

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

Edited by Alejandra Ríos Cázares and David
A. Shirk

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EVALUATING ACCOUNTABILITY AND TRANSPARENCY IN MEXICO

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EVALUATING ACCOUNTABILITY AND TRANSPARENCY IN MEXICO

NATIONAL, LOCAL, AND COMPARATIVE PERSPECTIVES

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University Readers
• San Diego •

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

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Preface

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

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

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

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

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

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

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

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

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

Alejandra Ríos Cázares

David A. Shirk

San Diego, California

July 5, 2007

1

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

ALEJANDRA RÍOS CÁZARES AND DAVID A. SHIRK

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

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

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

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

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

ACCOUNTABILITY, TRANSPARENCY, AND DEMOCRATIC GOVERNANCE

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

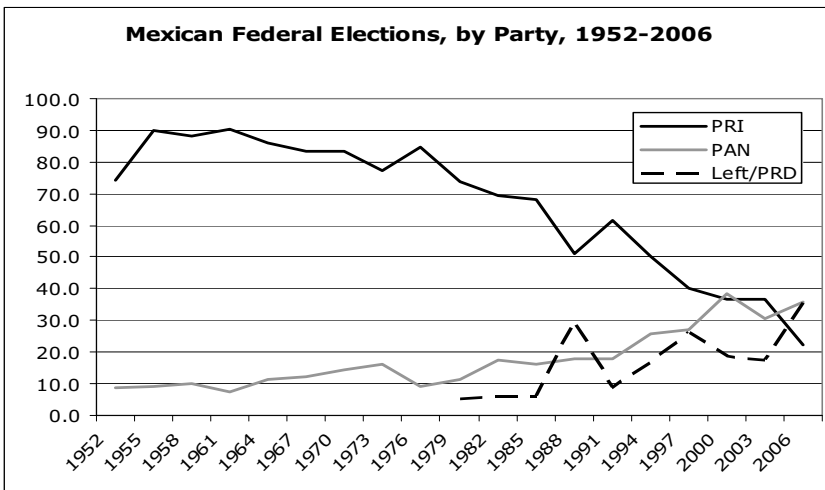
The objective of this monograph is to examine Mexico’s progress toward greater transparency and accountability on both of these dimensions. To be sure, as the authors in this volume illustrate, there are important characteristics of Mexico’s democratic system—such as the existence of prohibitions on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

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

CONSOLIDATING DEMOCRATIC GOVERNANCE IN MEXICO

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

Figure 1.1 Federal Electoral Trends in Mexico, 1952–2006



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

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

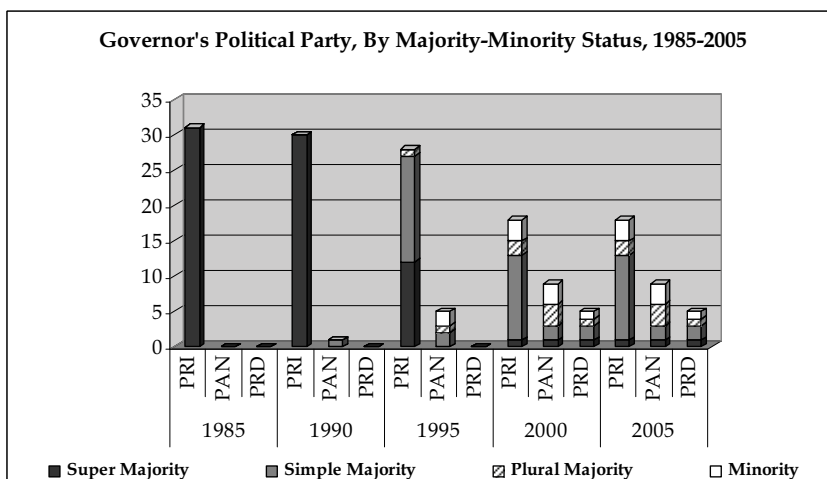
The PAN's ability to retain the presidency in the contentious 2006 election illustrated that electoral competition between Mexico's three major parties—which narrowed in federal and subnational contests over the last two decades—is finally consolidated (Klesner 2005; Solt 2004). What is more, the means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

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

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

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

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



Source: Compiled by the authors.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

References

- Arriola, Carlos. 1994. *Ensayos sobre el PAN, las ciencias sociales*. Mexico City: Miguel Ángel Porrúa.
- Baum, Jeeyang Rhee. 2002. “Presidents Have Problems Too: The Logic of Intra-Branch Delegation in New Democracies.” PhD dissertation, University of California, Los Angeles.