

From Inquisitorial to Adversarial Criminal Justice: Police Brutality and Due Process in Mexico

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- ▶ It also creates the conditions where vigilantism and frontier justice become unnecessary to deter crime (Pinker, 2011).
- ▶ But the state's main coercive arm –the police– can be predatory, turning or allowing violence against their citizens or becoming an extension of criminality rather than a solution.

Introduction

- ▶ Internationally, police abusive behavior has increased salience in recent years:
The **US, Brazil, Colombia, Philippines, Mexico, Nigeria** ...

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- ▶ Scholars argue that democratic institutions reduce the incidence of state abusive behavior and human rights violations (Davenport, 2007)
- ▶ Political participation, electoral contestation, and freedom of expression can correct the excesses of state coercion ((Davenport, 1996; Cingranelli and Richards, 1999; Davenport and Armstrong, 2004, Conrad and Moore, 2010).
- ▶ Democracies have more veto players, including real judicial independence (Powell and Staton, 2009; Mitchell et al; 2013; Keith, 2002; Conrad and Moore, 2010).

but they still violate human rights...

Introduction

- ▶ Can institutional reforms restrain police brutality?
 - ▶ What is the impact of the reform of inquisitorial criminal justice institutions on torture and other forms of police violations of due process?
 - ▶ Have these reforms produced incoherent outcomes?
 - ▶ The planting of evidence instead of using torture as a “method of criminal investigation”?
 - ▶ Effects on crime rates

I examine these questions in the context of Mexico

The Inquisitorial System Reform

- ▶ In continental Europe, inquisitorial systems were abandoned in the late 18th century.

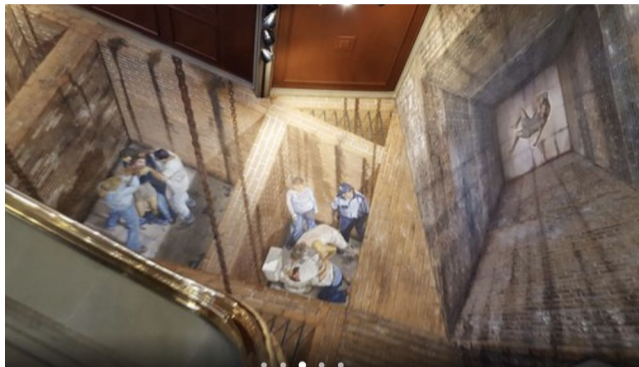
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- ▶ In Latin America, inquisitorial criminal justice systems inherited from colonial times were not reformed until the 1990s and 2000s.
- ▶ This reform was the most important institutional reform adopted in Latin America over two centuries (Langer, 1997)
 - ▶ Argentina (1991), Bolivia (1999), Chile (2000), Colombia (2004), Dominican Republic (2002), Ecuador (2000), Guatemala (1992), Honduras (1999), Mexico (2008-2016), Nicaragua (2001), Paraguay (1998), Peru (2004), Venezuela(1998).

Context: torture in Mexico



- ▶ Murals in the Mexican Supreme Court painted by Rafael Cauduro: a call for “no more injustice and abuse of power.”
- ▶ They spell out the history of injustices in Mexico –the massacre by the armed forces of students in 1968, soldiers and prisoners traumatized.
- ▶ But the most striking are scenes of torture in regular criminal trials.

Context: torture in Mexico

- ▶ The extreme cruelty of torture is fundamentally incompatible with the principles of human dignity and respect for life.
- ▶ Torture undermines the core values of justice and the rule of law and is unequivocally prohibited by international human rights law.
- ▶ Moreover, torture lacks justification: information obtained through torture often leads to false or misleading intelligence.

In 2015, the UN general rapporteur stated that torture remained a "generalized practice in Mexico"

Context: Torture in Mexico

- ▶ Torture has been used as **method of criminal investigation** (Magaloni, Magaloni and Razu, 2018).
- ▶ Before the reform, the Mexican Supreme Court endorsed torture and other violations of due process:
 - ▶ “The verification of traces of physical maltreatment by the defendant during detention does not invalidate a confession if it is corroborated by other evidence on file.”
 - ▶ “If a defendant were to try to change his statement before a judge, the statement given to the Public Ministry should be given more weight because it would have been the “most spontaneous.”

Mexico's inquisitorial criminal justice system

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- ▶ Suspects were presumed guilty and needed to rebut the prosecutor's assertions.
- ▶ For overworked judges and prosecutors, coerced confessions are an attractive option to close cases.

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- ▶ Three judge panels for each case: one judge who controls the investigation, one who presides over the trial and can know none of the facts in advance, and a third who oversees the execution of the sentence
- ▶ Protections for due process written into the Constitution and the National Code of Criminal Procedure (CNPP)

Reformed criminal justice

Among the procedural protections for the accused embedded in the reform are:

- ▶ The inadmissibility of confessions not obtained in the presence of a defense attorney
- ▶ The right not to be subject to “any techniques or methods that harm his dignity, induce or alter his free will”
- ▶ The right to be presented to “the controlling judge or Public Ministry, as the case demands, immediately after being detained or apprehended”
- ▶ Restrictions on pretrial detention
- ▶ A presumption of innocence
- ▶ The right to the assistance of a licensed, trained defense attorney

Criminal Justice Reform and Organized Crime

- ▶ New protections for criminal defendants would be instituted, in part limiting the opportunity for abuses and disincentivizing torture
- ▶ But organized crime (legally defined as crimes involving three or more persons) would be exempt, preserving the federal government's freedom to pursue the drug war and protecting the architects of the policy.

Implementation of the reform

The Criminal Justice Reform was adopted in the constitution in 2008 but not implemented until 2013. States applied the treatment to geographic units in the following ways:

1. Geography: the new code applies to all municipalities in a given region on a specific date. They gradually incorporate more of the state until the whole jurisdiction is subject to it.
2. Classification of crime: All crimes committed that fall into a specific category will be subject to the new code on a specific date. They incorporate more crimes gradually until the whole jurisdiction is subject to it.
3. Some combination of the two.

Effects of the institutional reform: prior work

“Institutionalized Police Brutality: Torture, the Militarization of Security and the Reform of Inquisitorial Justice in Mexico” (2020) (with Luis Rodríguez) *American Political Science Review*

- ▶ How have the reform and the drug war impacted torture?
- ▶ For the empirical analyses, we focus on (1) because it provides a straightforward implementation date. There are more than 65 different dates of implementation between 2013 and 2018.

Effects of the Institutional Reform

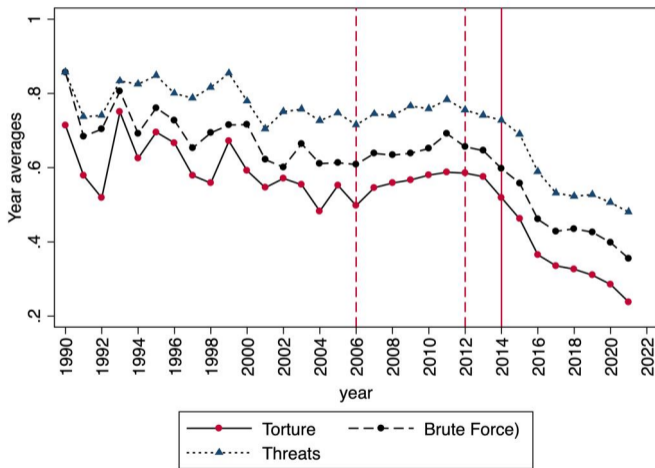
DATA

- ▶ We used the National Survey of the Population Deprived of Liberty (ENPOL), conducted by the Mexican National Statistics Agency in 2016 (N = 58,127)
- ▶ In this paper, I will use the National Survey of the Population Deprived of Liberty (ENPOL) collected in 2021 to explore some of the unintended effects of the reform.
- ▶ The empirical analyses leverage the date and location of arrest, allowing me to know how the police or other authorities (e.g., armed forces, National Guard) treated the suspect during the arrest.

Dependent Variables: torture and other forms of police brutality

1. “Institutionalized torture”: I take this to mean torture that is unlikely to happen without institutional knowledge and support – electrocution, drowning/suffocation/asphyxiation, stabbing, crushing with heavy objects, and burns.
2. “Brute force”: these are reports of beatings or beatings with objects.
3. Threats: these are threats of harm against family members or threats of false charges.

Descriptives: torture, brute force, and threats



Statistical panel using fixed effects model specifications:

$$y_{ist} = \alpha + \beta_1 T_i + \sum_k \delta_k X_{ik} + \lambda_s + \gamma_t + \epsilon_{ij} \quad (1)$$

y is a dichotomous indicator that takes the value of 1 if prisoner i reports torture, brute force, or threats.

T_i is an indicator variable for “treatment”: **1. Reform, 2. Turf wars, 3. Military Interventions**

The model also includes k individual covariates as well as judicial district and time-fixed effects (λ_s and γ_t , respectively).

Torture in Mexico: Results

Results in Magaloni and Rodriguez (2021):

- ▶ Torture decreases by 22% as a result of the reform
- ▶ Torture increases by 17% as a result of military interventions
- ▶ Torture increases by 27% due to turf wars

Updating Analysis with ENPOL 2021

	All average pre-reform	All average post-reform	Difference	P-value
Torture	0.58	0.31	0.28	0.00
Brute Force	0.66	0.42	0.24	0.00
Threats	0.71	0.46	0.24	0.00
Blindfolded	0.59	0.27	0.32	0.00
Incomunicado	0.78	0.58	0.20	0.00
Stripped	0.56	0.37	0.19	0.00

Updating analysis with ENPOL 2021

Table: Effects of Reform on Torture, Brute Force and Threats: ENPOL 2021

	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
VARIABLES	Torture	Torture	Torture	Brute	Brute	Brute	Threats	Threats	Threats
Reform	-0.067*** (0.026)	-0.059** (0.027)	-0.064** (0.026)	-0.055** (0.022)	-0.045* (0.023)	-0.047** (0.023)	-0.079*** (0.022)	-0.073*** (0.023)	-0.076*** (0.022)
Constant	0.136*** (0.030)	0.132*** (0.030)	0.130*** (0.028)	0.100*** (0.032)	0.109*** (0.032)	0.090*** (0.030)	1.161*** (0.034)	1.152*** (0.033)	1.171** (0.032)
Observations	34,894	34,894	34,894	34,898	34,898	34,898	34,777	34,777	34,777
R-squared	0.135	0.178	0.149	0.130	0.172	0.144	0.131	0.173	0.143
State FE	Y			Y			Y		
Mun FE		Y			Y			Y	
JD FE			Y			Y			Y

Effects of Reform on Police Abuse: ENPOL 2021

Table: Effects of Reform: Incomunicado, Stripped, Blinfolded

	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
VARIABLES	Incomunicado	Incomunicado	Incomunicado	Stripped	Stripped	Stripped	Blindfolded	Blindfolded	Blindfolded
Reform	-0.066** (0.021)	-0.061** (0.022)	-0.060** (0.021)	-0.056** (0.021)	-0.048* (0.022)	-0.050* (0.021)	-0.075** (0.024)	-0.063** (0.024)	-0.068*** (0.024)
Constant	0.129** (0.032)	0.100** (0.033)	0.088** (0.032)	0.062* (0.029)	0.074* (0.030)	0.046 (0.029)	0.221** (0.031)	0.272** (0.030)	0.270** (0.028)
Observations	34,889	34,889	34,889	34,855	34,855	34,855	34,880	34,880	34,880
R-squared	0.130	0.174	0.144	0.092	0.134	0.105	0.161	0.208	0.176
State FE	Y			Y			Y		
Municipality FE		Y			Y			Y	
Judicial District FE			Y			Y			Y

Robustness

- ▶ I rerun the tests using crime, authority performing the arrest, and if the prisoner self-declared guilty.
- ▶ I also perform a series of placebo tests assuming the reform happened 1, 2, and 3 years before. The results are null.
- ▶ I also use coarsened exact matching on background characteristics to ensure balance in covariates that may be related to the outcome variables.
 - ▶ Respondent's level of education and whether or not the respondent speaks an indigenous language
 - ▶ Crimes committed.
 - ▶ Both sets of variables and add a variable that captures the individual's sentencing status when he was interviewed. **Across all matching routines, I retain negative and significant coefficients on the reform.**

Challenges: Incoherent effects?

- 1 Low acceptability of the reform among police officers
 - 2 Police have not developed the capacity to investigate using scientific and forensic evidence
- ▶ At the same time, police and prosecutors are under enormous pressure to apprehend criminals, given popular demand and huge problems with impunity.
 - ▶ Hundreds of thousands have disappeared since 2006.
 - ▶ More than 90% of crimes are never resolved

Police Survey among 1,827 officers in 13 Municipalities in Monterrey

	Agree	Disagree
The new criminal justice system...		
Has increased the workload of police officers	0.857 (1554)	0.143 (260)
Guarantees respect for human rights compared to the past	0.843 (1523)	0.157 (284)
Produces weak sentences or allows criminals to walk free	0.805 (1459)	0.195 (353)
Protects criminals too much	0.831 (1503)	0.169 (305)

Fieldwork in three cities

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“We are making big efforts to train our police officers to work within the new criminal justice system ... but there are many cases when detainees walk free because police fail to follow the new rules.”

“Here, we get monetary bonuses for arresting. But it is necessary to get an indictment. If you have a confession, the judge will give you one. But the new criminal justice reform makes it too hard for us to interrogate. **How else are we to offer evidence?**”

Hypotheses of incoherent effects?

- ▶ Given the lack of capacity to investigate, I don't expect the police to be able to offer forensic evidence (DNA tests, footprints, ballistic tests) after the criminal justice reform.

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- ▶ Instead, I expect that after the criminal justice reforms, officers will increasingly PLANT EVIDENCE (guns, drugs, and clothes) to offer in court.
- ▶ After the reform, I expect a higher proportion of prisoners to be convicted for drug possession or trafficking.
- ▶ The lower the investigative capacity, the more I expect the police to “plant evidence.”

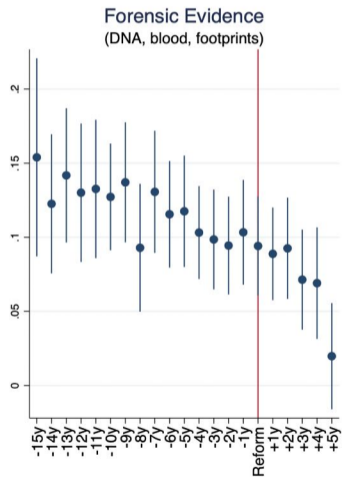
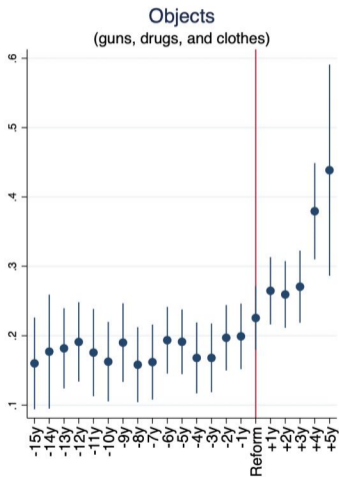
Statistical panel using fixed effects model specifications:

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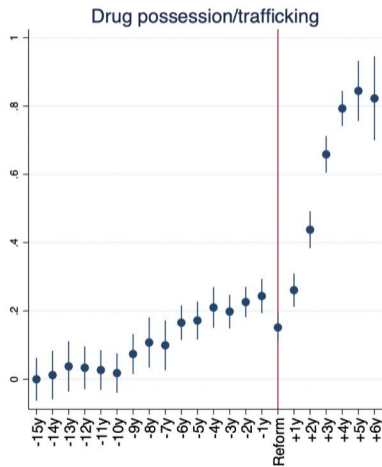
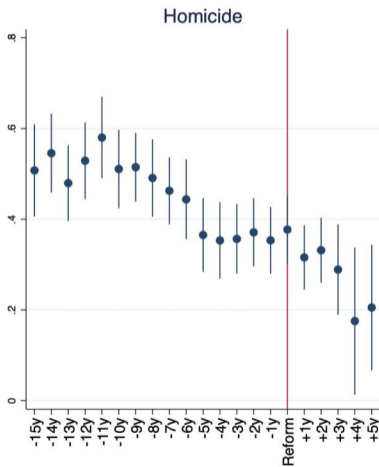
y is a dichotomous indicator that takes the value of 1 if prisoner i reports that during the trial an object (gun, clothes, or drugs) was offered by the police as evidence in the trial. An alternative model takes the value of 1 if the prisoner reports that the police offered forensic evidence (DNA, prints, or ballistic tests).

The model also includes k individual covariates as well as judicial district and time-fixed effects (λ_s and γ_t , respectively).

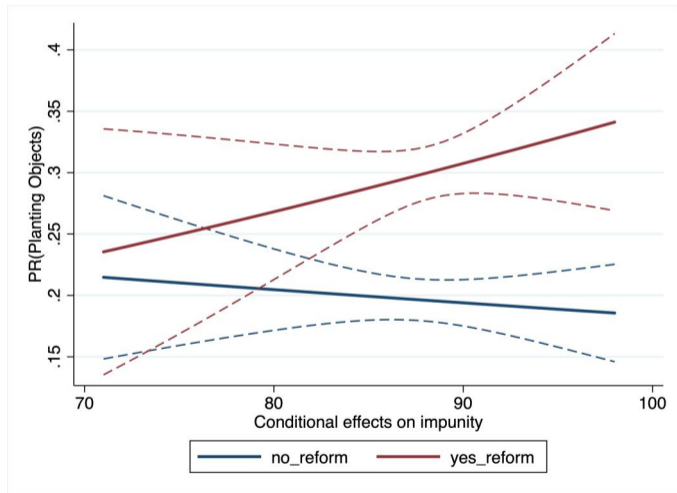
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- ▶ As further research, I will explore the causal effects of the reform on crime rates. The effects are ambiguous but should be analyzed.
- ▶ As further research, I will create better measures of state capacity to model heterogeneous effects of the reform