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Common Crime and State Legitimacy in Ciudad Juárez, Mexico

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The gruesomeness and frequency of murders and violence in Ciudad Juarez are so commonplace these days that the mere mention of the city illicit shudders and pity from people far and wide. The once prosperous and bustling border city now holds the ignominious title of “world murder capital.” To be sure, the statistics are overwhelming. Drug related murders in the State of Chihuahua, where Ciudad Juarez is located, are estimated to be 862 through April, a rate that would exceed the upward trend of last year which ended with approximately 2,082 drug-related homicides . In 2009 Ciudad Juarez became the most murderous city in the world with an overall homicide rate of approximately 189 per 100,000 residents, and approximately 130 intentional homicides per 100,000.

But homicides and organized crime tell only part of the story of Ciudad Juárez. The question we have been asked to examine in this paper is the relationship between organized crime and common crime and whether understanding common crime in Ciudad

Júarez may help us better understand what gave rise to the shocking rate of violence in that city. In short, my answer is “yes.”

In the following pages, I will argue that the failure of state and local officials to respond effectively to common crime has led to a breakdown in the rule of law in Ciudad Juárez, and eroded the public’s confidence in the institutions of governance in their city. Furthermore, as the legitimacy of state institutions has declined organized crime has exploited the situation to its advantage rendering the state incapable of effectively enforcing even the most basic of administrative violations. While common crime did not cause organized crime and elevated levels of violence in Ciudad Juárez, its persistence and the ineffective response of the state to it has contributed to conditions that have made possible the extreme violence shaking the city today.¹

The legal context for examining common versus organized crime

Mexico is a federal republic made up of 32 strong local jurisdictions – 31 states and the Federal District of Mexico City. The Mexican constitution creates three separate criminal jurisdictions – the “fuero federal” or federal jurisdiction for federal crimes of which organized crime is one; the “fuero común” for crimes defined in state constitutions as local or common crime; and the “fuero militar” or “fuero de guerra” which refers to crimes committed under the jurisdiction of the military justice system. This latter jurisdiction is fraught with controversy and is beyond the scope of this paper.

For the purposes of this paper we will focus on common crime, which in the case of Chihuahua state (where Ciudad Juárez is located) includes such crimes as: possession of

¹ Common crime is one factor, but not the only one. Geography is another important factor that should not be overlooked. Ciudad Juárez is a major commercial entry point into the US market place – for licit and illicit products – so its location virtually ensures that the city will suffer the presence of some organized crime. But this discussion is beyond the scope of this paper.

knives/swords (*armas blancas*) and firearms; robbery/theft/burglary; assault; possession of dangerous objects; sexual crimes; attempted robbery or assault; and deprivation of freedom or attempted kidnapping.

Homicide is also a common crime unless it's committed in connection with a federal crime, such as part of organized crime, or while using a weapon that has been restricted to military use such as automatic weapons.

Historically a strong differentiation has existed between common and federal jurisdictions with federal intervention in local jurisdiction uncommon, and then only under very specific circumstances such as clear evidence of a connection to a federal crime. The mechanism for bringing common crimes into the federal jurisdiction is known as “atracción,” referring to the federal “assumption” of a crime in state jurisdiction. The potential use of the “atracción” procedure was significantly expanded in the 2008 constitutional reforms. The reforms were intended to allow federal prosecutors responsible for prosecuting organized crime greater latitude in assuming cases that may involve organized crime.

By way of example, early last decade there was significant attention to the issue of murdered and missing women in Ciudad Juarez. While many of these cases involved domestic and intra-family violence, and thus a matter of local jurisdiction, there were an important number of homicides that were believed perpetrated by individuals linked to drug trafficking and organized crime and thus potentially a matter of federal jurisdiction.² Despite growing evidence of links to organized crime in these cases, federal authorities at the time maintained there was not enough evidence to suggest that organized crime was involved, so there was no basis for federal assumption (atracción) of the cases.

² See a series of articles in the Dallas Morning News by Alfredo Corchado in March 2004.

Just a few years later, the new federal code for criminal procedures was adopted by the Mexican Congress gave the Assistant (federal) Attorney General for Special Investigation of Organized Crime greater discretion to assume cases from local jurisdiction when a link to organized crime was suspected. Under this provision, then, numerous homicide cases in Ciudad Juarez would be eligible for assumption or *atracción* by federal authorities

Crime Landscape in Ciudad Juárez:

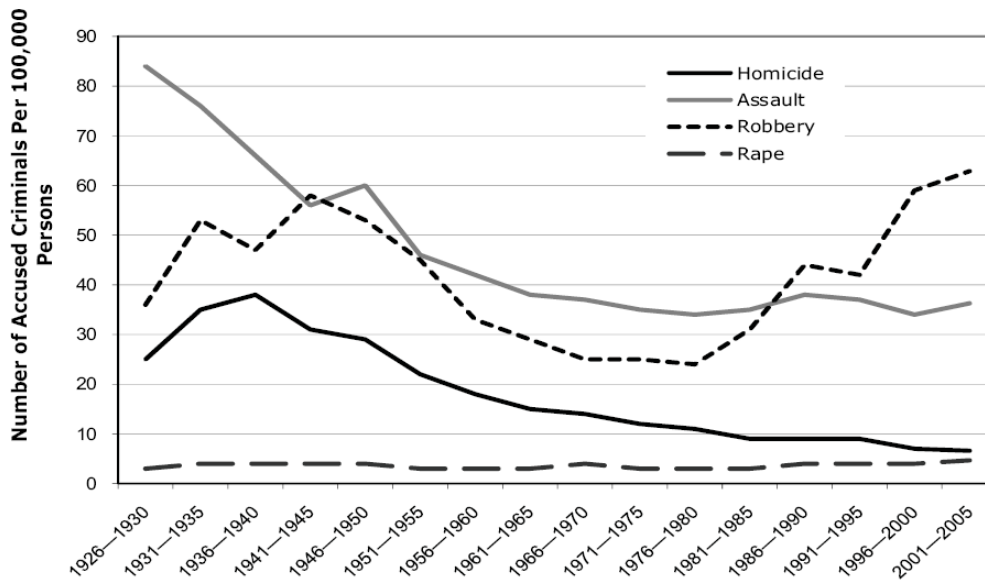
As noted earlier, the homicide rate in Ciudad Juárez linked to organized crime is off the charts. But it's important to also look at the historic trends in common crime Mexico and in Ciudad Juarez in particular.

It should be noted that analysis of Mexico's crime rates is inherently difficult because of the lack of credible and consistent crime data throughout the country. For example, victimization surveys suggest the existence of elevated rates of non-reporting of crime, the so-called "cifra negra" or hidden crime that results from lack of confidence in public authorities and a perception amongst citizens of the pointlessness of reporting crime.

Interestingly, as Donnelly and Shirk point out, with the exception of homicides, which have been declining until recently, the long-term trend for common crime seems to be upward. In the introduction to their book, they argue that common crime has generally been on the upswing in Mexico over the last two decades, as seen in the following table.³

³ Introduction to Police and Public Security in Mexico, Edited by Robert A. Donnelly and David A. Shirk, Trans-Border Institute, University of San Diego, University Reader. Page 4.

Figure 1.1 Accused Criminals per 100,000 Persons, for Common and Federal Crimes from 1926 to 2005 (homicide, assault, robbery, and rape)



Source: Data on crime suspects (*presuntos delincuentes*) compiled from INEGI by Pablo Piccato for 1926–2001 and by David Shirk and Rommel Rico for 2001–2005.

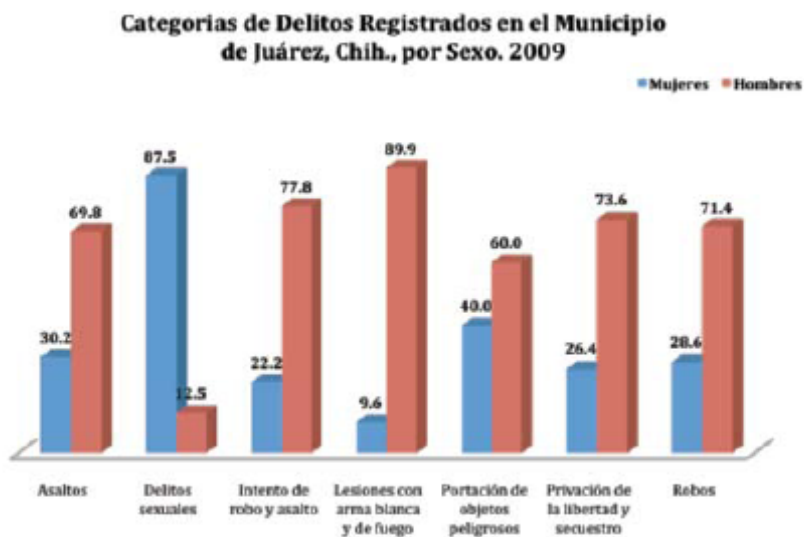
The following are graphs that provide more detail about the specific nature and level of common crime first in Ciudad Juárez as reported by the municipality, and next as a comparison of victimization reports for several states including Chihuahua.

Tabla 23.

Delitos Registrados en la Secretaría de Seguridad Pública Municipal en Municipio de Juárez, Chih. 2009													
Reporte	Ene	Feb	Mar	Abr	May	Jun	Jul	Ago	Sep	Oct	Nov	Dic	Tot
Lesiones con arma blanca y de fuego	39	50	35	38	67	80	73	106	90	86	86	78	828
Robos	59	87	60	63	56	47	50	36	42	41	48	35	624
Asaltos	45	46	38	26	44	22	30	23	17	27	18	17	353
Portación de objetos peligrosos	26	18	18	16	16	10	13	8	6	8	5	2	146
Delitos sexuales	7	6	11	6	15	11	13	11	6	7	6	11	110
Intento de robo y asalto	6	5	3	6	3	9	8	7	7	12	11	12	89
Privación de la libertad y secuestro	7	4	1	10	11	8	5	0	12	6	1	1	66

Fuente: Tabla elaborada por el Observatorio con datos de la SSPM.

Gráfica 19.



Fuente: Gráfica elaborada por el Observatorio con datos de la SSPM.

Tabla 3.2. Porcentaje de la población que fue víctima de algún delito en la República Mexicana en 2008 en las zonas metropolitanas de estudio, con referencia a resultados de encuestas anteriores²¹

CIUDAD	ENSI-3/04 %	ENSI-4/05 %	ENSI-5/08 %
Chihuahua	13	10	20 ▲
DF	19	29	19 ▼
Ciudad de México	19	24	19 ▼
Mexicali	20	18	19
ZCMex		18	18
Tijuana	22	19	17
Cancún	15	15	16
Guadalajara	20	12	15
Ciudad Juárez	15	13	15
Acapulco	16	17	14
Toluca		13	13
Oaxaca	14	13	13
Cuernavaca	16	10	13
Monterrey	8	9	12
Culiacán	21	14	12
Global Ciudades	18	19	17
Nacional	11	NA	11

Ciudades con cambio estadístico significativo del 2005 al 2008
 ▲ Subió ▼ Bajó

Source: ENSI 6, Page 32

Tabla 5.2. Tasa general de incidencia delictiva en las zonas metropolitanas de estudio, México, 2008

CIUDADES 2008	Tasa	Intervalo de confianza al 95%	
		Inferior	Superior
Distrito Federal	22,846	20,929	24,763
Cd. de México	21,201	19,816	22,586
Chihuahua	21,054	19,035	23,073
Mexicali	20,973	18,934	23,012
ZCMex	19,709	17,727	21,691
Guadalajara	18,296	16,584	20,008
Tijuana	16,787	15,228	18,346
Cd. Juárez	16,560	13,779	19,341
Toluca	16,165	14,207	18,123
Canón	15,982	14,104	17,860
Acapulco	14,384	13,042	15,726
Monterrey	14,217	12,842	15,592
Oaxaca	13,948	12,701	15,195
Culiacán	12,341	10,911	13,771
Cuernavaca	11,707	10,609	12,805
Global en ciudades	18,923	17,975	19,871

* Las estimaciones de error e intervalo de confianza son aproximaciones basadas en el supuesto de un muestreo con reposición y que el denominador fuese constante.

ENSI 6, pg 43

From these graphs we can see that common crime is quite high in the state of Chihuahua and Ciudad Juárez in particular. With a national average victimization rate of 11.5 percent, Chihuahua had a rate 25 percent higher at 14 percent.⁴ Ciudad Juarez is also above the national average for home burglaries and auto theft (total and partial).

Why is this important?

While it is clear that Ciudad Juárez has become a focal point for organized crime activity, the reasons for this are more complex. One key reason is because Juárez is a primary commercial access point to the vast U.S. consumer market so it is logical that traffickers of illegal goods and services would concentrate their efforts in the Juárez corridor.

A second element is the relative weakness and ineffectiveness of Chihuahua state institutions to confront common crime. High levels of impunity for common crime, and elevated levels of corruption that predate the current onslaught of organized crime

⁴ Ibid, page 16.

combined to erode the public's confidence in the institutions of Ciudad Juarez and the State of Chihuahua. The erosion of state legitimacy has then been successfully exploited by organized crime.⁵

This argument would be consistent with those put forward by Vanda Felbab Brown. She has argued, "When street crime is rampant, the public becomes angry/alienated from the state. People then tend to demand either Gulliani-type *mano-dura* policies, and if the state fails to deliver them or they are not effective, citizens become susceptible to mobilization by non-state entities. These can be belligerents - like the Taliban -- or drug gangs, like in Brazil's *favelas* or in Mexico... So tackling street crime is frequently critical for police and the state to win the confidence of the public and to reduce the political capital of the organized crime groups."⁶

Likewise, Donnelly and Shirk argue that, "The growth of 'common' crime over the last two decades has been accompanied by increased activity by organized crime groups. Amid the apparent inability of public officials to address even minor forms of crime, the impunity of organized crime syndicates in Mexico has provoked a sever degree of public frustration and concern."⁷

In testimony before Congress, Felbab-Brown also maintained that, "As long as there is weaker law enforcement and state-presence in one area than in others, the drug trade will relocate there... (State) [e]fforts need to focus on ensuring that peoples and communities will obey laws – by increasing the likelihood that illegal behavior and

⁵ A third factor in the rise of organized crime is advanced by Luis Astorga. See... Astorga argues that the break down of seventy years of one-party political control by Mexico's PRI party also dissolved the negotiated relationship between state and organized crime that had both allowed and limited the scope of organized crime. While Astorga makes a compelling case, the argument is less useful in Chihuahua, one of the few places where PRI control was successfully challenged as far back as the 1980s. In any case, this argument is beyond the scope of this paper which is focused on the question of common crime.

⁶ Vanda Felbab-Brown is a Fellow at the Brookings Institution. Quote is from an interview with the author.

⁷ Op.cit., Donnelly and Shirk, page 7

corruption will be punished, but also by creating the social, economic, and political environment in which the laws are consistent with the needs of the people so that the laws can be seen as legitimate and hence be internalized.”⁸

While there are no perfect measures of state legitimacy in this case, there are three possible ways to approach the issue. First, is the already noted level of un-reported crime, or “cifra negra” in Mexico generally and Ciudad Juárez in particular. According to the latest victimization survey conducted by ICESI, 78 percent of self described victims of crime in Mexico did not report the incident to the authorities. In Ciudad Juárez the rate of unreported crime is even higher - estimated at 86 percent. The survey also covers only common crime, which represents between 95 and 97 of total crime in Mexico. Not all of this is due to lack of legitimacy of the state, but a large percentage (49 percentage) see reporting crime as a waste of time, or 16 percent don’t do so because of distrust in the authorities.⁹ Following is the breakdown of reasons given by victims for not reporting crimes.

⁸ “Design and Resourcing of Supply-Side Counternarcotics Policies,” Vanda Felbab-Brown, Testimony before the House Domestic Policy Subcommittee of the Oversight and Government Reform Committee, April 14, 2010.

⁹ “Cuadernos del ICESI 8, Victimization, Incidencia y Cifra Negra en México, Analisis de la INSI 6.” Instituto Ciudadano de Estudios Sobre la Seguridad. Survey was conducted in March 2009 and reflects victimization during 2008.

Figura 25.1. Motivos para no denunciar los delitos, a nivel nacional , México, 2008

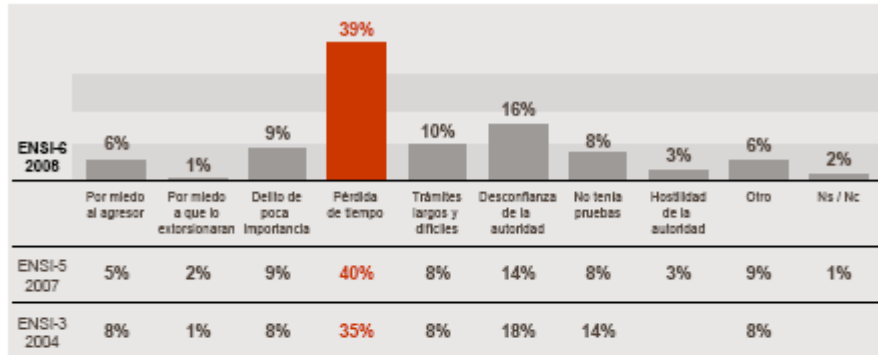
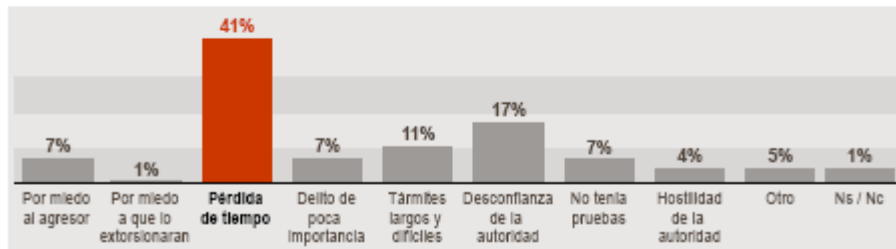


Figura 25.2. Motivos para no denunciar los delitos, en zonas metropolitanas de estudio, México, 2008



ENSI, 6. pg. 78

Ana Laura Magaloni Kerpel makes another very interesting comparison on reported crimes. She compares reported crimes in Mexico and Chile and notes that even though crime rates are much higher in Mexico than Chile, the number of reported crime is five times greater in Chile than Mexico. (See chart below from a public presentation). Magaloni attributes this discrepancy to the difference in public confidence in state institutions.

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A second measure of state legitimacy is the relative ineffectiveness of the justice system to actually prosecute, sentence and incarcerate criminals. The so-called impunity factor is quite high in Mexico meaning that a large number of perpetrators of crime are never actually convicted or sentenced for committing a crime. Guillermo Zepeda Lecuona developed the following, now famous breakdown of how crime is handled in the

Mexican justice system. The bottom line is that only 1.1 percent of cases brought to trial actually result in a sentence.

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Not surprisingly, then, polling in Mexico has also tracked the public's lack of confidence in state institutions. In a recently released paper by David Shirk he summarizes some of the polling data on public attitudes towards law enforcement institutions. Shirk argues, "In the face of these (violent) challenges, Mexico's criminal justice system has exhibited significant dysfunctions, contributing to extraordinarily high levels of criminal impunity. This, in turn, has led to low public confidence in the judicial sector."¹⁰ To support his argument Shirk cites two polls including a 2007 Gallop poll in which 37 percent of respondents responded favorably when asked if they had confidence in Mexico justice system while 58 percent responded negatively. Shirk also cites a 2010 Consulta Mitofsky poll in which one in ten Mexicans express confidence in the police. He goes on to say, "Indeed, according to a recent survey conducted by the *Justice in Mexico Project*, police themselves perceive a high degree of corruption on the force. Out of more than 5,400 municipal police officers surveyed, roughly a third described severe problems of corruption; 40% showed little trust in their superiors; and 68% said that corruption is concentrated at high levels within their department."¹¹

The lack of public confidence in local and state institutions of Chihuahua and Ciudad Juárez are reflected in the efforts of a Juárez-based citizens' organization known

¹⁰ "Justice Reform in Mexico: Change and Challenges in the Judicial Sector," David A. Shirk, Published as working paper for the U.S.-Mexico Security Collaboration project coordinated by the Mexico Institute at the Woodrow Wilson International Center for Scholars and the Trans-Border Institute at the University of San Diego, May 2010, page 4.

¹¹ Ibid, page 4

as the “Plan Estrategico de Juarez.”¹² This organization made up primarily of professionals and business people, has undertaken an elaborate analysis of the problems of their city and concluded amongst other things that there has been a collapse in the rule of law. The group’s strategic plan, then, is to begin rebuilding the legitimacy of the state from the bottom up by promoting “governance” which they define as the ability of the state and society to “plan and manage the common interests of (Ciudad Juárez).”¹³

Most of the organizations writings indicate that they see a link between governance and state legitimacy, and security. For example, their “Manifiesto” on governance makes the following points:¹⁴

The evident lack of security and peace within Juárez society is one of the clearest signs of the failure of our system of governance...

Improving governance commits all of us to efforts to strengthen the individual and social legitimacy of institutions.

To begin with, we want to give special attention to respecting all institutions and law. In Juarez skepticism about public and private institutions has crept into our society...Its essential that laws be obeyed, breaking the ring of impunity that surrounds the city and that creates a strange feeling that those who disparage legality are the ones who benefit most from the system.

¹² See <http://www.planjuarez.org/>

¹³ “Manifiesto: Por la Gobernabilidad de Juárez” El Plan Estrategico de Juárez: la importancia de la Gobernabilidad.” March 2007.

¹⁴ Ibid. Excerpts are the author’s translation. For the original, please consult http://www.planjuarez.org/files/pdf_214.pdf

The existence of corruption is the primary evidence that our system of governance must improve, that abuses exist and that power is not used to benefit the citizens but to benefit private interests.

Interestingly, despite these profound and at times lofty insights into the causes of the violence that is tearing apart their city, the organization is pursuing a very pragmatic strategy in their efforts to rebuild public confidence in the state. They are not attempting to stop the cartels or the violence on their own; rather, they are attempting to re-stitch the fabric of society by demanding that citizens obey the law and that authorities enforce the law, even the most basic laws.

Two areas where they have focused their efforts have to do with automobile registration and excessive window tinting. It is estimated that as many as 35,000 (some say 50,000) automobiles in Ciudad Juarez circulate without any license plates. Furthermore, despite laws to the contrary, many automobiles operate with heavily tinted windows making it impossible for anyone, including law enforcement, to identify driver or passengers.

Members of the Plan Estrategico maintain that organized crime exploits these deficiencies to their benefit, but that failure of the authorities to enforce even these minimal administrative requirements erodes public confidence in the authorities. So they have embarked on a public and private campaign to urge authorities to enforce the laws on license plates and window tinting, and have enlisted private businesses and organizations who have agreed to prohibit people from parking at their establishments if they do not meet these minimal requirements. This effort has had some public resonance

and the federal government has even agreed to prohibit the circulation of unlawful vehicles in Ciudad Juárez by June 20, 2010

Conclusion:

It is too soon to tell whether the “Plan Estrategico” approach to rebuilding governance from the bottom up will have an impact on crime and violence in Ciudad Juárez. What is interesting, however, is that the citizens who daily confront the horrors of living in a city apparently out of control have resisted get tough, quick fix solutions. It is fair to say that most Juarenses have grown weary and leery of big government initiatives designed to fix it all with another government program.

Almost everyone agrees, including those from Plan, that more government investment is needed in public infrastructure, quality schools, and economic opportunity for all, especially the youth. But even more important is the urgency of getting governments to do what they are meant to do, enforce the law – all laws. The failure of successive governments in Mexico, Chihuahua, and Ciudad Juárez to fulfill this obligation when it comes to common crime has eroded public confidence in its authorities creating a space that organized crime has successfully exploited.