

REVIEW ESSAY  
**Recent Research on the Legal History  
of Modern Mexico**

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Peter L. Reich\*  
*Whittier Law School*

- Indígena y Criminal. Interpretaciones del derecho y la antropología en México, 1871-1921.* By Beatriz Urías Horcasitas. Mexico: Universidad Ibero-americana, 2000.
- Criminal and Citizen in Modern Mexico.* By Robert M. Buffington. Lincoln and London: University of Nebraska Press, 2000.
- Crimen y Castigo. Legislación penal, interpretaciones de la criminalidad y administración de justicia (Ciudad de México, 1872-1910).* By Elisa Speckman Guerra. Mexico: El Colegio de México, Universidad Nacional Autónoma de México, 2002.
- City of Suspects. Crime in Mexico City, 1900-1931.* By Pablo Piccato. Durham and London: Duke University Press, 2001.
- Reconstructing Criminality in Latin America.* Ed. Carlos A. Aguirre and Robert Buffington. Wilmington: Scholarly Resources, 2000.
- Crime and Punishment in Latin America. Law and Society since Late Colonial Times.* Ed. Ricardo D. Salvatore, Carlos Aguirre, and Gilbert M. Joseph. Durham and London: Duke University Press, 2001.

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**Palabras clave:** derecho mexicano, historia del derecho, derecho y sociedad, criminología, Constitución de 1857, Constitución de 1917, código penal, Porfiriato, Revolución Mexicana, Ciudad de México.

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*What we see, then, was a gap, indeed an immense trench, between the ideal referent of the regime—the democratic principles of its liberal Constitution, the same values that our own age continues to invoke—and the reality of its functioning.*<sup>1</sup>

Modern Mexican legal history in its social context has been neglected by scholars, because law has traditionally been identified with colonial institution-building, and writing on more recent periods has focused narrowly on code or other legislative changes. Political and socio-economic historians have documented selective legal enforcement by elites and evasions by the masses, and thus have tended to ignore law as superstructural. The six works reviewed here begin to remedy this lack: two are studies of anthropological and other theoretical influences on law, two are case studies of crime and society in Mexico City, and two are anthologies of research on Latin American legal history that include articles on Mexico. This review essay will briefly survey the historiography of Mexican law to see where these works fit into scholarly trends, and then examine the books and articles seriatim to evaluate their contributions.

### **From *Derecho Indiano* to *Derecho de Códigos***

Academic legal history in Mexico was given its greatest impetus by Spanish scholar Rafael Altamira (1866–1951), whose meticulous textual analyses of the Laws of the Indies and Franco-driven exile in Mexico City inspired disciples to study colonial Spanish law, or *derecho indiano*.<sup>2</sup> Altamira's focus on legal terminology to explicate the operation of courts and sociolegal structures such as land tenure was followed and expanded by Mexicans Javier Malagón, Toribio Esquivel Obregón, and Silvio Zavala, and by other Latin Americans.<sup>3</sup> In the United States *derecho indiano* analysis, as applied to New Spain, was carried forward by Woodrow Borah's

1. François-Xavier Guerra, *Le Mexique. De l'Ancien Régime à la Révolution*, 2 vols. (Paris: L'Harmattan-Publications de la Sorbonne, 1985), 1:20 (all translations mine).

2. Altamira concisely summarizes his approach in Rafael Altamira, *Técnica de investigación en la historia del Derecho Indiano* (Mexico: J. Porrúa e Hijos, 1939).

3. "Don Rafael Altamira y Crevea y la historia del derecho en México," in *Memoria del IV Congreso de Historia del Derecho Mexicano*, vol. I (Mexico: Universidad Nacional Autónoma de México, 1988), 245–262. Spanish and Latin American scholars influenced by Altamira include Alfonso García-Gallo, Ricardo Levene, José María Ots Capdequí, and more recently, Victor Tau Anzoátegui.

work on the General Indian Court and Colin MacLachlan's study of criminal law enforcement.<sup>4</sup> More recently, detailed analyses of legal sources and their impact on judicial procedure have shown the continuing vigor of derecho indiano studies, albeit with more of a social history emphasis.<sup>5</sup>

Perhaps due to the initial institutional focus of colonial Mexican legal history, work on the post-Independence period has usually been limited to summarizing changes in constitutional and code language and in court structure.<sup>6</sup> Even Oscar Cruz Barney devotes more than two thirds of his standard law school textbook, *Historia del derecho en México*, to the colonial period, and the remainder to listing constitutions and major statutes.<sup>7</sup> One of the more sophisticated practitioners of this trend is María del Refugio González, who suggests in one study that the Constitution of 1917 was a reaffirmation of colonial power over property that prior instruments had ignored.<sup>8</sup>

Until the works reviewed in this essay were published, Mexican legal history had largely ignored the integration of law and social science long practiced in France and the United States.<sup>9</sup> One branch of the *An-*

4. Woodrow Borah, *Justice by Insurance. The General Indian Court of Colonial Mexico and the Legal Aides of the Half-Real* (Berkeley and Los Angeles: University of California Press, 1983); Colin M. MacLachlan, *Criminal Justice in Eighteenth Century Mexico. A Study of the Tribunal of the Acordada* (Berkeley and Los Angeles: University of California Press, 1974).

5. Javier Barrientos Grandon, *La cultura jurídica en la Nueva España* (Mexico: Universidad Nacional Autónoma de México, 1993); Charles R. Cutter, *The Legal Culture of Northern New Spain, 1700-1810* (Albuquerque: University of New Mexico Press, 1995).

6. Guillermo F. Margadant, *Introducción a la historia del derecho mexicano*, 10th ed. (Naucalpan: Editorial Esfinge, 2001); Jesús Antonio de la Torre Rangel, *Historia del derecho mexicano* (Aguascalientes: Universidad Autónoma de Aguascalientes, 1997).

7. Oscar Cruz Barney, *Historia del derecho en México* (Mexico: Oxford University Press, 1999). There are no histories of Mexican law in English, but the background chapter in a recent treatise on Mexico's legal system follows the same basic constitution and code pattern, with some discussion of surrounding political events. Stephen Zamora, José Ramón Cossio, Leonel Pereznieta, José Roldán-Xopa, and David Lopez, *Mexican Law* (Oxford and New York: Oxford University Press, 2004), 1-42. A detailed survey of Latin American private law from the colonial to modern eras has been released, elucidating many procedural and substantive aspects within their historical contexts, and with many Mexican examples woven into the topical discussions. M.C. Mirow, *Latin American Law. A History of Private Law and Institutions in Spanish America* (Austin: University of Texas Press, 2004).

8. María del Refugio González, "La Nueva España en la constitución mexicana de 1917. Los 'nuevos comienzos' en el constitucionalismo revolucionario," in *Homenaje al Profesor Alfonso García-Gallo*, vol. III, no. 2 (Madrid: Editorial Complutense, 1996). See also María del Refugio González, *Estudios sobre la historia del derecho civil en México* (Mexico: Universidad Nacional Autónoma de México, 1981).

9. The "law and society" approach has been embraced by both countries' scholars despite their legal systems' differing between civil, or code-based law, and common law

*nales* school, that initiated by Marc Bloch, examined the relationship between feudal law, medieval land tenure, and social structure.<sup>10</sup> This approach has been applied in studies of law, class antagonisms, and collective mentalities in revolutionary and nineteenth-century France.<sup>11</sup> Similarly, U.S. legal historian James Willard Hurst pioneered the study of law as facilitating nineteenth-century economic expansion by protecting and promoting entrepreneurship.<sup>12</sup> Hurst's integration of legal history and social science has been expanded and popularized by Lawrence M. Friedman, whose exhaustive *A History of American Law* begins by affirming that law is "relative and molded by economy and society."<sup>13</sup>

François-Xavier Guerra's Sorbonne dissertation, later published as *Le Mexique. De l'Ancien Régime à la Révolution*, began the application of the law and society perspective to Mexico by highlighting the disconnect between the liberal, individualistic 1857 Constitution and the society of collective groups it purported to govern.<sup>14</sup> While a few articles examining Mexican law in context have been appearing for the last decade and a half in the *Anuario Mexicano de Historia del Derecho* (from the UNAM's Instituto de Investigaciones Jurídicas), there is still a need for

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derived from judicial precedent, respectively. For a useful summary of the differences between the systems, see John Henry Merryman, David S. Clark, and John O. Haley, *The Civil Law Tradition: Europe, Latin America, and East Asia* (Charlottesville: Michie Company, 1994).

10. Marc Bloch, *French Rural History: An Essay on its Basic Characteristics*, trans. Janet Sondheimer (Berkeley and Los Angeles, University of California Press, 1966) (originally published 1931).

11. Robert Forster and Orest Ranum, eds., *Rural Society in France. Selections from the Annales: Economies, Sociétés, Civilisations*, trans. Elborg Forster and Patricia Ranum (Baltimore and London, Johns Hopkins University Press, 1977). The movement of many *Annalistes* away from including law in their repertoire and towards economic and demographic determinism is chronicled in François Dosse, *L'histoire en miettes: Des "Annales" à la "nouvelle histoire"*, (Paris: Éditions La Découverte, 1987).

12. James Willard Hurst, *Law and the Conditions of Freedom in the Nineteenth-Century United States* (Madison, University of Wisconsin Press, 1956).

13. Lawrence M. Friedman, *A History of American Law*, 2d ed. (New York: Simon and Schuster, 1985). For a representative sample of the law and society outlook, see Lawrence M. Friedman and Harry N. Scheiber, eds., *American Law and the Constitutional Order. Historical Perspectives*, enlarged ed. (Cambridge and London, Harvard University Press, 1988).

14. Guerra, *Le Mexique*. A Spanish translation was published as François-Xavier Guerra, *México: del Antiguo Régimen a la Revolución*, 2 vols., trans. Sergio Fernández Bravo (Mexico: Fondo de Cultura Económica, 1988). For a specific study of how the 1917 Constitution, too, was not enforced and thus operated only on a symbolic level, see Peter Lester Reich, *Mexico's Hidden Revolution: The Catholic Church in Law and Politics since 1929* (Notre Dame and London, University of Notre Dame Press, 1995).

more detailed monographic work going beyond constitutions and codes to look at particular issues and cases against their social background.<sup>15</sup>

### Legal Ideology and the Modern Mexican State

Beatriz Urías Horcasitas in *Indígena y Criminal* provides a useful overview of the conflict between the constitutional abstraction of equality and the social reality of an indigenous population faced by the Porfirian and Revolutionary elites. Based mainly on published primary sources, such as the criminological treatises of Manuel Macedo, Antonio Manero, and Carlos Roumagnac, the book is really an extended essay on the ways that Darwinian anthropology informed Mexican legal thinking. Urías Horcasitas explores how the anthropological concept that retrograde ethnic groups could be modernized via education and homogenization fit well with the legal elite's emphasis on uniform rules and social control. As she puts it, "from different perspectives, juridical and anthropological discourses emphasized the necessity of eradicating irremediable obstacles to the advancement of the country" (p. 25).

In an excellent section on the Museo Nacional's anthropology collection (predecessor of the current Museo Nacional de Antropología), Urías Horcasitas details the 1895 and 1922 catalogs' cache of criminal skulls, which formed the basis for anthropometric studies of "degenerate" indigenous races, allegedly suffering from poor nutrition and insufficient mental activity. The catalog authors explicitly related these physical deficiencies to criminal propensities (pp. 135–143). The confluence of anthropological investigation and legal conclusions was used by legislators and judges to justify limiting suffrage and imposing severe penalties on lower-class and indigenous people, at least until diet and education could integrate them into modernity.

*Indígena y Criminal* certainly moves beyond previous work on Darwinism in Mexico by illustrating the role of legal thought, in combination with anthropology, in legitimating class and racial divisions.<sup>16</sup> But

15. A useful review of Mexican legal historiography through the mid-1990s and its significance for the legal reforms of that decade is contained in Sergio López Ayllón, *Las transformaciones del sistema jurídico y los significados sociales del derecho en México. La encrucijada entre tradición y modernidad* (Mexico: Universidad Nacional Autónoma de México, 1997), 237–272. For a brief discussion of the 1994 and 1997 constitutional amendments that increased the federal judiciary's independence from the executive branch and strengthened the Supreme Court's power to interpret the Constitution, see Zamora, et al., *Mexican Law*, 40–41.

16. For a discussion of the philosophical, religious, and scientific debates surrounding the introduction of Darwin's theory into Mexico, see Roberto Moreno, "Intro-

the book is sketchy on details, providing no concrete examples of how this intellectual mix affected codes, cases, or procedural practices. The next study under consideration, though relying on similar sources and methodology, fleshes out the picture considerably.

*Criminal and Citizen in Modern Mexico*, by Robert M. Buffington, also employs contemporary criminological treatises, but draws from a wider selection and delves more deeply. The book's seven topical chapters move from the post-Independence period to the 1930s, exploring how "[t]he liberal rhetoric of toleration and human rights, the positivist rhetoric of order and progress, the revolutionary rhetoric of social justice and integration, sought in turn to disguise the exclusions of modern Mexican society behind a veil of criminality—to proscribe as criminal certain activities that were clearly linked to marginalized social groups" (p. 8). Buffington begins with a study of classic Mexican criminology, showing how reformers like Vicente Rocafuerte, José María Luis Mora, Mariano Otero, and others drew on Enlightenment ideals of sympathy for the oppressed but simultaneously stigmatized lower-class "vices" like drunkenness, gambling, laziness, and consensual unions, as leading to crime.<sup>17</sup> This ideological schizophrenia continued in the Porfiriato, as the 1871 Penal Code stated egalitarian goals and limits on potentially abusive judicial discretion, while "scientific" criminology moved further in classifying lower-class traits and behavior as necessarily criminal. The Porfirian obsession with female offenders and victims was manifested in Carlos Roumagnac's 1904 treatise, *Criminales en México*,<sup>18</sup> which inconsistently traced crimes of jealousy and drug addiction to both heredity and environment, but overwhelmed the reader with data and lurid rhetoric to produce an "illusion of coherence" that legitimized elite anxieties about proper female behavior (p. 81). Buffington treats institutional applications of criminology as well, with the Porfiriato seeing a new penitentiary built in the Federal District and a penal colony established on the isolated Islas Marías off the Pacific coast, both in response to elite fears of crime. With the coming of the Mexican Revolution, a constitutional debate raged over national, as opposed to local, prison control;

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ducción," in Roberto Moreno, ed., *La polémica del Darwinismo en México* (Mexico: Universidad Nacional Autónoma de México), 13–42.

17. Interestingly, Buffington omits Otero's role in the 1840s as formulator of the *amparo*, the innovative Mexican legal procedure for invalidating allegedly abusive government action, and a concrete means to vindicate individual rights, that was ultimately incorporated into the 1857 Constitution and copied by a number of other Latin American countries. Richard D. Baker, *Judicial Review in Mexico. A Study of the Amparo Suit* (Austin and London: University of Texas Press, 1971), xiii, 12, 18, 22–26, 41.

18. Carlos Roumagnac, *Los Criminales en México: Ensayo de psicología criminal* (Mexico: Tipografía "El Fénix," 1904).

the question finally was resolved in favor of decentralization as a bulwark against the abuse of executive power.

In Buffington's most focused chapter, he details legislative changes from the formal liberalism and predetermined sentencing in the 1871 Penal Code, through the experimentation with incarceration alternatives like parole and fines in the 1929 Code, to the restoration of judicial discretion in the Penal Code of 1931. This last alteration was a response to the legal establishment's fear that non-individualized punishment was mechanistic and did not offer judges an opportunity to sanction criminals more severely if their past, though not their present, crimes indicated greater danger to the public. He also includes a short chapter on how criminologists constructed and prison inmates resisted definitions of sexual deviance; for instance, the latter contested the characterization of all homosexual activity as "passive." Finally, the book covers much of the same ground as *Indígena y Criminal* in a discussion of anthropological influences on law. However, Buffington adds the observation that experts' categorization of biological typologies, separating "born" from "occasional" criminals, was useful to the centralizing, statist agendas of the Calles and Cárdenas regimes (p. 159).<sup>19</sup>

*Criminal and Citizen* is a wide-ranging analysis of successive elite failures to transform lower-class and indigenous subjects into citizens via criminological ideology, with an insightful excursion into code provisions regarding sentencing. But the stories of criminology, institution-building, and code evolution are never drawn together and remain separate essays. Further, there is no discussion of what these intellectual and statutory battles meant in actual cases, other than a suggestive, one-paragraph distillation of trial records showing that sentencing criteria evolved little between 1803 and 1935 (pp. 128–129). Nevertheless, Buffington has provided many examples of how legal theory promoted not only the stigmatization of criminals but modern state formation and its various coercive apparatuses.

### The Federal District as a Case Study

Two recent monographs, one by a Mexican and one by a U.S. scholar, apply law and society analysis to a key locality, Mexico City, during the Porfiriato and early Revolutionary periods, respectively. In *Crimen y Cas-*

19. For a common law analogue to genetic stereotyping as a government goal, see the U.S. Supreme Court decision of *Buck v. Bell*, 274 U.S. 200 (1927). In *Buck*, Justice Oliver Wendell Holmes upheld a state's sterilization of a "feeble-minded" woman, who was both daughter and mother of "feeble-minded" persons, because the policy would prevent society from "being swamped with incompetence," having to "execute degenerate offspring for crime," or letting people "starve for their imbecility." *Buck*, 274 U.S. at 207.

*tigo*, Elisa Speckman Guerra evaluates justice administration in the Federal District from 1872 to 1910, taking as her theme the divergence between liberal, free will-based legal norms and actual judicial practice. Her sources are varied, and include laws, treatises, police gazettes, popular literature, broadsheets, trial and appellate decisions, and statistics on sentence revocations.

As do Urías Horcasitas and Buffington, Speckman Guerra discusses the elite construction of criminality as a lower-class phenomenon and, based on the police gazettes, as a reification of gender determinism in crimes of passion. In a fascinating chapter analyzing and reproducing *bojas volantes*, or broadsheets, she shows how supernatural beings (demons, or the Virgin of Guadalupe) were pictured at crime scenes to morally characterize acts of depravity or innocence, regardless of the correct legal standard to be applied. She posits that judges confronting this cultural context were necessarily unable to follow the letter of the law and were instead influenced by these “alternative conceptions” (p. 248).

Applying this theory to decisionmaking in courts of first instance (trial) as well as appeals, Speckman Guerra finds that judges were lenient towards the police and men defending their honor in quarrels, but severe towards women (whose impulsiveness needed control), healers and witches (representing backwardness), and drunkards or the mentally ill (considered a social threat). In a quantitative analysis of appellate revocations of trial court criminal sentences, she demonstrates that only upper-class defendants and very young children (under nine years old) were likely to be shown mercy by higher tribunals (pp. 297–309). These results bear out Speckman Guerra’s thesis that the justice system was unable to escape the influence of elite prejudices despite the liberal norms of the 1857 Constitution and the Penal Code of 1871.<sup>20</sup>

*Crimen y Castigo* provides a valuable overview of the contradiction between criminal justice theory and practice in Porfirian Mexico City. The analysis is not all one-sided, for Speckman Guerra notes that the very possibility of appeal preserved liberty and equality guarantees to some extent (p. 317). Although her discussion of criminology covers ground already trodden by others, her case explication and aggregate statistics are innovative.

*City of Suspects*, by Pablo Piccato, complements *Crimen y Castigo* chronologically by addressing crime in Mexico City from 1900–1931, while emphasizing the “society” aspect of the law and society paradigm. Piccato delves more deeply into manuscript sources than do any of the above writers, examining 209 individual case files from the Tribunal Su-

20. A U.S. parallel to the problem of unconscious judicial bias due to social values is set out in Jerome Frank, *Law and the Modern Mind* (New York: Brentano’s, 1930).

prior de Justicia del Distrito Federal, which contain affidavits, arguments, and decisions regarding crimes against persons and property. He argues that definitions of crime were contested between modernizing elites seeking social control and the lower classes who defied them by continuing proscribed behavior and attempting to resolve disputes within their own circles. This perceptual conflict created, in Piccato's words, "a city marked by suspicion: criminology and repressive state strategies created suspects out of the urban poor; these in turn resisted and negotiated their status vis-à-vis their communities and authorities, whom they also mistrusted" (p. 11).

The book is comprised of three sections, covering the policing of Mexico City, the social nature of crime, and the labeling and punishment of criminals. While pre- and post-Revolutionary elites used the police to stratify the city, the poor undercut this social delineation by crossing into wealthier areas to earn livings as street vendors or beggars. The courts imposed sanctions for crimes such as homicide, domestic violence, and theft, which the lower class saw, respectively, as reputation defense, reaction to a lack of marriage legitimacy, and response to economic instability. Poor neighborhoods attempted to resolve conflicts informally and stay out of the judicial system, where expense and public loss of dignity would turn all participants into losers. Elite criminological theory did not change much after the Revolution, and justified crackdowns on *rateros* (well-armed professional criminals) and penal isolation. In reaction, mass political mobilization and public debates challenged these punishment notions. Piccato argues that there is a contemporary legacy of this mutual suspicion: criminals are still stigmatized by politicians' calls for new jails and weapons, and most people still consider the authorities and police to be corrupt.

*City of Suspects* uses unpublished primary sources more thoroughly than the other studies reviewed here and is more effective in presenting the different perceptions of criminal justice in Mexico's capital. Yet, the book's essentially sociological approach undercuts its contribution to legal history. Despite his extensive mining of case files, Piccato hardly discusses trial procedure and does not mention appeals except to note that they could be used as a delaying tactic. Legal doctrine exists here only as an occasionally stated ideal in the codes; a few offenses like *robo famélico* ("starving theft") would not be punished (p. 197). He romanticizes community dispute resolution, offering no evidence that it was fairer than the official process, and asserts that domestic violence can be explained by poverty, a position that sounds like a rationalization for perpetual gender inequality. Piccato presents a fascinating panorama of contestation by classes, but, ironically for a book based on legal sources, almost entirely neglects law per se.

### Mexico in Crime and Society Anthologies

The final two books reviewed are collections of research articles on various aspects of criminal law in Latin America; Mexico is represented well in one anthology, and less so in the other. *Reconstructing Criminality in Latin America*, edited by Carlos A. Aguirre and Robert Buffington, contains three articles on nineteenth- and twentieth-century Mexico out of a total of nine. Buffington's own introduction to the volume sets Latin American law and society studies within the theoretical debate about whether the nineteenth-century public sphere constituted liberation (following Jürgen Habermas) or repression (qua Michel Foucault). The new Latin American justice systems established after Independence continued elements of both, because, in Buffington's words, "the liberating act itself unleashes social forces that newly constituted (liberated) elites need to control to ensure their own survival" (pp. xvii-xviii).

For example, in Richard Warren's piece, "Mass Mobilization versus Social Control: Vagrancy and Political Order in Early Republican Mexico," vagrancy enforcement freed public space for elites but contracted it for the urban poor, alleviating some anxieties about public order while simultaneously circumventing popular sovereignty (pp. 41-58). These conclusions are reinforced for the later nineteenth and early twentieth centuries in Pablo Piccato's article, an earlier version of the geographic contestation chapter of his book reviewed above. Similarly, Katherine Elaine Bliss in "'Guided by an Imperious, Moral Need': Prostitutes, Motherhood, and Nationalism in Revolutionary Mexico," uses federal public health records to document prostitutes' protests against official limitations on their geographic movement and hospital segregation, arguing that the Revolution's progressive emphasis on medical reform and moral renewal meant repression for them (pp. 167-194). Other essays in *Reconstructing Criminality in Latin America* cover judicial practices in nineteenth-century Argentina, Brazil, and Peru, and in twentieth-century Argentina and Colombia, suggesting that contestation over criminological discourse, urban space, and punishment was hardly limited to Mexico.

The second of the anthologies, *Crime and Punishment in Latin America*, edited by Richard D. Salvatore, Carlos Aguirre, and Gilbert M. Joseph, contains only two Mexican studies out of thirteen articles on various countries, but benefits from an extensive historiographical introduction and a comparative afterword. In "Writing the History of Law, Crime and Punishment in Latin America," two of the editors (Aguirre and Salvatore) survey legal historical scholarship on Latin America from the colonial period to the present, moving rapidly from *derecho indiano*, through many of the more recent socioeconomic studies, to an

agenda for future research, including the legal knowledge possessed by “subalterns” (subordinated subjects) (pp. 1–32).<sup>21</sup> Of the two substantive essays on Mexico in this collection, one is an earlier version of Pablo Piccato’s ratero chapter in *City of Suspects*, and is discussed above. The other is Cristina Rivera-Garza’s “The Criminalization of the Syphilitic Body: Prostitutes, Health Crimes, and Society in Mexico City, 1867–1930,” which overlaps with Bliss’s essay in the Buffington and Aguirre anthology but dates the public health and legal systems’ attempts at social control back to the Restored Republic. Rivera-Garza also uses federal public health archives to document the successive anti-syphilis campaigns and prostitutes’ resistance via prison riots and escapes (pp. 147–180). Neither Bliss nor Rivera-Garza spends much time discussing how these issues were handled in the courts, although the latter includes an interesting paragraph on physician expert witnesses’ development of a forensic classification of normal and abnormal sexuality, which contributed to the construction of appropriate female behavior (pp. 161–162).

*Crime and Punishment in Latin America* concludes with an intriguing afterword by Douglas Hay, “Law and Society in Comparative Perspective” (pp. 415–430), suggesting some future directions for Latin American legal history, with reference to analogous research on Canadian and British Empire law. Among these are popular adoptions of elite legal forms (e.g., “wife sales” by the poor modeled on cattle transactions when divorce was too difficult), the use of older law as a critique of the new (food riots in favor of feudal consumer protections when modernizing states deregulated), and the use of free market theory to limit civil and criminal liability.<sup>22</sup> These proposals point towards a more comprehensive legal history than that of the Mexican studies in the two anthologies and other works reviewed above. Such research will necessitate employing economics and extensive case analysis, as well as the more common social history methodology.

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21. It should be noted that Jaime E. Rodríguez O. has already elucidated elite and popular legal concepts during the Independence period, in his work on the impact of the Spanish Constitution of 1812 and the Mexican Constitution of 1824. Jaime E. Rodríguez O., *The Independence of Spanish America* (Cambridge, New York, and Melbourne: Cambridge University Press, 1998), 138, 241–243; Jaime E. Rodríguez O., “The Constitution of 1824 and the Formation of the Mexican State,” in Jaime E. Rodríguez O., ed., *The Origins of Mexican National Politics* (Wilmington: Scholarly Resources, 1997), 65–84.

22. The standard monograph on how court-imposed liability limits fostered commercial and industrial development in the nineteenth-century United States is Morton J. Horwitz, *The Transformation of American Law, 1780–1860* (Cambridge: Harvard University Press, 1977).

The books and articles reviewed provide a sample of current Mexican legal history of the Porfiriato and early Revolutionary period, with an emphasis on the social construction of crime. Using published primary sources, and sometimes court records, the various authors demonstrate the contradictions between liberal legislation and the actual practices of judges and law enforcement officials. The elite perception of criminality as lower-class clashed with popular resistance and avoidance strategies, making of the law a dialectical process rather than a fixed set of norms.

Gaps in coverage remain which future scholars of Mexican legal history might profitably explore. None of the works above mentions the innovative Mexican procedure of *amparo*, incorporated into the Constitutions of 1857 and 1917 and adopted in numerous Latin American countries, by which an individual can petition to a court to invalidate, on a non-precedential basis, an allegedly arbitrary or illegal act of public authority.<sup>23</sup> As a device to mediate between the government and individuals, *amparo* suits may have constituted another legal arena in which social conflict could be resolved, or papered over.<sup>24</sup> Further, all of the studies above are either national in scope or focused on Mexico City. Would outlying regions or localities manifest similar balances of social forces and attitudes towards legal structures?<sup>25</sup> Research examining several regions, or more ambitiously, comparing Mexico with other countries, might address how inevitable or contingent these balances and attitudes were.

These lacunae notwithstanding, the reviewed authors' insights into the interrelated histories of Mexican law and social change are undeniable. A graphic rendition of the tension between legal learning and the

23. Baker, *Judicial Review in Mexico*. The proliferation of *amparo* and similar procedures is summarized in Mirow, *Latin American Law*, 180. For a study of the failed attempts to develop *amparo* into a comprehensive system of judicial review on the U.S. model, see Charles A. Hale, "The Civil Law Tradition and Constitutionalism in Twentieth-Century Mexico: The Legacy of Emilio Rabasa," in *Law and History Review* 18, no. 2 (Summer, 2000): 257-279.

24. During the 1930s, the Catholic Church filed numerous *amparo* petitions on behalf of individual priests accused of violating the anticlerical laws, thus evading the laws' application. Reich, *Mexico's Hidden Revolution*, 38, 59, 81, 85, 88, 89.

25. For a suggestive study of the inability of mid-nineteenth-century Yucatecan elites to deter cattle theft via judicial enforcement, see José Arturo Güémez Pineda, "Everyday Forms of Mayan Resistance: Cattle Rustling in Northwestern Yucatán, 1821-1847," in Jeffrey T. Brannon and Gilbert M. Joseph, *Land, Labor, and Capital in Modern Yucatan: Essays in Regional History and Political Economy* (Tuscaloosa and London, University of Alabama Press, 1991), 18-50. Also see the statistical analysis of crime control failure in Toluca during the same period, in Mario A. Téllez G. and Merizanda Ramírez A., "La criminalidad en el distrito judicial de Toluca (1827-1867). Una aproximación cuantitativa," in *Anuario Mexicano de Historia del Derecho* 10 (1998): 761-784.

legitimation of power can be found in a 1935 photograph of a Mexico City courtroom, by Agustín Victor Casasola. In the photo, a judge leans on his desk listening intently to testimony, surrounded by piles of treatises, case files, and notes. Resting in front of him, glaring directly at the parties, is a human skull.<sup>26</sup> At the close of the Revolutionary period, the Mexican legal system was still juggling the ideals of law, criminological science, and the desire to intimidate.

26. Pablo Ortiz Monasterio, ed., *Mexico. The Revolution and Beyond. Photographs by Agustín Victor Casasola 1900-1940* (New York: Aperture Foundation-Instituto Nacional de Antropología y Historia, 2003), 171.

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