploration of the relationship between residents and their representatives in government in the context of public security policies. (Rowland 2006 touches on this issue only indirectly.)

Indeed, few studies about the political organization of urban neighborhoods in Mexico go beyond case studies of remarkable episodes of local organization in any sphere of public service provision. This is particularly true since the rise of electoral competition at this level and the corresponding increase in local government autonomy in certain matters of public

policy. A fairly large number of municipal case studies has been published recently, but these tend to focus on local government as the unit of analysis, rather than the neighborhood group and its institutions, even when the cases involve neighborhood movements. We simply do not have much systematic information on the ways that residents interact—or do not interact—with municipal authorities regarding day-to-day issues of concern to them.

It is important to consider these questions because—like water provision, garbage collection, and other urban neighborhood issues—crime and public security are highly local issues. While it may be interesting and useful for some purposes to consider nationwide, statewide, or citywide indicators of the frequency or types of crimes, this does not tell us much about the impacts of crime and fear of crime on the lives of ordinary citizens, especially in large cities, where neighborhoods and their problems can vary widely. This kind of study of neighborhood issues of crime has been undertaken in other parts of the world, especially the United States and England (Merry 1981; Sánchez Jankowski 1995; Skogan 1990; Taylor and Gottfredson 1986). Another aspect of the spatial components of crime forms the basis of a well-established strategy of policing, known as “hot-spots,” or situational crime prevention, that starts from the premise that a large proportion of crimes in any jurisdiction take place in a small number of physical locations (Clarke 1997; Clarke and Felson 1993; Sherman, Gartin, and Buerger 1989). In spite of the importance of these theories in other parts of the world, in Mexico few municipal police departments have systematically adopted policies that consider neighborhood-level aspects of public security in their efforts to prevent and control crime.

Representation of Neighborhoods and Their Residents in the Ayuntamiento

In the literature on development, local government is commonly hailed as the level “closest” to residents. However, in urban Mexican municipalities, large populations combine with underdeveloped local institutions of administration and government,² to result in myriad difficulties for residents to express their preferences to government, let alone have these taken into

² For key discussions of municipal governance in Mexico, see Cabrero Mendoza 1996, 1998; Guillén 1996; Merino 2004.

account in local policy making. Indeed, it is questionable whether local jurisdictions that encompass over 100,000 residents—and more than 150 of these existed in Mexico in 2000 (INEGI 2000)—are able to enjoy many of the purported benefits of decentralized government.

The structure of municipal government in this country is problematic as well. As I have argued in more detail elsewhere (Rowland 2005), the municipal council (*cabildo*) is poorly suited to the task of representation of residents, since council members (principally *regidores*) are elected at-large, as part of party slates. This means that their loyalties are rarely tied to specific neighborhoods or groups of residents, but rather to the political party that placed them on the slate. In addition, voters tend to cast their votes for the municipal president, who is leader of the party slate and featured in campaigns, paying little attention to the rest of the list. This is one reason that the representation of particular neighborhood interests tends not to be contemplated or carried out by *cabildo* members, except under very unusual circumstances.

Even when council members are more oriented toward serving residents than their own political parties, their formal and informal powers to do so are not entirely clear. In general, they may bring matters to the attention of the council as a whole, they may attempt to convince the municipal president or directors of local government agencies to act on a matter, and, increasingly, they air any outstanding grievances in the local press. But they enjoy no power to force action regarding the problems that residents may face. For this reason, residents often make little use of their “representatives” in municipal government, except as occasional conduits of information or specific requests to the municipal president and agency staff.

There are exceptions to this general pattern, particularly when an issue or problem is serious enough to provoke residents to “mobilize” in the form of sustained public protests. Often, a representative of one or another political party (sometimes *cabildo* members, sometimes other political intermediaries) will become associated with these kinds of movements and ride them to some prominence, either as part of the municipal government or to catalyze and take advantage of any opposition to it. But these cases are extraordinary rather than typical of daily neighborhood life. In most urban municipalities, it appears difficult for public issues of concern at the neighborhood level to gain the attention of municipal authorities.

Sub-municipal Governance

As noted previously, there is a good deal of diversity in the forms of neighborhood organization nationwide, and these have been subject to change over time. During the era of one-party dominance, urban local governments designed neighborhood councils as a mechanism of communication between public officials and loyal party members to help inform them of neighborhood situations and events.³ Patronage could be distributed through these channels, and information about any pressing problems or demands could be brought to the attention of local authorities before they escalated. Some notable exceptions existed (including the Satélite neighborhood of Naucalpan, State of México, in the 1960s), but in general, sub-municipal organizations were tied tightly into the structure of the Institutional Revolutionary Party (PRI)—if not from the outset, then after a process of co-optation.

With the advent of increased plurality in the political parties in power at the local level since the 1990s, the structure of neighborhood councils has taken on greater variety. Often, incoming municipal administrations of the National Action Party (PAN) or Party of the Democratic Revolution (PRD) were faced with recalcitrant neighborhood leaders left over from the single-party era, given that these groups did not always follow the same electoral cycle as municipal governments. In some states, certain types of neighborhood leaders were not elected at all, but were named by municipal authorities. For these reasons, many municipal administrations from parties other than the PRI attempted to establish new institutions of neighborhood representation, either as a substitute for the same patronage and control functions of the previous groups or as a replacement with more plural and democratic forms of resident representation.

In either case, it proved difficult for neighborhood groups to avoid becoming enmeshed in partisan politics. Savvy neighborhood leaders may confess to changing their nominal party affiliations to suit the preferences

³ For example, in the *Ley Orgánica Municipal del Estado de México*, Articles 72 and 73, the “Citizen Participation Councils” are designed simply as mechanisms or channels of communication and collaboration between neighborhoods and municipal government; their role is to propose and discuss public service provision and to “promote participation” in public life. Their use today in Nezhualcōyotl is discussed at length below.

of the government in power at the local level. This appears particularly common where a single party has come to dominate the political sphere and where leaders see neighborhood residents as dependent on government largesse for things like public service provision or low-interest loans to help improve housing. In addition, state governments have been known to use their own resources in attempts to manipulate neighborhood groups, whether to the advantage or detriment of the party in power in the corresponding municipal government.

These issues are important to keep in mind during an examination of neighborhood councils, given that it is easy to idealize their role in urban government and tempting to try to generalize across jurisdictions without taking account of the variations across space and time. In effect, the legal framework that governs these groups is weak, vague, or nonexistent in many states. In nearly all cases, their sphere of influence is restricted to lobbying for neighborhood-level improvements, because the municipal president (or municipal council) is under no obligation to act on the information or preferences advanced by these groups. Neighborhood councils should be understood more as administrative conveniences for municipal government than as organs of representation for residents. They are rarely used to determine municipal public policy; rather, they play a role in the distribution of local public services. Understanding this context may help explain some of the experiences reported in the following sections.

The Research Design

Despite its attractions, the use of the neighborhood council as a unit of analysis presents a number of conceptual and practical difficulties. In the first place, there is no homogeneity in the organization and composition of neighborhood groups in Mexico. In each state, traditional practices combine with multiple and overlapping legal structures to impose a varying degree of control over neighborhood organization.⁴ Differences exist in the levels of detail of state framework laws (*leyes orgánicas*) as well as the de-

⁴ It is worth noting that the Federal District, which is neither a state nor a municipality, has the most detailed legal framework for neighborhood organization. Nevertheless, neighborhood politics there are not uniform nor are their institutions free of controversy (Alvarado and Davis 2004).

gree to which actual practices conform with law. As a result, municipalities tend to vary both in the practices and the terminology used to describe neighborhood groups. To complicate things further, in recent years, ambitious municipal presidents have often attempted major reorganization of the system as part of an effort to improve government or to strengthen their political party's control. For these reasons, research at this level must take into account a number of highly local variations; as in the present research, it is not always possible to avoid comparing somewhat dissimilar neighborhood groups in the course of inter-municipal comparisons. In fact, in one of the municipal cases used here, three distinct types of neighborhood groups were encountered, each with substantially different forms of organization and practices, as well as varying degrees of power relative to municipal government.

Given the complexity of this panorama, a fundamental question also arises: whom, precisely, do the leaders of neighborhood councils represent? Elections are held, at least nominally, for leadership in these organizations, but a number of limitations combine to create a less-than-ideal form of local democracy. Electoral alternatives are not always present, in part because it can be difficult to find individuals who are willing to serve in what are mostly unpaid positions. Competition is not always fair, since extra-official support for certain candidates sometimes comes through local government or political parties. The elections are not monitored by any agency external to the municipality, and abstention rates are generally very high. Indeed, the irrelevance of neighborhood groups to the resolution of daily problems in many areas means that individuals may choose to interact directly with municipal authorities, rather than through neighborhood groups.

The research reported here could not overcome these difficulties related to the object of study, but we did attempt to identify particularly problematic issues of representation and take these into account in our findings. The methodology consisted essentially of selecting a representative sample of neighborhood councils in each of two municipalities of the State of México—Huixquilucan and Nezahualcóyotl—and applying in-depth surveys with the leaders of each of the groups selected.⁵ The survey inter-

⁵ In Nezahualcóyotl, twelve "Citizen Participation Councils" (Copacis) were selected at random from the municipality's list of eighty; in Huixquilucan,

views, which lasted approximately 90 to 120 minutes each, consisted of a standardized list of questions regarding the composition and operation of the neighborhood organization, the personal political history of the respondent, and the group's relationship with other neighborhood residents and with the municipal authorities, as well as issues related to crime, crime prevention, and interactions with police.⁶ This survey design allows us to arrive at conclusions not only about public security but also about the political organization of sub-municipal areas and the ways that local governments interact with them on a variety of issues.

The selection of the two case municipalities, Huixquilucan and Nezahualcóyotl, responds in part to the needs of a wider research project of which this survey was only one component.⁷ Among other things, that project aims to compare survey responses from the State of México with those from the same survey for neighborhoods within the Federal District (DF), where the institutional frameworks for both neighborhood organization and policing are different. The studies were carried out in the two "metropolitan" municipalities of Mexico City (that is, parts of the urban area outside of the DF) for the purpose of comparing the impact of these institutional differences within an area where patterns of criminality were suspected to be relatively similar. In this sense, the present document is a first attempt to analyze a large quantity of complex information.

The Cases

In spite of the institutional similarities derived from their location in the State of México, Huixquilucan and Nezahualcóyotl could hardly be more different from one another (table 6.1). The latter is relatively well known,

because of the wider variety in existing neighborhood organizations, three cases were selected at random from each of three groups (the rural towns, the low-income areas, and the high-income areas), resulting in a stratified sample of nine from the municipal government's list of sixty-three neighborhoods.

⁶ These interviews were carried out by Diana Hurtado and Alejandro Navarro during the second half of 2005.

⁷ The project, "Democratization, Citizen Empowerment and Police Reform in Mexico," was directed by Arturo Alvarado, Department of Sociology, El Colegio de México, from January to December 2005, with funding from the Tinker Foundation and the European Community.

since from its beginnings in the 1950s it was a notable example of sudden and massive urbanization. It grew from about 2,000 residents to over 1.3 million in just thirty years. Today it is still one of the largest municipalities in Mexico in terms of population. It is primarily residential in character, although a number of large boulevards are lined with commercial establishments, and there are several massive (even by Mexico City standards) open-air markets, where everything from fresh produce to used automobiles are bought and sold.

Nezahualcóyotl's demographics have changed substantially since its formation. Population has been falling since about 1980 because little land is available for new settlement and many of the original "invaders" have aged in place, reaching more or less the middle class, thanks to the stability afforded by mostly self-built housing. Still, some sections of the large swath of low-lying land within Nezahualcóyotl are especially problematic, including the area in and around the massive Borda de Xochiaca garbage dump (which serves most of the metropolitan area) and several of the last neighborhoods to be urbanized, which are particularly precarious. In addition, the municipality must be crossed by residents of neighboring municipalities—tens of thousands daily—in order to reach the Federal District, so through-traffic is constant.

Table 6.1 Comparisons of Huixquilucan and Nezahualcóyotl

	Huixquilucan	Nezahualcóyotl
Population 2005 (est.)	226,088	1,182,285
Population 2000	193,468	1,225,972
Population 1980	78,149	1,341,230
Size of territory	143 km ²	63 km ²
Gross municipal product per capita (\$US)	\$15,120	\$8,019
Population that earns more than five minimum salaries	7%	4%

Sources: INEGI 2000; SIMBAD, <http://sc.inegi.gob.mx/simbad>, 2006; SIGEM, <http://www.premiomunicipal.org.mx/Premio2004/sigem/index.htm>, 2006.

In contrast, Huixquilucan has a fraction of the population of Nezahualcóyotl, distributed somewhat lopsidedly over a much larger territory. Huixquilucan is located on the west side of the Valley of Mexico; nearly half of its territory is mountainous and forested, and another 20 percent is dedicated to agriculture and dotted with small, traditional villages. Still,

Huixquilucan is known nationally for a strikingly different side: the Interlomas commercial district and neighboring luxury residential zones, which abut similarly wealthy areas of the Federal District along the east side of the municipality. In these neighborhoods, urban public services are more readily and regularly available than elsewhere, and even the presence of police and security cameras is notably greater than in other neighborhoods of the same municipality. Rapid growth in these luxury zones in the 1990s has helped spur growth of the “popular” (low-income) neighborhoods nearby, on hillsides and in canyons where it is often difficult to provide urban services. But rising land prices in Interlomas proper, and the proximity of Huixquilucan to the newer Santa Fe commercial and business district, have generated pressure in some of these low-income neighborhoods to gentrify. Thus large luxury apartment buildings and their residents may coexist uneasily alongside more traditional single-family dwellings, which often also house small businesses, such as convenience stores or auto repair shops. Although little through-traffic affects the municipality (except via a high-speed toll road just west of Interlomas), the rugged terrain and fast growth of automobile ownership provoke severe and recurrent traffic bottlenecks in many areas of the municipality.

THE PROFILE OF NEIGHBORHOOD COUNCILS IN HUIXQUILUCAN AND NEZAHUALCÓYOTL

There is greater diversity among neighborhoods in Huixquilucan—where distinct village, low-income, and high-income zones are evident—than in Nezahualcóyotl, where neighborhoods are more homogeneous. As befits these contrasts, the variety of officially recognized neighborhood organizations is also greater in Huixquilucan: in low-income neighborhoods and villages, the municipal government uses the title of delegate (*delegado*) for the officially recognized neighborhood leader in each territorial unit (*delegación*). But in the high-income neighborhoods, efforts by local government to exert greater authority over local organizations met resistance from some of the long-established resident associations (*asociaciones de residentes* or *colonos*). It is a testament to their power and autonomy that the municipality allowed these groups to persist with their own forms of organization.

The PRD's municipal administrations in Nezahualcóyotl have attempted to adapt the previous system of neighborhood councils since the party's first victory in 1997, taking advantage of existing figures in state law. The principal type of organization, known as the Copacis (Consejos de Participación Ciudadana, or Citizen Participation Councils), corresponds roughly to traditional neighborhood boundaries and was designed to work with the municipal Department of Citizen Participation.⁸ In addition to the Copacis, other government-organized mechanisms of communication with neighborhoods have been activated, including a system meant to work through the municipal Department of Public Security. This appears to operate in parallel to the Copacis but is designed to specialize in a single sector, rather than treating the wide range of issues of neighborhood well-being. A substantial variety of other local nongovernmental organizations exists in the neighborhoods of Nezahualcóyotl as well, but the Copacis are the principal official mechanism of communication between the municipal government and neighborhood residents.

In this section, the objective is to assemble a clearer picture of the composition of neighborhood councils in the two case municipalities, as well as their operations, including their relations with other residents, with governments, and with political parties. The fundamental questions driving this analysis concern the extent to which neighborhood councils serve residents or whether, instead, they serve the needs of government or political parties. To this end, we begin by examining the profile of council leaders to see whether they are representative of their neighbors. Then we consider the actions of the councils in order to understand their relevance and utility to residents.

The Profile of Neighborhood Leaders

In all twenty-one of the neighborhood councils surveyed, the organizations' leaders appeared to be typical of their neighbors, at least in broad

⁸ During the 2003–2006 administration, however, the Copacis came to be more closely associated directly with the municipal president and his staff, rather than this department, according to its director. Interview conducted by the author and others with Gerardo Salazar, Director of the Citizen Participation Section of the Nezahualcóyotl municipal government, January 19, 2005, in his office.

demographic terms. About the same number of women (11) and men (10) hold the top post in neighborhood councils, and they range in age from 22 to 84, with most concentrated in the 45-to-65-year age group. They are nearly all long-term residents of their neighborhoods, and those in Nezahualcóyotl include some of the original settlers of the municipality.

In the low- and middle-income zones of both Huixquilucan and Nezahualcóyotl, representatives generally have primary or secondary education levels, nonprofessional occupations, and large household sizes (mostly of four to nine residents). In the villages of Huixquilucan, these characteristics are similar, but some elements of traditional rural life are also evident. For example, representatives report much greater activity in the Catholic Church, and both they and their parents tend to have been born in the village where they now reside.

The characteristics of these groups contrast markedly with those of the neighborhood leaders in the high-income zone of Huixquilucan. Among these three women, education levels are higher, and two characterize themselves as primarily housewives. The other leader is a professional administrator for a neighborhood association that does not, in fact, include any residents at all; rather, the association members all operate businesses in the Interlomas zone. Among these three neighborhood leaders, religious diversity is greater than elsewhere; the group of three includes an Evangelical Christian and a self-described non-churchgoer. Household size is smaller, consisting of three to five residents, in two cases including a live-in domestic employee. These differences echo the characteristics of neighborhood residents in the high-income zone of Huixquilucan and underline the dramatic socioeconomic polarization of the municipality.

Relations between Neighborhood Councils and Neighborhood Residents

The internal structure of neighborhood councils—including the role of leaders, the forms of decision making, and the issues of concern and action—varies considerably in the cases studied here. The majority of councils surveyed are governed only by the corresponding municipal code (*bando municipal*), which is not considered by many of the leaders to offer sufficient guidance for their activities. The exceptions to this rule are in the high-income associations in Huixquilucan, each of which has its own governing statute. This difference can probably be explained both by the fact

that the associations predate much of the municipality's involvement in these neighborhoods, and by the salience of higher land values here. Residents of these neighborhoods are accustomed to using legal and other professional services for issues regarding their homes and other assets. They are likely to have more interest in defining the organs of neighborhood government, along with the personal abilities needed to do so.

Given the lack of formal guidance for the organization of the councils in other neighborhoods, traditional practices and improvisation are the norm. Of course, lack of guidance could be understood as offering autonomy and flexibility, which may be appropriate characteristics for an institution meant to serve the highly varied conditions in which these councils operate. But there appear to be some costs as well, visible in the centralized forms of decision making within the councils and the lack of contact between most councils and neighborhood residents.

The most common scenario reported regarding decision making is that the council leader (*delegado* or *presidente*) dominates this process, either alone or in consultation with one or two other council authorities (secretaries, treasurers, and so on). This seems to reflect both expedience and certain beliefs about the role of leadership. In some neighborhoods it appears to be difficult to attract the attention of other residents to council issues: leaders interviewed cited the time involved in council activities and the lack of monetary compensation for this time as the principal reasons for this lack of participation.

Nevertheless, a non-negligible number of councils (one-third of the total) claim to make decisions through consensus with residents. These include all three village councils in Huixquilucan, two of the three high-income neighborhood councils in Huixquilucan, and three councils in Nezahualcóyotl. In the villages, this practice is consistent with traditional rural forms of decision making in Mexico, and these have apparently transcended the municipality's efforts to standardize council practices. It also is unsurprising in the high-income neighborhoods, in the sense that councils were established with the mandate of serving their members, rather than for other purposes. The use of consensus in decision making in three of the twelve councils surveyed in Nezahualcóyotl is a bit more surprising, because the councils appear to play a different role in this municipality than those in the rural or high-income areas of Huixquilucan. The survey does

not give us much additional information on this issue; it may reflect the presence and strength of nongovernmental organizations at the neighborhood level that insist on playing a part in any local decision making.

If neighborhood residents are not involved in decision making by most councils, what is their role? Over one-third of the council leaders in each municipality say they hold meetings with residents on a monthly basis or more frequently. Not surprisingly, these are generally the councils that rely on consensus in decision making. The majority, in contrast, rarely or never meet formally with neighbors, and decision making is dominated by a small number of council members.

A wider variety of other practices that directly involve residents is reported in Huixquilucan than in Nezahualcóyotl. In the villages and one of the low-income neighborhoods, residents commonly provide labor in public service projects; this practice does not appear to be used elsewhere. In the high-income neighborhoods, residents pay quotas to support the activities of the associations and take part in protests by hanging signs in homes and cars, and signing petitions. In Nezahualcóyotl, none of these practices was mentioned by respondents. It is difficult to untangle cause and effect, but the overall pattern of low involvement may reflect a lack of interest of residents in council affairs or doubts about the efficacy of councils, especially relative to other forms of political action. Fully half of the council leaders in both municipalities report that neighbors rarely or never interact with the councils.

In both municipalities, when residents do seek out the councils, it is primarily to petition for help in resolving problems related to public service provision and, less frequently, for issues of public security. The former are precisely the types of duties and decisions that the neighborhood leaders report that they are responsible for: the identification of needs for minor public works and repairs. In a sense, they function as intermediaries, communicating residents' requests to municipal government or informing residents of opportunities offered by the municipality. In Nezahualcóyotl their focus is principally on drainage, pavement, and lighting, while in Huixquilucan it includes water service, street repair, and physical improvements to schools and churches. In the high-income areas of Huixquilucan, council actions also include requests for the application of law by relevant authorities, such as the removal of ambulant vendors from com-

mercial areas, the defense of federal open space that is being “invaded” by illicit construction, and the presence of more police officers. Again, these differences in the interests and duties of councils are consistent with the profile of these neighborhoods, since basic public services are already in place and relatively well maintained in the high-income zones of Huixquilucan.

The importance of the neighborhood councils as conduits for information about sub-municipal public services is underlined by the fact that more than three-quarters of the leaders surveyed in both municipalities cite problems related to public service provision as the most pressing issues facing them. Strikingly, in both municipalities, public security is also named as a top concern, with almost the same frequency as public service provision. The fact that neighborhood leaders identify public security as a problem but do not necessarily see it as part of their mandate for decision making or communication suggests that this issue is not addressed in a systematic way in the councils. In particular, in Nezahualcóyotl, as noted previously, there has been some effort to integrate a parallel system of sub-municipal committees to specialize in public security and deal directly with the municipal Department of Public Security. Nevertheless, as we see further below, in practice the Copacis do play roles in neighborhood public security. This confusing panorama points up the uncertainties created by the parallel structures of neighborhood representation provided for by state law.

Relations between Neighborhood Councils, Governments, and Political Parties

In both municipalities, three-quarters of neighborhood leaders are, or have been, members of political parties, contrasting with membership rates estimated to be below 50 percent for the general population (Levy and Bruhn 2006, 100). This high prevalence of party membership among leaders is consistent with the fact that these posts are essentially political positions; the apathetic are unlikely to seek election. In Huixquilucan, where the PRI ruled at the municipal level and ties to the PRI-dominated state level were tight, all six of the neighborhood leaders who self-identified as party members belonged to the PRI and had entered the party at least twenty-five years previously. Again, though, the contrasts within the mu-

nicipality are sharp: in the low-income neighborhoods, all three leaders were party members, and in the villages, two of three were active in party organizations. But in the high-income zone, only one of the leaders was a party member. This pattern reflects, to some extent, the persistence of the PRI's organization and integration into rural and low-income areas of the State of México and other central and southern states.

In Nezahualcóyotl, the importance of the PRD is striking, in comparison both to Huixquilucan and to other municipalities in the Mexico City metropolitan zone. In general, the level of politicization is high, with nine of twelve neighborhood leaders identifying as members of a political party. The two *priistas* there joined the party twenty-eight and forty years ago, respectively, while the seven *perredistas* are more recent, of course, since their party was only founded in 1989. Three of these members entered around that time, while the others joined between two and ten years ago—that is, since the local government was won by the PRD for the first time.

In contrast to Huixquilucan, the parties themselves in Nezahualcóyotl appear to have played greater roles in both proposing candidates for neighborhood leadership and supporting the campaigns of their loyalists. Indeed, municipal officials argued that these are highly politicized because of the form of state law for Copacis.⁹ In addition, six leaders in Nezahualcóyotl report having been asked to organize support for gubernatorial or other candidates of their parties in 2005, and to have complied with these requests by summoning neighbors to attend political rallies. Only one leader in Huixquilucan reports this kind of activity. In sum, then, partisan struggles appear to manifest themselves in the neighborhood organizations to a much greater degree in Nezahualcóyotl than in Huixquilucan. This may be due in part to the specific framework of state law under which the Copacis of Nezahualcóyotl are organized.

In addition, the general level of local political mobilization seems to have been especially intense in Nezahualcóyotl for a number of years. For example, our surveys suggest that the presence of politically oriented, nongovernmental, neighborhood-level organizations is much higher in Nezahualcóyotl; in Huixquilucan, far fewer neighborhood groups of any kind were reported. The much larger population size of Nezahualcóyotl

⁹ Interview with Gerardo Salazar, January 19, 2005.

also makes it very important to political parties at the state and national levels. In particular, the PRD appeared to be basing its strategy within the State of México for the 2006 presidential election on its dominance of politics in Nezahualcóyotl.

Still, it is not clear to what extent political parties may be manipulating either the composition or the activities of the neighborhood councils to facilitate the distribution of patronage, and thus increase their electoral support, in the way that the PRI reportedly did under the one-party-dominant regime. Some contact between local government and neighborhood councils is certainly legitimate and is, indeed, the very objective of these councils. Still, in Nezahualcóyotl at least, neighborhood leaders appear to seek and receive greater benefits from local government if they are of the same political party. Seven of the twelve councils report that they receive support from the municipal government to carry out their activities (this support comes mostly in the form of office supplies), and all of these are affiliated with the PRD. The two *priísta* neighborhood leaders complained bitterly about the difficulties of their work with the PRD-controlled municipality, but they reported receiving "*despensas*" (essentially, packages of basic food and household supplies) from their own party to distribute among neighborhood residents. A direct comparison with Huixquilucan is difficult, given that the only party clearly represented in any of the municipal councils is the PRI and because of the relative autonomy of the councils in the high-income zone.

General Conclusions about Neighborhood Councils

The neighborhood councils in the two municipalities studied do appear to provide some services of identification of neighborhood priorities and communication of these to local government. In this sense, they may serve a useful and democratic function, rather than being mere façades for government control over neighborhoods or for party patronage and recruitment. However, in many instances councils appear to be simply substituting for the municipal government in tasks that it is charged with providing. The reliance on councils for the function of reconciling resident preferences at the neighborhood level to the practices and policies of local government appears overly elaborate and not particularly efficient. In both these municipalities, it may reflect weakness in certain aspects of admini-

stration and governance, particularly regarding relations with residents. This weakness at the local level is consistent with much of the research on municipal government in Mexico, especially in the State of México.

Still, the fact that municipal governments choose to keep these systems alive suggests that municipalities find it either unnecessary or undesirable to develop these skills within the local administration. Indeed, using informal, nongovernmental, and (frequently) party-affiliated organizations as intermediaries between residents and their local governments provides other sorts of benefits to local politicians. Unfortunately, since there is very little consistent difference among political parties on issues of municipal government—it is difficult to formulate a partisan position on property taxes or water provision, for example—the high degree of involvement of parties seems only to distract from the formulation and representation of neighborhood preferences.¹⁰ Legitimate issues can be suppressed or ignored in the name of party unity, and leaders may become distracted from the primary objective of improving local conditions. To the extent that this is the case, the impact of these neighborhood council systems on the accountability of local government is ambiguous, to say the least.

HANDLING ISSUES OF PUBLIC SECURITY, CRIME, AND RULE OF LAW AT THE NEIGHBORHOOD LEVEL

While the original intent of the neighborhood councils in these municipalities did not include attention to issues of crime and rule of law, the growing importance of these for residents, at least in the urban areas, has made public security and interactions with police a growing concern. There is a wide variety of actions that may be taken at the neighborhood level to prevent or control crime, or at least to make residents feel more safe. Still, the lack of clear leadership by local governments on this issue makes for a broad and rather incoherent tangle of initiatives. In sum, it is precisely in the neighborhoods that least need government assistance in public security where this is most forthcoming. The vicious circle of neighborhood disorder

¹⁰ In fact, researchers for this project were asked repeatedly by several respondents to identify the party that was sponsoring the research, in spite of our description of this project from the outset as an academic and nonpartisan research initiative.

ganization and higher levels of fear and crime is apparently present in Mexican neighborhoods, just as it is elsewhere.

Identification of Neighborhood Public Security Problems

The surveys carried out for this research were not designed to estimate the frequency of different types of crime in the neighborhoods considered. It is worth noting, too, that in none of the neighborhoods surveyed were there any systematic attempts to identify problems of crime, fear, or public order. Still, the leaders' descriptions of the types of problems in their neighborhoods that are related to public security do offer a glimpse into the challenges faced in different parts of the metropolitan area. They also offer some insight into how other aspects of each neighborhood may affect the kinds of crime committed there.

In this sense, the stereotype of Nezahualcóyotl as a more dangerous and violent place than Huixquilucan appears to have some basis in fact, or at least in the perceptions of neighborhood leaders. Robbery in public places, with or without violence, violent home burglary, and the theft of automobiles or parts were reported as frequent problems far more often in Nezahualcóyotl than in Huixquilucan. In contrast, burglary without violence and theft in commercial establishments were cited as frequent problems in Huixquilucan. This does not mean that these crimes are exclusive to one place or another, only that leaders consider them the most common.

Interestingly, sales and use of illegal drugs and illicit alcohol were listed as problematic more frequently in the low-income areas of Huixquilucan and its villages than in the high-income neighborhoods. In fact, there is little reason to believe that significant differences in usage exist in different neighborhoods. Presumably, the absence of concern about these problems in the high-income areas is related to urban form and the practices of different socioeconomic groups. To the extent that these activities occur, they are probably done on private property and out of the view of neighbors, rather than on the streets. The absence of mention of drug and alcohol sales as frequent crimes in Nezahualcóyotl may reflect a very different phenomenon: in these neighborhoods, residents' concerns over public sales and use of drugs and alcohol are overshadowed by more violent and fear-provoking activities, like assaults on the streets and home-invasion robberies.

Another indication of the higher level of danger in Nezahualcóyotl than in Huixquilucan is in the victimization of neighborhood leaders themselves in the past year. In the former, three of twelve had been victims of serious crime (two assaults and one car theft), while in Huixquilucan, only one had been victimized (burglary), and it was considered by the victim to be politically motivated rather than a random street crime. While our small sample is insufficient for any broad generalizations, it does provide some concrete evidence of the relative danger from crime that residents face in the two municipalities.

A different sort of insight on the crime problem arises from a review of the strategies that the leaders of neighborhood councils as individuals chose to try to minimize their risk of victimization. These data are relatively more difficult to interpret, given that some of the choices may correspond to budget constraints more than to other factors. For example, only in the three high-income neighborhoods of Huixquilucan are private police forces used by neighborhood leaders, though they are reported to exist in new luxury buildings in one Huixquilucan low-income neighborhood, and unarmed night watchmen are used in one Nezahualcóyotl neighborhood. Still, it is worth noting that similar proportions of neighborhood leaders in both municipalities report taking actions like reinforcing the security of their homes (just over 50 percent in each); accompanying family members in the streets (33 percent in Huixquilucan, 42 percent in Nezahualcóyotl); and being more cautious about showing valuable items, like jewelry or wallets, in public (25 percent in Nezahualcóyotl, 33 percent in Huixquilucan).

Neighborhood Council Actions and Initiatives in Public Security

As mentioned in the preceding section, since the precise powers and responsibilities of the neighborhood councils regarding issues of public security are not spelled out, their actions are varied. In this regard, the councils in Huixquilucan appear to be more active and creative than those in Nezahualcóyotl. In Huixquilucan, the low-income urban neighborhoods report having pressured successfully for more frequent “rounds” or “patrols” by police officers, and one low-income neighborhood managed to be incorporated into the municipal system of “panic buttons” (*botones de enlace*), which connect households or businesses directly to the municipal Department of Public Security. Public meetings with police officers assigned to

the neighborhood were held in one low-income area, and emergency telephone numbers were distributed to attendees. In one of these neighborhoods, a neighborhood watch (*comité de vigilancia*) was established, and in another the neighborhood leader began to participate in "ride-alongs" in squad cars as police did their rounds. As a result of these efforts, the leader reported that "the officers no longer get drunk in the squad cars."

The councils in Huixquilucan's high-income neighborhoods were far more active in issues of public security. With residents' contributions, one bought a squad car and radios for the officers of the semi-private State Auxiliary Police who work in the area. One neighborhood installed a private system of security cameras, and one closed some streets to through-traffic. Another oversaw the installation of "panic buttons" in local businesses, and the leader of the council was connected to this system in another neighborhood. Lobbying for greater presence of police officers in these neighborhoods seems to have been successful as well. Leaders also tried to exert more oversight over the actions of police officers in their neighborhoods, both by developing closer relationships with officers and by reporting problems or misbehavior to the authorities.

The villages in Huixquilucan were different: two of the three surveyed reported having carried out no actions at all. The other mentioned only the incorporation of the council leader into the "panic button" system. However, this lower level of activity in public security makes sense given that these leaders also reported that street crime is relatively rare in their villages.

In Nezahualcóyotl, however, the lack of dynamism among neighborhood councils is a bit more puzzling. Of course, if the municipal Department of Public Security does make use of a parallel system of neighborhood committees, this issue may be handled through other channels. This might explain why half of the Copaci leaders who were surveyed report having taken no action related to public security. But others did act, and half of them cite the dissemination of telephone numbers of the authorities and other neighborhood residents, as well as the distribution of other information related to the prevention of crime. Several also held neighborhood meetings, with or without police officers, and attempted to develop closer relationships with local police in general.

Still, none of the Copacis appears to have the organizational or financial resources needed to undertake the variety of neighborhood-specific actions

attempted in the urbanized areas of Huixquilucan. Furthermore, if ad hoc public security committees indeed operate, they clearly are not integrated into neighborhood life through the official organs of neighborhood representation.

Of course, we cannot say with certainty whether the greater activism by neighborhood councils in Huixquilucan is effective. Their work might be the cause of their apparently lower rates of crime, or these may be due to other factors. The points to keep in mind from these observations are, first, that problems of public security at the neighborhood level appear to be confronted in at least two distinct ways in the municipalities studied here. Second, where neighborhood councils are involved in this issue, it appears to be as a consequence of their own initiative rather than the policies of police departments or municipal governments to work with them. Third, to the extent that the councils are meant as mechanisms to approach neighborhoods as integrated wholes, rather than according to sectoral divisions imposed by government administration, any parallel structure of committees dedicated to public security would presumably undermine the relevance of the Copacis, without clearly offering anything in return.

Interaction with Police

The survey responses suggest that municipal police are the element of the justice system with which neighborhood groups have the most contact. Of the twenty-one councils studied, all but one reported having some relationship with municipal police, and the vast majority in Huixquilucan (90 percent), as well as two-thirds of the leaders in Nezahualcóyotl, reported good relationships with them. About two-thirds of the total report that this relationship has remained the same or improved since last year, while one-third report deterioration.

Contact with the state police was much less frequent in Huixquilucan, while in Nezahualcóyotl it was about as common as for municipal police. There was also a noticeable difference in the evaluations of state police in each municipality: in Nezahualcóyotl, 42 percent reported only mediocre (“regular”) or poor relationships with these, while in Huixquilucan, the 33 percent who reported any relationship at all with state police all evaluated them as good. While certainly not definitive, this finding is consistent with widespread complaints by residents of Nezahualcóyotl, in the press and

during the course of this research project, about the problems caused by state police in this municipality. The relatively greater frequency of contact and the more common reports of negative experiences by Nezahualcóyotl's neighborhood leaders in comparison to those in Huixquilucan may indicate contrasting patterns of behavior by state police officers in the two jurisdictions. The reasons behind any differential behavior are not obvious. However, it may be related either to the socioeconomic profile of residents or to the partisan political profile of the municipal government.

Other questions in the survey were oriented toward providing a better understanding of the relations between neighborhood groups and municipal police in particular. Part of the challenge is to figure out what police officers actually do in neighborhoods, at least from the point of view of residents. This is important, in part, because the literature on policing from other countries recognizes that there is often substantial difference between the policies or practices adopted by the directors of police forces and the behavior of officers on the streets, away from direct supervision. Nearly all of the neighborhood leaders in this study mentioned that local police carry out patrols (*patrullaje*) or rounds (*rondines*), though police apparently are not present at all in one neighborhood in each of the two municipalities. Two-thirds of leaders in Huixquilucan and one-half in Nezahualcóyotl also reported that police regularly conduct special actions or sweeps (*operativos*) in their neighborhoods.

Other patterns are more divergent between the two municipalities. Nearly 80 percent of neighborhood leaders report that they know the officers assigned to their neighborhoods in Huixquilucan, while only 33 percent say this in Nezahualcóyotl. This may simply reflect the greater absolute size of the police force and population in the latter, or it may be the result of deliberate attempts in Nezahualcóyotl to rotate police officers assigned to particular neighborhoods. This is a tactic commonly employed in Mexico to lessen the risks of extortion and other problematic relationships between police officers and residents.

Police were more frequently reported to respond to residents' requests for presence in particular zones, like schools or commercial areas, in Huixquilucan (67 percent) than in Nezahualcóyotl (33 percent). Paradoxically, they were more commonly reported to attend neighborhood meetings in Nezahualcóyotl (50 percent) than in Huixquilucan (33 percent). This pat-

tern has no obvious interpretation. It may reflect a simple substitution of activities as a result of deliberate policing strategies. For example, in Nezahualcóyotl, police may be taking a “neighborhood policing” approach (consistent with recently implemented municipal policy), prioritizing the development of relationships with neighborhood organizations. In Huixquilucan, police may be concentrating on crime “hot spots” identified by residents. However, even if these patterns of police actions are a result of deliberate strategy, their effectiveness in each case would have to be questioned. In Nezahualcóyotl, as noted previously, only about one-third of neighborhood leaders know their local police officers. In Huixquilucan, it is questionable whether a “hot spots” strategy could be effective if based on the perceptions of danger of residents rather than on crime data collected by police forces.

More likely, these differences simply reflect high levels of improvisation, arbitrariness, and inconsistency in police behaviors and in the strategies of both municipal forces. This possibility is supported by the observation that, in the high-income neighborhoods of Huixquilucan, police appear to be much more attentive to neighborhood organizations than they do in the other two zones of the municipality. In other words, access to police protection in Huixquilucan—to the extent that local police truly serve as dissuasion to crime (more on this below)—appears to be highly unequal among neighborhoods in Huixquilucan and to correlate with socioeconomic variables. In Nezahualcóyotl, police protection is inconsistent but not clearly related to socioeconomic differences, in part because such differences are simply less apparent in this municipality.

Nevertheless, if the problem is improvisation, then systematic discrimination by municipalities and police forces might not in fact be the rule. Rather, the neighborhoods that complain the loudest and pressure local government in ways that it finds difficult to resist may be more likely to be attended to. For example, all three high-income neighborhood leaders report “special public security programs” in their neighborhoods, including security cameras and private police, but these programs were proposed and lobbied for by the neighborhood groups themselves. In contrast, all the special programs reported in Nezahualcóyotl were designed and implemented by the municipality rather than resulting from autonomous proposals or demands for action by residents.

Finally, it is worth considering whether municipal police are perceived by neighborhood leaders to pose any deterrent to crime at all, or whether their presence is considered irrelevant or even counterproductive. There appears to be some ambivalence about this question. On the one hand, as noted previously, some leaders do petition local government for more police presence in their neighborhoods, and a not insignificant number think that police actions are sufficient to fight crime in their neighborhoods—44 percent in Huixquilucan and 17 percent in Nezahualcóyotl. Indeed, even the majority of leaders in each municipality, who do not consider that police action is sufficient, may believe that more police presence would help dissuade some criminal acts. On the other hand, residents are not sanguine about the behaviors of some police officers: extortion and corruption were cited as problems by 67 percent in Huixquilucan and 25 percent in Nezahualcóyotl. In addition, diverse forms of simple ineffectiveness in response to crime and public order issues were cited by 22 percent and 42 percent, respectively.

Interaction with Local Government

Beyond policing and the actions of the local Department of Public Security, a variety of other actions by municipal government may contribute to the prevention of crime or to improving residents' perceptions of security in their neighborhoods. The kinds of supplementary actions that neighborhood leaders reported in response to our survey varied somewhat according to the neighborhood and the municipality (table 6.2).

With one exception (the repair and construction of green spaces), all of these actions were reported more frequently by council leaders in Huixquilucan than in Nezahualcóyotl. The reasons for this variation are not always obvious, but they likely are related to the different strategies adopted by local governments, both to improve public security and to make other sorts of impacts on local areas. For whatever reason, the Huixquilucan municipal government appears to have been much more active in repairing or installing public lighting (reported in 100 percent of the Huixquilucan neighborhoods), pruning trees in public spaces, installing neighborhood alarm systems, and organizing recreational and cultural activities.

Table 6.2 Neighborhood-level Actions by Municipalities: Percent of Council Leaders Who Report That These Actions Have Been Taken in Their Neighborhoods

	Huixquilucan (n = 9)	Nezahualcóyotl (n = 12)
Repairing or improving public lighting	100%	67%
Tree pruning and trimming	89%	58%
Installation of neighborhood alarms (<i>botones</i>)	78%	33%
Organization of recreational or cultural activities	78%	25%
Installation of lights outside private houses	78%	25%
Repair or construction of green spaces (parks, gardens, and so on)	67%	75%
Construction of police substations	56%	17%
Repair or construction of space for council activities	56%	0%
Courses on crime prevention	33%	17%
Closure of streets or walkways	22%	0%
Closure of dangerous places (vacant lots, businesses)	11%	0%

Some of the differences in these actions are likely related to municipal scale; the number of people and places to be attended to by local government is simply much greater in Nezahualcóyotl, so impacts of municipal actions might not be as apparent. The degree to which previous administrations have neglected certain neighborhood issues surely also plays a role, since the need for action by local government may be greater or lesser depending on what was done previously. Finally, it should be remembered that the actual impact of any of these actions on crime rates, or even on perceptions of public security, is subject to some debate and very difficult to estimate with precision. Nevertheless, these data suggest much more neighborhood-level activity by the government of Huixquilucan than by that of Nezahualcóyotl.

CONCLUSIONS

The findings presented in this chapter should be considered tentative. The complexity and volatility of sub-municipal governments in Mexico mean that additional research, designed to specifically test the hypotheses de-

rived from this research project and others, could shed more light on the issues discussed. For example, in different states or municipalities, during different times, or regarding the treatment of different public issues, the role of neighborhood councils may vary substantially from what was found generally in Huixquilucan and Nezahualcóyotl. The councils may go beyond simple communication with local government to include the determination of municipal policy priorities. Political parties may work through channels other than neighborhood councils to attract and keep supporters. Local governments may try to be as accountable to poor neighborhoods as to rich ones, and they may even succeed. Unfortunately, the research reported here does not coincide with any of these scenarios.

In broad terms, local governments have made notable improvements in Mexico during recent decades. Still, this research indicates that where a person lives exerts a strong influence on the degree to which she or he may benefit from any improvements in government, particularly within the metropolitan area of Mexico City. Given the high correlation between residential location and other socioeconomic variables, this finding suggests that government accountability is limited and access to justice is biased, especially for the poor.

That life is better in many senses for the rich than for the poor is not a novel conclusion. However, the lesson from the study of these neighborhood councils is that it is not only personal wealth that determines accountability and access to justice at the local level, but also the structures of neighborhood governance and the willingness of politicians to take advantage of institutional weakness for partisan advantage.

Variation across local areas in neighborhood organizations and their functions is not in itself problematic. Indeed, it could represent the possibility for flexible adaptation to local conditions, for example, among the diverse sub-municipal communities in Huixquilucan. However, flexibility is not the same as improvisation and lack of policy effectiveness altogether. And it is precisely these latter two problems that appear to plague the municipalities studied here. In this sense, the bias in favor of those with higher incomes is not necessarily a matter of deliberate discrimination. Indeed, the difficulties in accountability and access to justice may be due more to the fact that little municipal policy action of any kind is apparent

in many neighborhoods. This is a matter, then, of government effectiveness as well as institutional design.

Neighborhood councils have not evolved into functioning mechanisms for the communication of preferences and demands of sub-local areas. Instead, they continue to exist as a mix of old-style urban patronage (albeit for a greater variety of political parties than previously) and a new style of irrelevance to local government actions. Here, it is not clear to what extent the problem can be traced to simple local government incompetence and to what extent political interests, including political parties, deliberately prefer to keep these institutions weak to maximize their own flexibility in action.

One of the obstacles to making elected municipal officials accountable for neighborhood performance is that very few municipalities develop and publicize credible indicators of neighborhood performance. In addition, many politicians prefer to ridicule public perceptions of danger in their surroundings, rather than to view them as signals of a need for government action. At the same time, the range of problems in typical neighborhoods of both municipalities studied here is so wide, and there are so many "urgent" problems of public services for low-income residents, that it is difficult and perhaps inappropriate for neighborhood councils to focus their very limited wherewithal only on public security.

The dependence of neighborhood councils on municipal governments or political parties for their operating resources combines with the lack of any power to demand attention and action for pressing neighborhood problems. The result is to render most neighborhood councils passive and cooperative. Local governments and political parties appear to take advantage of this situation for short-term electoral gains, rather than working to establish more effective forms of neighborhood representation.

The contrast with the neighborhood associations in the high-income areas of Huixquilucan sheds light on just how different the response of local government is to groups that raise their own operating funds, integrate their demands coherently and systematically, and are oriented toward serving residents rather than pleasing government or party officials. These neighborhoods are not free from problems, and many of their advantages stem from the preexisting ability of residents to use their personal wealth and professional abilities to resolve or minimize community prob-

lems. Still, the differences between them and the other councils in their relationships with local government are glaring enough to merit consideration in any conversation about accountability and access to justice in Mexico. As in so many other spheres in Mexico, the state and the political parties appear disinterested in improving the lives of the majority of residents. There is little opportunity for any neighborhood leaders except the most wealthy to address issues of security and the rule of law with local elected officials, let alone hold them accountable for neighborhood conditions.

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7

Transparency and Accountability: Multiple Paths to Constructing Public Space in Mexico

SERGIO LÓPEZ AYLLÓN

There is a widely shared view that Mexico has successfully navigated the long and torturous path to democracy and is now a democratic country. Yet democracy is not fixed and immovable. Rather, it is continually being constructed, in a process that encompasses broad institutional, political, and even cultural complexities. As demonstrated by the experiences of countries that joined the wave of democratization toward the end of the twentieth century, the processes of democracy building tend to be differential and asymmetric, even within the same spatial and temporal contexts. The essays collected in this volume constitute a sampling of the complexity inherent in the construction of public space, and they provide important lessons about how a democratic system is achieved.

The diverse topics the authors examine—from citizen participation in municipal government to judicial independence, budget oversight, freedom of information laws, and regulatory improvement programs—lead us to consider the underlying elements they share and to understand how, as a group, they all address the same process of democracy building. I begin by considering some ideas that hopefully will support the reading of these works as the expression of a process and a shared objective.

There are some basic concepts regarding democracy that we must bear in mind. The renowned political scientist Norberto Bobbio proposed a

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“minimal definition of democracy,” which describes it as a “set of rules (primary or basic) which establish *who* is authorized to take collective decisions and which *procedures* are to be applied.... A democracy is characterized by conferring this power (which, insofar as it is authorized by the basic law of the constitution, becomes a right) to a large number of members of the group.¹... The basic rule of democracy is the majority rule, or the rule according to which decisions are considered collective, and thus binding on the whole group, if they are approved by at least the majority of those entrusted with taking the decision” (Bobbio 1987, 24–25).

Bobbio notes that those two conditions are necessary but not sufficient. “There is a third condition involved, namely that those called upon to take decisions, or to elect those who take decisions, must be offered real alternatives and be in a position to choose between these alternatives. For this condition to be materialized those called upon to take decisions must be guaranteed the so-called basic rights: freedom of opinion, of expression, of speech, of assembly, of association etc. These are the rights on which the liberal state has been founded ... in the full sense of the term” (Bobbio 1987, 25).

This third condition is of particular importance because it implies that one of the defining characteristics of contemporary democracy is the citizenry’s ability to evaluate the performance of their government. Consonant with Bobbio’s perspective, Nobel laureate in economics Joseph Stiglitz has argued that significant participation in the democratic process requires informed participants. Therefore, the electorate *must be* informed; voters must know the available alternatives and possible outcomes. In the absence of this prerequisite, democratic oversight cannot be attained (Stiglitz 2003, 7).

This relatively simple idea has given rise to other, more elaborate concepts that have enriched democracy’s institutional framework—and made it more complex. That is, it is not simply a question of generating a flow of information from those who govern to those who are governed so that the latter can cast an informed vote. Rather, it is a matter of constructing institutional frameworks that permit genuine accountability, which is seen as a necessary and indispensable complement to the effective control that citi-

¹ The present discussion will not address the meaning of a “large number of members,” which merely recognizes that even in the most perfect democratic regime, not everyone can vote.

zens should—and can—exercise over those in power. In this way, “accountability is a ubiquitous requirement in the world of democratic politics. We all agree that democracy implies accountability. In Mexico, in particular,... the establishment of effective accountability institutions and practices represents one of the first aspirations of the young democracy” (Schedler 2004, 9).

While there seems to be universal agreement on the need for accountability, there is less of a consensus regarding the content of this concept,² and even less regarding the practices and tools that give it content. It is advisable, therefore, to offer a more detailed explanation of exactly what is meant by accountability.

The idea of accountability broadly expresses the ongoing concern to ensure oversight of and limits on governmental power, as well as the institutional construction of checks-and-balances mechanisms. Andreas Schedler has suggested that accountability encompasses two core assumptions. One is “answerability,” or the obligation of politicians and government officials to make public and justify their decisions; the other is “enforcement,” or the capacity to penalize those who have exceeded their powers (Schedler 2004, 12ff.). Both dimensions lead to different problems when they are applied to the enormous diversity of phenomena and institutions that compose the complex framework of the Mexican state, particularly when attempting to reconstruct the rules governing the exercise of power within a context of a transition to democracy.

Answerability is the first and most common dimension of accountability, and it presupposes two elements. The first is the officials’ and politicians’ obligation to respond, predicated on an informational dimension that assumes the right (on the part of the overseeing agent) to receive information and, consequently, the obligation (on the part of the agent subject to oversight) to deliver it. This element also encompasses institutional mechanisms to disseminate information about actions and decisions even when there has been no specific request for such information. In a broad

² This problem arises in part because the translation of the term “accountability” into Spanish is an approximate fit, and there are some aspects of accountability that are not covered by “*rendición de cuentas*,” such as the idea that “to be accountable” is an obligation, not a choice, on the part of government.

sense, all of the so-called transparency tools are linked to this dimension of the obligation to respond. The second, more complex element involves the explanation and justification of an action. This aspect implies subjecting the exercise of power not only to the rule of law but also to the “rule of reason,” and it creates a relationship of dialogue between the accountable agents and those to whom they are accountable (Schedler 2004, 14).

Of course, it does not suffice that agents explain what they do and why they do it. They must also accept the consequences of their actions, including the imposition of sanctions when they exceed the authority accorded them by the judicial framework. In fact, neo-institutional thinkers have stressed that effective rules require oversight mechanisms that will not allow any infraction to pass unnoted (accountability’s informative function), but they must also include enforcement mechanisms that allow and encourage disciplinary action when illegal acts are committed (March and Olsen 1995).

How, then, is accountability built into a democratic system? Its design responds to an extremely complex institutional framework in which those who exercise power—politicians, officials, judges—are subject to different types of accountability. Thus there are political accountability mechanisms, but also mechanisms for administrative, budgetary, technical, and legal accountability. Therefore, there are multiple accountability tools, each of which responds to a different objective. Among these we could list public meetings and consultations, the right to access information, the duty to publish information (including proceedings and administrative and judicial decisions), regulatory impact assessments, audits, reports, and even judicial reviews of administrative decisions.

Given the diversity of agents subject to accountability and the mechanisms for implementing it, some conceptual categories should contribute to a better understanding of how accountability is constructed institutionally. The traditional distinction between horizontal and vertical accountability is useful in working toward this goal (O’Donnell 1994, 1999).

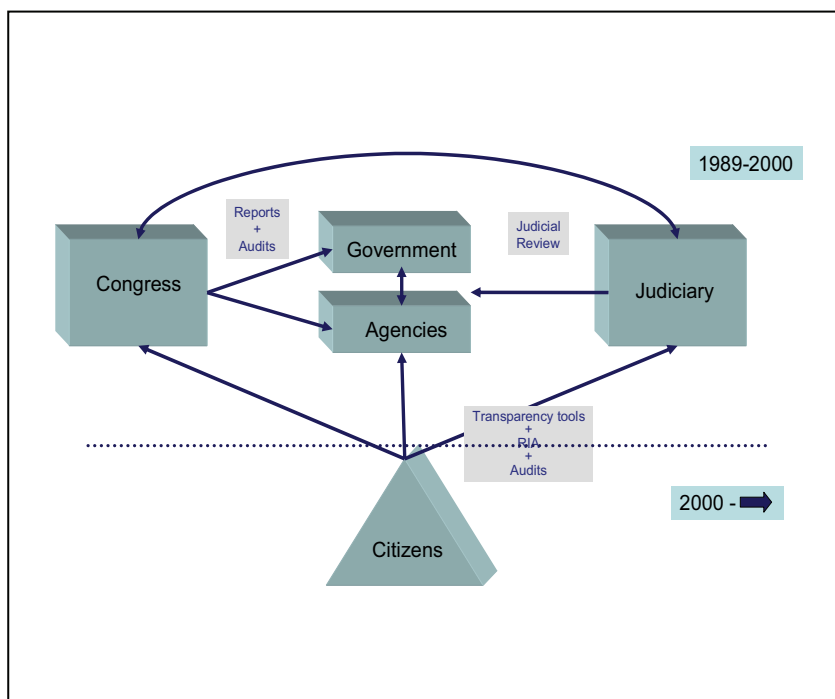
Vertical accountability describes a relationship of relative subordination, in which a higher-level agent demands accountability from one of lower level or vice-versa. The interaction operates in both directions; that is, it can be from the top down or from the bottom up. The typical example

of “top-down” accountability is the bureaucracy, where high-level public servants control their subordinates. The right of access to information or the mechanisms for citizen participation through citizen councils are examples of “bottom-up” accountability.

By contrast, horizontal accountability describes a relationship between agents at equal levels in the power structure. The paradigmatic example is the system of checks and balances in the classic division-of-powers model, in which the various powers conduct audits and disseminate reports on the others. Nevertheless, the true nature of power (which is relational) makes this concept highly problematic. It is very difficult, if not impossible, to identify instances in which “power equality” exists, whether in law or in fact. Even if we substitute the less rigorous and less precise concept of “equivalence” for “equality,” some of the paradoxes of horizontal accountability remain, given that even approximate equalities are rare. In this regard, Schedler has rightly suggested that it is more productive to approach accountability through the concept of independence. That is, the accountable agent should be independent from the actor to whom he/she is accountable in all decisions within his area of competence (Schedler 2004, 24). Judicial review, which presumably controls the legality of government officials’ actions, is the mechanism that best illustrates this type of accountability.

Given all these elements, it is possible to produce a simplified diagram of the relationships of accountability in a democratic system, which takes three different factors into account. The first one is the type of agency and the place it occupies within the judicial and political system. Of course, this diagram can be drawn in various ways depending on who is the accountable agent. The second factor is the type of accountability—horizontal or vertical—that exists between the various agents. The third element is the type of accountability tool that is used (see figure 7.1).

Within this analytical framework, accountability is a complex system of mutual controls that operate between the traditional powers (executive, legislative, and judicial) and even within each of these. One or more tools can operate within each relationship, such that the sum of them can be seen as an indicator of the depth and complexity of accountability at any given moment.

Figure 7.1 An Institutional Accountability Diagram

The Mexican experience demonstrates that various accountability relationships gradually took shape as the country advanced through its democratization process. The first of these appeared in the executive power. One example was the introduction of regulatory improvement measures beginning in 1996, as discussed in the essay by Jorge Alberto Ibáñez and Yessika Hernández. Later, a relative weakening of presidential power and the increasingly independent operation of the legislative and judicial branches enabled the institutional accountability mechanisms to work effectively (González and López Ayllón 1999; Serna de la Garza and Caballero 2002). This partially explains how institutions like the Federal Auditing Office (Auditoría Superior de la Federación), the budgetary arm of the Mexican Federal Congress, was able to exercise broad oversight of the federal budget. Similarly, it explains the increasing independence of the judicial branch, analyzed in depth by Andrea Pozas-Loyo and Julio Ríos-Figueroa.

Nevertheless, this framework remained unfinished until the late 1990s; what was lacking was the construction of vertical accountability mechanisms that operated from the bottom up, that is, those that would enable citizens to directly question government authorities and evaluate their performance. Of course, some mechanisms for citizen participation, such as neighborhood councils, began to appear toward the end of the 1980s, as discussed in the essay by Allison Rowland. But these mechanisms had important limitations in their design. It was only after the 2000 elections that the consolidation of formal democracy allowed for the enactment of the Transparency and Access to Information Law. This legislation created the mechanisms that, based on transparency and free access to information, gave Mexican citizens direct and efficient tools for demanding accountability (Concha, López Ayllón, and Tacher Epelstein 2004).

This panorama, though encouraging when viewed as a whole, also reveals notable dilemmas and shortcomings. The first and perhaps most important of these is the absence of effective enforcement mechanisms, which results in an imperfect accountability system in Mexico. As Nicolás Pineda Pablos outlines in his essay on municipal government accountability in Sonora, both the residents of the state and its legislature view the existing evaluation and enforcement mechanisms as still very weak and in need of much further development.

A second problem, which is frequently glossed over in more general views of current-day Mexico, is the federal nature of the country's political system, which adds unanticipated degrees of complexity to democracy building. Decision making is no longer centralized, and the autonomy of the states, and even the municipalities, along with the powers that operate within them, can generate asymmetric outcomes, even in relatively brief time spans and even when the same instruments are used. Evidence of this can be found in the essay by Mauricio Merino, which analyzes in detail the differences between the various state-level freedom of information laws. Far from encountering a virtuous outcome, we find surprisingly diverse standards for exercising the right of access to information.

A particular richness in the essays discussed below is that three of them address issues embedded in the local level, and two others, though they are not explicitly focused on local-level issues, do identify the local level as the right level for more focused analyses.

A final lesson is that democracy and accountability depend on the willingness of citizens to live by these principles. The cultural dimension—the set of values accepted as appropriate behavioral guidelines—is a key determinant of the optimal operation of democracy in practice. In this sense, several essays reiterate that the democratization process will not be complete until these values and behaviors take root in the daily lives of the Mexican people. This will depend, in turn, on the progress made in meeting the urgent need to improve the people's economic standard of living.

Keeping the preceding points in mind, we can now look more specifically at the individual essays. The first, "The Challenge of Transparency: A Review of the Regulations Governing Access to Public Information in Mexican States," by Mauricio Merino, presents an extraordinary analysis of the outcomes of the legislative process that followed the enactment of the Transparency and Access to Information Law. The merits of this work are not limited to the author's analysis of the significant and sometimes worrisome differences to be found between state-level freedom of information laws in terms of their normative, organizational, procedural, and institutional stipulations. Merino goes on to argue that transparency has yet to be understood as a new horizontal public policy that can affect both decision making and the exercise of power within the country. The distinction Merino poses between "right of access" to information as a basic right and transparency as "public policy" holds enormous relevance, because it allows a differentiation between action arenas and responsibility. Right of access requires a homogenization of the criteria that govern its exercise since, as a fundamental right, it should not vary from state to state. Transparency as public policy can, however, admit differences based on particular elements that may vary regarding the way in which power is exercised.

Merino's conclusions draw attention to change and difference as well as advances and shortcomings, but foremost is the conviction that this process is under way, even though its future is yet uncertain. Thus he states that "transparency policy is the first policy of a genuinely federal scope produced after the transition to democracy.... When I say 'federal,' I do not mean the traditional interpretation, according to which the government issued norms that were adopted by the states. I am referring to the original meaning of the term: a policy implemented in the states with as many dif-

ferences as there are differences between the states.” Far from smooth and homogeneous, this process presents marked contrasts and fluctuations: “states that have refused to adopt transparency as opposed to others that moved more quickly than the federation; systems of openness that have established guidelines for effective behavior as opposed to those that have encouraged the lack of powers and resources for the agencies responsible for implementing the process; genuine innovations as opposed to pretense. But in any case, this process has already become established in Mexico.”

The second essay, “The Role of the Regulatory Improvement Program in Strengthening the Rule of Law in Mexico,” by Jorge Alberto Ibáñez and Yessika Hernández, may at first blush seem unconnected to the core concerns of democracy and accountability. Nevertheless, as Ibáñez and Hernández attempt to demonstrate, regulatory improvement is a federal program aimed specifically at firmly imbedding democracy and accountability in the operations of the administration, and particularly in the exercise of its regulatory functions. Especially revealing is these authors’ description of the program’s origin, which was closely linked to the country’s move to new economic and political models, and its consolidation under the international best practices approaches endorsed by the Organisation for Economic Co-operation and Development, which are based in transparency and public consultation. It is worth recalling that many of the freedom of information laws that exist in the world today also came about as the result of actions by international organizations and are linked to processes of democratization (Ackerman and Sandoval 2005).

This essay provides a detailed description of the specific instruments linked to regulatory improvement. Particularly relevant to our perspective is the authors’ examination of the regulatory impact assessment, or RIA, as a tool for securing public explanations of regulatory decision making. The RIA is important for its content but also because it promotes objective and public debate about the advantages and disadvantages of proposed regulatory projects and about available alternatives. Furthermore, it enables interested actors to be heard. The RIA mechanism is advanced, then, as an element that supports accountability. This review leads the reader to wish for elements on which to evaluate the success of the regulatory improvement program, as well as an extension of the analysis to the state and municipal levels because, as in the case of transparency, each of these arenas

has specific functions that would benefit from regulatory improvement efforts. In other words, just as is true in the case of transparency, little or nothing will be gained if successful federal programs fail to be carried over to other levels of government, albeit with necessary modifications. Their carryover into other levels of government depends, first, on convincingly demonstrating the need for this to be achieved and, second, on capacity building to make the transfer possible.

The third essay, "Accountability and Democratization: Reviewing Public Accounts in Sonora," by Nicolás Pineda Pablos, is a stimulating overview of how accountability mechanisms operate at different levels of government in one Mexican state, specifically between local legislatures and municipal authorities. The conclusions to be drawn from this work accord with those derived from the essays discussed above. The first is that, from a normative perspective, a good deal of improvement has been achieved over the preceding closed, authoritarian model, including the present candid and public presentation of the outcomes of the process of rendering a municipal public account. Yet an overview of the technical capabilities of the local legislative branch, the content of congressional decisions, and legislative actions (or lack thereof) shows its shortcomings. Clearly, the margins for discretionary actions are still very broad; highly notable is the absence of mechanisms that ensure accountability of the local legislature itself, particularly those related to enforcement. And finally, there is a serious lack of social organizations with the capacity to conduct their own assessments of public accounts, a prerequisite for any significant improvement in accountability.

In other words, Pineda, like the other authors, observes an imperfect progression toward the normative construction of transparency, as well as limited results. A reading of this essay stimulates our curiosity; we want to know what is happening in other Mexican states, underscoring the need to pursue research that will allow us to compare cases, learn, and advance our knowledge.

"When and Why Do 'Law' and 'Reality' Coincide: De Jure and De Facto Judicial Independence in Chile and Mexico," by Andrea Pozas-Loyo and Julio Ríos-Figueroa, takes a somewhat different tack than the others. Yet it maintains a crucial link with them as it seeks to identify the factors that

make judicial independence an appropriate mechanism for horizontal accountability.

Pozas-Loyo and Ríos-Figueroa make interesting and highly relevant contributions to our understanding of the requisite conditions for the proper functioning of accountability institutions. One such condition is judicial independence. An initial lesson offered up by these authors is that we should not underestimate the importance of normative framework design. Not only is it an important variable in terms of the intended functions of an institution, but it also allows for meaningful and replicable comparisons. The second lesson is that normative framework design is a necessary but not sufficient element in fully explaining institutional operations; for this we need to look also at institutional interactions with existing sources of power. The presentation of scenarios with differing variables and a case analysis supports these authors' assertions regarding the conditions that favor judicial independence, understood as the ability to confront the government in cases involving the protection of citizens' rights in the face of abuses of power.

In the final essay, "Neighborhood Organizations, Local Accountability, and the Rule of Law in Two Mexican Municipalities," Allison Rowland analyzes a different dimension of accountability in local government, which involves mechanisms for citizen participation—in this case, neighborhood councils in two municipalities in the State of México. Rowland uses an empirical and comparative approach to explore the role of these organizations, which are intermediate between the municipal government and the citizenry, and she seeks to identify their impact on the level of public services (primarily public security) and the quality of political representation.

Rowland's findings reveal a number of conditions that are linked to the design of these participatory mechanisms, which were created beneath the umbrella of the authoritarian governments still in power in the early days of Mexico's political transition. Thus it comes as no surprise that some 75 percent of the neighborhood council members who were interviewed are or were members of a political party, or that the judicial framework within which they operate is viewed as weak or nonexistent, or that they basically function as administrative units of the municipal government.

Nevertheless, and despite these organizations' limited capacity to strengthen accountability, Rowland finds that in certain cases, especially in relatively wealthier communities or where neighborhood councils are more independent, these organizations can play an important role in the distribution of some public resources. She notes, for example, that some councils have had an impact on the number of police patrols in their neighborhoods and on the installation of security alarms and other crime-prevention measures.

Here again we find points of contact with the essays discussed previously. Even though Rowland rightfully notes that the number of observations does not allow for generalization, it is possible to assert that these councils represent a step forward in building participatory citizenship and shaping municipal governments that are responsive to their citizens' demands. Such organizations hold significant potential, and this potential should be developed.

In sum, five essays, five themes, five dilemmas that confirm that true progress has been made, but which also acknowledge that there is still a long way to go in constructing a fully plural life, exacting genuine accountability from those in power, and creating a society that demands the right to exercise its full authority. Further, these essays suggest directions for future research that will allow us to document, and to evaluate in comparative terms, the necessary accidents in the processes of implementing accountability mechanisms and to better perceive democracy's innumerable faces.

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