

# **Distrust and Disobedience: Discourse and Practice of Law in México**

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**Mexico**

## **Introduction**

In August, 2002, the Mexican Ministry of the Interior (SEGOB), together with the *Fundación Este País*, published the results of a national survey aimed at evaluating the culture and political practices of Mexicans.<sup>1</sup> According to the survey, 45% of the surveyed expressed the belief that neither the citizens nor the authorities respected the law. Moreover, 71% of the surveyed replied “no” to the question “Do you believe that the people should obey the laws, even if they are unjust? To another question, 58% answered affirmatively to the question “Do you believe that the people can disobey a law if it is unjust?”<sup>2</sup>

Four years after the publication of this survey, the presidential candidate of the leftist coalition “*Por el Bien de Todos*” (For the Good of All) in the 2006 elections, Andres Manuel Lopez Obrador (AMLO), was sworn in as the “Legitimate President of Mexico” in downtown Mexico City.<sup>3</sup> In this act, Lopez Obrador and his followers called for the formation of a parallel

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<sup>1</sup> *Conociendo a los Ciudadanos Mexicanos: Principales Resultados de la Encuesta nacional sobre Cultura Política y Prácticas Ciudadanas*, *Este País* magazine, 2-30, 137, August, 2002.

<sup>2</sup> *Id.*

<sup>3</sup> This occurred following a sit-in, termed by the coalition as the permanent assembly (*asamblea permanente*), that lasted over 40 days during which AMLO’s (Andres Manuel Lopez Obrador) followers blocked, with buses and tents, the Zocalo of Mexico City, the adjacent main streets (Madero, Juarez) and Reforma Avenue, one of the main avenues in the city, to pressure the Electoral Tribunal to order the opening of all the urns and a recount of the ballots emitted during the 2 of July election. “Vote by Vote” was the slogan of the protesters during this period. For further information on the 2006 elections and the post-electoral conflict, see Alejandra Lajous, *Confrontación de Agravios: la Postelección de 2006*, 2007.

government to shadow that of Felipe Calderon who was sworn in as President on December 1, 2006 following an extremely difficult and widely questioned electoral process.

The events that took place prior to the swearing in of the “legitimate President”<sup>4</sup>, those that occurred during the installment of the “legitimate government” and the events that followed<sup>5</sup>, were circumstances in which the legal system and its institutions were repeatedly challenged, questioned and discredited. These events, however, were not isolated phenomena. In other areas of the institutional and legal context, the widespread deterioration and discredit could, and can, be observed in everyday life. In the last 15 years, for instance, this has been observable in an increasingly rising crime rate, particularly violent crimes against society; the higher number and degree of brutality of crimes against the judicial and prosecutorial authorities and the police; the emergence of guerillas in the southern part of the country, such as the Peoples’ Revolutionary Army (EPR) and the Revolutionary Army of the Insurgent People (ERPI); the uprising in the state of Oaxaca under the leadership of the Popular Assembly of the People of Oaxaca (APPO) which culminated this year with the intervention of the federal police; and the growing presence of drug cartels throughout the country.

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<sup>4</sup> Said events began with the organization of 3 protest marches to pressure the Federal Electoral Institute to recount the votes. The marches were led by Lopez Obrador and had between 500,000 and 1,000,000 participants, according to the Mexican press. On July 30, during the last march, Lopez Obrador announced his decision to organize the sit-in (“permanent assembly”) and take over, “until further notice”, the central plaza: Zocalo, and the Madero, Juarez and Reforma Avenues. Then followed the physical occupation of the Congress Podium by PRD members to impede access by President Vicente Fox, who was impeded from reading the customary last address to the nation; the creation of the National Democratic Convention (on November 20<sup>th</sup>, the day when Felipe Calderon would have been sworn in as President) and on which Lopez Obrador was declared the “Legitimate President of Mexico” and his Cabinet was named; and the threat of the PRD to impede Felipe Calderon from being sworn in on December 1, which resulted in Calderon being sworn in a ceremony which lasted only a few minutes and had to come to an end at the National Auditorium, owned by Televisa. For more information see Alejandra Lajous, *Confrontación de Agravios: la Postelección de 2006*.

<sup>5</sup> I refer here to the conflict that arose by Lopez Obrador’s insistence to be him, as the people’s representative, rather than president: Vicente Fox Quesada, who celebrated the Independence and gave the traditional “Independence Call” (*grito de independencia*) in the Mexico City Zocalo; the conflict that arose when the police threatened to remove the AMLOistas from the Zocalo to allow the November 20th military parade to pass through and the assault of the Congress to impede the swearing in of Felipe Calderon. See Id.

In everyday events, this weakening of legal institutions is observed in the flagrant disobedience to traffic signals, in the corruption that occurs both at the lowest levels of law enforcement and at the highest bureaucratic levels, the undue appropriation of public and/or private properties (*paracaidismo*- “parachuting”)<sup>6</sup>, the prevalence of informal commerce and black market on the streets of Mexico, the lack of prestige of high and low ranking public service employees, etc.<sup>7</sup>

All of the above has occurred in a historical and social context in which the law and its institutions have a specific meaning and in which the people relate to them in a certain way. In this context, the law and its institutions are not viewed as tools that work the same way for everyone. Nor are they viewed as something that entails a moral obligation. Rather, they are perceived as a source of advantages, accessible only to a segment of society, compliance with and obedience of which are necessary only to the extent in which they cannot be avoided.

In this text, I argue that there are two elements of the Mexican attitude toward the law that are relevant for understanding the low degree of obedience occurring in the country. The first is a negative perception as to what the law is and its function, which translates into a generalized distrust in the law and its institutions. The second is an attitude of moral disobligation to obey the law, which is closely related to the factual function law plays. These two elements can be observed at the factual and discursive levels in Mexican life.

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<sup>6</sup> This term refers to the people, mainly peasant migrants, who arrive at the main cities looking for work and, having no where to live, take possession of public lots, such as parks, protected areas, sidewalks, etc and build houses.

<sup>7</sup> In his book “Un País al Margen de la Ley” (literally, “A Country Outside the Law”), Carlos Nino mentions some examples in which the illegality of social life in Argentina is observed, many of which exist in the Mexico of today. As examples he mentions the informal economy, tax evasion, corruption, anomalies in productive activities, lack of respect of traffic signs, and the general attitude of illegality in respect of the law. See Carlos Nino “Un País al Margen de la Ley”, chapter 3.

This text is divided into 5 sections. The first three sections focus on the subject of distrust toward legal institutions and authorities. The first section deals with the factual conditions of distrust as lived today in Mexico. The second section analyzes distrust in the public and private discourse. The third section studies the system's inefficiencies as a cause of distrust. The fourth section analyzes the strategies to improve institutional trust. The fifth and last section studies the possibilities of changing conduct to improve trust and diminish legal disobedience.

## **I. Evidence of Distrust**

As it is the case of other Latin American countries, Mexico is a country of enormous social and economic inequality. Currently, 40% of the population has a family income equivalent to 13% of the GDP, while 10% of the population (the high-income sector) has an average family income of 40% of the GDP.<sup>8</sup> According to the World Bank, in 2004, 20.3% of the Mexican population lived in “extreme poverty” and 51.7% classified as “moderate poverty”.<sup>9</sup> In the legal system, the social and economic inequalities become more evident than in other areas. While people in the high income bracket have access to the system and are able to demand compliance with their rights, people with lower income are forced to move outside the legal system.<sup>10</sup>

According to a 2004 report issued by Latinobarómetro, in Mexico, as in other countries studied, the perception is that government exists for the benefit of powerful interests. To the question, “would you say that the country is governed by a few powerful interests to their own benefit, or that it is governed for the good of the entire population?” 75% answered that “it is

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<sup>8</sup> Rolando Cordera, “*La Sociedad Mexicana Hoy: Distribución del Ingreso*” available at [www.rolandocordera.org.mx/pobreza](http://www.rolandocordera.org.mx/pobreza).

<sup>9</sup> Id.

<sup>10</sup> Several studies have been conducted to analyze and explain this phenomenon in Mexico. Some examples are: *Guillermo Zepeda Lecuona, Crimen sin Castigo* (Crime without Punishment); *Elena Azaola, El delito de Ser Mujer* (The Crime of Being a Woman); *Robert Buffington: Criminales y Ciudadanos en el México Moderno* (Criminals

governed by a few interests for their own benefit.”<sup>11</sup> The second survey conducted by the Interior Ministry (SEGOB) in Mexico during 2003 corroborates this perception. To the question, “with what you have observed, are the laws applied to the benefit of all or to just a few?”, 63% answered “just a few”. When questioned about the use of the law in Mexico, 39.9% replied that they believed that the laws are used “to defend the interests of the powerful”, and only 21% stated the belief that they are used “to seek justice”.<sup>12</sup>

One of the most serious consequences of the perception of impartiality of the law is the loss of trust which, as pointed out by Dan Kahan, generates greater loss of trust, leading to non-cooperation (which in this case of the legal system translates into disobedience of the laws).<sup>13</sup> In line with the normative perspective theories<sup>14</sup> people tend to act according to the pattern of behavior perceived in the rest of the individuals of their segment, independently of existing incentives.<sup>15</sup> Consequently, people contribute to the general welfare to the extent in which they perceive that others are also contributing. If, on the other hand, people perceive that others are “not contributing” or “taking advantage”, there is a tendency not only to stop cooperating but even to retaliate.<sup>16</sup> The *logic of reciprocity* suggests the importance of generating trust, since

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and Citizens in Modern Mexico); Angélica Cuellar, *La Justicia Sometida* (Justice Subjugated); Catalina Perez Correa, *Historias de Barandilla* (Front Desk Stories) just to mention a few..

<sup>11</sup> Of 18 countries studied, Mexico took 7th place in negatively qualifying the government, behind the Dominican Republic, Peru, Paraguay, Uruguay, Ecuador and Bolivia. On this topic, Colombia and Venezuela received the best remarks. *Latinobarómetro, Informe- Resumen 2004: Una Década de Mediciones*. Available at [www.latinobarometro.org](http://www.latinobarometro.org)

<sup>12</sup> Secretaría de Gobernación, *Segunda Encuesta Nacional sobre Cultura Política y Prácticas Ciudadanas*, 2003.

<sup>13</sup> Dan M. Kahan, *The Logic of Reciprocity: Trust, Collective Action, and Law*, 2003.

<sup>14</sup> See also Tom Tyler, *Why do People Obey the Law*, 2007 and Tracy Meares and Dan Kahan, *Law and (Norms of) Order in the Inner City*, 1998.

<sup>15</sup> Dan M. Kahan, *The Logic of Reciprocity: Trust, Collective Action, and Law*, 2003. See also Tracey Meares and Dan Kahan, *Law and (Norms of) Order in the Inner City*, 1998. The reciprocity theory criticizes the traditional theory of “collective logic” which explains the behavior as something specific starting with incentives. According to Kahan, this theory sustains that people look to obtain maximum benefits, and to the degree possible, they tend not to cooperate. Therefore, the theory of collective logic seeks to modify human behavior with incentives (rewards and punishments).

<sup>16</sup> Dan M. Kahan, *The Logic of Reciprocity: Trust, Collective Action, and Law*, 2003.

those who believe in the cooperation of others will be more willing to cooperate.<sup>17</sup> Trust, therefore, is an instrument that promotes social cooperation, which in the present case translates into obedience of the law.

We can understand this instrument as a social and cultural practice determined by daily action and discourse. As Paula Mussetta states, trust is a complex practice constructed culturally.<sup>18</sup> According to Felipe Hevia, trust -and distrust- presuppose the existence of a relationship, in which the actions, or intentions, of the other person (or party) cannot be pre-established, thus creating some type of risk (insecurity or uncertainty) for one or both of the parties.<sup>19</sup> Often, this relationship determines the degree of trust that exists. Hevia, for example, catalogs societies depending on the closeness of their relationships. According to him, there are family type societies, such as the Italian, in which "trust extends no further than the family or intermediate societies" and societies in which trust goes beyond the family, such as Germany and the United States.<sup>20</sup>

With the information available about Mexico, we observe that there is a clear distinction, in terms of trust, between relations that occur in the private sphere as opposed to those of the public sphere, with some similarity to the family type societies mentioned above. As to relations in the private sphere,

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<sup>17</sup> Id. According to Kahan, the traditional theory is that people behave as individuals wanting to maximize their benefits who do not voluntarily contribute to the public good except in cases where there are express benefits. The reciprocity theory criticizes this idea, stating that persons behave according to their emotions and following social norms that dictate behavior, irrespective of the benefits that might be obtained. See Tracey Meares and Dan Kahan, *Law and (Norms of) Order in the Inner City*, 1998.

<sup>18</sup> Paula Mussetta, *Dilucidando la Confianza: Aportes Empíricos para esclarecer el fenómeno en México*, in *Transparencia, Rendición de Cuentas y Construcción de Confianza en la Sociedad y el Estado Mexicanos*, (literally, Elucidating Trust: Empiric Contributions to Clarify the Phenomenon in Mexico" in Transparency, Rendering of Accounts and Building of Trust in Society and in the Mexican State) IFAI.

<sup>19</sup> Felipe Hevia de la Jara *¿Cómo Construir la Confianza? Hacia una Definición Relación de la Confianza Social*, en *Transparencia, Rendición de Cuentas y Construcción de Confianza en la Sociedad y el Estado Mexicanos*, (literally, "How to Build Trust? Towards a Definition of Social Trust", in Transparency, Rendering of Accounts and Building of Trust in Society and in the Mexican State) IFAI.

“narratives of trust are constructed in terms of everyday living. Experiences, living relations, together with the capacity of individuals to place themselves in situations are the building blocks of trust in the private sphere [...].

In the public sphere, the situation is different. The stories of trust in these cases are highly charged with components of an evaluative critical type. In addition, generally the narratives in these cases are informed by the large repertoires available in the collective stock.”<sup>21</sup>

In this sense, trust is formed in private life by experience, and in the public sphere, by collective discourse and the trust expressed by others.

Existing data suggest that in the public sphere, Mexicans feel little trust towards their institutions, particularly government institutions. According to Felipe Hevia, the institutions most trusted by Mexicans are the church and television.<sup>22</sup> According to the 2005 national survey conducted by the Citizens Institute of Studies on Insecurity (ICESI- *Instituto Ciudadano de Estudios sobre la Inseguridad*), the least trusted institutions are political parties, Congress (both at the local and federal level), the police and prosecutorial agencies. Churches, along with educational institutions and the army received the highest grading.<sup>23</sup> The 2003 survey of the Ministry of the Interior (SEGOB) also found low levels of trust towards police forces and higher

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<sup>20</sup> Id.

<sup>21</sup> Paula Mussetta, *Dilucidando la Confianza: Aportes Empíricos para esclarecer el fenómeno en México*, in *Transparencia, Rendición de Cuentas y Construcción de Confianza en la Sociedad y el Estado Mexicanos*, (literally, Elucidating Trust: Empiric Contributions to Clarify the Phenomenon in Mexico” in Transparency, Rendering of Accounts and Building of Trust in Society and in the Mexican State) IFAI.

<sup>22</sup> Felipe Hevia de la Jara *¿Cómo Construir la Confianza? Hacia una Definición Relación de la Confianza Social*, en *Transparencia, Rendición de Cuentas y Construcción de Confianza en la Sociedad y el Estado Mexicanos*, (literally, “How to Build Trust? Towards a Definition of Social Trust”, in Transparency, Rendering of Accounts and Building of Trust in Society and in the Mexican State) IFAI.

<sup>23</sup> The ICESI (Instituto Ciudadano de Estudios sobre Inseguridad, A.C.) was created by the *Consejo Coordinador Empresarial*, the *Confederación Patronal de México*, the *Fundación Este País*, the *Instituto Tecnológico de Estudios Superiores de Monterrey* and the *Universidad Nacional Autónoma de México*. The purpose of the ICESI is to study and generate independent statistics in connection with crime in Mexico. ICESI performs surveys on an annual basis and at a national level. Available at <http://www.icesi.org.mx>

levels of trust for businessmen, the church, the Federal Electoral Institute (note that this study was made before the 2006 elections), the National Human Rights Commission and the army.<sup>24</sup>

In terms of trust in the church, the data compiled by Latinobarómetro coincide with data issued by ICESI and SEGOB. According to Latinobarómetro, “in all the countries of the region we found low levels of trust in institutions, with the exception of the Catholic Church.”<sup>25</sup> Taking into account the distinction between the public and the private sphere, we might explain the trust in the Church as a product of the family type relations that exist within it. Even though the Church is a public and not private institution, relations that form between its members and authorities are closer and more permanent, resembling those of the private sphere in which there is less uncertainty about other peoples’ behavior.

Perhaps another aspect that calls attention is the trust expressed in the army, which in other Latin American Countries is often negatively evaluated. This can be explained as a result of the positive social work the army accomplishes in Mexico (such as the construction and repair of roads and bridges, the rescue work it performs after natural disasters, etc.), and the positive mention with which it is referred to in the public discourse. Also, one might consider the historical absence of military presence as a coercive force in the country (except in the war against drugs) and the absence of military dictatorships in recent history.

As to trust in other citizens, Mexicans seem to distrust others, specifically in terms of their compliance with the law. According to the cited survey conducted by SEGOB, 43% of the surveyed expressed the belief that neither the authorities nor the citizens obey the law.<sup>26</sup> As to the question, Who do you think that less respects the law: rulers, citizens or both? 43% replied

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<sup>24</sup> Secretaría de Gobernación, *Segunda Encuesta Nacional sobre Cultura Política y Prácticas Ciudadanas* 2003.

<sup>25</sup> Latinobarómetro, *Informe- Resumen 2004: Una Década de Mediciones*. Disponible en [www.latinobarometro.org](http://www.latinobarometro.org)

<sup>26</sup> Secretaría de Gobernación, *Primera Encuesta Nacional sobre Cultura Política y Prácticas Ciudadanas* 2003.



“neither of them”, 31% said “the rulers”, 6% replied “citizens” and 13% answered that “both of them respect it”

Lastly, according to Paula Massetta’s study, lawyers share, with the police, the level of distrust.<sup>27</sup> (In a more anecdotal level, though not less illustrative; the term frequently used to refer to lawyers in Mexico is “aboganster” (shyster lawyer), referring to the perceived abuses committed by lawyers to their clients.

## **II. Narratives of Distrust**

The distrust (and occasionally contempt) that people show towards the law and its institutions is not only present in citizens’ everyday narrative. It is also openly perceived in political discourse in the country. As an example, I cite the speeches of Lopez Obrador, for being not only recent and dramatic case of disdain towards the law, but also for the dimensions that it acquired. Nevertheless, it is important to note that López Obrador’s speeches are not an isolated or peculiar case. Both in the discourses of politicians (from other parties and from members of the PRD, the party with which Lopez Obrador is affiliated) as in that of businessmen and the church, we find a prevalent disregard for legal and governing institutions.

As part of the social mobilizations organized by the “For the Good Of All Coalition” (*Coalición por el Bien de Todos*)- in the post electoral momentum and before the Federal tribunal declared a winner for the elections- to obtain the total recount of ballots (vote by vote), López Obrador pronounced a series of speeches in which the disregard for the law, which has

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<sup>27</sup> Paula Mussetta, *Dilucidando la Confianza: Aportes Empíricos para esclarecer el fenómeno en México*, in *Transparencia, Rendición de Cuentas y Construcción de Confianza en la Sociedad y el Estado Mexicanos*, (literally, Elucidating Trust: Empiric Contributions to Clarify the Phenomenon in Mexico” in Transparency, Rendering of Accounts and Building of Trust in Society and in the Mexican State) IFAI.

been the theme of this paper, can be discerned. In the third assembly organized in Mexico City's main plaza (*Zocalo*), before nearly a million followers, López Obrador declared:

“And I repeat, Mexico, our great country does not deserve to be governed, and we are not going to allow, Mexico, our great country, does not deserve to be governed by a spurious president, a President who lacks legitimacy, with no moral or political authority.

We are waiting for the Electoral Tribunal to decide to clean up and bring transparency to the election, ordering that all the votes be counted. [...] Although we also know that the members of the Tribunal are being submitted to strong pressure from the usual powerful, those who believe themselves to be the masters and Lords of Mexico. It must be clarified: it is not that we don't respect the institutions; the fact is that, unfortunately, in our country we do not have a tradition that ensures that those who have the institutions in their hands act honestly and honorably.

We should not forget that simulation has always ruled. Historically, the Constitution and the laws have been complied with only in form, but raped in essence.

Unfortunately, in Mexico, as a general rule law has meant the opposite of its reason of being; even though the Rule of Law has always been invoked, those in charge of enforcing justice, instead of protecting the weak, serve only to legalize the abuses committed by the strong; the law that has prevailed has been that of money and power above all others.”<sup>28</sup>

Similarly, in his acceptance speech as the Legitimate President of Mexico, and once the Electoral Tribunal had declared the triumph of right wing candidate Felipe Calderon, Lopez Obrador declared:

“We are here today because, given the electoral fraud committed on July 2, we have decided to declare abolished the regime of corruption and privileges, and begin the construction of a new Republic [...] To accept the rules of the current regime implies not only an act of treason to the people of Mexico, but an indefinite postponement of the democratic change and to surrender powerless before to the inappropriate acts of the economic and political elite, assailants of public institutions...

“The powerful impose their rule with money, racism and class prejudice, injustice, illegality and the manipulation of many through diverse media.

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<sup>28</sup> Lopez Obrador's speech when announcing the installation of the Permanent Assembly at the Zocalo and on Madero, Juárez and Reforma avenues. [www.gobiernolegitimo.org.mx](http://www.gobiernolegitimo.org.mx)

They work against the public interest—let’s not go further, just look at the raise in price of milk, diesel and gasoline”.<sup>29</sup>

Lopez Obrador’s speeches synthesize the common feeling of Mexicans towards the government, the authorities, and the institutions: that they serve to promote the power of the “strong”, the “powerful” and the “privileged”.

Similar to the political discourse, radio and television news programs, the press, entertainment programs, political discourses, etc., disseminate the discourse of trust or distrust, reinforcing the discredit (or prestige) of each institution. To give an example, on April 9, 10 and 12 the principal newspapers of Mexico City, published on their first page the following headlines:

**On the subject of public officials and government:**

Reforma:

“IMAGE OF MAYORS IS EXPENSIVE: MAYORS SPLURGE PUBLIC MONEY ON PERSONAL PROPAGANDA”

“AUDITOR ISSUES A CORRUPTION ALERT: MEXICO IS BEING DROWNED BY DISCRETIONARY POWERS WHICH FACILITATE THE DETOURING OF FUNDS”

“ADVISORS DEVOUR PEMEX MONEY”

“THEY DIVIDE UP 350 MILLION AT WILL: CONGRESSMEN ENJOY A NEW PORTION”

El Universal:

“ONE OUT OF FIVE LEGISLATORS DID NOT FINISH COLLEGE”

“DF: THEY DON’T KNOW WHAT TO DO ABOUT THE WATER LEAKS”

“INTERNATIONAL HUMAN RIGHTS COMMISSION: STRATEGY AGAINST CRIME FAILS”.

Excelsior:

“INDICTED REJECT PUBLIC DEFENDERS”

“SOCIAL SECURITY LAW FAVORS CONGRESSMEN”

La Jornada:

“MEDIAN MORA: CRITICAL MOMENT IN THE COUNTRY DUE TO VIOLENCE COMMITTED BY DRUG CARTELS”

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<sup>29</sup> Speech when Lopez Obrador swore himself in as the Legitimate President of Mexico.  
[www.gobiernolegitimo.org.mx](http://www.gobiernolegitimo.org.mx)

## **On Inequality, Wealth or Poverty:**

La Jornada:

“SEDESOL: POVERTY SAME AS TWELVE YEARS AGO”  
“FORBES: SLIM IS NOW THE SECOND RICHEST MAN IN THE WORLD”  
“BANKS GAMBLE WITH TAX MONEY”  
“TELEVISION COMPANIES AND FOOTBALL TEAMS CHEAT THE TAX COLLECTOR”

## **On the Army:**

Excelsior:

“ARMY DISMANTLED 285 CLANDESTINE LANDING STRIPS”

Reforma:

DRUG CARTEL AND ARMY CLASH IN NUEVO LEON”

## **III. Distrust and Inefficiency: The Case of the Mexican Criminal Justice System**

The distrust that may be sensed in the public discourse and in the stories depicted are not only the result of the general perception that law is applied for the benefit of a few. It is also a consequence of having a complex, obscure and inefficient system, incapable of enforcing the law. Several studies conducted in México suggest that people build their perception of trust on the evidence of concrete actions.<sup>30</sup> This means that people evaluate the concrete, objective results of authorities and institutions. In Mexico, however, the minimum purpose of the legal institutions does not seem to materialize: the enforcement of the law. In the report by Latinobarómetro, for example, when evaluating the perception of whether the State succeeds or not in enforcing the

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<sup>30</sup> See Paula Mussetta, *Dilucidando la Confianza: Aportes Empíricos para esclarecer el fenómeno en México*, in *Transparencia, Rendición de Cuentas y Construcción de Confianza en la Sociedad y el Estado Mexicanos*, (literally, *Elucidating Trust: Empiric Contributions to Clarify the Phenomenon in Mexico*” in *Transparency, Rendering of Accounts and Building of Trust in Society and in the Mexican State*) IFAI.

law, Mexicans gave a 4.78 grade, within a scale from 1 to 10, in which 1 means a failure by the State to enforce the law.<sup>31</sup>

The perception that institutions fail to accomplish positive results in turn translates into an attitude of reservation towards the law and its institutions (and frequently, into a fear towards the authorities). Mexicans tend to avoid the legal system and its authorities and prefer to look for unofficial control mechanisms, unofficial conflict resolution systems or simply to leave problems unresolved rather than deal with the official system. As an example, we can study the crime phenomenon and the criminal justice system. Even though crime is one of the problems which most worries and affects Mexican society, only a small percentage of crimes are reported to the *ministerio público* agencies (prosecutorial authorities) or to the police.<sup>32</sup>

Crime in Mexico has become one of the most common and tangible anomalies (as Carlos Nino refers to the general trend to illegality, understood as the non-compliance with legal, moral and social rules).<sup>33</sup> According to a recent study of Citizen's Institute for Studies on Insecurity (*Instituto Ciudadano de Estudios Sobre la Inseguridad or ICESI*); 7 out of 10 respondents felt insecure at the place where they live (of the respondents in Mexico City, 9 out of 10 persons said they felt insecure).<sup>34</sup> Out of fear for the criminals, a large part of the population has modified their daily activities and considers that their quality of life has been negatively affected.<sup>35</sup>

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<sup>31</sup> Latinobarometro, Informe- Resumen 2004 Una Década de Mediciones. Available at [www.latinobarometro.org](http://www.latinobarometro.org). In this category, Mexico was one of the countries that gave better grades to the State, even though none of the 18 countries under study gave a "passing grade" to their governments.

<sup>32</sup> Even though statistics regarding reported crime place Mexico just above the world's average and close to Spain (1,770/100,000) and Russia (1,779/100,000), studies of the "black" or "net" number, that is, of unreported crime, place Mexico among the countries with the highest crime rates in the world. European Institute for Crime Prevention, cited in GUILLERMO ZEPEDA, *CRIMEN SIN CASTIGO*, 2004. In a former study made by FUNSALUD-WORLD BANK (in 1995), it was estimated that in Mexico City, only 15% of the crimes were reported. See WORLD BANK, *TRENDS AND EMPIRICAL CAUSES OF VIOLENT CRIME IN MÉXICO*, 1999.

<sup>33</sup> Id. page 24

<sup>34</sup> Fourth survey by ICESI. [www.icesi.org.mx](http://www.icesi.org.mx)

<sup>35</sup> Id. According to the 2005 survey, more than a half of the population considered that crime has had a negative effect on their quality of life, one out of two respondents ceased to use jewelry, stopped going out at night or carrying cash with them.

Nowadays, the *reported* crimes are in the vicinity of 1,500,000, or 1,490 per 100,000 inhabitants.<sup>36</sup> By April 10<sup>th</sup>, 2007, 600 executions by the mafia had been reported throughout the country for the year.<sup>37</sup> But, even though crime is regarded as a problem that affects everyone, few people actually report the crimes. According to a survey by ICESI conducted in 2005, only one out of every five victims reported the crime to an authority.<sup>38</sup> During 2001, 24% of the respondents in Mexico City said they had reported the crime. By 2005, this figure went down to 19.2%. In the City of Acapulco, which has the lowest report figure, only 11.3% of the respondents in 2005 stated that they reported the crime.<sup>39</sup>

According to statistics reported by ICESI, a considerable number (39%) of the respondents who expressed that they failed to denounce the crime committed against them stated that they didn't report the crime because they thought it would be a waste of time. Others, (20%)

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The situation of the crime in Mexico has been aggravated in recent years, but it was only after the 1994 crisis when the incidence of crime became visibly increased. In 1991, the number of crimes reported in Mexico was 809,000. In three years, this number grew to 1,111,000 (1994). In another three years, the figure grew to almost 1,500,000 (1997). Guillermo Zepeda, *Entre la Delincuencia y la Impunidad: el Desempeño de las Instituciones de Procuración de Justicia Penal de México frente a los desafíos de la Seguridad Ciudadana*, CIDAC, unpublished. See also Guillermo Zepeda, *Delincuencia: Fachada reformadora y los sótanos de la impunidad*, 4 REVISTA DEL SENADO DE LA REPÚBLICA 87, 92 (1998)

<sup>36</sup> See INEGI's reported crime database. Available at

<http://www.inegi.gob.mx/est/contenidos/espanol/tematicos/mediano/ent.asp?t=mvio37&c=5599>

When compared with other countries, Mexico has a very low index of reported crimes, as well as a low reporting percentage of crimes actually reported. According to the European Institute for Crime Prevention and Control (HEUNI), the average for England is 10, 205 crimes reported annually per 100,000 inhabitants, with an estimate of 61% of the crimes being reported, Canada has an average of 9,982 per 100,000 with 55% of the crimes being reported, for the United States, the average is 5,367 crimes reported annually per 100,000 inhabitants with a 57% of reports, Argentina showed an average of 3,197 per 100, 000 with a 30% rate of reports and Peru has an average of 7,660 per 100,000 with only 16% of the crimes being reported. According to Guillermo Zepeda, in Mexico City 18% of the crimes are reported. See Guillermo Zepeda, *Crimen sin Castigo* (literally, Crime without Punishment) 43- 51(2004).

Even though the concept of "crime" and "report" and the manner of measuring it may vary from one country to another, this comparison seeks to help the reader situate and compare Mexico's crime rates with those of other countries.

<sup>37</sup> "El Universal" newspaper, April 11, 2007 available at [www.eluniversal.com.mx](http://www.eluniversal.com.mx)

<sup>38</sup> See ICESI, *Cuarta Encuesta Nacional sobre Inseguridad*. Available at <http://www.icesi.org.mx>

<sup>39</sup> Id.

expressed the reason for their failure to report was the lack of trust in the authorities. Another fraction (17%) expressed fear to the endless and complicated procedures.<sup>40</sup>

Distrust evidenced by the victims of crime is more than supported. In Mexico, initiating a criminal proceeding, as well as all sorts of proceedings, results in a hideous experience that is usually fruitless. According to scholar Guillermo Zepeda, only 18.3% of the crimes reported in 2002 were “actually concluded” meaning that only 4.6% of the estimated crimes that were perpetrated that year were investigated.<sup>41</sup> The rest, 95.4% were filed as unsolved.

Added to this inefficiency, the system shows a substantial degree of corruption.<sup>42</sup> According to a survey made by CIDE (*Centro de Docencia Económica*) to prisoners in Mexico City and suburban areas, 53% of the prisoners expressed the view that they would have been set free if they had given money to the police; 37% expressed the view that they would have been set free if they had given money to the *ministerio público* (public prosecutor) agent or secretary.<sup>43</sup> According to a report from Latinobarómetro, 65% of Mexican respondents reported that there existed “a lot” or “quite a lot” of probabilities for a cop to be bribed. Likewise, 58% replied that there were “a lot” or “quite a lot” of probabilities of bribing a judge.<sup>44</sup> In both these

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<sup>40</sup> Id.

<sup>41</sup> GUILLERMO ZEPEDA, *CRIMEN SIN CASTIGO* 219 (2004).

<sup>42</sup> On this subject, see Comisión Interamericana de Derechos Humanos. *Report on the situation of Human Rights in México* (1998), in <http://www.cidh.oas.org/countryrep/México98>, WILLIAM CARTWRIGHT, *MÉXICO: FACING THE CHALLENGES OF HUMAN RIGHTS AND CRIME*, Capítulo IX (2000), GUILLERMO ZEPEDA, *CRIMEN SIN CASTIGO* 266, 267 (2004); GUILLERMO COLÍN SÁNCHEZ, *DERECHO MEXICANO DE PROCEDIMIENTOS PENALES*, 240 (2002); MIGUEL AGUSTÍN PRO JUÁREZ HUMAN RIGHTS CENTER AND LAWYERS COMMITTEE FOR HUMAN RIGHTS, *LEGALIZED INJUSTICE* 56 (2001); Comisión Nacional de Derechos Humanos en [www.cndh.org.mx](http://www.cndh.org.mx); and Comisión de Derechos Humanos del Distrito Federal in [www.cdhd.org.mx](http://www.cdhd.org.mx)

<sup>43</sup> CIDE survey see supra chapter 1

<sup>44</sup> Latinobarómetro, *Informe- Resumen 2004: Una Década de Mediciones*. Available at [www.latinobarometro.org](http://www.latinobarometro.org) In a different question, 56% replied that there were “a lot” or “quite a lot” of probabilities of bribing someone in a ministry to obtain a contract or concession.

aspects, Mexico obtained the first place in perception of corruption among the countries studied.<sup>45</sup>

These studies coincide with the conclusion reported, during its on-site visit to México, by the IACHR (Inter-American Commission of Human Rights) in which it expressed that:

“[It] received extremely serious and alarming reports of instances of corruption, abuse and assaults committed in various police posts in the country. The IACHR found striking the numerous statements given by Mexican citizens in which they expressed their mistrust of the judicial police, whom they described in very negative terms.<sup>46</sup>

In this report, the Commission cites former President Ernesto Zedillo who stated:

It is profoundly insulting to our dignity that police and judicial agents, instead of preventing, investigating, fighting crime and protecting the population, are actually more cruel and dangerous criminals because of the impunity that follows their actions. In all honesty, ladies and gentlemen, we must admit that, when it comes to public safety, the three Powers of the Union and the three levels of Government have failed the citizens of our country.<sup>47</sup>

Indeed, in the case of the criminal justice system, distrust of institutions and authorities is directly linked to a factual inefficiency and with a lack of equality in the processes (also occurring in other institutions of the legal system). However, here, as in other areas, the lack of

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<sup>45</sup> As to the chances of bribing a police officer, Mexico was followed by Paraguay (58%) and Argentina (57%). Those who occupied the last places were Chile (22%) and El Salvador (20%). As to the chances of bribing a judge, the second and third places were occupied by Paraguay (55%) and Ecuador (47%), followed by Argentina (46%). The last positions were occupied by El Salvador (22%) and Chile (20%). In connection with the odds of bribing somebody in a Ministry, Paraguay (56%) had the same percentage as Mexico. Argentina (50%) and Ecuador (44%) followed. El Salvador and Chile got 19% of “a lot” or “quite a lot” answers on this subject.

<sup>46</sup> Id.

<sup>47</sup> Id



concrete results is combined with the existence of a negative discourse which promotes a greater distrust.

#### **IV. Building Trust**

Resorting once again to the presumptions of the Logic of Reciprocity discussed above, the existence of a negative discourse about the institutions and authorities promotes greater distrust and generates an attitude of a lack of cooperation, which in turn triggers more distrust, etc.<sup>48</sup> In terms of obedience of the law, this implies that there will be increasingly less persons willing to obey the law.

The question then is how to reduce the degree of existing distrust (or, conversely, how to foster trust). According to the reciprocity theory, trust is promoted by making people believe that others are willing to contribute in a positive manner to the relationship (i.e. by obeying the rules of law).<sup>49</sup> This may begin with a change in the discourse or in the practices (by making the institutions more efficient and/or by causing more people to obey the law).

A change in the discourse or narrative that makes people believe that others are displaying a positive behavior (obeying the laws and/or applying them in an equitable manner), however, this is not easy to accomplish. Discourses usually find their roots in culture and social practices, and are the reflection of what people perceive (both from the existing discourse as from the existing practices). Thus, discourse, perception and practice seem to be closely related, mutually producing and reproducing each other. One way to break this circle is to apply an external stimulus that affects any of these elements.

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<sup>48</sup> Dan M. Kahan, *The Logic of Reciprocity: Trust, Collective Action, and Law*, 2003.

<sup>49</sup> Id.

A change in perception is achieved, for instance, by promoting the idea that legal institutions are attaining positive results. As mentioned above, the majority of the studies that have been made suggest that the perception of trust is built upon concrete evidences or actions; that is, tangible actions people perceive as positive.<sup>50</sup> The report from Latinobarómetro offers some indication of what this means, even though the data presented are aggregated for the entire region. According to the report, 46% of the respondents in Latin America replied that an “equal treatment for everyone” was what determined their trust in an institution. Another 28% answered that this was defined by institutions “fulfilling their promises”. Achieving a permanent change in perception, however, is difficult without accomplishing a change in reality which, in turn, entails a change in the practices.

## **V. Changing the Practices**

Several social and cultural practices promote distrust towards legal institutions and their authorities. The most visible practices: social demonstrations and marches, road and street blockades, guerrillas, strikes, crime, the violence and the frequency with which vendettas occur between drug cartels, etc; undoubtedly cause distrust with respect of the law and need to be taken care of in order to improve the popular perception of the legal system. But, even though these practices have a negative effect on all citizens (affecting their perception regarding the law), the vast majority of them do not participate, nor do they agree, with them.

Another type of practice, less visible but more customary, are the practices in which the bulk of citizens participate. Conducts such as disobedience of traffic rules, participation in

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<sup>50</sup> See Paula Mussetta, *Dilucidando la Confianza: Aportes Empíricos para esclarecer el fenómeno en México*, in *Transparencia, Rendición de Cuentas y Construcción de Confianza en la Sociedad y el Estado Mexicanos*, (literally, Elucidating Trust: Empiric Contributions to Clarify the Phenomenon in Mexico” in Transparency, Rendering of Accounts and Building of Trust in Society and in the Mexican State) IFAI.

informal trade, “parachuting”, corruption of low-rank public servants and other “anomalies” mentioned in the introduction<sup>51</sup> are much more extended practices that also encourage distrust, promote acceptance of said practices and create better conditions for illegality. How can we modify this tendency towards illegality?

In his book, *Why People Obey the Law* Tom Tyler analyzes the different theories that study perception and compliance with the law.<sup>52</sup> According to the author, there are two types of theories that try to explain perception and its relation with obedience of the law. These are: instrumentalist or social control theories and, the normative perspective theories.<sup>53</sup>

Instrumentalist theories explain the degree of satisfaction with the legal system, and the resulting perception, as something directly related to the favorable outcome obtained by individuals in a legal proceeding. According to these theories, says Tyler, citizens are satisfied with the system when they feel they can obtain a favorable outcome.<sup>54</sup> These theories explain that human behavior is predetermined and susceptible of being molded, both by a system of rewards and punishments, and by the perspective of being sanctioned.<sup>55</sup>

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<sup>51</sup> See supra note 6

<sup>52</sup> Tom Tyler, *Why People Obey the Law*, 2006.

<sup>53</sup> The author also mentions distributive justice theories, according to which people “would like things to come out fairly- that they would like to receive the level of punishment they feel they deserve [...] If a judge treats them fairly by listening to their arguments and considering them, by being neutral. And by stating good reasons for his or her argument, people will react positively to their experience, whether or not they receive a favorable outcome.” Distributive justice theories thus assert that people desire the system to treat them “fairly”, independently of the outcome of each proceeding. People do not judge the law, nor do they form perceptions of the system, in accordance with favorable or unfavorable outcomes but rather on the existence of “fair” proceedings, the development and result of which agree with people’s expectation. A proceeding in which the person feels he/she has been listened and taken into account, is perceived as more just than one in which the person is not allowed to speak. Dealings with the authority in which, as mentioned in the Latinobarómetro report, people “are treated equally” may be perceived as more just than those in which people are discriminated, giving rise to positive reactions.

Id. Pg. 6

<sup>54</sup> Id. pg. 7

<sup>55</sup> Id. In this sense, the application of instrumentalist theories is focused on modifying behavior based on a reward and punishment system. The *Public Choice*’s perspective, for instance, takes up the principles of these theories focusing on the chances of modifying behavior from analyzing the cost of infringing the law. “People react to outcomes, to their experiences in terms of favorable outcomes. Also study of social control, the assumption that behavior is motivated by rewards and punishments in the external environment. So, social control tries to manipulate citizen’s behavior by altering environment” pg. 20

The normative theory however, states that in a system where trust exists, the use of external incentives aimed at changing the practice (as a system of rewards and punishments), is not always effective in promoting trust.<sup>56</sup> According to Kahan, sometimes the use of incentives may increase distrust, since it sends a message that other people are not willing to cooperate. Within a context of distrust, however, the theory suggests that incentives may have a positive effect in achieving cooperation.

In the Mexican context, the problem of illegality (desobedience) has usually been dealt with through the use of sanctions. Thus for example, the most frequent tools for fighting crime has been raising sanctions and promoting this raise. As established earlier, this strategy has been ineffective in dealing with crime. Perhaps this has been due to the lack of resources destined to ensure their enforcement, or due to the lack of appropriate institutional and structural reforms that take culture into account.

At the first sight, the adoption of incentives (such as a system of punishment) seems an effective and easy solution for authorities, given that it involves little assessment of the problem. However, these reforms are seldom accompanied by the reforms to make the sanctions effective. Thus, these reforms have mostly been empty and inefficient in achieving a change in disposition towards the law.

Lastly, Tyler analyzes the normative model, which Kahan takes on when formulating the reciprocity theory. According to Tyler, this model focuses on the voluntary elements of compliance. On one hand, people turn to their social group to learn what is an appropriate behavior and reproduce it. Behaviors of disobedience promote the same behavior in others<sup>57</sup>

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<sup>56</sup> Dan M. Kahan, *The Logic of Reciprocity: Trust, Collective Action, and Law*, 2003.

<sup>57</sup> Tracey Mears and Dan Kahan, *Law and (Norms of) Order in the Inner City*, 1998.

while disapproving attitudes toward disobedience promote obedience.<sup>58</sup> People, as social beings, strive for approval from their peers, and avoid being objected to, which generates feeling of shame and guilt.<sup>59</sup> The more one person anticipates being disapproved for a conduct, the less he/she will be inclined to perform said conduct. On the other, people have ideas about what is right and wrong and adequate their conduct accordingly.

The normative model notes that people have internal obligations which determine how rules of law are complied with.<sup>60</sup> These obligations, says Tyler, have two sources. First, the obligation may arise from the perception that the authority issuing a legal precept has a legitimate right to legislate and to impose rules.<sup>61</sup> Second, the obligation occurs in connection with a sense of internal morality; from what each person considers appropriate and inappropriate.<sup>62</sup> People, this model advocates, hardly ever break their own codes of ethics. Both senses are thus connected with compliance of the law.

To examine the validity of these models, Tyler analyzes several studies as well as carrying out a study in Chicago. According to this studies analyzed, people who view authority as legitimate had a better compliance with the law than those that did not perceive this to be so- though they also shows that this relation is only “moderately strong”.<sup>63</sup> The five studies analyzed and the Chicago study, indicate that morality has a strong effect on compliance shown by individuals.<sup>64</sup> In Tyler’s study, almost every one of the citizens considered infringing the law

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<sup>58</sup> Dan M. Kahan, *The Logic of Reciprocity: Trust, Collective Action, and Law*, 2003.

<sup>59</sup> Id.

<sup>60</sup> Tom Tyler, *Why People Obey the Law*, 2006. “That citizens will act against their self interest is the key to the social value of normative influences.” Pg. 24

<sup>61</sup> Id. Pg. 29 According to Tyler, this legitimacy may lie in the person or in the institution.

<sup>62</sup> According to Tyler, the difference between morality and legitimacy stresses the various motivations to comply with the law. The question Tyler asks is whether, in the event of a conflict of interests between one’s own interest and morality/legitimacy (internal obligation), one has preference over the other.

<sup>63</sup> Id. Pg. 31

<sup>64</sup> Id. Pg. 37

as a violation of their own moral code.<sup>65</sup> Thus, when assessing the relationship between legitimacy of authority and morality, most people viewed breaking the law as a violation of their personal morality. According to the survey, 82% of the respondents stated that “ a person should obey the law even if it goes against what they think is right”.<sup>66</sup> Furthermore, a majority thought that the chance of being caught while committing an illegal act was high, particularly if a serious crime was involved.

In Mexico, however, and differing from the results of his Chicago study, people don't seem to regard obedience to the law as a moral obligation, and some even consider that, in certain cases, disobeying the law is the right thing to do. As mentioned in the introduction, according to a 2002 survey by Mexican Ministry of the Interior (SEGOB), 72% of the respondents answered “no” to the question “Do you believe that the people should obey the laws, even if they are unjust? As to a rephrasing of the question “Do you believe that the people should disobey a law if it is unjust? 56% of the respondents answered affirmatively.<sup>67</sup> Moreover, as has been depicted in this text, the vast majority of Mexicans do not believe that the authorities, or the laws deriving from them, are legitimate.

I once again resort to a speech by López Obrador to illustrate the point. In this speech, apart from questioning the legitimacy of the institutions, López praises the disobedience of the law by making it comparable to justice.

“I also celebrate that we are gathering on such an important and significant date, today, November the 20<sup>th</sup>, when we celebrate the anniversary of the Mexican Revolution, which set our people free from Porfirian dictatorship and conquered social rights for all.

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<sup>65</sup> Id. pg. 178

<sup>66</sup> Id. pg. 45.

<sup>67</sup> Secretaría de Gobernación, *Pimera Encuesta Nacional sobre Cultura Política y Prácticas Ciudadanas 2003*. In the same survey by SEGOB, 37% of the respondents answered that they agree that “a public official is allowed to take advantage of his/her position provided he also does good things”.

With this act we strengthen the defense of the people's will and, at the same time, we pay homage to those who, throughout history have fought for freedom, democracy, justice, and for the sovereignty of our country. We are gathered here because, in view of the electoral fraud perpetrated on July 2, we have decided to declare that the regime of corruption and privileges has been abolished and that the construction of a new Republic has begun"<sup>68</sup>

"To accept the rules of the current regime implies not only an act of treason to the people of Mexico, but an indefinite postponement of the democratic change and an impotent resignation before the injustices of the economic and political elite, hijackers of the public institutions. I have been relentlessly attacked because I said "To hell with their institutions!" But we were not the ones who ruined them. It was "them". Perhaps I should have been more precise by saying: "To hell with the wreck of institutions they want to impose on us, after corrupting them and dismantling them"<sup>69</sup>

With institutions and authorities lacking legitimacy, with no moral attachment to the system and, with a near zero probability of being punished, neither authorities nor the citizens have a good reason to obey the law.

How can we foster trust? How can we give legitimacy to Mexican system, to its norms and authorities to promote the moral internalization of obedience? I once again turn to the SEGOB survey for an answer.

According to a survey made by SEGOB in 2003, the data are indicative of a desire of the citizens of being more closely involved in the making of the most important decisions for our country. According to the survey, 51% of the respondents answered "I agree" to the statement "The government behaves more in an authoritarian than in a democratic manner" (another 9.5% replied that they "agreed in part"). Likewise, 54.7% of the respondents said they "agreed" that "the government decides matters on its own account, rather than consulting the citizens". Lastly,

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<sup>68</sup> Speech when Lopez Obrador swore himself in as the Legitimate President of Mexico. Available at [www.gobiernolegitimo.org.mx](http://www.gobiernolegitimo.org.mx)

<sup>69</sup> Id.

81% replied that they “agree” to “the vote of the majority of the people must decide the government actions.”

Using Tyler’s Model and the information available for México, we can infer that there are at least three strategies to improve legitimacy and/ or trust of Mexicans towards their institutions and legal regime. These are: 1) Achieving a better participation in the decision making processes and its implementation; 2) promoting proximity between authorities and citizens (making relations between authorities and citizens similar to the family type relations seen in the previous section); and, 3) focusing efforts en producing concrete results and making these results more visible. In the remainder of the section I present different examples of how each of these strategies can has been implemented.

### 1) Citizen Participation

The SEGOB survey indicates that a vast majority of Mexicans feel that citizens should have more influence en government decisions. One possibility is to assume that Mexicans would respond positively if the government submits its most important decisions to a direct a vote, as are the case of plebiscites.<sup>70</sup> Let’s call this first type “passive participation”.<sup>71</sup>

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<sup>70</sup> This strategy, although successful in legitimizing and publicizing certain government activities and/or decisions, does not constitute a real participation in the decision making process because it does not give citizens the possibility to propose alternatives, nor to express their own concerns or needs. It simply gives people the possibility to accept or reject a given proposal.

<sup>71</sup> There are other measures, beside plebiscite that can be defined as passive. Even though some of these do not constitute a higher participation of citizens in the decision making process, they do make it more tangible and trustful. Concretely, I refer to measures directed to creating more transparency. An example of this is the Federal Institute of Access to Information (IFAI- *Instituto Federal de Acceso a la Información*), created by the federal government in 2002. The purpose of the IFAI was to achieve more transparency, thus forcing authorities to be more honest during proceedings. A side effect of the IFAI and its laws is the increase in trust towards institutions that are “willing” to open their proceedings. Even though the Institute does not directly promote citizen’s participation, it does open institutions to the public, giving more certainty as to their activities and decision-making processes. The Institute allows direct monitoring of institutions. The IFAI however is a passive organ in which the citizens have to actively seek the information from the diverse institutions they wish to monitor. Usually it is only researchers, political parties, NGOs and the like that use this option. Because of this, this passive measure of “opening” proceedings and decision making processes is only partially successful in achieving legitimacy. In contrast, the Porto Alegre Project, mentioned later creates transparency in a much more open way.



López Obrador frequently used this resource during his majorship. In the construction of the “second floor”<sup>72</sup>, the opposing party called for a plebiscite to show the unpopularity of the project. López won the plebiscite with an enormous victory, thus legitimating the project, and his government. After the second floor, López frequently resorted to plebiscites to publicize and legitimate his actions.

A second possibility is to think that what Mexicans want is a greater participation in the decision making process in terms not only of knowledge but also of real influence. Let’s call this second type of participation “active”. An example of active participation is the participatory budget program implemented by the PT (*Partido do Trabalhadores*) in Porto Alegre, Brazil.<sup>73</sup> Through this program, the PT organized popular councils to decide the destination, in terms of public investment, of a fraction of the city budget.<sup>74</sup> Gianpaolo Baiocchi explains that, in 1988, the city of Porto Alegre was divided in 16 districts, in which assemblies were created. In these assemblies, the community members gathered to propose, discuss, vote and decide on the destination of the budget on investment. On one hand, people could voice their needs and intervene in the decision on where to allocate expenditure. On the other, people could, the following year, see the materialization of the works they had decided to implement. Thus, even though the project took several years to consolidate and earn the citizens’ trust, it eventually achieved an augmentation in participation and gave credibility to the government. In 1996, the

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<sup>72</sup> The “second floor” (*segundo piso*) was López Obrador’s great project as mayor of México City. The project consisted in building a top (second) floor to the *periférico*, one of the main highways that runs through the city from north to south.

<sup>73</sup> Gianpaolo Baiocchi, *Radicals in Power: The Workers Party (PT) and Experiments in Urban Democracy In Brazil*, 2003.

<sup>74</sup> The popular councils were limited to discussing expenditure on investment, primarily public works in infrastructure. This occurred so because budgetary laws had fixed spending items and set minimum expenditure on health (13%), education (30%), etc. see Id. P. 34.

program was selected as one of the Worlds “best practices” in urban government at the United Nations Habitat Conference.<sup>75</sup>

## 2) Proximity between authorities and citizens

As mentioned before, Mexicans distinguish relations that take place in the public sphere from those that take place in the private one. Generally speaking, relations occurring in the private sphere possess more trust than those occurring in the public sphere. This is partially explained by the closeness of relations occurring in the private sphere (family type), which results in a diminishing of the risk perceived. Taken to a public policy arena, we may imagine that the more proximate and the smaller government agencies are (to citizens), the less uncertainty there will be in their regards to their actions.

The case of Porto Alegre may again be used as an example. The participatory budget program, had originally been conceived with five district councils, and in the beginning the city was thus divided.<sup>76</sup> The leaders of the community, however, objected to this division noting that the districts were too large and that this affected the degree of participation. For many community members, transport to the district assemblies was too time consuming and expensive. The project planners therefore agreed, in a second stage of the program, to divide the city into the 16 districts.<sup>77</sup> This new division achieved greater participation from the communities and acceptance of the program, since community members and leaders from the different areas of the city were able to join the meetings.

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<sup>75</sup> Id. 27.

The budgetary project was successful not only in increasing citizen’s participation in the decision making processes but also in making these processes transparent. Thus, not only did it foster “active participation” but also helped increase “passive participation”.

<sup>76</sup> Id.

<sup>77</sup> Id.

The adoption of neighborhood police (*policia de barrio*), in Mexico City is another example of trying to link citizens with the authority. This program was adopted in Mexico City in 2003 based on the idea of promoting proximity between authorities and citizens. In the presentation of the program, the Minister of Public Safety stated that:

“The idea of the neighborhood police is to not move police agents from the neighborhoods, to have them know the community; that the community gets to know who their police are, where they live, who their family is, what problems they have.”<sup>78</sup>

Though backed by community members, and founded on the ideas of creating proximity between citizens and authorities, the neighborhood police program has not been successful.<sup>79</sup> In part, this has been due to the fact that there have been no real changes in the practices of police officers.<sup>80</sup> Except for the increased contact with neighborhood committees, police continue functioning in the traditional manner. Since there is no external control to monitor their practices, police have no real incentives to improve their work. In addition, police assume no civic duties nor carry out any community labor, which would create a link to citizens. The extended distrust towards police continues and has stifled the program. Today, the trust that the program expected to bolster has not materialized.

### 3) Production and Promotion of Concrete Results

Finally, I mention the production and promotion of concrete results as a strategy for promoting legitimacy and trust. As mentioned earlier, people form criteria and perceptions on the basis of concrete results. In the last years, Mexican governments and authorities have

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<sup>78</sup> Speech of the Public Safety Minister, Marcelo Ebrard Casaubon, during the presentation of the program, March de 2003. Available at [www.ssp.gob.mx](http://www.ssp.gob.mx)

<sup>79</sup> Jessica Varat and Allison Garland (ed), *Participación Ciudadana y Percepción de Inseguridad en America Latina*, en Latin American Program Special Report, Agosto 2006.

<sup>80</sup> Id.

produced numerous results. These, however, have usually been isolated events and scarcely publicized.<sup>81</sup>

I mention two examples of projects that have been successful in improving credibility of authorities. The first is the new process for obtaining driving licenses in the Miguel Hidalgo County, located in México City. For several years, the process to obtain a driver's license was extremely obscure and wearisome. The interested person had to show up, personally, at the administration office's, with several personal documents and queue for hours in order to be examined. The queue could easily be "shortened" by giving a "monetary compensation" to a facilitator. The exam consisted in a series of questions that the person in charge verbally formulated. The answers were then captured, by the person in charge, into a computer, the monitor of which could only be seen by her. Frequently, the person petitioning the license would fail until he or her would give the authority the corresponding "compensation" (*mordida*).<sup>82</sup>

The reforms to this process consisted in two main changes. The first was the implementation of a telephone system to make appointments. People now must make appointments via telephone and are attended to at the time of their appointment, thus eliminating the long waits and the facilitators. The second change consisted in the elimination of the knowledge exam. Today, to obtain a driver's license the person must sign a declaration stating that she or he knows the transit regulations and has the technical capacity to drive. The interest party thus assumes responsibility of having the capacity to drive.

With the new system, there are less discretionary powers to give appointments and to grant licenses. Thus, there are fewer opportunities for corruption. What used to be a slow and

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<sup>81</sup> One of the successes of López Obrador, has been the understanding of the importance of publicizing the actions and acts of his government. Thus, for example, as mentioned earlier, one of the main sources of legitimacy for López Obrador was the construction of the "second floor" (*segundo piso*), which was publicized through a plebiscite.

costly procedure, characterized by everyday corruption, is now an agile and transparent procedure, with no other monetary cost than that of the license. The contrast between this system and the previous one serves to improve citizen's perception in institutions. And, it is precisely in this type of everyday procedures where the relation (and perception) between authorities and citizens is formed.

The second example of a successful program that has improved perception and trust, is the one implemented in 2006 by the Mexico City public safety ministry (*Secretaria de Seguridad Pública del DF- SSP-DF*) to sanction and remove illegally parked vehicles, a common violation of driving laws. Before the reform, illegally parked cars were towed away to the county pound, which was frequently far removed from the place where the violation occurred. The owner of the car would have to go to the pound to recover his or her car. The common practice was that the owner of the car would pay a bribe, of equal or less value of the fine, to the tow truck officers, thus avoiding the fine and a long tedious procedure to recover the car. The program implemented by the SSP-DF was to install cameras on the back of tow trucks to monitor the activities of officers. The camera is automatically turned on when the truck hooks a car and transmits live images of the event to the central office of the SSP-DF. The fines may also now be paid directly to the driver, using a credit o debit card, and have the car immediately released.<sup>83</sup> Cash- to pay the fine- is only received at the county pound. As a result of this measure, the SSP-DF has increased its fines by 60- 70% and has practically eliminated bribes at the lower level. Although there is no concrete data to evaluate a change in citizens' perception, it can be expected that the measure has been well received and that there is an increase in certainty that the money of the fines is going directly to the county.

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<sup>82</sup> *Mordida*, means bite, a colloquial term used in México to refer to the bribe given to authorities.

<sup>83</sup> The drivers now carry a credit card terminal.

## **Conclusions**

In this paper I have pointed out the endemic culture of illegality present in Mexico. This culture is evident in everyday practices as well as in the public and private narratives. Along with this illegality, is a culture of reproach and distrust towards authorities, law, and its institutions. As the writer, Carlos Monsivais points out:

“The popular notion of justice, as depicted by muralist José Clemente Orozco in his supreme court mural, is that of a corrupt entity, barely dressed, with tangled hair, and very much aware of whom to give, and for how much, the custody of her scale.”<sup>84</sup>

Mexicans perceive illegality as a sign to be wary of other citizens, authorities and, institutions; thus generating an ambiance of distrust. The common feeling is that authorities are unconnected to citizens except as perpetrators of a system of dominance, abuse and corruption. The perception that law is an instrument of dominance and a source of injustices strips law, and its institutions, of legitimacy, promoting further distrust and illegality. Practices and narratives nurture each other promoting the negative perception of law and its function and promoting an attitude of confrontation towards the legal system.

Insistently, the strategy to combat practices of illegality in Mexico has been through the implementation of systems of rewards and punishment. This strategy, however, has been unsuccessful in changing practices. The discourse, the perception and in general, the culture, on the contrary, have been persistently ignored.

This paper has aimed to show the importance of culture in understanding the illegality and distrust that surround the disobedience of law in Mexico. Likewise, this

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<sup>84</sup> See Carlos Monsivais, *Notas Sobre Cultura Jurídica*, en El Universal, 13 de agosto, 2006.

paper has meant to show that unless citizens feel authorities and the law as their own, and not as something externally imposed, they will have no reason to trust nor to submit themselves, to the institutions that originate from them.

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Monsivais refers to the mural, set at the entrance of the Supreme Court, in which justice is depicted falling from her pedestal, with torn clothes, eyes uncovered and the balance falling from her hand.