RULE OF LAW, CITIZENSHIP AND ACCESS TO JUSTICE IN MEXICO

Pilar Domingo
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Introduction

Recent political development in Mexico has placed the notion of justice and rights at the fore-front of the Mexican political debate. Justice and the notion of citizenship in Mexico's political development, since 1917, had been subordinated until recently to the revolutionary and nationalist discourse of corporatist social justice. As in much of the literature on Latin America, little attention has been placed on either the development of the formal justice institutions (either from a political or social perspective), or on the real state of citizenship, other than in reference to social movements, trade union movements, or corporatist institutional arrangements. With the advent of global trends of democratization in the context of economic liberalization, which have fundamentally altered the nature of Latin American societies and their political and economic references, the notion of democratic rights (however these may be defined) acquires a new centrality, both in public discussion and academic debate.

Other than the work of jurists, political and social analysis in Mexico has rarely taken into consideration the role of the judicial institutions in the development of the political system or regarding state-society relations. To the extent that the regime is currently undergoing a process of change to more open political participation and party competition, academic research has turned increasingly to the analysis of institutional aspects, electoral legislation and party organization. Otherwise it has concentrated on political economy, where state reform was examined from the perspective of structural economic changes resulting economic liberalization, and the impact of this on the corporatist state, and the emergence of popular movements.

The Mexican political system is undergoing, albeit slowly and painfully, a process of transformation of its political institutions and economic structures. Although when this process of change began is highly debatable, the more visible changes began to take place with the electoral reforms of 1977. This event marks a turning point in the basis of legitimacy of the PRI regime. It highlights the decline of a concept of legitimacy based on a corporatist and inclusionary social discourse, and the beginning of a political system in which the opposition parties have a role, and in which electoral competition (albeit slowly) is incorporated into the discourse of regime legitimacy.¹ Over time this will have the effect of advancing a more liberal concept of citizenship and rights in the political discourse.

In the 1980s, political liberalization progressed on a stop and go path. It was also a decade marked by economic crisis, and new economic strategies, culminating in the liberalization and privatization model of the Salinas administration and the sig-

¹ [Millan, 1993] speaks of the decline of the capacity of the corporatist state to reproduce legitimacy on the basis of an inclusionary and socially integrating political and economic project which prevailed in the post-revolutionary decades. See also [Marván, 1990].
ning of the North American Free Trade Agreement. The emphasis was on economic modernization, with the vague promise that political reform would come later. PRONASOL emerged as a way of addressing social problems through poverty alleviation projects. However, political and social problems are far from being resolved, as is evident from the Chiapas rebellion, and the clear political volatility and crisis of regime credibility which characterized the first months of the Zedillo administration following the badly handled devaluation of the Mexican peso.

Under these conditions of economic uncertainty and political instability, the problem of rule of law and justice administration has come to the fore in the Mexican political debate. At a political institutional level it is clear that some kind of transition is taking place, and formally, at least, with considerable procedural advances in electoral matters and party competition. However, the Mexican political system is still a considerable way away from complying with even the basic requirements of democratic rule. By contrast, there is growing public demand and political discourse regarding the need to protect and promote a sense of democratic citizenship and the political and civil rights which go with this. Clearly democratic citizenship can only truly emerge in a political and institutional environment which promotes it. However, growing public awareness and demand of rights protection, however diffuse or inarticulate this demand may be, may be an important source of pressure for the regime to develop towards a more acceptable form of rule of law.

The legal and constitutional tradition of the Mexican state is based on a liberal-rights conception of citizenship and rule of law, with an important component of social and economic rights. However, the history of the Mexican political system, and the reality of state and society relations clearly do not render a portrait of rule of law—neither one of complete illegality and illegitimacy.

This paper will argue that perceptions of citizenship and rights are changing at a societal level at a fairly fundamental level. As a consequence of this, the demands for rights protection on the state, specifically through improved justice mechanisms, is becoming more evident. Moreover, there are changes in the kinds of rights that figure most prominently in the concerns of Mexican society. These changes, which to a certain degree can be attributed to transformations in the political culture of the country, are also the result of a shifting political and institutional environment, and to socio-economic factors. In turn, developments in the nature of civil and political values in society will have an impact on state institutions and political development. The

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2 By almost any procedural minimal definition of democracy, (or Dahl's polyarchy) Mexico fails to observe basic standards. Electoral processes do not yet meet the degree of trustworthiness and acceptability necessary for democratic rule - if only because they are still a source of "undemocratic" inter-party conflict, in the sense that the basic acceptance of the rules of the game by the competing parties is not yet securely in place. It remains to be seen how the recent electoral reforms will fare. If this is still a problem at the level of federal and presidential elections, it is all the more so at a state level.
direction of causality of these changes, by the very nature of the issues under conside-
ration, which are elusive and difficult to measure, defy clear-cut conclusions.

The paper, firstly will briefly discuss the connection between citizenship and
rule of law, and between access to justice and regime legitimacy. Secondly, it will
present some reflections on the nature and development of citizenship in the context
of Mexico's peculiar political development. Finally it will examine public perceptions
of the legal institutions, and the problems of access to justice which characterize the
mechanisms of justice administration in Mexico.

Here the judicial system is taken as an important institutional instance which
defines the nature of state-society relations and the manner in which citizenship is
determined. The practice of how rights are protected and advanced to a significant
extent will depend on the way in which the justice system works as that institution in
charge of applying and enforcing the law. And it is at this institutional level that we
may find a measure of how citizenship effectively operates, in terms specifically of
access to justice and the relationship of the citizenry with law-enforcement mecha-
nisms.

Through a discussion of the state of citizenship in Mexico, and how this is
mediated or not by the mechanisms of justice administration, the paper will suggest
some reflections on the changing nature of state-society relations, and the implica-
tions of this for the process of political liberalization cum democratization, in terms of
where new bases of legitimization of the regime need to be constructed. Conclusions
can only be tentative given the complexity and elusiveness of these factors.

1. Citizenship, rule of law and judicial politics

Rule of law can be taken to mean, on the one hand, limited government, normally in
the form of separation of powers, and on the other, the existence and real application
of a body of rules and rights which regulate the relationship between state and the
individuals in a society, and between the individuals themselves. Rule of law can be
said to exist to the extent that this basic normative set of rules and rights, normally
embodied in a constitutional text, is minimally binding and overriding in the political
and social order of a given community. At one level, rule of law means the mecha-
nisms by which political power is checked and subordinated to pre-set rules of the
game. At another level, it refers to the effective protection and advancement of rights
entitlements, defined in the constitution.3

3 Rule of law finds limitations even in the more developed of democracies, as increasingly
through the complexities of globalization and modernization, decision-making processes fall outside
the traditional political institutions, and therefore, also outside the control mechanisms of rule of
law. Equally, the needs of modern society cannot be fully met through traditional justice systems, as
new types and magnitudes of juridical conflicts arise at a rate that exceeds institutional capacities, or
their rate of renewal.
We may question whether rule of law can be said to exist in the absence of satisfactory democratic mechanisms. Mexico, despite the considerable procedural advances in the direction of a more competitive democratic polity, still falls considerably short of deserving the democratic label. Does it make sense, therefore, to even consider the possibility of rule of law mechanisms, in the strict sense of the term in this context. It might be more adequate to speak of a state of legality, in the degree to which citizenship and the corresponding rights are or are not advanced. The question is, then, to what extent are we witnessing in Mexico a development from a state of legality of sorts to full rule of law.

We will take citizenship to mean the degree of effective realization of a specific bundle of rights which fall into the categories of civil, political and social rights as defined in the constitution. What is interesting in Mexico is the development of the meaning of citizenship over time in the sense that different weight has been given to these three different bundles. Civil rights and political rights were subsumed until recently to the corporatist political culture of the national revolutionary discourse, but with more emphasis on the social rights of the 1917 Constitution. Since the 1970s, increasingly emphasis has been given to civil and political rights, in a more liberal sense, coinciding with a decline in the social rights.

Citizenship carries various meanings, largely in terms of how the rights and obligations which citizenship entails are defined, [Miller, 1995; Marshall, 1963; and Roche, 1995]. The Mexican constitution may have a specific concept of citizenship as defined by the bundle of rights and entitlement that it incorporates, in fact an expression of liberal rights, blended with a mixture of social and economic rights. In practice, however, as in much of Latin America, the reality of rights protection and rights violations provides us with a different picture of how rights are advanced or not in society. What interests us here, then, is how citizenship is effectively perceived and advanced; firstly at the level of the political discourse, (it is clear that the project of the revolutionary citizen of the immediate post-revolutionary years in the political discourse is quite different from the democratic citizen which now appears center-stage of the political reforms); secondly, in terms of how public perceptions of what it means to be a citizen have changed, and in terms of what citizenship ought to entail in the public mind.

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4 Rule of law under Franco's regime did not exist in the degree to which his political power was not limited by a pre-specified set of political rules. However, that some form of predictable and fairly reliable legal order existed is suggested by the evidence regarding the way in which the justice system operated, at least in matters which were not politically delicate, [Toharia, 1975].

3 The traditional gap between modern constitutionalism in a formal sense since the early days of Independence in much of the continent, and the failure to consolidate truly liberal forms of constitutional rule and rule of law is characteristic of constitutional rule in Latin America, [Domingo, 1994].

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To a considerable extent, rights and citizenship are mediated by the nature of the political process, and specific events or developments which alter the standing of these concepts in state-society relations.

However, culture and values will also determine the nature of citizenship, [Roche, 1995, Turner, 1994]. Here arises the question of whether polities are shaped by predominant cultural values, and how these values can change. That is, whether culture affects political change, or whether political development has a bearing on the definition and direction of values in society. Here obviously we are also dealing with other aspects beyond the sphere of the political, which alter social perceptions regarding the state and state-society relations.

It is important to stress the gap between predominant patterns of behaviour molded by culture and tradition, and new or different demands or aspirations of how things ought to be. For instance it may be the case that ideally most Mexicans aspire to a democratic rule of law system and recognize the merits of this type of social and political interaction. But this is confronted with a culture of clientelism and illiberal habits. Most Mexicans complain about police bribery, yet they will prefer to pay the bribe rather than to go to the police station - arguably because it is still, by far, more cost-effective, and were law enforcement institutions more efficient and transparent, this would result in a change of behaviour patterns. The Mexican example shows that tax evasion can be effectively curbed through reforms in tax collection and enforcement mechanisms. Equally, in a country where police bribery is the norm for traffic violations, it is surprising that the policy of no circula, by which once a week private vehicles cannot be brought out on the road as an anti-pollution measure, is effectively enforced and respected, [Fix Fierro, 1994]. This is probably linked to the costliness of the corresponding fine, which is correlative to the corresponding amount of the bribe. Nonetheless, it attests to the impact of institutional reform and political change on what otherwise appear to be resistant cultural habits.

The debate over the link between culture and political change dates back to the 1960s [Almond and Verba, 1963]. The traditional culturalist approach tends towards the notion that values and culture are resistant to change, and bear an important influence on how institutions operate. However, the complexities of modernization and development clearly affect social and cultural values, attitudes and identities, and this process will be both a consequence of political change and an agent of political change [Muller and Selgison, 1994; Eckstein, 1988; Werlin, 1990]. Cultural aspects will have an important impact on how citizenship is defined [Roche, 1995; and Turner, 1994]. However, institutional reform and political change will also reshape

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6 See [North, 1990] on the costliness and effectiveness of institutional change and enforcement.
7 The smoothness of the Spanish transition process was in part a consequence of a society already receptive to democratic forms and distanced from the ideological polarization of the 1930s; and also, the establishment of democratic rules has instilled a greater presence of democratic values in Spanish society.
cultural habits, and normally in conjunction with such other factors as education, socio-economic development and levels of social marginalization and exclusion, a global democratizing message, improved media information and so forth.

The interrelation between these factors is complex, and the directions of causality are neither uni-directional, linear nor easy to measure. However, this paper will suggest that there appears to be significant, although still elusive, societal changes in perceptions and aspirations regarding rights, at a very general level, towards a more liberal democratic conception of citizenship. Nevertheless, whilst there is a perceptible change on the one hand, it is important to stress the heterogeneity of Mexican society in regional, ethnic and socioeconomic terms, so that it is by no means clear that a “single” type of citizenship is being advanced, or that aspirations regarding rights and what these mean are uniform. If anything, these are vague and weakly articulated. To the extent that there is consensus it is with regard to the discontent and dissatisfaction with things as they are.

And much of this discontent is targeted at state institutions, their credibility and legitimacy. With regard to rights protection there is a perceived and, indeed, real gap between demands for justice and the institutional capacity (or will) of the state legal structures to effectively protect these. Despite reforms, it appears that improvement in terms of rights protection and access to justice is minimal.

Whilst the state of affairs may not have deteriorated, this gap nonetheless becomes more critical in the process of political change and erosion of regime legitimation. It will be suggested that as the old bases of legitimation of the Mexican state shift towards a discourse of liberal competitive democracy, its failure to live up to some of the essential elements of this, namely rule of law and rights protection, becomes particularly critical. It is important to stress that this shift in the discourse is neither linear not homogenous. There are different conceptions of what justice means and ought to mean at the level of different social groups. Also, within the political elite, rule of law and order means quite different things for the different political groups.

Regime legitimation is connected to the development of citizenship rights. The justice apparatus is one institutional instance where citizenship is either advanced or hindered. One question which emerges is whether judicial reform and its impact on access to justice mechanisms is an agent of change, or whether the degree to which it takes place is in fact a consequence of changing political and cultural circumstance. Moreover, the fact that judicial reform takes place does not mean that it is necessarily successful in addressing the problems of access to justice which contribute to the gap

The universality of a liberal concept of citizenship and the rights this entails is under strain even in the more successful democratic polities, as minority rights and communitarian demands for self-determination increasingly become an issue to be resolved. Moreover, the social rights that during the height of welfarism had been seen to be consolidated are clearly in retreat in the wake of neo-liberal politics.
between the aspired to notion of citizenship as defined in the constitution, and the real levels of rights protection.

The failings of the Mexican state in this area, given the direction of political liberalization become more critical in terms of its capacity to reproduce its legitimacy. In the measure to which both the political discourse and the societal aspirations move towards a democratic conception of rights, then there is more pressure for the institutions which advance these to work more effectively.\(^9\)

2. Citizenship and political development in Mexico

The 1917 Constitution, founded in a revolutionary moment, constitutes a legal text clearly rooted in 19th century constitutional tradition, as regards the political organization of separation of powers and civil rights. Its drafters, however, went beyond the basic liberal contents and incorporated a truly “modern” and innovative set of social and economic rights which would be advanced notably through the consolidation of post-revolutionary institutional arrangements around a corporatist state, and the agrarian reform. The legal codes are founded on the precepts of equality before the law and a universal conception of rights. And the political discourse has been consistently underpinned by a constant allusion to the rule of law of the Mexican state. The importance of the constitutional discourse is evident precisely in the vast number of constitutional amendments which the various Mexican presidents have undertaken since 1917.\(^{10}\)

With the institutionalization of dominant party rule since the 1930s, the Mexican political system is constructed around this constitutional framework, where the appearances of democratic rule have been rigidly and unswervingly maintained. Strictly kept periodic elections, (however “unclean” and fraudulent these may have been) and non-reelgible presidential terms of six years allowed for effective and political successful turnover of public and political positions. This kept alive a resilient system of political rewards and clientelist relations which penetrated every level of a large state apparatus. The consequent political and social mobility of sorts which this permitted made for apparently permeable and flexible relations between state and society, creating a certain basis of social support and legitimation for the regime. The longevity of the power structures established and consolidated since the 1930s attests to the success of the Mexican regime and its capacity for self-reproduction. The complex institution and social “legitimizing” mechanisms of the Mexican political

\(^9\)This has been the case in most of Latin America with the tide of democratization, [Panizza, 1995].

\(^{10}\) Since the 1920s every Mexican president has made some reform to the Constitution, and more than 66% of its clauses have been reformd, [Gonzalez Oropeza 1996]. The Constitution has been amended over 350 times, [Fix Fierro, 1994:25]. On the one hand this reveal the great importance of the political attachment to constitutional forms; on the other, the ease with which the constitution is altered an indication of political expediency overrriding constitutional rule.
system have rendered possible the endurance of an essentially authoritarian and illiberal regime. The political dynamic of informal, and heavily clientelistic, yet well established rules of the game which ordered state and society were intricately complemented by a constitutional facade of rule of law and constitutional government. Only recently does there appear a more profound questioning and possibility of change of the rules of political power.

The post-revolutionary political discourse was strongly supplemented by allusions to constitutional rights which represented revolutionary conquests. The content of these rights presents a curious blend of liberal rights (with a marked concern for property rights), democratic political rights through universal suffrage, freedom of association, freedom of expression, and a series of social and economic rights. The 1917 text complies, at least formally, with the civil, political and social rights characteristic of a modern democratic state, which nominally constitute Mexican citizenship. However, contrary to a political and social process such as Marshall describes for the case of Britain, in which rights are conquered in a "truer" sense, in terms of a more substantive overriding value of these as they are consolidated [Marshall, 1963], (notwithstanding the not so recent retreat of social rights, and the growing clamour for a written bill of rights in England), in Mexico different sets of rights are advanced more crudely in subordination to political expediency at different moments of the PRI's history of uninterrupted government. In addition, the political and legal institutions, whilst on the one hand developed as a legitimizing buttress of the constitutional regime, failed on the other, perhaps inevitably, to develop internal efficiency in their own right. Specifically the justice apparatus, whilst providing to a considerable extent a state of legality, falls short, by all accounts of providing an adequate service to its clients.11

The history of post-revolutionary economic and political development indicates how over time different rights have received different attention and have been given different priorities, often in accordance with social and political needs of the moment - and far less in terms of a real conquest of rights. The courts have seemingly complied with these broad transformations at a general level.

Social and economic rights served as a backbone of the Mexican corporatist state since the 1920s and 1930s. Labour rights were channelled through official unions with corporatist access to the political system. The land reform of the 1930s was instrumental in stabilizing post-revolutionary Mexico. Significantly, these rights received the support of the legal institutions as part of the consolidation of the corporatist revolutionary state.[Craig: 1990a; and Craig, 1990b]. For instance, the Board of Conciliation and Arbitration, (Junta Federal de Conciliación y Arbitraje),12 which

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11 Again, stressing the difference with authoritarian Spain under Franco in which nonetheless judicial efficacy of the legal institutions was not unsuccessful in daily routine matters of justice administration, [Toharia, 1975].

12 This tribunal is one of several which define certain areas of jurisdiction outside the authority of the judiciary. Tax disputes and electoral disputes are also resolved within separate tribu-
handles labour rights and disputes, was established as a result precisely of the mis-
trust on behalf of labour with the formal judicial apparatus [Gonzalez Oropeza, 1996:64-66]. Although the 1917 Constitution paved the way for social reforms and the nationalization of petroleum, the political process by which this was put in place was complex and violent. Moreover, the Supreme Court initially hesitated to render full support to the new social and economic rights, and it was through the legal and constitutional reforms of the 1920s and 30s that the courts were harnessed to the political will of the moment. [Fix Zamudio, 1988].

The extent to which social rights have been consistently advanced, and the scope of the state’s action for their promotion has been limited, and has had varying impact in different regions, social sectors and economic activities. Moreover, there is sufficient scope for skepticism regarding the myth of the paz priista, and the smoothness of national revolutionary corporatism, [Knight, 1990; Rubin, 1990; and Craig 1990b]. Nevertheless, sufficient consensus surrounding the social pact was achieved that the regime was able to reproduce sufficient legitimacy to all appearances, and, for as long as the corporatist state worked with some degree of effectiveness, (albeit also with considerable violence and selective repression) social and economic rights were a strong component of the concept of citizenship that predominated and that was promoted in the national revolutionary discourse.

1968 marked a turning point in state-society relations, and opened a process of internal transformation within the corporatist state. The 1970s saw the resurgence of independent union and peasant movements with new demands on the state. The relationship between the state and popular movements shifted, as the latter sought greater autonomy from the state, with the aim of offsetting the clientelism and corruption of official union practices. More importantly perhaps is the growing sense that with the demand for greater autonomy from the state comes also the demand for political representation, namely the claim for effective political rights. It might be questionable the degree to which autonomy has been achieved, corruption and clientelism effectively curbed, or democratic demands attended to, [Fox, 1994; Davis, nals. However, their independence from the executive has been a considerably polemic matter, particularly with regard to the latter where after all, political rights are handled, namely the right to vote, and in this case there was no appeal to the judiciary.

Specifically the constitutional reform of Cárdenas in 1934, by which Supreme Court tenure is limited to a presidential term, later reversed in 1944, was a clear message in the direction of forcing court subordination to executive will.

The much acclaimed land reform and the complementary constitutional act 27, for instance, never really reached the state of Chiapas. It is important to stress that although at times these social rights have received the benefit of greater political support, Mexico’s socio-economic realities reveal the dramatic limitations in terms of welfare and real distributive effects that this had.

It is worth stressing that the relative stability of this period corresponds to a period of economic growth.

[Fox, 1994] claims that the new popular movements, in the extent to which they succeeded, continued however to reproduce the vices of clientelism, or semi-clientelism of before.
The decline of the corporatist state is not a linear process. Nonetheless, the demand for the respect for political rights began to appear more visibly than in the past.

The erosion of the social pact of the corporatist state was further undermined in the economic crisis and subsequent reforms of the 1980s and 90s. In addition, growing urbanization in the 1960s effectively displaced larger sectors of the population from the original social pact. This increase in the excluded sectors from traditional channels of access to the state (in turn undergoing significant transformations) led to different forms of state-society relations. The 1985 earthquake highlighted the great deficiencies of the Mexican state in handling the situation. New forms of civic associations have emerged to some degree, with a corresponding increasing expression of democratic demands [Tarres, 1990 and Tarres 1994].

It is perhaps too strong a point to claim that Mexican society is advancing towards the emergence of broad and inclusionary grass-roots movements. Perhaps Zermeño is right in his claim that the dismantling of the corporatist state is not leading to a modern articulation of state-society relations, but rather to a vacuum in the political system in terms of its intermediation mechanisms and capacity between state and society [Zermeño, 1990]. Economic crisis has propelled this process of social disarticulation. Nevertheless, as access to the corporatist state is diminished, and as the state loses its distributive capacity, more poignant becomes the individual need for rights protection and access to justice.

In addition to these social and economic factors, concrete reforms towards political competition have paved the way towards both an explicit (yet ambiguous and inconsistent in practice) political discourse of competitive electoral politics, and a public demand to have political rights respected. The reforms of 1977 began a tortuous process of give and take regarding electoral rules and the development of real opposition politics [Marván, 1990]. However, as the vote has become more important in the public mind, then so has discontent increased with the fraudulent practices of the governing PRI. This became particularly evident in the elections of 1986 in Chihuahua, prompting the PAN to make an international issue of the fraud which characterized this election. The 1988 election was the point of culmination in terms of electoral fraud and its negative impact on regime legitimacy. The 1980s is characterized by a process in which the opposition parties begin to take an active role in

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17 Earlier migrations to the cities had in fact been coopted into the system through the “popular sectors”. What is more problematic for the system is the social and political integration of a growing middle class.

18 Tarres presents an interesting study of a middle class association based in Ciudad Satelíte, where democratic values of sorts transpire in their demands, and a critical view of the power structures as they exist are expressed.

19 Paradoxically, Cárdenas represented in his discourse not an advancement towards liberal democracy, but rather an idealistic reconstruction of the revolutionary past.
advancing electoral politics, a role which clearly furthers the process of erosion of legitimacy of the old state structures and PRI politics.

In a 1989 survey over 50% of Mexicans thought there was nothing they could do about electoral fraud, [Camp, 1993:62]. Since 1988, respect for the vote has been at the heart of the political debate, with successive reforms to this effect as the political system inches its way towards more competitive electoral politics. That these changes are perceived is evident. Another survey, [Camp: 1993: 62] indicates that the Mexican voter feels considerable improvement in terms of respect for the vote (see Table 1).20 What is important to stress is the growing weight, both at a societal level and in the political discourse, which is given to political rights and competitive electoral politics. This is all the more so as the opposition parties, now with greater public visibility have advanced issues related to democratic citizenship, notably, clean elections, and in a less articulated form, rule of law and an end to impunity and corruption.21 Despite improvements in electoral mechanisms, and a decline in the violence that characterized electoral processes, political rights are still highly vulnerable by various accounts,22 [Foweraker, 1996, Human Rights Watch, 1996].

Of interest here is the distinct trend towards greater political activism, not at all restricted to the traditional liberal sense of electoral participation, as is indicated in Table 2. This can indicate either greater levels of political tolerance for dissent, as part of the long process of political liberalization that Mexico is undergoing, or it attests to greater levels of discontent with government. Probably it is a combination of both, which nonetheless breeds fertile ground for more explicit opposition to the nature of Mexican government and the regime itself.

Other actors have emerged in the 1980s and 90s both nationally and internationally which have advanced the demand for rights protection and a reformed legal order.

The demand for rule of law and a predictable legal order in the 1980s emerges as a result of the political decision in 1982 to nationalize the banks, and comes out of the business community. Business in Mexico had established a comfortable relationship with the state around state capitalist development, a privileged relationship which had benefitted (and still does, although more selectively) precisely from discretionary and clientelistic state practices. Transparency and legality did not characterize state-business relations. The nationalization of the banks in 1982 shook this comfor-

20It is important to stress that by 1991, the image of the Salinas administration had improved considerably, as indicated by the PRI victory in the mid-term congressional elections.
21For the Zapatistas, an important issue has been that of justice. In their cause, the problems of justice in Mexico refers to three levels: social and economic justice; the outright injustice and impunity which characterizes local Chiapas politics and power structures, and the Chiapas penal code and practices; and finally they incorporate the notion of indigenous rights in their demand for justice.
22It is important to note that with regard to the vote, the judiciary has historically been barred from ruling on electoral disputes.
table alliance and prompted an explicit, yet to a large extent conjunctural demand on the part of private business for the establishment of a legal and constitutional framework to protect property rights with minimum guarantees of reliability, predictability and impartiality, [Elizondo, 1992]. Since the de la Madrid Administration Mexico's economic policies have been based on a necessary re-establishment of conditions of legal security and economic confidence for national and foreign investment - with varying degrees of success, as the 1994 devaluation clearly highlighted. In the context of economic liberalization, a working legal framework which protects property rights may find significant support among certain business sectors - either those better placed to compete under new and supposedly more competitive conditions of market rule, or those who now see themselves excluded from the traditional state-capital relationship. This pressure is in addition linked to the internationalization of capitalist development through liberalization. Moreover, recently international agencies such as the World Bank and the International Development Bank have placed legal security and reform in justice administration high on their agenda. Traditionally, however, the Mexican state's handling of property rights has been subordinated not to rule of law logic of the overriding value of these rights, but to political expediency, [Azuela, 1989].

More directly linked to the demand for legal reform and rights protection is the emergence of human rights non-governmental organizations (NGOs). Their presence in Mexico soared during the 1980s, [Welna, 1996]. Throughout Latin America, human rights organizations have been pivotal in the national and international denunciation of human rights abuses, and have had an impact both on policy and on political discourse. They have certainly contributed in raising rights issues to the level of national debate, and their presence, while not providing a solution to the problems of rights protection and access to justice, has brought light to the reality of this. The restraint of sorts on the part of the Mexican state in handling the Chiapas uprising in terms of human rights violations was in part a consequence of the greater international scrutiny on Mexican internal affairs - somewhat linked to the signing of the North American Free Trade Agreement. The point here is to stress that the presence of
human rights NGOs is both an indication of the changing political climate within Mexico, and is in itself an agent of change.

Of great importance with regard to the issue of rights has been the creation of the Comisión Nacional de Derechos Humanos (CNDH) in 1990, and in response to the growing public demand against impunity, corruption and human rights abuses, particularly with regard to police behaviour. The CNDH was initially viewed with skepticism in part because it plays a purely advisory role, based on recommendations regarding the specific accusations against authorities. It has no enforcement powers, so that often its recommendations for punishment are put to one side. [Fix Fierro, 1994; and González Oropeza, 1996]. Despite these limitations, the mere public presence of the CNDH is of considerable significance, as through the greater visibility of human rights abuses that it attends it increases to some extent the public scrutiny of judicial process, the deficiencies of this and the problem of impunity in public office. However, it clearly cannot resolve the problems of impunity and rights violations.

These changes in perceptions and demands regarding rights and justice, which correspond by no means to a linear process, nor are they necessarily coherently articulated and packaged, take place in the context of additional factors. The shift in the last decade towards a freer press and media bring to light more visibly than in the past the problems of corruption and impunity.25 This, combined with an international context of democratization and human rights discourse underpin the above processes of transformation towards more democratic notions of citizenship. Moreover the unresolved political assassinations of 1994 and the corruption scandals surrounding Raul Salinas have brought to the public view the deficiencies of the legal institutions, added to the deterioration of the problem of law and order.

Finally, a new factor which has appeared on the rights discussion is the question of indigenous and community rights, largely prompted by the Zapatista movement, but readily welcomed by the great diversity of indigenous communities throughout the country. These are hard to place on the liberal democratic agenda, in part because of their problematic compatibility with the liberal universalist notion of rights and citizenship, [Dahrendorf, 1994].

However we assess this reality, it appears that the notion of citizenship and the rights this entails has shifted in Mexico. At a general level the impression is that civil and political rights in a liberal democratic sense are increasingly valued, although this is not necessarily clearly articulated, or homogeneously expressed throughout Mexican society. Nonetheless it is evident that citizenship rights, as established in the 1917 Constitution, do not essentially exist in Mexico. We might think of the real state of these rights as a matter of degree, to the extent that a system of legality of sorts does exist supported by legal institutions and a unified court system, and a strongly

25 [Foweraker, 1996:83] duly stresses, however, the limitations which still exist on the issue of freedom of expression and censorship, and the alarming levels of violence which still accompany this.
rooted legal and constitutional tradition. Moreover, rights are not systematically waived, as in the case of military regime experiences in other Latin American countries.26

Mexico's peculiar brand of authoritarianism mixed with liberal and social constitutionalism renders problematic any attempt at clear definition or classification of rights in Mexican society. Social and economic rights served as the backbone of the Mexican state at one stage. Political rights, despite periodic elections, have clearly been subordinated to political expediency. Neither respect for the vote nor freedom of expression have characterized the realpolitik of Mexico's regime. Selective repression and censorship, although skillfully and selectively handled, have undermined the notion of democratic political rights, (although by no means rendered them meaningless in terms of providing the regime with a legitimizing mechanism). Finally, civil rights have been undermined by the deficiencies of the system of justice administration, and access to justice (discussed below).

In Mexico's political development, the constitutional presence of these rights, and the legal institutions for their protection have been pivotal in terms of regime legitimation, contributing to the apparent social and political stability of the last seventy years. However, they are not true constitutional rights in the sense that their advancement is not unquestionably above short-term political interests. On the contrary, they have consistently been subordinated to overriding political decisions, the interests of the ruling PRI group, and the contingent political, social and economic alliances of the moment.27 At different times these different sets of rights, civil, political and social have received greater or lesser support in public politics. Currently we are witnessing unprecedented advances as regards political rights, cleaner elections, less restricted media channels, although social rights are clearly in retreat in the context of economic liberalization.28 The question here is whether these changes, and the institutional reforms which they involve, imply an irreversible process of political liberalization which will carry with it a redefinition of state-society relations, and of the real status of citizenship rights.29

26 There is also perhaps the case for arguing that the institutional constraints which the Constitution itself establishes for the principle of separation of powers, and the degree of excessive centralization of power in the presidency, by definition will produce an essentially authoritarian system, which cannot be expected to a more liberal or democratic notion of rights, citizenship and rule of law.

27 [López-Ayllón, 1995], speaks of a historical legacy in Mexico by which the state makes the law, and is intimately related to the law, but is not bound by it because it can transform it to its needs. Moreover, the law institutes a project which becomes more an aspiration, but which fails to correspond to the reality of its application.

28 [Millan, 1993] provides an interesting discussion of how state-society relations have shifted and reaccommodated, as the bases of regime legitimacy have changed over time. Whilst the outcome of the political and economic transformations of the past decades is not yet clear, it is evident that regime legitimacy increasingly rests on electoral credibility and rule of law.

29 [Foweraker, 1996] speaks of the contradictory nature of citizenship in Mexico, where citizenship is increasingly aware of its rights, but still there are patterns of arbitrary detention and di-
The problem of rendering a clear picture of the status of rights in Mexico is further confounded by, firstly, the varying forms which the state takes in different parts of the country, in terms of its presence and the degree to which it effectively penetrates civil society; and secondly, by the heterogeneity of Mexican society, fundamentally in socio-economic, regional and cultural terms. How rights are perceived in the indigenous communities of Chiapas or Oaxaca differs profoundly from how they are perceived in the urban middle class of Mexico City or the business sectors of Chihuahua. Here we face not only formidable socio-economic barriers to minimally equitable access to formal justice mechanisms, but in some instances entirely different world-views altogether. If to this we add the structural deficiencies of the formal justice system, and the undemocratic nature of the political regime, then our picture of how “citizenship” may be defined in Mexico becomes truly complex.

Finally, the definition of citizenship, which determines to a large extent the nature of state-society relations, is largely mediated through the state institutions involved in rights protection and promotion. The legal institutions are fundamental in this role, and it is through these that to some extent regime legitimacy is reproduced. This is all the more so as other channels of state society mediation of the Mexican corporatist state decline, and the political discourse advances towards one based on liberal democratic precepts. Here rights are made real to a considerable extent through the justice system as part of democratic rule of law. And it is here that the performance of the legal institutions becomes all the more critical for regime legitimacy.

3. Justice administration and access to justice in Mexico

Given the political reality of Mexican constitutionalism, the overwhelming concentration of power around the presidential office, and dominant party rule, the judiciary has generally been seen as an organ highly subordinated to the executive, (also for structural reason which will be discussed below), with little autonomy or capacity to act independently. The justice system is characterized by its high levels of politicization, clientelism and corruption. A closer look at the history of the judiciary renders a more complex picture of an organ which has acted both as a bulwark of the Mexican political system, complementing its nominal constitutional and legal discourse, and moreover, has granted the system legal authority. Whilst the regime cannot be said to have governed under the essence of rule of law, it was and is undoubtedly underpinned by a system of legality. Indeed, as some analysts have observed, court statistics reveal a certain degree of political independence, particularly in the routine day to day cases, and where highly visible political interests do not conflict [Gonzalez Casanova, 1965; and Schwartz, 1977].

Sapparances, censorship and bad faith, in other words “citizenship within reason” where the reason is the authoritarian reason of the political elite.
How the justice system in Mexico operates to a large extent reflects the nature of the state system. The degree of politicization, clientelism and patronage relations which characterizes the judiciary is no more than an extension of how power structures are defined throughout the Mexican public administration, and how this, in turn, affects state-society relations and the status of citizenship. This section of the paper will discuss firstly the public perception of the justice system. Secondly it will address some of the structural problems of justice administration and access to justice in Mexico.

3.1 Public perceptions of access to justice

The justice apparatus in Mexico is traditionally viewed with suspicion and skepticism as an organ subordinated to the will of the executive on the one hand, and as a network of corrupt and clientelist relations where doing justice does not prevail. This generally unfavourable image of the legal institutions has seemingly become more apparent with their recent public visibility through such events as Zedillo’s constitutional reforms of 1994, which made a political issue of the problems of justice administration, the unsatisfactory yet publicity-ridden investigations of the political assassinations of Colosio and Ruiz Massieu, and the role of the Supreme Court in the Aguas Blancas massacre of seventeen peasants in the summer of 1995.

In addition, the critical problem of law and order and increased crime rates is currently an important issue, especially in local politics. In the public mind, law and order and public security are strongly related with the judicial apparatus. The two are different, yet related problems. Significantly, as Table 4 indicates, most respondents confuse prosecuting and police functions with the judicial function, and as many as 39% claimed not to know which institutions are part of the judiciary. What prevails in the public view is that impunity is the order of the day, and justice is never done. This has provoked alarming reactions in the form of a series of lynchings in September 1996, as people chose to take justice in their own hands. There is very little confidence and trust in the legal and police institutions, (Table 3 compares Mexico to the United States and England). Essentially, there is little confidence in the law enforcement mechanisms, and in justice administration in general. However, it is clear that the issues of law and order and justice are high in the Mexicans' priorities, (Tables 11, 12 and 13). Thus, although there is a great lack of information regarding the workings of the different justice mechanisms, it appears that Mexican's are strongly aware that the inadequacies of these affect their lives.

Specifically the court system is viewed with distrust and suspicion, and, it appears, all the more so by those who have never been involved in a court case (Tables 5 and 6).30 It is interesting to note that Supreme Court judges receive a much

30 Of the respondents to the survey carried out by Voz y Voto, only 7% had had experience with the court system. Voz y Voto, July 1996, p.24.
more positive evaluation than lower court judges. Also, curiously, litigating lawyers
are thought of as being more dishonest than the judges themselves by those respondents
who have had court experience. (Table 7). Moreover, with regard to court
costs, it appears that lawyers fees take up the better part of expenses for the parties
involved. (Table 10). Finally, whilst all respondents saw court procedures as very
lengthy and costly, this assessment is somewhat higher amongst those who have
suffered them (Tables 8 and 9).

There is no available information by which to measure the degree to which
these views on the judiciary have changed over time, or whether the image of the
court system has deteriorated or improved. However, it is evident that the view that
prevails with regard to the justice system is one of great distrust. The survey carried
out by Voz y Voto on the court system, moreover, was carried out only in Mexico
city and by phone, which restricts the sample to the urban middles class and above,
(that is, live in the city, and have a telephone). We can assume that the lower the socio-economic level, the worse will be the image of the court system and the possibility
of equal access to justice and judicial impartiality.

The next section will look more closely at the structural problems of access to
justice and rights protection in the Mexican justice system.

3.2. Structural problems of the justice system in Mexico

The system of justice administration is key in the relationship between state and societ.
It is one instance where state decisions are made binding at a societal level, and
through which rights are protected. An assessment of the justice administration involves the
study of a complex set of legal procedures, societal relationships, social and cultural mores, a full discussion of which goes beyond the scope of this article.
Here we will merely highlight some of the more striking deficiencies of the formal
justice apparatus in terms of providing an impartial and minimally equitable and
effective service of rights protection. Also, here we will see that reforms have taken
place throughout the history of the legal institutions, particularly since the 1970s,
which have to some degree tried to redress the deficiencies, yet are insufficient to
meet the needs and demands of a changing society.

Several factors need to be taken into consideration which will affect the efficiency of justice administration, its degree of impartiality and its availability.

3.2.1. Judicial independence

Judicial independence is a fundamental element of the principal of separation of
powers in the democratic tradition, as a mechanism of checks and balances on political
power, and as a means to achieve impartiality through the isolation of the judges
in their administration of the law from conjunctural political pressures or short-term
interests. The Mexican Constitution nominally upholds the principle of judicial independence, yet the reality of political development shows the Supreme Court to be subordinated to the executive. From this lack of political and institutional independence of the Supreme Court derives a pyramidal hierarchy throughout the justice system which reproduces the initial vices at the top of the structure through the rest of the courts system.

The problem of judicial independence in Mexico is two-fold. Firstly there are weaknesses in the formal constitutional provisions which hamper rather than promote judicial independence (this has partly changed with the constitutional reform of 1994). Secondly, the political environment of the Mexican political system is hardly propitious for judicial independence, where the power structures are not essentially subjected to constitutional control mechanisms, but rather these are secondary to an informal set of rules and dynamics. Given the latter, we can hardly expect the Supreme Court to play a supervisory role in terms of constitutionality and legality.

Judicial independence formally depends fundamentally on three factors: appointments procedures, tenure and stability in office, and the degree of autonomy and structure of the judicial budget. All three of these have changed significantly over time in Mexico's constitutional history since 1917. The reform of 1994 has altered significantly both the appointments procedure and tenure, as well as the administrative structure of the judiciary.

Prior to 1994, the appointments procedure at the level of the Supreme Court members effectively established an executive appointment of the position. The executive proposed a list of candidates to be ratified by a senate majority. Given the traditional PRI majority in the Senate, executive will has been effectively respected. This system clearly introduced a political bias in the judiciary, which reproduced itself throughout the lower levels, as lower court members were appointed by the Supreme Court. Appointments and promotion procedures were lax and alarmingly lacking in merit-based assessments or requirements of appointees. The judiciary, then, was organized around a pyramidal structure of appointments which were not characterized by high levels of professional competence, but rather by top-bottom clientelist relations, and seemingly high levels of corruption.

The constitutional reforms of 1994 created a new organ, Consejo de Judicatura, a council made up of seven members appointed by the judiciary, the executive and congress, and presided by the president of the Supreme Court, [Melgar Adalid, 1995]. A principal task of the new council is to relieve the Supreme Court, reduced with the reform from 22 to 11 members, of its administrative functions, namely appointments procedures for members of the lower courts, and the administration of the judicial budget. As regards appointments procedures, the intention is to establish

31 In the original 1917 appointments procedure, members to the Supreme Court were elected from a list of candidates proposed by the state legislatures, by an absolute majority of congress in secret ballot (with a minimum two thirds quorum) - the executive was notably absent from this procedure. This was changed in 1928 to the system which existed until 1994.
more rigorous assessment criteria and a more formalized and rigorous "judicial career" structure than existed before, with the aim of improving the quality of legal services. It is still too soon for any clear evaluation of these new measures. The fact that such a potentially innovating reform took place at the beginning of the Zedillo administration is in itself indicative of the growing concern with rule of law.

Supreme Court members in the 1917 Constitution were given life tenure, a mechanism by which judicial independence is strengthened. In 1934, Cárdenas reformed this to the effect that tenure was to be for six years, coinciding with the presidential term. This, in addition to the reform of 1928 which had significantly increased executive presence in the appointments procedure, to all effects and purposes subordinated the judiciary to the executive. Although the Cárdenas reform was later reversed in 1944, again to life tenure, the judiciary had effectively entered into a logic of political passivity and subordination to the executive.

Budgetary autonomy in Mexico is fairly limited. Until 1994, the only financial guarantees provided for in the Constitution stipulated that the salaries of the members of the Supreme Court and the lower courts may not be reduced during their time in office. Prior to a budget law of 1976, the judicial budget was granted at the discretion of the executive, and its administration was to be approved by the Secretary of Planning and Public Expenditure, (Secretaría de Programación y Presupuesto). Since 1976, the judiciary no longer requires executive approval with regard to how the judicial budget is administered. This was finally raised to constitutional level with the reform of 1994. However, it was only in 1982 that salaries of judges were raised significantly. [Welna, 1996; Soberanes, 1992]. Already since the presidency of López Portillo, the judicial budget begins to show an upward movement which increases notably during the 1980s. [Welna, 1996; Fix Fierro, 1994:80]. The percentage of the national budget rose from 0.07% in 1983 to 0.8% in 1993, [Soberanes, 1992:62-63]. On the whole, however, the image that prevails within the judiciary is that of insufficient resources and low salaries, which worsens considerably the lower the level within the judicial hierarchy.

The principle of judicial independence has been undermined in the degree to which both political independence and financial autonomy have been weakly upheld in the recent history of the judiciary. The reforms during the 1980s and the 1994 reform have strengthened the principle of judicial independence, but it is still too soon to have an adequate assessment of how these changes will work in the future.

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32 [Welna, 1996] stresses that judicial reforms were speeded up after 1977, with significant reforms taking place under de la Madrid and Salinas, and leading up to the reforms of the first month's of Zedillo's administration.

33 This rise in the percentage of the national budget that is allocated to the judiciary must also be seen in the context of general cuts in other areas of the public sector.

34 In the opinion of most judges and litigating lawyers interviewed for Voz y Voto, July 1996, the lack of sufficient financial resources, and real budgetary independence was seen to be a major obstacle for the improvement of justice administration.
It is important to note that whilst independence per se is important, no less so is the scope of juridical competence which the judiciary has. The review and control mechanisms which the judiciary has in Mexico are in fact considerably limited, (although they have increased with the 1994 reform). In addition, the proliferation of special administrative tribunals which fall outside the competence of the judiciary limit the areas in which it can intervene [Gonzalez Oropeza, 1996].

3.2.2. Structural obstacles

Budgetary limitations and other infra-structural inadequacies are the source of a number of problems. Low salaries and the general discredit of the courts have the effect that the better lawyers move into more lucrative private practice.

Despite reforms which, especially in the 1980s, have almost tripled the number of district courts in the country since the 1950s, (fig. 1), the actual caseload per judge has more than tripled since 1940 (fig. 2), reaching over 1600 cases per year per judge, [Welna, 1996; Fix Fierro, 1994]. Under these conditions it is hardly to be expected that each case receives the attention it requires, and often cases are resolved in order of who pays the biggest bribe, (not necessarily to the judge but to court clerks) for shifting forward a particular case. With the reforms under de la Madrid and under Salinas, in particular, the number of courts were significantly extended, but not enough to keep up with increasing demands on a court system in a rapidly urbanized society with modern needs.

Moreover, the distribution of the courts is heavily concentrated in the urban centers, leaving insufficiently attended large areas of the country (fig. 3). That courts should be concentrated in urban areas is not surprising, and by itself tells us little. However, the impression is that their scarcity in the rural areas is particularly dramatic, and clearly detrimental in terms of access to court services for the rural population, [Fix Fierro, 1994].

The reforms that have taken place, though perhaps timely, have been insufficient, and have not really addressed other problems related to lack of training, inadequate merit assessment and promotion mechanisms, absence of disciplinary oversight to curb corruption. The new Consejo de Judicatura aims to correct these deficiencies, but its effectiveness still remains to be seen.

In addition, a common complaint is the complexity of the bureaucratic procedures and paperwork in justice administration which slow down legal processes, and make them virtually non-comprehensible to the average layman. This is partly a result of the code law tradition. Elaborate written procedures prevail in both criminal law and civil litigation. The complexity of this added to a historical propensity of excessive state bureaucratization aggravate the problems of inefficiency and lack of transpa-

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35 These, in the opinion of interviewed judges and litigating lawyers are crucial obstacles to an improved justice administration, [Voz y Voto, 1996].
rency at all levels of the justice system, increasing the sense of public distrust and aversion with regard to legal dealings of any kind, [Gessner, 1984]. Rights protection, then, through formal legal channels becomes inviable, or at least highly unattractive.

3.2.3. Access to justice

Access to justice is conditioned not only by actual services which the formal justice system offers, but also to contextual factors, namely the political and cultural environment and the socio-economic setting, [Cappelletti, 1993]. These factors will determine to a large extent the insertion of the justice system in society, and affect the way in which rule of law is exercised in practice.

Major obstacles in every justice system to the principle of equality before the law are firstly, the economic factor of litigation costs and time. Secondly, formal legal mechanisms do not always account adequately for cultural aspects, and the formal solutions they provide do not always offer the best solution for the conflicting parties. This has resulted in the emergence of informal mechanisms of conflict resolution which under some circumstances render more effective or acceptable solutions, and it accounts to some extent for the survival of traditional community forms of conflict resolution.

Legal sociology has clearly established the damaging effect of the economic obstacle on the principle of equality before the law, to the great disadvantage of lower socio-economic groups. Litigation costs are high, making access to justice more attractive to people with resources, who can pay for the better lawyers, and in the Mexican context, who can pay the better bribes to their advantage, thus in clear violation of any notion of impartiality, or equality before the law [Fix Fierro, 1994].

The economic obstacle is present even in more homogenous societies, it is all the more detrimental in a highly unequal society as the Mexican. In addition to the already high costs of litigation in any modern society, corrupt practices and clientelism further hamper the equity of justice administration in Mexico.

Legal aid in Mexico exists by law, but in practice it is highly deficient, [Fix Fierro, 1994]. Not only are the numbers of lawyers as defensores de oficio, alarmingly insufficient to meet the demands on the system of legal aid, but they are also often the worst in terms of training and professional competence. Human rights NGOs to some extent have filled the gap in legal advice.

The geographic distance of considerable portions of the population from courthouses acts as a further inhibition for access to justice. In addition, there is a

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35 This aversion is clear from the research by Gessner; in almost any sphere of litigation, the respective parties will seek to avoid immersion in formal legal proceedings.
37 Gessner finds that in civil litigation between parties of equal socio-economic or “power” standing, the courts in Mexico have proved to be relatively effective, [Gessner 1984].

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21
lack of information and limited awareness of civil rights, and when these are being violated. This is particularly true at a rural level, [Gessner, 1994; and Secretary for Democracy, Human Rights and Labour, 1994]. This is coupled with the fact that common in the lower social groups is a sense of great distrust and rejection of dealing with formal legal mechanisms.

In the face of this dismal state of affairs regarding access to justice, recourse to informal mechanisms of conflict resolution or deals made “outside the law” is frequent. In more developed states, alternative arbitration mechanisms in civil conflicts are increasingly viewed favourably as cheaper, more time-effective and relatively successful. However, here they tend to have some form of regulation and control mechanisms to avoid undue abuses of intimidation. Moreover, if they fail, there exists ultimately the recourse to a minimally impartial formal justice system. In Mexico, by contrast, informal deals frequently correspond to the intimidation of the stronger party towards the weaker party, with the threat that the latter will be worse off if formal litigation is resorted to. Informal resolution mechanisms do not only emerge under conditions of inequality, such as in the case of indigenous traditional mores and rules. Here they work with greater success than the formal legal mechanisms, in terms of providing solutions more readily acceptable to the conflicting parties, as ultimately they are rooted in local culture.

On the whole, conditions for fair and adequate access to justice and rights protection in Mexico are dire. The reforms of the 80s and 90s have done little to address these problems.

3.2.4. Rights protection and criminal law

The worst abuses of human rights occur at the level of criminal law procedures. Much of the problem here lies beyond the judicial system proper. In Mexico, much of the penal process rests in the hands of the public attorney's office or ministerio público, and the judicial police (formally dependent on the executive through the office of the general attorney), [Sarré, 1992]. Both are alarmingly unaccountable, and generally held in the public esteem with great distrust and outright fear. [González Oropeza, 1996:70-76; and Waldman and Schmid, 1996] The list of denunciations is endless, but the chances of redress minimal. In Mexico is consistently at the receiving end of damning human rights abuses reports by international human rights agency, notably Americas Watch and Amnesty International for persistent rights violations. The entire criminal law procedures is wrought with systemic corruption at every level, inhuman prison conditions, presenting a deplorable picture of the state of affairs of the justice system.

38 In 1994 the CNDH of the Federal District received 466 accusations against policemen and judicial policemen, of which only 54 (11%) were indicted, [Gonzalez Oropeza, 1996:70].
3.3 Judicial reform and Political Development

The above report of the state of the justice system in Mexico testifies to the inadequacies of justice administration and rights protection in Mexico. As it exists, the judiciary in Mexico appears to be in no shape to meet the demands and needs of a rapidly changing society and of a political system which appears to be inching its way towards a more liberal and democratic conception of citizenship. The reforms of the 1980s and 90s have advanced to some extent some aspects of justice administration. Moreover, they are undertaken it would seem in response precisely to the changing nature of Mexican society as described in the second part of this paper. It is difficult to assess the extent to which they are in response to changing social demands, or once again reflect the state's remarkable capacity to act with foresight and flexibility in a changing political and social environment.

However this may be, it is important to stress that these reforms have been patchy and incomplete. They have met neither the growing demands on the justice system of a modernizing society, nor do they meet the criteria by which the legal mechanisms can be said to present minimum standards of impartiality, predictability and rights protection in a liberal order of rule of law. Equally, it is worth pointing out that the vices of the justice system are not distributed homogeneously throughout the legal apparatus; some areas of litigation work more efficiently and impartially than others. A research agenda to be encouraged is precisely to examine the differences that arise within the various forms of litigation, and also, between federal and local state justice mechanisms.
Concluding remarks

Citizenship is defined on the one hand by a specific constitutional order, and is upheld and mediated through the relevant state institutions. On the other hand it is also defined by membership to a community, and shaped both by the values that prevail, and by the political and social environment in which it is embedded. In effect the perceptions of citizenship are shaped at three levels: the legal level in terms of constitutional precepts and institutional design; at the level of the real, but not necessarily formal, power structures and effective institutional workings that mediate state-society relations; and finally at the level of social and cultural perceptions of citizenship, and demands and aspirations as to what citizenship ought to signify.

The relationship between these three levels in Mexico has changed in the last decades. At a formal legal and constitutional level, changes have occurred which have modified both the type of citizenship that is promoted, as the social revolutionary structures shift towards more liberal democratic conceptions of political and social order, and the channels through which rights are protected, through the creation of such institutions as the CNDH, the changes in electoral legislation and several attempts at judicial reform. Parallel to this, there are transformations in the political power structures as the old corporatist state declines and new forms of political competition are shaped. Finally, there are changes at a societal level in terms of shifting values, demands and aspirations which are both the result (and to some extent cause) of the above, and also of changing social, economic and international circumstances.

These processes of change are not linear, nor is the direction of causality easily established. Nonetheless, it appears that the institutional make-up of the state as it exists fails to keep up with the changing needs of Mexican society. The mechanisms of justice administration and access to justice are one important institutional instance where this gap becomes particularly critical in the mediation of state-society relations. It is not necessarily the case that matters are worse than before, but rather that the demands on the legal institutions become more important in the context of Mexico's changing political structures. The corporatist state to some extent fulfilled the notion of access to justice and to the state, more often than not through informal rules heavily based on clientelism and state patronage. The retreat of the corporatist state in certain areas, combined with the economic crisis of the 1980s and the social trends of urbanization have heightened a growing sense of exclusion and social disarticulation. This and the political changes of the last decades have prompted growing demands for justice and rights protection; at the same time, there is a growing sense of exclusion and disarticulation from the political community, to a small extent off-set by particularist and localist organization of grass-movements. What prevails, however is a growing sense of distrust and dissatisfaction in the legal and state institutions.

Essentially, the regime is suffering a profound crisis of legitimation in which its institutional make-up is being questioned in a fundamental way. Legitimacy is er-
ded as the post-revolutionary polity crumbles (despite the PRI's efforts to retain its nationalist revolutionary title). Moreover, there is a failure on the part of the political elite to construct a new basis of legitimacy around a liberal democratic discourse, despite considerable procedural advances which nonetheless appear as half-hearted and inconclusive. Finally, legitimacy is eroded as tensions in state-society relations increase resulting from a combination of growing disaffection with the state, mixed with a growing sense of exclusion from national membership and social disarticulation. This tension is expressed in distrust with state institutions, and a growing demand for rule of law, in which rights protection blends in with the problem of law and order, impunity and corruption.

Regime legitimacy, at this stage in the development of Mexico's political system, is increasingly dependent on its performance regarding democratic criteria which go beyond the respect for the vote (even in this is still unsatisfactory). Rule of law, the justice system and rights protection have become important issues, both at the level of the political discourse and at the level of societal demands. The reforms that have been undertaken in this area are important, but by no means sufficient. Ultimately, effective rule of law would signify the existence of overriding liberal democratic precepts in the power structures, in state-society relations, and in minimally effective rights protection and access to justice. To the extent that the legal structures fail to measure up to these criteria then we cannot speak of democratic citizenship, and this will undermine attempts to reconstruct regime legitimacy. This is all the more so as legitimacy is increasingly, albeit ambiguously, expressed in democratic terms.
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Table 1
Mexicans' views of Elections 1988 and 1990

<table>
<thead>
<tr>
<th>Responses to Question</th>
<th>Percentage Respondents</th>
<th>Percentage Change</th>
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<td></td>
<td>1988</td>
<td>1991</td>
</tr>
<tr>
<td>Will your vote be respected?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Yes</td>
<td>23</td>
<td>42</td>
</tr>
<tr>
<td>No</td>
<td>53</td>
<td>32</td>
</tr>
<tr>
<td>Don't know</td>
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<td>26</td>
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Table 2

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<th>Country</th>
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<th>1990</th>
<th>Percentage Change</th>
</tr>
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<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Mexico</td>
<td>7</td>
<td>24</td>
<td>242+</td>
</tr>
<tr>
<td>United States</td>
<td>15</td>
<td>26</td>
<td>73+</td>
</tr>
<tr>
<td>Canada</td>
<td>18</td>
<td>30</td>
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<tr>
<td>Mexico</td>
<td>2</td>
<td>16</td>
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<tr>
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<tr>
<td>Canada</td>
<td>9</td>
<td>16</td>
<td>78+</td>
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(a) Political action includes boycotts, legal demonstrations, illegal demonstrations, occupation of buildings.
Table 3
Legitimacy of the State in England, United States and Mexico: Confidence of Citizens in Institutions

<table>
<thead>
<tr>
<th>Institution</th>
<th>England</th>
<th>United States</th>
<th>Mexico</th>
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<tbody>
<tr>
<td>Family</td>
<td>-</td>
<td>-</td>
<td>84</td>
</tr>
<tr>
<td>Church</td>
<td>56</td>
<td>85</td>
<td>62</td>
</tr>
<tr>
<td>Schools</td>
<td>53</td>
<td>82</td>
<td>60</td>
</tr>
<tr>
<td>Television (a)</td>
<td>-</td>
<td>-</td>
<td>37</td>
</tr>
<tr>
<td>Law</td>
<td>-</td>
<td>-</td>
<td>32</td>
</tr>
<tr>
<td>Army</td>
<td>79</td>
<td>86</td>
<td>32</td>
</tr>
<tr>
<td>Newspaper/media</td>
<td>38</td>
<td>69</td>
<td>25</td>
</tr>
<tr>
<td>Businesses</td>
<td>55</td>
<td>84</td>
<td>22</td>
</tr>
<tr>
<td>Congress/parliament</td>
<td>52</td>
<td>83</td>
<td>16</td>
</tr>
<tr>
<td>Unions</td>
<td>29</td>
<td>52</td>
<td>14</td>
</tr>
<tr>
<td>Politics</td>
<td>-</td>
<td>-</td>
<td>12</td>
</tr>
<tr>
<td>Police</td>
<td>80</td>
<td>88</td>
<td>12</td>
</tr>
</tbody>
</table>


Table 4
In our country the government is made up of three powers: the Executive, the Legislature and the Judiciary. Which institutions are part of the Judiciary?

<table>
<thead>
<tr>
<th>Response</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Attorney general office, district attorneys, and judicial police</td>
<td>26</td>
</tr>
<tr>
<td>Supreme Court, courts</td>
<td>15</td>
</tr>
<tr>
<td>Police</td>
<td>9</td>
</tr>
<tr>
<td>Police Delegations</td>
<td>2</td>
</tr>
<tr>
<td>Chambers of Deputies and Senators</td>
<td>2</td>
</tr>
<tr>
<td>Army</td>
<td>1</td>
</tr>
<tr>
<td>other</td>
<td>6</td>
</tr>
<tr>
<td>Don't know/ no information</td>
<td>39</td>
</tr>
<tr>
<td>Total</td>
<td>100</td>
</tr>
</tbody>
</table>

Source: Voz y Voto, July 1996
Table 5

How honest do you think the judges involved in justice administration are?

<table>
<thead>
<tr>
<th>evaluation %</th>
<th>A</th>
<th>B</th>
</tr>
</thead>
<tbody>
<tr>
<td>Very dishonest/dishonest</td>
<td>40</td>
<td>50</td>
</tr>
<tr>
<td>Regularly dishonest</td>
<td>36</td>
<td>37</td>
</tr>
<tr>
<td>Honest/very honest</td>
<td>1</td>
<td>5</td>
</tr>
<tr>
<td>no information</td>
<td>23</td>
<td>8</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>100</td>
<td>100</td>
</tr>
</tbody>
</table>

A = Have been involved in a court case/trial  
B = have not been involved in a court case/trial  
*Source: Voz y Voto, July 1996*

Table 6

How honest do you think the members of the Supreme Court are?

<table>
<thead>
<tr>
<th>evaluation %</th>
<th>A</th>
<th>B</th>
</tr>
</thead>
<tbody>
<tr>
<td>Very dishonest/dishonest</td>
<td>23</td>
<td>31</td>
</tr>
<tr>
<td>Regularly dishonest</td>
<td>11</td>
<td>29</td>
</tr>
<tr>
<td>Honest/very honest</td>
<td>41</td>
<td>17</td>
</tr>
<tr>
<td>no information</td>
<td>25</td>
<td>23</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>100</td>
<td>100</td>
</tr>
</tbody>
</table>

A = Have been involved in a court case/trial  
B = have not been involved in a court case/trial  
*Source: Voz y Voto, July 1996*
Table 7

How honest do you think the lawyers representing the parties in a dispute are?

<table>
<thead>
<tr>
<th>evaluation %</th>
<th>A</th>
<th>B</th>
</tr>
</thead>
<tbody>
<tr>
<td>Very dishonest/dishonest</td>
<td>54</td>
<td>41</td>
</tr>
<tr>
<td>Regularly dishonest</td>
<td>27</td>
<td>41</td>
</tr>
<tr>
<td>Honest/ very honest</td>
<td>9</td>
<td>11</td>
</tr>
<tr>
<td>no information</td>
<td>10</td>
<td>7</td>
</tr>
<tr>
<td>Total</td>
<td>100</td>
<td>100</td>
</tr>
</tbody>
</table>

A = Have been involved in a court case/trial  
B = have not been involved in a court case/trial  
Source: Voz y Voto, July 1996

Table 8

How long does a court case take?

<table>
<thead>
<tr>
<th>evaluation %</th>
<th>A</th>
<th>B</th>
</tr>
</thead>
<tbody>
<tr>
<td>Very long/long</td>
<td>70</td>
<td>53</td>
</tr>
<tr>
<td>Regularly long</td>
<td>17</td>
<td>21</td>
</tr>
<tr>
<td>Not long</td>
<td>13</td>
<td>3</td>
</tr>
<tr>
<td>no information</td>
<td>-</td>
<td>23</td>
</tr>
<tr>
<td>Total</td>
<td>100</td>
<td>100</td>
</tr>
</tbody>
</table>

A = Have been involved in a court case/trial  
B = have not been involved in a court case/trial  
Source: Voz y Voto, July 1996
### Table 9

*How costly do you think is going to court?*

<table>
<thead>
<tr>
<th>evaluation %</th>
<th>A</th>
<th>B</th>
</tr>
</thead>
<tbody>
<tr>
<td>Very costly/ costly</td>
<td>67</td>
<td>65</td>
</tr>
<tr>
<td>Regularly costly</td>
<td>13</td>
<td>14</td>
</tr>
<tr>
<td>Not very costly/ not costly</td>
<td>20</td>
<td>4</td>
</tr>
<tr>
<td>no information</td>
<td>-</td>
<td>13</td>
</tr>
</tbody>
</table>

Total: 100

A = Have been involved in a court case/trial  
B = have not been involved in a court case/trial  

*Source: Voz y Voto, July 1996*

---

### Table 10

*What did your money go to when you went to court?*  
(posed to persons involved in a court case who said it was costly or very costly)

<table>
<thead>
<tr>
<th>response in order of importance</th>
</tr>
</thead>
<tbody>
<tr>
<td>* Lawyers</td>
</tr>
<tr>
<td>* Tips to accelerate procedures</td>
</tr>
<tr>
<td>* Bribing public servants</td>
</tr>
<tr>
<td>* Photocopies and paperwork</td>
</tr>
</tbody>
</table>

*Source: Voz y Voto, July, 1996*
Table 11
What do you think most affects the country’s stability?

<table>
<thead>
<tr>
<th>Response</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>That those who break the law are not punished</td>
<td>36</td>
</tr>
<tr>
<td>That there is too much poverty</td>
<td>33</td>
</tr>
<tr>
<td>That the unions and the employers do not agree</td>
<td>17</td>
</tr>
<tr>
<td>That popular traditions are being lost</td>
<td>6</td>
</tr>
<tr>
<td>Don’t know/ no reply</td>
<td>7</td>
</tr>
</tbody>
</table>

Source: Beltran et al, 1996, 49, (my own adaptation)

Table 12
Of the following four reasons for choosing a place to live, which is the most important for you?

<table>
<thead>
<tr>
<th>Response</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>That there be law and order, and justice</td>
<td>48</td>
</tr>
<tr>
<td>That there be employment and business</td>
<td>33</td>
</tr>
<tr>
<td>That there be relatives and friends</td>
<td>13</td>
</tr>
<tr>
<td>That there be no demonstrations and strikes</td>
<td>4</td>
</tr>
<tr>
<td>Don’t know/ no reply</td>
<td>2</td>
</tr>
</tbody>
</table>

Source: Beltran et al, 1996:52, (my own adaptation)
Table 13
Which of the following is the worse for an Individual?

<table>
<thead>
<tr>
<th>Reply</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Rejection by his/her family</td>
<td>35</td>
</tr>
<tr>
<td>Injustice and abuse of authority</td>
<td>33</td>
</tr>
<tr>
<td>Poverty</td>
<td>16</td>
</tr>
<tr>
<td>Conflict in the workplace</td>
<td>13</td>
</tr>
<tr>
<td>Don't know/ no reply</td>
<td>3</td>
</tr>
</tbody>
</table>

Source: Beltran et. al, 1996, 48, (my own adaptation)

Figure 1
Number of District Courts

Source: Informes Anuales, Suprema Corte de Justicia Nacional, quoted in [Fix Fierro, 1994:75]
Figure 2  
Increase of Caseload per Judge

<table>
<thead>
<tr>
<th>Year</th>
<th>Number of Cases</th>
</tr>
</thead>
<tbody>
<tr>
<td>1940</td>
<td>495</td>
</tr>
<tr>
<td>45</td>
<td>630</td>
</tr>
<tr>
<td>50</td>
<td>934</td>
</tr>
<tr>
<td>55</td>
<td>884</td>
</tr>
<tr>
<td>60</td>
<td>1189</td>
</tr>
<tr>
<td>65</td>
<td>1143</td>
</tr>
<tr>
<td>70</td>
<td>1260</td>
</tr>
<tr>
<td>75</td>
<td>1479</td>
</tr>
<tr>
<td>80</td>
<td></td>
</tr>
<tr>
<td>85</td>
<td>1686</td>
</tr>
<tr>
<td>90</td>
<td></td>
</tr>
</tbody>
</table>

Source: Informes Anuales, Suprema Corte de Justicia Nacional, quoted in [Fix Fierro, 1994:76]

Figure 3  
District Court Distribution in 1992

Source: Informes Anuales, Suprema Corte de Justicia Nacional, quoted in [Fix Fierro, 1994:124]
Table 14

Do you think that we have a truly democratic regime?

<table>
<thead>
<tr>
<th>RESPONSE</th>
<th>ALL</th>
<th>PAN</th>
<th>PRD</th>
<th>PRI</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>30</td>
<td>0</td>
<td>0</td>
<td>58</td>
</tr>
<tr>
<td>No</td>
<td>67</td>
<td>100</td>
<td>100</td>
<td>34</td>
</tr>
<tr>
<td>Don’t know/no response</td>
<td>3</td>
<td>0</td>
<td>0</td>
<td>7</td>
</tr>
</tbody>
</table>

(a) Members of Congress

Source: Este País, March 1994 (my own adaptation)