



PROJECT ON REFORMING THE ADMINISTRATION OF JUSTICE IN MEXICO
CENTER FOR U.S. MEXICAN STUDIES
9500 Gilman Drive, #0521, La Jolla CA 92093-0510
Tel. 858-534-4503; Fax: 858-534-6447
<http://usmex.ucsd.edu/justice>

CIDE
COLMEX
ICESI
IIJ-UNAM
INACIPE
USMEX

Periodization and Its Discontents: The Social Construction of Crime and Criminality in Modern Mexico

by
Robert Buffington
Bowling Green State University
robbuff@bgnet.bgsu.edu

USMEX 2003-04 Working Paper Series

Originally presented at the conference on “Reforming the Administration of Justice in Mexico” at the Center for U.S.-Mexican Studies, May 15-17, 2003.

ABSTRACT: This paper gives an overview of four phases in the social construction of crime and criminality in Mexico since the Independence era. It argues that these phases follow a pattern in which a criminal justice paradigm is gradually consolidated and eventually superseded. It then examines some of the problems with a paradigm-driven periodization.

Periodization and Its Discontents: The Social Construction of Crime and Criminality in Modern Mexico

By Robert Buffington
Bowling Green State University

Introduction

Confronted with the undeniable “realities” of crime—its victims, its economic costs, its pernicious effects on social relations, its corrupting impacts on politics and the administration of justice—an academic paper that stresses its social constructedness can’t help but seem a bit specious. What, in the face of these realities, does it matter that preceding generations have looked at crime and criminality somewhat differently than our own? I’m not sure I have a satisfactory answer to this question. Very possibly—faced with the exigencies of the present—historical context is important only to historians. So if this paper appears tentative, if the broadly sketched periods and patterns it identifies lack sufficient specificity, if the tensions it analyzes seem mostly outdated, if it has little apparent relevance to pressing administrative and institutional needs, my hope is that there is at least some comfort in knowing that we’ve been here before, that our predecessors have confronted and weathered similar crises. But, so much for disciplinary insecurities.

This paper has two parts. The first part gives a broad overview of four major phases in the social construction of crime and criminality in Mexico since the Independence era and analyzes the “logic” or pattern underlying each of them. The second explores some of the dialectical tensions that render problematic any attempt at periodization. Both parts are speculative rather than definitive. In both, an attempt is made to tease out any possible “lessons” the past might hold for analysts and policymakers in the present—especially for those committed to “reforming the administration of justice in Mexico.”

The theoretical insight that informs the paper as a whole is borrowed from Émile Durkheim’s classic *The Rules of Sociological Method*. “Crime is . . . necessary,” Durkheim argues, “it is bound up with the fundamental conditions of all social life, and by that very fact it is useful, because these conditions of which it is a part are themselves indispensable to the normal evolution of morality and law . . . [because] where crime exists, collective sentiments are sufficiently flexible to take on a new form, and crime sometimes helps to determine the form they will take.” Thus, while he acknowledges that “although crime is a fact of normal sociology, it does not follow that we must not abhor it,” Durkheim reminds us that any society’s engagement with crime and criminality is normal, productive, and even indispensable to social “evolution.”¹ In another classic text, *Discipline and Punish*, Michel Foucault also elaborates on the indispensable,

¹ Émile Durkheim, “The Normal and the Pathological” in Joseph E. Jacoby, ed., *Classics of Criminology* (Prospect Heights, IL: Waveland Press, 1979), p. 65.

productive aspects of crime and criminality.² His concerns about the social ramifications of criminological discourses and technologies of power inform this paper as well. Foucault's pessimistic vision, however, emphasizes the coercive, disciplinary character of criminal justice systems. For that reason—and in the spirit of this conference—I have preferred Durkheim's more optimistic (and positivistic) approach to “productive” crime. A willing suspension of disbelief, perhaps, but defensible, I think, in these trying times.

Phases and Patterns in the Social Construction of Crime and Criminality

Attitudes towards crime and criminality in Mexico can be divided into four phases. Using foundational political events as convenient if somewhat arbitrary sign posts, these four phases can be sketched as follows: 1810-1855 (Independence to Ayutla), 1855-1910 (Ayutla to Revolution), 1910-1982 (Revolution to Economic Crisis), 1982-present (Economic Crisis to ???). As might be expected with something as inevitable and endemic as crime, there are obvious continuities that run through these different phases. And, since crime is nothing if not messy and transgressive, there are also frequent overlaps between them.

Perhaps because of these many continuities and overlaps, each of the four phases appears to follow a similar pattern—a pattern that bears a passing and not entirely coincidental resemblance to the shifting scientific paradigms analyzed by Thomas Kuhn in *The Structure of Scientific Revolutions*.³ This resemblance is likely due to the prominence of the social sciences (and their adaptation of scientific methods) in shaping and defining (but not determining) each of these phases. Although Kuhn restricts his analysis to the “hard” sciences, his paradigm model brings a certain conceptual clarity to an extraordinarily complex historical problem and I borrow it here for that reason. The pattern has five overlapping stages that develop something like this:

- 1) A sustained period of social upheaval produced by and contributing to a major shift in the nation's political economy.
- 2) The generalized perception of endemic crises, represented in public opinion as a crime wave, and taking the form of a series of moral panics about the state of the nation.
- 3) A concerted response (especially but not exclusively on the part of state policymakers), represented in public opinion as a war on crime and taking the form of “new” discourses, practices, institutions, and technologies of social control.
- 4) The consolidation of a new criminal justice paradigm, often in the form of new laws and institutions, along with its inevitable contestation and negotiation by vested elite interest groups and the often targeted popular classes.

² Michel Foucault, *Discipline and Punish: The Birth of the Prison*, trans. Alan Sheridan (New York: Vintage, 1979).

³ Thomas S. Kuhn, *The Structure of Scientific Revolutions* (Chicago: University of Chicago Press, 1970)

- 5) The accumulation of “anomalies”—inconsistencies, contradictions, failures—in the dominant criminal justice paradigm that render it unstable and thus vulnerable to the next sustained period of social upheaval (which restarts the cycle).

The Independence to Ayutla phase (1810-1855) begins with the early nineteenth-century wars for Independence and the transition from colony to nation-state. A rehearsal of the unique combination of political and economic factors that precipitated this sustained period of social upheaval is impractical here. No respectable historian, however, would deny the pervasive sense of moral panic, beginning with the Hidalgo revolt and persisting through the Santa Anna era, which runs through most contemporary accounts of the period. Prominent in these accounts are the familiar presence of criminalized *villains du jour* whether collective actors like Hidalgo’s mestizo peasant hordes and Mexico City’s notoriously unruly crowds, or sinister individuals like the ruthless rural bandit and the treacherous urban *lépero*. Given the chaotic conditions of early nationhood, it is hardly surprising that the concerted response to these crises was more discursive than institutional with frequent social commentaries and occasional studies by prominent public intellectuals like José Joaquín Fernández de Lizardi, Vicente Rocafuerte, Mariano Otero, and José María Luis Mora. Most commentaries reflected “enlightened” notions of crime and punishment with obligatory references to the classic criminology of Cesare Beccaria, the utilitarianism of Jeremy Bentham, and penitentiary experiments in the United States and Britain. Most deployed these notions in the eclectic, non-doctrinaire fashion that would come to characterize Mexican criminology. In this first phase, the consolidation of a criminal justice paradigm was above all a constitutional affair as ruling elites struggled to develop the appropriate legal infrastructure for the new nation. Even among elites, contestation rather than negotiation was the order of the day as enlightened commitments to equality before the law ran up against centuries of *fueros* and other forms of legalized social inequality. Anomalies multiplied with each succeeding constitution. Liberal revolution in 1855 and the appearance of a definitive new constitution in 1857 failed to resolve these anomalies and another sustained period of social upheaval, more destructive than the first, quickly ensued.

The Ayutla to Revolution phase (1855-1910) follows a similar trajectory as civil wars and foreign interventions contributed to yet another round of moral panics. Most were directed at the same villains as before. But as civil strife intensified into civil war, all sides sought to demonize their political opponents and the traitor—the betrayer of *la patria*—became a much reviled, often tortured, and sometimes executed criminal. In the initial stages, the response to this crisis was primarily discursive as well, culminating in a new “modern” penal code in 1871 that its author Antonio Martínez del Castro hoped would end “the state of anarchy we have endured for so long [which] has sown distrust among the citizenry, engendered hatreds, and . . . resulted in mutual isolation, in the selfish pursuit of private interests, and in disregard for the public good.”⁴ As in the first phase, however, discursive consolidation failed to produce social stability and concerned policymakers took advantage of the *pax porfiriana* to begin the institutionalization and

⁴ Antonio Martínez de Castro, “Exposición de motivos del Código Penal,” *Criminalia* 34, no.3 (30 marzo 1968), p. 133.

professionalization of Mexico's criminal justice system with model prisons, police reforms, and penal code revisions. As "anomalies" began to accumulate in Martínez del Castro's classic liberal paradigm, the positivist criminology of Cesare Lombroso and Gabriel Tarde found a responsive audience among the growing ranks of aspiring (but not yet professional) Mexican criminologists. Classic liberal criminology assumed that criminal behavior was a rational choice and punished the crime in order to discourage the criminal. Positivist criminology, however, insisted that most criminal behavior was irrational, even abnormal, and sought to defend "decent" society from sociopathic criminals with punishments directed at criminal "types" rather than their crimes per se. Effectively resisted or co-opted by legal professionals still committed to a liberal criminal justice system, positivist criminology remained a paradigm in waiting. The sustained period of social upheaval that began in 1910 marked the beginning of its ascendancy.

The third phase in the social construction of crime and criminality is the longest and most clearly paradigmatic. Closely linked to the rise and decline of the political party that would become the Partido Revolucionario Institucional or PRI, it begins with the 1910 Revolution and ends with the 1980s political and economic crises. That the Revolution qualifies as a sustained period of social upheaval is hardly controversial; nor is the notion that it would generate moral panics of all sorts. In addition to the usual suspects, my colleague Pablo Piccato has identified some "new" villains: the ubiquitous petty thief or *ratero* (a descendent of the traditional *lépero*) and the unabashedly modern Grey Automobile Gang (a forerunner of the *norteño* narco-trafficker in his flashy SUV).⁵ After the Revolution, positivist criminology supplanted liberal criminology as the dominant criminal justice paradigm and post-revolutionary policymakers turned to a new generation of professional criminologists to lend their expertise in "social defense" to the state's project of national redemption. The appearance of a positivist penal code in 1929 met with some resistance, however, and a more "pragmatic" penal code—one that incorporated the doctrine of social defense only "up to the point permitted by our constitutional framework, our judicial traditions, and our social and economic conditions"⁶—was adapted in 1931. The inauguration of a professional journal for criminologists, *Criminalia*, two years later further anchored these gains. David Garland uses the term "penal welfarism" to characterize mid-twentieth-century attitudes towards crime and punishment in England and the United States.⁷ Encouraged by the state's reformist ambitions, Mexico's expanding ranks of criminal justice professionals took a similar tack, although institutional constraints and lack of resources made serious efforts at penal welfare something of a sham (as they often were elsewhere). Nonetheless, ideological commitments to social reform and individual rehabilitation gave a sense of paradigmatic stability to the criminal justice project—something it had lack up until that time—and which complemented the relative political stability of the PRI years.

⁵ Pablo Piccato, *City of Suspects: Crime in Mexico City, 1900-1931* (Durham: Duke University Press, 2001).

⁶ From Alfonso Teja Zabre, "Exposición de motivos presentada al Congreso Jurídico Nacional . . ." Quoted in Robert M. Buffington, *Criminal and Citizen in Modern Mexico* (Lincoln: University of Nebraska Press, 2000), p. 125. Both codes were for the Federal District and territories but set the standard for the states.

⁷ David Garland, *The Culture of Control: Crime and Social Order in Contemporary Society* (Chicago: The University of Chicago Press, 2001).

Moreover, while penal welfarism was fatally undermined by conservative regimes in the US and England during the 1980s, criminal justice professionals in Mexico continued to espouse penal reform and re-integrationist principles for at least another decade. At the same time, the gradual decline of PRI hegemony took its toll on the criminal justice system as critics relentlessly exposed its many failings from inadequate institutions to inefficient practices to widespread corruption.

A series of catastrophic political and economic crises beginning in the 1980s—devaluations, earthquake, assassinations, armed revolt—characterize the fourth phase in the social construction of crime and criminality in Mexico. It's too early to tell if the pattern will hold for this cycle but preliminary indications are that it will. Certainly, moral panics over political corruption (including political murders), organized crime (especially narco-trafficking), serial murders, and kidnappings (traditional and express) appear with depressing regularity, as do laments over the Colombianization of Mexico. In the introduction to *Organized Crime and Democratic Governability*, John Bailey and Roy Godson break down “images of the political-criminal nexus” into four categories: contained corruption, centralized-systemic (formal), centralized-systemic (formal and shadow), fragmented-contested. While they acknowledge that all four images coexist in Mexico, Bailey and Godson argue that only the last fragmented-contested image “fits with our understanding of the disruptions and dislocations brought on by the dual transition . . . from macroeconomic adjustment policies . . . [and] the beginning stages of liberalization and democratization . . . [to] microeconomic measures designed to strengthen market forces . . . [and] social welfare policies . . . redesigned to target resources more effectively.”⁸ Read against the historical patterns sketched out above, I would argue that these four images of the political-criminal nexus reflect the late twentieth-century crisis in the penal welfarist paradigm: the first image (contained corruption) is typical of a stable paradigm able to respond effectively to challenges, the second and third demonstrate the destabilizing power of the paradigm's anomalies, the fourth shatters the paradigm all together—an accurate reflection, as Bailey and Godson imply, of the current state of affairs. The concerted response to paradigmatic instability has already begun, running the gamut from academic gatherings like this one to publicity stunts like the controversial hiring of former New York City Mayor Rudolph Guiliani as a Mexico City crime consultant to a new Federal District penal code. Consolidation of a new criminal justice paradigm, however, is still a ways off (and not just in Mexico). At the moment, Mexican policymakers (like their colleagues elsewhere) are experimenting with a range of options from conservative approaches (broken windows, zero tolerance) to neo-liberal “rational choice” models to a modified penal welfarism. If past responses have any predictive value, their approaches will be as eclectic and pragmatic as those of their predecessors.

This overview clearly suffers from both over-compression and over-simplification. Nevertheless, I would argue that it has a certain heuristic and even practical value. For example, as the term itself implies, moral panics have a desperate and intemperate quality that often distorts the situation they purport to explain. Periods of political and economic

⁸ John Bailey and Roy Godson, “Introduction” in *Organized Crime and Democratic Governability: Mexico and the U.S.-Mexican Borderlands* (Pittsburg: University of Pittsburg Press, 2000), p. 20.

“structural adjustment” are indeed traumatic and require widely publicized drastic measures (i.e. jailing prominent political figures, firing thousands of Mexico City policemen, hiring celebrity consultants). They also require considerable patience and sustained reflexivity. These qualities—often forgotten by policymakers and public opinion in the midst of a moral panic—are restored by historical perspective. “Crime,” Durkheim reminds us, “is bound up with the fundamental conditions of all social life” and public concerns about crime, including periods of intense moral panic, are nothing new.

Durkheim’s insistence that public concerns about crime and criminality are essential to the formation of the “collective sentiments” that bind societies together suggests further possibilities. If we must “abhor” the very real damage crime does, we should also be attentive to *and take advantage of* its positive effects. Since before Independence, Mexican national identity has been closely tied to the crime and criminality that mark its boundaries. Octavio Paz’s appropriation (via Samuel Ramos) of Porfirian criminologist Julio Guerrero’s stereotypical mestizo criminal—masked, macho, violent, insecure—as the Mexican national type in *Labyrinth of Solitude* is probably the best known example. But the wide-spread (and transnational) popularity of *narcocorridos* and rock groups with names like Maldita Vencidad y los Hijos del Quinto Patio suggest that criminality and national identity remain inextricably linked in the public imagination. For all its destructive qualities, then, crime also performs a creative function: the discourses and debates it generates help the public to make sense of sustained periods of social upheaval and, in so doing, they shape the collective sentiments essential to sustaining national identity—a crucial step in the restoration of social order. And these discourses and debates can to some extent be shaped not just in the media but in venues like this one as well. Intervention in public discourse, however, is a tricky matter, especially when informed by over-compressed and over-simplified historical narratives.

Periodization’s Discontents

If historical overview has its virtues, it also has several major drawbacks—drawbacks that must be taken into account by any conscientious analyst. There are too many to deal with here, so I’ll content myself with three drawbacks (posed as questions) that are especially germane to the issues at hand:

- 1) Does paradigm-driven periodization distort complex historical processes?
- 2) How (and by whom) is a criminal justice paradigm constructed?
- 3) What constitutes public opinion?

The answer to the first question (Does paradigm-driven periodization distort complex historical processes?) is yes on at least two counts. First, any attempt to impose a causal chain (crisis⇒perception⇒response⇒consolidation⇒anomalies⇒crisis) on a complex historical process like the social construction of crime and criminality obscures the fact that the “stages” and “phases” that it produces are just as likely to be synchronous (and mutually constitutive) as they are diachronic (or in a cause-effect relation). This is obvious for the current situation in Mexico and was probably just as obvious in past

situations. Even where a causal chain is defensible, as in the succession of disciplinary paradigms within criminology and penology (i.e. classic, positivist, penal welfarist, neo-liberal), the overlapping of “stages” and “phases” as well as the constant rearticulation of existing discursive elements within them expose the arbitrary nature of any periodization scheme. Second, the question of timing must be confronted head on. The overview given above is structured around historical events in Mexico. Thus, although it notes foreign influences on Mexican developments from Beccaria to Guiliani, it situates the paradigm shifts themselves firmly in Mexican national time. However, many legal historians take a more internationalist approach that focuses on the dissemination and assimilation of “imported” ideas. On both counts, more attention to the dialectical tensions between synchronous and diachronic causation and between endogenous and exogenous developments would help “correct” the inherent flaws in the paradigm model. This would not only give us a better sense of past paradigm shifts but would shed much-needed light on the process of paradigm development currently underway.

The second question (Whose paradigm are we talking about?) also highlights the need for a dialectical approach. In this case, however, the dialectical tensions occur between and among interest groups and social classes within Mexico. By definition, a criminal justice paradigm is a hegemonic construct in the fullest sense of the word—a bundle of working concepts that sets the parameters of public discourse and institutional practice. At the same time, hegemony isn’t monolithic. Like the discourses and practices that structure it, hegemony is constantly being negotiated and contested by elite interest groups operating from within the power structure and by marginalized groups resisting or seeking accommodation with the powerful. Under most circumstances, this process of negotiation and contestation functions to keep hegemonic paradigms flexible, responsive, and therefore acceptable (if far from ideal) even to the “opposition.” To call this “the consent of the governed” is perhaps going too far. Nevertheless, to ignore the internal dynamics of paradigmatic hegemony would be a huge mistake whether for historians looking at the past or for policymakers seeking solutions in the present. Consensus is both impossible and undesirable; paradigmatic hegemony (and the sense of a functional, if much contested, social order that it confers) is both possible and very much to be desired.

Another drawback to historical overviews (What constitutes public opinion?) is closely related to the problem of paradigmatic hegemony. Like hegemony, the notion of public opinion pretends to a coherence that it promises but can never deliver. Even a cursory glance at media reporting, opinion polls, and electoral processes reveals complex discursive fields constructed around differences of opinion rather than consensus. If there is any consensus in public opinion, then, it is hidden in the unstated premises of hegemonic paradigms, not in the ebbs and flows of an easily identifiable “collective sentiment.” And the best way to get at those unstated premises—the discursive heart of public opinion—would be to follow Foucault’s advice in *The Archeology of Knowledge*. “One must characterize and individualize,” he suggests, “. . . these dispersed and heterogeneous statements; the systems that govern their division, the degree to which they depend upon one another, the way in which they interlock or exclude one another, the transformation that they undergo, and the play of their location, arrangement, and

replacement.”⁹ A tall order to be sure but essential to any real understanding of public attitudes towards crime and criminality—an understanding vital to any serious attempt at “reforming the administration of justice in Mexico.” Thus an archeological exploration of historical and contemporary discourses on crime and criminality, it seems to me, should be one of the principal goals of this project.

Final Thoughts

To begin with gross generalizations and conclude with self-critique might seem counterproductive. I would argue instead that that both strategies are essential. In *The Consequences of Modernity*, sociologist Anthony Giddens points out that modernity, especially in its later stages, is characterized by an intense reflexivity that constantly revises our understanding of the world in order to ensure ongoing “progress” across the spectrum of human knowledge about the natural and social worlds.¹⁰ Intended to increase our control of both worlds, reflexivity also works to heighten our sense of insecurity. The fevered pitch of contemporary moral panics might be a negative by-product of modern reflexivity. Despite some negative consequences, however, what’s needed is not less reflexivity but approaches and projects that include—as I hope this one does—sustained self-critique. Only that way, can we begin to talk about meaningful reform.

A hopeful postscript: Driving through the southwestern U.S. borderlands (from Las Cruces to San Diego) on my way to this conference, I spent several hours listening to Mexican border radio—a deliberate cultural re-immersion of sorts after 8 long years in the upper Midwest. The talk-show commentators and callers were obsessing about two things: sex and crime. The first obsession was no surprise since sex provides an irresistible hook for wide-ranging discussions of interpersonal relations. The second obsession—or more precisely, the tone of the second—was somewhat unexpected. Sensational crime has always attracted a lot of attention (José Guadalupe Posada’s lurid broadsides spring to mind), and indeed these discussions often centered on shocking, if anecdotal, accounts of assaults, kidnappings, and murders. What seemed unusual to me was the willingness, even eagerness, of all concerned to turn these discussions into sustained and penetrating critiques of contemporary social relations, in particular the responsibilities of the state vis-à-vis its citizens and the responsibilities of citizens vis-à-vis the state *and* each other. This spontaneous use of mass media as a true public sphere in which citizens engage in “rational-critical” debate over the nature of society and government—all too rare in discussion about crime (or terrorism) in the United States by contrast—can only further the development of participatory democracy in Mexico. The devastation wrought by rampant crime is a high price to pay and panicked responses always run the risk of undermining the democratic processes that concerns about crime help stimulate. High price or not, an engaged and demanding citizenry can’t help but be a tremendous boon to Mexico’s future.

⁹ Michel Foucault, *The Archeology of Knowledge and the Discourse on Language*, trans. A. M. Sheridan Smith (New York: Harper Colophon Books, 1972), p. 34.

¹⁰ Anthony Giddens, *The Consequences of Modernity* (Cambridge: Polity, 1990).