# Mexico's Judicial Reforms of 2008:

## Building a Legal Causeway, But from the Past or to the Future?

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*Abstract*

*Mexico instituted judicial reforms in 2008. These reforms were seismic because they changed the judicial system from an inquisitorial system to an accusatorial one. The reforms were enacted, in part, to handle Mexico's struggle with the drug cartels. Given the drug flow northward, the United States has an acute interest in whether Mexico can defeat the cartels with these reforms. But this challenge ultimately rests with Mexico. The reforms have generated three narratives within Mexico. First, the liberals: they support the reforms because the Mexican citizenry did not have confidence in the inquisitorial-based judicial system. Second, the establishment: they oppose the reforms because it is a split from the past and the old system was not broken. And third, the realists: they believe the reforms, although positive, do not go far enough to combat the violence by the cartels. The paper is in the form of a play. Three law professors, over coffee, each have a different take on how the judicial reforms will affect their nation*

*In a café in Mexico City, three law professors meet for a late afternoon coffee.*[1] *The conversation gravitates toward the increasing violence and seeming anarchy that is gripping Mexico, especially in the wake of the casino bombing in Monterrey. Each professor has a different take on how the nation's 2008 judicial reforms will affect the situation. Lázaro believes the judicial reforms are not necessary; José thinks the reforms of 2008 are necessary; and Francisco is troubled by Mexico's decision to treat this violence as merely a law enforcement issue and not an insurgency.*

**Scene I: The Violence**

**Francisco**[2]**:** I'm sorry I'm late, guys. My wife and I just saw our son's production of Robert Bolt's play, *A Man For All Seasons*. I love that play. It's nominally about the sanctity of the law but the play really deals with how the past molds our future.

**Lázaro**[3]**:** Exactly. What we do today is tempered by the past we know, which impacts the future.

**José**[4]**:** My husband and I have to go see it. It is one of my top five plays. In fact, I show the movie version to my comparative law class. Much to the chagrin of my students, I start the class with: "Why can't we be more like the Brits?"

**Lázaro:** Does that wish cover just bad food or would you like a side order of colonization?

**José:** Touché, my friend! But the protagonist, Sir Thomas More, understands the weight of the law and how it reflects upon its citizens. The law, and a nation's adherence to the law, is an insight into the nation's soul. The Brits have Sir Thomas More, and who do we have, Lázaro? José Antonio Zuniga?

**Francisco:** Isn't that the poor guy in the documentary, *Presunto Culpable*?

**José:** Yes; Zuniga was falsely accused of murder, and the system didn't care. It took a documentary to earn the poor bastard some justice; it certainly wouldn't have occurred in our court system. And the richest irony is that some Federal judge from Guadalajara just banned it.

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[1] The three professors are named after historical figures in Mexico's history. The naming of these three professors is fictitious and was done for readability and thematic ease; it is not intended to forecast what position these historical patriots would have on the 2008 judicial reforms.

[2] Francisco is named after Francisco Madero who was a revolutionary in the Mexican Revolution and became President of Mexico in 1911, only to be executed in 1913. In 1910, he wrote the famous *Plan of San Luis Potosi* (the name of the city where he was being imprisoned), which declared the dictatorship of Porfirio Díaz illegal. This decree ushered in the 17-year revolution.

[3] Lázaro is named after Lázaro Cárdenas who is viewed as one of the founders of the Institutional Revolutionary Party (PRI) of Mexico. Cárdenas was the President of Mexico from 1934 to 1940 and came from a traditionally conservative part of society but was an incredible nationalist, who, for example, expropriated Mexico's petroleum companies. Mexico's oil industry is still under state management.

[4] José is named after José Luis Maria Mora, a liberal, who in the 1830s and 40s proved unsuccessful but fundamental to challenging the power of the conservative ideology of the Roman Catholic Church in Mexico.

**Lázaro:** Well, I'm not sure that was the wisest move on the part of the judiciary but let's face it, *Presunto Culpable* is a sensationalist piece of yellow journalism. You can take any case in any country and there will be cracks in the process. You need to look no further than our protectors to the north.

**José:** But this Zuniga fellow was innocent, Lázaro. That is not a crack, it is an avalanche. And the law is sometimes less about reality than it is about perception. The public is not looking to the state for protection, but it *should*.

**Francisco:** You would hope that the first place people would look to is the state, especially as our homeland is being gripped by appalling violence. The attack on the Casino Royale in Monterrey left over 50 innocent people dead and made international headlines. In the past three years alone, nearly 35,000 people have died in violence associated with organized crime and the war on drugs. And the newest statistics show the percentage of deaths in 2010 related to drug trafficking has shot up by 70 percent.[5] You cannot open the newspaper without reading about these massacres. We are in turbulent times; Juarez makes Beirut look safe. Our young sing *narco corridos*[6] like the drug cartels are something to aspire to.

**Lázaro:** But our nation's inability to stem this violence is in large measure the fault of these so-called judicial reforms. The reforms are simply not necessary and worse, they disconnect the law from our past. The laws created under the 1917 Constitution were not perfect but they were *ours*. The blood of many Mexicans was spilled so that we could have a secular system of government that reflects our national identity. The Constitution is Mexican and must develop and change with the Mexican people. The path to the future does not just appear; it is a continuation from the past. You cannot change a nation's judicial system without tethering it to the laws of the past that the society created.

**Francisco:** But do you think citizens like Zuniga want to be part of that past, Lázaro?

**Lázaro:** President Calderón's reforms are intended to make our judicial system more transparent and fairer but our civil society is falling apart here. We need to rethink this course of action and now. The reforms have made us lose our way and we can't turn around and see where we were because the reforms have eviscerated more than a hundred years of precedent. So what do we do? We ask for help from the true villains in this tragedy—the rich gringos to the north in Drugistan. They never saw a drug they didn't want! If it weren't so tragic, I would almost feel Greek!

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[5] Clare Ribando Seelke, "Mexico-U.S. Relations: Issues for Congress," *Congressional Research Service* (February 15, 2011), 4.
[6] Folk songs written about the exploits of the central figures of drug trafficking.

**José:** Now wait a minute. Yes, the violence is increasing but these drugs are as much a cancer for them as they are for us. The U.S. is the source of demand, but that is only a sliver of this story.

**Lázaro:** Riddle me this, José: without the demand, would the cartels even exist?

**José:** Maybe not. But blaming the gringos for all our ills is not going to solve the real issue: who are we as a nation?

**Lázaro**: We are a nation in a shadow. The United States seems to think this is *our* problem, not theirs. They give us some paltry sum, what, one and half billion dollars, and demand we cure this cancer.[7] We are not equals in this relationship and we know it. They get the benefit, we pay the cost; they use the drugs, we get the violence; they use our cheap labor, we get called illegal aliens or wetbacks or worse.

**Francisco**: At the risk of defending our fine neighbors to the north. . . .

**José:** Oh my, could you please speak into the microphone!

**Francisco**: . . . they are also affected by these cartel wars. Granted, they don't have 35,000 graves to show for it, but having a neighbor who is unhinged because of violence cannot be in their national interest. Look at their relationship with Canada—you would almost think they are one country. But Canada does not give them organized crime syndicates or illegal immigrants. I got it, they might be talking out of both sides of their mouth when it comes to drugs and illegal immigrants but our chaos makes them nervous. But their menu of choices is pretty limited—they must help us so that we can help ourselves. Promoting bilateral security initiatives, cooperating on counter-drug measures, and helping us reform the police and judiciary are all meant to build confidence, but they are all long-term policies. They are not quick fixes or panaceas. And then add to the mix our acrimonious relations over the past, oh, 150 years. Really, beyond this, what tools do they have?

**Lázaro:** They can do *something* about immigration and drugs, can't they?

**Francisco**: Sure they can, but those fixes are for domestic consumption within the U.S. Doing something about drugs, for example, is not about helping Mexico; it is about helping the U.S.

**Lázaro:** Let's face it, the U.S. ignores us and we are obsessed with them. The violence in Mexico is never noted in the U.S. press unless it is on the border while their every cold

[7] Clare Ribando Seelke and Kristin M. Finklea, "U.S.-Mexican Security Cooperation: the Merida Initiative and Beyond," *Congressional Research Service* (January 31, 2011), 8.

becomes our flu. It's a one way mirror; we know who George Washington is but they have never even heard of Benito Juárez.

**Francisco:** There might be a love/hate relationship here but on some level we must cooperate because of the curse of geography.

**José:** I think the relationship is slowly becoming more cooperative but the reasons are both good and bad. On the positive side, the amount of trade between the two of us continues to balloon because of NAFTA. And there is now unprecedented collaboration among our legal, intelligence, and law enforcement agencies, but that is driven, unfortunately, by the drug wars.

**Lázaro**: Case in point, José: if you happen to be collaborating with the gringos in Arizona and have a Mexican accent, you just might get the chance to experience the U.S. law enforcement agencies in action, up close and personal!

**José:** Very funny. We can point fingers all day long, Lázaro, but how we battle these cartels is about *us*. Are we going to set a course for the future or are we forever mired in the past? Or worse yet, will we forever blame someone else for our own problems? The reforms are not a creation of fancy. Forget our neighbors, the people of Mexico have no confidence that we can put our own house in order. The judicial reforms of 2008 are at least an attempt to build confidence in the fabric of law. Judicial institutions must be created so that the people believe in them.

**Francisco:** Maybe things have not improved much since 2008, but let's face it, prior to the reforms, the judicial system was broken. It was corrupt and wasn't responsive to the needs of the nation. Its ineffectiveness allowed drug cartels to control great swaths of the country. Mexico had become two countries: one controlled by the state and the other controlled by the cartels.[8] A state cannot survive when its government is unwilling or unable to intrude into entire geographical regions or economic sectors of the country. The reforms signaled to these criminal syndicates that the Government of Mexico was going to retake these regions and sectors. Of course there would be violence. The drug cartels, once they control something, will not give up without a fight.

**José:** And that is my point: when violence erupts, you must have a judicial system that protects its people. The people must have faith that the judicial system will be fair, transparent, and timely. It is the essence of governance and why the reforms needed to become law. It is not surprising that up until the judicial reforms were passed, Mexicans had little if any faith in the judicial system.[9] And the Zunigas of the world only reinforce that lack of faith. It is common to hear the joke that everyone in Mexico has one foot in

[8] Steven R. David, *Catastrophic Consequences: Civil Wars and American Interests* (Baltimore, MD: Johns Hopkins Press, 2008), 98.
[9] David A. Shirk, "Justice Reform in Mexico: Change and Challenges in the Judicial Sector," in a report by The Woodrow Wilson International Center for Scholars: Mexico Institute (April 2010), 5.

jail. This system had to be reformed so that people could look to it as a bulwark against impunity and a source of protection by taking criminals off the street.

**Francisco:** I agree with you, José. I have serious doubts, however, about how we treat the cartels. The law does not go far enough.

**José:** The reforms are quite extensive and the two that go directly to this governance concept, which I think centers on legitimacy of the institution, are the introduction of new oral and adversarial procedures, on the one hand, and a focus on the rights of the accused, on the other. These changes are seismic.

**Francisco:** But, José, there is a third issue addressed by these reforms: how do we treat members of the cartels? The reforms attempt to address the administration of justice, but fail to grapple with the public demand for security. I think security, not justice, must be the starting point. Cartel members are not run-of-the-mill criminals; they challenge our nation's security. This lack of security permeates our nation and erodes Mexico's viability as a state. Violence is killing our people and yes, our nation, too. The sole purpose of a state is to protect its citizenry from enemies, and they come in both flavors: foreign and domestic. Exclusivity of violence is within the purview of the state and the state alone.

**José:** You have been reading too much Kafka, Francisco! Waiter, can I get my philosopher-in-chief another café con cinamón with an extra shot of espresso.

**Scene II: The Reforms**

**Lázaro:** When it comes to the cartels, I agree with you, Francisco, but for slightly different reasons. This medicine called 'reform' is not addressing the real issue of what to do with these cartels. Security is important but we are abandoning the system we grew up with, the one that stems from our past. The demand to change our system from a civil law inquisitorial system to a common law accusatorial system is fundamentally flawed; it assumes that by changing the system, we somehow enhance justice. A tenet of the inquisitorial system is that the public prosecutor is the center of the criminal justice system. He is the one the government has entrusted to preserve justice in the system. It has its flaws but no system is fault-proof. The critics of our traditional and uniquely Mexican system point to the abuses of the public prosecutor. Well, then put safeguards in the system. To throw the baby out with the bathwater seems ridiculous.

**José:** But Lázaro, the baby was dead!

**Lázaro:** No, it wasn't. The French, the Germans, the Spaniards seem to be doing quite well with their inquisitorial system. It is one thing to tweak a system – to make it better. It is quite another to change it whole cloth. And while we are building this accusatorial

aircraft in mid-flight, who is going to teach us how to fly it? And please don't tell me our great savior to the north. You don't wake up and start speaking French. You must learn the language and that takes time and patience, as well as practitioners and scholars who understand the language. These judicial changes could end up being our Achilles heel.[10]

**José:** You don't accept that our system was broken! In Latin America, the judiciary has been historically weak, if it existed at all. Mexico is no exception; the Mexican judicial system is the great afterthought. This is Latin America where a strong executive is a constant, at the implicit cost of other competitors in governance—whether they are legislative or judicial.

**Lázaro:** A strong executive is not just a Latin American, or for that matter, Mexican curse.

**José:** I'll grant you that, but given our history of strong executives, they have come at the cost of the judiciary. When the people look to the courts for justice, they are looking to an institution that has been historically weak. We had criminal impunity, on one hand, and no access to justice for those accused of a crime, on the other. It is the worst of both worlds. The guilty never get convicted and those accused never get justice. If I were to make a recipe for corruption, all the ingredients are there.

**Lázaro:** Okay Chef José, I am not defending the system's perfection. I just think the changes present greater challenges to justice than fixing what we had. Make it better, don't destroy it. Prior to these changes, Article 20 of our Constitution provided numerous rights to an accused, such as prohibition against intimidation and unnecessary detention, and an opportunity to answer allegations.[11]

**José:** The problem with these aspirations is that they were not wedded to reality. What the Constitution says and what actually was done are two different things. Such practices were effectively nonexistent.[12] The Constitution is a piece of paper. The reforms are intended to grow institutions that enforce protections.

**Francisco:** But Lázaro's point is that such a structural change will result in an implosion of the system. The reforms of the judiciary in 1995 were painful but they were relatively limited.[13] All they did was give the judiciary additional authority over which appeals to hear from the lower courts. I would submit we still have turbulence to this day on how these limited changes should be implemented. The changes of 2008 were monumental.

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[10] Jose Ramon Cossio Diaz, "The Justice System, 2000-2007," in Andrew Selee and Jacqueline Peschard, eds., *Mexico's Democratic Challenges: Politics, Government, and Society* (Stanford, CA: Stanford University Press, 2010), 204-08.
[11] Gillian Reed Horton, "Cartels in the Courtroom: Criminal Justice Reform and its Role in the Mexican Drug War" (pending publication and on file with author), 15.
[12] *Ibid*., 19.
[13] These reforms were introduced by President Zedillo to promote higher professional standards and greater powers of judicial review. The law is referred to as the Ley Federal de Delincuencia Organizada. *See* Shirk, 11.

Face it, the reforms of 1995 are child's play in comparison to the changes just implemented.

**José:** This is why the reforms are phased in over eight years. This gives us until 2016 to adjust and learn. It gives us the time and space. But Lázaro's argument is about implementation. I agree it will be hard. But the old system was giving us cases like Zuniga's. And why? Under the old system, the public prosecutor was all-powerful. The prosecutor unilaterally used to bring all the charges, collect virtually all the evidence against the accused, and present all the evidence to the court. Most of the evidence under the old system was in the form of affidavits. This meant the accused was rarely if ever able to probe the truthfulness of the underlying statement. You can't question a piece of paper. Plus, what if the statement is coerced?

**Lázaro:** The public prosecutor is an officer of the court. There is no judicial system in the world where the prosecutor is not given the presumption of normalcy; that is, what he or she is doing is for the benefit of society. You sound like you want to make a system fool-proof. Perfection is the enemy of the good enough, José.

**José:** Of course you have to have normalcy of the process, but that is not the issue. A presumption is one thing, complete discretion is another. When you give so much power to one individual and that power cannot be examined, probed, or even questioned, then there is an issue of transparency. No transparency means the room for abuse is obscene. The system created a dynamic where you were guilty until proven innocent.[14] Even the Senate acknowledged as much when they passed these reforms.

**Francisco:** But aren't we trading the public prosecutor for the judge? Under the reforms, the judge's role is now central to the process. He can require live testimony and either allow evidence into court or prevent it from coming in. The judge now functions as the moderator of the system. His role is intended to be the impartial mediator between the two sides, the prosecutor and the accused.[15] Are there any guards against a judge hijacking the process?

**José:** The intent is that the second prong of the reforms, the rights of the accused, will be the guard against judicial abuse. The ability to confront witnesses in person is only one part of transparency. The other governor on the state's power, whether it stems from the prosecutor or the judge, is the ability of the accused to have a defense counsel in criminal cases. This counsel can present evidence and make arguments on behalf of his client, the accused. The fundamental difference between an accusatorial and an inquisitorial system is this notion of tension. In the inquisitorial system, the truth is gleaned through a process; in an accusatorial system, the truth is discovered through two sides clashing with each other.

[14] Horton, 15.
[15] *Ibid.*, 16.

**Francisco:** José, I am not trying to be the devil's advocate, but if we give these cartel members all these rights, won't they simply use them to their advantage? I can buy the argument that the old system was rife with abuse, but aren't these rights simply reinforcing impunity?

**Lázaro:** It is a gift to the cartels. We become like the U.S. The rich can afford the best lawyers and then they use these so-called rights to their advantage. They will use these rights as a sword and it is Mexico's throat that will be cut.

**José:** I concede this point with ease, gentlemen. The rights we afford our citizens can become a sword. But that is not an evil.

**Lázaro:** Is there just coffee in that cup?

**José:** The evil is when the state does not play by the rules. When they do not, shouldn't its citizenry possess such a sword? You miss an integral assumption about the process: rights work within a system of law where everyone should be equal. If the government violates the rights of a citizen, then the judge should be able to consider that violation. It matters not whether the person is a member of a cartel. He starts with being a citizen. Impunity is fundamentally different than exercising one's rights to get to a favorable result. Impunity is the *lack* of a process; rights are garnered *through* a process. Any citizen can now sit in a courtroom and see the process. The reforms bring transparency to its people; impunity eschews this transparency. Without transparency, the government's legitimacy is questionable at best. As we fight the cartels, the people must believe in their system of justice.

**Francisco:** José, you are right; society must know that they will be treated fairly. Corruption must be thwarted and a system of justice that is open and can be criticized by its citizenry is a baseline for good governance. But my fundamental reservation is that you are assuming we are in normal times. The situation has grown so dire that these cartel members must be treated differently. The reforms attempt to address this by giving the public prosecutor enhanced powers to investigate members of cartels. These powers include the ability to detain the alleged member, to wiretap his communications, and seize his assets. But they don't grapple with the fundamental question: should we give these characters the same rights as we give Zuniga?

**Lázaro:** Unlike the other portions of the reform, I tend to agree with this portion. The changes to the law you mentioned, Francisco, are procedural but there are also substantive changes to the law. The one that I think will make for better justice is the ability to use evidence at the trial that is not live but discovered during the investigatory portion of the case. The witness does not have to show up at the cartel member's trial.

**José:** Then, how can the accused challenge the evidence against him? The entire purpose of the reforms is transparency—to give the accused his day in court. To ask the witnesses what they saw and to probe their honesty. Now, because the accused is alleged to have committed a crime connected with the cartels, this foundation is ignored. We are back where we started: you give the prosecutor a blank check to abuse one of our citizen's human rights.

**Lázaro:** The cartels don't play by the same rules. If a material witness is forced to take the stand, he will be murdered by the cartels. The reality is that the state must balance the rights of the accused with the protection of society. These gangs are relentless. And if you force witnesses to testify, who will show up? No one. People are not willing to die for nothing, L. You create a system that makes for good press but is simply unworkable. It is like reading Karl Marx—good theory but a little fuzzy on the details for execution.

**José:** But at least Marx had the decency to put his theory before those who would read it. The problem with your logic is I never get to read the rules. The state and the state alone decides if the accused is a member of a cartel. There is nothing in the law that allows the accused to rebut that presumption. This subjective standard, held by the state, is an invitation for abuse. Can't get a piece of evidence in, call the accused a cartel member! The fox is guarding the hen house. We create a parallel system of injustice; this does not hold water with me and it won't hold water with our citizens. Mexico understands and lives the evil of the cartels, but by allowing the state to deprive one of its citizens of basic rights, it becomes unworthy of its citizen's trust. Without trust, the darkest evil is the state.

**Lázaro:** This is Mexico, José, not some fly-by-night republic. We—me and you—are the state and with all its flaws, we are not in the dire straits you seem to think we are in. We have lived with much worse violence and Mexico still proudly stands as a vibrant and free nation. The reforms cry wolf but I have my doubts.

**Francisco:** Well, not to be rude, but I'm going to cry if we don't take a little boy's break. That café was quick, but quite good José!

## Scene III: The Cartels

**Francisco:** I understand what both of you are saying but what we are ignoring is that our nation is in troubled waters. The local and state governments are simply not capable of dealing with these cartels. We can reform the judiciary all we want, but the entity that could stop the violence, the police, even at the federal level, are inept.[16] Face it, the law enforcement arm that is battling these cartels is now the army. We have misjudged the powers of these cartels and the President assumed the typical response could handle it.

[16] Seelke and Finklea, 14.

It cannot. Calling out the army should be a sign to the nation that we are in a different kind of engagement. This is a war and we should treat it as one.[17]

**Lázaro:** But Francisco, Calderón is not getting on the television and saying we are at war with our own citizens, even if they are thugs and criminals. It would be anathema to our culture to do something like that. I don't care for these reforms but, at its heart, Mexico is a democracy and quite fond of being one.[18]

**José:** Lázaro, if you are not careful, I might have to revoke your PRI membership card.

**Lázaro:** You mean this is not non-attribution? We can all agree that a fundamental feature of democracy is that the people expect something from their government. If we treat this like an insurgency, Francisco, we ignore our past and that past is Mexico. My refrain might be repetitive, but to lose our history is to lose ourselves. The cartels are dangerous and they erode the democratic concepts underlying our nation. But giving the cartels a status that they are *per se* enemies of the state is a road that we should not travel because there are no turn-arounds. We need to make sure these criminals are brought to justice and the reforms hamper this effort.

**Francisco:** But that is my point, Lázaro, they are not criminals, they are insurgents. I applaud your lofty ideas about justice but they don't save our homeland. Even if all the reforms are successful, and I hope they are, will they be enough? The focus of my mind's eye is that this cancer needs to be eradicated. The only way to do that is to eliminate these cartels. The normal process will simply not work. It is like fighting a war with both arms tied behind your back. The reasons are irrelevant; the fact remains, you lose.

**José:** I agree we are in trouble but I guess my response is that your medicine is worse than the disease. If we did what you propose, Francisco, what will check the state's power? You fear anarchy and I fear authoritarianism. I will choose anarchy because from anarchy can come governance and reform. But authoritarianism kills democracy, and I am not willing to abandon democracy.

**Francisco:** That is a false choice. It is not between authoritarianism and anarchy. It is about losing the State of Mexico. These cartels are an existential threat to our home. Criminals do not threaten the fabric of the country. Cartels do. If we fight a war with another country, we don't treat the enemy soldiers as equals. The state realizes that its security is at peril so it inflicts violence upon those soldiers; the state kills them. The cartels are soldiers; not of another country but of an organization that is destroying

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[17] *See, generally*, Bob Killebrew and Jennifer Bernal, "Crime Wars: Gangs, Cartels, and U.S. National Security," in a report for The Center for a New American Security (September 2010), 50-54.

[18] Alejando Moreno, "Citizens' Values and Beliefs Toward Politics: Is Democracy Growing Attitudinal Roots?" in Andrew Selee and Jacqueline Peschard, eds., *Mexico's Democratic Challenges: Politics, Government, and Society* (Stanford, CA: Stanford University Press, 2010), p. 31.

Mexico. The conclusion is the same. In 1994, when the military put down the leftist rebellion in Chiapas, the state did not treat those insurgents as criminals.[19] Instead, they were enemies of the state. They could be killed because of their hostilities toward the state. This is a zero-sum game; it's us or it's them, José.

**José:** But what about 1968? The ramifications of the Tlatelolco massacre can still be felt today. This nadir changed Mexico. Army soldiers mowed down thousands of innocent students who had the temerity to demand reforms from their government. We all know why the government did it—our country was ten days away from hosting the Olympics. For the first time, Mexico was on the world stage. These students were embarrassing the government, so it unilaterally decided to make these students enemies of the state; our Mexico killed these kids.[20] The ideal of Mexico trumped the rights of being Mexican. Where does the authority of the state to kill whomever it sees as a threat stop?

**Francisco:** The protests of 1968 are markedly different from the cartels of today. It is one thing to embarrass the state, it is quite another to make it unsafe for its citizens. When it comes to the latter, Mexico must act. We cannot afford protections in the form of rights and laws that prevent the state from defending itself. The reforms are excellent for those of us willing and able to function within the rules set forth by society. Yet it is a two-way street: with rights come responsibilities.

**Lázaro:** War is such an extreme, though.

**Francisco:** Yes, it is and we are there. Calderón won't admit it but those troops who are fighting will. Until we treat this crisis as an insurgency, like the Colombian government recently did against the FARC[21], we give these cartel insurgents protection from the state. We legally protect the very entity trying to destroy us.

**José:** I could not disagree with you more, Francisco, but I guess it comes down to the eternal question: what is the function of the state? I believe the people must have confidence in the state and its laws, and if they do, the law will protect them.

**Francisco:** You are such the optimist. But I start with the premise that the state's laws cannot protect its people if the state is not the only caretaker of authorized violence. Maybe next semester I will sit in on your comparative law class and watch *A Man For All Seasons* from your viewpoint, José.

**José:** I would be honored, Francisco.

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[19] Ejército Zapatista de Liberación Nacional is a revolutionary leftist group based in Chiapas, the southernmost state of Mexico. They revolted in 1994 because of the new trade agreement with the U.S. and Canada. Mexico called in the army to quell the insurrection. John Charles Chasteen, *Born In Blood & Fire: A Concise History of Latin America* (New York, NY: W.W. Norton & Company 2006), 317-18.

[20] Michael Reid, *Forgotten Continent: The Battle for Latin America's Soul* (New Haven, CT: Yale Press 2007), 198-201.

[21] The Revolutionary Armed Forces of Colombia (FARC) is a left wing insurgency that claims to represent the poor rural workers and opposes U.S. influence in Colombia.

**Lázaro:** Protection, confidence or both, we all must start from the same position: we are all Mexicans. It is about protecting the *patria* of our country: the soil; the traditions; the culture; the people. The laws of Mexico are important, but Mexico's soul is everything.

**José:** But are the laws that protect our country and its citizens about the past or the future, Lázaro?

**Lázaro:** Without the past, José, there is no future.

**José:** But law's purpose is to serve the future. To quote Sir Thomas More, "The law is a causeway upon which, so long as he keeps to it, a citizen may walk safely."

**Francisco:** Well said. Let's face it—we are country torn between our past and our future. I can only hope that our causeway joins the two in the present so that all may walk safely.

**Lázaro:** A truly tall order but to attempt less would betray Mexico. Let us hope for a Mexico, you could say, for all seasons.

**Francisco:** Gentlemen, enough of this deep theoretical banter! I think we need to order something a bit stronger than this coffee!

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