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Reform of Justice and the Proliferation of Human Rights Non-Governmental Organizations in Mexico (1977-1994)
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Abstract

Why do citizens in non-democratic settings, where widespread cynicism and personal risks to activists make independent organization unlikely, nonetheless sometimes organize civic vigilance that is customarily associated with democratic settings? In particular, why did human rights NGOs suddenly proliferate in Mexico after not forming when such groups appeared in Latin America's other major countries? In contrast to group theories that emphasize changes in resources available for mobilizing social demands, this paper argues that institutional reforms to Mexico's justice system created incentives for some citizens to improve the provision of justice directly by creating NGOs that supply human rights services to other citizens. Subnational data on change over time is used to test the plausibility of this argument. The study finds a sequence of judicial reforms matched by jumps in the proliferation of human rights NGOs in Mexico. The findings suggest that even where democracy is not consolidated, government institutions may inadvertently foster independent civic organization.

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Introduction

Non-governmental organizations (commonly called NGOs) addressing human rights have proliferated rapidly in Mexico, garnering them resources, attention and controversy during recent years. In 1994, for example, these NGOs grabbed international attention when Zapatista rebels and the Mexican army faced off in Chiapas and the NGOs organized a human buffer line between the opposing forces which surrounded the building where peace talks were held. Later the same year, as Mexicans voted for president, the human rights NGOs again attracted local and international attention when they organized massive and unprecedented citizen monitoring of polling stations, contributing to Mexico's cleanest election in memory. During the past decade, private and official international development funders have re-directed monies to NGOs, in some cases creating special units to facilitate this kind of funding. The Mexican government created a new funding agency (National Solidarity Program) to fund NGOs as well. Unfortunately, these organizations have netted more unsavory attention too — NGO staff have had their phones tapped, homes watched and offices ransacked, and some have been followed, threatened, kidnapped, beaten and even murdered.

Why do NGOs attract such attention? NGOs operate by engaging staff who use charitable contributions to provide benefits to outside groups or the general public without requiring membership, contributions or votes in return. As a result, NGO memberships, budgets and projects are small, especially compared with the resources wielded by public agencies, political parties, interest groups or social movements. One reason for the attention to NGOs is the political influence they sometimes gain, which seems disproportionate relative to their size and resources. While both scholars and practitioners disagree about whether NGOs are good or not, their debates are premised on a recognition that NGOs can acquire power. Power focuses attention.

The effects of NGOs and their power have been analyzed more than their origins. Proponents of NGOs say these organizations bring to public life an idealism, efficiency or effectiveness that government lacks. Detractors counter that NGOs usurp public authority, undercut formal partisan representation or mislead the poor. Yet in addition to normative premises, these arguments about NGOs' power and consequences build on implicit and untested claims about where NGOs come from. Despite growing interest in these organizations, we in fact understand little about why NGOs are numerous in some places and few or absent in others, about why there are many at some times and none or few at others.

Violence, of course, can always give even a small, poor organization considerable influence but NGOs are non-violent. For a discussion of the trade-offs between membership size and use of violence, see James de Nardo (1985), Power in Numbers: The Political Strategy of Protest and Rebellion, Princeton, Princeton University. Press.
The proliferation of human rights NGOs in Mexico presents a rich opportunity to provide a stronger foundation for understanding the power NGOs can gain and the effects they can have on politics, by exploring when and why citizens successfully create NGOs. Only a handful of these groups existed in Mexico in the early 1980s, although such organizations had become common in the capitals of South and Central America during the 1970s and 1980s. In contrast, recent surveys show some 250 human rights NGOs now active in Mexico. Other differences also help to make this an attractive case for employing subnational comparative methods. More than half of these NGOs in Mexico are based outside the capital, unlike the pattern in most other countries. At the same time, these state-based NGOs are distributed in a highly uneven pattern — while 22 human rights NGOs are active in the state of Jalisco, for example, there are none in neighboring Zacatecas.

These patterns raise several questions. What explains the timing of human rights NGOs' appearance and their remarkable growth in Mexico? Why are most of these NGOs located outside the capital and why are they numerous in some states but not in others? More broadly, why do citizens sometimes decide to go out on their own to create NGOs rather than work through existing forms of organization and structures of power — whether through political parties, interest groups or social movements? The human rights NGOs in particular highlight the paradox underlying these choices: why do citizens in non-democratic settings, where personal risks for activists and widespread cynicism make independent organization unlikely, nonetheless sometimes organize civic vigilance that is customarily associated with democratic settings?

This paper will focus on the first of these questions to shed light on the others. In the next section, I develop a theoretical framework to explain the timing and growth of NGOs as the result of domestic institutional changes. I argue that we have underestimated the role of domestic political institutions in shaping innovative civic activism by relying on group theories that focus on how demands are organized and mobilized as a result of changes in resources available from international regimes, elite political divisions or cultural change. In the third section I present my findings in support of this institutional relationship, using historical and survey data on human rights NGOs and a series of justice reforms in Mexico to show how the effects of these reforms created various incentives for citizens to form these new organizations. The findings illustrate how a new institutionalist framework complements and extends existing approaches to provide a richer theoretical understanding and better empirical account of NGOs. The research also sheds light on the dynamics of justice reform in Mexico.

The broader project to which this paper belongs also compares the highly uneven distribution of human rights NGOs among Mexico's 31 states with differences among the states' judicial systems and the states incorporation of federal reforms to examine further these alternative explanations. And it compares attempts by Mexican human rights NGOs to influence outcomes in order to address the arguments about NGO impact and build an alternative explanation for NGO power.
I. Theory: explaining human rights NGOs in Mexico

I.1. Defining NGOs

Before discussing conventional explanations for NGOs and my own theory, I will state a working definition of NGOs. Defining NGOs has been problematic for two reasons. First, the literature on NGOs has often grappled with the vast, residual nature of the notion “non-governmental” to focus on the small, activist organizations for which the term is commonly used. Toward that end, scholars have mapped the many kinds of organizations that are outside government, specifying the features and sub-categories that eventually describe a subset of organizations commonly referred to as NGOs. But since they have proceeded by mapping all non-governmental groups, they then create a new term for this subset. In addition to being cumbersome, this approach departs from actual usage. Secondly, other scholars have sidestepped the definition issue altogether by treating NGOs as social movements or interest groups. This latter approach, however, begs questions about why activists have been creating NGOs in growing numbers, often in preference to social movement or interest group (or party or government agency) alternatives.

This paper uses an analytic definition of NGOs to distinguish them from other organizations. For the purposes of this study, NGOs are i) formal, ii) private, iii) self-governing, iv) nonpartisan, v) non-profit-distributing, vi) nonreligious and vii) public benefit producing. This includes any association, society, commission, foundation, charitable trust, nonprofit corporation or other juridical figure that meets three conditions: first, it must not be part of the governmental sector under local law; second, its by-laws must prohibit distributing to members any profits that may be earned, and; third, it must provide service to or policy advocacy for the general public or for a defined population outside of the organization itself (that is, they produce public goods, as discussed above).

This definition does not include cooperatives or firms because they are profit-distributing organizations. Nor does it include churches because these are religious organizations, although an organization may be sponsored by a church —or, for that matter, by a firm or other organization—and still be an NGO if it is self-governing. It

3 See, for example, Thomas F. Carroll (1992), Intermediary NGOs: The Supporting Link in Grassroots Development, West Hartford, Conn., Kumarian Press, where he introduces the term “grassroots support organizations” or GSO or J. Farrington, and A. Bebbington (1993), Reluctant Partners? Non-governmental organizations, the state and sustainable agricultural development, London, Routledge.

4 See, for example, Scott Mainwaring and E. Viola (1984), “New social movements, political culture, and democracy: Brazil and Argentina in the 1980s”, Telos 61, Fall, pp. 17-52.

does not include government agencies because while they produce public benefits they are not private or self-governing. This definition excludes political parties because these are partisan, office-seeking organizations. It also excludes social movements because they are not formal organizations, although an organization with approved by-laws, regular meetings and clear decision-making procedures is an NGO even if local government will not give it any juridical standing. And it excludes trade unions or other economic interest groups because they are rent-seeking groups that produce benefits for their members. Finally, this definition does not include social clubs, professional associations, schools, trade associations, mutual benefit organizations—or the many other organizations that are included in the much broader category variously called “civil society”, the “nonprofit sector”, the “independent sector” or the “third sector”—because while it can be argued that it is good for society to have membership organizations, these groups produce club goods (collectively produced but excluded from outsiders) for their members rather than public benefits.

1.2. Conventional Explanations

Prevailing theories about why NGOs are propagating emphasize changes in resources available to political activists for organizing to voice political demands. These theories are unsatisfying because neglect more fundamental institutional causes that are at work even when such resources are constant. Three basic lines of argument appear in current scholarship and political debates. They can be characterized as the “internationalist”, “elite conflict” and “cultural” views.

The internationalist view argues that local NGOs are stimulated by foreign resources from groups with reform agendas—including international organizations, other countries’ governments, the international press and private foreign funders—and that they then work together to constrain state sovereignty. The elite conflict view claims that social movements, including NGOs, are prompted by divisions within the political elite that give non-elite activists encouragement and resources to mobilize expanded political participation. Finally, the cultural view asserts that NGOs are

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fomented by the expanding and educated middle class, which has relatively more resources to sustain voluntary action and which seeks to replace the paternalistic clientelism and deference to authority characteristic of prevailing socialization in Mexico with its own values of individual freedoms and democratic voice. In contrast, I present evidence here in support of a fourth view, based on recent institutional theory which argues that in certain circumstances people face incentives to create new organizations to solve problems they face. I argue that a series of partial reforms to Mexico's institutions of justice created conditions that fostered local human rights NGOs. In this view, institutional changes created strategic incentives for some citizens to organize NGOs as vehicles to reduce new uncertainties that they faced, by themselves defending and promoting rights that the government itself was unable or unwilling to provide.

While the first three views each direct attention to interesting sources for NGO activism, they are ultimately incomplete. The internationalist view emphasizes the important resources (including international standards, technical assistance, access to international media, foreign parliaments and intergovernmental agencies as well as money) provided to NGOs from abroad but it is less helpful in explaining the proliferation. International funding and allies have been only intermittently involved with Mexico's human rights NGOs and their close involvement after a 1985 earthquake and during 1994 presidential elections fails to explain the remarkable growth in NGOs during other periods. Moreover, this approach does little to account for the uneven distribution of human rights NGOs at the state level in Mexico.

The elite conflict view, meanwhile, helpfully focuses on political entrepreneurs and the domestic political competition that at times vies for NGO collaboration, offering access to political office or to bureaucratic posts or subsidies. But this interest has also been sporadic and has provoked hostility from NGOs (to both government and opposition initiatives) more often than not. Neither Mexico's electoral calendar


nor the endless rounds of electoral reforms provide a reliable guide to the spread of human rights NGOs.

Finally, the cultural view contributes an emphasis on the generally middle-class face of NGO staff, who often feel their ideals and goals neglected by the post-revolutionary corporatist organizations of Mexico's ruling party, and on the gaps in both attitudes and resources between these staff members and NGO beneficiaries, who typically regard any organizations with pragmatic suspicion after years of clientelism. But the size and distribution of Mexico's middle class does not predict the likelihood of NGOs.

While it seems likely that the international human rights regime, competition among domestic elites and an expanding middle class might at times each contribute to the expansion of NGOs, these sources alone generate unsatisfactory explanations. These approaches identify changes in resources that make it easier for political actors to organize political demands for human rights. But in emphasizing the resources to articulate demands, they do not tell us why activists might create NGOs—that is, organizations to supply benefits to nonmembers—rather than use new resources to create social movements, interest groups or political parties which to focus primarily on articulating and satisfying collective demands in exchange for membership.

1.3. Institutional explanation

In contrast, this paper argues that independently of such changes in resources for articulating demands, certain institutional changes create incentives that encourage some individuals to create NGOs as a means to pursue their political preferences by supplying benefits to the public or groups of nonmembers. In Mexico, I argue, a series of partial reforms to the justice system generated incentives for these individuals to create human rights NGOs as a means to counter rising risks they and others involved with the justice system felt, supplying information to enhance the capacity of citizens—especially those in vulnerable groups—to effectively improve the provision of swift and fair justice for themselves and the nation through their own activities. In this view, NGO activists may well employ newly available resources such as those emphasized by the theories discussed above—but those resources are neither necessary nor sufficient for the NGOs: on the one hand, NGOs may form successfully even when those resources are constant or falling; on the other hand, without strategic incentives in the institutional setting for private organizations to supply benefits to nonmembers, the availability of those resources alone will not induce the organizational innovation inherent to NGOs.
Which people are involved in this process and what are their goals? Why might institutional change activate them? How do NGOs help attain their goals?

1.3.a. Goals

To understand who might respond to institutional change in ways that lead to NGOs, it is necessary to understand three cleavages created by institutions that provide "mixed" public goods such as justice. Unlike television broadcasts or national defense, which are "pure" public goods (that is, both jointly produced and jointly consumed), access to justice and other mixed public goods are jointly produced but not jointly consumed—they are subject to crowding. Not everyone can have the help of a police officer, a judge or habeas corpus at the same time. Instead, location, calendars, requirements for standing and other constraints effectively filter individual citizens' access to the public good of justice. Instead, some citizens get more while others get less access to justice. Some may get speedy attention while others wait forever; some may get impartial treatment while others may get special (either favorable or unfavorable) treatment. Advantaged and disadvantaged beneficiaries tend to conflict over allocation rules, forming one cleavage along distributional lines.

A second cleavage exists because some citizens care more about the collective benefit of providing mixed goods while others care principally about individual benefit from the good. Like the unvaccinated who indirectly get increased protection from disease when others are vaccinated, citizens not directly involved in court cases indirectly benefit when swift and fair justice is served because it deters potential crime they might suffer. But individual preference for (or valuation of) this indirect benefit through others' direct benefit is unevenly distributed. So there is a cleavage between what we might call "social benefit optimizers"—who will always care more about the overall provision of a public good—as opposed to "private optimizers" who care most about the provision to themselves.

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11 Mixed public goods have been far less studied and theorized than pure public goods, even though they are far more common.
12 These preferences have been variously called "other-regarding", "inter-subjective" and social preferences to distinguish them from self-interest.
13 While price and voting mechanisms allow social choices over the provision of goods to reflect individual preferences for public goods, the social preferences are difficult to measure because those who hold them fear they will be exploited by others if they reveal this preference accurately. And there is a collective action problem in getting both groups to reveal their preferences accurately. See Norman Frohlich and Joe Oppenheimer (1978), Modern Political Economy, Englewood Cliffs, Prentice-Hall, on the collective action problems inherent in the provision of public goods. Although they discuss the notion that goods can be provided across a public-private continuum, depending on local social and technological resources, they do not discuss mixed public goods further (p. 35).
Finally, the various participants in institutions that produce mixed public goods acquire different levels of information about the institutional performance in the provision of the good. Legislators, prosecutors, judges, police, attorneys, defendants, detainees, social workers, journalists, voters and so on are unequally able to observe when and how justice is served—or subverted. As a result they have different levels of information about the nature and level of institutional performance. This informational cleavage creates conflict between agents (policy implementors who are contracted to provide justice) and principals (citizens and, presumably, policymakers) who want to see justice served but cannot fully observe what agents do toward that end.¹⁴

Lastly, it is worth noting that these cleavages are cross-cutting so that individuals may fall into more than one group. Moreover, individuals in any group can prefer and, therefore, pursue their goals with differing intensities.

I.3.b. Institutional change

While the cleavages created by institutions producing mixed public goods are necessary for NGOs to form, they are not sufficient. Changes in institutional rules (laws) or implementation (agencies and practices) create uncertainties for members of the groups identified above. In general, they all want to know how their interests will be affected and how best to protect them: When and how will new rules be implemented? Will new implementation practices enhance or diminish the provision of the public good established in principle by rules? But given their different goals—better individual benefits, optimal social provision or optimal levels of effort—these uncertainties create distinct demands for strategic information about institutional performance.

For example, disadvantaged beneficiaries along the distributional cleavage will be most concerned to learn either how they can improve their access (e.g., get swift and fair treatment with protections from abuse) with the changes or defend themselves from further losses (such as fewer opportunities to avoid ill treatment by authorities). Meanwhile, the “social benefit optimizers” will worry not only about the uncertainties for their own access but also about their interest in the overall provision of the good and they will seek new information to ally that concern. At the same time, information-holders will find the information they have (by virtue of their position)—or can get from others—is more valuable, both for guiding their own behavior and for trading with others, and this encourages exchanges.

I.3.c. Risks and opportunities

Despite these incentives for individuals in the various groups to seek new information as they pursue their goals, they often face risks that make information exchanges costly and unlikely. To understand how some "social benefit optimizers" become "social entrepreneurs" who create and run NGOs, we need to consider how their goals and the various demands created by sudden institutional change create incentives for them to design innovative rules to reduce those risks and encourage them to supply benefits for others.

First, while social optimizers often coordinate informally to pool their individual information in response to institutionally created uncertainties, under these conditions they face incentives to formalize their collaboration for better information and better protection. That is, because of dangers of harassment from institutional agents and principals who benefit from low-information arrangements and because of risks that the pooled information might be appropriated for private or political gain, informally pooled information will always be limited in scope to members of groups that already exist (e.g., families, associations, schools, churches, firms). These dangers and the limits on information generated by small groups encourage participants to find ways to expand the number of collaborators by devising rules that protect themselves from exploitation by each other and from outsiders. For example, NGOs often adopt a horizontal internal structure to avoid takeover by a minority, retain a significant volunteer contribution to help screen participants who do not share their preferences and publicize their existence to attract collaboration (including protection) from other groups. Such rules aim to assure that even if participants are not in fact social optimizers, they will still behave as if they were. These internal rules vary widely but NGOs form only when participants find it strategically advantageous to formally structure their own collaboration, becoming "social entrepreneurs" if they successfully develop specific rules to govern their own participation.

Second, the information pooled by social optimizers is not only valuable to themselves for reducing uncertainty about their social benefit interests. This information is also potentially valuable to institutional beneficiaries. Indeed, providing this information to disadvantaged policy-takers can increase their capacity to gain access to specific mixed public goods such as justice. When beneficiaries do improve their access they effectively increase the overall provision of the good, as desired by social optimizers. This fact gives the social optimizers incentive to find ways to transfer some of their knowledge. At the same time, active involvement with beneficiaries offers opportunities to learn more about overall provision of the good through the experiences of disadvantaged policy-takers and this potential creates additional incentive for social optimizers reason to exchange information with the disadvantaged. Nonetheless, disadvantaged beneficiaries are often wary of clientelistic cooptation; and social optimizers are wary of exposing themselves to harassment from groups hostile to their goals through expanded participation in their group. As a result, both
these potential advantages and the mutual concerns over autonomy encourage social optimizers to devise formal rules for providing information-based services to beneficiaries and for structuring beneficiary participation in that provisions. For example, NGOs typically design outreach projects with rules specifying which ways beneficiaries may participate in project design, implementation and evaluation, to protect autonomy and generate useful information. Like the internal rules, these project rules vary widely but NGOs are established only when social entrepreneurs find it strategically advantageous to provide information-based services to nonmembers and successfully develop project rules that govern beneficiaries' involvement in ways that attract their participation.

Finally, since even individuals in the group with better information (institutional agents) are interested to improve their information when institutional change occurs, they are potentially interested in the information pooled by social optimizers. Meanwhile, they can, in turn, provide new information to social optimizers. Exchanges could potentially benefit both. But agents face incentives to lie to principals to protect their discretion and promote their private goals. They may well see monitors, especially monitors providing services to beneficiaries, as competitive threats to their own services. So exchanges can risk the autonomy and safety of monitors and cannot guarantee the quality of information exchanged. Accordingly, social entrepreneurs face incentives to design formal relationships with external collaborators that limit and structure the involvement of contributors in the control of the organization and their access to internal information. Such rules are then used to govern various kinds of contributions which can be material as well as informational. For example, NGOs contract consultants, create boards of directors or advisory councils and sign funding agreements with specific rules to limit their obligations and promote reliable contributions to the group. Again, like the internal and project rules, these contribution rules vary widely. NGOs survive and grow only when social entrepreneurs find it strategically advantageous to incorporate contributions from outsiders who are not beneficiaries and successfully develop collaboration rules that govern outsiders' involvement in ways that attract their contributions but limit their internal influence.

In sum, by this account NGOs appear and survive when social entrepreneurs emerge and design rules that allow them to gather better information on institutional performance and to provide information-based benefits to nonmembers. This approach explains how social entrepreneurs who create NGOs can be distinguished from political entrepreneurs who mobilize demand for political power through social movements, interest groups or political parties. It also explains why NGO activists produce politically significant benefits for nonmembers. Furthermore, it identifies a class of public goods —mixed, rather than pure— around which NGOs can potentially organize. Finally, this explanation specifies conditions of institutional change that create strategic incentives for these organizations to form.
I.4. Empirical Implications

If this explanation is valid, what should we observe over time? First, at the macrohistorical level we should observe a pattern where abrupt institutional change and NGO proliferation match. Without rapid institutional change we should not see NGOs; with rapid institutional change we should see greater likelihood of NGOs. Second, at a micro-historical level, we should be able to see that rapid institutional change creates distinct incentives for people, depending on the three cleavages discussed above: distributorial, social preferences and informational level. Moreover, we should find that change over time in the incentives facing members of these different groups is matched by observable differences in the people likely to become NGO activists, the strategies they use to cooperate with each other, the types of beneficiaries targeted in projects, the kinds of supply strategies used by NGOs and the kinds of collaborative relationships developed by NGOs. On the other hand, if the pattern of NGO proliferation over time does not correspond with the chronology of institutional change, then the relationship described here is unlikely. Similarly, if overall variation in NGO activists, outreach and support programs does not roughly follow when incentives change for the institutionally-defined groups we have identified, then the relationships described here are not supported.

The next section reviews evidence on this relationship in Mexico. The first part presents the outcome that needs to be explained, discussing the nature and content of data on the proliferation of human rights NGOs. The second part of the section presents evidence on explanatory variables for those patterns, drawing on statistical and analytical data on change and stability in the justice system. The section concludes by summarizing the findings, which show a strong correspondence between institutional changes and the proliferation of NGOs in this case, supporting the plausibility of the explanation developed here.

II. Explaining the timing of human rights NGOs in Mexico

At the outset of this paper, I indicated that the population of human rights NGOs in Mexico changed dramatically during the past two decades. Survey and interview data on these NGOs characterizes more specifically the patterns of change which I seek to explain. The first part of this section will present evidence mapping their proliferation over time, showing observable patterns in both the numbers and predominant characteristics of NGOs over time.

The second part of this section will identify a series of reforms to Mexico’s justice system beginning in 1977 and show how the history of these institutional changes created specific incentives for citizens to create and sustain human rights NGOs.

Finally the third part of this section will conclude by discussing my finding that there is a close correspondence between the sequence of reforms and the prolif-
eration of the NGOs over time. While these findings do not prove causality, they are consistent with the claim in this paper that incentives created by rapid institutional change lie behind the remarkable growth in the number of these new organizations.

II.1. Characterizing the variation in human rights NGO proliferation

Like other NGOs anywhere, Mexico’s human rights NGOs exhibit a diversity that has often defied systematic comparative analysis. At some times they are largely obscure, at others prominent; sometimes they are created by lawyers, other times by former bureaucrats; while NGOs from one period may emphasize political rights, those in other periods may focus on social or economic rights; while some of these target political prisoners, others target homosexuals; some provide legal aid, others monitor elections; whereas at times NGOs accept government support, others receive no external funding. Despite this diversity, data show discernable patterns of both change and continuity over time among these NGOs.

Before presenting the quantitative data, several of its features which bear on measuring change over time merit discussion. This study employs evidence from a quantitative survey of Mexican NGOs that was conducted in 1994 by the Mexican Academy of Human Rights. The survey aimed to verify and expand on prior surveys published by government agencies (the Ministry of Government and the National Human Rights Commission). Three effects of the data that pertain to measuring changes in the size of the NGO population over time should be kept in mind. In addition, two aspects of the data related to measuring qualitative changes in these NGOs over time are also important.

First, since the survey identifies only NGOs that existed in 1994, it could in theory systematically understate the total number of NGOs that were created in past years since some of these may not have endured until 1994. Nonetheless, in-depth interviews with approximately 50 staff from the human rights NGOs confirm that the different rates of growth portrayed in the data are substantively accurate and any systematic understatement is not significant. Second, since the survey was conduc-

15 Despite limitations, this survey data is exceptionally robust; systematic information on NGOs is uncommon and has confounded comparative analysis of these organizations. Sergio Aguayo Quezada and Luz Paula Parra, who designed and conducted the survey, made the data available to me and have also analyzed it for their forthcoming book on NGOs in Mexico. See Sergio Aguayo Q. and Luz Paula Parra R. (1995), “Los organismos no gubernamentales de derechos humanos en México: entre la democracia participativa y la electoral”, manuscript, Mexico City, Academia Mexicana de Derechos Humanos; also, Sergio Aguayo Q. and María Luisa Tarres (1995), “Las enigmáticas ONG mexicanas: una caracterización”, manuscript, Mexico City, Colegio de México.

16 Disbanded NGOs would fall into two categories. One category would be groups that disappear after never moving beyond informal meetings to establish a staff that carries out programmed activities. While such groups naturally leave fewer traces than groups that do establish regular activities, I did nonetheless find evidence of various groups that lingered in such a limbo and never became successfully established as an NGO. In the data, these cases are appropriately excluded as
ted during 1994, it did not register all the NGOs formed that year. Accordingly, data for that year are excluded here. Finally, while the survey identified 36 organizations addressing human rights in 1994 that dated from before 1977, their apparent creation before 1977 as human rights NGOs is an artifact of the data collection and they too are excluded from the sample. My interviews and the survey researchers’ analysis indicate that these organizations are either a) corporatist interest groups rather than NGOs or b) NGOs that did not begin human rights programs until after 1977.17 Examples of these groups will be discussed below to clearly distinguish them from the NGOs founded later to focus explicitly on human rights. Raw data appear in Figure 1.

Figure 1

Raw Data on Formation of HR groups in Mexico

Year of Formation of HR groups in 1994

Measuring qualitative, as well as quantitative changes over time from this data merit discussion. In the survey, respondents identified themselves as NGOs and specified their year of creation, location, goals, type of founder and so on. The definitions of negative cases (i.e., no successful NGO). The second category would be organizations that did successfully establish themselves with regular, structured activities but which then disbanded. However, I did not uncover evidence of successfully established human rights NGOs in Mexico that had disbanded, even though I did find plenty of evidence for frequent instability in the addresses, phone numbers, projects, budgets, staff and even leadership in many NGOs. All indications are that this second category—which should have been easier to detect in the interviews than the “ghosts” of the first category which I did find—apparently had few if any cases. While theoretically possible, it seems unlikely—based on the qualitative interviews—that the survey data significantly underestimated older NGOs.

17 This classification of the groups prior to 1977 is justified on similar grounds by Sergio Aguayo and Luz Paula Parra in their analysis of the data they gathered for the Mexican Academy of Human Rights. My own interviews with organizations dating from the period prior to 1977 also confirmed this distinction.
these categories therefore should be thought of as more suggestive than precisely rigorous. In addition, the survey did not seek to distinguish present from past characteristics of the NGOs. Fundamental changes that may have occurred over time in the makeup, outreach and sponsorship of some organizations are thus not reflected. Nonetheless, the patterns in this data of characteristics associated with NGOs dating from different periods were largely substantiated by my own interview data on NGO histories, with some exceptions. Examples will be discussed below. Accordingly, it should be kept in mind that this data on the qualitative features of NGOs is more suggestive of patterns over time than rigorously precise.

Taking into account the characteristics of the data just discussed, Figure 2 presents the survey data on NGOs' year of formation, setting aside the potentially misleading measurements associated with the years before 1977 and after 1993. This table illustrates the long-run acceleration in the growth of human rights NGOs and periods where the rate of NGO formation increases rapidly over the prior period.

**Figure 2**

*Modified Data: New HR NGOs in Mexico*

By Year of Formation, 1976-1993

Three discontinuities appear when we analyze this data by rate of change. In the first, the number of human rights NGOs jumps from none to a modest few in the period 1977-1982, when fewer than five NGOs were created each year. Second, the rate of new groups forming rises to a moderate level of growth in the years 1983-1988, when more than five and less than fifteen groups were established each year. Third, the rate jumps again to a high pace of growth in the years 1989-1993, when over twenty human rights NGOs were founded in each year. These periods are summarized in Figure 3.

In addition to accounting for changes in the NGO population, the institutional explanation developed in this paper also emphasizes the importance of several qualitative aspects of these groups. These features include the social entrepreneurs who
create NGOs and their links with each other, their beneficiaries and outreach projects, and their relations with sponsors. Keeping in mind the limits discussed above, the data point to continuity in several respects across the three periods distinguished above—with noteworthy variations that will be discussed below.

First, founders of NGOs dating from all three periods are predominantly either “socio-political activists” or “academics and jurists”. Second, the kind of rights around which the social entrepreneurs in NGOs from all three periods organize are predominantly “human rights” and “constitutional rights”, followed by “social”, “political” and “civil” rights in all three periods. Third, the “general population” is targeted by over half the NGOs from all three periods, with “children” and “peasants” also equally targeted as beneficiaries during these periods although by much smaller fractions of the total in each group. Fourth, several project strategies were favored by over half the NGOs from each of the three periods, including “human rights promotion”, “rights counseling” and “training”. Other strategies favored consistently by about a third of the NGOs in each period include “denouncing and defending human rights”, “disseminating human rights”, “providing human rights services” and “human rights education”. Finally, the data on sponsorship was consistent for NGOs from all three periods but was highly limited: two thirds of all the NGOs declined to answer on this topic, while the largest group that did respond (a fifth) reported no receiving no outside funds at all.

In order to characterize the dynamics of NGO creation in these three periods, I give examples of organizations from each in the following three sub-sections. I also present evidence of variation—in addition to the continuities identified above—that
appears in the patterns related to social entrepreneurs and their relations with each other, their beneficiaries and their sponsors.


One event is invariably cited as marking the historical beginning of human rights NGOs in Mexico. In August 1977, Rosario Ibarra de Piedra formed the Committee to Defend Persecuted Prisoners, the Disappeared and Political Exiles, which most observers date as the first human rights NGO in Mexico.

Like the relatives of hundreds of other detainees in the 1970s who were jailed, deported or disappeared, Ms. Ibarra de Piedra had been working since March of 1977 to locate her disappeared son who had been active with opposition groups. Ms. Ibarra de Piedra never found her son. Still, from her home in the Northern business city of Monterrey she demonstrated an innovative strategy for Mexico. This strategy consisted of creating a public committee to gather and disseminate information about specific cases of human rights abuse and about government’s failure to investigate itself. Her calls for others to follow this example were heeded increasingly in the years that followed. The public nature of her new organization, its explicit focus on human rights and its independent direct action to do what the justice system would not do to locate her detained child all distinguished her new organization from prior groups. Prior human rights efforts had been individual and ad hoc or part of clandestine, revolutionary activities.

In contrast to this Committee, various non-clandestine organizations created prior to 1977 that address human rights issues today are not, as noted above, properly classified as earlier human rights NGOs because they were corporatist interest groups or did not then focus explicitly on human rights. Examples of each of these two kinds of earlier groups will help to mark the difference between them and the human rights NGOs that followed the Committee in the periods after its formation.

In 1951 Benjamín Laureano created the Frente Mexicano Pro Derechos Humanos. The Frente is organized geographically and hierarchically as a corporatist organization, with the leaders in the capital city (where they are in regular contact with government officials from the executive branch) and subordinate groups in state capitals and other cities. Laureano is proud that his members have included many current and former senior government officials, including ministers of state, governors and army officers. Rivalry over the years with state-level leaders, however, prompted several subordinates to break off and create their own Frentes —such as the Frente Nacional Pro Derechos Humanos located in the state of Jalisco and the Frente Único Mexicano de Derechos Humanos located in the state of Puebla. These

Frentes operate similarly, offering ad hoc access to administrative, police and court officials in return for political support. They too are prideful of their direct personal access to senior officials in the executive branch, recounting their meetings with presidents, governors and ministers. The walls of the break-aways typically carry photographs of these meetings and the logos of the ruling Revolutionary Institutional Party (PRI), of other corporatist organizations that form part of the PRI such as the National Confederation of Popular Organizations (CNOP) or the Masons (to which all senior party members belong). The break-away Frentes criticize Laureano for just retailing “petitions” although the rival Frentes describe a similar form of operation. Unlike the NGOs, which monitor government performance and seek to improve policy by making it impartial and general, the Frentes deliver discretionary access to public services in exchange for political affiliation— that is, private rather than public solutions to the demand for justice.19

Unlike the corporatist Frentes, most of the organizations in the survey that date from before 1977 and address human rights issues today are distinct from the human rights NGOs that formed later because they were independent social service organizations that created human rights programs in later years. For example, the Instituto Mexicano para el Desarrollo Comunitario (IMDEC) in Jalisco, was created in 1964 by Carlos Núñez and is one of Mexico’s best known NGOs. IMDEC began its human rights program in 1986 after years of popular education work in Mexico and other Latin American countries, in response to a growing number of requests for technical assistance from new NGOs.20 Although IMDEC has ties to progressive clergy in the Catholic Church, it was not sponsored by the Church. More typical is the Pastoral Penitenciaria, also in Jalisco, which was created in 1974 by the Catholic Church to work with the families of prisoners, because Catholic activists were the most common founders of NGOs during this period. The Pastoral began its human rights work in 1977, with a legal aid program that was first run by a nun and later by interns from the University of Guadalajara law school.21

In contrast to the dominance (45%) of Church-linked founders of NGOs addressing other issues before 1977, this group founded just fifteen percent of the first human rights NGOs in the period beginning in 1977. Academics and jurists (54%) were the most common founders of human rights NGOs during this period, followed by socio-political activists (23%) such as Ms. Ibarra de Piedra (and this group went on to become the leading founders in the subsequent periods).

In sum, fifteen human rights NGOs date from this period. The founders organized overwhelming around the goals of human and constitutional rights (63%), which as noted above, continued to predominate among NGOs of latter periods as well. They


21 Interview with Sister Alma, April 4, 1995.
typically appealed for action by like-minded citizens by publicizing their organizations. Like their successors in following periods, they targeted the general population, children and peasants (41%), but they led NGOs from other periods in their proportionate attention to political and general prisoners (17%). NGO projects in this period developed the “core” strategies mentioned at the outset which predominated among the NGOs from latter periods as well —human rights promotion, human rights counseling, denunciation and defense, service provision and training (76%). Finally, data on sponsorship is limited as noted above, although interviews indicated that individual private contributions were most important during this period while the survey data suggested that in later periods, when government funding became available this group of NGOs was especially ready to use it.


Both quantitative and qualitative data show that despite continuities mentioned above, the NGOs in this period are distinct in several respects. The spread of human rights NGOs, the central change under study here, jumped significantly. Sixty-one groups date from this period, four times the number of the first period.

Other features set this period apart as well. Socio-political activists created proportionately more (52%) NGOs than any other group, with church-based activists rising to second place (22%) and academics and jurists third (20%). In addition, the interviews revealed that former government officials are noticeably active among those who choose NGOs as the most attractive venue to work in. The goals around which these entrepreneurs organized were predominantly the core of rights that dominated in the first period as well but NGOs from this period emphasize a diversity of social and political rights —health, education, housing, food and labor rights— in proportions (33%) not evident in the periods before or after. In addition to publicizing their organizations as in the past, staff in the NGOs from this period reached many like-minded citizens by offering training programs on human rights activism and on forming NGOs. In addition to the general population beneficiaries common to NGOs from all periods, the staff of NGOs from this period focused more on refugees and migrants, ethnic groups and women than did the others. Besides the core strategies described above, these NGOs added strategies of monitoring elections, promoting democracy and promoting justice. Finally, in interviews these NGOs reported increasing foreign support available in this period.

The Mexican Academy of Human Rights, founded in 1984 by a heterogeneous group of renowned scholars and legal activists —including some members from government— was the most prominent NGO in this period. Citing its diversity, the Academy restricted its aims to research and training, which an activist staff quickly deployed to train dozens of future activists from around the country in the legal basis of human rights and the practical mechanics of creating human rights NGOs. Like Ms. Ibarra de Piedra in the previous phase, the Academy staff sought to help promote
other human rights NGOs in addition to working directly on human rights problems. While the Academy offered no individual legal aid, it led the way in sponsoring increasingly incisive and policy-oriented analyses of Mexico’s legal system.22

Meanwhile, in 1986 several government employees from the National Indigenous Institute (known as INI) left their public posts to create Chiltak in the southern state of Chiapas. Chiltak provided legal aid to indigenous peoples, especially those involved in the state's many conflicts over land ownership or those in jail. The staff felt that NGOs had the advantage of being “closer to the social fabric” yet still an “intermediary” to outside resources that preserved “norms, ethical standards in a way different from government or parties”. Staff lawyers worked primarily in the agrarian and penal courts, defending individual cases. While these activists have stuck with their choice through difficult financial times, they are sanguine about the limitations of their choice, and are less vocal promoters of the NGO route than are the representatives from the first period. They found that their beneficiaries suspected that the NGO “lived off” of their situation by being an intermediary, a relationship similar to what they’d sought to escape by leaving government. They also see a constant internal tension in NGOs between “administrative controls to avoid the potential for such clientelistic practices and even corruption” and the spread of bureaucratization that kills idealism, turning their work into “just a job, not service”.23


The NGOs created during this period are by far the most numerous group. Well over half of all the organizations surveyed, 143 in all, belong to this group. More than half the NGOs created during this period are located in the states rather than Mexico City, and predominantly in local municipalities rather than in the capitals. While socio-political activists still created more of these NGOs than did any other group (38%), academics and jurists are close behind (31%) while church-based activists created just seventeen percent. In this period NGO staff began more formal coordination among organizations, creating four networks among themselves. The groups from this period again focused principally on the “core” human rights goals but cultural and economic rights received new emphasis, while the interest in specific social and economic rights from the previous period leveled off. In addition to the general beneficiaries targeted in all periods, this group focused proportionately more on indigenous peoples. Meanwhile, these NGOs built policy-oriented work on individual cases more than those from prior periods, emphasizing strategies of “tracking violations” and

lobbying ("gestoría"). Finally, in interviews many groups reported that international funding was uneven and that government funding was available.

Two examples illustrate the co-existence of cynicism and cautious opportunism in this period. In 1991, judicial police stopped a car driven by the brother of Miguel Ángel Martínez Pérez in the capital of the state of Puebla. During the following days the police extorted thousands of dollars from the family by torturing and threatening to charge (falsely) their captive with responsibility for industrial property that had been damaged or stolen in the vicinity. Mr. Martínez Pérez, a former military officer and moderately successful construction businessman, paid the bribes to free his brother. Deeply angered by this injustice he created the Comité para la Defensa de los Derechos Humanos de Puebla in 1992. He created an NGO, he says, because government agencies have a “stigma” of loyalty to political chieftains rather than to the public and to see the day “that my children would find in court a judge that hears them and police on the street that really protect them”. The Committee’s lawyer expresses similar feelings, explaining that he does pro bono work for the Committee to mitigate the disgust he feels at working in the judicial system.²⁴

Meanwhile, also in 1991, representatives from the National Indigenous Institute (INI) approached activists associated with indigenous groups in Michoacán (and several other states) with offers of generous funding from Pronasol monies for organizations providing legal aid to indigenous populations. Interested in this opportunity, the activists formed a board, creating the Asociación para la Defensa de los Derechos Indígenas de Michoacán (ADDIMAC) and conducted a needs survey among indigenous leaders, as required by the government. They identified legal aid to jailed members of indigenous groups as the most pressing need and launched a statewide program that has worked with prison directors to reduce chronic violence directed against these people and has represented individual detainees to improve their notoriously poor treatment at the hands of parole officials and appeals judges. In other states, new organizations availing themselves of these resources focused on other issues—in neighboring Jalisco, for example, the Asociacion Jalisciense de Apoyo a Grupos Indigenas (AJAGI) concentrates on land conflicts.²⁵ Staff in these organizations were uncertain about their future since continued Pronasol funding was uncertain after Ernesto Zedillo was elected to the presidency in 1994.

The following table summarizes the three periods.

Table 1

Three periods of human rights NGO proliferation in Mexico.

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<tr>
<td>Rate of NGO formation</td>
<td>Under five each year</td>
<td>Five to fifteen each year</td>
<td>Over twenty each year</td>
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<tr>
<td>Total[^26]</td>
<td>15</td>
<td>61</td>
<td>143</td>
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Features of NGO staff, their coordination strategies, beneficiaries, project outreach and sponsors:

- most founders are academics and jurists, followed by socio-political activists
  - coordination by publicity and example
  - general human and constitutional rights emphasized
- general population targeted most; also prisoners
  - human rights education strategies most common
  - private individual contributions predominate
- activists, followed by church-based and academics & jurists, are leading founders
  - coordination through training in how to create human rights NGOs added
  - diversification in social and economic rights added
- refugees and migrants added as beneficiaries
  - legal and judicial research strategies added
  - foreign funding added by some NGOs
- indigenous peoples increase as beneficiaries
  - lobbying and individual casework strategies more prominent
  - government funding added by some NGOs
- activists, academics and jurists are leading founders
  - networks formed to coordinate among NGOs
  - cultural, economic rights added by some
  - networks formed to coordinate among NGOs
  - diversification in social and economic rights added
  - government funding added by some NGOs

[^26]: The total here excludes some groups covered in the original survey, for reasons explained in the discussion of the data at the outset of this section.

I turn now to the evidence on institutional change over time.

II.2. Characterizing the changes in Mexico's institutions of justice

Most accounts of the proliferation of human rights NGOs in Mexico have overlooked a series of changes in Mexican judicial institutions, focusing on new resources that at times became available for organizing political demands rather than on conditions that would lead some citizens to supply services to others as a means to directly improve the overall provision of justice. Here I begin by presenting some of the key features...
of the status quo ante in the Mexican justice system which did not lead to the formation of human rights NGOs in the period before major reforms began, despite the presence of serious problems. The following subsections identify three lines of justice reform which, as they were introduced in sequence, each created significant institutional turbulence and new incentives for citizens to create NGOs.

The data on judicial reforms in Mexico is drawn from primary and secondary sources and interviews. Thirty interviews among legal scholars, judges, prosecutors and police, in addition to the NGO interviews, provide the qualitative data. Quantitative data on these changes is drawn from published and manuscript sources.

Three legal institutions in Mexico bear mention to understand the setting prior to the period in which successive waves of reforms and of human rights NGOs arose. First, the basic instrument for citizens to defend themselves from arbitrary acts by public authorities is the amparo, an injunction that includes habeas corpus-like features and which became highly developed in Mexico during the nineteenth century. While a suit for amparo can be presented to any judge, or even by telegram, only Federal courts have jurisdiction to decide amparos. Finally, the original use of amparos to prevent arbitrary detentions and abuse of citizens has been extended to cover all acts by authorities, becoming an instrument for challenging all manner of administrative and judicial decisions including, especially, judicial decisions in civil suits between private citizens. This has considerably broadened the instrument, with the practical effect—in the view of critics—of blunting it substantially.27

Second, the Ministerio Público, derived from the French Ministere Public and common to several Latin American judicial systems, is formally responsible for protecting and promoting human rights. More broadly, the Ministerio Público formally represents the interests of the government and the public. In Mexico it has a monopoly on both the prosecution of crimes and on the execution of sentences and is part of both the Federal and State level justice systems. The Ministerio Público belongs to the Executive, not Judicial branch and it has Judicial Police attached to each of its agencies, in both the state and federal systems. In practice, agents of the Ministerio Público depend heavily on the Judicial Police for information on whom and when to prosecute, with the former providing principally the formal administrative and legal steps for prosecuting. The Judicial Police have acted with great autonomy and have developed a practice of hiring free-lance assistants ("madrinas" or godmothers) to help round up and interrogate suspect. The use of such madrinas is widespread though not legal.28

27 See Héctor Fix Zamudio (1979), "A Brief Introduction to the Mexican Writ of Amparo", California Western International Law Journal, Vol 9, p. 68; and "The Writ of Amparo in Latin America" in Lawyer of the Americas; and also Héctor Fix Fierro (ed.) (1994), A la puerta de la ley: el Estado de derecho en México, (Mexico, Cal y Arena), for detailed explanation of this layered and complex instrument, as well as an account of its historical development and importance.

28 See José Luis Soberanes Fernández (1995), "Políticas Públicas relativas al sistema judicial en México", Mexico City, Instituto de Investigaciones Jurídicas (IIJ), UNAM, manuscript, pp. 50-
Third, there has been no constitutional court in Mexico until a version of it was established in 1988 (which will be discussed with other reforms below). Instead, jurisprudence has taken on a formal legal status whereby five sequential rulings by the Supreme Court—which are all otherwise only *ad hoc*—can take on a general validity for all courts. With respect to human rights, the institution of jurisprudence has been used to raise the requirements imposed to sue successfully for *amparo*. In 1957, for example, jurisprudence was established to prohibit the use of *amparos* for relief from actions by the Ministerio Público, which critics say has left the door formally open for unrestrained abuse by this agency. Similarly, jurisprudence has established that a person complaining of harm in bringing an *amparo* suit must demonstrate that he or she is entitled to the rights supposedly infringed and also prove the violation, burdens of proof which critics claim is excessive and has encouraged police to use physical abuse that does not leave marks. Finally, jurisprudence has given decisive weight to written confessions over oral protestations before judges, leaving little restraint on abuse by agents who take written statements from detainees.\(^{(29)}\)

While the provision of justice suffered from broadly unchecked discretion for the officials charged with providing it, social entrepreneurs did not emerge to create human rights NGOs, even during the repression of opposition political and guerrilla movements in the decade following a 1968 massacre of demonstrators during the Mexico City Olympic Games.

Historically, views of Mexico’s justice system from abroad have been moderately critical. Citing a 1965 study by González Casanova that showed courts deciding against the government in a third of the claims they heard against the government, for example, Joel Verner called the system “stable-reactive” and “clearly an emerging court”.\(^{(30)}\) Freedom House ranked civil rights in Mexico from 1976 through 1993 as stable with “broad areas of freedom but also broad areas of illegality” except for temporary improvements in the years 1979, 1990 and 1993. In those particular three years Freedom House classified the system as having “the trappings of civil liberty and whose government may be successfully opposed in the courts, although it may be threatened or have irresolvable political deadlocks and may have to rely often upon martial law, jailing for sedition, and suppression of publications”. These rankings

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\(^{(29)}\) See Fix Fierro, *op cit.*, especially pp. 58, 68, 70, 72, 93; González Oropeza, *op cit.*, Fix Zamudio, *op cit.*

gave Mexico a “4” for most of this period and a “3” for the three years of improvement (“1” is highest and “7” lowest on this scale of civil liberties). 31

Within Mexico, observers have grown increasingly critical. Mexican jurists, based principally at the National University’s Institute for Juridical Research (IIJ), have argued in various fora that state courts are notoriously ill-prepared, Federal Courts are chronically overloaded, judicial review is lacking, judicial independence is compromised by executive control, the “amparo” instrument for habeas corpus has been stretched to cover so many conflicts that its effectiveness is seriously diluted and so on. 32 Mexican NGOs, as we have seen above, have targeted the justice system for criticism since 1977 and their negative judgment has been amplified since the late 1980s in studies by international human rights organizations, including Amnesty International, Human Rights Watch, Minnesota Lawyers for Human Rights and others. 33 Finally, since taking office in 1994, President Zedillo has identified judicial reform as his highest priority, raising the stakes over his predecessors who, beginning with President López Portillo in 1976, had each identified the provision of justice as an important area for government reform. 34

Minor modifications of Mexico’s judicial system have occurred throughout its history but the changes were slow until late 1970s and despite the system’s shortcomings human rights NGOs did not form in that period. Although repression of opposition political movements was routine, especially in the years following a 1968 massacre of demonstrators during the Mexico City Olympic Games, social entrepreneurs did not act to organize critics and provide services for disadvantaged beneficiaries.


34 Interview with Luis Rubio, May 5, 1995, who pointed out that Zedillo has been promoting this priority since the mid-1980s; interview with Miguel de la Madrid Hurtado, April 10, 1996; see also Rubén Valdez Abascal (1994), La modernización jurídica nacional dentro del liberalismo social, Mexico, Fondo de Cultura Economica, for a view from the Salinas administration.
The next three sub-sections set out the chronology and nature of rapid reforms that began in the late 1970s. Expansion and enhancement of the existing judicial system were most prominent in the first phase of reform, launching a pattern that continued in the second two phases as well, although at less dramatic rates. Meanwhile, formal and structural changes of the justice system dominated the second phase of reform, although these steps began in a more limited way during the first phase and continued on a smaller scale into the third phase as well. Finally, multiplication of new judicial fora characterized the third reform phase most, although this strategy was foreshadowed in the second phase. Each of these reform strategies had distinct effects on the incentives for citizen activists to create or support human rights NGOs among a citizenry already accustomed to routine abuses, corruption and low transparency.


Acting on promises to improve the justice system which he had made during the campaign preceding his unopposed election in 1976, President José López Portillo dramatically accelerated what had always been a slow process of expanding and enhancing the existing judicial system. In addition, he introduced some limited formal changes to the judicial system.

The expansion and enhancement began quickly after López Portillo took office. It consisted of opening more courts and providing new training. Beginning in 1977, he created several new Federal District Courts each year, at a sharply higher rate than previously seen. The thirty-five new courts he created during his six-year term was more than four times the number created by the prior administration and more than twice the increase seen during all of the previous thirty-five years. Meanwhile in 1978, López Portillo opened a judicial training school, the Instituto de Especialización Judicial del Poder Judicial de la Federación de México, to train judicial staff.

A secondary area of reform during this period was formal changes to the justice system. These began with a pardon in 1978 that covered some 2,000 political prisoners. While this change did not introduce a new rule or change the structure of justice, it set aside an important class of judicial decisions from prior years. This action was part of López Portillo’s policy of limited political liberalization which began with the legalization in 1977 of outlawed parties. In addition, the López Portillo government acceded in 1981 to the International Convention on Civil and Political Rights and the International Convention on Economic, Social and Cultural Rights, both of

35 Fix Fierro, op cit., p. 75.
36 Luis Salas and José Ma. Rico (1990), Carrera judicial en América Latina, (San José, CAJ) p. 26; Argentina’s military government also opened a similar institute the same year, as did Chile’s military government in 1979.
which had been approved by the U.N. assembly in 1966 and had entered into force in 1976.

The results of these changes were less than one might expect. Despite the new training opportunities for court staff, the expanding system's demands for new judges and staff far out-stripped the available supply, so that judges and staff were increasingly untrained and unprepared for their work. "Ignorance", "improvised" decisions and reversals became rampant in the system. Most seriously, perhaps, the greatly expanded number of new District Courts nearly always brought with them new agencies of the Ministerio Público and Federal Judicial Police. Disadvantaged citizens —those without political connections, the poor, non-Spanish speaking indigenous people, for example— feared these bureaus since these groups are the most frequent targets of the agents. In addition, the abrupt expansion did not augment the limited number of public defenders, further reducing their availability in proportionate terms as court fees, professional counsel and time required to use the system effectively excluded the growing number of disadvantaged now exposed to the system from any of its potential benefits. The high-profile formal changes, meanwhile, were not carried through as promised. As late as 1982 prisoners amnestied in 1978 had yet to be released.

These reform policies created various incentives for activist citizens to create or support human rights NGOs. The rapid increase in the number of courts created new uncertainties for all participants in these institutions as to whether the change would bring promised improvements or instead an expansion of prevailing abuses to new areas. While members of various groups coordinated informally to track the implications for themselves of the changes, some members of two groups of citizens that had regular contact with the judicial system —academics and jurists, and socio-political activists— and who also cared about the overall provision of justice found reasons to organize formally as human rights NGOs. On the one hand, when they were critical they wanted protection from the repression directed at organized political opposition. They developed rules to lessen their vulnerability developing, for example, a specific focus on human and constitutional rights and publicizing their presence and goals with calls for others to do likewise. On the other hand, they saw rising demand for the kind of information they had from disadvantaged policy-takers. Those demands rose as the public defender resources fell behind the expansion, encouraging the poor to seek other alternatives. In the eyes of the poor and other disadvantaged groups the expansion of the courts also brought more of an already undesirable thing as they faced increasing risk of unwelcome contact with the Ministerio Público and the Federal Judicial Police. Moreover, despite the greater availability of Federal courtrooms available to consider suits for amparo protection throughout the country,

38 Soberanes F., op cit., p. 77.
40 Soberanes F., op cit., p. 77.
victims found the judges unprepared or de-moralized and unwilling to help restrain these two agencies. These demands offered two opportunities. First, NGO information could be exchanged for new information about policy outcomes at the grassroots level. Second, if disadvantaged policy-takers had better information about the legal system they would be better prepared to secure justice from the expanding system rather than suffer from it, effectively raising the overall provision of justice in Mexico. In response, social entrepreneurs designed NGO outreach projects such as those providing legal education and legal counseling to the general public and specific disadvantaged groups.


Formal changes to the judicial system rose significantly during the administration of Miguel de la Madrid. Expansion of the existing court system continued at a high but somewhat lower rate, while a reform strategy that would be used heavily in the subsequent period —creating new judicial fora— also made its debut during these years. De la Madrid introduced numerous formal changes with great publicity. Just after inauguration in 1982, he sent Congress legislation that surrendered presidential authority to fire Federal judges, gave oversight responsibility for the career of Federal judges to the Supreme Court, established the notion of tenure for Supreme Court judges, and allowed the senior judges (rather than the president alone, as had been customary) to nominate lower judges. De la Madrid also announced that a notorious secret police unit in the capital would be closed and he sought extradition from the U.S. of a notorious former Mexico City police chief for corruption and abuse of power. These steps were all part of a broader effort by de la Madrid to combat corruption through a campaign of "moral renovation". Meanwhile, in 1986 Mexico signed and ratified the U.N. Convention against Torture, and Other Cruel, Inhuman or Degrading Treatment or Punishment. Finally, in 1988 the Supreme Court was given limited constitutional review powers and, simultaneously, its amparo responsibilities were delegated to the Circuit Courts.

Reforms to expand and enhance the judicial system were sustained during this period. In 1983, de la Madrid raised Federal judges' historically low salaries to "decorous" levels and increased the percentage of public spending allocated to the judicial branch. Increasingly large proportions of the overall government budget went to the Federal judiciary, particularly in 1988, when it rose more than tenfold from just under 3 percent in 1986 and 1987 to more than 3.8 percent in the last year of this period. Training opportunities grew as well, with mid-career training overseas, especially in Italy and Spain. Meanwhile, the number of district courts contin-

41 Soberanes F., op cit., p. 82; González Oropeza, op cit., p. 44.
42 Soberanes F., op cit., p. 61.
43 Interview with Judge, April 26, 1995.
ued to expand at an accelerated rate, although somewhat more slowly than under López Portillo. 44

Lastly, in 1987 a new court system was created at the federal level to adjudicate certain electoral conflicts after opposition politicians from the PAN in Nuevo León filed complaints with the Organization of American States that. 45 This court was not given jurisdiction over presidential elections, however. This reform and other formal reforms mentioned above together helped to make Mexico's Constitution the most revised one in the world—it has been amended some 400 times. Sixty-six percent of its 136 articles have been revised. De la Madrid, who introduced fifty-two amendments, made more than any other administration. 46

The effects of these changes were also less than a committed reformer might have hoped for. The dismissed secret police began a wave of professional muggings before they found their way into other police forces. The new recruitment and tenure procedures for Federal judges languished unused and when a new Organic Law for the judicial branch—that is, legislation that would implement these formal changes—was written before the end of de la Madrid's term, his earlier formal changes were simply ignored and not included. 47 By and large, the changes came at the margins of the system and were intentionally gradualist. They went the way of the broader reforms introduced by López Portillo to liberalize the political system and by de la Madrid's to end its corruption through a “moral renovation”, both of which faded away after initial efforts.

In addition, the expansion of the District Courts now deeply aggravated the shortage of trained personnel. Those judges who had participated in training discovered with growing frustration that political rather than professional performance criteria still seemed to determine who was promoted. 48 The increased budgets did not expand the already shrinking ratio of public defenders to courts, allowing the shortage to worsen steadily as the courts expanded. Meanwhile, the delation of amparo responsibilities from the Supreme Court to its associated Federal courts worsened their overload. A pattern emerged where the previously high backlog rates in these courts—which had always invited criticism—dropped steadily while dismissals of suits rose precipitously, as judges sought any technicality (even misspellings) to dismiss suits and keep their backlog rates low. 49

Finally, the creation of a new court system to hear electoral complaints revived a practice used after the Revolution, when special court systems for labor, taxes, administrative issues and the military were created in both the Federal and

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44 Fix F., op cit., p. 75. The data are for five year periods and show that from 1985 to 1990, 43 new District Courts were created—approximately a 40 percent increase.
45 Twenty-three states also created electoral tribunals in the years that followed.
46 González O., op cit., pp. 11, 12.
47 Soberanes F., op cit., p. 69.
48 Soberanes F., op cit., González O., op cit., interview with C. Judge.
49 Fix F., op cit., p. 76-78.
State systems to keep the judiciary away from these issues. The new system further fragmented the authority of an already weak judicial system (and foreshadowed significantly more of the same to come in the next administration) 50

These reforms again created incentives for citizens to create NGOs. For all participants in the judicial system the changes introduced new uncertainty about which rules —new or old— would apply in specific instances and provoked a search for information to guide behavior for the best advantage. The unfulfilled or excessively delayed promises of formal changes frustrated and angered citizens, deepening public cynicism about the justice system. At the same time, the high profile nature of the formal changes put the provision of justice on the public agenda and gave activists an opportunity to try to keep it there. The new level of uncertainty encouraged more of those citizens who worried about the collective benefit of justice to coordinate, including many who became increasingly disposed to leave government or party militancy for the greater flexibility and practical focus of NGOs. Meanwhile the example of earlier NGOs reducing risks through formalization and publicity together with new opportunities to use the information they developed encouraged them to create human rights NGOs. The public nature of the NGO, its issue-oriented focus and its emphasis on public rather than clientelistic, discretionary solutions to problems offered activists a tool for keeping questions of justice in the public eye and even for refining the issue in terms of human rights. Reflecting widespread concern about a deep recession in this period they organized around not only the core human rights that predominated in the first period but also specific social and economic rights. Extending the example of their predecessors who called for others to organize human rights NGOs too, social entrepreneurs in this period began offering formal training in how to organize human rights NGOs.

Like their predecessors, these social entrepreneurs responded to growing uncertainties among disadvantaged policy-takers by providing services based on the information they had gathered. Demand for information on how to secure fair and favorable treatment was widespread among policy-takers as system-wide ambiguities grew with the rule changes. In response these NGOs added legal and juridical research projects to the rights education strategies favored during the first phase. They also expanded the range of beneficiaries to work with Central American refugees who began arriving during those years and who found themselves in a legal limbo since Mexico accepted political exiles but not refugees and the distinctions involved were not systematically applied. Some of these social entrepreneurs responded to demands among policy-makers for better information about institutional outcomes as well, involving public officials in advisory capacities. Finally, despite long-standing nationalist suspicions of the motives of foreigners in Mexico, some of these NGOs availed themselves of foreign funding which became available in this period.

50 González O., op cit., pp. 14, 16-17, 22, 23, 41.

Abandoning the explicit gradualism of the de la Madrid years, president Salinas boldly announced plans for a dramatic modernization of the economy and the state, including the justice system. While he continued to use expansion and formal reforms, he created a record number of new judicial fora.

Upon inauguration, Salinas convened a Forum on the provision of justice although the concrete result was limited to a series of formal changes to the penal code that stiffened sentences for serious crimes. In late 1989 he also changed the tax code, taking away the tax exemption previously enjoyed by registered Asociaciones Civiles, which is the legal standing used by NGOs (and many other private associations) in Mexico. A year later he amended the Constitution to remove its historic ban on political rights for the Catholic Church and its clergy. Meanwhile, District Court expansion continued (though at a somewhat slower pace than under de la Madrid), the budget allocation continued at approximately the same rate as the de la Madrid years and foreign training for judicial officials continued. Finally, in 1993 the Salinas administration extended the length of time that police could detain individuals suspect of "grave" crimes without judicial order (i.e., with no habeas corpus restraints) to seventy-two hours.

Salinas' major reforms came in the creation of new judicial fora. In 1990 his government reformed the recently created Electoral Court System. He changed its rules again in 1994. By then, twenty-three states had followed the federal example to create electoral courts as well. In 1989 he created a Human Rights Prosecutor, in the Secretariat of Government (which is charged with internal political control) rather than in the Prosecutor General's office. In 1991 Salinas created a National Human Rights Commission. A constitutional amendment in 1992 gave the Commission constitutional status to function as an ombudsman. The same year states were required to create state-level commissions as well, and most did so in 1993. In addition, in 1992, the government also created a new court system to handle land reform. Several special-purpose prosecutors were created in the capital city as well, which were presented as informal alternatives to suit in court.

The effects in practice, as before, were not ideal. The enhancement reforms to the existing courts continued to be plagued by under-prepared staff while judges who did participate in training and tried to use their professional criteria reported intimidation and fear for their jobs.\(^{31}\) Meanwhile, turnover in senior justice posts was very high: there were five attorneys general during the Salinas years. Critics complained that the Supreme Court became merely a way station for politicians in between other high-level presidential appointments rather than a body filled according to professional criteria.\(^{32}\) Moreover, despite its growing dimensions, the judicial system was unable to solve three high-profile crimes: the assassinations of a Catholic Cardinal in

\(^{31}\) Interviews with two judges.

\(^{32}\) González O. cites Jorge Carpizo as an example, op cit., p. 24.
Guadalajara (in 1992), the government’s presidential candidate and the secretary-general of the PRI (both in 1994).

Meanwhile, the increased severity in the Federal penal code seems to have been a cue to states, many of which altered their own penal codes, criminalizing protest behavior in vague and threatening ways. The extended detention period for police gave them more time to allow physical signs of any torture applied to disappear before bringing a detainee before a judge and counsel. When NGOs organized among themselves to protest changes in the tax code they were ignored for nearly a year and then advised by letter from the Government Secretariat (the political ministry) that the new requirements would not be applied to them. This discretionary application of the law introduced new ambiguity into their standing.

Finally, the multiplication of judicial fora created what one jurist called a judicial “jungle.” Structural flaws that created conflict of interest persisted in the Electoral Court, despite its two restructurings. Agents of the new land reform court were accused of corruption and fired, while the substantive judgments of this court went disproportionately against the peasants it was said to be helping. Meanwhile, the conflict resolution fora of the various special prosecutors introduced a catch where those who availed themselves of these informal mechanisms forfeited their rights to sue in the formal system. Finally, while admitting that the new Commission helped to legitimate the subject of human rights and did help to investigate high profile cases, human rights activists complained that the National Human Rights Commission was severely compromised in being restricted from investigating complaints related to elections or labor disputes, areas in which the activists found many abuses. The activists uniformly dismissed the state-level commissions as merely pro forma agencies filled with political appointees.

Again these outcomes created incentives for some citizens to found or support human rights NGOs. The ambiguities of the new penal codes, at both the federal and state levels, raised new questions about what kind of public protest was allowed and which kinds of groups would be punished. Similarly, the extended detention period raised new questions about whether torture of detainees could be effectively curtailed. These concerns were repeatedly cited by activists who created NGOs during this last period. Meanwhile, the cumulative expansions of the judicial system continued to make it more demoralized, threatening and unreliable than ever. Lawyers who joined NGOs doing this period cited these problems and their participation in NGOs as a means to compensate for their displeasure with what they found they had to do in their normal work.

53 DeCosse et al, op cit., discusses the case of Chiapas.
54 Soberanes F., op cit.
55 González O., op cit., p. 21.
56 González O. op cit., p. 22, 23.
57 González O. op cit., p. 19.
To these uncertainties created by formal changes and expansions of the system were added the new uncertainties generated by the proliferation of new Commissions and Court systems. While these new fora ostensibly invited broader access to justice by creating new venues to hear new complaints, their political control by the executive branch and their unclear, nonhierarchical relationship with the judicial branch raised a new series of doubts about the reliability and predictability of these mechanisms. Would their decisions be restricted by the president and governors? Would their decisions stand up in law courts? What if there were disagreement between these arbiters and either the executives or judges?

The tax threats, meanwhile, encouraged NGOs to formalize relationships among themselves and several overlapping networks formed during this period to coordinate responses to government actions. Freed from prior restrictions on political activity through the constitutional reform, the Catholic Church now sponsored new human rights NGOs formally. These changes and new funding available through the government Pronasol program to support community self-help encouraged activists to develop new funding relationships use public resources available to NGOs pragmatically to defend and promote human rights.

Like their predecessors in the two previous periods, these social entrepreneurs formalized relations among themselves for protection and to take advantage of external opportunities. Responding to demand for individual assistance, they developed legal aid casework projects and used the experience of these projects to portray problems in the justice system. Building on this information and on-going legal research projects, they began to lobby congress and the executive on proposed changes. And responding to the spread of electoral courts at the state level and widespread frustration with electoral fraud they designed projects to monitor elections.

II.3. Summary of Findings and Alternatives

In sum, prior to 1977 Mexico’s justice system changed only slowly but afterward experienced three major lines of reform in sequence. Despite recognized abuses, no human rights NGOs formed before in 1977. But when Mexico’s President López Portillo announced plans to reform the justice system and then made good on his word by expanding the federal system by more than fifty percent, a previously stable setting shifted considerably. Among the justice system’s many participants responding to the turbulence created by the change, some academics, jurists and activists created NGOs to monitor the changes and use their knowledge in assistance to vulnerable groups who sought to defend themselves better in the expanding system. Figure 4 illustrates the discontinuity introduced by López Portillo.
The small new community of human rights NGOs created in the first six years of reform might well have continued to expand modestly at fewer than five new groups each year as the expansion continued into the next administration. But a second policy shock unsettled this new equilibrium when, with great fanfare, President de la Madrid introduced numerous formal changes in the rules of the justice system. This additional set of changes added new uncertainties about when new or old rules would apply, arousing concern more widely among potential social entrepreneurs and adding a new level of demand for human rights information among disadvantaged policy-takers. They responded by creating significantly more NGOs—five to fifteen a year from 1983 to 1988. Figure 5 (above) illustrates the formal discontinuity introduced by de la Madrid, using data available on amendments to the constitution (of all types) in his and other administrations.

Again this substantial community of human rights NGOs might well have continued to increase at this higher rate of growth as the expansion and formal reforms continued after 1989 in the Salinas administration. However, a new set of reforms created a third institutional shock that sent the rate of human rights NGO formation still higher. The Salinas government created new judicial fora, including new courts and new prosecutors, whose subordination to the existing judicial system was ambiguous. While some citizens found opportunities to resolve conflicts through these new agencies, others found in them a further fragmentation of judicial authority that left citizens additionally exposed to the political discretion of executive branch officials. Fears of further reduced transparency and predictability in the justice system provoked a still wider group of citizens concerned about the overall provision of jus-
Welna/Reform of justice and the proliferation of human rights non-governmental organizations...

**Figure 5**
Institutional Change 2:  
Formal Rule Changes

![Bar chart showing constitutional amendments by period](chart)

**Figure 6**
Institutional Change 3:  
Multiplication of Federal Judicial Fora

![Bar chart showing multiplication of judicial fora by period](chart)

...to organize NGOs to track the changing system, through projects providing individual casework to disadvantaged citizens or groups as well as conducting legal
research and legal education projects. In this last period, more than twenty new human rights NGOs formed each year. Figure 6 (above) illustrates the discontinuity in the creation of new judicial fora introduced by the Salinas reforms. Figure 2 (reproduced here) illustrates again the changes in NGO population that resulted from the sequence of judicial reforms.

There is, on the other hand, evidence that might be used in limited support of the alternative explanations discussed in Section II. For example, it might be argued that Mexico’s presidential elections in 1976, 1982 and 1988 preceded the jumps in human rights NGO proliferation and that elite competition surrounding those elections provided resources for NGOs to organize. But in the electoral years of 1982 and 1988 the rate of human rights NGO formation actually falls, while in 1976 there were none. Instead, the coincidence of change in administration and change in the NGO population lends support to the institutional thesis when we consider that Mexican presidents typically distinguish themselves from their predecessors by launching new reforms in their own administrations. Rather than proliferating with presidential electoral competition, human rights NGOs multiply once each administration’s judicial reforms were announced and launched.

Similarly, Mexico’s accession to international human rights covenants in 1980 and 1986, together with foreign funding available particularly in the mid and late 1980s and in 1993, and attention from international human rights NGOs in the late 1980s and 1990s might be used to argue that local NGOs formed in response to new opportunities and resources in the evolving international human rights regime. But
this approach would not explain why local human rights NGOs formed before 1980 yet did not form before 1977, even though they were numerous in most capitals of Latin America during the 1970s.

Finally, economic growth in the late 1970s and 1990s might be used to argue that Mexico's middle class grew significantly, leading to the appearance and growth of NGOs. But this argument would not explain the significant proliferation of human rights NGOs during the 1980s, when Mexico suffered a deep economic recession that reduced the size of its middle class.

While the institutional approach is not proven here, its plausibility is demonstrated. Elsewhere I provide a stronger test of this approach against variance in the human rights NGO population in Mexico's 31 states.

III. Conclusion

This paper has shown how group theories that emphasize change in resources from the international system, from elite political competition or from an expanding middle class afford incomplete explanation for why citizens create NGOs at some times and not others. In contrast, this study argues for an institutional framework to show why even in non-democratic settings, institutional change can create incentives for some citizens to organize NGOs as a means to improve the overall supply of public goods directly by producing aspects of these goods themselves for nonmembers. The plausibility of this approach was tested against variation in the population of human rights NGOs in Mexico. The research found that a sequence of three major reforms to Mexico's justice system each created incentives for citizens from certain groups to collaborate in the creation and maintenance of human rights NGOs. Moreover, the paper shows that as a result the introduction of each set of reforms was followed by a jump in the proliferation of these NGOs. The causal relationship between government institutions producing mixed public goods and the proliferation of NGOs argued for here suggests that independently of their potential impact, NGOs are indicators of institutional change and uncertainty.

If the relationship suggested in the preceding sections between reforms of the justice system in Mexico and the proliferation of NGOs is indeed valid, this insight can be used to reflect some on the impact of NGOs.

First, despite the involvement of jurists in the formation of Mexico's human rights NGOs, of lawyers on their staff and narrowly legal goals among their objectives (e.g., constitutional and civil rights), this community of NGOs has not been known for court successes. Given the nature of the justice system at the outset of the period, however, and the frequently negative effects of the reforms since 1977 it is hardly surprising that Mexico's NGOs tend to offer defense from the legal system rather than use of it.
Second, on the basis of this relationship, we would predict that even though international and national funding for NGOs has dropped precipitously under the Zedillo administration, the inauguration of more far-reaching formal changes together with greater implementation of those new rules and increased (but still timid) activism by judges will sustain or increase further the rate of human rights NGO formation during the Zedillo administration.

Finally, this relationship indicates where we might look successfully to find the ultimate impact of Mexico's human rights NGOs. Faced with the piecemeal and fragmenting reforms developed by government, the NGOs are likely to push for holistic, watershed reforms that unify and reconstruct crucial components of the justice system such as the police, the Ministerio Público and the courts. They are likely to promote these changes using their experience defending citizens at the local level to make arguments that emphasize the high costs (as well as the injustice) of current institutions and the relative efficiency and efficacy of comprehensive reforms. Moreover, the NGOs are likely to broaden initial alliances with each other, as well as with jurists, business interest groups frustrated by the costs of the justice system, local philanthropists and, increasingly, with frustrated mid-level officials in the justice system.
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