



Juan Antonio Le Clercq
Jose Pablo Abreu Sacramento *Editors*

Rebuilding the State Institutions

Challenges for Democratic Rule
of Law in Mexico

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UNIVERSIDAD DE LAS AMÉRICAS PUEBLA

 Springer

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Editors

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in Mexico

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Foreword

Literally every single day people talk more about the necessity of establishing the rule of law. Some think it should be a kind of primary setting. Others believe that it is more a process that implies a broad transformation to enforce something that is incomplete or dysfunctional. Yet there are diverse possibilities between these two extremes. The narratives of these moments have an element in common: the identification of absences. Practically nobody believes that Mexico has managed to build, operate, establish, work with, or, indeed, perform any similar expression related to what has historically been defined as the rule of law.

It would be relatively easy to compile a list of authors who have discussed the numerous deficiencies and the damaged or disastrous status that rule of law has or does not have in our society. If we take as the starting point, let's say, twenty years ago, the list would be enormous. Many topics would appear, one or multiple times, in an isolated or cyclical way: security or insecurity of contracts, police action, lack of resources, violation of due process, the disruption of federalism or separation of powers, the expansion of crime, legalization of drugs, accountability, a career civil service, the use of the Army for public security tasks, informal economy, regulatory proliferation, but also the absence of regulation, corruption, migration, human rights violations, absence of referendums among indigenous minorities, irregular extractions, corporatization of political parties, spread of political and electoral clienteles, depredation of natural resources, cybernetic insecurity, unmarked graves, kidnaps, disappeared people, murdered journalists, human trafficking, black markets, extrajudicial executions, and a literally profound etcetera.

The items in the aforementioned list, along with other topics and variables that could easily be included, have been advanced as deficiencies in the rule of law. Beyond relevant viewpoints and thematic differences, what it is shown is the perception, and sometimes a full demonstration, of a series of national problems linked to the law. Each person sees only what is personally or professionally relevant to him or her, and that obliviousness is so great that it should be regarded as the antithesis of the situation that should ideally prevail.

The challenge of facing those problems in that way generates additional complications. The first and most evident one consists of the turmoil caused by trying to turn any deficiency into a legal, normative, or practical damage to the rule of law. If we imagine this legal-political-social possibility as one piece composed of many parts, it could be said that the whole ends up being adversely affected by the inadequacy of one of its elements.

This metaphoric approximation highlights that many authors maintain that the rule of law to which we aspire as a totality is normatively and practically non-existent, or else does exist but deficiently because it lacks that central element.

Several things that have been discussed in recent years are situated in this foggy condition. The underlying issue is not so much the difficulty of identifying such topics, but the reasons for considering these particular topics, and not others, as deficient and, what is more, why those issues affect the “rule of law” as a whole.

Perhaps, it could be said that this analysis is, in fact, a meta-discussion. According to this logic, we would not be discussing the problems with the rule of law, but what individuals believe to be more disruptive, in an analytical way. This perspective leads us to a second discussion about how it affects the whole, and not about what it is important to adjust or correct in the legal-cultural mode.

Possibly, it could be said the two discussions are different and independent. And I would agree. But I disagree about the confusion of some authors when they draw a line between the necessity of correction and of description. I should insist on the fact that if everything that is done fits within the “rule of law” zone and there is limited awareness of how the part affects the whole, we would not know which specific part should be corrected or how it should be corrected in order to achieve that whole.

I am elaborating on the above considerations, maybe quite extensively, to contextualize the book which I am about to introduce. It is a compilation of essays where, in my opinion, three elements converge. First, it seeks to define what could nowadays be conceptually understood as the rule of law in this geographic area. This is not a trivial feat. There is a large number of works on the possible list to which I previously referred which, before embarking on the analysis of successes and failures, do not explain what is going to be understood by the rule of law. This gives the impression that those who act in that way assume the existence of a natural state of affairs, as if everybody is thinking, both conceptually and practically, the same thing when they talk about the rule of law. But, in fact, this is not true.

If we look closely at what I will call the underlying discourse, wide and profound differences could be identified in the components of the rule of law or its objectives and functions. For some people, it is an instrument of contractual execution; for others, it is a control and coercion mechanism; for still others, it is the normative realization of the democratic State.

The book’s main strength is that it makes explicit the whole theoretical scaffold of what is going to be understood by the rule of law. The essays in the first part focus on this concept and what conforms to it and what does not. This does not mean that we have to accept the authors’ ideas. It simply enables us to know, explicitly, the authors’ ideas and arguments and to avoid erroneous suppositions.

The second advantage of the book is that it provides concrete examples of some specific issues to demonstrate what is defined as the rule of law. At this stage, we move on from the theory to see how these failures take place. Does the number of constitutional reforms generate an affectation, in a kind of understanding as Marx did, where the quantitative become qualitative? Is the absence of security or the lack of civic culture destructive of what is construed and done as rule of law?

The third aspect of this work has a more specific dimension by asking what should be done socially, and in some cases legally, to establish or reestablish equilibrium in the country, either by geography or subject. There are valuable arguments that also, of course, have a practical dimension.

What has just been mentioned could give the impression that the book possesses a sort of unity: a whole perfectly formed from the general and abstract to the concrete, through the particular. But the fact that diverse authors present their ideas about related topics does not automatically lead to complete cohesion. In other words, what is said by one author in the first part may not necessarily be accepted by another author in a different part of the book.

Anyone who decides to read this book cannot simply assume its total unity. On the contrary, the reader has to extract from each chapter the elements of particular use and relevance to them. What certainly has been done is to structure the parts in a differentiated manner and, for me, this is the chief merit of the collection. This is not a common feature; however strange this may sound. It is delightful and valuable that authors and editors have made an effort to mark the differences. It is a relevant analytic step forward. This could foster further reflections to comprehend and generate consensuses to modify the situation of a fundamental theme of our time: simply, from my perspective, the rational and ordered social coexistence among all or quite a few of us.

Mexico City, Mexico
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Mexico City, Mexico
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Dr. Juan Antonio Le Clercq
Dr. Jose Pablo Abreu Sacramento

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Abbreviations

| | |
|---------|--|
| ACHR | American Convention of Human Rights |
| ARP | Administrative Responsibility Penalties |
| ASF | Superior Federal Audit (Auditoría Superios de la Federación) |
| CAPI | Computer-assisted personal interviewing |
| CCINM | Citizen Council of the National Institute of Migration (Consejo Ciudadano del Instituto Nacional de Migración) |
| CEAV | Executive Commission for Victims Assistance (Comisión Ejecutiva de Atención a Víctimas) |
| CEEAD | Center for Studies on Teaching and Law Learning (Centro de Estudios Sobre Enseñanza y Aprendizaje del Derecho) |
| CENACE | National Center for Energy Control (Centro Nacional de Control de Energía) |
| CENAGAS | National Center for Natural Gas Control (Centro Nacional de Control de Gas Natural) |
| CIDAC | Research Center for Development (Centro de Investigación para el Desarrollo, A.C.) |
| CIDE | Center for Research and Teaching in Economics (Centro de Investigación y Docencia Económicas, A.C.) |
| CIDH | Inter-American Court of Human Rights |
| CJF | Mexican Council on Administration of the Federal Judicial Branch (Consejo de la Judicatura Federal) |
| CNDH | National Commission for Human Rights (Comisión Nacional de los Derechos Humanos) |
| CNH | National Hydrocarbons Commission (Comisión Nacional de los Hidrocarburos) |
| CNPJE | National Census of Local Prosecution Offices (Censa Nacional de Procuración de Justicia Estatal) |
| COFETEL | Federal Telecommunication Commission (Comisión Federal de Telecomunicaciones) |

| | |
|----------|---|
| COFECE | Federal Competition Commission (Comisión Federal de Competencia Económica) |
| COLMEX | College of México (Colegio de México) |
| CONAPRED | National Council Against Discrimination (Consejo Nacional contra la Discriminación) |
| CONEVAL | National Council for the Evaluation of Social Development Policy (Consejo Nacional de Evaluación de la Política de Desarrollo Social) |
| CRE | Energy Regulatory Commission (Comisión Reguladora de Energía) |
| CSG | Carlos Salinas de Gortari |
| ELD | Free School on Law (Escuela Libre de Derecho) |
| ENVIPE | National Victimization Survey (Encuesta Nacional de Victimización y Percepción sobre Seguridad Pública) |
| EPN | Enrique Peña Nieto |
| EZP | Ernesto Zedillo Ponce de León |
| FCH | Felipe Calderón Hinojosa |
| FLACSO | Latin American Faculty of Social Sciences (Facultad Latinoamericana de Ciencias Sociales) |
| FMP | Mexican Petroleum Fund (Fondo Mexicano del Petróleo) |
| GCM | Global Compact for Safe, Orderly and Regular Migration |
| GII | Global Impunity Index (Índice Global de impunidad) |
| GPP | General Population Poll |
| HPR | Homologated Police Report |
| IAHRC | Inter-American Human Rights Commission |
| IEDF | District Federal Electoral Institute |
| IFECOM | Federal Institute of Experts in Mercantile Contests (Instituto Federal de Especialistas en Concursos Mercantiles) |
| IFETEL | Federal Institute for Telecommunications (Instituto Federal de Telecomunicaciones) |
| INACIPE | National Institute of Criminal Sciences (Instituto nacional de Ciencias Penales) |
| INAI | Instituto Nacional de Acceso a la Información (Instituto Nacional de Acceso a la Información) |
| INE | National Electoral Institute (Instituto Nacional Electoral) |
| INEE | National Institute for Educational Evaluation (Instituto Nacional para la evaluación Educativa) |
| INEGI | National Institute for Statistics and Geography (Instituto Nacional de Estadística y Geografía) |
| INM | National Institute of Migration (Instituto Nacional de Migración) |
| IPSA | International Political Science Association |
| ITAM | Autonomous Technological Institute of México (Instituto Nacional Autónomo de México) |
| ITESM | Monterrey Institute of Technology and Higher Education (Instituto Tecnológico Y de Estudios Superiores de Monterrey) |

| | |
|---------|---|
| LACC | Latin America and Caribbean Centre |
| LFCE | Federal Law of Economic Competition (Ley Federal de Competencia Económica) |
| LSE | London School of Economics and Political Science |
| MORENA | National Regeneration Movement (Movimiento de Regeneración Nacional) |
| MP | Federal Prosecutor (Ministerio Público) |
| NAFTA | North American Free Trade Agreement (Tratado de Libre Comercio) |
| OECD | Organization for Economic Cooperation and Development |
| PAN | National Action Party (Partido Acción Nacional) |
| PEMEX | Mexican Petroleum (Petróleos Mexicanos) |
| PF | Principle of Fairness |
| PPD | Drug Policy Program (Programa de Política de Drogas) |
| PRI | Institutional Revolutionary Party (Partido Revolucionario Institucional) |
| QRQ | Qualified Respondent's Questionnaires |
| REDODEM | Documentation Network of Migrant Advocacy Organizations (Red de Documentación de las Organizaciones Defensoras de Migrantes) |
| RLI | Rule of Law Index |
| SCJN | Court of Justice of the Nation (Suprema Corte de Justicia de la Nación) |
| SEGOB | Ministry of National Affairs (Secretaría de Gobernación) |
| SESNSP | Executive Secretariat of the National Public Security System (Secretariado Ejecutivo del Sistema Nacional de Seguridad Pública) |
| SETEC | Technical Secretariat for the Implementation of Criminal Justice Reform (Secretaría Técnica del Consejo de Coordinación para la implementación del Sistema de Justicia Penal) |
| SFP | Ministry of Public Function (Secretaría de la Función Pública) |
| SNA | National Anti-corruption System (Sistema Nacional Anticorrupción) |
| SNI | National System of Researchers (Sistema nacional de investigadores) |
| SPT | Subcommittee on Prevention of Torture and other Cruel Inhuman or Degrading Treatment or Punishment |
| TFJA | Federal Court of Administrative Justice (Tribunal Federal de Justicia Administrativa) |
| UAM | Metropolitan Autonomous University (Universidad Autónoma Metropolitana) |
| UANL | Nuevo León Autonomous University (Universidad Autónoma de Nuevo León) |
| UDLAP | University of the Americas Puebla (Universidad de las Américas Puebla) |

| | |
|--------|--|
| UIA | Iberoamerican University (Universidad Iberoamericana) |
| ULSA | La Salle University (Universidad de La Salle) |
| UMECAS | Supervisory Units for Precautionary Measures (Unidades Estatales de Supervisión a Medidas Cautelares y Suspensión Condicional del Proceso) |
| UN | United Nations |
| UNAM | National Autonomous University of Mexico (Universidad Nacional Autónoma de México) |
| UNDP | United Nations Development Programme |
| UNHRC | United Nations Human Rights Council |
| UNLA | Latin University of America (Universidad Latina de América) |
| UNODC | United Nations Office on Drugs and Crime |
| UP | Panamerican University (Universidad Panamericana) |
| UPM | Pontifical University of Mexico (Universidad Pontificia de México) |
| USAL | University of Salamanca (Universidad de Salamanca) |
| VFQ | Vicente Fox Quezada |
| WGI | Worldwide Governance Indicators |
| WJP | World Justice Project |
| WVS | World Value Survey |

Chapter 1

Introduction: Understanding the Lack of Rule of Law in Mexico



Juan Antonio Le Clercq, Jose Pablo Abreu Sacramento
and Fernando Miguel Herrera Rosado

1.1 The Complex Development of the Rule of Law

The rule of law has been established as a central feature of modern states and democracies; it represents an ideal linked to political development. The rule of law rests on the idea that a society adopts through legislation a set of formal rules and norms and decides to adhere to those rules in order to regulate the behavior and interaction of individuals, public institutions and private organizations, including conflict resolution mechanisms. This represents the basic social contract crystalizing a common aspiration of modern democracies.

In some of its canonical definitions, the rule of law refers to at least five fundamental processes: lawmaking in coherence with principles such as clarity, publicity, stability, consistency, transparency or prospectivity; equal protection of citizens' rights and interests; impartial and universal access to justice; public officials' behavior and decisions in adherence to law; and institutional rules of the game to regulate social, political and economic interactions – something North (1990) called a timeless certainty horizon.

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But thick and critical descriptions¹ of the liberal negative concept of legal order, centered on restraints, rights, checks and balances, view the rule of law in a more extended way, a perspective that involves more complex elements, such as the development of institutional capabilities, the provision of public goods, a culture of legality, market regulation, containing corruption and patrimonialism, promotion and protection of human rights, principles of social justice and equality and the legal and political consequences of economic inequality and social exclusion (Tamahana 2004; Bingham 2010; Waldron 2016).

Beyond the differences and advantages of thick and thin approaches to the rule of law, a central problem in contemporary academic and political discussions is the difficulty of extending and consolidating the rule of law where tradition, political informality or autocracy have been the basis of the social contract. This is why it is very relevant to focus our attention on the key institutional conditions and social circumstances that allow the development of an effective rule of law, especially in developing countries and post-authoritarian regimes.

Is it possible to establish the rule of law successfully in developing countries or young democratic regimes? Does the rule of law depend on high degrees of economic development, related to particular political histories or conditioned by specific legal traditions? Is it possible to design public institutions according to legal principles where problems of corruption, patrimonialism, informality or lack of a culture of legality persist? What is the relationship between an effective rule of law and deep economic inequalities?

Answering these questions requires the study of successful and failed experiences as well as deeper comparison between different national cases. One of the main issues in the debate on the rule of law, as the reader will notice throughout the articles in this book, has to do with its measurement. What is the optimal framework of variables and attributes that would enable us to capture reality? Why is it important to measure the rule of law? The authors of the book will attempt to address these questions.

It is particularly relevant to reopen this discussion when disappointment with democracy is clearly rising in different regions of the world.

Beyond a Political Sciences and Law perspective, the intensification of global dynamics has significant effects on the rule of law. Migration is one of the key issues of our time. But also, we cannot ignore the fact that de facto or agreed supranational norms are defining national ones. HiTech companies play globally but constrain to local norms. International treaties and regional institutions force interactions between people to change and this requirement starts to be distrusted.

¹Thick descriptions (a term first coined by British philosopher Gilbert Ryle in an essay entitled "The Thinking of Thoughts: What is 'Le Penseur' Doing?" [1968] and expanded on by American anthropologist Clifford Gertz in *The Interpretation of Cultures* [1973]) are based on contextualized scientific observation of human behavior, whereas thin descriptions offer only surface level observations.

In addition, we cannot ignore the prominence gained around the world over the past few years by strong quasi authoritarian leaderships like Turkey, Russia, and China, or the rise of populist/nationalist political actors and parties like Trump (USA), Bolsonaro (Brazil), Kurz (Austria), Le Pen (France), the League (Italy) and VOX (Spain).

In Latin America, this discussion acquires more relevance when we focus our attention on the complicated regional context. The consolidation of democracy in different countries seems to pass through a delicate moment. The high levels of inequality, the growing security crisis, the generalized environment of corruption, and the political conflicts in specific countries like Nicaragua and Venezuela are just some examples of the issues we are facing.

Although there is no unique model and the rule of law is considered not a final stop but a continuing construction, there is a never-ending risk of regression, and fundamental elements are threatened.

In Mexico, the rule of law is still an aspiration. In spite of several structural reforms adopted during the last three Presidencies, public institutions still have significant deficiencies. The inauguration of a left-wing government in December 2018 – which could be considered a second pivotal moment in the transition to democracy – is starting to provoke questions about its economic model, its security strategy and its political attitude of distrust/intolerance to other ideologies.

Mexico represents a case of the persistence of weak rule of law in a context of problematic democratic consolidation and unequal economic development. Several rankings, indexes, and reports have continually shown the endurance of widespread corruption, ineffective institutions, impunity and globally feeble rule of law. These studies are additional evidence of the relevance of discussing the rule of law in Mexico, which is the aim of the book.

For example, the Corruption Perception Index that studies this phenomenon in 180 countries around the world classifies Mexico in the 138th position, behind Latin American countries like El Salvador, Honduras, and Bolivia (Transparency International 2018). The World Bank's World Governance Indicators includes a rule of law indicator in which Mexico has worsened its score from 38 points out of 100 in 2007 to 32 in 2017. In the Economist Intelligence Unit Democracy Index (2018), Mexico scores 6.19 and ranks within Latin American and Caribbean countries in the 16th position out of 24. This is the worst score among "flawed democracies" – not far from El Salvador with 5.96, which is considered a "hybrid regime". In the Freedom in the World Index (Freedom House 2018) Mexico scores 62 points out of 100 and is classified as "partly free", along with other nations in the region, such as Bolivia, Paraguay, Colombia, Ecuador and Central American countries. In the Fragile States Index Mexico scores 71.5 out of a maximum of 120, ranking in the 94th position of 178 countries, and is classified in the 'warning' category like the majority of countries in Latin America.

In addition to these reports, there are two valuable initiatives understand Mexico's performance on the rule of law: The *World Justice Project* (WJP) Rule of Law Index

and the Global Impunity Index. Analyzing the data of both within their various editions, it is possible to observe not only the evolution of scores but how the methodology has changed. This illustrates the complex task of measuring the rule of law. Interestingly, both indexes launched subnational indexes throughout the years to measure the performance of the Mexican states and obtain more in-depth insights.

The first edition of the WJP Index was launched in 2009 (Agrast et al. 2009). In the first edition WJP did not provide a general score for each country. Instead, factor scores were presented.

Table 1.1 presents the four highest and four lowest subfactor scores for Mexico in the 2009 edition, comprising four factors and 16 subfactors. As these data show, the highest subfactor involved the design of laws. The lowest scores, in contrast, involved the effectiveness and accountability of public agencies and actors.

The WJP index evolved and began to rank countries and provide a general score. In the 2017–2018 edition, Mexico occupied position 92 out of 113 countries. Its highest factor was open government and its lowest criminal justice and absence of corruption. The subfactor scores reveal that accountability and corruption control are still relevant challenges that have changed little in a decade (Tables 1.2 and 1.3).

On the other hand, the Global Impunity Index² shows that Mexico ranks very poorly against other countries on impunity. Since the 2015 edition Mexico has had the worst position in the Americas (Table 1.4).

Beyond the deficiencies of Mexican government institutions, the behavior of Mexican citizens does not appear to contribute towards closing the gap to reach an effective rule of law. For example, Mexicans' perception of what could be called democratic values is very revealing. In 2001 the Secretaría de Gobernación – National Affairs – launched the Encuesta Nacional sobre Cultura Política y Prácticas Ciudadanas. The answers to some of the questions are very interesting: 44% of the participants considered that neither authorities nor citizens respect the law. 68% considered that both politicians and citizens were involved in corruption. The questions varied in subsequent editions, but the results show a similar pattern. In the 2008 edition, 64% considered that people did not respect or barely respected the laws. 68.2% considered that the laws were enforced to the benefit of a minority (SEGOB 2008). In the 2012 edition, 80.3% of the participants answered that they had no or very little trust in Mexican laws.

As the readers shall see in Section 1.3, for the first time WJP launched a sub-national index for Mexico. One of the questions in the survey asked people which three words they thought of when they hear “rule of law”. The most frequent words

²The Global Impunity Index was launched in 2015 by the Centro de Estudio sobre Impunidad y Justicia belonging to the Universidad de las Américas Puebla. The index evaluates security and justice systems in Mexico.

Table 1.1 World Justice Project (WJP) Rule of Law Index (2009)

| Subfactor | Factor score |
|--|--------------|
| Government powers limited by constitution | 0.87 |
| Compliance with international law | 0.63 |
| Laws are clear, publicized and stable | 0.62 |
| Governmental and non-governmental checks | 0.56 |
| Accountable government officials and agents | 0.38 |
| Accountable military, police, and prison officials | 0.36 |
| Fair and efficient alternative dispute resolution | 0.34 |
| Fair and efficient administration | 0.31 |

Source WJP (2009)

Table 1.2 WJP Rule of Law Index 2017–2018

| Factor | Factor score |
|----------------------------------|--------------|
| Open government | 0.61 |
| Order and security | 0.59 |
| Fundamental rights | 0.52 |
| Constraints on government powers | 0.46 |
| Regulatory enforcement | 0.44 |
| Civil justice | 0.40 |
| Absence of corruption | 0.31 |
| Criminal justice | 0.30 |
| Position in ranking | 92/113 |

Source WJP (2018)

Table 1.3 WJP Rule of Law Index 2017–2018

| Factor | Factor score |
|--|--------------|
| Absence of civil conflict | 1.00 |
| Freedom of religion | 0.74 |
| Publicized laws and government data | 0.68 |
| Right to information | 0.63 |
| Absence of violent redress | 0.29 |
| Sanctions for official misconduct | 0.25 |
| Absence of corruption (in the legislature) | 0.19 |
| Effective correctional system | 0.19 |

Source WJP (2018)

Table 1.4 Global Impunity Index 2015

| | Position/Number of countries | Score |
|------|------------------------------|-------|
| 2015 | 58/59 | 75.7 |
| 2017 | 65/69 | 69.21 |

Source Le Clercq/Rodriguez (Coords.) (2018)

were: respect, rights, and justice. However, 52% of the participants did not have an answer to the question.

The relevance of evaluations and measurements, as some of the authors will advocate, lies in the fact that diagnosis allows direction to be given and priorities to be set for public policies. Measuring also allows Mexico to be contextualized and put into perspective against other nations.

1.2 Understanding the Proposal of Rebuilding the State Institutions – An Overview

Having established the relevance of discussing the rule of law nowadays, globally and locally, we should say that this book is an attempt to contribute to the public debate on the fragility of the rule of law. Its purpose is to identify the key factors which explain the endurance of its fragile condition in Mexico, opening possible routes to possible solutions and further research. Three axes are proposed: first the concept and measurement of the rule of law, second some factors that explain its fragility in Mexico, and third specific cases of policy implementation in the country.

The opening section of this book is dedicated to examining the concept of the rule of law and the difficulties of measuring it. It is generally accepted that there is no consensus on the definition of the concept of rule of law. Its multidimensional nature allows the inclusion or exclusion of several competing attributes and the adoption of distinctive analytical perspectives. Consequently, there is no consensus on how to measure the health of the rule of law in a given country or society. Conversely there is no argument about the importance and the necessity of measurement tools. As we shall see in Chap. 4, the more information we have, the more accurate the diagnosis that can be made.

In the first chapter in the section, Sarsfield opens the discussion by presenting the main attributes and perspectives that leading authors advance when they deal with the concept of the rule of law. He highlights that, along with other major concepts in political science, there is no agreed or accepted definition. Following Sartori, he takes as a starting point the delimitation of what is not considered rule of law. Societal arrangements with the presence of the “rule by men” or “special interest-based laws” are incompatible with the idea of the rule of law. This implies that one’s actions must be regulated by external norms. Norms should not be captured by subjective or arbitrary considerations. The enactment of a law and its application should respect equality before the law – a condition that is broken when laws are aimed at specific groups or individuals.

One of the most debated questions is how many and which attributes should be included within the rule of law notion. Some conceptions favor thinner definitions, whereas others prefer thicker ones. It is a very relevant question because the answer

will affect the applicability and the measurement of the concept, as we shall see later in the book. An essential attribute addressed by Sarsfield is institutional equilibrium: “laws must be able to domesticate, transform or constrain the behavior of powerful actors”. This is particularly relevant in contexts where the executive branch tends to concentrate power, as we can see in Latin American countries.

Finally, following Raz (1979), the author suggests that paramount attributes, such as democracy, fundamental rights or justice, that can be included as part of the rule of law should not be confused or regarded as synonyms. To do so would be to risk losing the particularity of the rule of law concept.

Chapter 3 introduces a key issue of this book: does law effectively rule in Mexico? In his article, Estrada Michel argues that Mexico lacks indicators to measure compliance with the rule of law. The author also underlines the necessity of addressing the rule of law within the constitutional theory, surpassing the borders of other disciplinary approaches (political science or economics). Following these ideas, he proposes a set of indicators covering a variety of relevant areas: human rights, impunity, corruption control and the performance of specific government bodies, such as the agency in charge of performing financial audits of government offices.

In his view, the rule of law must not ignore Mexico’s transition process to democracy. A positive achievement of the past decade is the human rights 2011 reform that created a network of agencies in the country to promote and guarantee human rights at state level. Another positive step forward is the autonomy of Prosecutor Offices. To conclude, the author maintains that the key to straightening the rule of law in Mexico is combating impunity.

The final chapter in Part 1 reminds us that, beyond the conceptual debates, the rule of law notion is related to essential aspects of everyday life, such as walking without danger in our neighborhoods, practicing religion and enforcing contracts. Granted the lack of consensus, the *World Justice Project* (WJP) attempts to fill the aforementioned conceptual and measurement gap by introducing a comprehensive framework of indicators to capture its multidimensional nature and monitor the performance of countries. The purpose is to facilitate evidence-based policy-making.

The authors present an overview of the WJP’s efforts to measure the rule of law in Mexico. Since 2009, the country’s performance has been measured every one or two years, along with more than 100 nations worldwide as part of its Rule of Law Index. For the first time, the WJP adapted its methodology to produce a subnational index to obtain specific country insights, resulting in the Mexico States Rule of Law Index. The new index covers the same standard eight factors as the global study: constraints on government powers, the absence of corruption, open government, fundamental rights, order and security, regulatory enforcement, civil justice, criminal justice. These factors were adapted to the Mexican context in order to produce relevant data that would identify which states and what specific factors show the greatest opportunities and weaknesses.

The WJP index stands out because country reports are based on the collection of primary data: the perception of the general public along with country experts' opinions. One of its limitations is the fact that the study covers only the three largest cities in each country. The Mexico States Rule of Law Index is a decisive effort to overcome this issue.

Overall, the rule of law in Mexico shows a prevailing precarious performance with significant negative effects on the everyday life of Mexicans. Results for each state can be found in detail in this article. In the future, the WJP envisions producing thematic data reports. The WJP's experience is a clear demonstration that, regardless of conceptual and methodological challenges, the measurement of the rule of law is invariably essential to facilitate more effective policy design. The Mexico States Rule of Law Index should be a relevant reference for state governments that would seriously embrace the objective of straightening the rule of law.

The second section of the book covers the most substantive contributions to the debate on the structural fragilities of the rule of law in Mexico. The section opens with a crucial issue: How many constitutional reforms produce rule of law?

The Mexican constitution is one of the most long-living fundamental laws in the world that are still in effect. Since it was adopted in 1917 after the Mexican Revolution, it has shown great vitality and is to be transformed by incorporating new rights and institutional change which echo political and social changes. Yet constitutional change does not necessarily produce positive effects. The Mexican constitution has undergone 233 amendments which reform 698 articles, damaging its order and coherence. The author suggests that reforming the constitution has become a fetish: "political actors assume that everything that is integrated (in the constitution) updates, strengthens, improves or even guarantees coherence, generating a process that reinforces itself through time", the main assumption being that changing the text will change the reality. The WJP Rule of Law Index along with other measurements like The Global Impunity Index (Le Clercq/Rodriguez 2018) have clearly demonstrated that Mexico suffers significant and pervasive deficiencies in enforcing laws and actually applying changes that were introduced in the fundamental law. The third section of the book will provide some relevant examples.

The first chapter in the section presents an extensive quantitative analysis of institutional reforms of Mexican fundamental law, including constitutional reforms by presidential period, by decade, and by topic, and the most reformed articles. One of the main conclusions of the chapter is that amendments show that the Mexican constitution represents more a battlefield of competition driven by political aspirations and projects rather than a milestone in the rule of law. This conclusion is complemented by indicators presented in the previous section: several surveys have shown the feeble trust of Mexicans towards their own laws and the lack of respect for them.

In this context, the main challenge for Mexico regarding this matter is understanding the gap that prevents the translation of constitutional change into

significant improvements to the rule of law. Relying on several scholars, the author notes some of the challenges which need to be overcome: design issues, difficulties in implementation related to secondary legislation, poorly coordinated and underfunded agencies, social conflicts, and high levels of corruption and impunity.

The next contribution in this section is an overview of Mexico's current insecurity crisis. Vidal Romero presents a broader perspective of violence during the twentieth century. He reminds us that one of the primary tasks of a state is to impose order within its territory, a *sine qua non* to the flourishing of society. According to this logic, citizens would rationally prefer democratic order to alternative forms of organization as a means for securing respect for basic rights and enjoying favorable conditions for economic prosperity. As the WJP Rule of Law Index shows, even in democratic settings, adherence to law and order results in a variety of performances across nations. Failures of the rule of law open the gates for illicit behavior, a trend that could get out of control when impunity and economic incentives work in a negative way, as the case of Mexico shows.

For some authors, Mexico's security crisis can be explained by political pluralism. The transformation of the Mexican political system brought major changes to the structure of the Mexican state. Others focus more on the failures of the Mexican government's strategy to deal with criminal organizations. Vidal Romero maintains that, in addition to these possible explanations, there are other factors that contribute to the rising violence in Mexico. Relevant changes in the strategy and the operational function of cartels, and the disconnection between the taxing authorities and the specific public bodies that actually spend government budgets also lead to corruption and undermine local authorities' capabilities to fight crime. The combination of a fragile rule of law and uncontained violence creates a vicious cycle, deteriorating law and order even further. On the whole, Mexico's biggest challenge is to create institutions and the right incentives so that individuals, organizations, and public officials adhere to the norms. Fixing fiscal arrangements and regulating drugs could also be game changers.

In the next chapter, Olivares-Mendez and Triculescu plunge into one of the most sensitive topics of our times on a global stage: irregular immigration and human rights. Irregular migrants end up involved in a "grey area" at the crossroad between globalization, sovereignty, and the rule of law. Although Mexican constitution acknowledges protection for all, not just for its citizens, the constitution's content is disconnected from reality, as many Central Americans passing through the country experience day by day.

The authors signal a key issue that came after the adoption of the Human Rights Reform in 2011. The *pro personae* principle was undermined in 2013 when the Mexican Supreme Court constrained the application of international treaties to those rules that do not contradict exceptions contained in the Constitution. According to the authors, this represents a setback to the application of the *pro personae* principle in the country.

The Migration Act, adopted in 2011, was indeed a step forward in the right direction. Unfortunately, weak institutional capacities, unqualified staff, and a limited budget, among other obstacles, have seriously damaged the effective

implementation of the law. Audits by the National Institute of Migration had reported significant deficiencies. Mexican immigration officers repeatedly detain people for longer periods than the rules allow and do not provide proper assistance to migrants. This is relevant if we bind it with the report of the United Nations Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, acknowledging that torture in Mexico is generalized.

Migration is by nature a transnational issue, as migratory flows between the United States, Mexico, and Central America or African and European Nations clearly show. Mexico's condition as a country that is simultaneously origin, passage, and destination for migrants places it in a unique position to push forward the global agenda, securing the protection of the rule of law for both regular and irregular migrants.

The next chapter presents an infrequent and sometimes ignored discussion about the rule of law: the role of citizens. This contribution invites us to reflect on the role that the members of a society as individuals have in public affairs. The author maintains that the effectiveness of government bodies is not the only condition to achieve a forceful rule of law; another necessary one is the participation of the people motivated by an individual moral obligation.

However, Mexicans do not seem to be cooperative or show sufficient involvement, beyond showing up to vote on elections. Existing mechanisms that empower citizens, such as the possibility of proposing legislation or demanding referendums on relevant topics, are scarcely used.

The chapter provides a thought-provoking discussion with other scholars on the principle of fairness, a principle that is proposed as the foundation of the moral obligation to participate and cooperate in a community. Citizenry tends to ignore the fact that public goods are the result of an "unbroken chain of coordinated actions" that demand the participation of its members. "When an individual enjoys a benefit available for everybody and this benefit exists just because of the sacrifice of others, then that person will have an obligation to do her fair share to maintain that benefit". Minimal actions such as voting, reporting crimes, paying taxes or collaborating with neighbors and organizations are the proposed fair share. The promotion of a broad civic education policy in Mexico could be a joint effort by schools and universities, along with civil society organizations and relevant public agencies, to set a starting point for building the social construct of the rule of law.

According to Fierro (Chap. 8), democratization and the end of the hegemonic political party system in Mexico lead to further demands, such as transparency and accountability mechanisms, the necessity of a civil service and the promotion of human rights. Accountability mechanisms should be an essential component of the rule of law as a means to increase society's control over government bodies and to get better results. The Mexican legal system adopts the French tradition oriented towards control of powers and the protection of human rights.

Fierro refers to administrative law as a domain where conflict resolution was dominated mostly by informal means until the end of the twentieth century. Underfunded courts, the lack of qualified staff, restraints on independence and the limitations in dealing with administrative activities are some of the main challenges

that limit the potential benefits of administrative law in Mexico. In this context, the administrative courts' purpose is to determine whether government acts guarantee human rights protection and comply with norms fixed by the constitution. To this end, 'nullity', "state liability" and 'amparo' trials are mechanisms available to Mexican citizens to control public bodies protecting them from the negative consequences of their actions. Financial compensation, for example, is established by the Mexican constitution to repair damages.

The *amparo* trial is the mechanism by which citizens are entitled to challenge actions they considered contrary to the constitution. It is considered the most powerful accountability mechanism in the Mexican legal system because it is applicable to all branches and orders of government. The 2011 human rights amendment made *amparo* mechanisms more flexible. Nowadays, class actions and legally pursuing private entities as providers of public services are possible. However, more flexibility is needed since sixty per cent of *amparo* cases are dismissed due to case overloads and the excessive formalities of the legal system.

All in all, Mexican citizens' ignorance of the available accountability mechanisms, coupled with technicalities, are major barriers for its broader use.

To close the second section of the book, Roman Gonzalez brings to our attention the importance of the education of future lawyers. He maintains that having a significant number of law schools and lawyers in Mexico has not led to greater strengthening of the rule of law in the country. According to the author, this situation suggests that something is wrong. Training lawyers is more a matter of quality than quantity. Therefore, enhancing the quality of the education of law students would have positive effects across the Mexican legal system. As an example, the next generation of lawyers could be trained to be more sensitive and get more technical skills to promote human rights.

Excessive focus on content-memorizing, lack of context, weak analytical and argumentative skills and poor knowledge of international norms are some of the educational deficiencies that law school students show – deficiencies that, in time, result in interpretation and application mistakes once in the labor market.

The aforementioned 2011 Human Rights amendment makes addressing this well-known situation especially timely. To Roman Gonzalez, without pertinent efforts to redress law students' education in Mexico, the possibilities of the reform succeeding are very limited. Law schools can play a decisive role to improve the likelihood of success, given the social relevance of the profession as intermediaries between the legal apparatus and the people seeking for justice.

The third and last section of the book covers relevant analysis of so-called "structural reforms" introduced in Mexico over the past decade: criminal justice system, anti-drugs strategy, corruption control, energy sector, and economic competition. All of them are relevant domains that illustrate the challenges of translating the rule of law into concrete public policies.

The section's opening chapter (Novoa and Silva) discusses the Mexican criminal justice system. More than ten years have passed since Mexico introduced major changes in 2008. The aim was to improve the quality and to guarantee respect of the rights of both victims and suspects of crime. Several statistics and reports show the

disturbing condition of the criminal justice system in Mexico. Only ten per cent of crimes are reported by victims, mainly because people consider it a waste of time and do not trust the authorities. As an illustration, according to the Impunity Global Index (2018), the State of Mexico has the highest impunity levels. This state has the largest amount of cases (202,205) in the country. Of those, only 0.59% (1,209) resulted in a sentence.

The judicial system reform was adopted to promote the transition from an inquisitorial system to an adversarial and accusatorial one. Mexican Congress fixed 2016 as the deadline for full implementation. Today, the implementation is still in its early stages.

According to the authors, one of the main obstacles to the success of the reform was the feeble political will of state governors towards the reform. This could suggest that they expected the reform would be abandoned. Coordination issues, low budgets, and poor investigative capacities are additional deficiencies that limit the potential of the reform.

Another major obstacle is the current legislation of *amparo* trial, which does not operate coherently with the criminal reform system. On the whole, the authors maintain that the greatest limitations of the system are not to be found in the regulation but in the day-to-day operational and institutional failures.

Christopher Ballinas presents a review of the National Anti-corruption System (SNA). “Mexico has no tradition of checks and balances or independent watchdogs, and corruption was endemic”. Ballinas provides a description of Mexican political institutions where, for many decades under PRI, the president held privileged legal and extralegal powers. In this context, institutional change was more a mechanism to maintain power than a path to transformation and prosperity. The behavior of political actors and public officials was indeed motivated by particular interests and a desire to maintain the status quo.

Former Mexican President Enrique Peña Nieto (2012–2018) launched an ambitious reform agenda which managed to obtain the cooperation of the main opposition political parties (The Pacto for Mexico). However, the Casa Blanca and other political scandals resulted in corruption control becoming a mainstream topic in the country, forcing the president’s agenda to take more decisive steps to foster corruption control: The introduction of the SNA was the consequence. The SNA was conceived as an entity to coordinate the anti-corruption capabilities of existing government bodies with the participation of civil society both nationally and at the level of the individual states. Yet the SNA has not tackled major political scandals – not just the Casa Blanca case but also others such as the Odebrecht. According to Ballinas, the SNA is symptomatic: “the government creates a panel to address a major issue, only to starve it of resources, inhibit its progress or ignore it, or make rules so convoluted as to make the system unworkable”.

The next contribution, by Jorge Romero, takes a critical perspective of the so-called “war on drugs” initiated by the Mexican Federal Government during Felipe Calderon’s (2006–2012) administration. This strategy has been criticized from different angles: as a human rights crisis and for its social and economic implications. Romero presents a new perspective: institutional analysis, bringing

attention to the distribution of power at the local level and its relationship with the drug policy.

The author introduces the figure of the ‘cacique’, a form of political intermediary. In its origins, the ‘cacique’ referred to a person who had legitimate leadership over a certain territory. This figure illustrates the relationship between formal institutions and de facto power allocation mechanisms that have been in place in Mexico for centuries. Taking a path-dependence approach, the author shows how the cacique figure evolved from a formal institution to an informal one. “The *cacicazgo* emerges as a mechanism of clientele administration that exercises control over local populations as a bargaining chip in perpetual negotiation with federal political leaders”.

Jorge Romero provides an overview of the evolution of the drug policy in Mexico. He subscribes to the argument of other scholars, highlighted by Vidal Romero in his article about Security, who relate the significant increase in the power of drug cartels to the democratization process and the end of the political monopoly of PRI. Several authors had underlined that political changes disrupted local agreements. Romero remarks on the necessity of more research to analyze Mexican State cases, such as Michoacan, where the “drug on wars” began in 2006. Since then, Mexican armed forces have been deployed throughout the territory without clear legislation. For Romero, Mexico is in the midst of a transition process to establish an open access social order.

The final chapters present a review of economic reforms. First, Tony Payan presents an analysis of the relationship between politics and public policy. Taking as a case study the reform of the Mexican energy sector, he shows that policies produce incentives, and resources and influence actors (opposition, interest groups, citizens), provoking consequences in politics. In parallel, political changes affect the design and implementation of policies. “Public policy and politics produce feedback loop dynamics that end up changing the policy environment and threatening the implementation and consolidation of a policy path”.

The reduction in Mexico’s oil production coupled with international factors led the Government to reform the energy sector. The author identifies poverty and pervasive inequality, along with corruption, organized crime, and impunity, as domestic factors that undermined the implementation of the energy sector reform. External factors such as changes in USA politics also had consequences in Mexico. The sluggish economic results damaged the support of Mexican people for neoliberal economic reforms introduced over the previous decades, which contributed to the election of a left-wing candidate to the presidency in 2018. The energy sector was, in a way, the ultimate stage of an aggressive economic agenda launched by PRI and PAN.

The aforementioned factors have a strong relation to the rule of law. For Payan, the understanding of the evolution of political, social and economic indicators cannot be separated from keeping track of the shifts in the public policy environment.

In the closing chapter of the book, Solange Maqueo presents a comprehensive overview of the evolution of economic competition legislation in Mexico. Over the

past three decades, Mexico's political system has undergone major changes that some of the authors of the book have described. These transformations in politics were accompanied by no less significant changes in the Mexican economy. Successive reforms gave place to the Federal Law in Economic Competition in 1992 and the creation of special public agencies in charge of its implementation. Significant amendments followed in 2006, 2011 and 2013. This twenty-year period shows how the agencies in charge of enforcing economic law (the Federal Competition Commission, the Federal Telecommunication Commission, and their successive names) were adjusted and acquired more autonomy and legal powers, placing Mexico on a par with best international practices. In this gradual process, the author highlights the importance of the creation of specialized economic competition courts. Economic competition law represents a domain where the rule of law has evolved in the right direction.

This book represents a common effort of scholars who, in recent years, have been working on different topics relevant to greater understanding of the complex Mexican context. We strongly believe that the arguments, data, and analyses that are presented in this book could lead to serious reflection by stakeholders and, maybe, facilitate public policy design.

Although the authors have different perspectives and conclusions, we share a common ideal: the desire to foster coordinated actions to change the state of affairs that govern us and keep us far from an authentic rule of law.

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