

Doctoral Dissertation
(Ph.D. in Public Management)

**Constitutional justice and people's perception
about law – a comparative structural approach –
*Canada, Japan and Mexico***

November 2009

The Okuma School of Public Management

Waseda University

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Acknowledgments

This thesis was written with the support of a Monbukagakusho scholarship and under the guidance of Professor Hisao Tsukamoto, Professor Osamu Nishi, Professor Akira Momochi, Professor Harunori Yamada and Professor Mitsuyoshi Ishida, I thank them for their support and guidance.

I would also like to thank all of those who helped administrating the surveys, for their patience and perseverance.

I am indebted to those who read the drafts of this thesis, for their reviews, comments and questions.

Lastly, this thesis would not have been possible without the love and support of Javier, Angelica, Nishim, Iizax, Zazil and Vadim. I dedicate this thesis to them.

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List of Abbreviations

CA1867	Constitution Act, 1867 30 & 31 Victoria, c. 3. (U.K)
CA1982	Schedule B to the Canada Act 1982, (U.K.) 1982, c. 11
CBA	Canadian Bar Association
CPEUM	Constitution of Mexico
GHQ	General Headquarters of the SCAP
LRTI	Legal Research and Training Institute
NAFTA	North America Free Trade Agreement
NGO	Non-Governmental Organizations
PRI	Institutional Revolutionary Party (Mexico)
SCAP	Supreme Commander of the Allied Powers
SCC	Supreme Court of Canada
SCJ	Supreme Court of Justice of Japan
SCJM	Supreme Court of Justice of Mexico
UNAM	Autonomous Mexican National University
USA	United States of America
WWII	Second World War

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INTRODUCTION

We don't see things as they are, we see things as we are.

—Anais Nin¹

This doctoral dissertation is a comparison of three systems of Constitutional Justice: the Canadian, the Japanese and the Mexican. This thesis explores four aspects of those systems: the legal, the organizational, the political and the social.

The first chapters deal with the legal, administrative, and political aspects of Constitutional Justice in each nation and intend to give a complete idea of the background, history, principles, organizational abilities and the discourse surrounding the system of Constitutional Justice in each of the three nations. The last chapter explores the social aspects of the system of Constitutional Justice, discussing the results of a qualitative survey administered in Canada, Japan and Mexico.

The core of this dissertation is the analysis of the above-mentioned survey. Its questions seek to elucidate the societies' view of legal institutions and the law, and in doing so, interpret the relationship between people, their legal systems and judicial institutions.

¹ Nin, 1969

The conclusions of the study are intrinsically linked to the results of the survey and the social aspect of each system.

A. The concept of constitutional justice - between law and politics

The principle of Constitutionalism is founded in the idea of rule of law. It has as its central idea the existence of a Supreme Law, a Constitution, which limits the power of the government and, in doing so, protects fundamental human rights. Judicial procedures and a system of courts or a court are charged with ensuring that the Constitution and its precepts are applied and obeyed accordingly.

Constitutional Justice is the name used for the set of laws and instruments that protect, defend and enhance a national constitution and protect and defend the constitutional rights of the people, even against the power of other authorities within the state apparatus. This thesis will study the system that has been created for the application of such laws.

Constitutional Justice is administered in several different ways by a multitude of courts under the aegis of state apparatus. Most of the countries in the world are creating or have already created Constitutional Courts. According to Professor Nishi Osamu, from 1990 to 2002, 84 new constitutions were created in the world. 57 of those new constitutions, which represent the 67.9% of them, established the system of specialized Constitutional Courts for

the control of the constitutionality of laws and acts².

Canada, Japan and Mexico are not within this majority; as none of them have Constitutional Courts but rely on the national judiciary to solve constitutional issues.

B. The challenge of connecting constitutional justice with the people - the problem of legitimacy

The rule of law is as much an object of suspicion as it is of reverence³. Democracy refers to the government by the people for the people⁴ and nowadays democracies are systems grounded in such representation. The root of democracy lies in the notion that only the representatives of the people have the authority to establish law. This is an essential feature of the nation-state structure in the world.

When an authority institutes law without consulting the representatives of the people, it becomes a matter of relevant concern of any representative democratic system.

This is the case of the institutions in charge of providing Constitutional Justice. Judges, who are not representatives of the people or elected by the people, establish decisions in constitutional matters.

Moreover, constitutional courts “make constitutional justice” through the difficult task of

² Nishi, 2003: 111

³ Craig, 1997: 480

⁴ Furley, 2003: 131, explaining the ideas of Aristotle.

interpreting the constitution. Interpretation is the process used for enabling the law to keep track of the political changes, and is informed by changes in power, rhetoric and values within a society. This aspect of law is exploited differently in different nations, some more “normative” than others but legal interpretation is a nomothetic.

There are several challenges for the ruling constitutional systems all around the world, especially regarding the connection between the decisions taken by the authorities that decide constitutional cases and shape constitutions and the decisions taken by the people. Democracy has nowadays a widespread legitimacy in the world, but trust in democratic institutions has declined⁵. Such low levels of trust could endanger the legitimacy of democracy and democratic institutions, and this is the reason of the critical importance of the connection between people and constitutional decisions.

This connection that maintains the decisions made by the people, private companies, small and large institutions, etc. in accordance to constitutional decisions occurs within a complicated network where individuals, small and large communities, the media, other public powers such as the legislature and the executive branch of the government, the international community, etc. participate engaging in a dialogue that creates everyday the system of constitutional justice in each place.

This thesis will address the tribunals that are in charge of establishing constitutional

⁵ Moreno and Mendez, 2002: 351, quoting Diamond and Gunther, 2001 and Inglehart and Catterberg, 2002.

decisions, which most usually comprise human rights related judgments, judicial review in its broader sense and standards for political agreements. It will also address other institutions that participate in such decisions in many different ways as will be explained below, but it will concentrate in understanding the individuals, the masses.

C. Research Questions

The primary motivation for this dissertation centers on two issues: Despite the fact there has been considerable reform of the federal judiciary, why is constitutional decision-making less and less meaningful for Mexicans, and why is it that Mexican people are still dissatisfied with their constitution and the judiciary?

The judiciary in Mexico has been under an intense process of reform for the last 20 years. Yet, it seems that the achievement of the aims of the reform is nowhere in sight. This thesis seeks to explore other approaches and points of view different from the commonly presented and discussed in academic and political forums in Mexico in order to provide fresh and new ideas to help understand the complex problem that judicial administration presents to Mexico.

Some Japanese judicial institutions are also undertaking broad reform, aiming a more participative system. Japan just established the *Saiban-in seido*, a lay jury system for criminal cases. Most scholars are very critical of these reforms and question the feasibility of

such reforms as viewed by the people, observing the weak support that the reform has had⁶.

This dissertation is especially concerned with the following questions: How large is the gap between the constitutional decisions of the state (the laws, particularly focused on judicial decisions) and the daily-life decisions made by the people in each state? Is the size of the gap important? How could we study and understand the interaction between the legal, political, administrative and social contexts? How can we expect constitutional compliance from the population?

One of the last “research concerns” to be mentioned in this introduction is closely related to the changes in the distribution of people around the world. All systems of constitutional justice face in our nowadays globalizing, integrating societies a certainly bigger challenge than of those courts in more homogenous societies. Constitutional justice in the world faces the challenge of balancing between two existing contradictory principles: democracy and the inclusiveness of minorities.

At the same time, the function and vision of constitutional tribunals around the world continues to change. From the time of Hans Kelsen, who wrote and created constitutional tribunals in the late 19th century to the actual innovative constitutional courts systems of Latin America and South Africa and the applications of theories such as Constitutional Engineering of Giovanni Sartori, much has changed. This study expects to help understand

⁶ The support towards the reform is of 20%, Cf. <http://www.yomiuri.co.jp/national/news/20081223-OYT1T00237.htm>

constitutional tribunals and their place in the actual political systems in the world.

Finally, other less scientific and socially concerned reason, has also been a source of inspiration for this project: Japan and Mexico are celebrating 400 years of diplomatic contact, nevertheless very little is known about Mexico in Japan and vice-versa. This thesis seeks to shed some light on both systems, looking for similarities and differences.

D. The Comparative Approach

The approach taken by this dissertation is Comparative. Comparative law is a methodology which aims to explain foreign legal systems, issues, rules, etc. It can utilize qualitative and quantitative methods. It usually implies a systematic process that helps the scholar discover, understand and explain the alien legal phenomenon. Most usually it will have a descriptive, analytical and a conclusive stage. It uses tools such as prototypes, categorization or classifications, among other tools. That is to say, that a comparative study can have a sociological, economic, feminist approaches and use a certain kinds of classification and prototypes to study a certain phenomenon. Most usually, comparative legal studies are studies that explain foreign systems in terms of the scholar, which means that prototypes, approaches and classifications are tools that will always be, consciously or unconsciously, determined by the mind-set of the scholar and his own understanding of the law and the legal.

For example, European Continental scholars most usually use the traditional taxonomy

used to study a legal phenomenon in his own legal jurisdiction – a classification of civil, common and socialist traditions; they will use prototypes such as the concepts of “Continental model” or “American model” and will embrace an approach such as the ones mentioned before, without for example studying law from the approach of Taoism or the perspective of an Amazonian native.

The aim of this dissertation is to examine four aspects (legal, organizational, political and social) of the Constitutional Justice System in Japan and Canada looking for lessons to learn for the system of Constitutional Justice in Mexico and vice-versa. In order to enhance the comparability of the study, three cases were selected.

The comparative approach is supported by a certain methodology, which is explained below. The Canadian, Japanese and Mexican systems of Constitutional Justice, contrary to what some scholars may think at first sight, are highly comparable. In the following paragraphs there is a list of similar characteristics and a list of differences of the three systems, which support the notion of selecting the actual set for this comparison.

Canada, Japan and Mexico have similarly classified systems of Constitutional Review: the American Model⁷.

In all three cases, the National (also called “Federal” in Mexico) Supreme Court of Justice is the highest institution (and with the last word) imparting constitutional justice.

⁷ Macvic Arne in <http://www.concourts.net/tab/tab1.php?lng=en&stat=1&prt=0&srt=0>

In all three systems, other courts can impart constitutional justice (*diffuse control of constitutional justice*).

Additionally, in each of the three countries there are written constitutional texts that contain a specific set of constitutional rights, values and processes to make decisions and

review acts by the authorities.

See Table 1:

In terms of public administration and organizations, the three

System of Constitutional Justice	Canada	Japan	Mexico
Written constitution – Charter of rights	o	o	o
Organs in charge of providing Constitutional Justice	o	o	o
American model of Constitutional Review - Structure	o	o	o
Judicial Review	o	o	o
Constitutional complaint	o	o	o
Constitutional dispute	x	x	o
Advisory Opinion	o	x	/
Habeas Corpus	o	o	o
Concrete Review (Concrete vs. Abstract)	/	o	o
A posteriori (A posteriori vs. a Priori)	o	o	o
Diffuse (Diffuse vs. Concrete)	o	o	o
Inter parte (Erga omnes vs. Inter parte)	o	o	o

systems are similar in nature and composition. The landscape of the state-apparatus appears

to be very similar in the three cases. Although Japan is a unitary system and while Canada

and Mexico are Federal, constitutional decision-making in the judiciary in the three countries

is centralized into a set of organs and the participation of few actors. See Table 2 below:

Political, legal and administrative framework:	Canada	Japan	Mexico
Federal system	o	x	o
Parliamentary system	o	o	x
Civil law system	x/o	o	o
Positivistic – Continental Legal Tradition	x	o	o
Monarchies	o	o	x
Democracy	o	o	o
Trias politica model of governance	o	o	o
Rule of Law	o	o	o

Also, there are several relevant

commonalities among two of

the three nations.

Japan and Canada are

Parliamentary Monarchies;

meanwhile Mexico is a

Presidential Republic. Japan and Mexico are classified as civil law systems; meanwhile Canada is, in its majority⁸, a common law jurisdiction. Canada and Japan are classified as “developed countries”; meanwhile Mexico is considered a “developing” country. Canada and Mexico are nations that overcame a period of colonization and now are independent nations that have inherited a strong sense of government and development from the nations that colonized them; Japan however has been “occupied” but never “colonized”.

The addition of Canada in the study was done in order to better understand the organization and reforms in Mexico and Japan. Canada was used as a case that helped evade the creation of dichotomized conclusions. Canada and Mexico are close, not only geographically but historically and economically.

Understanding the situation of a country like Mexico requires an understanding of its place within the international community and the relationship that it has with its closest partners. Canada and Mexico are both partners in one of the biggest Free Trade Agreements in the world, the North American Free Trade Agreement (NAFTA).

Their powerful common neighbor has inspired many of the reforms, policies and institutions that exist in the three countries. The three countries are very closely related, economically and politically, to the United States of America (USA). Many of the decisions that the three governments have taken have been strongly influenced by the USA. Most of

⁸ The province of Quebec is a civil law jurisdiction.

the comparisons that have shaped the judicial institutions of the states in Canada, Japan and Mexico have been comparisons between these countries and the United States of America.

Nevertheless, the three countries selected have very different social settings and since the most important actor to be studied in this dissertation (after the judiciary in charge of constitutional justice) is the social aspect of the system, it is of essential relevance to select a sample as this one. The people's opinion is the independent variable of this study. The three nations have a very different social composition and have different economic and historical features. Each of these nations has lived the last hundred years of their state-lives in very different ways. At the same time, each judicial system has taken different decisions when settling constitutional disputes and has, as a result, seen different outcomes.

These differences coupled with the significant similarities make the group highly comparable.

E. Methodology

The author's master's degree thesis was used as a base for this thesis. The master's degree thesis was a descriptive account of the constitutional judicial systems in Japan and Mexico. This description was improved and enlarged for the purposes of this thesis.

The first chapters of the master's thesis contain a description done after reading and summarizing several sources of data and information, and doing an extensive literature

review. Some of the literature comprised books, pamphlets and statistical data provided by the national governments in Japan and Mexico and international agencies. The greater majority of the sources were articles, books and commentaries by authors from all over the world discussing the judiciary from different approaches. The dissertation described the Japanese and Mexican systems under a continental civil law approach very widely used in Germany, France and Mexico which broadly concentrates on sources of law, the dichotomy of the public and the private arenas of the law, and the highly positivistic understanding of the concept of law. The prototypes used were *Constitutional Court*, *Judicial Review*, and *Constitutional Justice*. The classifications used were: a taxonomy of the kind of constitutional courts – *Continental Model*, *American Model*, *Mixed Model*; a taxonomy of constitutional procedures – *Judicial Review*, *Constitutional Complaint*, *Constitutional Dispute*, *Advisory Opinion*, *Habeas Corpus*; a taxonomy of the different kind of judicial reviews: - *concrete vs. abstract*, *a posteriori vs. a priori*; *diffuse vs. concrete*; *erga omnes vs. inter partes*. The descriptive phase of the study was grounded in dichotomies.

The stages of writing this thesis were as follows: a) Completing the description of the legal, political and administrative aspects of the three constitutional judicial systems; b) Adding the description of the legal, political and administrative aspects of the Canadian system of constitutional justice; c) Analyzing the information finding the relationships between the two systems and exploring if the legal expression in each country was incidental,

important or relevant; d) Consulting philosophical and critical studies of both systems; e) A survey was applied in the three countries; f) Finally, the results of the survey were analyzed with reference in previous studies of the social context of each legal system and in comparison with the findings of the previous sections.

F. Literature Review

There are no studies only pertaining to Canada, Japan and Mexico which deal with their constitutional systems or the set of beliefs that shape the relationships between the people and constitutional institutions. There have been, however, some studies and surveys applied to the three nations (among others) related to democracy and the rule of law in the areas of politics and sociology.

The sources reviewed for this study can be classified in four themes: Legal Philosophy; Comparative Law; Constitutional Law cases and doctrines in each country; and those related to public opinion concerning legal institutions and the law in each country. For this study, the literature reviewed is mainly in English; however there are also some relevant works in Spanish, Japanese and French. There are several translations to English, which proved to be very useful for the purpose of this thesis.

Regarding legal philosophy, the texts of Weber (1978), Aristotle (1998), Foucault (1980), Kymlicka (1996), Cover et al. (1995) and Kelsen (2007) defined the scope and perspective of

this study. The critical perspective of Foucault, particularly his studies on power and institutions helped the author better understand the phenomenon of constitutionalism and its legitimacy. The readings on Cover are the ones closest in content and meaning to the direction of this thesis. The legal approach expounded in his work *Nomos and Narrative* has largely inspired and informed this study. The works of Kymlicka were crucial for understanding the issues of diversity and integration. Weber, Aristotle, and Kelsen are among the most influential philosophers in law, thus their books were essential for understanding and clarifying the definition of actual legal and constitutional systems.

Concerning the theme of Comparative Law, the author read and reviewed hundreds of sources. Classics such as Gutteridge (1971), Weber (1978) and Montesquieu (1989) were reviewed in order to understand the history of the study of foreign legal institutions (different from the European). Most recent discussions such as the works of Zweigert and Kotz (1992), Van Hoecke (2002), Jackson (2002), Ewald (1995), Sadurski (2002), Orucu (2000), Harding and Orucu (2002), and Mavcic (2009) were also consulted in order to better classify legal institutions.

Concerning constitutional law in the three countries, the most relevant works for this thesis has been the works of Nishi (1989), Cairns and Williams (1985) and Cairns, 1992), Bakan et al. (2003), Sharpe and Kent (2005), Monahan (1987), Matsui (1986), Hogg (1982, 1991, 2002), Luney and Takahashi (1993), Hook and McCormack (2001), Higuchi (2001),

Beer and Itoh (1978, 1996), Itoh (1989), Ramseyer and Rasmusen (2001), Haley (2006), TD Johnson (2002), Rabasa (2004), Fix Zamudio (2003), Cossio (2004), and Ferrer MacGregor (2002) among some others. Nishi was used mainly for the historical background of Japanese constitutionalism. Cairns and Hogg are important constitutional scholars in Canada and their literature is vast and relevant to this study. Luney, Takahashi, McCormack, Haley, Johnson and Higuchi are all scholars that have a particular perspective and opinion regarding constitutional law and constitutionalism in Japan, all of which were used to enrich the text of this thesis and the understanding of constitutional law in Japan. Itoh, Beer, Ramseyer and Rasmusen have several studies and data regarding constitutional cases that were consulted and reviewed for this study. Rabasa, Fix Zamudio and Cossio were the most important sources of Mexican constitutional law. All of them have several texts that discuss the background and the expectations regarding constitutional justice in Mexico. Ferrer's several edited volumes on Constitutional Procedural Law were the most important source for this thesis regarding the processes of Constitutional Justice in Mexico.

The following sources were consulted for a better understanding of the Japanese, Mexican and Canadian societies and their relation to the law; they are all concerned with methodology.

As a preliminary reading and in order to decide the scope and form of this study, the following classics in qualitative research studies were reviewed: Collier (1991); Collier and Brady (2004); A. Lijphart (1975); T. Skocpol and M. Somers (1980); R. Jessor, A. Colby,

and R. A. Shweder (1996), A. Przeworski and H. Teune (1970); M. Weber (1978); R. Bendix and S.M. Lipset (1967); and, M. Foucault (1979 and 1980). Collier, Lijphart, Skocpol, Somers, Przeworski, and Teune' works represent two different views of approaching social inquiries and problems such as the one that has been written about in this thesis. All of these authors are concerned with discussing methodology to understand social phenomena. All of these authors question the generalization of hypothesis and the establishment of theories by means of the establishment of certain terms, statistical examination of samples and historical investigation. Bendix, Przeworski, Teune and Lijphart are scholars from the previous generation to Collier, Skocpol and Somers; their approach is certainly less critical than that one of Collier, Somers and Skocpol. Skocpol's is a well-known work on historical explanations and macro-social inquiries. Colby, Jessor, and Shweder are scholars interested in ethnographic research and their studies have been used as model for this survey. They all have conducted similar research studies in Asia, such as India, Indonesia, Burma, etc. All of those research studies have had also complementary interviews and long stays in each of the countries studied. At the same time, they all conducted similar questionnaires that were obtained following similar methods to this thesis.

For more specific studies on the cases of legal perspectives of the society, the following research projects were consulted: World Values Survey⁹, the Latinobarómetro¹⁰, the Research

⁹ <http://www.worldvaluessurvey.org/>

¹⁰ <http://www.latinobarometro.org/>

Center for International Comparison of Legal Consciousness¹¹ (Ho-Ishiki Kokusai Hikaku-Kenkyuukai), and several series of articles in relation to the newly established Lay Jury system in Japan carried out by Mainichi Shinbun, Asahi Shinbun, Yomiuri Shinbun, etc. in the last three years.

Some of the most relevant works that were consulted were those of the following authors: David M. O'Brien and Peter H. Russell (2001), Ian Brodie and Neil Nevitte (1993), Neil Nevitte (2003), Alan Cairns (2000), Sato Iwao (2002), Ota Shozo (1991, 1993), Kato and Young (2001), Kawai and Kato (2003), Alejandro Moreno (2002) and Catterberg (2006). All of these works have explored the ways in which people relate to political institutions mainly through surveys of opinion.

The questions of the survey in the study of Kawai and Kato are similar to the questions raised in this study. However, their research only relates to Japan in comparison to the United States of America, Korea, and China. Their work shows how stereotypes about Japanese may be untrue and how ideas of law have traveled and influenced the views of people in Asia.

Alejandro Moreno does research in support of the World Value Survey and has published several works. Some of his works contain several discussions about the contradictions that surveys of opinion applied in Mexico have had. It is an important source that has been used to support some of the conclusions of this thesis, particularly the point regarding that

¹¹ <http://www.j.u-tokyo.ac.jp/~sota/hoishiki/index.htm>

Mexicans seem to have very low levels of trust in people, public institutions, and the law but paradoxically seem to defer greatly towards law and authority.

Nevitte explores in his studies how Canadians are not the only nation changing their view of the constitution and democracy. He argues that this phenomenon is seen in several places around the world and is connected to the satisfaction of economic needs, and the events subsequent to the Second World War.

All of these studies have been used to test and support the conclusions to which this thesis arrives.

Pamphlets and short magazines explaining some services and legal procedures in the three countries were also reviewed. Periodicals and articles in the Internet were also consulted for this study.

Chapter II

The legal aspect of constitutional justice

*The aim of justice reform is to make our society more free, more fair, and more responsible –
Satoru Shinomiya¹²*

This chapter aims to define what are the legal parameters and basis of constitutional justice making in each of the nations studied in this thesis. This is to facilitate easier consideration of the survey results in conclusions. This chapter contains a brief explanation of the principles that are stated in the constitution of each nation; a summary of other legal sources of constitutional justice; the legal procedures that each constitution establishes for constitutional justice; and, some considerations regarding the relationships among the participants in the process of constitutional justice.

A. Constitutional principles in Canada, Japan and Mexico

Constitutional principles are not only guides but also actual commandments that judges in constitutional courts use to interpret the constitution and solve the controversies over

¹² VOA news: <http://www.voanews.com/english/archive/2009-07/2009-07-01-voa27.cfm?moddate=2009-07-01>

constitutional matters. Constitutional cases can deal with human rights established in the constitution, faculties of the other powers (federation, legislatures, governors, etc.), and with difficult situations which actually are considered legal matters such as secessions, revolutions, etc.¹³

1. Canada

The principles of the Canadian constitution are:

a. Federalism, democracy, constitutionalism and the rule of law, and respect for minorities (see answer to question 1 (par. 32) of the Reference re Secession of Quebec, [1998] 2 S.C.R. 217), and the principle of Responsible government (which is also based in a convention).

b. Judicial independence (Schedule B to the Canada Act 1982, (U.K.) 1982, c. 11, which came into force on April 17, 1982, which from now on will be cited as “CA1982” s. 11 (d); also Valente v. The Queen, [1985] 2 S.C.R. 673; Preamble of Constitution Act, 1867 30 & 31 Victoria, c. 3. (U.K.), which from now on will be cited as CA1867; and Reference re Remuneration of Judges of the Provincial Court (P.E.I.), [1997] 3 S.C.R. 3).

c. The establishment of the following freedoms: of conscience and religion; freedom of thought, belief, opinion and expression, including freedom of the press and other means of

¹³ For example, Reference re Secession of Quebec, [1998] 2 S.C.R. 217 of the Supreme Court of Canada.

communication; of peaceful assembly; and freedom of association. It also establishes the right to life, liberty and security of the person; equality; to move and gain livelihood (CA1982 s. 2, 3, 6 – 15).

- d. The recognition of two official languages: French and English (CA1982 s. 16).
- e. The recognition and protection of the multicultural heritage and aboriginal nations (CA1982 Arts. 25, 27 and Part II).
- f. The constitution as a “living tree”, a law that changes and evolves through time (see *Edwards v. Attorney-General for Canada*, [1930] A.C. 124 (P.C.), at p. 136).
- g. The state is a constitutional monarchy with a parliamentary government (CA1867).
- h. The supremacy of the constitution (CA1982, s. 52). The constitution has several sources: written ordinary statutes, common law, orders, judicial decisions, and unwritten conventions (CA1867 in its preamble).
- i. The establishment of a procedure that enables Canada to reform its constitution (CA1982, Part V).

2. Japan

The Japanese constitution contains the following principles that regulate all other laws and decisions of the authorities and people:

- a. Sovereignty power resides in the people (Preface and Art. 1).

b. The government organizes itself as a parliamentary system and a constitutional monarchy. The monarchical figure is called “emperor”(Arts. 2- 8).

c. The Emperor is considered as a symbol (Art. 1).

d. Renunciation of war (Art. 9).

e. Guarantee of the fundamental civil rights of everyone; freedom of movement, religion, thought, assembly and association, etc. (Chapter III)

f. The Diet is considered the highest organ of the state power and it is divided in two houses: the House of Representatives and the House of Councilors (Art. 41).

g. The executive power is vested in a cabinet. The Prime Minister is the head of his Cabinet. A majority of the members of the cabinet are elected from the members of the Diet and by the Diet (Art. 65-68).

h. There is an independent judiciary, which is vested in a Supreme Court of Justice (SCJ) and inferior courts. The judges of the Court are appointed by the Cabinet and are in duty as long as the electorate approves them through vote. Judges of the Supreme Court of Justice are voted every ten years in general elections (Arts. 76 - 80).

i. The constitutionality of laws, in its broader sense, can be reviewed by the Judiciary (Art. 81).

j. The National Finances are decided by the Diet (Art. 83).

k. Local Self – government must be protected (Art. 94).

- l. The Constitution can be amended through referendums (Art. 96).
- m. The Supremacy of the Constitution (Arts. 97 - 99).

3. Mexico

The Mexican Constitution¹⁴ comprises the following principles:

- a. Guarantee and protection of the fundamental rights of the people as: freedom of movement, religion, thought, assembly and association, nationality, etc.; furthermore, the right of literacy, of a good standard of life, health care, good standards of job and employment (Art. 123), a healthy environment to live, housing, protection and respect of the native culture; legality and equality; prohibition of slavery or servitude (Arts. 1 - 24)
- b. Sovereignty resides in the people. (Art. 39)
- c. Separation of the Church from the state and political restrictions to religious activities.
(Art. 130)
- d. The prohibition of large states and the distribution of the land in small properties, which belong originally to the nation. Land for common use is established. (Art. 27, 28)
- e. The government organizes itself as a representative, democratic and federal republic.
(Art. 40)

¹⁴ For more information please see the brief explanation of the Mexican Constitution at NISHI, Osamu. Gist of the Constitutions of countries of the world. Komazawa Hogaku, Vol. 6. No.1, pp. 72 and 73.

f. The people exercise their sovereignty through the Union Powers (Federal Legislative Power) which are divided in three branches in the same hierarchy: legislative, judicial and executive power. (Art. 41)

g. The executive power is vested in one person, the president. The legislative power is vested in a congress divided in two chambers. (Art. 50) The judicial power is vested in a Supreme Court of Justice (SCJM), the Electoral Tribunal, Collegiate and Unitary Circuit Tribunals and District Courts (Art. 94).

h. The Judiciary can review the constitutionality of laws (Chapter IV).

i. Government officials and public officers are responsible before the people (Art. 108).

j. The state and free-municipal government is guaranteed (Art. 115).

k. The Supremacy of the constitution, the federal laws and international treaties is established (Art. 133).

l. The constitution can be reformed through the activity of the Union Powers (Art. 135) but it cannot be abrogated (Art. 136).

4. Foreign influences of constitutional principles

There are several influences from other countries in each constitution.

The world's general opinion has established "constitutionalism" as the most successful model for building effective states. There has been a considerable writing on Comparative

Constitutional Law in this respect. Countries all over the world are now copying or adapting their Constitutional systems to the systems encouraged by the international community, which in general are based on the ideal of Constitutionalism. Constitutionalism has been strongly encouraged by the most economically powerful nations and has become a requisite to fulfill for nations around the world looking for recognition from the most developed nations.

The Japanese constitution is possibly one of the best examples of “foreign” participation in the making of a constitution and the establishment of constitutionalism in a Far-East nation. Officially, the actual constitution is a “revision” of the first Japanese constitution, the Meiji constitution; but, it actually contains several principles and measures that directly contradict the previous constitution. The General Headquarters (GHQ) of the Supreme Commander of the Allied Powers (SCAP) drafted the Japanese constitution during the occupation of Japan after the end of the Second World War. The Japanese political elite of the moment prepared some drafts but the GHQ - SCAP rejected all of them. Thus the actual constitution of Japan, when established, formed a direct bond between the Japanese people and the international community.

The actual Japanese constitution and principles were revolutionary in all the aspects of the word. They were established to guide a “new kind” of acts and decisions of the Japanese people, as expected by an international community. The first and last paragraphs of the

constitution summarize this view: *...We, the Japanese people, acting through our duly elected representatives in the National Diet, determined that we shall secure for ourselves and our posterity the fruits of peaceful cooperation with all nations and the blessings of liberty throughout this land, and resolved that never again shall we be visited with the horrors of war through the action of government, do proclaim that sovereign power resides with the people and do firmly establish this Constitution....*

... I (the emperor) rejoice that the foundation for the construction of a new Japan has been laid according to the will of the Japanese people, and hereby sanction and promulgate the amendments of the Imperial Japanese Constitution ...

Several scholars have established that Japan would have never entered the era of modernity without a constitution¹⁵. Most of scholars have also argued that even though the constitution was “imposed” in many ways, it already enjoys a wide support and understanding of the Japanese people.

Originally, the Canadian Constitution held the principle of the supremacy of parliament but this principle has been derogated through the enactment of CA1982. This principle of the Canadian Constitution was inherited from the United Kingdom, where it is still one of the basic principles of the English Constitution. The influence of the British Constitution traveled also to Asia where it has also been an influence for the principle of the supremacy of

¹⁵ Higuchi, 2001

the Diet in the Japanese Constitution.

Article 41 of the Constitution of Japan establishes that the Diet is the highest organ of the state power and that is the sole law-making organ of the state. This is also a particularity of the Constitution of Japan, which is not found in the other two constitutions discussed here. The courts resort to this article in order to limit the parameters of their actions and the framework of faculties of the whole judiciary.

5. Constitutional principles as historical and political issues

Constitutional principles are usually principles that reflect a certain crucial negotiation that took place in the political arena of a nation. For example, most of the principles contained in the Mexican Constitution are principles that were contended for more than a century in Mexico, where several civil wars were fought such as the separation of church and state, the property of land, the federal division of power, and equality among people. Constitutional principles may even reflect the frustrations of political negotiations that were unsuccessful such as the latest judicial decisions on indigenous constitutional cases in Canada, which reflect certain postures taken during the negotiation of the Meech Lake Accord.

Thus constitutional principles are an open window towards the social and political landscape of a certain country. For example, in Japan, there is no mention of the

establishment of a “unitary” system in the Japanese constitution. There is no mention of a federal or unitary form of government at all because there was no need to reach such an agreement, as it was the case in the other two nations. The Japanese constitution does establish some articles in relation to local autonomy¹⁶, but without the detailed and careful elaboration that is seen in the constitutions of Canada and Mexico, where the social landscape is more diverse and power was concentrated in different smaller units separated throughout the territory of these two nations.

6. Particularities of each constitution

a) The reform of the constitution and the change of constitutional principles

There are certainly a great number of particularities in each constitution. The Japanese constitution may be, among the three, the most difficult to reform. The constitution requires a majority of two thirds of each house of the Diet and a consequent approval of the population through referendum. This difficult process may be the reason why the Japanese Constitution has never been reformed. Moreover, actually there is no law for such a referendum. A section of the Diet is working in the proposal.

¹⁶ Constitution of Japan: *Article 92. Regulations concerning organization and operations of local public entities shall be fixed by law in accordance with the principle of local autonomy.* Also see *Article 95. A special law, applicable only to one local public entity, cannot be enacted by the Diet without the consent of the majority of the voters of the local public entity concerned, obtained in accordance with law.*

Since in Canada, ordinary parliamentary statutes can achieve the “level” of constitutional statutes, the Constitution of Canada “grows” in ways that the Mexican and the Japanese do not. There is also an important principle in the Canadian constitution that is referred to as the “living tree” doctrine. The doctrine establishes that the Constitution is to be interpreted in a broad and progressive manner, looking for the constitution to adapt to the changing times. This doctrine of interpretation of the Constitution has its origins in the famous “Persons case” resolved by the Privy Council in the United Kingdom and it has, since then, grew in influence and importance.

Thus, Canadian constitutional law changes not only by reform of the constitution but also through the labor of courts. The interpretation of the Constitution of Canada has evolved and changed enormously, particularly in the last 25 years since the establishment of the CA1982. Cases regarding same-sex marriage, equality in rights and freedoms for women, freedoms of speech and conscience and even the organization and principles that direct the government and government policies have been changing gradually through the interpretation of the constitution by the courts in Canada.

Scholars usually label the process for reform in Mexico as “difficult” because it requires a majority of two thirds of the federal congress and the majority of the state/provincial legislatures. Despite it’s labeling as a difficult process, the constitution of Mexico has been

reformed in more than four hundred and eighty occasions¹⁷. Many scholars wonder, with reason, if the essence of the Mexican constitution is the same to the original of 1917.

In matters of changing the interpretation of the Constitution, Mexican and Japanese courts are far more cautious. On a few occasions the courts have changed their position. In Mexico, a reform of the text of the constitution is more common than a change through the courts. In Japan, scholars have established that courts are far stricter and conservative in relation to a change in the interpretation¹⁸.

b) International treaties

As we will see below, international treaties have an important role in constitutional law in the three countries. Even though the text of the Canadian Constitution does not contain a special position for international treaties, international covenants have been considered important by the courts and have been considered in constitutional decisions. The Mexican Constitution organizes the sources of law clearly and establishes the position of international treaties on the same level of the Constitution. The Japanese Constitution does not equate treaties to the Constitution but it mentions that treaties should be faithfully observed in the article where the constitution is established as the supreme law of the nation; in the opinion of the author in support of the notion of their superiority.

c) The constitutional nature of the Japanese Emperor

¹⁷ Cf. <http://www.diputados.gob.mx/LeyesBiblio/ref/cpeum.htm>

¹⁸ Cf. <http://www.comparativeconstitutions.org/>

Japanese Constitutional particularities are mainly related to the emperor and the principle of a peaceful state. In the constitution, the emperor is only referred as a symbol.

The political and legal power of the emperor in Japan is growing smaller every day. The Diet limits the power of the emperor and the imperial family by means of establishing laws that regulate their faculties and the use of their properties and it is the cabinet the main institution that governs most of the issues in relation to the imperial family. Contrastingly, the Queen in Canada (and her representative) is vested with Executive power and still participates in the government in some few occasions, as it was observed during the last political crisis in Canada in November of 2008, when there was a coalition with interesting characteristics that seek a no-confidence vote for the actual prime minister. Nonetheless, her role has also grown less powerful. Recently, it seems that the monarch's participation in state issues is still broader in Canada than in Japan.

The continued existence of the symbol of the emperor is usually understood to have fulfilled the task of providing certain continuity to the Japanese state after the Second World War. Many scholars are very critical of its functions, and the beliefs and ceremonies that surround the emperor, which have been labeled as “backwardness”¹⁹. The fact is that the Emperor still participates in the appointments of officials, the promulgation of laws and completes the landscape of politically influential institutions in the Japanese nation.

¹⁹ Higuchi, 2001, 9-10

d) Human Rights in each text of the Constitution

The Mexican constitution is very clear in mentioning that the guarantees of the constitution are to protect all people, regardless of their nationality. Nevertheless the Japanese constitution is very specific as to establish its regulations, rights and obligations to Japanese people only.

The Japanese Constitution contains the following rights: respected as individuals; right to life, liberty, and the pursuit of happiness; equality; right to choose their public officials and to dismiss them; right of peaceful petition; freedom of thought and conscience; freedom of religion; freedom of assembly and association as well as of expression; freedom of movement and occupation; academic freedom; right to maintain the minimum standards of wholesome and cultured living; right to receive an equal education; right and the obligation to work; right of workers to organize and to bargain and act collectively; right to own or to hold property; right for legally established taxation; right to justice under the parameters of due process; right of all persons to be secure in their homes, papers and effects against entries, searches and seizures; right to a speedy and public trial by an impartial tribunal; the Constitution also establishes the prohibition of torture, bondage of any kind and discrimination.

The GHQ - SCAP seemed to have sought to plant the seed of individualism through the Constitution, which specifically addressed the need to respect the people as individuals.

Several scholars in Japan have discussed the fact that constitutionalism is rooted in individualism and that while individualism does not permeate the whole society, true constitutionalism cannot be enjoyed²⁰.

Several scholars argue how collectivism in Japanese society is a barrier against the establishment of true constitutionalism in Japan. The fact that Japan is a very “community oriented” society has produced important and good benefits to the Japanese people as a state.

The Mexican Constitution is, among the three constitutions, the one that establishes the most detailed and largest account of rights and freedoms. The Mexican Constitution adds to the list of the Japanese Constitution the following rights: right to decide the number and time to have children; right to the protection of their health; right to a decorous place to live; right to an interpreter in judicial procedures; right to a healthy environment; right of all children to feeding and to have options for enjoyment; right to access information; right to own weapons; autonomy for indigenous nations in all aspects of their organization and lives; and the right of Mexicans to their nationality.

The text of the Canadian Constitution statutes mention the least number of rights and freedoms: right to life, liberty, and security; equality; right to choose their public officials by vote; right of petition; freedom of thought and conscience; freedom of religion; freedom of assembly and association; freedom of expression (it has a detailed description of different

²⁰ Nakayama, Michiko in Higuchi, 2001: 340

versions of this freedom); freedom of movement and occupation; right to work; right to justice under the parameters of due process; the Constitution also establishes the prohibition of any kind and discrimination; right to have all state affairs carried out in French and English, the two official languages of Canada. The Canadian authorities are committed to promote equal opportunities to all Canadian people in all spheres and all regions of Canada.

e) Obligations of the state-apparatus authorities

At the same time, the Mexican Constitution is the one containing the most detailed list of the government and the authorities' obligations and a list of standards for their performance. Among the list of government's duties are the following: providing legal counselor to all of those that cannot afford and find themselves prosecuted by the authorities, establishing the policies and programs to enhance development, providing free medical services for workers, free education services, free judicial services, providing support to indigenous communities for their development and the protection of their heritage, etc.

f) Affirmative Action Policy and Notwithstanding Clause in the Canadian Constitution

Among the three countries, Canada is the only one to have established in its Constitution specific policies regarding "Affirmative Action" towards certain sectors of the population. Among the three nations is also Canada the only nation that has a "notwithstanding clause" that allows the federal and provincial parliaments to establish laws that violate the following rights and freedoms: freedom of expression; freedom of association; freedom of assembly;

freedom of conscience and religion; right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice; the right not to be arbitrarily detained or imprisoned.; the right not to be subjected to any cruel and unusual treatment or punishment; equality; the right to do not self-incriminate through testimony; the right to an interpreter. The validity term of those laws and regulations cannot be longer than five years, but they can be re-enacted. The use of this faculty is not very popular and thus the legislatures have made less and less use of it. This clause has been hotly debated in Canadian political and scholar circles. Nevertheless, all constitutions enable similar faculties under certain circumstances (usually related to emergency situations in the country) to the legislative and the executive powers of each nation. Apart from this clause, Canadian governments (federal and provincial) can also make use of the Emergency Powers of the so-named Peace, Order and Good Government faculties established in the Constitution Act, 1867.

g) Regulation of Property

Among the three nations, the Mexican Constitution is the one that offers the largest regulation of property. The text of the Canadian Constitution statutes is not as detailed as the Mexican example and the Japanese Constitution barely mentions property in its regulations. In this respect, particularly in terms of land property, the Mexican and the Canadian constitution are the antithesis of each other; which may provoke important issues particularly

concerning commerce and investment, the two main aims of the North America Free Trade Agreement (NAFTA). Both systems of regulation of property are highly complicated with a broad variety of kinds of property; nevertheless regulations reflect a different kind of negotiation and agreement. Meanwhile the Mexican example has its origins in a social revolution movement that fought the colonial organization of land and property; the Canadian example has its origins in treaties and understandings established during the colonial era. Legal procedures relative to land property in Mexico appear as complicated mainly due to the several kinds of constitutional guarantees of some kinds of property. The trials, legal guarantees and processes and the judicial institutions may be similar in content and form but since the regulation of land property in Mexico has created partly autonomous judicial instances and judicial procedures, and partly autonomous administrative offices of land and property, the trials and institutions seem to work differently which is not completely true. Nevertheless, in the author's opinion, the Mexican Constitution is mainly concerned with property as the Canadian Constitution is mainly concerned with equality.

The historical struggles that have given origin to the immense regulation of *equality* in Canada and *property* in Mexico are still reflected in constitutions, laws and in the case law in both nations.

B. Sources of law in Canada, Japan, and Mexico

Sources of law in this area of study are shaped by the country's legal system and tradition.

Usually, the constitution and constitutional procedural laws are the main sources of regulation of constitutional justice in one country. Also organic laws of the courts are sources of Constitutional Justice. This is why in several countries in Latin America this area of study is better known as constitutional procedural law²¹.

Case law is the most important source of law in Common Law jurisdictions, particularly for the regulation of Constitutional Justice. Some courts around the world also consider important international case law. A rare example worth mentioning is South Africa: its Constitutional Court has to consider foreign constitutional cases resolutions, or jurisprudence, in order to administrate Constitutional Justice.

1. Canada

In Canada there is not an exhaustive list of sources of law or a list of sources of constitutional law. At the same time, Canada is the only of the three countries where case law from other countries is considered a source of law since several documents were created by the British Parliament, and binding rules have been established by British courts. Sources of law are also some unwritten doctrines and unwritten principles, common law, case law, international law, case law from the Commonwealth nations and the United Kingdom are usually considered relevant; doctrine (in the sense of scholar and expert opinions); etc. It is also

²¹ Ferrer Mac-Gregor 2002

not unusual to find discussions about cases and constitutional regulations from the United States of America in the decisions of courts in Canada.

The main sources of the Canadian constitution are the main constitutional statutes (Constitution Act, 1867, formerly the British North America Act, 1867, together with amendments made to it since its enactment; the text of the Constitution Act, 1982, contained in the Canada Act, 1982; British Parliament Acts such as the Royal Proclamation of 1763, the Quebec Act of 1774 and the Statute of Westminster of 1931; the Saskatchewan Act of 1905; Alberta Act, 1905; Manitoba Act, 1870; Constitutional Acts of the provinces; Constitution Acts such as the ones of 1866, 1871, 1915, 1930, 1940; Terms of Union of the provinces of British Columbia and Prince Edward Island; among others); Common law that regulates primarily Aboriginal rights, the federation, parliamentary supremacy, among other issues of constitutional relevance; conventions, which are *rules that have developed from government practice over time and that are enforced not by the courts but by political sanction*²²; unwritten principles usually also established through constitutional interpretation of the courts; and royal prerogatives.

The laws and other kind of sources that regulate the defense of constitutional rights and the constitutionality of laws in each country can be impossible to study in their totality in this thesis, nevertheless in the following pages there is an account of the most relevant laws

²² Bakan et al., 2003: 5

regulating constitutional justice in the three nations.

Canada regulates the procedures concerning the defense of constitutional rights and the constitutionality of laws mainly through the following laws:

- a. Canadian Bill of Rights, R.S.C. 1970.
- b. Canadian Citizenship Act, S.C. 1946.
- c. Canadian Human Rights Act, S.C. 1976-77.
- d. Constitution Act, 1982.
- e. Human Rights Act, S.M. 1974.
- f. Human Rights Code, 1981.
- g. Human Rights Code, R.S.B.C. 1979.
- h. Indian Act, R.S.C. 1970.
- i. Individual's Rights Protection Act, R.S.A. 1980.
- j. Racial Discrimination Act, 1944, S.O. 1944.
- k. Provincially established Bills of Rights such as the Saskatchewan Bill of Rights Act, 1947.
- l. Constitution Act, 1867.
- m. Constitution Act, 1930.
- n. Royal Proclamation of 1763, R.S.C., 1985
- o. Treaties between Indian nations and the British Parliament.

- p. Convention on the Rights of the Child, Can. T.S. 1992.
- q. Criminal Code, R.S.C. 1985, c. C-46.
- r. Criminal Justice Act 1988 (U.K.), 1988.
- s. Criminal Justice and Public Order Act 1994 (U.K.), 1994.
- t. International Covenant on Civil and Political Rights, 999 U.N.T.S. 171.
- u. International Covenant on Economic, Social and Cultural Rights, 993 U.N.T.S. 3
- v. Universal Declaration of Human Rights, G.A. Res. 217 A (III), U.N. Doc A/810.
- w. Exchequer Court Act, R.S.C. 1970, c. E-11.
- x. Federal Court Act, R.S.C. 1970
- y. Charter of the United Nations, Can. T.S. 1945 No. 7

It is not unusual to see the Constitution of the United States of America quoted and referred to decisions by the courts in Canada.

As you can observe there are several international covenants and treaties that are considered by the courts in Canada. Nonetheless, courts are always very careful to delimit the extent in which foreign law affects their legal systems. Very often we find discussions on how Canada differs from the United States in terms of Constitutional justice²³ or on how certain international treaties are to be considered only after considering other national agreements and regulations.

²³ For example see: R. v. Sharpe, [2001] 1 S.C.R. 45, 2001 SCC 2, par. 218

2. Japan

In strict sense, Japanese sources of law are the constitution, international treaties, statutes, regulations and customs. Japanese lower regulations are usually not considered law in strict sense, nevertheless their use and relevance provoke scholars to discuss them as legal regulations²⁴.

Among the five sources of constitutional law that are mentioned here, only one is formally recognized as a source of the Japanese Constitution, the text of the Constitution itself. The other sources of Japanese constitutional law may be: the decisions made by the Supreme Court of Justice (SCJ) regarding constitutional matters, scholar and expert opinions, *practices or conventions* and detailed procedural regulations established by the SCJ. In Japan there are certain practices that have been adopted that affect the development of constitutional justice in Japan. Those practices are not as of strong binding character and relevance as *conventions* in

²⁴ According to Dean, M., Japanese statutes and regulations are organized in a hierarchical system that reflects the different levels of government that includes seiteho (laws enacted by the Diet), which can be roppo (the five most relevant codes and the Constitution), and horitsu (the other statutes-); horei (actually understood as all written regulation) which can be divided into meirei (orders and regulations issued by government agencies), seirei (Cabinet orders); and kisoku (rules). Local ordinances (jorei) are not technically law but still are the main reflection of local autonomy and regulate several important aspects of everyday life in Japan. There are also administrative guidance rules (gyosei shido) that frame the legal decisions of people living in Japan, which some scholars think should be considered as sources of law. Case law is theoretically not considered law in Japan, nevertheless lower courts are bound to the decisions of higher courts. This measure has provoked that case law from higher courts grow in relevance and importance in the Japanese legal world (2002: 129).

Canada but have never been actually contested in the court. They are practices that have not been interrupted in the lifetime of the actual constitutional text and actual political era in Japan. These Japanese practices regulate informally the relationships between the Judiciary and the Cabinet and the performance and tasks of prosecutors. For example, it is a practice that the Cabinet accepts the recommendations made by the Judiciary for appointments of judges in Japan. Scholarly work is reflected in very few occasions in decisions pertaining constitutional justice in Japan.

Japan regulates the procedures concerning the defense of constitutional rights and the constitutionality of laws mainly through the following laws:

- a. Constitution of Japan
- b. Courts Law
- c. Protection of Personal Liberty Act
- d. Criminal Procedural Law
- e. Criminal Procedural Regulation
- f. Execution Law of the Criminal Procedural Law
- g. Administrative Procedural Law
- h. Administrative Complain Law
- i. Prosecution Procedural Law

At the same time there are a list of regulations established by the Supreme Court that also

influence the ways in which prosecutors and lawyers solicit constitutional justice.

3. Mexico

Sources of law in Mexico are the Constitution, international treaties, the laws (which are organized in different levels: statutes, rulings, etc.), local customs, *jurisprudence* (concept that in this case means five consecutive judicial decisions of higher courts decided in the same sense), and doctrine (scholar and expert legal opinions). The order in which are mentioned reflects their formal hierarchy. In Mexico, differently from Japan, government agencies, administrative bureaus, and local administrative agencies cannot promulgate any legislation that impose any obligation or right to the citizens. There are few regulations that actually frame the decisions of the citizens such as the ones related to tax forms and presentation of information, construction regulations, public and private transportation regulations, etc. but since those regulations are often contested, are backed up with laws made by the legislatures.

Sources of constitutional law in Mexico are: the Constitution, the case law established by the higher courts regarding constitutional issues, scholar and expert opinions, and regulations established by the Supreme Court of Justice dealing with procedural aspects of cases of constitutional justice. Differently from Canada and Japan, there are no practices that have been uninterruptedly observed by the authorities that have influenced or influence the development of constitutional law in Mexico. The text of the Mexican Constitution is possibly the most

reformed constitution in the world. The changes in the text reflect also the changes that the constitutional arrangements have suffered since 1917, the year that the Mexican Constitution was promulgated. These constant transformations have been accentuated in the last fifteen years since the Institutional Revolutionary Party (PRI) started to loose power²⁵.

Mexico regulates the procedures of the defense and interpretation of the constitution by the following laws:

- a. Political Constitution of the United Mexican States of 1917, (Constitución Política de los Estados Unidos Mexicanos) in articles 1 – 29, 94 – 107, 109, 110, 133.
- b. Federal Judicial Power Organic Law (Ley Orgánica del Poder Judicial de la Federación).
- c. Amparo Law (Ley de Amparo, reglamentaria de los artículos 103 y 107 de la Constitución Política de los Estados Unidos Mexicanos).
- d. Federal Code of Electoral Institutions and Procedures (Código Federal de Instituciones y Procedimientos Electorales)
- e. Constitutional Controversies and Actions of Unconstitutionality Act (Ley Reglamentaria de las Fracciones I y II del artículo 105 de la Constitución Política de los Estados Unidos Mexicanos)

Furthermore, it is important to remember that in Mexico, as in Canada and Japan, exist

²⁵ The PRI is the biggest party in Mexico. It maintained most of the political power in Mexico for approximately seventy years, from 1929 until 2000.

other procedures that also, in one way or another, protect some principles established in the constitution because they are dedicated specifically to the protection of human rights. These procedures are established in international treaties and other national laws. There are 30 Declarations on Human Rights issues, and more than 48 human rights related protocols and international treaties signed and ratified by Mexico. The most relevant laws and rules are the following:

- a. Human Rights Commission Act (Ley de la Comisión Nacional de los Derechos Humanos)
- b. Human Rights Commission Organic Rule (Reglamento Interno de la Comisión Nacional de los Derechos Humanos).
- c. Rules of Procedure of the Inter-American Commission on Human Rights.
- d. Rules of Procedure of the Inter-American Court on Human Rights.

We can conclude that in Canada and Japan, the judiciary itself has established the scope and reach of their tasks and abilities as shapers of the constitution. In Japan, those restrictions have been widely in agreement with the decisions of the legislature. In Mexico, the legislature has been the main organ shaping the ways in which the judiciary performs constitutional justice, nevertheless more and more the judiciary is establishing rules about how to perform such duties.

There are other three considerations to be done in this chapter. The first one is related to some important remarks about the legal system in the three countries discussed. The second one is a summary of the faculties of each judiciary, which will also help understand how constitutional justice is achieved in the three nations. The third one is a discussion on how legal texts/words matter in judicial decisions.

C. Legal faculties of the judiciary pertaining constitutional justice

1. Canada

In Canada, constitutional justice is mainly performed in two ways with mainly three effects: the first way is the resolution of cases involving constitutional issues. Processes such as constitutional review, and habeas corpus are some of the processes that can take place through the first way mentioned above in this paragraph.

The second way is by solving references made by other authorities and powers in relation to constitutionally relevant issues. This last faculty of the courts is usually known as *advisory opinions*. In Canada, *advisory opinions* are called *references*. References are only granted under the premises that the court establishes for each case and only when there has been a formal inquiry presented by an authority. A reference is a set of questions that are required to be answered by the court and do become law.

There are three kinds of effects of these two processes. The first effect is the direct influence that the parts in that certain constitutional case suffer/enjoy by means of such a decision; the second effect is the general effect of such a decision, which is of broad consequences in common law jurisdictions where those decisions are considered as sources of law to decide following cases. Decisions of this importance in common law jurisdictions become law and also become doctrine to be studied by legal scholars and students. The last effect of such two processes is the intervention in the resolution of disputes or decision processes of other authorities as it usually happens through the influence of judicial advisory opinions and the declaration of unconstitutionality of some laws, which often require the legislature to act in consequence and even produce a new piece of legislation.

One process could have all these effects in a legal system and the decision-making processes in one country, as it is in Canada.

It is important to state that in Canada, criminal law is a federal matter, and common law is largely the same in all the provincial jurisdictions outside of Quebec. Due to this situation, and the prerogative characteristic of federal law, provincial courts have been enabled to also deliver some kinds of “federal” justice. Public law is “shared” among all the provinces, including Quebec. And as it is stated above, the federal government appoints the highest provincial courts’ judges. Thus, the author of this thesis has concluded as many other scholars before, that the Canadian judiciary is a highly diversified institution but with

important centralizing organs.

2. Japan

In Japan, constitutional justice is performed in one way: the resolution of cases involving constitutional issues. The effects of those resolutions are similar in character to the ones mentioned in the paragraphs above but different from them too.

In Japan, case law is not a formal source of law and thus its influence is far less than in Canada. The resolution of a decision formally will only affect the parts in the case.

Nevertheless, we cannot ignore that the judiciary and its systematic decisions have shaped: how disputes are solved among the other authorities, how lawyers solicit justice, how prosecutors perform their duties and how people decide on whether to solve certain dispute using the judiciary or the kinds of petitions they do to the judiciary. For example, the decisions on the unconstitutionality of the electoral districts legislation have since then affected those kinds of legislation forcing the legislature to change some laws²⁶.

Using the vocabulary of the most usual categorizations of legal scholarship, this also means that Constitutional Review in Japan is *concrete* and *a posteriori*, which means that the faculty of the court is to review a certain law through individual cases that come to court

²⁶ The effect though is considerably low, since strangely, the legislature has produced unconstitutionally similar legislation after the decisions of the SCJ specifying the unconstitutionality of the elections law.

after the law enters into effect. The effects of the review are *inter-partes*, which means that the effects only concern the parts participating in the case.

Any citizen can request judicial review, requests done by government officials or other authorities are not allowed (differently from the cases in Canada and Mexico). In Japan, the state (as a part in the case) can submit its opinion even in cases where the state is not a party. Ministers can state his or her opinion with permission of the court in special and important cases where public welfare is discussed. In Japan, there exists a judicial procedure in administrative law that was established for this kind of disputes between authorities in the government, mainly used by the prefectural governments but usually those cases do not grow until achieving a constitutional level of conflict.

In Japan, Constitutional Justice is mainly constrained to judicial review. There have been around 10 cases (in the life-time of the actual constitution) where the Supreme Court of Justice has declared the unconstitutionality of laws or acts of the government²⁷. There are other many cases where laws and acts of the government have been declared unconstitutional by lower courts, nonetheless in most of those other cases the SCJ has reversed the judgments

²⁷ See Cases: Case number: 1955 (A) No.2961 decided November 28, 1962; case number: 1970 (A) No.1310 in April 4, 1973; case number: 1968 (Gyo-Tsu) No. 120 in April 30 of 1975; case number: 1974 (Gyo-Tsu) No.75 in April 14, 1976; case number :1984 (Gyo-Tsu)No.339 rendered July 17, 1985; case number: 2006 (Gyo-Tsu) No. 135, rendered June 4, 2008; 1999 (O) No.1767, rendered September 11, 2002; case numbers (all related to the same issue): 2001 (Gyo-Tsu) No. 82, 2001 (Gyo-Hi) No. 76, 2001 (Gyo-Tsu) No. 83, 2001 (Gyo-Hi) No. 77 rendered September 14, 2005; and, case number: 1992(Gyo-Tsu) No.156, rendered April 2, 1997.

in appeal.

Finally it is important to state that Japanese bureaucracy has always surprised foreign scholars because of its power and influence in everyday's life of the population and the government. As it has been mentioned above, the administration guidance produced by local administrative organs are formally not sources of law but only a guide, nevertheless the courts do constantly defer to them.

3. Mexico

In Mexico, constitutional justice is performed in the following four ways: the first way is the resolution of cases involving constitutional issues which is also the first way mentioned in the previous two cases. These processes include: habeas corpus, electoral rights of the citizens constitutional controversies, constitutional review, and *amparo* (agrarian, fiscal, etc.). The first way is classified as *concrete*, *inter partes*, and *diffuse*, which means that a broad set of courts has the faculty to solve constitutional cases. As we already stated before the first way by which the courts achieve decisions do not become law (in its formal term), they can only become source of law (in its broadest term) when they repeat systematically a certain interpretation of a principle or sense.

The second way is by solving constitutional controversies between authorities or powers. The third way is a constitutional review brought to court by certain authority looking for

general effects of the resolution. The fourth way is by investigating cases of constitutional rights violations. The last three ways are exclusive faculties of the Supreme Court of Justice.

A more detailed description of the main procedures is as follows:

- a. Constitutional Controversies. Constitutional Controversies are also called Constitutional Disputes. It is a procedure where two different authorities or powers from the same or a different level of government are in conflict and solicit the SCJM to resolve that conflict. In some cases the resolution of the court can have general effects. This kind of procedure is more commonly found in those institutions that follow the Continental (also called European) Model of constitutional courts.
- b. Actions of Unconstitutionality. Actions of Unconstitutionality are procedures that review the constitutionality of laws (as Judicial Review does). An authority solicits this process, in this case: 1). parliamentary minorities, 2). political parties with federal or state register or 3). the General Federal Attorney. The resolution of this kind of processes can be of general effects. This process is also more commonly found in constitutional courts that are shaped following the Continental/European model of constitutional courts.

As it is also the case of Constitutional Controversies, resolutions with general effects declarations require the vote of a majority of eight ministers of the Supreme Court of Justice.

c. Investigation Procedures of the Supreme Court of Justice. The constitution enables the Court to send “experts” to conduct investigations on possible serious violations to the constitution by authorities. In the event of evidence of such violations, the Court emits a resolution that contain several recommendations to the authorities involved in the procedure of the constitutional rights violations. These recommendations are not formally obligatory but of important relevance to the political atmosphere. This faculty, differently from the previous two, was established in the constitution of 1917 but the SCJM has barely used this faculty but in three occasions.

d. Amparo. Amparo is a complex process that in Mexico includes the procedures of *Habeas Corpus*, judicial review as known in United States of America, the agrarian social rights defense procedure and ordinary constitutional-rights-based appeals. It also includes procedures on administrative law but this function is not very exploited since most of the states have created procedures that can defend citizens against illegal administrative acts. Amparo is usually classified in two kinds: single instance Amparo (also called direct) and double instance Amparo (also called indirect). At the same time, and for a better comprehension of this procedure, jurists classify Amparo by the area of specialization, which conditions several of the characteristics of the procedure as civil, agrarian, labor, administrative, and penal Amparo. All these classifications cover so

many different procedures that one single large book is not sufficient to contain them all, regardless all are known by the name of *Amparo*.

The effects of the procedures mentioned above are the following: The first effect is the direct influence that the parties in a certain constitutional case suffer/enjoy by means of such a decision; the second effect is the public effect of such a decision, which is of broad consequences in the case of resolutions of constitutional controversies and actions of unconstitutionality, which are *erga-omnes*. The last effect of such two processes is the intervention in the resolution of disputes or decision processes of other authorities as it usually happens through the influence of judicial resolutions of constitutional controversies, recommendations, actions of unconstitutionality, the declaration of unconstitutionality of some laws, which often require the legislature to act in consequence and even produce a new piece of legislation. One single process of all of which we have mentioned could have all these effects in a legal system and the decision-making processes in one country, the same as in Canada.

It is important to stress that *advisory opinions* are not a faculty of the SCJM as *references* are in Canada, nevertheless the Court usually expresses its opinion in the text of the judgments, and may write a set of recommendations. The SCJM, when considers it relevant, also expresses in its decisions its opinion on how acts and laws should be reformed or amended in case of unconstitutionality. The Court is able to oblige the legislative power to

promulgate certain laws in a definite period of time in extreme cases or to oblige administrative authorities to act in a determined way on the basis of need.

The administration of Constitutional Justice in Mexico is a mixed system where several procedures are of *abstract* and some of *concrete* control. At the same time, there are some procedures that are of diffuse control but there are also procedures that are of the exclusive jurisdiction of the Supreme Court of Justice.

In the case of the defense of fundamental rights such as freedom, life, and legality of penal law procedures provincial²⁸ courts can also act as federal courts²⁹. In no other cases, are provincial courts allowed to interpret the federal constitution. Provincial courts are solely in charge of the defense of state constitutions and laws. The Supreme Court of Justice is in charge of Constitutional Controversies and Actions of Unconstitutionality, which are the only instruments that allow *general effects* in the event of an unconstitutional law. It is the only court that can investigate certain phenomenon without been solicited to do it. Mexico has been classified as a system belonging to the United States of America's Model of Constitutional Review³⁰ nevertheless, due to the complexity of its system, it would be better classified as a mixed system as will be outlined in the following pages.

²⁸ Since Mexico is formally the United States of Mexico, the correct way to call the "provinces" in Mexico is "states". Nevertheless, for the purpose of this dissertation the term "province" will be used for both Canada's provinces and Mexico's states.

²⁹ The state courts only participate in the initial stages of the procedure doing the proper suspensions of acts and starting the procedures of the defense of the rights established in the constitution

³⁰ See MAVČIČ, Arne at <http://www.concourts.net/introen.php>

4. Commonalities among the three countries

In all three countries, the system of constitutional justice is classified mainly as a system of *diffuse control* of constitutionality, which means that the faculty to decide constitutional cases is not exclusive of one court, or one organ. In all cases, other courts *below* the Supreme Court can also interpret the constitution and issue judgments dealing with the constitutionality of government acts. This may seem to do not be rare, but lately, there is a growing trend to leave a special exclusive power – different from the judiciary in its original sense– to have all control over this faculty³¹.

This characteristic allows that the constitutionality of a certain matter or act be discussed in different levels by different courts before it arrives to the Supreme Court of Justice. This process opens up an important dialogue between powers and authorities in each country. In Japan, for example, there have been several decisions by lower courts establishing the unconstitutionality of some government acts regarding article 9 of the Constitution that are important for reflecting the tension growing in the country related to this issue. The Supreme Court of Justice in Japan has behaved very conservative but certainly those decisions reflect that the judiciary is not completely deaf and may act if no political process is taken forward to reform the actual article.

³¹See the growing trend in Europe and other African and Latin American countries where Constitutional Courts have been created. Cf. Nishi, 2003 and Mavcic, 2009.

According to the interpretation of the Constitution made by the Supreme Court of Justice of Japan, almost every court in Japan can decide on constitutional matters and interpret the constitution³². The courts in Japan that are not able to decide on Constitutional matters are Summary Courts. The provincial courts in Mexico cannot decide constitutional matters but are able to decide on provincial constitutional matters that are usually very close in meaning and content to the federal constitution. Constitutional justice in Mexico is done in all levels of the judiciary in different ways. In Canada the phenomenon is similar but the settings are different. Provincial Superior courts have jurisdiction to hear constitutional matters even in the case of federal laws. In Canada, only the lowest courts are not allowed to hear constitutional matters.

Nevertheless, in all three cases, the court of last resort is the supreme court of justice. Through the process of appeal, the courts establish the parameters that regulate the interpretation of the laws and the constitution, and uniform those interpretations. Thus, the importance and relevance of discussing the supreme court of justice is based on the fact that this organ establishes the parameters that establish the hierarchy of national values, and constrain the meaning of those constitutional values. When the supreme courts of each nation shape the constitutional landscape of the country, the courts establish the parameters by which the authorities and the people regulate their every day decisions.

³²See Food Staple Management Law Constitutionality Case, 4 Minshu 73 (1950)

5. Exclusive faculties of the Supreme Courts in Mexico and Canada

In Canada and Mexico, apart from the decisions of judicial review, the courts also have the faculty to give different kinds of advisory opinions to other organs of the government. In Mexico, there are not such references; any opinion given under the faculty of investigation of the court does not have any legal binding authority.

The Supreme Court of Japan does not have any exclusive faculty. She can only judge a certain case and review the constitutionality of certain acts of the government, mainly law. The SCJ does not have the faculty of an advisory opinion. Furthermore the SCJ only allows individual cases to be heard at the court; that is controversies between particulars, or particulars and agencies of the state. The SCJ only performs duties of concrete judicial review; meanwhile the SCJM also performs tasks of abstract judicial review. Since Canada is a Common law jurisdiction, the decisions of the courts perform a similar function but with rather a different degree of power and mode.

The courts in Canada can use different kinds of remedies for their decisions dealing with constitutional issues. There can be suspensions of invalidity, prorogation of the effects of unconstitutionality, partial override of the legislation, among others. Nevertheless, it is important to emphasize that in Canada, the main effect of a declaration of unconstitutionality is to override the law, to delete it from the legal world. In Mexico, the decisions of *Amparo* cases, cases brought by particulars, declaring the unconstitutionality of a law only affects the

parts in the case. As we have seen in the paragraphs above, cases where a law is declared unconstitutional with ‘general effects’ are possible but on different grounds and under different circumstances that are discussed above.

The classification of *abstract vs. concrete* constitutional review could not be applicable to Canada because it is a Common Law jurisdiction. Nevertheless, the effects of the constitutional decisions regarding the classification *interpartes vs. erga omnes* can still be used to emphasize that the majority of constitutional decisions will affect only the parts in the case. Constitutional decisions will only affect the generality of the population through the usage of certain legal processes of those interested in using them.

In Japan, the declaration of the unconstitutionality of a law never has general effects, it only has effects for the parts in the case, and it will only concern the decision and the specific case. The parliament has, until now, reformed such clauses and articles that have been found to be unconstitutional, but in some cases this process has taken a long period of time³³. In Mexico, when a law has been declared unconstitutional, the legislative power is always prompt to reform the legislation that has been found to be unconstitutional or to derogate it.

6. The constitutional regulation of the judiciary

The Mexican Constitution defines with details the judiciary and the faculties of the judiciary regarding constitutional justice. The Japanese Constitution has an entire chapter

³³ In case: 1955 (A) No.2961 (ThePatricide case), the article was reformed approximately 15 years after the resolution of the court declaring the unconstitutionality of the law.

dedicated to the judiciary but only mentions that the *Supreme Court of Justice is the court of last resort with power to determine the constitutionality of any law, order, regulation or official act* without establishing any details in this respect. The text of the CA1982 and CA1867 do not contain any regulation of the procedures pertaining constitutional justice, or the procedures before the Supreme Court of Justice (SCC), or the structure of the judiciary or the SCC³⁴. Nevertheless in Canada some ordinary Parliament Acts are also part of the constitution, as for example the Supreme Court Act, RSC 1985, c. S-26. This act underwent a drafting process as any other Parliament Act but still is considered a part of the “constitution”. Canada has a well-established doctrine and common law concerning constitutional justice that has significantly changed and evolved, particularly in the last 26 years, since the enactment of the CA1982. In the three cases there are secondary laws that regulate such procedures and organize the judiciary.

Most of the regulation of the structure of the judiciary in Japan falls under the jurisdiction of the Supreme Court of Justice itself and only partly on the legislature. In Canada, the Parliament and the Cabinet are the ones that decide most of the laws and regulations that establish the courts, their composition, and the framework of the judicial processes. In Mexico, judicial processes and the composition of the courts, are decided by the legislatures.

³⁴ Section 24. (1) *Anyone whose rights or freedoms, as guaranteed by this Charter, have been infringed or denied may apply to a court of competent jurisdiction to obtain such remedy as the court considers appropriate and just in the circumstances.*

The extensive regulation in this matter in Mexico reflects an attempt of the legislators to decentralize power, which has been historically concentrated in the executive power.

D. Regulation of the Supreme Court of Justice

1. Canada

In Canada, the Supreme Court of Canada is not regulated in the text of the Constitution, the current statute governing the Supreme Court of Canada is the Supreme Court Act R.S. 1985, c. S-26. Several authors within Canada have recommended the court to be provided for in the text of the Constitution but until now, a federal statute (usually regarded as of constitutional importance and thus as part of the constitution) regulates the court.

Section 3 of the statute establishes that:

3. The court of law and equity in and for Canada now existing under the name of the Supreme Court of Canada is hereby continued under that name, as a general court of appeal for Canada, and as an additional court for the better administration of the laws of Canada, and shall continue to be a court of record.

In the cases of Japan and Mexico, the supreme courts are established in the Constitution.

2. Japan

The following articles describe the judiciary and the Supreme Court of Justice of Japan:

Article 76: The whole judicial power is vested in a Supreme Court and in such

inferior courts as are established by law. 2) No extraordinary tribunal shall be established, nor shall any organ or agency of the Executive be given final judicial power. 3) All judges shall be independent in the exercise of their conscience and shall be bound only by this Constitution and the laws.

Article 77: *The Supreme Court is vested with the rule-making power under which it determines the rules of procedure and of practice, and of matters relating to attorneys, the internal discipline of the courts and the administration of judicial affairs. 2) Public prosecutors shall be subject to the rule-making power of the Supreme Court. 3) The Supreme Court may delegate the power to make rules for inferior courts to such courts.*

Article 78: *Judges shall not be removed except by public impeachment unless judicially declared mentally or physically incompetent to perform official duties. No disciplinary action against judges shall be administered by any executive organ or agency.*

Article 79: *The Supreme Court shall consist of a Chief Judge and such number of judges as may be determined by law; all such judges excepting the Chief Judge shall be appointed by the Cabinet. 2) The appointment of the judges of the Supreme Court shall be reviewed by the people at the first general election of members of the House of Representatives following their appointment, and shall be reviewed again at the*

first general election of members of the House of Representatives after a lapse of ten years, and in the same manner thereafter.

***Article 80:** The judges of the inferior courts shall be appointed by the Cabinet from a list of persons nominated by the Supreme Court. All such judges shall hold office for a term of ten years with privilege of reappointment, provided that they shall be retired upon the attainment of the age as fixed by law. 2) The judges of the inferior courts shall receive, at regular stated intervals, adequate compensation which shall not be decreased during their terms of office.*

***Article 81:** The Supreme Court is the court of last resort with power to determine the constitutionality of any law, order, regulation or official act.*

***Article 82:** Trials shall be conducted and judgement declared publicly. 2) Where a court unanimously determines publicity to be dangerous to public order or morals, a trial may be conducted privately, but trials of political offenses, offenses involving the press or cases wherein the rights of people as guaranteed in CHAPTER III of this Constitution are in question shall always be conducted publicly.*

3. Mexico

Finally, in Mexico the constitution has a very detailed description of the tasks and composition of the federal judiciary and the Supreme Court of Justice. More than ten articles that contain several sections in each article contain the constitutional regulations about the

judiciary and the parameters of how constitutional justice is carried out. There follows a quotation of the most important section of the first article regulating the federal judiciary in Mexico.

Article 94. The exercise of the Judicial Branch of the Federation is vested on the Nation's Supreme Court of Justice, in an Electoral Tribunal, in Collegiate and Unitary Circuit Courts and in District Courts.

Management, supervision and discipline of the Judicial Branch of the Federation, with the exception of the Nation's Supreme Court of Justice, shall be entrusted to the Federal Judicial Council, under the terms established by the Law, in accordance with the bases set forth in this Constitution...

E. Formal and informal disregard of constitutional principles

Since this thesis is interested in studying the connection between the decisions taken in constitutional cases and the views of the people, the author considers of interest of this thesis to discuss issues related to this disregard to constitutional principles. These sentences and some of the discussion that follows ahead try to emphasize that people disregard certain legal regulations, including constitutional principles; confuse certain norms; and, have contradictory ideas about social standards and the law. For a better explanation, there follows a couple of examples.

The opening sentence of the Constitution Act, 1982³⁵ (Canada) states: “*Whereas Canada is founded upon principles that recognize the supremacy of God and the rule of law*”.

(emphasis added)

“*The supremacy of God*” is an idea that does not seem to be of great relevance for the courts in Canada since it is barely mentioned in judicial decisions. Nonetheless, the idea of the *rule of law* is mentioned several times in all constitutional sentences that the author has read³⁶. There is no explanation of the idea of the *supremacy of God* in judicial decisions, while there are plenty of discussions about the idea of the *rule of law* in scholar papers and judicial decisions. Both ideas share the same position in the text of the Constitution, but certainly are not ideas “supported” equally among the population. Thus, judicial institutions and the government apparatus conduct their activities in correlation to that which is supported by the population and not only in correlation to that which is established in the statutes.

In all nations, in certain situations, some constitutional principles are found in conflict with others. In such cases, courts are usually the ones that decide which principle should prevail over the other. This is the main way in which justice is carried out. There are an enormous number of examples of these conflicts like the competing classification in

³⁵ Schedule B to the Canada Act 1982, (U.K.) 1982, c. 11

³⁶ The supremacy of God principle is usually recognized to address the universal and inalienable rights which are the source of the rights established in the Canadian charter. Also see Penney, 2006 and Sossey, 2003.

Canadian federalism; the conflicts regarding the principle of disarmament and non-militarization in Japan vs. the right of all nations to defend against themselves, etc. The more conflicts you find among the principles that regulate a certain society, the less rational the constitutional system appears to be. Those misconnections among the constitutional principles and regulations also provoke contradictions, confusion and a “need” to disregard.

In Mexico it would be impossible to have the word “*God*” in the text of any law, including the Constitution, due to historical precedents regarding the prior influence and importance of the Catholic church in state affairs in Mexico (which are the reason of the principle of division of state and religion). The Meiji Constitution of Japan mentioned the “*spirits*”³⁷ in its introduction but obviously the idea of (one)-God is not an inspiring or relevant idea in Japan due to the religious foundations of the Japanese people.

The Constitution of Canada also establishes that the executive power is vested in the Queen; nevertheless there is a constitutional and political convention that establishes that the Prime Minister is in fact the one in charge of the executive power. This constitutional convention establishes a formal disregard of the text of the law only comprehensible in the

³⁷ ...*That we have been so fortunate in Our reign, in keeping with the tendency of the times, as to accomplish this work, We owe to the glorious Spirits of the Imperial Founder of Our House and of Our other Imperial Ancestors.*

We now reverently make Our prayer to Them and to Our Illustrious Father, and implore the help of Their Sacred Spirits, and make to Them solemn oath never at this time nor in the future to fail to be an example to our subjects in the observance of the Laws hereby established.

May the heavenly Spirits witness this Our solemn Oath.

...

context of history, and the social and political environment in Canada.

No study concerning the Japanese constitution would be complete without acknowledging the disregard, confusion and contradictions that the maintenance of the figure of the emperor and the establishment of article 9 has provoked in the Japanese constitutional system and its social and political environment.

The Japanese constitution begins with a long sentence and paragraph that establishes: *“We, the Japanese people, ... shall secure for ourselves and our posterity the fruits of peaceful cooperation with all nations and the blessings of liberty ... and resolved that never again shall we be visited with the horrors of war through the action of government, do proclaim that sovereign power resides with the people and do firmly establish this Constitution.”* And continues to establish in article 9: *“Aspiring sincerely to an international peace based on justice and order, the Japanese people forever renounce war as a sovereign right of the nation and the threat or use of force as means of settling international disputes. 2) In order to accomplish the aim of the preceding paragraph, land, sea, and air forces, as well as other war potential, will never be maintained. The right of belligerency of the state will not be recognized.”*

How could we study the fact that Japan established Self-Defense forces and that those forces have an expanding budget in spite of the peace-seeking principles in their constitution?

Most scholars confront this issue taking a stance in relation to article nine, arguing in favor or against certain interpretations of the article³⁸. The fact is that the Japanese population is clearly divided among supporters and reformers. This division has caused a constitutional crisis in Japan that until now has been dealt with a high degree of disregard. The situation in Japan is not the only one in the world, which is why it is of crucial importance to study also this gray area of the law.

Disregard, confusion and contradiction never travel in only one-way. In Japan, as in many other countries, people and institutions have disregarded some of its laws and constitutional principles and also some of their traditions and customs in order to survive, reform, change and develop.

Disregard, confusion and contradiction is a difficult issue to deal with and to study. Most of the authors actually discussing “disregard” are in the field of sociology and anthropology and are scholars usually interested in topics related to different kinds of discrimination, colonization, race, etc. Nevertheless more and more in recent literature we can find authors discussing disregard of legal norms and legal norms that disregard.

Disregard is a key word in the world of rules and norms. Disregard can be consensual or individual, and can permeate entire discourses, beliefs or simple orders. Disregard is often linked with contradictions within law and between the law and the *nomos* of a nation. Legal

³⁸ See Taylor, 2000 among many others.

texts are full of words and ideas that are disregarded everyday by the population and the institutions, it is a fact. Constitutions, as important as they are, also contain ideas and words that are disregarded or underestimated and undervalued. Disregard can be translated to different behaviors, not only to pure disregard. Additionally, disregard can also happen in different levels and among only certain sectors of the population.

Disregarding behaviors, contradictions and confusions are of ultimate importance mainly because they are crucial for the definition of the rhetoric of a certain community. It is impossible to find the links and the logic that connect the text of the Constitutions and the decisions of the judiciary without acknowledging the rhetoric of power in each nation. Democratic systems require from the authorities a clear vision of the population's opinions and views about power and regulations. Understanding such behaviors and attitudes is then crucial to define the requirements of a constitutional system.

Chapter III

Legal professionals, legal education and the organization of the Judiciary - administrative aspects considered

"Our society has reached a point where its progress and even its survival depend on our ability to organize the complex and to do the unusual." – James Webb³⁹

In the following paragraphs, due to the requirements of this paper, the challenges of diversity and democratic representation within the public institutions in charge of providing constitutional justice will be discussed.

Scholars in the area of administration and public choice agree on the impossibility of getting the best results by having all public goods and services provided by a single integrated bureaucratic structure subject to the control and direction of a single chief organ. However, centralization is an essential feature of constitutionalism.

Constitutional justice has its base in the centralization of the interpretation of the law, which adds up to the challenge of this sector of the states and their governments. The

³⁹ WEBB, James who is the second NASA administrator and a principal founder of the National Academy of Public Administration in United States of America (US). (http://www.napawash.org/about_academy/index.html)

challenge then is how to provide constitutional justice that is less centralized, more diversified and inclusive of minorities.

Among the three of the systems of constitutional justice, the Mexican appears to be the most diverse. The interpretation of the law is not concentrated solely in one institution; it is diversified depending in the area of law and the level of justice. At the same time, lower courts also have larger probabilities to settle controversies in constitutional cases. But the high levels of diversity in Mexico may be a cause for the low levels of trust and respect to legal institutions, professionals and the law.

Several other solutions have been given to the problem of diversification of institutions judging constitutional issues such as Human Rights in the world. States have created autonomous institutions such as the National Commission for Human Rights in Mexico. There are also Non-Governmental Organizations (NGO) dedicated to fight campaigns against the violation of rights (that are usually are protected by the Constitution). These kinds of institutions are also important for the diversification of the protection of some constitutional rights.

For example, the system of Constitutional Justice in Canada is centralized in few institutions and offers fewer options for its delivery, but is constantly challenged by autonomous institutions and non-governmental organizations. In Canada there is a broad range of options for the population interested in protecting constitutional rights among those

autonomous institutions such as NGO's and commissions of human rights.

At the same time, there are international courts where constitutional issues can also be heard. An example is the Inter-American court of Human rights, which has heard cases from Mexico and Canada. This last kind of judicial instance does not exist in Japan.

Another important challenge that systems of Constitutional Justice face around the world is related to representation of the population. As it has been also expressed above in other words, constitutional tribunals are not democratically constructed institutions. Nonetheless, constitutional tribunals still perform the important duty of interpreting the constitution, affecting constitutional arrangements and affecting all other kind of legal decision-making within a nation. It is no doubt that systems of constitutional justice all over the world are confronted with the task of developing an alternative theory of public administration that is appropriate for citizens living in a democratic society, an alternative theory that accounts for diversity. In the following pages the thesis will explore the policies that the three countries have established to resolve this issue affecting the judiciary mainly by exploring the demographics of the judiciary and the legal profession and by exploring certain constitutional measures in the three nations.

A. The situation of legal professionals and judges

In the following paragraphs there is a description of the people involved in judicial

processes. This will provide with one of the most important perspectives over the task of the judiciary, and will touch upon the legal profession, diversity of the legal profession and judges, legal education in the three countries.

1. Canada

a) Legal Education

In Canada, there are 21 law schools from which 16 are common law schools and 5 are civil law schools. Mclean's⁴⁰ last ranking (2008) had Toronto, McGill, Osgoode and the University of British Columbia (UBC) as the best common law schools. The best civil law school was considered to be the faculty of Law of Montreal University. All of them offer two or three master programs and one doctorate program in law. There are also doctorate degrees in multidisciplinary studies that often discuss legal issues.

In Canada, academic work is a very important source of inspiration for legal decisions; it is very common to find decisions that quote scholarly work in their content. Some of the judges are also academics, the same as in Mexico. In Japan and Mexico academic work is also a source of inspiration for legal and constitutional decisions, but not in the degree of Canada. In Canada and Japan there is an established academic career where the goal is to attain a tenure position in a Faculty of Law of one of the universities in the country.

⁴⁰ <http://oncampus.macleans.ca/education/2008/09/11/overall-ranking/>

In Canada, this is not the case, nevertheless there is an important number of professors that have studied abroad mainly the US, Australia or the UK. Professors usually publish articles and books in order to further their careers.

b) Legal profession

According to the Federation of Law Societies in Canada and the Bar Associations data there were in 2007 approximately 80000 lawyers (legal professionals with the capacity to represent in court) in Canada, of which 27000 were women.

There are about 2500 students admitted to Law school each year, from which the great majority will succeed in becoming a lawyer. The students must complete a year of articling, which is a very important part of their training before being considered eligible to be “called to the bar”. In Canada, there are about 420 persons per lawyer.

Canadian society considers legal professionals such as lawyers, prosecutors, and judges an elite. Upon appointment as a federally appointed judge, the title “Honourable” is conferred on each new-judge. There are several kinds of judges in Canada, who may or not stay as judges for their entire lives. Nevertheless most of the federally appointed judges after appointed for the first time, will stay as judges unless exceptional circumstances occur. Differently from the Japanese case, the age of the first appointment of a judge is considerably older. Provincially appointed justices of peace must usually will need 10 years of working experience preferably in community oriented fields. Usually, provincial judges need to have

ten years completed membership at the Bar of one of the provinces or territories and they should have practiced law with a “high level of achievement”. The greater majority of federally appointed judges have had a considerable amount of judicial experience aggregated to 10 years as members of the bar. According to Baar⁴¹, federally appointed judges are typically drawn from the litigation bar and the average age ranges from 45 to 60 years of age.

c) Judges

The Canadian court system has been also sometimes labeled as unitary⁴² due to the fact that the federal government appoints all judges of superior courts in the provinces, the provincial courts of appeal, and all other federal courts. The size of provincial courts varies; for example, the Ontario Court of Justice is a complex system with several kinds of courts and more than 250 judges meanwhile the territory of Nunavut does not have a provincial court. If something is true about Canada is the asymmetric organization in all levels and all kinds of institutions, including the public legal institutions.

There is an increasing concern in Canada with “diversity”. A personal history form contains as its last question the following: *“Given the goal of ensuring the development and maintenance of a judiciary that is representative of the diversity of Canadian society,, you may, if you choose, provide information about yourself that you feel would assist in this objective...”* “ At the same time, merit criteria now specifically include considerations of

⁴¹ Baar, 1998

⁴² Ibidem

whether a candidate will contribute to the diversity of the bench. Nevertheless, according to Devlin, McKay and Kim⁴³ there is a deficit of judges with knowledge of indigenous law and of indigenous ancestry. In 2007, there were a total of 5 federally appointed aboriginal judges in Canada⁴⁴.

The Canadian judges' appointments system is based in the English system. The appointments are made by the executive branch of the government (Governor in Council/Prime Minister), with the support of recommendation issued by committees created by the Ministry of Justice - Commissioner for Federal Judicial Affairs - from a pool of names of applicants. The applicants must be of the legal profession and be members of the regional bar association. Therefore, applicants usually graduate from different institutions and passed different tests for the bar admission.

Among the problems of such system is the political patronage of judges. According to several scholars such as Bouthillier⁴⁵, there is no doubt that those candidates who are or were supporters of the party in power have been shown preference. The Canadian Bar Association (CBA) 1985 report on appointments of federal judges also established the "*dissatisfaction with the extent of political patronage in judicial appointments*" and that "*the system was not designed to select the best potential judges*".

⁴³ Devlin, McKay and Kim 2000: 734

⁴⁴ The Law Society of Upper Canada in <http://www.lsuc.on.ca/latest-news/b/archives/?i=12260>

⁴⁵ Bouthillier Guy. 1971: 569.

There are around 1100 federally appointed judges in Canada and a similar number of provincial judges, there are also a number of judges of peace and other kinds of judges appointed provincially (this number of judges are included in the number of legal professionals mentioned above). After reviewing the most important sources of information the author has concluded that approximately one third of the judges are women (which corresponds to the proportion of women in the legal profession, established above). In Canada, the number of judges and lawyers are not mutually exclusive, as it is the case in the data from Japan.

Many scholars have argued about the conservatism tone of the judiciaries in Canada, Japan and Mexico in the past. The three courts have been “accused” and criticized in the past for some of the approaches taken by the courts towards their judges.

In Canada, until 1985, federally appointed judges were not allowed to vote in any kind of elections in the country. In Japan, judges are said to live very socially restricted lives and those judges that have expressed their political views are punished by the system. It is strange because most of those restrictions have been implemented by or due to the pressure of the media, the legislative and the executive branch of the government and/or the society itself and its *nomos*.

2. Japan

a) Legal Education

According to J. O. Haley, Japan has a very large number of students studying law, four times the number in the USA (the USA has 3 times the population of Japan)⁴⁶. Nevertheless, most of them do not study law to pursue a fully-legally-oriented profession such as attorneys. Most of those students will graduate with an undergrad degree in law but will not be able to perform as lawyers, judges, or prosecutors.

Those interested in pursuing a career as judges, attorneys and prosecutors need to pass a National Law Examination (also known as LRTI test which means Legal Research and Training Institute). Most usually they attend Law School after they graduate from an undergraduate degree. This course of action is newly implemented and is part of the reform of the system of legal education. Actually there are 74 law schools throughout the country, which are allowed to admit around 5000 students each year (which is expected to diminish to 4000 from 2010).

In 2008, 6261 graduates sat for the National Law Exam but only 2065 of them (33 percent) passed⁴⁷. Only those students that pass the national law examination in Japan each year are allowed for the subsequent training, which lasts 1 or 2 years and consists in intensive training and a kind of internships in lawyer firms, prosecutors' offices or courts. As soon as the trainees finish the training, they start working as assistant judges, lawyers and prosecutors.

⁴⁶ Haley, 2006: 92

⁴⁷ <http://search.japantimes.co.jp/cgi-bin/ed20090420a2.html>

In Japan, the last stage of legal education concentrates in only one institution: the Legal Research and Training Institute where students train for one or two years, depending on their background. In Japan apart from the 74 law schools there are more than 100 universities that offer majors in law around the country. The most outstanding law schools are 6, which have the largest number of students passing the National Law Examination: Tokyo University, Kyoto University, Chuo University, Keio University, Hitotsubashi University and Waseda University. In 2008, 2065 of 6261 students passed the National Law Examination, from which 869 were from these 6 universities, representing the 42% of the total passing the examination. 564 of 2065 that passed the exam were women⁴⁸. The actual process by which this examination is carried out is very different from the one 8 years ago. The passing rate before the reforms was about 2-3%, which has changed to 33%. Nevertheless the number of students taking the examination has decreased considerably due mainly to the requirement of a specialization degree in law. In 2000, 36203 students took the examination, from which 994 passed the examination.

Masters programs are becoming more popular. Nevertheless, most of legal professionals continue their education by taking updating courses, or professional oriented courses. Most of those who pursue a master or Ph.D. program are interested in an academic career, as in Canada and Mexico. According to the databases of the Asian Students Cultural Association,

⁴⁸ <http://www.yomiuri.co.jp/kyoiku/news/20080912-OYT8T00228.htm>

there are around 130 master programs in Japan and 79 doctorate programs in Law⁴⁹.

Academia in Japan performs a similar function to the one in Canada. Professors and researchers are expected to assess judges and lawyers, they also evaluate and study the decisions and policies carried out by the political and legal institutions and prepare new lawyers and legal professionals.

In Japan, only the best students from the “wealthiest” families were sent to study law abroad in the beginning of last century until the end of the Second World War (WWII). Still, there is an important tradition among the legal profession in Japan related to studying law abroad. Comparative law is the heart of legal scholarship in this country. Japan built its legal system, wrote its laws and organized their public institutions, including the judiciary thanks to a large and selected number of Japanese students prepared abroad and legal scholars from abroad. Even today, most of the legal scholars in the most important universities have studied abroad, mainly Germany, the United Kingdom and the United States of America. Most of professors in Japan, particularly in the top universities, will study abroad during one of their graduate degrees or in between them.

b) Legal profession

In 2001, there were 18246 lawyers and 2294 Public Prosecutors and 3049 judges, for a total of 23589 fully-legally-oriented professionals. Thus, in Japan there are approximately

⁴⁹ <http://www.jpss.jp/> and <http://www.abk.or.jp/>

7000 people per lawyer. Those numbers have been slowly increasing. For example, as of 2006, there were a total of 3318 judges (1597 judges, 915 assistant judges, and 806 summary court judges). The judiciary is also formed by a large number of court officials who are also trained in a special training center. As of 2006, the total number of court officials was about 22000, including approximately 9000 court clerks, 1600 family court probation officers, 300 court stenographers, and 9400 court secretaries. The number of women in the legal profession in Japan is considerably low; according to the census of 1995 there were only 5500 female lawyers⁵⁰.

c) Judges

The Supreme Court of Japan has several times established that the judiciary should exclude political extremists of all sorts⁵¹ and is said to be mainly composed of “moderate conservative” oriented judges⁵². At the same time, the process of selection and training in a legal-related profession such as lawyers, judges, prosecutors is one of the most strict in the world, promoting a very elitist but at the same time, a very well prepared, hard working and professionally oriented composition. Certainly, the selected people have a very homogenous understanding of what law means and how it should be interpreted.

In fact, the process by which judges are appointed and promoted is a decision made within

⁵⁰ Japanese Institute of Workers Evolution at <http://www.jiwe.or.jp/english/situation/general.html>

⁵¹ Cf. “Miyamoto” case, 1971 - You can find notes of this case in several sources, one of which is Dean, 2002: 331.

⁵² Ramseyer and Rasmusen, 2003

the judiciary, formally approved by the cabinet, even at the level of a Supreme Court Chief. Appointments and reappointments of judges are decided according to professional performance. According to Ramseyer and Rasmusen, judges in Japan are punished systematically if they do not perform according to the expectations, which means impeccably well. The judges are all people of Japanese ancestry and are mostly men (only 4% are women). The Japanese judiciary is a career for the socially prominent and certainly the society considers them one of the elites of the country. Most of the judges stay as judges for most of their working lives.

Judges are elites all over the world, not only in Japan. Traditionally, the legal profession has had a very privileged social status. Some scholars have even argued that the legal profession is the most elite profession of all. Researchers have also found that lawyers come from more privileged backgrounds than those working in other professional jobs⁵³.

The amount of data available in Canada and Mexico differs from the data available from Japan. The judiciary in Japan is a unitary system, meanwhile the judiciary in Canada and Mexico is a federally organized system. The “judiciary” then becomes a difficult term to understand in the latter cases mainly due to the diversity of the state/provincial judiciaries.

3. Mexico

⁵³ See for example: <http://www.thelawyer.com/legal-profession's-elitism-gap-gets-wider/136529.article>

a) Legal Education

Legal education in Mexico has been transformed importantly in the last twenty years mainly due to the increase of private schools graduates and their increasing participation in public institutions. Before Miguel de la Madrid, the great majority of high positioned public officers were lawyers, mostly graduated from the Mexico Autonomous National University (UNAM). The UNAM is an institution with a strong nationalist, and “pro-revolutionary” approach towards politics and public administration and is said to have a legal education that is dogmatic and highly positivist. Nevertheless, the new leaders are now not only lawyers but also economists, engineers, etc., with a very important percentage of graduates from private universities. Private universities approach towards legal education is oriented towards businesses, globalization and has a more technical (vs. dogmatic) orientation.

There has been an important development of private law in the last 30 years due to the increasing demand that globalization has put on the governments, particularly in of Mexico.

The multiplication of law schools in Mexico has also diversified the social networks and has provoked that no single institution be the main source of the networking. According to the database of the Subsecretaria de Educacion Superior (Department of Higher Education⁵⁴), in April 2009 there are 1158 institutions offering a degree in Law. These 1158 schools vary in quality, composition, and admissions requirements, but the programs are usually very similar

⁵⁴ <http://www.sirvoes.sep.gob.mx>

to each other. There is one national examination that all legal professionals must pass in order to obtain their degree. Nevertheless since the institution ultimately grants the degree and the obtainment of the degree is the only requirement to grant a lawyer license (done by the Ministry of Education), lawyers can be of various backgrounds and have different levels of knowledge in the field.

The most recognizable law faculties in Mexico are those of the following: Escuela Libre de Derecho; Universidad Autonoma de Mexico (UNAM); Instituto Tecnologico Autonomo de Mexico (ITAM); Instituto Tecnologico y de Estudios Superiores de Monterrey (ITESM); Universidad Anahuac; Universidad de Guanajuato; Universidad Iberoamericana; Universidad La Salle; y la Universidad Panamericana. There are 379 master programs and 52 doctorate programs offered in Mexico. Specialty programs are also common to take by lawyers and legal professionals, such programs are around 134 in total.

In Mexico, lawyers and other legal professionals mainly provide law education during their spare time. Full time academics are the least common among a faculty. Few universities have a settled academic career with salaries that can sustain a good standard level of living. Most of the faculty in any university will be paid as part-time professors (which is considerably lower to the salaries received by professors in Japan and Mexico). Law journals are about the same amount in Canada and Japan 65 – 80 law journals, meanwhile in Mexico academic law journals may not surpass 25.

b) Legal Profession

Legal professionals in Mexico number about 250000, which means that there is about one lawyer per 445 people. Meanwhile in Canada and Japan, there is a concern about the need for more lawyers, in Mexico there is not such a concern. The population of lawyers is considered to be high.

According to INEGI (Statistical, Geographical and Information National Institute in Mexico⁵⁵), in 2007 there were 954 federal judges, from which 190 were women. According to Perez⁵⁶ in 2000 there were a total of 3677 judges in Mexico, which meant 3.7 judges per 100000 people. There were also 188422 law students in Mexico, which represented 11.9 % of the total university students, from which 47% were women. There is no information about indigenous population participating as judges or lawyers in Mexico. Nevertheless and differently from the Canadian case there have been several indigenous people in positions of power, mostly legal professionals. Several authors have argued that Mexican legal circles were not prompt to allow into law schools indigenous people and that indigenous population is severely marginalized in the legal profession.

In Mexico, the legal profession was understood always during the colony and in its aftermath as an elite profession. After independence most of the legal professionals in Mexico were working for the government, as bureaucrats and justices. During the revolution

⁵⁵ <http://www.inegi.org.mx/>

⁵⁶ Perez Perdomo, 2004

of 1910 and after it, the influence of the lawyers' circles was immense, nevertheless most of the time they served as councils to the "caudillos" with few decision-making powers. Some presidents in the 19th century were lawyers, such as the first indigenous president Benito Juarez. This case is an exceptional case and not the norm. Indigenous populations were widely discriminated in Mexico, including in matters such as their entrance and admission to Law Schools. In Mexico a measure such as the one now in existence in Canada that establishes a quota of aboriginal students in law school has never existed. Nevertheless there are projects such as the CIDE (Center of Investigation and Economic Teaching), which are concentrated in providing other kind of opportunities for other stratus of the population in Mexico, and there has been always the UNAM, where the school fees are very low.

c) Judges

The Council of Federal Justice appoints all federal judges but the Supreme Court Ministers. The Supreme Court ministers, as they are called in Mexico, are proposed by the president and appointed by the senate. All judges adhere to a system of judicial career after passing an examination. Most of the examinations are specialized in certain area of the law, such as civil, administrative, criminal and labour law, as the courts and the judges, clerks, etc. are.

4. Final remarks

The population of lawyers is greater and more diverse in Mexico than in the other two countries. Since the requirements to become a lawyer are not as strict as in Japan most of all legal-related professions and positions within public institutions, there are lawyers occupying even paralegal positions in private companies and other organizations. Differently, in Canada and Japan, there is a large population of paralegals, which do not necessarily have the credentials to be lawyers but still have the professional capacity to perform certain tasks involving legal procedures. The ratio of female judges in Mexico is slightly lower than in Canada.

In Japan, there are few discussions about the need of diversification in the legal profession. There are several articles discussing the diversity of backgrounds in the parliament but not within the legal profession specifically. In Canada all law schools have a quota of indigenous students that they must comply with and there are a number of policies established by public institutions such as the department of justice and the judiciary focused in increasing the diversity of the population working in their institutions. In all the three countries there is a growing concern about having more female legal professionals and promoting equality of opportunities for them.

If we look at the numbers presented above, Canada and Japan have concentrated the education of legal professionals in a comparatively fewer number of institutions. People interested in pursuing a profession such as a lawyer, a judge and a prosecutor would need to

attend one of those very few schools and in Japan, they would all need to attend the Legal Research and Training Institute. In Japan, a complete generation of legal professionals in the country may be able to know each other, or at least know an important number of their mates. In Canada, there are very fewer schools and indeed fewer bar examinations available to those interested in a legal profession, which makes easier also to network and also to homogenize the standards of the profession. In Canada all judges must have been lawyers in order to be able to be appointed as judges.

In contrast, in Mexico, the education of legal professionals is not as homogenous and centralized. Those students able to be accepted in a recognized institution such as La Escuela Libre de Derecho may network only with those students in the same institution or in close institutions but not with even 8% of the total of those students graduating at the same time in other schools in the country. We could state that in Mexico the legal profession is the least elitist of the three compared in this thesis in terms of education homogeneity. Nevertheless, in Mexico, it is important to assert that since legal graduates are unable to network among an important number of graduates of their entire province or country in the ways that the Japanese and the Canadian students are able to, the composition of the population of legal professionals often maintains heterogeneous and divided throughout their entire legal professional lives. At the same time, the levels of knowledge among lawyers in Mexico varies in degrees that the other two legal education systems do not, which is actually the

main concern regarding the broad variety of schools and programs.

Importantly, the rhetoric concerning the structure of the population varies. Minorities in Japan are considered to be a very small portion of the population⁵⁷. In October 15, 2005, the ex-Prime Minister of Japan Aso praised Japan for having "one culture, one civilization, one language, and one ethnic group," and stated that it was the only such country in the world. Canada, very contrary to Japan, considers itself a state excessively diverse and heterogeneous⁵⁸. Even though, Mexico is a country that understands itself as a country of "Mestizos" -people that have mixed origins⁵⁹, there is a high division among the population, mainly in terms of economic status.

⁵⁷ Japanese minorities may be already around fifteen percent of the population and due to immigration this population is growing. It is usually recognized in newspapers, magazines and newspapers that the Ainu people are a different ethnic group, the same as the Ryukyuan (people from Okinawa and the surrounding islands). Okinawa became a part of Japan but until the end of the WWII, even though historically it has been an ally and a semi-independent region subject to the Japanese empire. The Ainu people are very few indeed, but once it was the main population of the Islands of the north of Japan, the biggest being Hokkaido. No demographic study separates and recognizes the Ryukyuan as of a different ethnicity but "Okinawan" people do not identify themselves as Japanese. Most of the Ainu people have declared to suffer discrimination sometime in their lives and that people can recognize their faces and anatomic features. At the same time there is an increasing concern about immigrants in Japan, which are about two million people. Most of them are people of Japanese ancestry from places such as Peru or Brazil. There is also an increasing population from Korea, China and the Philippines.

⁵⁸ Canadians are of various backgrounds mainly English, French, Irish, Scottish and from other West European ethnicities. Around five percent of their population considers itself as indigenous and there are also more recent larger populations of immigrants from Asia, mainly India, China, Philippines, Japan, Korea, etc. Also, there is a growing rate of immigrants from Latin America and the Middle East.

⁵⁹ Nevertheless there is an unrecognized and barely discussed problem in the country about the divisions within its population, where there still is discrimination against people with indigenous background.

B. The Ministry of Justice in Canada and Japan and the Prosecutors office in Mexico

1. Canada

In Canada, the Ministry of Justice is responsible for providing policy and program advice and direction through the development of the legal content of bills, regulations and guidelines to the government. In support of the Attorney General, the Ministry also provides a range of legal advisory, litigation and legislative services to government departments and agencies; for example, litigating civil cases by or on behalf of the federal Crown. The Ministry is also responsible for overseeing all matters relating to the administration of justice that fall within the federal domain. The Ministry also advises Cabinet on all legal matters including the constitutionality of government initiatives and activities.

There are approximately four thousand three hundred people working in the Department of Justice of Canada, which equates to a medium-size Ministry. The Department provides legal services to government on a “portfolio” basis. Six Portfolios encompass the entire range of federal departments and agencies. The Six Portfolios are as follows: Government-at-large and the Justice Portfolio, Aboriginal Affairs Portfolio, Business and Regulatory Law Portfolio, Central Agencies Portfolio, Citizenship, Immigration and Public Safety Portfolio and the Tax Law Portfolio. There are also offices similar to this federal one in most of the provinces, which are usually called ministry of the attorney general. Not all of them are big and not all of them are specialized as the federal institution is. Nevertheless jurisdictions such

as the one of Ontario has specialized offices.

2. Japan

The Ministry of Justice in Japan not only prescribes basic rules (basic legislation) applicable in daily life but also the basic judicial framework under which these rules are observed. It also assumes responsibility for a broad range of legal work under which, those who commit crimes are punished and those who have served their time are assisted in their rehabilitation, taking charge of prosecutorial and correctional work and rehabilitation aid services. The Ministry also oversees the management of a system to help citizens exercise their personal rights, such as the registering of real estate and notarization. Other important duties of the Ministry of Justice include ensuring that the basic human rights of individuals are respected; supervision of the immigration control of foreigners entering or leaving Japan, for the purpose of public security; and supervision of legal education among other duties.

In Japan, the Ministry of Justice is a very centralized institution that establishes national regulations on everyday matters such as immigration procedures or corporate registration and transactions procedures.

Meanwhile in Mexico, the notion of justice is almost exclusively related to judges, in Japan, prosecutors and the Ministry of Justice are institutions with an also relevant part in Judicial processes and thus, people identify them as judicially-related figures.

Among the three countries, the Ministry of Justice of Japan is the department with more

responsibilities and broader faculties; and among the three countries, prosecutors in Japan are the ones with broadest faculties. In Canada, since the Ministry of Justice is not able to establish regulations but only able to assess and advice in certain issues regarding laws and regulations. Nevertheless it has several important faculties regarding the administration of the judiciary that are not only formal (as in Japan) but actually relevant to the process. In the two cases the ministry of justice is also in charge of the investigation and prosecution of criminals and the maintenance of the legal order.

In Japan, the Public Prosecutor's Offices are administratively part of the Ministry of Justice. It is possibly the most important area of the Ministry; nevertheless, the office is actually quite independent from the authority of the Minister of Justice. Actually, the leadership of the ministry is qualified as irrelevant to the actions of the procurators. Some have said that the minister reigns but the prosecutors rule in the Ministry of Justice⁶⁰.

The Prime Minister is designated by the Diet, and the remaining ministers of the Cabinet are appointed and dismissed by the Prime Minister. The Minister of Justice is usually selected among members of the Diet, appointed by the Prime Minister. The Cabinet is collectively responsible to the Diet and must resign if a motion of *no-confidence* is adopted by the House of Representatives. Several Japanese scholars have argued that since the Prime Minister exercises the control and supervision of the executive branch and no law or Cabinet

⁶⁰ Johnson, 2002: 120

order can take effect without his approval, actually, the Cabinet's authority is exercised largely by the Prime Minister. The Japanese Cabinet is effectively thought as an extension of the Prime Minister's authority.

In all cases, the chief prosecutors in Canada, Japan and Mexico are not elected but appointed by the executive branch of the government. At the same time, in Japan and Canada, the minister is usually appointed after a large negotiation in the parliament.

The organizational chart of the Ministry of Justice of Japan shows seven main bureaus and four other smaller departments. The Budget of the Ministry of Justice of Japan was three years ago 845,445,969,000 yen that is more than 9 million dollars. In 2006, there were a total of 2447117 criminal offences in Japan, from which the majority were due to professional negligence and traffic violations. Only 32.6 % of the cases were prosecuted and in 40% of those cases, the prosecution has been suspended⁶¹. Japan prosecutors may be among the most efficient prosecutors in the world where 98% of the cases prosecuted end up in conviction mainly because prosecutors and police would only pursue those cases that know will end up in charge or conviction. The Ministry of Justice has been described as a highly hierarchical and centralized institution (as many other institutions in Japan). Prosecutors control the Ministry of Justice of Japan since they occupy the “key positions” within the ministry.

⁶¹ Cf. Haley, 2006 and the Ministry of Justice data at: <http://www.moj.go.jp/>

Promotions are a combination of merit and seniority. Each prosecutor is recognized as an independent government agency.

Prosecutors are organized following the organizational pattern of the judiciary, which is certainly not the case in Mexico but partly true for Canada and Mexico. At the same time, and since their organizational pattern follows the organization of the judiciary, there are very few prosecutors specialized in performing a certain kind of task, most of them will perform several kinds of tasks and prosecute all kinds of cases. There is a supreme public prosecutors office with 8 high, 50 district and 453 local offices.

According to Johnson, common workplace and interdependence are the most important features of Japanese prosecutors. Japanese prosecutors participate in the investigations directing the police in their investigations, which is not usually the case in Canada and Mexico. The prosecutors have the faculty to suspend prosecution, which is also faculty of prosecutors in Mexico. Though in Mexico, citizens with interest in the case can challenge prosecutor's decisions, an impossible scenario in Japan.

Japanese prosecutors will often remain in the career for their professional lifetime. Prosecutors in Canada and Mexico will have other positions during their professional life. Some of the Canadian prosecutors will stay as prosecutors but not all of them. There are also part-time prosecutors in both Mexico and Canada, in Japan there are not.

According to various scholars, Japanese prosecutors are insulated from many of the public pressures and political exigencies that shape prosecutor behavior in the USA, which is a similar situation to prosecutors in Mexico. At the same time, Japanese prosecutors are used to receive a level of deference and compliance few prosecutors in Mexico or many other places can imagine.

D.T. Johnson has also established that prosecutors in Japan benefit from enabling laws of criminal procedure that confer extensive powers to investigate crimes and dispose of cases and try cases before judges and juries. There are rules that enable great freedom for prosecutors in Japan. There is a faculty of “voluntary investigation” that allows them to avoid or diminish scrutiny of their behavior. Some of the power of the prosecutor is related to the following policies and regulations: a). Rules about arrest also give them broad powers to apprehend suspects without warrant; b). rules about detention give prosecutors power to hold suspects for arrest; c). rules about interrogation give investigators authority to question suspects for up to twenty-three days on each single charge, and to paraphrase or summarize suspects’ statements in their own words; d). rules to do note give defense counsel the right to be present at interrogations; e). police and prosecutors may continue interrogating even after suspects have declared their unwillingness to talk; f). prosecutors also possess powers to designate the time, place and length of meetings between defense attorneys and detained suspects; g). prosecutors have the monopoly to charge, withhold charge and to withhold

evidence from the defense in any case charged. These rules also allow them to appeal any unfavorable sentence or verdict, including acquittals.

According to J. O. Haley, Japanese judges and prosecutors stress correction as a primary end. The *restorative approach* has become the predominant pattern in Japan. Police, prosecutors and judges recognize its success in correcting offenders and satisfying victim and public needs. Others also agree with this idea, E. Johnson (96), Bayley (91), Shikita (82), among others have argued that the prevailing portraits accentuate the propensity of police, prosecutors and judges to correct suspects and offenders, to repair relationships between victims and offenders and to heal the harms caused by crime. D.T. Johnson argues that the main aim of the office is: Uncovering and constructing the truth. Reports on the victims and the suspects are increasingly detailed accounts that do not have comparison to reports made in Mexico or Canada.

According to Bayley, the Japanese police are confronted with few serious crimes, a small caseload and police enjoy wide support.

According to Johnson, prosecution in Japan is more collective, pervasive, hierarchical, secretive and cohesive than its counterpart in the USA. All discretionary decisions are taken collectively, which is different from the case in Mexico particularly and Canada. “*We check each other, we test each other, and we control each other’s excesses. We believe the result is sounder decisions than those arrived at individually...*” was the phrase that an interviewed

officer said to the above mentioned scholar. Japanese prosecutors are the ones that make the most important decisions about who gets what in the Japanese way of justice⁶². J.O. Haley thinks they play a critical role in the justice system.

In Japan, police arrests are fewer than 20% of all suspected Penal Code violators. Prosecutors can arrest by themselves. The infrequency of arrest derives from the desire to protect suspects from the stigma of arrest and from the belief that the failure to charge arrested suspects is impermissible. In criminal trials in Japan, over 90 percent of defendants usually confess. The terms under detention are longer under Japanese law than their counterparts in Mexico and Canada. In order to keep a suspect under detention, in Mexico judges must settle the probable cause within 36 hours, the longest. This kind of hearing and procedure does not exist in Japan. A suspect may spend 72 hours before a judge reviews her/his case. In Japan, interrogations are said to take several hours a day for several days in a row (as long as twenty five days) during the pre-charge period. Such long periods of interrogation do not occur in Mexico. Prosecutors in Japan are the ones that decide to charge somebody with a crime by themselves. In Canada a judge and sometimes a jury participate in the process. More often in Mexico, the ultimate decision falls in the hands of the judge.

3. Mexico

⁶² Johnson, 2002: 4

There is no “Ministry of Justice” in Mexico, but there is an office called Procuraduría General de la República - General Prosecutors Department. The General Prosecutors Department is responsible of the following faculties: investigation and prosecution of criminals and the maintenance of the legal order; the representation of the government in judicial cases; and the legal – advisory office of the Executive Power; just as in the cases of the Ministry of Justice in Canada and Japan.

Actually, there is a proposal to reform the Prosecutors Department in Mexico that looks to separate the functions of the department, being the first to investigate and prosecute cases and the second to represent the executive power. There is also the proposal to appoint the Chief Prosecutor in a similar way by which the justices of the Supreme Court of Justice are appointed.

In Mexico, a ministry of justice such as the one in Canada and Japan, able to participate in some of the procedures in the administration of the judiciary was not created mainly because there is a strong belief that such an institution could be detrimental towards the doctrine of the separation of powers. Mexico, differently from Japan and Canada is a presidential system, where the constitution establishes that the executive power is to be deposit in only one person, the president. In this aspect, Mexico appears closer in functions to the USA’s Department of Justice than to Canada’s and Japan’s Ministry of Justice.

In Mexico differently from Japan, where the leader is qualified as mostly irrelevant to the

actions of the procurators, the prosecutors office will change certain policies depending of who leads the office. At the same time, there is a very close relationship between the President and the Prosecutors Department in Mexico. The president chooses the Prosecutor of the Republic among his/her closest collaborators.

In all three countries, in the situation of constitutional cases, they must usually participate in their character of representatives and advisors of the government and not only in their character of guardians of public order. To defend a certain law, order, act of the government in terms of the profit it yields towards keeping public order is usually a way to understand public performance.

Until here a brief discussion of the functions of prosecutors in each country and a brief presentation of the rhetoric and discourse that surrounds this institution. Constitutionally speaking, prosecutors are very often if not always, a part in constitutional cases.

C. Judicial Institutions

1. The Supreme Courts of Justice

When considering models of Supreme Courts, most usually, scholars and politicians considered the following: A national appellate court, a purely federal court, a federal court having also comprehensive appellate jurisdiction in all constitutional matters, a purely constitutional court and the model of a federal and a constitutional court, with separate

chambers for each of these functions⁶³.

According to Chief Justice Bora Laskin, the framers of the Canadian Supreme Court chose the model of a system of appellate adjudication operative in unitary Great Britain. Thus, among the three courts discussed in this chapter, the Canadian is the only one that was *originally* modeled after the English Appellate Court. The other two courts were *originally* modeled after the Supreme Court of the United States of America. Nevertheless, the SCC has changed its character since its creation mainly due to three factors, the first one is that Canada is a federal state and not a unitary state, the second one is the independence from the English Privy Council in the middle of the 20th century and the third one is the establishment of the Charter, almost 30 years ago.

In all cases, there is a strong will for giving the Supreme Courts a similar kind of power and faculties to their counterpart in the USA. In all cases, the courts have the power of

⁶³ Bora Laskin, 1975: *There was the model of a national appellate court, functioning like an English appellate court, or like the House of Lords, with general jurisdiction (be it as of right or by leave) not limited to any class or classes of cases. There was, second, the model of a purely federal court, with an appellate jurisdiction limited to matters within or arising out of the exercise of federal legislative powers including the validity of that exercise, but excluding constitutional issues arising under provincial legislation in view of the fact that appeals then lay directly to the Privy Council from provincial courts of appeal. There was, third, the model of a federal appellate court having also comprehensive appellate jurisdiction in all constitutional matters as ultimate Canadian expositor of the constitution, albeit there was a further appeal to the Privy Council. This was the model offered by the Supreme Court of the United States. There was, fourth, the model of a purely constitutional court and fifth, the model of a federal and a constitutional court, with separate chambers for each of these functions, in adaptation of the chamber system found today in the Cour de Cassation of France....*

Judicial Review. But most importantly, they distinguish for the expressed constitutional expectation for a political role of the court.

Nevertheless it is important to establish that the strong will for giving a supreme court a similar power to the Supreme Court in the USA has been expressed in different important moments in the three countries. In Japan, this moment was expressed in the establishment of the constitution during the occupation of the SCAP of the Japanese territory and thus, in the opinion of the author, is weaker than in the other two cases.

In the cases of Canada and Mexico, it seems that there is an apparent agreement about having a Supreme Court that is -substantially- a constitutional court, which means a court mainly concentrated in solving constitutional issues; while in Japan, this kind of agreement is not an actual, overt agreement. In Japan, the Supreme Court of Justice is mainly seen as a court of appeals that is expected to defer to the legislative power. In Mexico and Canada, scholars have argued about the political aspect of her role. Meanwhile in Japan, the court has emphatically affirmed that political issues are not within her jurisdiction.

Thus, in terms of power, the legal framework of the Supreme Courts of Justice in Canada and Mexico defines a broader set of tasks that affect the political landscape and therefore a more powerful position than their counterpart in Japan. In terms of legal and judicial power, there is no question that these three courts are the most powerful institution in the country.

Emphasizing the most important commonalities it is important to say that the three

supreme courts have similar functions: they all behave as the court of last resort in the country in terms of Constitutional Justice; the three courts are the last court of appeal (for most of the areas of law); the three courts are in charge of the final interpretation of the constitution; and in the three cases there is an important disposition of the judiciary to wait for a determined interpretation of the constitution made by the Supreme Court of the nation in order to decide a certain issues. In all three cases, the courts have established certain schemes of how equality, freedom, and fundamental rights can be understood. In all cases, supreme courts have a written ‘charter of rights and freedoms’ to interpret and to guide their decisions regarding the freedoms and rights of the people in their countries. They all have the power of constitutional review. Nevertheless, that power translates into different results in each case, mainly because of the *nomos* in each place.

The three courts are composed by a relatively small odd number of judges. In Canada, there are 9 judges; there are 15 judges in the Supreme Court of Japan (SCJ) and in Mexico, there are 11 judges. In all cases there is a chief justice. In all cases women have been members of the court; in Japan, the number is considerably lower than in the other two countries: three. In all cases, judges have various legal backgrounds: bureaucrats, attorneys, judges, prosecutors, etc. In all cases, there is a majority of supreme court judges with a strong judicial background and in all cases the majority of the judges have graduated from a few number of schools in the country. In the cases of Japan and Mexico, the courts function in

plenary but they also divide their members in chambers for certain types of cases⁶⁴. In Canada, all cases are reviewed by the plenary. In all cases dissenting opinions are contained in the text of the decisions of the court, more strictly addressed in Canada than in Japan and Mexico.

In all three cases, the supreme courts establish precedents that are followed by the courts below them and courts after them in time. This is true in different degrees in the three countries. In Mexico, jurisprudence⁶⁵ (a kind of judicial precedent) is officially and legally considered a source of law. Since Canada is mainly a Common Law jurisdiction, the courts' decisions are one of the most important sources of law. In Japan, the approach towards this issue seems less clear. Nevertheless, actually, the Japanese system is also obedient of judicial precedents established by higher courts. Some scholars affirm that the actual appeal system force the courts to defer to repetitive trends in decisions taken by higher courts mainly due to a collective interest in economizing resources and work.

a) Administrative affairs of the Supreme Courts of Justice

In Japan, in its conduct of administrative affairs, the Supreme Court acts upon the resolutions of the Judicial Conference, which consists of the 15 Justices and is presided over

⁶⁴ In Mexico the chambers are specialized organs of the court. The first chamber is in charge of criminal and civil cases, for example. In Japan, the cases are classified in terms of their relevance or importance.

⁶⁵ Here jurisprudence means a series of decisions of high courts and the Supreme Court, which follow a similar pattern and are decided under a similar approach. In Mexico 5 decisions in the same sense by the Supreme Court of Justice or the higher courts are considered to be law.

by the Chief Justice. When changing or establishing a procedural rule, the Judicial Conference finds support in an advisory committee. The budget is also administered by the SCJ who can ask the Diet for any raise in the budget. Appointments of judges at all levels in the judiciary are within the purview of Cabinet, nevertheless until today all the recommendations of the judiciary have been duly approved by the Cabinet. Thus, the Supreme Court administers the whole judicial system independently, without barely any formal intervention by the executive and legislative branches.

Interestingly, the Japanese Constitutional system is the only system, among the three here discussed, where the citizens approve, through casting a vote, the performance of the judges of the Supreme Court of Justice. Every ten years, Japanese citizens express their vote regarding the continuation of the judges of the Supreme Court of Justice. Until now, there has never been a case of a judge been “disapproved”, nonetheless there have been few judges that have been Supreme Court’s judges for enough time for been approved through “elections”.

The chief justice of the SCJ represents the judiciary and his status is as high as that of the Prime Minister. In Japan and Canada, the chief justices hold their charge until retirement. In Japan, since all judges must retire at the age of 70 and most of the judges in the Supreme Court are very mature, most of the chief justices’ terms in office are short, not longer than 10 years. Thus, some have argued that the influence of the chief administrator of the judiciary is rather minimal. In Mexico the terms in office are fixed, chief justices are elected for four

years periods and cannot be reelected for the next following period. In Mexico there have been few judges that have been influential in the composition of the judiciary and have shaped the path of the federal courts. In Canada, the terms are not fixed but all judges must retire when they become 75 years of age. Most of the judges have been appointed to the Supreme Court when they are about 50 years old. Chief justices are usually appointed in their late 50's or early 60's, and that is why the influence of the chief justice is rather important compared to the case of the chief justices in Mexico and Japan. The administrative tasks of the SCC are taken care by a registrar, who is responsible before the court and is appointed also by the Governor in Council. The registrar performs some similar functions to the "Secretaria de Acuerdos" of the Supreme Court of Justice in Mexico, particularly those regarding the registry of the cases.

In Canada, the Registrar is responsible for all administrative work in the Court. He or she answers directly to the Chief Justice. His responsibilities include the appointment and supervision of Court staff, the management of the Library and the Registry, and the publication of the Canada Supreme Court Reports. The Governor in Council appoints the Registrar and the Deputy Registrar.

The Supreme Court of Canada's staff comprises close to 200 employees, all of them members of the federal public service. The Supreme Court of Canada also finds support in judicial assistants, executive legal officers, corporate services, court attendants and clerks.

There is a specialized section that also is in charge of translating all decisions to both official languages of the court.

The administration of the Supreme Court of Mexico is carried out by the plenary of the court directed by the President of the court. In his administrative duties, several committees and smaller offices are in charge of assisting the President of the Court. The President of the court and other ministers of the Supreme Court of Justice head those committees. In Mexico, the justices of the SCJN are called ministers and the chief justice is called President.

In all three cases there are a number of clerks (also called secretaries in Mexico) that work as researchers and help the judges redact the judicial decisions. The number of clerks is between 30 – 50 clerks in each court.

Clerks (Canada and Japan), also called secretaries in Mexico perform a very similar function in the three places. They all do research for the courts and are the first drafters of the decisions. Clerks provide with an important source of knowledge and effort in order to finally give shape to the decisions. In Canada clerks are very young, recently graduated from law school and are only in service for a couple of years. In Mexico, secretaries are older people with a career in the legal field which can be rotated but who stay as secretaries for a longer period of time, and, most commonly, pursue a judicial career afterwards. In Japan, clerks are also older people that will not rotate or be removed as often as in the other cases, and certainly will not pursue a judicial career afterwards. Clerks are influential figures within

the judiciary of the three nations.

b) Workload of the Supreme Courts of Justice

It is only in Canada that the figure of the “leave” exists. The figure of the ‘leave’ gives the judges of the Supreme Court of Canada the privilege of selecting the cases to review. The figure of the ‘leave’ is certainly distinctive of Canada in this comparison. The other two courts compared in this study review every case that complies with all the procedural and substantial requisites to be reviewed by the Supreme Court; this is to say that there is no discretionary consideration for judicial cases advancing in the judicial system. A faculty such as this one could never exist in Mexico, where the political culture sees this kind of faculty as too discretionary for a judicial body to be properly controlled.

Due to this faculty of the SCC, the workload is much greater for the Supreme Courts in Mexico and Japan than for the Supreme Court in Canada. In 2008 there were 74 (79 in 2006) cases solved by the SCC, meanwhile there were 3494 solved by the SCJM (2008) and 5407 cases solved by the SCJ (data 2006). The amount of workload has been a matter of special concern in Mexico, where special reforms were done in the end of the 80’s and beginning of the 90’s towards allowing the Supreme Court to concentrate in those issues of constitutional importance, and leaving most of the other kind of cases to the next higher federal courts.

In Mexico the latest reforms to the Constitution and some other laws have given the Collegiate Tribunals (higher courts after the SCJM), several faculties that absorbed a large

part of the Supreme Court of Justice' faculties as a last court of appeal. Through these reforms, the Supreme Court of Justice was left with more "constitutionally-relevant" tasks to perform such as the investigation of human rights violations, the resolution of disputes among different authorities of different levels, the declaration *erga-omnes* of the unconstitutionality of laws, etc. Nowadays, the practice is that the Supreme Court of Justice settles the jurisprudence that is used by the Higher Tribunals in Mexico to solve the majority of the cases. In Canada, the Supreme Court of Justice is also a court of appeal but since among its faculties there is the discretionary faculty to choose the cases this organ solves, the greatest judicial load of work is also mostly under the responsibility of Federal and Provincial higher courts.

2. Organizational charts

In order to continue discussing the judiciary, the following pages will present an overview of the courts system in each country.

The organization and structure of the judiciary in the three nations has been strongly influenced by the organization and structure of the federal judiciary of the United States of America (USA), which is a model influenced by the English model. But there are also other influences that have shaped each judiciary. The continental model, mainly the German tradition has also been an influence for the modeling of the Japanese and the Mexican

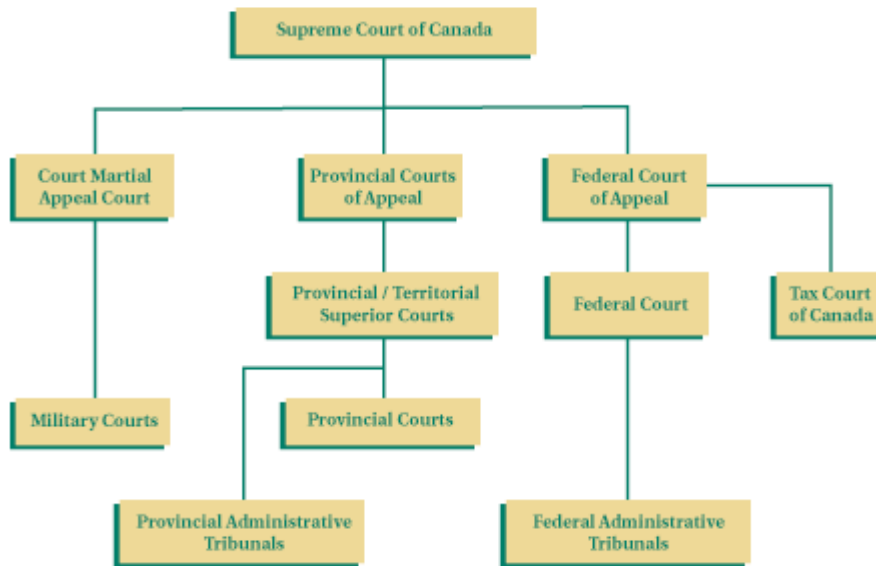
judiciaries. Not only because the legal system is based on Civil Law (in contrast with Common Law) but also because courts frame their tasks and restrict their duties under the guidance of the established German legal philosophy.

At the same time, in Mexico there are also two other distinctive characteristics of “continental” influences, the first one is that administrative courts are organized outside the federal judiciary (as it was also before the actual constitution in Japan), and the second one is that the administration of the courts is done by an organ that is conformed by officers proposed by the legislative, the executive and the judicial branches of the government, not within the structure of the executive and an autonomous organ within the judiciary.

a) Canada

The author expects that these images help understand the following chapters. The following organizational chart taken from the Canadian Supreme Court’s website is an image of the courts system in Canada:

Outline of Canada's Court System



Description

Illustration 1

On the top of the illustration is the Supreme Court of Canada, which only functions in plenary, and is formally a national court and not a federal institution. The Federal Court of Appeal hears appeals from the Federal Court and the Tax Court. The Federal Court of Canada consists of a Chief Justice and 32 other judges. The Provincial Courts vary in name and composition (Superior Court, Court of Queens Bench, etc.)

As it is also in Japan, the administration of the courts and their budgets, the appointment of the judges and other officials, the establishment of courts buildings, etc., are functions mainly performed by judges (in council or in a committee) and other officials in the judiciary within the same structure of the courts. Nevertheless, federal courts receive support from the Courts Administration Service. The Ministry of Justice influences directly and indirectly some of the administrative work that needs to be performed by the judiciary to perform its functions. The Courts Administration Service reports to the Parliament in Canada. In both

countries, appointments and recommendations are done in a process that involves both the courts and the ministry of justice.

Illustration 1 represents three judicial jurisdictions: the military courts, the federal courts, and the provincial courts, each of which has a court of appeal. All three jurisdictions may have conflicting interests, which are solved by the SCC. Moreover, since the SCC mainly reviews cases that are granted leave, its main character is as an authority defining the law in Canada and solving controversies among the other courts and not a court of appeal; thus, it works as a court that centralizes the power to interpret the law in Canada. Provincial courts' systems vary in Canada. In order to exemplify a provincial courts system; Ontario's court system's organizational chart is

COURT		JURISDICTION
Court of Appeal for Ontario		<ul style="list-style-type: none"> ■ Appeals from the Ontario Court of Justice and the Superior Court of Justice
Court of Ontario	Superior Court of Justice	<ul style="list-style-type: none"> ■ Divisional Court—Judicial reviews of government action, statutory appeals, and appeals from certain decisions of the Superior Court of Justice ■ Criminal and youth criminal justice trials with or without jury after preliminary hearing ■ Family law matters including divorce and division of property but not child protection; in those areas of the province in which the Family Court of the Superior Court of Justice has been established, the Family Court has jurisdiction over all family law matters, including child protection ■ All other civil matters ■ Appeals from certain decisions of the Ontario Court of Justice ■ Small Claims Court—Civil matters under \$10,000
	Ontario Court of Justice	<ul style="list-style-type: none"> ■ Provincial offence trials ■ Criminal and youth criminal justice bails, trials, and preliminary hearings ■ Family law matters, including child protection but excluding divorce and the division of property, in those areas of the province where the Family Court of the Superior Court of Justice has not been established ■ Appeals in provincial offence matters where the trial was conducted by a justice of the peace

presented:

Illus. 2

b) Japan

In Japan, the system seems to be more simplified:

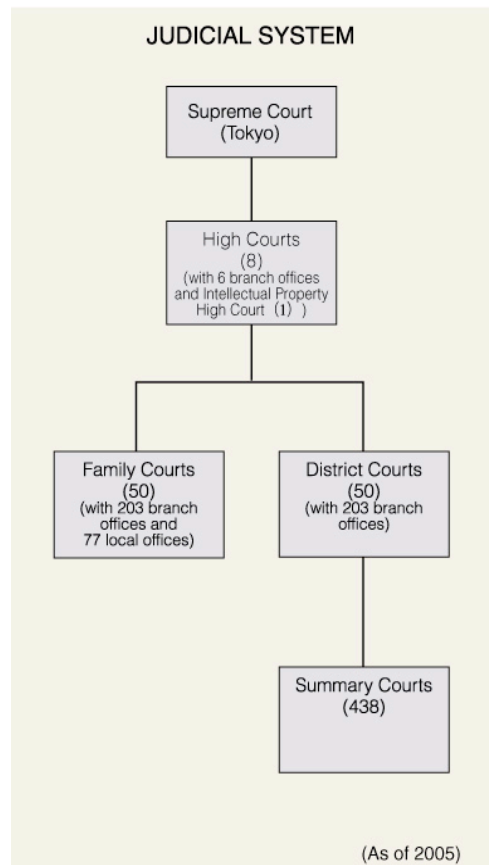


Illustration 3

Japan has a unitary system of government where the main powers rely on the central government. Japan is divided into 47 prefectures. Prefectures have an elected governor, a legislature and an administrative bureaucracy. Yet, the Judicial System is completely defined by the central government and there exist only one system of courts divided in 50 circuits. In Japan there are five types of courts: a) Supreme Court (1), b) High Courts (8), c) District Courts (50), d) Family Courts (50), e) Summary Courts (438).

The Supreme Court of Justice of Japan works in two ways: in three courtrooms of five judges each or, in *grand bench* with the total number of judges, fifteen. Cases dealing with constitutionality of laws or acts can only be revised in the *grand bench*⁶⁶. In High Courts

⁶⁶ See article 10 of Courts Law (Saibansho-ho)

(courts of appeal) the cases are managed in a collegiate body of three judges. In District Courts one judge handles a case, but there are some special cases that are examined in a collegiate body of three judges (criminal serious charges). One judge conducts cases in Family Courts. High Courts and District Courts are usually not specialized in a certain field of law such as their counterparts in Mexico and Canada.

The chart shows that in Japan there is only one judicial jurisdiction, a national one. All cases are received, processed, judged and resolved in one system and under only one guidance and authority, that of the Supreme Court of Justice. The Supreme Court of Justice main function is to be the last court of appeal. Differently from the case of Canada, the Japanese Supreme Court of Justice is not in need to solve conflicts among different judicial jurisdictions and does not discretionally review the cases that are brought to her. Moreover, since the Japanese court system is already a unitary system, there is no need for the Supreme Court of Justice to act as a centralizing authority, she automatically homogenizes the interpretation of law. This may seem obvious, but it is of crucial importance that we distinguish the distinct characters of the supreme court of justice in each of these countries for further consideration.

c) Mexico

The Mexican courts organizational chart seems to show a more complicated structure:

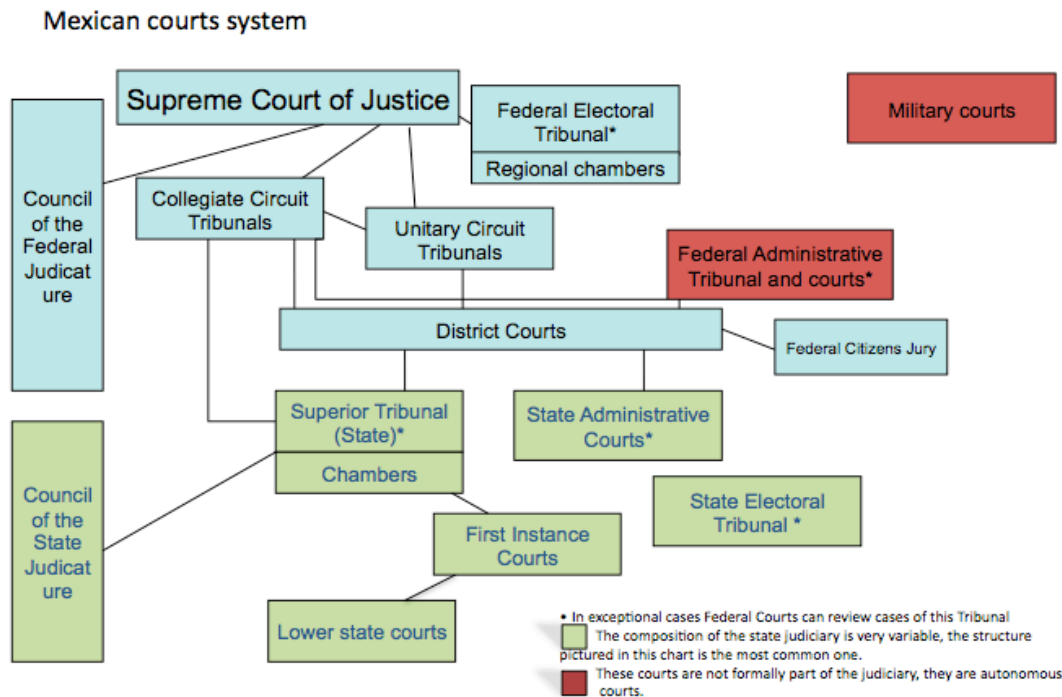


Illustration 4

The administration of justice in Mexico has two levels, the federal and the state/provincial level. The Supreme Court of Justice, the Electoral Tribunal, Collegiate and Unitary Circuit Tribunals, District Courts, and the Citizens Federal Jury integrate the federal level justice⁶⁷. There are some cases where state/provincial courts support federal courts and by doing this they become federal courts, but this cases occur exceptionally. The last member of the Federal Judicial Power is the Council of the Federal Judicature, which is the organ in charge of all the administrative issues of the Federal Judicial Power, created by a reform in December of 1994. The Council does not have any judicial task.

(1) The Federal Judiciary Council in Mexico

The Council of the Federal Judicature is an administrative organ created by a reform to the

⁶⁷ See Article 107, XII of the Politic Constitution of the United Mexican States (CPEUM).

Constitution in 1994. It is in charge of all the administrative work of the judiciary, including the budget administration, recommendations and appointments, discipline of the staff and judges, supervisory of the judiciary, creation of organs within the federal judiciary, etc. with exception of the Electoral Tribunal and the Supreme Court of Justice. The executive board of the council is integrated by seven counselors: the president of the Supreme Court of Justice who also performs as the president of the council; three counselors designated among the magistrates and judges of the Judicial Power by the *grand bench* of the Supreme Court of Justice; two counselors designated by the senate; and one designated by the President.

This organ was created to help the judiciary to deal with the considerable workload of judges related to administrative issues of a court and to fight corruption. This organ is autonomous from the Supreme Court of Justice, nevertheless four of the members of the executive board of the council are appointed or are members of the Supreme Court of Justice, which is the majority of the board; and since all decisions in the executive board are taken by majority its decisions are strongly influenced by the Supreme Court of Justice and the Judiciary.

The Council is actually divided into six commissions that are led by six of the seven (the chief justice of the SCJM is not leading any commission) of the members of the executive board: Adscription, Judicial Career, Administration, New Organs, Discipline and Information and Evaluation. The Federal Council was created in 1994 but it was not until

1999 that the Council was able to perform as planned which means that the actual organization of the judiciary is new and partly under reform. Most of the states are now implementing similar reforms and similar organs to administrate the judiciary. All provinces have a similar institution also usually called: Judiciary Council.

(2) The Supreme Court of Justice

The Supreme Court of Justice is integrated by eleven ministers, which can work on the *grand bench* or in two courtrooms. The president of the court does not work in any of the two courtrooms but he does participate and votes in cases that are conducted by the plenary. The remaining ten judges are divided in groups of five per courtroom. The courtrooms are specialized organs; the first courtroom is in charge of penal and civil cases, while the second courtroom is in charge of administrative and labor cases. The courtrooms also name a president. In terms of the judicial system, the country is divided in thirty-one circuits⁶⁸.

(3) Collegiate, unitary and district tribunals

Three magistrates integrate each collegiate tribunal. Collegiate tribunals act as courts of appeal, and are usually the last instance in cases of Amparo. One magistrate integrates each unitary Circuit Tribunals, which function as courts of appeal for some kinds of trials, such as criminal cases. District Courts are integrated by one judge and are the first instance of federal jurisdiction.

⁶⁸ There are 31 states plus the federal district of Mexico city. Only the state of Colima does not have its own federal judicial circuit.

(4) Electoral Tribunal of the Federal Judicial Power

One superior courtroom and five regional courtrooms integrate the Electoral Tribunal of the Federal Judicial Power. The superior courtroom is a permanent organ integrated by seven magistrates. The regional courtrooms are intermittent, working only in election periods. Three magistrates integrate each regional courtrooms. The Electoral Tribunal organizes itself in terms of the Electoral Law that divides the territory in five circumscriptions. The senate elects the Electoral Tribunal magistrates from a proposal presented by the Supreme Court of Justice.

Electoral Tribunals in Mexico have exclusive jurisdiction over almost all Electoral law matters. In Canada and Japan there is not such a specialized judicial institution solving electoral matters.

(5) Citizen Federal Jury

The Citizen Federal Jury is an organ integrated by seven citizens chosen through a draw. It is assembled at the discretion of a District Court Judge. The only crime that can be judged in a jury trial is the one committed by the press or media against national security and the public order.

(6) Provincial judiciaries

At provincial level, the judicial power is organized differently, depending on each regional state/province. Usually, the state territory is divided into smaller territories where, depending

on the population and the type of communities, courts are assigned. Usually provincial judicial power are integrated by a Supreme Tribunal of Justice, which works in grand bench and in courtrooms; courts of appeal and first instance courts, which are divided by their area of specialization (civil, administrative, criminal, family, among others), and an administrative organ usually called State Council of Judicature.

State/provincial controversies in Mexico are often tainted with constitutional and federal issues⁶⁹ mainly regarding public law, procedural guarantees, etc. This situation provokes such cases to often be ultimately partly solved by federal courts. Criminal and civil law is mostly a matter under state/provincial jurisdiction, nevertheless most of the codes in both areas of law have been written taking as a model the federal criminal and civil codes. Commercial law is a federal matter. Nevertheless, most of the masses experience the law in courts that are provincial courts which until now haven't been organized as well as the federal judiciary and which until very recently are having major reforms in their installations, computer systems, appointments systems, processes, and the law.

In Mexico the faculty to review the constitutionality of an act is widely spread among all levels, including the provincial levels, particularly in the cases of threats to the guarantees of life and liberty. In the case of probable violations to the rights of liberty and freedom, all judges can provide with a remedy that will order the suspension or the cancelation of such act

⁶⁹ A large amount of complaints brought to provincial courts are potentially reviewable by the federal judiciary due to procedural rules established in the Constitution.

that attempts to this violation. Nevertheless, actually there are barely any cases of amparo initiated by the common/lower courts. The courts in charge of solving constitutional issues in its first instance are the federal district courts. The first appeal is almost in all cases directed to a collegiate tribunal. The third appeal is directed to the Supreme Court of Justice. The unitary tribunals are in charge of appeals against some penal and administrative cases. Cases resolved by the provincial courts system can be also appealed to the collegiate tribunals and the SCJM.

As we can observe, military courts are not under the authority of the federal judiciary and the Supreme Court of Justice in Mexico, which is a matter of important controversy. This year (2009) the Supreme Court of Justice in Mexico is expected to solve a case in this matter that could open the door for review of military cases by federal higher courts or the SCJM.

d) Relevant commonalities and differences

1. The judiciary of Canada, Japan and Mexico is strongly influenced by the American Federal Judiciary and the American Model of Constitutional Review. Nevertheless, each of the systems presented above has its own characteristics: Japan has a unitary system; Canada has a very Nationally centralized federal judiciary system; and Mexico has adopted distinctive institutions from the European Tradition of Judicial institutions that are completely different from the Canadian and Japanese case.

2. In Mexico there are some judicial controversies that are not reviewed by the SCJM or

federal courts, specifically those coming from military courts, electoral matters, administrative law and some cases of provincial law. This feature decentralizes particularly the interpretation of the law allowing for more diversity in the meaning of legal terms.

The mostly-independent electoral courts are a feature only found in the Mexican courts' system (among these three cases). In Canada and Japan, common courts attend electoral issues. In Mexico, in the last fifteen years there has been an important development concerning Electoral Justice, which may be a reflection of some historical cases of electoral fraud in federal and state elections. Finally, Federal Administrative and Tax courts are not formally a part of the Judiciary but part of an independent structure created by the legislature. Nevertheless in the last two cases (electoral and administrative courts) federal higher courts and the SCJM have the capacity to review some aspects of their decisions, one of those aspects is the constitutional aspect of their decisions.

All these distinctive features of the Mexican courts' system are influenced by European models of judicial institutions and political and administration of justice theories.

3. In Canada it is clear that the SCC is a national court with a significant centralizing power since it can review all kinds of resolutions by any court existing in the country, including the resolutions of military courts.

4. It is also important to mention that in the cases of Canada and Mexico, the judiciary is very divided and specialized (apart from in federal and provincial jurisdictions) in terms of

the field of law of the cases that the courts review. This means that there are courts that are specialized in family matters, criminal matters (a matter of federal jurisdiction that is administrated by the provincial jurisdictions), administrative courts, etc. In the Japanese case, this is also true, but in a less degree. There are family courts and administrative courts, but most of the judges and the courts are not specialized in one field of law. One judge may resolve all sorts of criminal and civil cases that are brought to his/her court. Nevertheless, lawyers in Japan are more specialized, thus everybody can find firms specialized in corporate law, financial transactions, smaller loans and collection, family cases, testaments and wills, criminal, etc. In Mexico, judges are specialized in a certain area of the law, as well as lawyers. Courts are either criminal or civil, and in the area of civil law, there can be certain specialized courts. Firms are also most commonly specialized. In Canada, judges also specialize but in a less degree than in Mexico but certainly will not replicate the case of Japan. Lawyers usually also are specialized in a certain field of law.

5. In Canada, provincial entities and their judiciaries try to follow the model of the federal judiciary but since Canadian federation is highly asymmetrical, not all of them have a similar structure. The Mexican judicial federalism, differently from the Canadian case is considerably more symmetrical and the structures of provincial judiciaries follow a very similar pattern in all the cases.

Chapter IV

The political aspect of the judiciary

It is emphatically the province and duty of the judicial department to say what the law is...If two laws conflict with each other, the courts must decide on the operation of each...This is of the very essence of judicial duty. –John Marshall⁷⁰

In the cases of judiciaries shaped under the influence of the American Model of Constitutional Review, the Supreme Court is traditionally considered to be the only court able to represent the judiciary in the political arena of each nation. This is the case of the supreme courts in Canada, Japan and Mexico.

The following paragraphs will discuss the political standing of each court from the point of view of the judges that serve it, as expressed in resolutions, press conferences, and the website of the courts.

A. Canada

In Canada, the SCC understands itself as a political actor and has a very different perspective of the principle of separation of powers from that of Japan, particularly. The SCC has stated that:

Moreover, the Canadian Constitution does not insist on a strict separation of

⁷⁰ Marbury v. Madison, 5 U.S. 137 (1803)

powers. *Parliament and the provincial legislatures may properly confer other legal functions on the courts, and may confer certain judicial functions on bodies that are not courts. The exception to this rule relates only to s. 96 courts. Thus, even though the rendering of advisory opinions is quite clearly done outside the framework of adversarial litigation, and such opinions are traditionally obtained by the executive from the law officers of the Crown, there is no constitutional bar to this Court's receipt of jurisdiction to undertake such an advisory role. The legislative grant of reference jurisdiction found in s. 53 of the Supreme Court Act is therefore constitutionally valid*⁷¹ (emphasis added).

With this understanding, the court has participated heavily in handling important political crises and problems such as the Quebec Secession, issues regarding indigenous people's rights to land and resources, and federal economic regulation.

Interestingly, the SCC also describes herself as a court of appeal, but as one leading the development of law on questions of public importance:

The Supreme Court of Canada is Canada's final court of appeal, *the last judicial resort for all litigants, whether individuals or governments. Its jurisdiction embraces both the civil law of the province of Quebec and the common law of the other provinces and territories*⁷².

⁷¹ Decision: Reference re Secession of Quebec, [1998] 2 S.C.R. 217, par. 15

⁷² Supreme Court of Canada. The role of the court [Online June 2008] Available at URL: <http://www.scc->

Mission statement

*As the final court of appeal, the Supreme Court of Canada serves Canadians by leading the development of common and civil law through its decisions on questions of public importance.*⁷³ (emphasis added)

In the last visit of Justice Bastarache to the University of British Columbia, Faculty of Law⁷⁴, he acknowledged that most of the cases the court receives cannot be solved within the existing law. He also made clear that even where there is no applicable law; the judges have “a say”. Additionally, the emphasis on *issues of public importance* differentiates the court from many other courts that emphasize their exclusive judicial role within the state.

An important decision that illustrates the political facet of the SCC is the *Reference re Secession of Quebec*, [1998] 2 S.C.R. 217. In this decision the SCC recognizes the political character of the questions and ruled: the *Secession is a legal act as much as a political one*⁷⁵.

In this decision, the SCC recognizes:

As to the "proper role" of the Court, it is important to underline, contrary to the submission of the amicus curiae that the questions posed in this Reference do not ask the Court to usurp any democratic decision that the people of Quebec may be called

csc.gc.ca/AboutCourt/role/index_e.asp

⁷³ Ibidem

⁷⁴ Vancouver, Canada. November 22, 2007

⁷⁵ Reference re Secession of Quebec, [1998] 2 S.C.R. 217, par. 83

upon to make. The questions posed by the Governor in Council, as we interpret them, are strictly limited to aspects of the legal framework in which that democratic decision is to be taken. The attempted analogy to the U.S. "political questions" doctrine therefore has no application. The legal framework having been clarified, it will be for the population of Quebec, acting through the political process, to decide whether or not to pursue secession. As will be seen, the legal framework involves the rights and obligations of Canadians who live outside the province of Quebec, as well as those who live within Quebec.

In this decision the court established the legal parameters and guidelines by which the political decisions regarding a possible secession of Quebec from Canada should be taken. In doing this, the Court became a decisive participant in the political arena of Canada.

B. Japan

Contrastingly, political matters of public importance are potentially not under the jurisdiction of the Supreme Court of Japan. The Japanese Supreme Court of Justice (SCJ) has ruled on several occasions that issues of public importance of political nature are not to be judged in the courts. The following extract of a decision regarding the issue of the Self Defense forces predecessor (National Police Reserve) exemplifies the Court's posture:

For instance, an act of a government of high political nature, having direct relationship to the sovereign act of the state, is beyond the province of judicial review, even if it results in a legal dispute and even if it is legally possible to render judicial determination as to its validity or invalidity. It must be admitted that such determination should be entrusted to such a political department like the Government or the Diet, which owes political responsibility to the people, with whom rests the sovereign power of the state, and ultimately to the political decision of the people themselves. *This limitation imposed upon the judicial power, in its final analysis, is derived from the principle of separation of three powers:* Although there is no express provision in the Constitution to this effect, it must be interpreted that such is the design inherent in the Constitution because of the very nature of the thing, when viewed in the light of the highly political nature of the act of the government now under consideration, the nature of the court as a judicial organ of the state, and the procedural limitation which inevitably accompanies the trial.⁷⁶ (Emphasis added)

The court has often sharply stated: ...*However, in the end, a legislative solution has to be awaited*⁷⁷.

As stated previously, the Diet is the highest organ of the state in Japan⁷⁸. In the opinion of

⁷⁶ Decision: 1959(A)No.710

⁷⁷ See decisions: 1996 (Gyo-Tsu) No.60; 1997 (O) No. 873; and 1974(Gyo-Tsu) No.75.

⁷⁸ Article 41 of the Constitution of Japan.

some authors, the court interprets constitutional cases under the weight of this precept, choosing to write decisions that explain and support acts made by the other two powers in harmony with this article. In most cases slightly tainted with political matters brought to court, the court has decided to do not interfere because she considers that it is not the role of the judicial power to decide on matters that could unbalance the political forces in the state⁷⁹. In very few cases the SCJ has established a violation of the Constitution⁸⁰.

With respect to the principle of separation of powers, the court has ruled:

The Constitution further granted to the court the power to review the constitutionality of all laws, orders, regulations or official acts (Article 81). *As a result, whenever a legislative or administrative act becomes a legal issue, including the question of its constitutionality, the whole matter comes under the power of judicial review of the court. This is called the concept of superiority of the judiciary, under which a power superior to that of the legislative and executive is recognized in the judiciary. This is one of the characteristics of the Japanese Constitution. **There is, however, a limit even to this superior judicial power. The basic foundation underlying the concept of the separation of powers within the framework of the***

⁷⁹ It is important to mention that the executive and legislative power in Japan are very close to each other because it is a parliamentary system where mainly one party has had the control of the parliament since the end of the World War II (WWII).

⁸⁰ Since the establishment of the SCJ and until now there have been only 8 cases where the SCJ has established the unconstitutionality of different laws.

Constitution is the theory of check and balance among the three powers, as well as

a clear cut separation of the respective powers. So, in speaking of the separation of

powers, it must be clearly borne in mind that the Constitution never intended that the

judicial powers shall be almighty above all things else.⁸¹ (emphasis added)

The principle of separation of powers in Japan is taken very seriously. This extends to constraining the activities of judges in Japan. Judges are expected to: refrain from having political affiliations; and refrain from supporting any kind of political, social, economic or legal school or group. Furthermore, Professors Ramseyer and Rasmusen have written several articles providing statistics that suggest that *judges {in Japan} that defer on sensitive political questions will do better in their careers*⁸². Their study makes some comparisons between the advancement in the careers of the judges and the cases solved by them.

In the Japanese system, courts are not representative of the people and courts are not expected to decide guidelines and goals of the government. Courts are expected to work in *harmony* with the decisions taken by the executive power in order to provide legal certainty and predictability, which allow development and progress. The court has expressed that its main task is to be a final court of appeal:

The Japanese Judiciary establishes its task, stating that *[t]he courts are the final adjudicators of all legal disputes, including those between citizens and the State*

⁸¹ See decision: 1959(A)No.710

⁸² 2001: 331

arising out of administrative actions...

*The Supreme Court exercises appellate jurisdiction of appeals to the court of the last resort, and appeals from/against a ruling as provided for specifically in the codes of procedure. In addition, it has initial and final jurisdiction in the proceedings involving the impeachment of commissioners of the National Personnel Authority*⁸³.

Some are of the opinion that the behavior and decisions of the Supreme Court of Justice of Japan allows the other powers, particularly the administrative agencies and the executive power, be more authoritative. It is the opinion of the author that this is partly true, the system balances its deferential stance through different means, most commonly through permitting a greater participation of the prosecutors office in judicial cases and a large participation of agencies of the executive and bureaucrats in the settling of disputes of citizens with the government.

C. Mexico

In Mexico, the SCJM has recently declared in a jurisprudential thesis that the severity of the judicial control is inversely related to the degree of liberty designed by the authors of the norm and that the judicial intervention of the SCJM should be moderate:

83 Supreme Court of Justice of Japan. The Supreme Court of Justice. [Online June 2008] Available at URL: <http://www.courts.go.jp/english/system/system.html#01>

According to the considerations explained by the First Chamber of this Supreme Court of Justice in the thesis CXXXIII/2004, of name: ""Equality. Cases where the constitutional judge must do a strict scrutiny of the legislative classifications (Interpretation of Article 1 of the Political Constitution of the Mexican United States).", always that the legislative action affects the fundamental rights of the people guaranteed by the Constitution, it will be necessary to apply intensely the principles of equality and no discrimination established in the Supreme Law. In the same way and in order to respect the design established in the Constitution, regarding to those issues where the Constitution limits the discretionary faculties of the Congress and the Executive power, the intervention and control of the constitutional court must be larger. For this High Tribunal the normative force of the principles of democracy and separation of powers has as obvious consequence that the other institutions of the State, -among them the constitutional judge- must respect the configuration faculties of the Congress and the Executive and their liberty to act within them (the principles of democracy and separation of powers) . Therefore, the severity of the judicial control is inversely related to the degree of liberty designed by the authors of the norm. In this way, it results evident that the Constitution requires the court to moderate the equality judgment, without quitting her control competences in certain fields. Looking forward to do not interfere in the political will

of the legislator in the fields of economics, where the Constitution establishes a broad special capacity of intervention and regulation by the State, the regulation of tributary and economic effects by the courts is, by general rule, not strict. This means that the interference possibilities of the constitutional judge in these areas are less and the intensity of his control is limited. In these fields, a strict control would conduct the constitutional judge to substitute the legislative competence of the congress –or the extraordinary competence of the executive- because it is not a faculty of the Federal Judicial Power but a faculty of the political institutions to analyze if those economic classifications are the best and necessary.⁸⁴ (emphasis added)

Recently, the SCJM has attracted more cases to the court under the special figure of the *Investigation Faculty*. This faculty of the SCJM allows her to investigate violations of constitutional guarantees and human rights. The Court can also decide at its discretion to exercise this faculty but the resolution by the court under this faculty is not legally binding nor does it establish any precedent in the field.

Moreover, the Supreme Court of Justice herself has restricted the exercise of this faculty. In a court ruling published in August 2007⁸⁵, the SCJM decided that the aim of this faculty

⁸⁴ Thesis 1a./J. 84/2006 under registered number 173957. 9th epoch, First Chamber, XXIV, Nov 2006, 29.

⁸⁵ See Acuerdo General número 16/2007, del Pleno de la Suprema Corte de Justicia de la Nación, published in the DOF 22/08/2007.

was not to find the persons or institutions liable for violations of the constitution but solely to investigate and state whether or not there had been any violations. According to the law, other authorities are responsible for following up on these procedures depending on the result of the findings.

In Mexico as in Japan, the court sets homogeneity and certainty as bases for development. In a recent interview the judge Jose Ramon Cossío (SCJM) has established that their work is to judge *solely the constitutionality of the issues brought to the court; the court does not judge the political or the social, or the religious features of any issue*⁸⁶.

Contrastingly with the case of Japan, the SCJM describes herself not only as an appeal court but as the guardian of the Constitution and as a court concerned with solving cases of public importance.

“...the Highest Federal Constitutional Tribunal in the country and the head of the Federal Judicial Power. She has under her responsibilities to defend the order established by the Constitution; by means of her decisions maintain the equilibrium between the different powers and institutions of the government; plus, solve matters of great importance for the society. Since the court distributes justice of the highest level, in other words, constitutional justice, there is no authority in this country above the Supreme Court of Justice and there is no legal resource that can be exercised against her resolutions⁸⁷. (emphasis added)

⁸⁶ Botello, 2008. The statement was related to the cases regarding the constitutionality of abortion.-

⁸⁷ Supreme Court of Justice of the Nation. The Supreme Court of Justice [Online June 2008] Available at URL:

In December 2007, the chief judge of the Supreme Court of Justice of Mexico (SCJM), Minister Ortiz Mayagoitia established that *the court is committed to attract for review all the complaints related to constitutional guarantees with the aim of deciding those issues with absolute impartiality, giving homogeneity to the resolutions and offering certainty to thousands of complainants*⁸⁸.

D. Final remarks

From these examples, the reader can observe that the SCJ and the SCJM emphasize their interests in promoting harmony and equilibrium among the state-powers and in giving homogeneity to judicial decisions and the law. The courts of Japan and Mexico are not interested in exercising a political role within the state. However, the SCC's judges are confident in declaring that their role is to participate actively in establishing the parameters that frame the actions of political actors. The SCC understands its role to be political.

The SCC, although described in the legal text as a mere appeal court, performs an important political in the Canadian state. The SCJ, although described as a court with the power to decide the constitutionality of laws, orders, and any other acts, defers to the privileged position of the Diet and the principle of separation of powers. The SCJM, although

<http://www.scjn.gob.mx/NR/exeres/BADD8530-3CF9-490B-B310-0550E875EB7D,frameless.htm>

88 Supreme Court of Justice of Mexico 2008, Report of Results of 2007 of the Supreme Court of Justice of Mexico December 2007 by the president of the court.[Online, cited June 11, 2008] Available from URL: <http://www.scjn.gob.mx/PortalSCJN/Transparencia/InformesLabores/2007/Informe2007.htm>

described in the law as a political actor with several important tasks, abstains from exercising a considerable number of its law-making powers.

It is not that the judges of the SCC express a different view from that which is established by the laws, or that the Japanese Supreme Court contradicts its mandate to interfere in all cases of constitutional violations, or that the Mexican Supreme Court defers its duties. The declarations made by the judges in the three cases have to be observed and linked to the background and the popular rhetoric of each nation.

Differently from the SCJ and the SCJM, the SCC conducts its role grounded in the common understanding that courts have always and will continue to produce law. However in Japan and Mexico, where the legal system is based on *Civil law*, there is not such an understanding among academia and the population. In Japan and Mexico, popular beliefs about law, courts, and judges are crucially different. This difference in the rhetoric of these nations is the main explanation for the different political stances of the Supreme Courts.

Indeed, the political role of each court is very different from the others. The reasons of such differences are also based in the features of the political negotiations in the country, the abilities (and inabilities) of other political actors, the set of ideals and historical influences that have shaped the legal systems.

The Japanese Supreme Court is not a revolutionary court such as the Hungarian, nor exceptionally progressive as the German, nor is the one that sets the political order of the

state as the Canadian one, but it still occupies an important position within the system. The court complies with the responsibility to give certainty, predictability and stability to legal affairs in the state in order to promote development.

Certainly, the SCJ is criticized for her passivity and conservativeness but the channels for political negotiation and the political institutions are so well defined (because of the homogeneity and longevity of the system) that the political role of the SCJ is less important and needed than in places such as Canada.

The increasing rate of cases being tried in courts in Japan is forcing the SCJ to adapt to new circumstances where more judicial intervention is required⁸⁹. The Japanese government is trying to push through the most important judicial system reforms in the country's history. One of the goals of these reforms is to increase the number of lawyers, a measure that would empower society for better utilization of the courts. The other goal is to increase the participation and involvement of the population in legal processes by creating a lay jury system.

In Canada, the channels set by the executive and the legislative branches are not enough to deal with all the controversies that result from a highly complicated federal system, which integrates very different communities such as the French and aboriginal communities. In

⁸⁹ The latest decision of the court regarding the unconstitutionality of the law of nationality is an example of how the court will adapt to the new features of the country. The decision opposes the previous decisions in this matter. Please see decision of June 4, 2008 of the Supreme Court of Japan in joint session (the decision has not yet been translated to English and has not been published).

Canada, societal and political actors demand a significant amount of attention from the courts.

The court has set her role as being highly participative.

It is interesting to mention that in Canada, the court has been criticized for this participative approach and the resulting unpredictability of its decisions.

In Mexico, the court is broadening its influence and scope of its work in the state. However this task has been made somewhat difficult as the judiciary has been undergoing continuous reform. The most significant of this reforms happened in 1994 when the faculties of the SCJM were increased, the judiciary was organized under the control of an administrative council and the electoral courts were created. Several groups within the largely heterogeneous Mexican society still lack the ability to participate politically (here the author refers to large portions of the population that are under represented such as most indigenous populations, some kinds of workers and peasants organizations). The political arena is still suffering an impact from recent power-shifts resulting from the loss of power by the PRI⁹⁰ in 2000. The fact that the different political actors in Mexico are also continuously redefining themselves is affecting the way the court defines her own role. It is the opinion of the author that the SCJM is relinquishing the possibility of becoming an effective political institution in Mexico by establishing regulations that restrict her own faculties. Tasks such as the *investigation faculty* that are not binding but still are highly demanding in political terms

⁹⁰ Partido Revolucionario Institucional which translates into Institutional Revolutionary Party.

are only distracting the court from performing her main functions within the state, as a court of constitutional justice. If such cases are to be taken seriously, the court's decisions should be broad, binding and should translate into legal practices among the authorities. As the court states in its website, her work should focus on the resolution of issues of national judicial importance regarding the constitutionality of federal laws and international treaties.

Chapter V

The social context

“Reality is created out of confusion and contradiction, and if you exclude those elements, you are no longer talking about reality” – Asahido Murakami⁹¹

Until now, this thesis has covered and explained the legal and political context, and the organization of the system of Constitutional Justice. From here, the attention will shift to an analysis of the social context of each system. The social context will be examined through the analysis of the results of an ethnographic survey⁹² applied in each of the three countries. It will also consider the views of scholars that have studied these three societies.

A. The survey

The survey seeks to understand the different ways people relate to the law and the rhetoric regarding law and courts in these three nations. The interest in this idea stems from the relevance of the public opinion to law and power of the courts.

⁹¹ Murakami, 2000: 308

⁹² See Appendix A of this thesis.

The institutions that deliver constitutional justice in the three nations are similar to each other and founded on similar principles. However the analysis of the political aspect has shown important differences in the rhetoric of constitutions and courts in the three countries.

Thus, the author felt the need to assess people's views of the law and how they relate to it in Canada, Japan and Mexico. The survey focuses on the perceptions of the law and the application of the law.

Scholars tend to assert that the idea of law in Japan and Mexico is different from the idea of law in the United States of America or Germany. There are certain generalizations about the idea of law in Japan, Mexico and Canada that are usually considered to be the source for a different attitude towards law. For example, Takahashi has expressed that Japanese people's deferential attitude towards law is based in an idea of law that does not limit the authorities: *The problem is that the idea of constitutionalism is a foreign concept to us Japanese; that is, it is not endogenous to our own soil. Before we learned the idea from Westerners, **we did not know the idea of imposing law on rulers.** Law had always come from rulers; obedience to the law had been a virtue of the people; rulers had ruled by law instead of being ruled by law. Of course, rulers were not totally free. They were bound by a moral code that decreed, among other things, that rulers should govern the states as fathers govern their homes ... and this mentality dies hard.*⁹³ (emphasis added)

⁹³ Takahashi in Jackson, 2002: 35

Japanese people may have had such an idea of law in the past, but this study demonstrates that the greater majority of Japanese people do not have such ideas any longer.

Some scholars have asserted that attitudes of Mexicans towards law and the authorities are as deferential as the attitudes of Japanese towards law and the authorities. But obviously the causes of these attitudes are explained differently in Mexico because conversely to Japan, the development of constitutionalism has been experienced in Mexico for several hundreds of years. Scholars have explained this attitude of Mexicans towards law primarily by emphasizing the colonial past of the country⁹⁴.

The rebellious and distrustful attitudes towards law in Mexico have been explained by in different manners. Some scholars have argued that the language of the law and the constitution in Mexico is taken only as something aspirational⁹⁵. Other scholars have argued the weak institutionalization of organs of the government⁹⁶, and the complexity of the courts' system and the underdevelopment of the legal framework of constitutional justice⁹⁷. Some other scholars have also argued that the diversity of the population and the lack of cohesion among it provokes distrust towards other people and therefore towards the law and the authorities. Of course, all of those reasons may be partly true, but still are insufficient to explain the problem. To date these reasons have been unsatisfying for many other scholars.

⁹⁴ Cf. Llosa, 2002 and Rajagopalan 2005.

⁹⁵ Cf. Almond, Gabriel and Sidney Verba, 1963: 134

⁹⁶ Cf. Cameron, 2007: 20

⁹⁷ Cf. Taylor, 1997: 166

1. Survey's Hypotheses

The first hypothesis is that societies of the three countries share the same idea of law, the same paradigm of law.

The idea of law has changed importantly, not only in Japan but all over the world, after the WWII. The spread of Human Rights through international treaties regarding genocide, war, human rights, child protection, weapons, etc. that occurred after WWII has changed radically the idea of the law and constitutionalism in the world. Moreover, since the world is becoming more and more connected, the idea of the law is becoming more affected by global events than by local events.

Similar studies on the people's opinion point out that the differences in the idea about law are decreasing⁹⁸. In several countries of the world there is a similar feeling about the objectives and the sources of law, the importance of the law and the advice of lawyers, and about participating as a juror, believing that law is good, etc.

The second hypothesis is that Mexicans depend on the law to a degree that Japanese and Canadians do not. This thesis uses the concept of dependence not to express trust or confidence, which are concepts used in some contexts related to the idea of *dependence*, but to express *need* and *support*.

The testing of this hypothesis is possibly the most innovative part of this thesis. All the

⁹⁸ Cf. Kawai and Kato 2003

studies consulted for this study have not distinguished between trust and dependence. In order to prove this hypothesis, trust and dependence will be explored independently. Several serious studies such as the *World Values Survey* and the *Latinobarometro* have already demonstrated that Mexicans express low levels of trust.

The third hypothesis is that the similarity in the level of deference towards the authorities in Japan and Mexico is not grounded in disregard or indifference in any of the two countries.

The fourth hypothesis is that the competence of a legal system does not depend on the population's homogeneity. This hypothesis will be tested mainly using the examples of Canada and Japan. Canada is considered more heterogeneous than Japan, but the opinions will prove to be more homogeneous in Canada than in Japan.

2. The data

The data for this study was obtained through the application of a survey, which was implemented after several trials and corrections and drafted by the author of this thesis, the committee of professors and academics supervising the study and other students that joined her on the project. The options available as answers were selected after the application of a pilot survey in the three countries, which posed only open questions with respect to the last section of the questionnaire; the options selected for the survey were the main four/five options answered in the first pilot survey in all three nations.

The research design is based on several principles used in ethnographic and qualitative

research. The questionnaire contains three sections. The first consists of a rating group of 64 independent questions, which are used to contrast the answers given in the next two sections. The second section consists of two questions that are used to counterbalance the conclusions on “closeness to law” with the results in the third section; the third section contains five forced-ranking questions. A Spanish, Japanese and English translations were provided for each country. All respondents were given the same instructions.

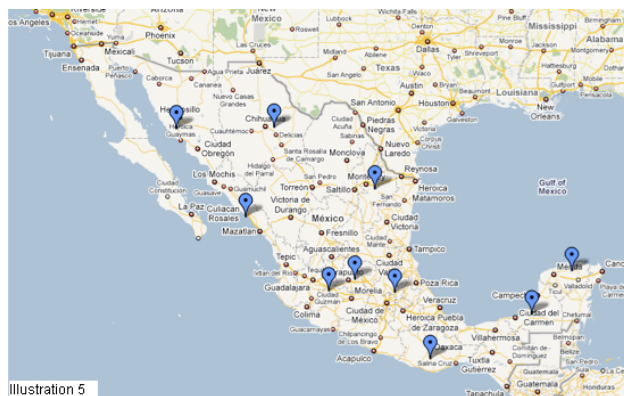


Illustration 5

3. The process of application of the survey

The survey of this thesis has been applied in Canada, Japan and Mexico.

Until now, the total surveyed population is

of 318 persons. A number of 119 Mexicans, 101 Japanese and 98 Canadians have been surveyed until the moment. The survey was applied in the following cities in Mexico:

Mexico city, Monterrey, Oaxaca, Campeche, Chihuahua, Celaya, Hermosillo, Poeboc, Mazatlan, Cd. Juarez, Merida, and Guadalajara. It was also applied in the following cities in

Canada: Toronto, Vancouver, Victoria, Corner Brook, New Westminster, Quebec, Montreal, Calgary, Chilliwack, Kamloops, and Mill Bay.

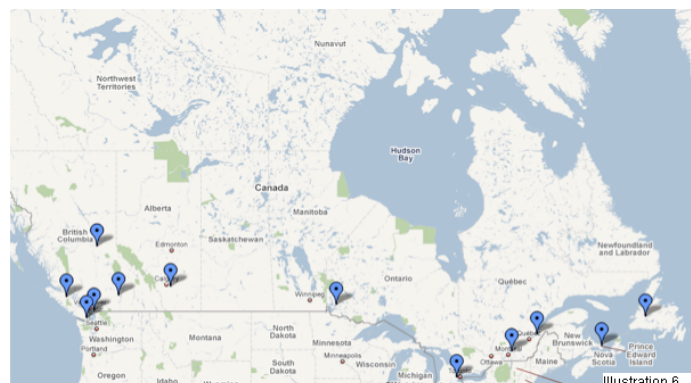


Illustration 6

In Japan surveys were done in the following cities: Tokyo, Kyoto, Osaka, Sendai, Fukushima, Tochigi, Nagasaki, Mito, Chiba, Hanamaki, Niigata, Yamagata, Fukuoka, Nagoya, Atami, Shizuoka, Yokohama, Sapporo, among few others.



In all cases the percentage of female and male population has a fifty/fifty percent proportion. Almost 95% of the people surveyed in Mexico and Japan were surveyed face to face; meanwhile in Canada, most of the surveys were

answered through the Internet. In Mexico the surveys were applied in parks, offices, prisons, clinics, stores, schools, and in the streets. In Japan, most of the surveys were obtained in parks, universities, stations, and trains and in events related to research and investigation. In Japan, there were some surveys that were solicited through mail. The survey was applied with particular consideration of age, sex and socio-economic class of the respondents. In Canada, most of the surveys were solicited through email or mail and that is why they were delivered through the Internet. In Canada, an advertisement for the survey was posted on Facebook, a popular social networking site.

The respondents came from a variety of backgrounds. The survey was mainly applied to all ages (17 to 99 years old), both sexes equally and considering the importance of interviewing people from as many economic and social classes as possible. The application was random; respondents were surveyed in the streets, in parks and in trains. After examining

the results of one day of fieldwork, the team would decide the target population for the following day. Thus, if one day some samples of certain communities were obtained, the team would concentrate in other areas of the country or a different gender or a different age group. Information regarding the communities, sectors, social classes, economic classes that this survey should target was obtained from the census information provided by several international and national agencies such as the INEGI in Mexico and the United Nations reports on poverty and education. The following table shows the characteristics of the sample as stated by the respondents. Table 3 - Surveyed Population – demographic characteristics:

GENDER	CANADA	JAPAN	MEXICO
Female	48.5%	50.5%	48.7%
Male	51.5%	49.5%	51.3%
	CANADA	JAPAN	MEXICO
AGE AVERAGE	40.9	38.9	39.1
	CANADA	JAPAN	MEXICO
IMMIGRANTS	20%	0%	0%
	Hong Kong, Iran, Netherlands, Nicaragua, Mexico		
EDUCATION LEVEL	CANADA	JAPAN	MEXICO
Elementary school	0%	0%	8.4%
Secondary school	15.2%	26.3%	26.9%
University level	45.5%	57.9%	54.6%
Graduate level	39.4%	15.8%	10.1%
ECONOMIC CLASS	CANADA	JAPAN	MEXICO
Low	12.1%	23.2%	19.3%
Middle	84.8%	73.7%	78.2%
High	3%	3.2%	2.5%

In Mexico people mentioned the following communities as those they felt they belong to: Christian, Catholic and Atheist communities (religious groups); Mayans (indigenous group); from Oaxaca, Mexico City, Monterrey (place of origin); and federal public officials, artists, sportsman, (professionally oriented). In Japan the communities mentioned were related to religious groups, occupation oriented groups and ideological movements. In Canada the options mentioned were ethnic groups (Persian, Hispanic, Chinese, White), and religious groups (Local Parish Church). In Canada there were several respondents who had recently immigrated from other parts of the world, predominantly from Latin America and Asia. In Japan and Mexico there were no cases of recent immigrants. There was a wide range of professions among respondents: health care, artists, sportsmen/women, workers, peasants, etc. Education levels were mainly spread among University level and Graduate level in Japan and Canada with few cases of high school and middle junior school level. In Mexico there were a few cases of educational attainment only to elementary school level. In all cases, the majority held an educational attainment to university level. In all cases there are people from high, low and middle classes. The majority of the population professed to belong to the middle class of their country.

The survey was applied from June to November of 2009. As a caveat, it is worth

acknowledging that during the drafting of this thesis a number of landmark events took place in the three countries, which may have influenced the responses to the survey. In Japan a man was found innocent after spending more than 15 years in jail waiting for a death row; the new lay jury system for criminal cases has been established in Japan; a constitutional crisis where the intervention of the queen was required happened in Canada; and a couple of cases of investigation of constitutional rights violations in Mexico was resolved by the Supreme Court of Justice. All those happenings have had an impact in the results of the surveys of opinion and in the selection of cases for study in this thesis.

B. Results and its comparison

The statistical results of the survey can be found in Appendix B of this document. In this section of the thesis the results of the survey are discussed. The discussions are classified in different topics on which this study concentrates:

- The idea of law
- Closeness to law
- Respect of legal institutions and law
- Trust of legal institutions and law
- Satisfaction with the legal system
- Dependence on the law

1. The idea of law

The first hypothesis of this part of the study is that the idea of law in the three countries is considerably similar. The following results seek to demonstrate this hypothesis.

Results to questions 11, 17, 29, 47, 51, 52, 54 and 56 obtained a very similar rating and response in the three nations (average ratings varied in less than 0.206 in an spectrum of 5)⁹⁹.

The results to questions 11, 47, 51 and 54 express the same level of disagreement towards the following statements in the three countries:

11. I think I will never need the service of a lawyer.

47. I think laws are none of my business.

51. I think the idea of the law is essentially bad.

54. A society can survive without laws.

At the same time, people in the three countries expressed the same level of agreement towards the following statements in the three countries:

17. I respect the law.

29. I obey the law in the same level as the members of my family do.

52. I think laws help achieve harmony.

56. Legal language is different from the normal language we use for our normal life.

⁹⁹ See Appendix B, section 5, under the letter k

These results seem to point out that there is a very similar pattern in how people relate to the following aspects of the idea of law:

- a) The law is of principal importance for the society for the greater majority of people.
- b) The second most relevant similarity is that there is a sense of good about law. Laws appear to people as something good for the society.
- c) The third most relevant similarity is related to the idea of law as a distinct world with its own language and tools; in order to deal with legal issues people require the services of a lawyer, an expert in the law.
- d) Of ultimate relevance to this study is the fourth strongest similarity among the three sets. People in the three countries expressed that the degree of compliance with the laws is similar to those of their closest community, their family.

These results show the common basis of the idea of the law in the three nations. The variations in the answers are also considered for discussion: It is only in Mexico where some people (12% of the cases) agree in with the idea of law as something essentially bad¹⁰⁰ (Canada: 5% and Japan: 4%). Nevertheless Mexicans agreed to the same degree as Canadians and Japanese about the law's participation in achieving harmony (question 52) and with Canada in the usefulness of law (question 53). Japan here differs slightly about the usefulness of law, showing a high percentage of people indecisive about their response (43%

¹⁰⁰ Question 51 of the survey.

of the cases were answered indecisively). In this respect seems that Japanese people use their adjective “benri–convenient/useful” not match very well with the functions of law recognized in the *nomos*.

Regarding question 63¹⁰¹ *What is the law?*, results are similar to each other. The first option (*The laws are means for regulating human relationships*) and the third option (*The laws are ideals of the community*) were ranked as first and third in all countries. The order of preference selected by the respondents was the same in Mexico and Canada. In the case of Japan, the second most preferred answer was the fourth option (*The laws are moral standards of the community*). The Japanese sample varies in the order as you can see in the graph below.

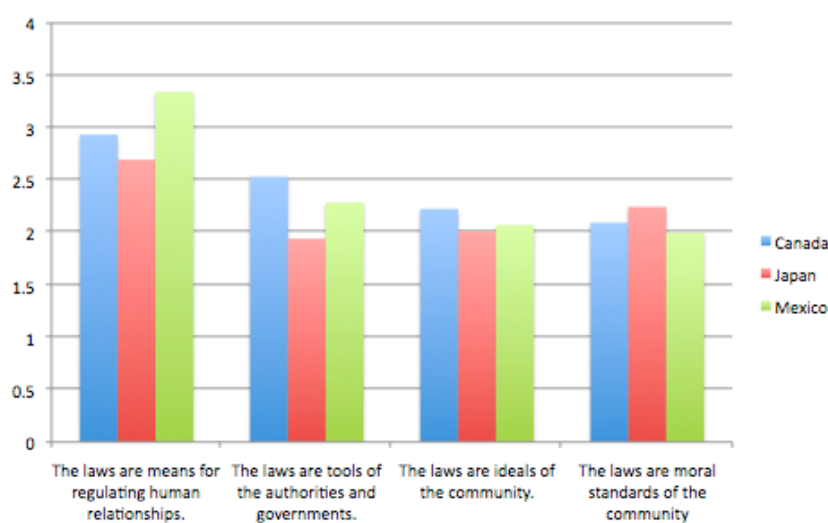


Illustration 8

¹⁰¹ Rank the following statements one to four with (1) being the statement you agree the most and (4) being the statement you agree with the least. Give a different number to each statement in the line on the left. If you disagree with a statement tick disagree (D) or leave it blank.

1. The laws are means for regulating human relationships.
2. The laws are tools of the authorities and governments.
3. The laws are ideals of the community.
4. The laws are moral standards of the community.

In the three cases there is a strong tendency to believe that laws are means for regulating human relationships. The levels of disagreement scarcely varied in each case. In the Japanese case, the percentage of responses of disagreement is the highest among all cases. Even the first option received a 10% response of disagreement. This result may point out that the options offered in the survey suited the Canadian and the Mexican respondents better than the Japanese; in the opinion of the author, this is a situation also caused by the distinctiveness of the legal language in Japan.

The answers were more evenly rated in Japan and less evenly rated in Canada, data that shows that Canadian people have certain homogeneous preferences. Nevertheless, the heterogeneity of the responses towards the other options, particularly in Japan and Mexico, shows that there is also a degree of indecision about what laws are. At the same time, there was only one case in each country that commented in relation to question 63, showing that there were no other particular ideas of what the law is in none of the cases. This result may not be as relevant (and also not conclusive) as others discussed below, nevertheless the author thinks that this result supports the notion that there is an unsettled part of the definition of law in the actual global *nomos*.

Moreover, of the first 58 questions, 44 had similar results in the three countries (less than 0.705 of difference between the maximum and minimum in a spectrum of 5). Only the results of five of the remaining 14 questions varied by more than 1.00, between the maximum and

minimum in a spectrum of 5. Those five questions are the following¹⁰²:

1. I know about law.

8. The authorities respect the laws.

9. I think laws are effectively applied in my country.

15. Courts and judges should be trusted.

36. I think some laws have been imposed on my country.

In question number one, Japanese expressed a low level of agreement compared to Mexicans and Canadians. In question 8 and 9, Mexicans expressed a very low level of agreement compared to Japanese and Canadians. Regarding question 15, Japanese expressed a high level of agreement compared to the other two samples. Regarding question 36, Japanese expressed a low level of agreement compared to Mexico, particularly.

These results show that the divergent paths of the idea of law concern specific characteristics of each legal system and are not inherent to the idea of law. The divergences are mainly expressed in relation to the effectiveness of legal institutions and trust in judicial institutions.

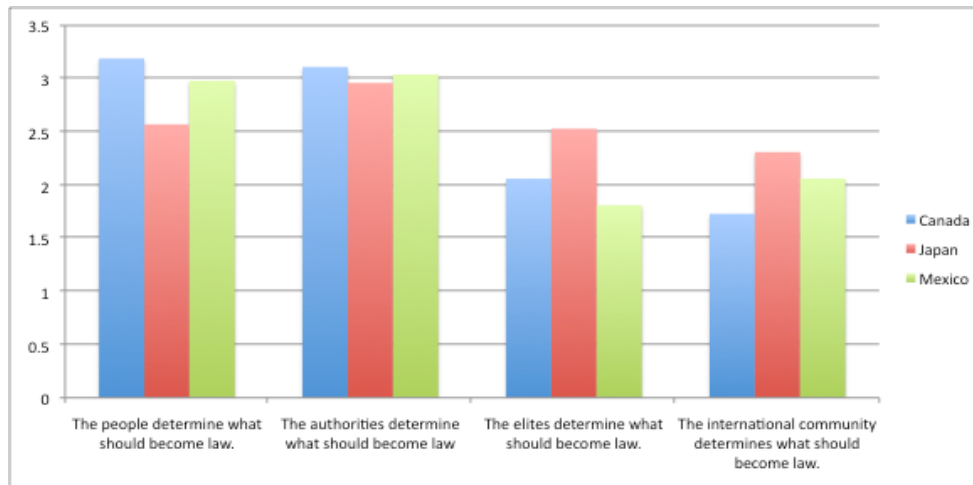
a) How is law determined?

In relation to question 62¹⁰³, the option of “*The people determine what should become*

¹⁰² See Appendix B Section 5, under letter l.

¹⁰³ Rank the following statements one to four with (1) being the statement you agree the most and (4) being the statement you agree with the least. Give a different number to each statement in the line on the left. If you disagree with a statement tick disagree (D) or leave it blank.

law” was the highest rated option in Canada. In Japan and Mexico this option was the second most preferred option. The option “*The authorities are who determine what should become law*” became the overall highest rated option. In Canada and Mexico, the margin between the first place and the second best rated options is very narrow.



Illus 9

These results show that there is a similar tendency in the three cases. In Japan there is a larger margin between these two options but still not significantly different. It seems that in the three countries, people feel that the authorities are usually the ones that decide what become law, which shows also a certain distance between the people and the law.

In the case of Japan the options were selected more evenly than in the other two cases. Interestingly there was no option rated higher than 2.97 and lower none than 2.15. In the cases of Mexico and Canada, there are values above 3 and below 2. In Canada, the highest-

-
1. *The authorities determine what should become law.*
 2. *The people determine what should become law.*
 3. *The elites determine what should become law.*
 4. *The international community determines what should become law.*
 5. *The elites determine what should become law.*

rated option was considerably larger than the lowest rated option (*The international community determines what should become law*). This result points out that people's opinions are more heterogeneous in Japan than the people's opinion in Mexico and Canada, which marked homogenous preferences and dislikes. The heterogeneity of the Japanese sample in these results is shown throughout the survey, which contrasts highly with the perceived notion that since Japanese people are one ethnicity it is a very homogenous country in terms of social concerns.

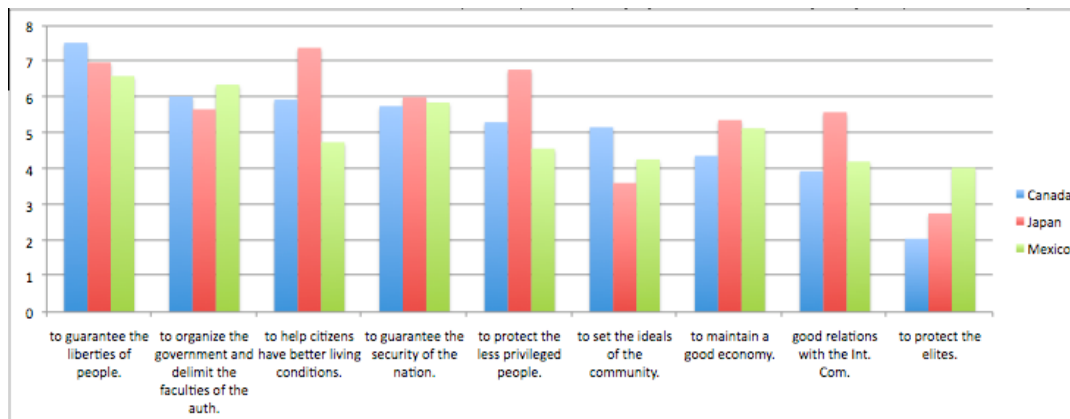
b) The objectives of law

Question 65 is concerned with the objectives of the law and is divided into two parts. The first section (A) asks for the opinion about the ideal aim of the law meanwhile the second section (B) asks about the actual aim of the law. In relation to question 65-A¹⁰⁴, the highest-rated option in the three cases was: "*The main aim of the law should be to guarantee the liberties of the people*". The lowest rated option in all cases was

¹⁰⁴ Rank the following group of statements 1 to 9 with (1) being the statement you agree the most and nine (9) the statement you agree with the least. Please give a different number to each statement in the lines on the left. If you add an option please organize the statements from 1 to 10. If you disagree with a statement tick disagree (D).

1. *The main aim of the law should be to guarantee the liberties of people.*
2. *...to organize the government and delimit the faculties of the authorities.*
3. *... to guarantee the security of the nation.*
4. *... to protect the less privileged people.*
5. *... to maintain a good economy.*
6. *... the improvement and maintenance of good relations with the international community.*
7. *... to protect the elites.*
8. *... to help citizens have better living conditions.*
9. *... to set the ideals of the community.*

“The main aim of the law should be to protect the elites”. Meanwhile in Canada and Japan, nobody had preference for this option. In Mexico this option received a rating of 4, which shows that in the opinion of some this should be also the aim of the law. Results for question 65-A are in Illustration 10:



In Japan the second most preferred option was “The main aim of the law should be to help citizens have better living conditions” followed closely by the option “The main aim of the law should be to protect the less privileged people”. In Canada, the second highest-rated option was “The main aim of the law should be to guarantee the security of the nation”, and the third highest-rated option was “The main aim of the law should be to help citizens have better living conditions”. In Mexico the second highest-rated option, differently from the other two cases, was very close to the highest-rated option and it was “The main aim of the law should be to organize the government and delimit the faculties of the authorities” which was a poorly rated option in Japan. The third highest-rated option in Mexico was “The main aim of the law should be guarantee the security of the nation”. The results of the Canadian and the Mexican samples are more homogeneous than the Japanese sample, which shows a

heterogeneous set of responses again.

Over all, the preference towards some options and the disagreement with others show that there is a similar tendency in all cases. Japanese people were more eager to select answers that appear to be aiming at more pragmatic, concrete aims (*help citizens to have better living conditions and support the less privileged people*) than the answers selected by Canadians and Mexicans (*security of the nation and the organization of the government and authorities*). This fact could be also due to language issues.

Some respondents used the option to write down what they thought the aim of the law should be. Japanese respondents added the following “other” options for the aim of the law: *regulation of the environment; progress; the improvement of goodness, and the magnanimous characteristics of society; and peace*. Canadians provided the following answers for the aim of the law: *regulation of human relationships and the environment, and help citizens*. Mexicans provided the following answers in the option for “other” aims of the law: *enhance harmony between the authorities and the people; protect the society; maintain order; give certainty to the people; equally provide justice for all; give security to the people; regulate the behavior of the people; protect the fundamental rights of the people; and maintain social peace*.

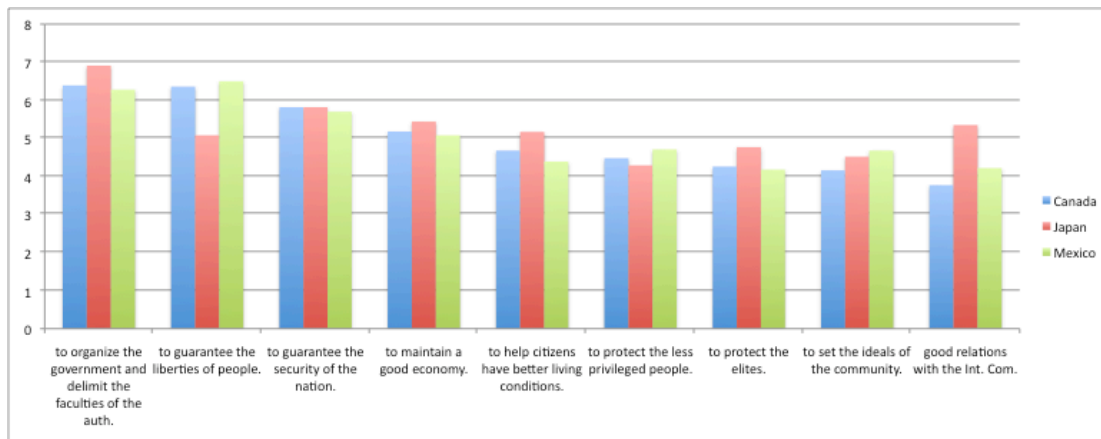
From the results obtained in this question, we can conclude that people in the three nations have a similar idea about law as a tool for the protection of rights of citizens. The results also

show the differences: people in Mexico believe that laws should be concerned with regulating the authorities and the government to a degree that Japanese certainly do not. This conclusion is supported with the results and commentaries about the second part of this question regarding the actual aim of the law.

In Japan, the opinions surveyed in relation to question 65-B¹⁰⁵ contrast with the opinions surveyed for question 65-A; in Japan, the answers for question 65-B with best rates are 1. *“The main aim of the law is to organize the government and delimit the faculties of the authorities”*; 2. *“The main aim of the law is to maintain a good economy”*, and *“The main aim of the law is to help citizens have better living conditions”*; 3. *“The main aim of the law is to guarantee the security of the nation”*. Meanwhile, in Mexico the three highest-rated options are the same that resulted from question 65-A, in the same order.

In Canada, the three highest-rated options were the same as in Mexico. Nevertheless, the order in which they were preferred is different. In Canada the highest-rated option was *“The main aim of the law is to guarantee the security of the nation”*, followed by the next two options: *“The main aim of the law is to guarantee the liberties of the people”* and *“The main aim ... is to organize the government and delimit the faculties of the authorities”*. See results to 65-B in Illustration 11:

¹⁰⁵ The question is actually the same than in case of 65-A, but the verb changes from “should be” to “is” in order to express that the question refers to the actual situation observed in the country.



For the option of “other” actual aims of the law, Japanese provided with the same options as in question 65-A, but rated them differently (in opposite positions in most of the cases). Canadians provided the following other options: *maintain order* and *promote economic growth*.

The options provided by the respondents in the three countries seem to point out that Mexicans have more expectations about the regulation of the behavior of the authorities than their counterparts in other countries. The answers reflect a different idea of what the law should actually aim to do. Mexicans expressed a constant concern about enhancing harmony, particularly between the people and the authorities, perhaps the most important dichotomy in the Mexican state. Meanwhile, the Japanese society does not see itself within such a dichotomy.

As we can observe, responses to this question also showed a similar tendency in all cases. We can also observe special features of each case: a high level of heterogeneity of the Japanese sample, a high level of homogeneity in Canada and a preference in the Mexican

respondents to establish more “abstract” and “controlling” aims for the law.

Mexicans showed similar responses to questions 65 - A and B, which may result in interesting contradictions. The Mexican sample was among three cases, the sample that showed a higher level of identification between the actual and the ideal aim of the law. At the same time, the results of the Mexican sample obtained from questions 62, 63, 64 and 65 contrast notably with the answers supplied in the other sections of the survey. Later in this thesis, there is a discussion about why Mexicans, who are less satisfied with their laws than Canadians and Japanese, depend on law more than their Canadian and Japanese counterparts. Why is that in Mexico the ideal aims of the law are rated and ordered similarly to the actual aims of the law, but at the same time, there is less trust and satisfaction with the law than in Canada and Japan? Why is it that Mexicans who are less satisfied with the law (question 32 and 12) thought that the laws were aiming to the ends they consider ideal?

c) Homogeneity and heterogeneity of the individuals’ idea of law

The difference among the three countries is not of great importance or relevance. The most homogenous set of responses were provided by the Canadian sample, which, interestingly, is considered the most heterogeneous population. There was not a significant level of homogeneity in the Japanese sample.

The analysis of the responses to questions 37, 38, 39, 40¹⁰⁶ in comparison to responses to

¹⁰⁶ 37. *People understand and use the law differently depending on the ethnic group they belong to.* 38. *People understand and use the laws differently depending on their economic status.* 39.

questions 22 to 29¹⁰⁷ are also particularly helpful to understand this situation. Among the three countries, it was the Canadian sample that presented the lowest number of opinions establishing that *people's understandings and uses of law were different depending on their background*. Closely following was Japan and then Mexico. Around 65% of the respondents in Mexico thought that *Mexicans use the law differently depending on their background*. In Japan it was around 50% and in Canada a little bit less than 50%. If we compare this data to that obtained from questions 22 to 29, the data corresponds accordingly to the overall order and homogeneity of responses. Canada presents the most homogenous set of responses. In Mexico the responses were more heterogeneous than in the other two cases.

2. “Closeness” to law

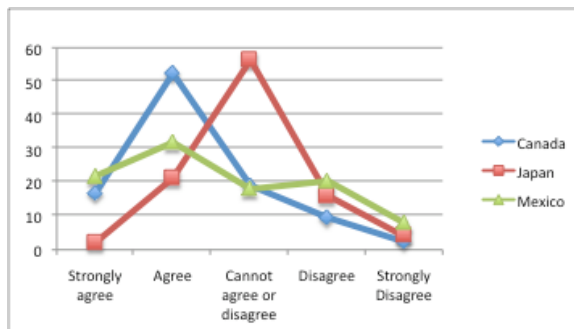
“Closeness” is mainly measured in terms of indifference rather than in terms of non-compliance of the law. In these terms, Canadians in general, seem to show a higher degree of involvement with legal issues and law in all aspects. In terms of closeness, Mexico shows a higher degree of heterogeneity of opinions but a population engaged with legal issues. Japanese show less involvement with legal issues and the law.

Relevant to the issue of closeness are questions 30, 47, 49, 59 – 61, 1, 35, 36, 10, 11, 28

People understand and use the laws differently depending on their hierarchical status. 40. People understand and use the law differently depending on the province/city they are originally from.

¹⁰⁷ 22- 29. *I obey the law in the same degree as people (in my city / my same economic class / my religious community / my family / my same education level / etc.*

and 34. Question number 30 (See Illustration 12 below) states: *I think laws in my country are*



congruent with my own morals/principles/rules. Japanese agreed with the statement in 31% of the cases and disagreed in 17% of the cases, showing a high

level of indecision on this question (53%). Mexicans agreed with the statement in 53% of the cases and disagreed with the statement in 28% of the cases. Canadians agreed with the statement in 62% of the cases and disagreed in 11% of the cases. The results of this question were among the ones used to conclude that Japanese feel the least close to the law and Canadians feel closest to the law. The high percentage of indecision in the Japanese case shows a certain disregard for this issue.

The fact that the majority of Mexican respondents agree with this statement contrasts strikingly with the low levels of satisfaction, again.

In Canada there were no cases of agreement with the statement: *I think laws are none of my business* (question 47), but there were a number of relevant cases (15%) in Mexico and also some in Japan (5%). In all cases, people expressed that they thought laws were important.

In Japan there was a lower percentage of respondents agreeing with the statement: 49. *I think laws affect all aspects of my life* (figure below) compared to the Mexican sample, result

that also supports the idea of Japanese people are the “less close” to law.

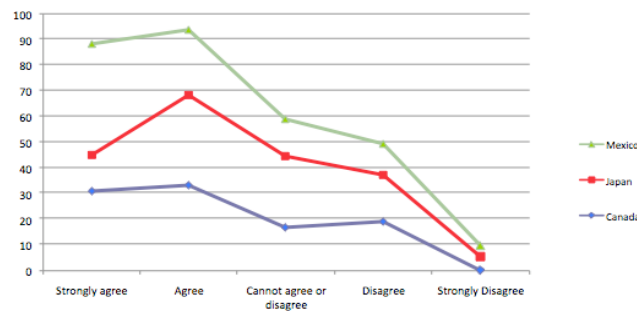


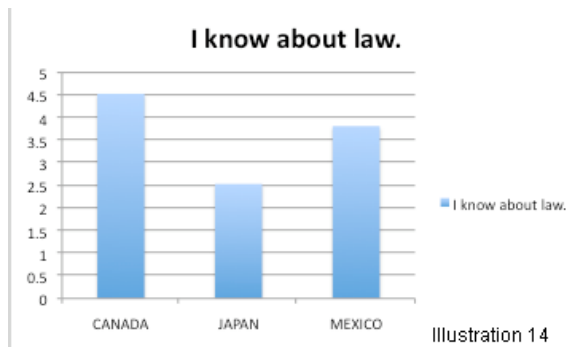
Illustration 13

The Japanese respondents were also the ones who showed less interest and offered fewer examples of legal issues among the three cases. A large percentage of Mexicans answered that they think about legal issues more than 10 times a week (18 %) a percentage that contrasts importantly with the Japanese results (less than 3%) and also with the Canadian results (9%).

It is also in Mexico where we can find the largest percentage of people expressing that they think about legal issues less than one time a week (38%). In Canada the percentage is almost as high as in Mexico. Japan also shows a large percentage of people thinking about legal issues less than one time a week with a 21%. In Canada and Japan the option number three (1-4 cases a week) was the most preferred (Canada: 38%, Japan: 67%, contrasting with Mexico: 25%). These results correspond also to the preferences resulting from question 59, where almost all options received a much stronger percentage in Mexico than in Canada and Japan. In Japan the percentages are the lowest of all.

There is a larger percentage of respondents in Mexico and Canada who believe that they

know about law (Mexico: 72%, Canada: 66%) than in Japan (24%). This response is also interpreted supporting the idea that people in Japan feel less “close” to law.



Regarding question 35, which states: *I think laws are the expressed will of the people of my country*; Mexicans divided their answer evenly between agreement and disagreement (agreement: 37%, disagreement: 37%);

Japanese people also divided their answer more or less evenly (agreement: 36%, disagreement: 31%); Canadians contrastingly, agreed strongly with this statement (more than 50%) and disagreed in only 14% of the cases.

Question 36 states: *I think some laws have been imposed on my country*. The responses to this question show that Mexicans agreed with the statement in 64% of the cases, meanwhile only 17% disagreed with the statement. Contrastingly, Japanese disagree strongly with this statement: Japanese agreed in 5% of the cases and disagreed in the 46% of the cases, meanwhile Canadians agreed in 25% and disagreed in the 22% of the cases.

Finally, the results obtained from question 10, reflect that Mexican people have been in need of a lawyer considerably more times than their counterparts in Canada and Japan, which supports the idea expressed in the paragraph immediately above, and which also supports the thesis that Mexicans know more about law and feel closer to law than Japanese people

because Mexicans have experienced judicial and legal issues more often than their counterparts in Japan.

People in Canada, Japan and Mexico disagreed with the statement *11. I will never be in the need of a lawyer* (in all cases percentages the level of agreement was around 23%). Nevertheless the majority of Japanese (50%) and Canadian (41%) were more prone to express that they do not know if they will be in the need of a lawyer meanwhile the majority of Mexicans expressed a preference towards believing that they will need of a lawyer (53%).

The answers to question 28¹⁰⁸ particularly interested the author because this result could also point out at the high level of disregard towards law and a less close relationship between the people and law in Japan. According to the results of the survey, Japanese people are less keen to express that the people belonging to their closest social circle obey the law to the same degree as themselves.

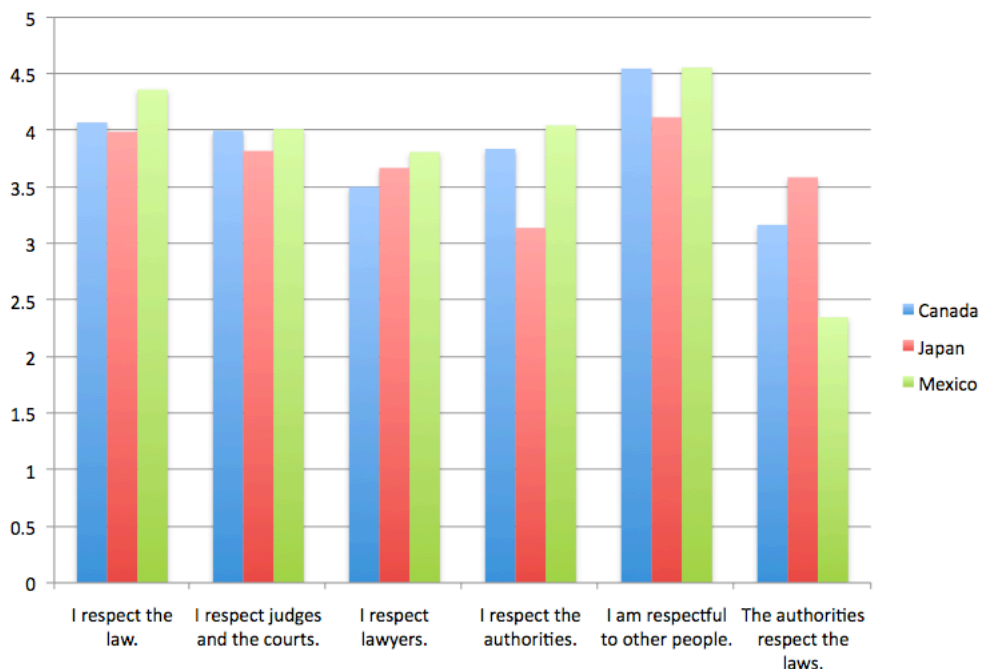
In terms of the idea of law as a foreign idea, the results are not close to those expected according to most scholars (particularly in the Japanese case). In the case of question 34 (*I think laws in my country are foreign ideas*), Japanese people disagreed in more cases than in which they agreed with those statements (agreement: less than 5 %, disagreement: 40%), meanwhile in Canada the percentage of agreement was about the same as in Japan but the disagreement was considerably higher, showing more assurance at answering the question

¹⁰⁸ Question 28. *I obey the law in the same degree as people closer to me do.*

(agreement: 8%, disagreement: 66%). Mexicans showed a similar opinion to Canadians, disagreeing to the same degree.

3. Respect towards legal institutions and law

Relevant to the issue of respect are questions 17, 18, 19, 20 and 21¹⁰⁹, which were similarly responded by respondents in the three places. Respondents answered they respect the law, judges and other people. Respondents in Mexico and Canada expressed less respect towards lawyers than in Japan, while Japanese respondents expressed less respect towards authorities than respondents in Canada and Mexico. In all cases, respect to the law was considered important. Also, in all cases, there was an important expressed preference towards respect for other people.



Illus.15

¹⁰⁹ 17. I respect the law; 18. I respect judges and the court; 19. I respect lawyers; 20. I respect the authorities; 21. I am respectful to other people.

If we compare these results to the results of questions 4 to 7, which ask for the opinion about the capacity of lawyers, judges, politicians and bureaucrats, we can find a correlation between levels of knowledge and levels of respect.

Regarding questions 4 - 7, there is a tendency to consider politicians know little about the law. The main difference among the three cases is about government officials. Meanwhile in Mexico people consider them to be the least knowledgeable of the four, in Canada and Japan, people consider them to have knowledge about law. This could point out to the need to prepare government officials in Mexico (as it is done in Japan) and to the dissatisfaction towards government services in Mexico.

4. Trust towards legal institutions and law¹¹⁰

In terms of trust (questions 12 - 16), the samples differed. Mexicans were less keen to express that they *trust the law* (41%), which is considerably less than the percentage of the trusting opinions in Canada (66%). In 48% of the Japanese answers, people stated that they *trust the law*. Lawyers were the least trusted legal figures in the three cases. In Canada there is a low percentage of respondents that expressed distrust towards judges, meanwhile there is a significant number of people that distrust judges in Mexico (37%) and Japan (20%). However, Japanese people were the keenest to answer that judges and courts should be trusted (97%), followed by Canadians (62%) and Mexicans (58%). It is also Japanese people

¹¹⁰ See Appendix B, 2, c)

that think people should trust their authorities (68%), followed by Canadians (56%) and Mexicans (48%).

This data points out that Mexicans are less keen to trust their authorities and do not feel obliged as their counterparts in Japan to trust them. Other studies have also concluded similarly in this respect. Several scholars have stated that Latin American societies are, on average, the most distrusting of all¹¹¹.

The results of this part of the survey seems to support the idea that Japanese society is keener than their counterparts to trust their authorities, possibly, as most theories establish, due to the Confucian principle of deference towards authority. Nevertheless, the results show that Japanese do not actually trust their authorities as they think they should and as much as Canadians for example. This result shows an interesting contradiction between that ideal and the actual trust in authorities in Japan. This phenomenon seems to reflect the indirect¹¹² character of Japanese society towards authority.

People in Mexico were more distrustful of lawyers and judges than their counterparts in Canada and Japan but in terms of respect towards lawyers and judges the samples reflect a similar tendency in the three cases. This finding supports the notion that trust in legal institutions is not in correlation to respect to legal institutions as some may argue. Lawyers were the least respected in the cases of Mexico and Canada but not in Japan, where the least

¹¹¹ Cf. Moreno, 2002: 505

¹¹² Also called “Tatemae” in Japanese

respected were the “authorities”. Judges are, among all legal professionals, the most respected and trusted ones in the three countries.

Meanwhile in all cases, people agreed on respect for the law; it is only in Japan that there is a very strong feeling of trust towards legal institutions and law.

5. Satisfaction with the legal system

Levels of satisfaction regarding the actual application of the law are mainly evaluated through the results obtained from questions 8, 9, 31, 32, 33, 43, and 44.

Mexicans are also the least keen to think *laws in their country were good* (question 32, agree: 42%, disagree: 34%). Mexicans are also the least keen to establish that *laws are respected by the authorities* (question 8: agreement: 12%, disagreement: 56%), *laws are effectively applied in their country* (question 9: agreement: 15%, disagreement: 62%); and are also least keen to establish that *courts’ decisions are made according to the law* (question 44: agreement: 32%, disagreement: 34%), and that *courts’ decisions are good for the country* (question 43: agreement: 25%, disagreement: 34%).

Meanwhile Canadians and Japanese are very keen to express that in their country, *law is respected by the authorities* (Japan: agreement: 68%, disagreement: 12%), *effectively applied in their country* (Japanese agreed in 47% of the cases), that *courts’ decisions are made according to law*, and that *laws in their country are good* (Canada: Agree: 86%, disagree: 7%; Japan: Agree: 60%, disagree: 12%). The percentages between Mexico and Japan are

particularly contrasting.

There is higher level of heterogeneity in the opinions expressed towards the statement of question 43: *The decisions of the courts are/have been good for the country*. In this regard, Canadians and Japanese show preference to express their indecision, but do disagree lot less with the statement than Mexicans. In Mexico, the opinions are spread evenly among the five options.

The responses to the question regarding accessibility to laws (question 33) also showed that in Canada, people think laws are very accessible (60%), meanwhile in Mexico and Japan they thought laws are not very accessible (Japan: 21%, Mexico: 34%). Japan's rate is particularly low.

In case of question 31 (*Laws are correspondent to the reality of the country*), the Canadian case again stands out since most of the people (62%) were of the opinion that laws are indeed correspondent to the actual situation of the country, meanwhile in the Japanese (30%) and Mexican (35%) cases the percentages are considerably lower.

6. Dependence on law

Relevant to the issue of dependence, are questions 64, 2, 53, and 63 among some others. In regard to question 64¹¹³, in Mexico there is a strong preference towards the option of

¹¹³ Rank the following statements 1 to 5 with (1) being the statement you agree the most and (5) being the statement you agree with the least. Give a different number to each statement in the line on the left. If you disagree with a statement tick disagree (D) and do not provide a ranking for that statement.

1. I comply with the religious norms of my community.

compliance with the law over the options of complying with other social regulations; meanwhile, in Canada complying with the law is as important as complying with social norms and manners, the margin between these two options is indeed almost imperceptible.

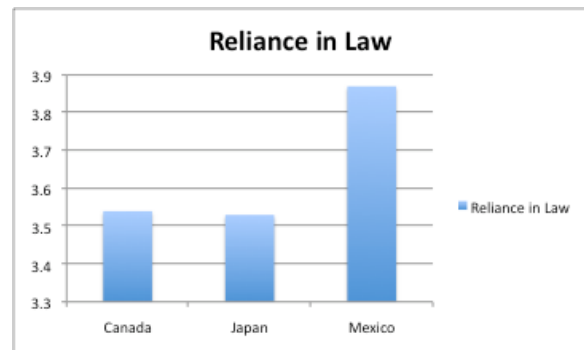
Social manners were by far the highest-rated option in Japan. In Japan, complying with social

manners was the most preferred option,

followed by the option of complying with *own*

ideological principles. Complying with the

law became the third highest-rated option in



Japan.

Illus. 16

It is interesting that in Japan there is a larger margin between the two most preferred options and the option of legal compliance than the margin existing between the option of legal compliance and the other two most preferred options in the cases of Canada and Mexico. Moreover, the studies carried out by the Research Center for International Comparison of Legal Consciousness also demonstrate that Japanese people do not express reliance in law, particularly when comparing reliance in law against reliance in “common sense”¹¹⁴. These studies also demonstrate how Japanese people are very resistant to go to

2. I comply with the social behavior norms of my community.

3. I comply with my ideological principles.

4. I comply with the traditions and customs of my community.

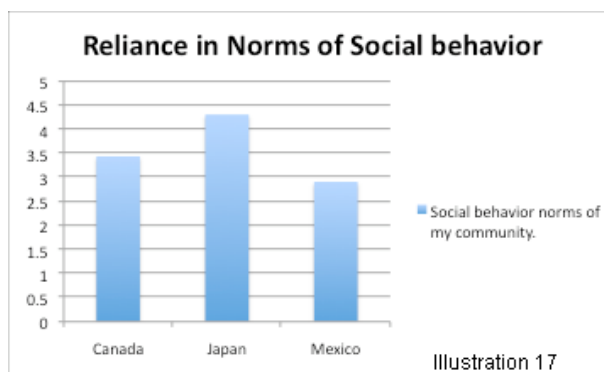
5. I comply with the law.

¹¹⁴ Cf. Kawai and Kato, 2003: 93, 270; and Kato and Young, 2001: 28. Refer especially to question 6 of such studies.

court to solve a controversy, and prefer to be advised to solve controversies in other ways different from legal means.

Since there is enough data and information that proves that legal compliance in Japan is high¹¹⁵, the data should be accordingly interpreted. This result does not mean that Japanese do not comply with the law, but that there is a broader range of social mores that Japanese abide by. These results seem to point out that Japanese people comply with a broader set of rules than their counterparts in Mexico.

Meanwhile, Mexicans expressed a strong dependence on law placing other common social rules in the third and fourth place after individual ideological principles with a considerable margin between these options and the first and second options highest-rated.

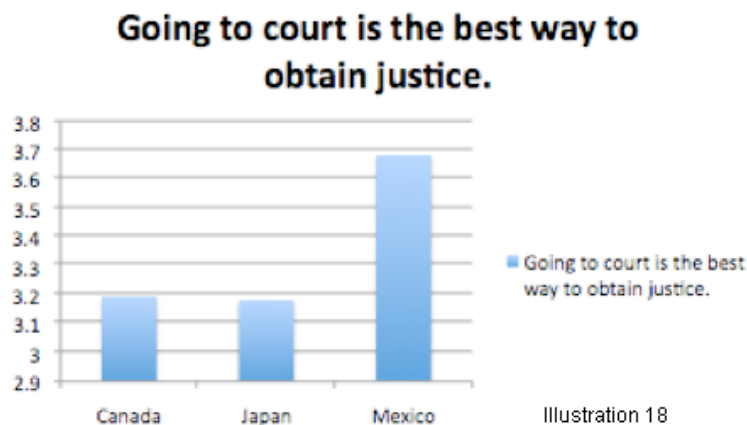


In the Japanese case there are strongly preferred options and strongly disliked options (contrary to most of the other questions). In one third of the surveys,

the option of complying with religious norms was selected as not relevant at all. During the study, the author and some of the team members received constant complaints about the inclusion of this option in a question – “*everybody knows that we Japanese people do not have religion*” was a common comment among the respondents.

¹¹⁵ Cf. Upham 1987, Amyx 2003: 150

With respect to question 2 (*Going to court is the best way to obtain justice*), there are interesting findings: A large percentage of Mexicans agreed with the statement (Agree: 65.2%, Disagree: 14.5%), meanwhile the percentages of agreement in Japan and Canada are less than 50% (Canada agree: 46.4%, disagree: 28.6%; Japan agree: 34%, disagree: 21%).



If we interpret the responses to this question together with the responses provided in questions 3, 10, 59 and 64 the results seem to point out that

Mexicans depend importantly in law in order to achieve justice, resolve conflicts and interact with others since there are few people who think there are other means to solve conflicts and other social rules needed to respect in order to interact with others.

In the opinion of the author these results may be the most relevant of all the findings of this study. Mexicans depend strongly on the law to regulate their relationships and their social lives, a situation that may point out one truly contrasting fact among the three societies in relation to legal culture and the idea of law. This result is also supported by the results of question 59, which states: *I worry about the law(s) when I think about: taxes, my properties, my family, etc.*

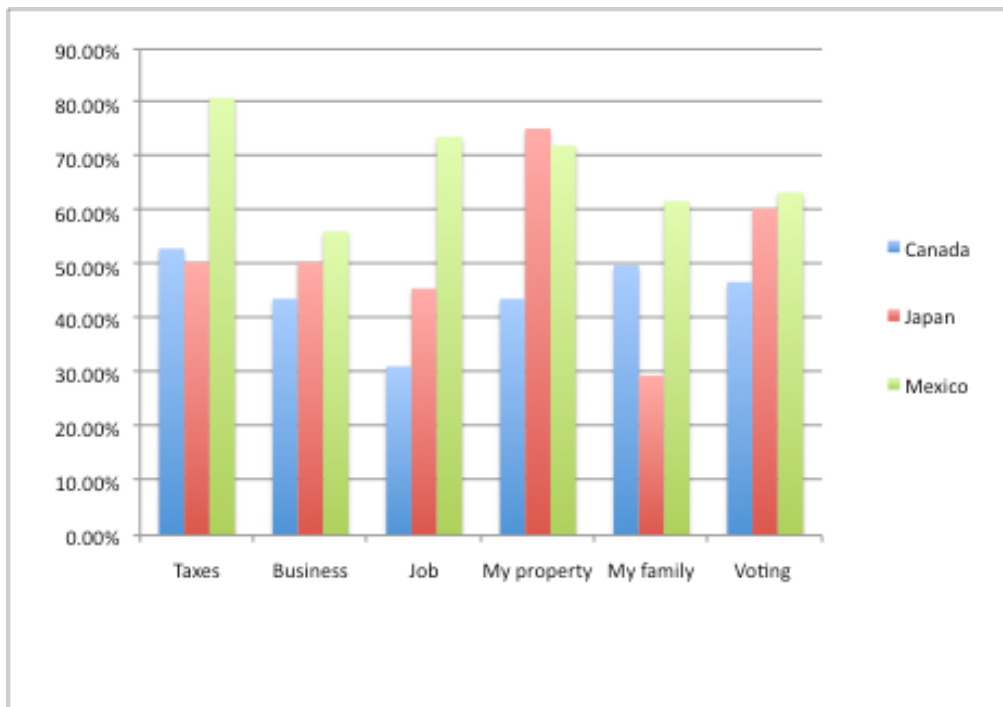


Illustration 19

As the reader can observe, Mexicans showed a significant greater concern with law than Canadians and Japanese in relation to issues that affect their daily lives such as work and family issues.

This observation poses an interesting problem to solve: Why Mexicans do not trust laws yet depend on the law? Why Mexicans, who are less satisfied than their counterparts in Japan and Mexico with the laws and the authorities, are keener to answer that the best way to obtain justice is by going to court (question 2)? Why Mexicans who are less satisfied with their laws and authorities are keener to establish that they abide the laws? These results demonstrate that Mexicans depend more on the law to solve interpersonal conflicts than their counterparts in Japan and Canada but at the same time Mexicans are the ones that distrust laws the most and the ones that are the least satisfied with laws and judicial institutions.

This contradiction in the opinion of Mexicans has also been found in other studies such as the World Value Survey and the Latinobarómetro. In all of these studies, Mexicans express low interpersonal trust, low levels of tolerance on one side, and a strong emphasis on deference to authority/law, on the other¹¹⁶.

The causes for the paradoxical attitudes of Mexicans towards law could be that people do not complement the use of laws with other sources of social regulation and not that Mexicans think about law in a different way from other places in the world. This thesis is possibly the most important of this study.

In Mexico, the results of the survey point out a high tolerance towards others' lifestyles and own social/living norms as long as those behaviors do not transgress law¹¹⁷. Laws may be disobeyed in the same degree than in other places in the world, but since there is a lack of reliance in other sources of informal but still essential rules for socialization, laws appear "malleable" to investigators and scholars and legal compliance is considered lower than in other places.

¹¹⁶ Moreno and Mendez, 2002: 350

¹¹⁷ Regarding question 58. *I excuse certain illegal actions of others*, in Japan the responses were equally divided among those who disagreed (36%) and those who agreed (36%). In Canada the tendency was to excuse certain illegal actions (44% agreed against 25% that disagreed). In Mexico there is a strong tendency to disagree (55% against a 30% of the people that agreed to excuse).

Chapter VII

Conclusions

Philosophy is a study of problems which are ultimate, abstract and very general. These problems are concerned with the nature of existence, knowledge, morality, reason and human purpose. -Jenny Teichmann and Katherine C. Evans¹¹⁸

The fate of democracy and the system of constitutional justice in Mexico depends on ordinary people's intrinsic commitment to democratic principles, including those related to constitutional justice. Such commitment appears to be significantly low in Mexico. This research looked at the Canadian and Japanese constitutional systems for some ideas for understanding this problem, and obtained several. Most of those ideas are mentioned throughout the thesis. Some will be emphasized in this chapter.

1. Similarities and differences in the legal and organizational aspects of constitutional justice

This analysis has proved that the three systems of constitutional justice have important similarities in their legal and organizational framework. As expected, the political aspect of

¹¹⁸ Teichmann and Evans, 1999: 1

the systems proved to be very different from each other. The legal framework in the three countries is similar in nature because the sources of constitutional law are mainly the same in the three nations: the Constitution, international covenants and treaties dealing with human rights, secondary laws related to the organization of the judiciary and its relationship with other powers and authorities, rules of procedure established by the courts, and the precedents established by high courts and the supreme court of justice.

There is also a majority of similar constitutional principles that exist in the three nations such as the principles of division of powers; judicial independence; constitutionalism; rule of law; democracy; responsible government; respect of minorities; freedom of conscience and religion; freedom of thought, belief, opinion and expression, including freedom of the press and other means of communication; of peaceful assembly; freedom of association; right to life, liberty and security of the person; equality; to move and gain livelihood; the availability to reform the constitution; the principle of the sovereignty residing in the people; the autonomy of the local state, among others.

The main difference that exists in the legal system among the three nations is found in the capacity of Canadian courts of developing Constitutional Law. This capacity lies in the Canadian principle and doctrine of the "*Living Tree*" which has its roots in the Common Law tradition, the predominant tradition in Canada. Since this capacity of the courts was of interest for this thesis, it presented no problem for the comparison. Moreover, since the

notion of rule of law has its origins in Common Law tradition, it was in the interest of this thesis to compare a system of this tradition. Furthermore, Canada is the country of Common-Law tradition that has been influenced the most by the principles of Civil Law tradition since an important part of its territory is a Civil-Law jurisdiction, importantly influenced by French law. This characteristic of Canada has facilitated and improved the comparison of these three legal systems.

Other difference among these three nations is that the Japanese Supreme Court has fewer faculties than the other two supreme courts. While the Mexican and Canadian courts can emit advisory opinions about constitutional issues, the Japanese cannot.

The organization of the judiciary in charge of constitutional interpretation is also highly similar in the three nations. In all three nations, the Supreme Court is in charge of the last word and is the last instance of resort in cases related to constitutional issues. In all three nations other courts can also interpret the constitution and resolve cases in the matter. In all cases, the judges of the Supreme Court are appointed by the executive power, taking into consideration the opinion of the judiciary.

The most important difference among these three nations in relation to the organization of the court is grounded in the faculty of the Supreme Court of Canada (SCC) that allows her to grant "*leave*" for review. This characteristic of the Canadian system has almost imperceptible consequences for this study because its effects are balanced with the importance of

precedents in legal systems that belong to the Common-Law tradition.

Regarding the diversity of the population of legal professionals, the main difference among the three systems is the education of legal professionals. Mexican legal education is not centralized as legal education in the other two countries; the number of universities that are able to grant a degree in law, which is the only requirement to become a lawyer in Mexico, is considerably bigger in Mexico than in the other two nations. Legal education is also less demanding in Mexico, where no bar examination or similar is required. These characteristics of the Mexican system allows more diversity in the population of lawyers, judges and prosecutors but affects the levels of public trust in the abilities of legal professionals.

The Japanese and Canadian systems have established examinations that help sustain high standards in the education of lawyers. That system has had a good effect in the levels of public trust and respect towards legal professionals and legal institutions in these countries. The establishment of such examinations in Mexico may influence favorably the levels of trust towards legal professionals, legal institutions and the law.

2. The idea of law in each society

The second hypothesis to be discussed in this conclusion regards the idea of law in each society. The ideas of law have been proven to be highly similar in the three countries. People

in the three countries expressed similar opinions regarding “*what is law?*”, the “*goodness*”, “*importance*” and “*usefulness*” of the law, and the *distinctiveness of the field of law*. The results also show highly similar ideas about the actual objectives of the law.

The main differences among the three samples lie in the desired objectives of the law. People in Japan have expressed a preference for practical objectives close to the people and their needs, while people in Mexico and Canada expressed concerns related to establishing controls for the authorities, the three powers and a concern for the security of the country.

Generalizations discussed in previous studies regarding the idea of law are being challenged by new data obtained through several studies such as the ones made by the Research Center for International Comparison of Legal Consciousness¹¹⁹ and this thesis. The studies of Kawai and Kato have found that stereotypes about the public’s view of the law in Japan do not explain the reality of Japanese attitudes towards legal institutions. The views of law and the importance of the law have been globalized and academic work needs to start acknowledging this phenomenon.

3. The political aspect of the system of Constitutional Justice in the three nations

As we have seen in the conclusions summarized above, there are important differences in the political aspect of the system in each country. The political discourse in relation to the

¹¹⁹ Cf. Kawai and Kato, 2003: 234, 242, and forward.

task of constitutional interpretation by the courts follows a completely different path in the three nations because, as Machiavelli may have said, the social setting is different.

Meanwhile in Mexico and Canada the legislature has expressed its will of transforming the supreme courts in constitutional tribunals concentrated in resolving important constitutional issues in the country, in Japan the legislature has not expressed such a will. Moreover, the only moment in the history of Japan in which the Supreme Court has been given the task of review the constitutionality of laws and acts of other authorities was through the enactment of the Japanese Constitution, a text drafted during the occupation of Japan after the Second World War.

Likewise, while in Japan and Mexico there is a strict observance of the principle of division of powers, in Canada courts allow a more relaxed interpretation of the principle. While in Japan and Mexico, courts do avoid cases that deal with political issues; Canadian courts openly express their concern and required participation in some important political issues. Moreover, judges in Japan and Mexico are very careful to express how their task is only related to legal considerations, while judges in Canada express openly that most of their work cannot be only interpreted in the light of the law but requires the consideration of socio-economic issues.

The fact that the political aspect of the system of Constitutional Justice presents so many relevant differences among the three nations shows that though the structure and organization

of the system of Constitutional Justice is similar in the three nations, there is a profound difference among the three systems. Several scholars recognized the fact that power is a structural phenomenon, thus the difference noticed in the political aspect of the systems of Constitutional Justice can only be found in the social structure and *nomos* of each nation.

4. The social aspect of the system of Constitutional Justice in the three nations

Individuals cannot be expected to form large voluntary associations of the size of actual states to pursue matters of public interest unless special conditions exist¹²⁰. Thus, the state-apparatus must be thoughtful of this inability and be informed of that which concerns the individuals. Moreover, the public interest is controlled by a set of institutions that integrate the state-apparatus which have been agreed upon by the masses. This thesis is primarily interested in explaining the differences of the social aspect of the constitutional systems in Canada, Japan and Mexico because it understands that the differences among the three systems are grounded in this aspect; and, because it considers of ultimate importance the agreement of the masses in issues of constitutional justice. In order to do so, the survey used for this thesis focused on understanding in what degree people in the three countries feel they relate to the laws in their country (in comparison to other social rules or social constraints), what is the idea of the law in each country, and the levels of trust, respect and dependence on

¹²⁰ Olson, 1965

law.

An important finding is that there is a high degree of heterogeneity of the idea of law in Japan. The samples of this study showed that the opinions of the law are broadly scattered in Japan. This level of heterogeneity about the idea of law in Japan has also been glimpsed by other studies¹²¹. This conclusion challenges the common belief which establishes that all demographically homogeneous countries benefit from homogeneous opinions.

In this study, the Mexican sample is the one that shows the most heterogeneous responses. The results of the Japanese sample were the second most heterogeneous responses and the Canadian the third most heterogeneous. The fact that Japanese opinions are slightly more heterogeneous than in Canada is surprising; but, since Japanese people were the less closely related to law, the result points out that the strength of Japanese homogeneity is reflected in a consensus regarding other kind of social regulations such as social manners and customs.

These results defend the notion that heterogeneity of the public's opinion about law can be supported with a homogenous opinion about other kind of social mores and regulations. These findings also point out that a legal system can stand diverse views about law if there are other kind of forces and regulations that create a bond among the society in its pursue for similar aims, such as progress and development.

The third conclusion of this study is that people in Canada and Japan utilize a wider range

¹²¹ Cf. Kawai and Kato, 2003: 88, 100, 102, among others.

of social mores for conflict resolution than in Mexico, where people mainly depend on the law for resolution of conflicts.

Canadians expressed a balance between their preferences for laws and social conventions. Japanese people expressed a stronger attachment to social conventions than to laws, and Mexicans expressed a weak attachment to social mores or manners and a strong attachment to law.

This finding points out that in Mexico there is an important dependence on the law as the main mean to regulate social conflict, achieve justice, and regulate human behavior, and also points out the need to support the legal regulation of social behavior with more “informal” rules for social interaction.

This conclusion is also supported using other findings of this thesis related to the evaluation of “closeness” between people and the law. As stated above, the degree of “closeness” was measured in terms of “indifference” rather than in “disobedience”, “distrust”, “disrespect”, or “dissatisfaction” with legal procedures. The results of the survey show that Japanese people are the least close/related to law among the three cases. The results systematically show how Japanese people do not feel as close, or need to express closeness to legal issues, as their counterparts in Canada and Mexico. The law is an important matter that is not overviewed in any way, but which is considered indifferent to most aspects of daily life in Japan. The surveys applied regarding the establishment of the Lay Jury system

in criminal cases also reflect the same attitude towards law¹²². Some scholars have considered this attitude *pragmatic*: Japanese people acknowledge the importance of the law but rely in other venues for the resolution of conflicts due to the high costs of legal procedures and their complexity.

These findings must not be interpreted saying that homogeneity in the opinion about law and closeness with legal issues are not desirable. The author acknowledges that homogeneity in public's opinion about law and "closeness with the law" are vital for the maintenance of constitutional states. These findings are emphasized to point out the importance of the support of a system of social mores and manners in actual states, and the importance of balance between these two kinds of regulations.

Nowadays, states are powerful organizations that comprise, most commonly, large areas of space, which are shared by different kinds of smaller communities and their individuals. Thus, communities are required to share spaces and interact with members of other communities with whom they share few or no values. This phenomenon is provoking a greater reliance in legal and constitutional laws for conflict resolution among individuals,

¹²² Cf. <http://mainichi.jp/select/jiken/graph/enquete/2.html>, where 63% of the population expressed their rejection towards participating as jurors. Such low level is not uncommon, most of the countries where the system has been established there is a slightly more positive feeling about participating in criminal cases. What differentiates the Japanese case are the causes of such rejection. Most of the Japanese people (69%) think that the decisions will get worse using the system of jurors. These results reflect how people feel inadequate to judge others and understand the legal issues of a case.

because individual's daily-life decisions are always taken in consideration to its closest community and the context of such community within each state. Therefore it is important to emphasize that public reliance in social mores is also crucial for constitutional states.

Even though some authors have written about this aspect of Latin-American societies, none of them has done it as an academic work related to law. The author of this thesis decided to analyze trust and dependence independently, differently from previous authors that have written about the influence of this characteristic of the Mexican society in the constitutional system. All the studies consulted for this study have not distinguished between trust and dependence.

The fourth conclusion is related to the levels of contradiction within each sample. The Canadian sample is the one that offers the least contradictory answers; the answers are rationally connected to each other and less heterogeneous. Among the three cases, the Mexican sample is the one that shows more contradictions as the discussions above demonstrate. These contradictions in the Mexican sample have been also found by other studies. This thesis argues that the excessive dependence on law causes such contradictions in the attitudes of people towards law. At the same time, the author recognizes the deep philosophical contradictions of the constitutional system in Mexico which also provoke such contradictions in the public's opinion. Such philosophical contradictions regard for example the easiness for revision and amendment of the constitution that opposes several

constitutional principles such as the one established in article 136 which is a formula for ultimate protection of the principles established in 1917.

5. Areas for improvement

This study could be improved and completed by interviews with legal professionals and government officials dedicated to the making of and the use of law. At the same time, with the size of the samples being small, a further better-funded project could explore better the results and areas studied.

At the same time, and as shown in the discussion above, this kind of studies always face critical issues such as language related issues. Most of the lessons learned during the draft of this thesis concern issues which are fundamental for each of the constitutional systems studied and are deeply related to language.

Experts in linguistics such as Hagiwara (1998), Okazaki (1938), Ishii (1979 and 1987), among many others, recognize that Japanese language relies importantly in context, is simple, abstract, and therefore lacks precision in meaning. The fact that Japanese language is less specific language than Spanish (official language in Mexico) and English (one of the official languages in Canada) adds complexity to the issue of expressing what law is. In Japan, most of the legal language has been created in the last 100 years. In order to apply this survey the Japanese version had at least 15 reviews (the English and Spanish versions were only subject

to three each) in order to make it simpler, easier to understand but still clearly related to legal issues. The last version still received criticisms (mainly from the respondents) of the words that were chosen. Other studies have also recognized the critical influence of “language issues” in this kind of studies; Kawai and Kato discussed in their book how translations were difficult to achieve and how the sense and meaning gets lost through translation¹²³.

Moreover, the dichotomies that are easily recognized in other languages cannot be as clearly stated in Japanese. Legal vocabulary is full of dichotomies that are rooted in Western culture and Western languages. Linear thinking (usually considered a characteristic of Western languages such as Spanish and English) is also reflected in the way most of law is organized and how legal issues are addressed within the *nomos*.

This study can also be improved by including more empirical studies in relation to judicial performance and lawyers associations. A deeper and more detailed explanation of the legal processes and trials that precede constitutional procedures would also be useful to describe the reality of constitutional justice in the three nations.

6. Final Remarks

Historical events that have taken place thousands of kilometers away from Mexico and hundreds of years ago have had their effect on the Mexican legal philosophy, history and

¹²³ Kawai and Kato, 2003: 230, 241

reality. Similarly, events that have taken place in the American continent have had effect in Japanese law, reality and language. This phenomenon can also be observed in Canada. This is the most amazing power of globalization: the influential power of historical-geographical-ideological-anthropological consequences of facts that occurred in a different time, in a different place, within a different framework of ideas and a different society from the one where they are actually observed.

Comparing Canada and Japan to Mexico has proved to be immensely fruitful. Even the language issues that are discussed above have also proved to be very useful. The draft of this thesis has required an immense effort for rethinking the words, understandings and paradigms of legal academia and legal language in Mexico. The perspectives from which the Mexican constitutional system is studied are commonly reused by academics once and once again; this study observed Mexico with different eyes and from a different perspective. That said, it should be easy to understand that the challenges of understanding the social behavior of Japanese people towards law were the most illuminating experience during the draft of this thesis. Most usually, Japanese legal literature often mentions the high levels of legal observance, high percentage of convictions, the high degree of homogeneity of the population, the high standards set for professions such as lawyers and judges, etc. This is why, it is surprising for a foreigner to arrive and observe that few people actually discuss legal issues, or have visited the courts, or know about their constitution. Most of the Japanese

people that were interviewed for this thesis answered the questions regarding recent judicial cases (60 and 61 of the survey in Appendix A) only mentioning what was discussed at the moment on the television main channels.

Studying law, and law and society in Canada also provided with different perspectives and ideas. In Canada there is a large tradition of social studies regarding law that proved to be helpful for this study. Moreover, the standards by which Constitutional Justice is carried out in Canada have also importantly challenged the assumptions of legal scholarship learned in Mexico, and also those learned in Japan. It was surprising for some of the supervisors of this thesis and for the author, to read the statements by judges in Canada explaining their version of the doctrine of separation of powers and the role of the judiciary in several constitutional cases. In Canada, there is a conviction regarding the good of the judicial role and the making of law by courts that does not exist in Mexico or Japan. Judicial Review was born in this tradition and under a social setting with such convictions. Thus, the study of Canadian Constitutionalism was of decisive consequence to this study.

There were important points of connection between the three systems that were crucial for enabling the comparison; nevertheless, the most relevant findings of this thesis lie in the similar structures and processes found within different social or legal settings, which were considered to have a positive impact in the relation between the legal system and the society. The analysis of those differences and their roots helped understand differently several

situations regarding legal decisions made by people in Mexico. As most political economists in the public choice tradition recognize, there is no single form of organization good for all social circumstances¹²⁴. Thus, it was imperative that this dissertation defined the lessons to communicate, taking into consideration Mexican reality and possibilities.

In the opinion of the author, Mexico could benefit from several measures and institutions that exist in Japan and Canada in order to improve the levels of trust in law and balance the dependence and reliance in legal rules, such as lifting the education standards for judges, lawyers and prosecutors in Mexico.

Moreover, the findings of this study imply that Mexico, a demographically heterogeneous country, requires supporting its legal and constitutional regulations with a homogenous set of social mores. This idea is, in the opinion of the author, the most important finding of this thesis. Such transformation cannot be implemented through judicial institutions, lawyers associations or legislative work; the problem is then how to inspire the population to observe social mores.

Thanks to the continuous reading, questioning, exploring and writing that this thesis required, the author transformed into a different kind of observer. Learning about oneself observing the other is an exercise that the field of comparative sciences is dedicated to. The author understands that we can learn something from anyone, but at the same time, believes

¹²⁴ McGinnis, 2000: 46

that there are important lessons that can only be learned from some. In her opinion, this thesis' findings are of ultimate importance for the legal and constitutional system in Mexico, which is about to become 100 years old.

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**Constitutional justice and people's perception about
law– a comparative structural approach – Canada,
Japan and Mexico**

APPENDICES

**Constitutional justice and people's perception
about law– a comparative structural approach –
*Canada, Japan and Mexico***

APPENDIX A
THE SURVEYS

1. ENGLISH TRANSLATION
2. JAPANESE TRANSLATION
3. SPANISH TRANSLATION

Thank you for answering this survey. Your collaboration is highly appreciated and very important for a research project in comparative law led by Naayeli Ramirez, a Ph.D. student in Waseda University in Tokyo. This survey will be applied in several places of the world. The research project is interested in understanding how differently people around the world relate to law. The survey will take aprox. 20 mins. to answer.

Even if you think you do not know the answer to a question, please pick an option or options that you think/feel suit your understanding of the law.

	A. Strongly agree	B. Agree	C. Cannot agree or disagree	D. Disagree	E. Strongly disagree
I. Specify in which degree you agree with the following statements:	A	B	C	D	E
1. I know about law.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
2. Going to court is the best way to obtain justice.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
3. I happily go to court if I am required to.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
4. Lawyers know about the laws.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
5. <u>Judges know about the laws.</u>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
6. Politicians know about the laws.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
7. Government officers and policemen know about the laws.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
8. The authorities respect the laws.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
9. I think laws are effectively applied in my country.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
10. <u>I have never required the services of a lawyer.</u>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
11. I think I will never need the service of a lawyer.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
12. I trust the law.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
13. I trust lawyers.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
14. I trust judges.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
15. <u>Courts and judges should be trusted.</u>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
16. Authorities should be trusted.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
17. I respect the law.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
18. I respect judges and the courts.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
19. I respect lawyers.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
20. <u>I respect the authorities.</u>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
21. I am respectful to other people.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

	A. Strongly agree	B. Agree	C. Cannot agree or disagree	D. Disagree	E. Strongly disagree
	A	B	C	D	E
22. I obey the law in the same degree as people in my town/city obey it.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
23. I obey the law in the same degree as people in my same economic class do.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
24. I obey the law in the same degree as people in my religious community do.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
25. <u>I obey the law in the same degree as people of my same ethnicity.</u>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
26. I obey the law in the same degree as people of my same education level.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
27. I obey the law in the same degree as people with similar experiences to me.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
28. I obey the law in the same degree as people closer to me do.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
29. I obey the law in the same degree as the members of my family do.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
30. <u>I think laws in my country are congruent with my own morals/principles/rules.</u>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
31. I think laws in my country are correspondent to the actual conditions of my country.	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
32. I think laws in my country are good.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
33. Laws in my country are accessible to all of those in need of using it.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
34. I think laws in my country are foreign ideas.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
35. <u>I think laws are the expressed will of the people of this country.</u>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
36. I think some laws have been imposed on Canada.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
37. Canadians understand and use the laws differently depending on their hierarchical status.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
38. Canadians understand and use the laws differently depending on their economic status.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
39. Canadians understand and use the law differently depending on the ethnic group they belong to.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
40. Canadians understand and use the law differently depending on the province/city they are originally from.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
41. I think all Canadians understand and use the law similarly.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
42. Canadians understand and use laws differently from other places in the world.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
43. The decisions of the courts are/have been good for the country.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
44. The decisions of the courts are/have been made in accordance with the law.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

	A. Strongly agree	B. Agree	C. Cannot agree or disagree	D. Disagree	E. Strongly disagree
	A	B	C	D	E
45. The courts and the judicial system are well-organized institutions.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
46. Lawyers associations and bars are well-organized institutions.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
47. I think laws are none of my business.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
48. I think laws are important.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
49. I think laws affect all aspects of my life.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
50. The most basic/fundamental laws can be found all over the world.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
51. I think the idea of the law is essentially bad.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
52. I think laws help achieve harmony.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
53. Laws are useful.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
54. A society can survive without laws.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
55. Legal language is difficult.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
56. Legal language is different from the normal language we use for our daily life.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
57. Laws always reflect a certain understanding about life.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
58. I excuse certain illegal actions of others.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

II. Tick all the options you consider true:

59. I worry about the law(s) when I think about:

- ☐ Taxes ☐ Business
☐ Job ☐ My property
☐ My family ☐ Other: _____
☐ Voting and my citizen rights

III. Answer the following questions:

60. In one week, how often do you think about legal issues and/or cases/decisions of the courts?

A. 10 or more B. 5 – 9 C. 1 – 4 D. Less than one

61. Mention any case you have heard about that has been resolved by the courts:

IV. Rank the following statements one to four with (1) being the statement you agree the most and (4) being the statement you agree with the least. Give a different number to each statement in the line on the left. If you disagree with a statement tick disagree (D) and do not provide a ranking for that statement.

- | | | | |
|-----------------------------------------------------------------------------------------|---|-------------------------------------------------------------------------------------|---|
| 62. <input type="checkbox"/> The authorities determine what should become law | D | 63. <input type="checkbox"/> The laws are means for regulating human relationships. | D |
| <input type="checkbox"/> The people determine what should become law. | D | <input type="checkbox"/> The laws are tools of the authorities and governments. | D |
| <input type="checkbox"/> The international community determines what should become law. | D | <input type="checkbox"/> The laws are ideals of the community. | D |
| <input type="checkbox"/> The elites determine what should become law. | D | <input type="checkbox"/> The laws are moral standards of the community. | D |

Rank the following statements 1 to 5 with (1) being the statement you agree the most and (5) being the statement you agree with the least. Give a different number to each statement in the line on the left. If you disagree with a statement tick disagree (D) and do not provide a ranking for that statement.

64.

- | | |
|------------------------------------------------------------------------------------|---|
| <input type="checkbox"/> I comply with the religious norms of my community. | D |
| <input type="checkbox"/> I comply with the social behavior norms of my community. | D |
| <input type="checkbox"/> I comply with my ideological principles. | D |
| <input type="checkbox"/> I comply with the traditions and customs of my community. | D |
| <input type="checkbox"/> I comply with the law. | D |

V. 65. Rank the following group of statements in two columns: Ideal aim and Actual aim of the law. For each column rank the following statements 1 to 9 with (1) being the statement you agree the most and nine (9) the statement you agree with the least. Please give a different number to each statement in the lines on the left. If you add an option please organize the statements from 1 to 10. If you disagree with a statement tick disagree (D) and do not provide a ranking for that specific statement.

Ideal		Actual		
___	D	___	D	The main aim of the law is to guarantee the liberties of people.
___	D	___	D	The main aim of the law is to organize the government and delimit the faculties of the authorities.
___	D	___	D	The main aim of the law is to guarantee the security of the nation.
___	D	___	D	The main aim of the law is to protect the less privileged people.
___	D	___	D	The main aim of the law is to maintain a good economy.
___	D	___	D	The main aim of the law is the improvement and maintenance of good relations with the international community.
___	D	___	D	The main aim of the law is to protect the elites.
___	D	___	D	The main aim of the law is to help citizens have better living conditions.
___	D	___	D	The main aim of the law is to set the ideals of the community.
				The main aim of the law is

Male / Female Age: _____ Economic class: High Middle Low Net monthly income: _____

Do you identify with a social circle? Yes : _____ No

Are you a recent immigrant (your parents or you immigrated)? No Yes If affirmative from where _____

Highest level of education: Elementary school / Secondary School / University or similar level / Graduate or similar level

Your job or business is related to the following economic activity: Construction / Education / Housewife / Administrative work / Technology related / Legal /

Commerce / Student / Other: _____

Do you have any comments? Please feel free to contact me for any query or comment on this survey at: naayeli.ramirez@akane.waseda.jp Thank you.

I authorize you to use the information provided above for the objectives established at the beginning of this survey.

My name: _____ My signature: _____

このアンケートはナジェリー・ラミレスが早稲田大学で行っている比較憲法に関する調査に使用するためのものです。カナダとメキシコでも行います。所要時間は約20分です。アンケートにご協力いただき、本当にありがとうございます。

わからない場合でもあなたの考えに最も近いと思う選択肢を選んでください。

I. 以下の文を読み、あなたの意見にもっとも近いものに丸をつけてください。

	A. 強くそのとおりだと思う	B. どちらかと言えばそのとおりだと思う	C. どちらとも言えない	D. どちらかと言えばそうは思わない	E. 全くそうは思わない
1. 私は法律の知識を持っている。	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
2. 裁判所を利用することが、正義を得るための最良の方法だ。	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
3. もし来るように言われれば私は喜んで裁判所に行く。	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
4. 弁護士は法律の知識を持っている。	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
5. 裁判官は法律の知識を持っている。	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
6. 政治家は法律の知識を持っている。	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
7. 役人・警察官は法律の知識を持っている。	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
8. 法律は国家権力によって尊重されている。	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
9. 日本で法律は効果的に適用されている。	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
10. 私はこれまで弁護士を必要としたことがない。	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
11. 私は今後弁護士を必要とすることはない。	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
12. 法律は信頼できる。	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
13. 弁護士は信頼できる。	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
14. 裁判官は信頼できる。	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
15. 法廷と裁判官は信頼されなければならない。	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
16. 国家権力は信頼されなければならない。	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
17. 私は法律を尊重する。	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
18. 私は裁判官・裁判所を尊重する。	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
19. 私は弁護士を尊重する。	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
20. 私は国家権力を尊重する。	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
21. 私は人々を尊重している。	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
22. 私は自分の街の人々と同じように法律に従う。	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
23. 私は同じ経済レベルの人々と同じように法律に従う。	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
24. 私は自分の宗教コミュニティの人々と同じように法律に従う。	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
25. 私は同じ民族の人々と同じように法律に従う。	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
26. 私は自分と同じ教育レベルの人々と同じように法律に従う。	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

	A. 強くそのとおりだと思う	B. どちらかと言えばをのとおриだと思う	C. どちらとも言えない	D. どちらかと言えばそうは思わない	E. 全くそうは思わない
	A	B	C	D	E
27. 私は自分と似た経験を持つ人々と同じように法律に従う。	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
28. 私は自分の身近な人々と同じように法律に従う。	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
29. 私は自分の家族と同じように法律に従う。	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
30. <u>法律は自分のモラル・信条・ルールと一致している。</u>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
31. 法律は日本の実体と合っている。	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
32. 日本には良い法律がある。	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
33. 法律はそれを必要とする人全員にとって利用しやすい。	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
34. 法律は外来の考えだと思う。	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
35. <u>法律は日本人の意思が表現されているものだ。</u>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
36. 法律は日本にむりやり課されているものだ。	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
37. 法律は異なる階層の人々によって異なる理解がされている。	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
38. 法律は異なる経済レベルの人々によって異なる理解がされている。	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
39. 法律は異なる民族性の人々によって異なる理解がされている。	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
40. <u>法律は異なる出身地の人々によって異なる理解がされている。</u>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
41. 法律は国民全員に同じように理解されている。	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
42. 日本の法は他の国と異なっている。	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
43. 裁判所の判決は日本にとって良い。	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
44. 裁判所の判決は法律に従ってなされている。	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
45. <u>裁判制度はよく組織された機関だ。</u>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
46. 弁護士会はよく組織された機関だ。	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
47. 法律は私にとってなにも意味をなさない。	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
48. 法律は私にとって大切だと思う。	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
49. 法律は私の人生のあらゆる面に影響を及ぼす。	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
50. <u>法律の世界中である程度共通した内容のものが存在する。</u>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
51. 法は悪だ。	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
52. 法律は調和を達成することに役立つ。	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
53. 法律は便利だ。	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
54. 社会は法律なしで生きることはいできない。	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
55. <u>法律用語は難しい。</u>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
56. 法律用語は日常生活の言語と異なっている。	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
57. 法は生命についてのある理解を反映している。	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
58. 私は他人のある種の不法行為を見逃す	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

59. 私は～について考える／決めるときに法律のことをよく考えなければならない

- | | |
|---------------------------------------|-----------------------------------------|
| <input type="checkbox"/> a. 税金 | <input type="checkbox"/> b. ビジネス |
| <input type="checkbox"/> c. 仕事 | <input type="checkbox"/> d. 家族 |
| <input type="checkbox"/> e. 所有物、資産、財産 | <input type="checkbox"/> f. 投票、市民の権利と義務 |
| <input type="checkbox"/> g. その他 _____ | |

II.

60. 一週間のうち、どのくらいの頻度で法律に関する話題について考えますか。

10 回以上 5 - 9 回 1 - 4 回 0 回以下

61. 裁判によって解決した問題で最近耳にした事件があれば教えてください。一つでいいです。

III.

各パートごとに、自分の意見に最も近いものに 1 を、以下、自分の意見とかけ離れていく順に 2 から 4 まで異なる数字を付けてください。ただし、自分の考えに全くあてはまらないと思うものには×をつけてください。

62.

- ☐ 法律とは国家権力がそうと決めたものだ。
- ☐ 法律とは人々がそうと決めたものだ。
- ☐ 法律とは国際社会がそうと決めたものだ。
- ☐ 法律はエリートがそうと決めたものだ。

63.

- ☐ 法律は人間関係を規範する手段だ。
- ☐ 法律は政府の道具だ。
- ☐ 法律は社会の理想だ。
- ☐ 法律は国の公衆道徳に基づいている

64. 各パートごとに、自分の意見に最も近いものに 1 を、以下、自分の意見とかけ離れていく順に 2 から 5 まで異なる数字を付けてください。ただし、自分の考えに全くあてはまらないと思うものには×をつけてください。

- ☐ 宗教的基準を守る。
- ☐ マナーを守る。
- ☐ 自分の思想信条を守る。
- ☐ 国家の伝統慣習を守る。
- ☐ 法律を守る。

IV. 各パートごとに自分の意見に最も近いものに 1 を、以下、自分の意見とかけ離れていく順に 2 から 9 まで異なる数字を付けてください。ただし、自分の考えに全くあてはまらないと思うものには×をつけてください。別の意見を書いたら、2 から 10 まで異なる数字を付けてください。二つのコラム（理想的な法律の目的と実際的な法律の目的）を答えてください。

65.

理想的に

実際に

_____	_____	法律は自由について配慮する。
_____	_____	法律は政府や国会や裁判所などの権力を規定することに配慮する。
_____	_____	法律は安全保障問題について配慮する。
_____	_____	法律は貧しい人々や弱者について配慮する。
_____	_____	法律は経済問題について配慮する。
_____	_____	法律はよい国際関係について配慮する。
_____	_____	法律はエリートを保護することについて配慮する。
_____	_____	法律は国民がより良く生きるのを助けることについて配慮する。
_____	_____	法律は特定の社会の理想を植え付けることについて配慮する。
_____	_____	その他：法律は_____について配慮する。

性：男性／女 年齢 _____ 経済レベル：高・中・下

純所得：_____

自己認識：民族 / コミュニティ（教会など）のメンバーですか？はい：_____ いいえ

最近の移民：はい いいえ 出生国：_____

職業：主婦 建設 教育 法律 事務 技術者 自営 学生 公務員 その他_____

最終学歴：_____ 中学校 高校 大卒または同等レベル 大学院または同等レベル

何かコメント・意見があれば私にメールをください：naayeli.ramirez@akane.waseda.jp

Gracias por contestar esta encuesta. La encuesta será utilizada en un proyecto de investigación de derecho comparado liderado por Naayeli Ramirez, estudiante de doctorado en la Universidad de Waseda en Tokio, Japón. El proyecto explora las diferentes ideas sobre la ley en diferentes partes del mundo. Esta misma encuesta será aplicada en Japón y Canadá. Su colaboración es muy importante y altamente apreciada. La encuesta le tomará aproximadamente 20 minutos contestarla. Aún y cuando no sepa la respuesta a alguna de las preguntas a continuación, le pedimos escoja la opción u opciones que mejor representen su forma de entender la ley.

I. Especifica el grado en el que estas de acuerdo con las siguientes aseveraciones.

	Totalmente de acuerdo	De acuerdo	Indeciso	Desacuerdo	Totalmente en desacuerdo
	A	B	C	D	E
1. Yo tengo conocimiento sobre las leyes y el derecho.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
2. La mejor manera de obtener justicia es por medio de los juzgados y tribunales.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
3. Si me es requerido, yo felizmente voy a los juzgados.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
4. Los abogados conocen las leyes.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
5. Los jueces y ministros conocen las leyes.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
6. Los políticos conocen las leyes.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
7. Oficiales gubernamentales y policias conocen las leyes.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
8. Las leyes son respetadas por las autoridades.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
9. Las leyes son aplicadas efectivamente en mi país.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
10. Nunca he necesitado los servicios de un abogado.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
11. Creo que nunca estaré en necesidad de un abogado.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
12. Yo confío en las leyes.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
13. Yo confío en los abogados.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
14. Yo confío en los jueces.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
15. Se debe confiar en los jueces y los juzgados.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
16. Se debe confiar en las autoridades.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
17. Yo respeto la ley.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
18. Yo respeto a los jueces y los ministros.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
19. Yo respeto a los abogados.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
20. Yo respeto a las autoridades.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
21. Yo soy respetuosa con las personas.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
22. Yo obedezco la ley en el mismo grado que las personas de mi pueblo/ciudad obedecen la ley.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
23. Yo obedezco la ley en el mismo grado que las personas de mi misma situación económica obedecen la ley.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

	Totalmente de acuerdo	De acuerdo	Indeciso	Desacuerdo	Totalmente en desacuerdo
	A	B	C	D	E
24. Yo obedezco la ley en el mismo grado que las personas de mi comunidad religiosa la obedecen.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
25. Yo obedezco la ley en el mismo grado que las personas de mi mismo grupo étnico.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
26. Yo obedezco la ley en el mismo grado que las personas con el mismo nivel educativo que yo.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
27. Yo obedezco la ley en el mismo grado que las personas que tienen el mismo tipo de experiencias que yo.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
28. Yo obedezco las leyes en el mismo grado que las personas de mi círculo social más próximo.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
29. Yo obedezco las leyes en el mismo grado que los miembros de mi familia.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
30. Yo creo que las leyes están de acuerdo con mi propia moral/principios/reglas.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
31. Yo creo que las leyes están hechos de acuerdo a la realidad de mi país.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
32. Yo creo que las leyes en mi país son buenas.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
33. Las leyes son accesibles para todo aquel que esté en necesidad de utilizarlas.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
34. Yo creo que las leyes son ideas extranjeras, el derecho es una idea extranjera.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
35. Yo creo que las leyes son expresiones de la voluntad del pueblo mexicano.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
36. Yo creo que algunas leyes han sido impuestas a México.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
37. Yo creo los mexicanos comprenden y usan la ley diferente dependiendo de su posición jerárquica en nuestra sociedad.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
38. Los mexicanos comprenden y usan la ley diferente dependiendo del estrato social al que pertenecen.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
39. Los mexicanos comprenden y usan la ley diferente dependiendo del grupo étnico al que pertenecen.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
40. Los mexicanos comprenden y usan la ley diferente dependiendo de su ciudad o región de origen.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
41. Yo creo que las leyes son comprendidas por mí y por mis connacionales de forma muy parecida.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
42. Yo creo que en México, la ley se comprende y utiliza en formas distintas que en otros lugares en el mundo.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
43. Las sentencias de los juzgados y tribunales son/han sido buenas para el país	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
44. Las sentencias de los juzgados y tribunales son/han sido tomadas con respeto a las leyes.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
45. Los juzgados y tribunales son instituciones bien organizadas.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Totalmente de acuerdo	De acuerdo	Indeciso	Desacuerdo	Totalmente en desacuerdo
-----------------------	------------	----------	------------	--------------------------

	A	B	C	D	E
46. Las asociaciones de abogados son instituciones bien organizadas.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
47. Yo creo que las leyes son un asunto que no me concierne.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
48. Yo creo que las leyes son importantes.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
49. Yo creo que las leyes afectan todos los aspectos de mi vida.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
50. Las leyes más fundamentales pueden ser encontradas en todo el mundo	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
51. Yo creo que la idea de la ley es algo esencialmente malo.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
52. Yo creo que las leyes ayudan a lograr armonía.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
53. Las leyes son útiles.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
54. La sociedad puede sobrevivir sin leyes.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
55. El lenguaje legal es difícil.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
56. El lenguaje legal es diferente al lenguaje que usamos en nuestra vida diaria.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
57. Las leyes siempre reflejan una cierta forma de entender la vida.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
58. Yo tolero ciertas acciones de otros que violan la ley.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

II. En las siguientes preguntas, marca todas las opciones que te parezcan verdaderas.

59. Me preocupo por lo que la ley establece cuando pienso en:

- ☐ Impuestos ☐ Trabajo
☐ Negocios ☐ Mi familia
☐ Mis propiedades ☐ Otra: _____
☐ Votar y mis otros derechos como ciudadano.

III. Contesta las siguientes preguntas;

60. En una semana, ¿con qué frecuencia piensas en situaciones legales relacionadas con juzgados y tribunales?

- a. 10 o más b. 4 – 9 c. 1 – 3 d. Menos que eso

61. Menciona un asunto judicial, sentencia o juicio del que hayas escuchado hablar últimamente:

IV. En la siguiente sección ordena las siguientes aseveraciones del uno (1) al cuatro (4) según tu preferencia. Otorga el número uno (1) a la aseveración con la que estás más de acuerdo y el cuatro (4) a la aseveración con la que estás menos de acuerdo. En caso de que encuentres una aseveración con la que NO estás de acuerdo, marca la D a la derecha y no incluyas la aseveración dentro de la clasificación de aquellas con las que estas de acuerdo. Escribe el número a la izquierda de la oración en la línea que se provee. No repitas ningún número.

- | | | | |
|-------------------------------------------------------------------------------------------------------|---|-----------------------------------------------------------------------|---|
| 62. | | 63. Las leyes son: | |
| <input type="checkbox"/> Las autoridades son quienes deciden qué se debe convertir en ley. | D | <input type="checkbox"/> medidas para regular las relaciones humanas. | D |
| <input type="checkbox"/> La población es la que decide qué se debe convertir en ley. | D | <input type="checkbox"/> herramientas de los gobiernos. | D |
| <input type="checkbox"/> La comunidad internacional es la que determina qué se debe convertir en ley. | D | <input type="checkbox"/> los ideales de la comunidad. | D |
| <input type="checkbox"/> Las élites son las que determinan lo qué se convierte en ley. | D | <input type="checkbox"/> estándares morales de la comunidad. | D |

En la siguiente sección ordena las siguientes aseveraciones del uno (1) al cinco (5) según tu preferencia. Otorga el número uno (1) a la aseveración con la que estás más de acuerdo y el cinco (5) a la aseveración con la que estás menos de acuerdo. Cada aseveración deberá tener un número distinto, no repitas ninguno. En caso de que encuentres una aseveración con la que NO estás de acuerdo, marca la D de desacuerdo a la derecha y no incluyas la aseveración dentro de la clasificación de aquellas con las que estas de acuerdo.

64.

- | | |
|---------------------------------------------------------------------|---|
| ___ Yo respeto las normas religiosas de mi comunidad. | D |
| ___ Yo respeto las normas de comportamiento social de mi comunidad. | D |
| ___ Yo respeto mis propios principios ideológicos. | D |
| ___ Yo respeto las tradiciones y costumbres de mi comunidad. | D |
| ___ Yo respeto la ley. | D |

V. 65. En la siguiente sección ordena las siguientes aseveraciones en dos columnas distintas: la del Ideal y la del Real, cada una del 1 al 9. Otorga el número 1 a la aseveración con la que estás más de acuerdo y el 9 a la aseveración con la que estás menos de acuerdo. En caso de que encuentres una aseveración con la que NO estás de acuerdo, tacha la D y no incluyas la aseveración dentro de la clasificación de aquellas con las que sí estás de acuerdo. Si quieres agregar una aseveración agrega un número a tu clasificación. No repitas ningún número.

Real		Ideal	
___	D	___	D La finalidad de la ley es garantizar las libertades de la población.
___	D	___	D La finalidad de la ley es organizar el gobierno y las autoridades.
___	D	___	D La finalidad de la ley es garantizar la seguridad de la nación.
___	D	___	D La finalidad de la ley es proteger a los sectores de la población menos privilegiados.
___	D	___	D La finalidad de la ley es mantener una buena economía en nuestro país.
___	D	___	D La finalidad de la ley es promover buenas relaciones con la comunidad internacional.
___	D	___	D La finalidad de la ley es proteger a las élites.
___	D	___	D La finalidad de la ley es ayudar a los ciudadanos a tener mejores niveles de vida.
___	D	___	D La finalidad de la ley es establecer los ideales de una determinada sociedad.
___		___	Otra: La finalidad de la ley es _____

Hombre / Mujer Edad: Clase social: Alta Media Baja Ingreso mensual neto: _____

¿Te identificas con una comunidad, etnia o círculo social? Sí, ¿Cuál? No

¿Eres un inmigrante reciente? (tus padres o tú inmigraron a este país): Si, ¿cuál es tu país de origen? No.

Actividad económica: Construcción / Educación / Estudiante / Ama de casa / Tecnología / Legal / Comerciante Otro:

Último grado de educación: Primaria / Secundaria / Preparatoria / Universidad / Posgrado

¿Tienes alguna duda o comentario? Me puedes contactar en la siguiente dirección electrónica: naayeli.ramirez@akane.waseda.jp

Yo autorizo el uso de la información que proveo en esta encuesta para fines de investigación y educativos.

Nombre: _____ Autorizo: _____

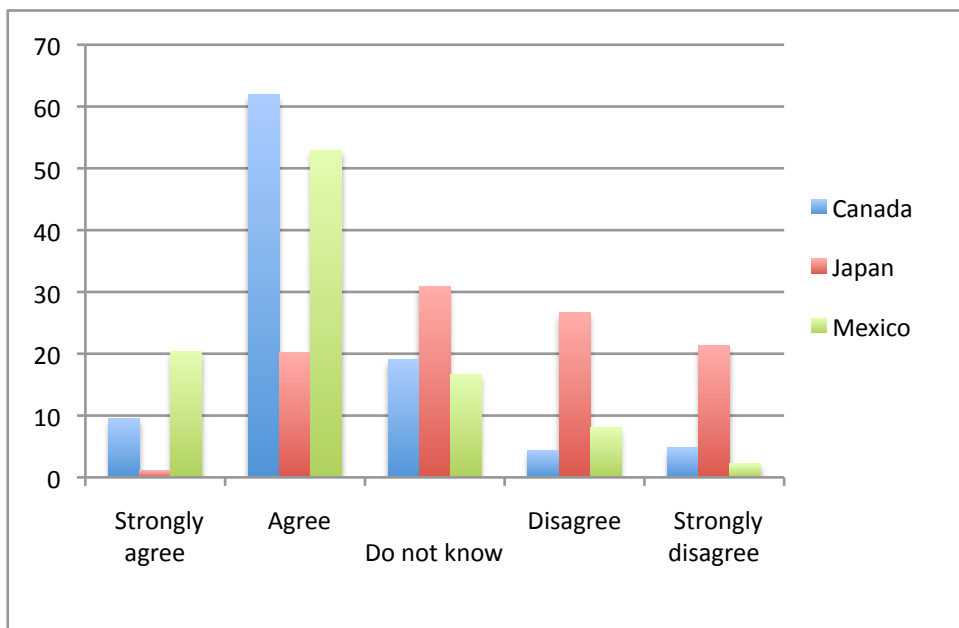
**Constitutional justice and people's perception
about law– a comparative structural approach –
*Canada, Japan and Mexico***

APPENDIX B

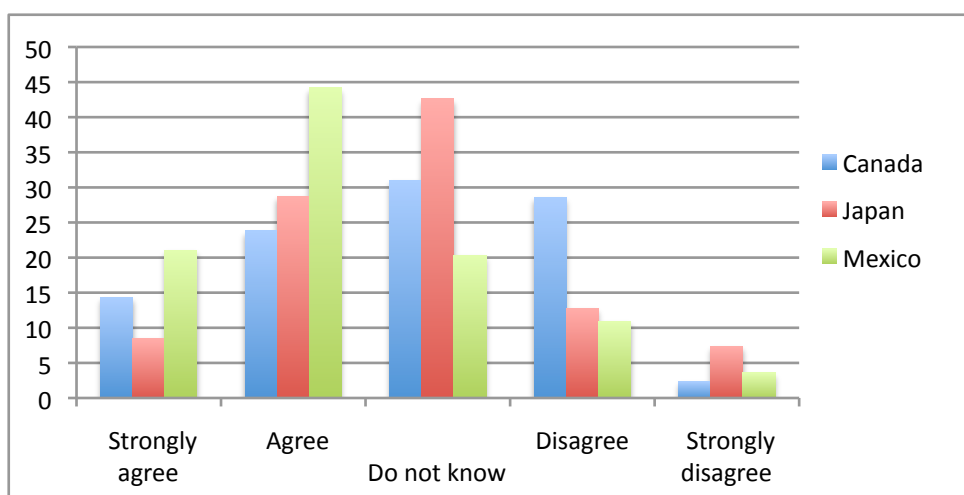
RESULTS: GRAPHICS

1. QUESTIONS 1 – 58
2. QUESTION 59
3. QUESTIONS 60 – 61
4. +RATING QUESTIONS 62 – 65
5. DEMOGRAPHICS
6. THEME GRAPHS

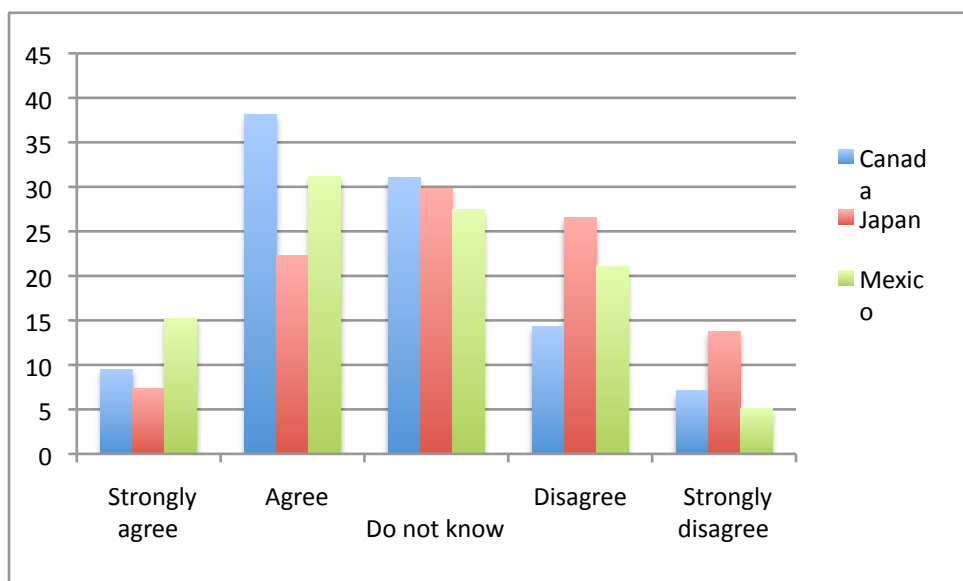
1. I know about law					Percentages
	Strongly agree	Agree	Do not know	Disagree	Strongly disagree
Canada	9.5	61.9	19	4.4	4.8
Japan	1.10	20.20	30.90	26.60	21.30
Mexico	20.3	52.9	16.7	8	2.2



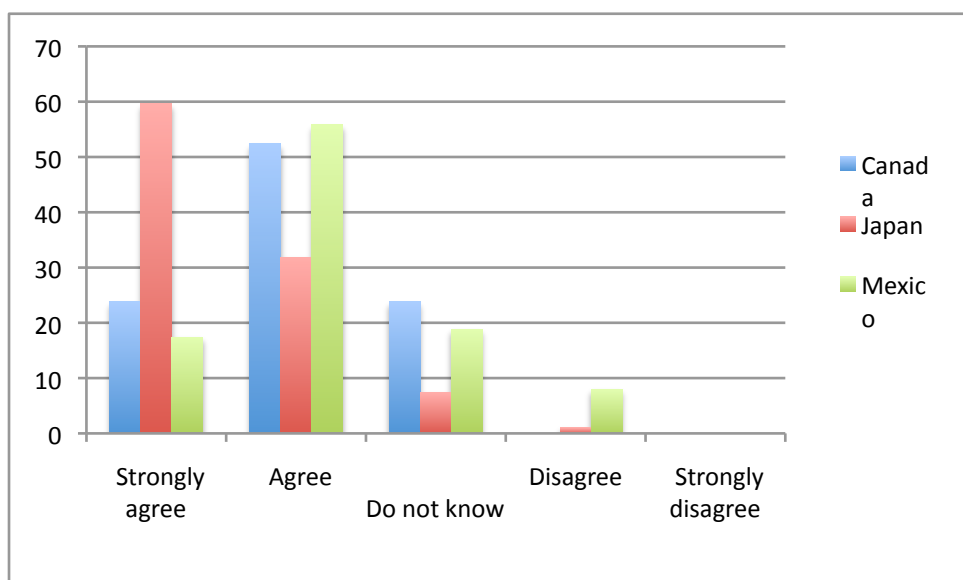
2. Going to court is the best way to obtain justice.					Percentages
	Strongly agree	Agree	Do not know	Disagree	Strongly disagree
Canada	14.3	23.8	31	28.6	2.4
Japan	8.50	28.70	42.60	12.80	7.40
Mexico	21	44.2	20.3	10.9	3.6



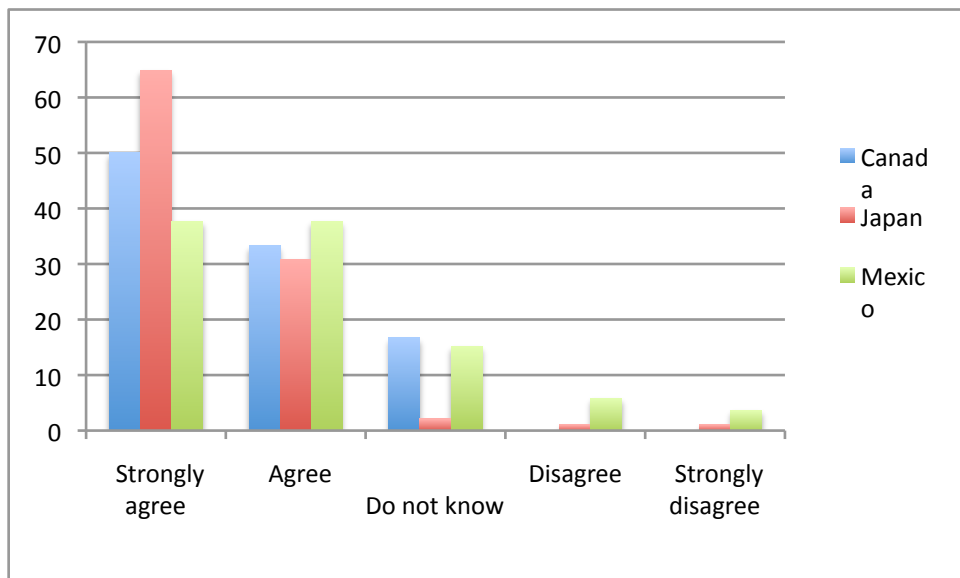
3. I happily go to court if I am required to.					Percentages
	Strongly agree	Agree	Do not know	Disagree	Strongly disagree
Canada	9.5	38.1	31	14.3	7.1
Japan	7.40	22.30	29.80	26.60	13.80
Mexico	15.2	31.2	27.5	21	5.1



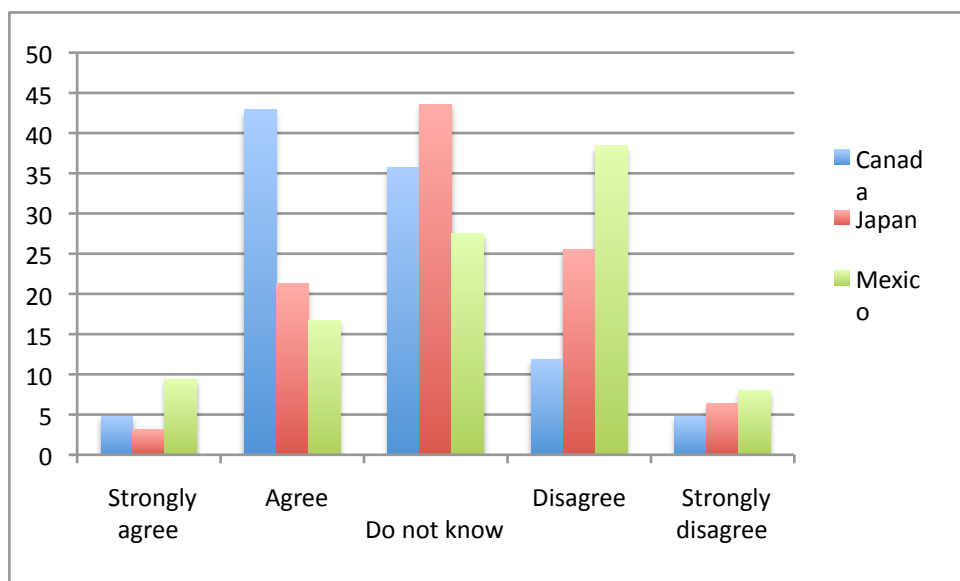
4. Lawyers know about the laws.					Percentages
	Strongly agree	Agree	Do not know	Disagree	Strongly disagree
Canada	23.8	52.4	23.8	0	0
Japan	59.60	31.90	7.40	1.10	0.00
Mexico	17.4	55.8	18.8	8	0



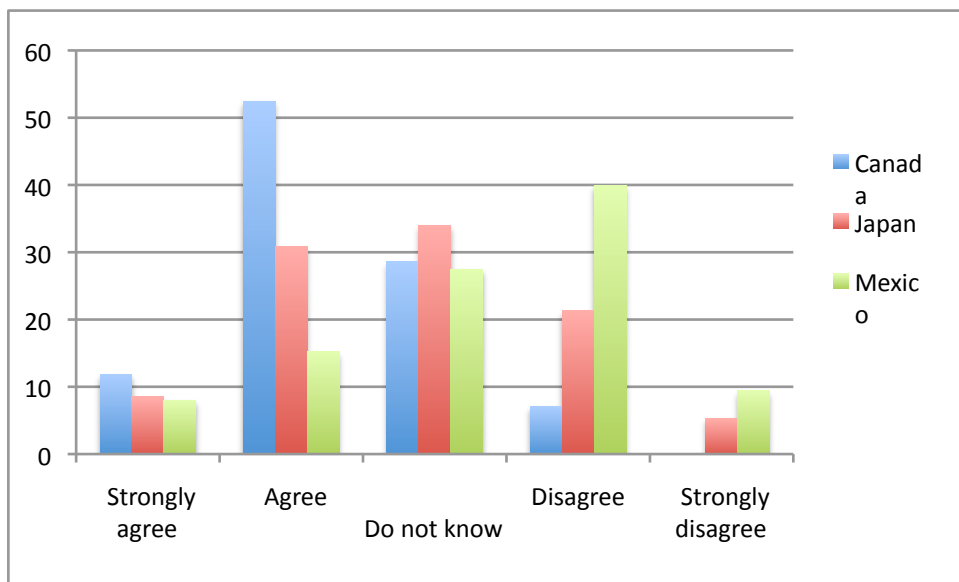
5. Judges know about the laws.					Percentages
	Strongly agree	Agree	Do not know	Disagree	Strongly disagree
Canada	50	33.3	16.7	0	0
Japan	64.90	30.90	2.10	1.10	1.10
Mexico	37.7	37.7	15.2	5.8	3.6



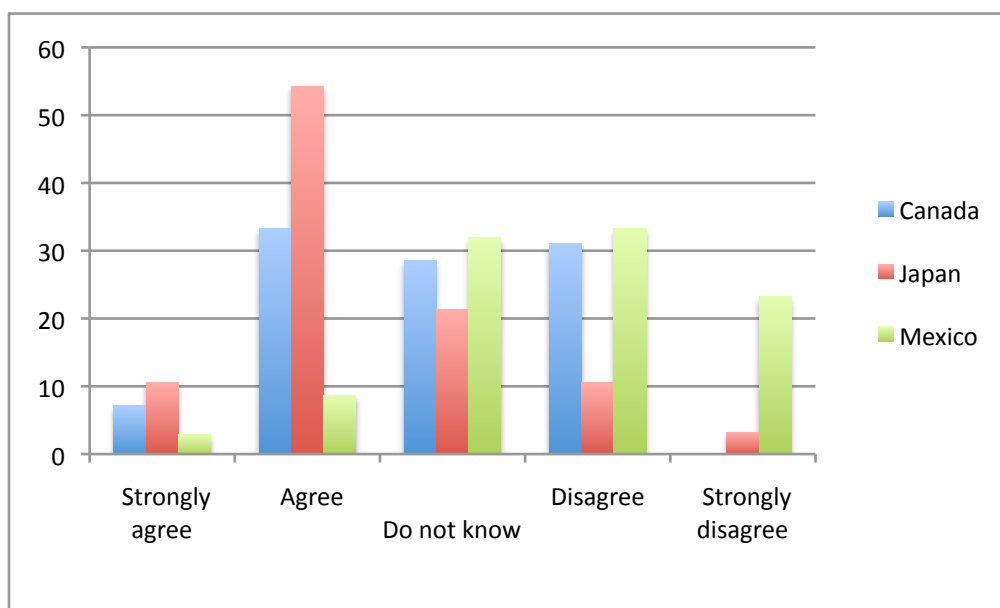
6. Politicians know about the laws.					Percentages
	Strongly agree	Agree	Do not know	Disagree	Strongly disagree
Canada	4.8	42.9	35.7	11.9	4.8
Japan	3.20	21.30	43.60	25.50	6.40
Mexico	9.4	16.7	27.5	38.4	8



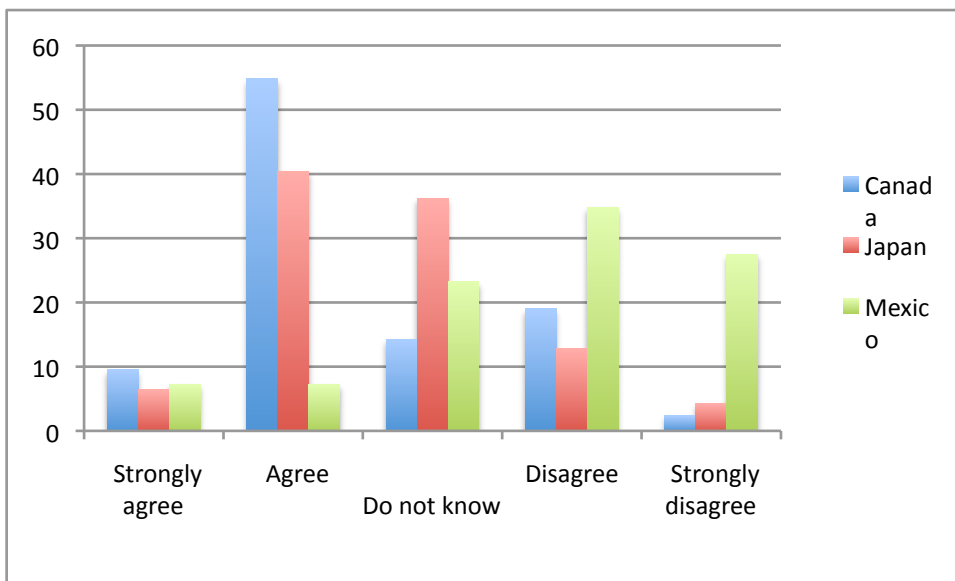
7. Government officers and policemen know about the law					Percentages
	Strongly agree	Agree	Do not know	Disagree	Strongly disagree
Canada	11.9	52.4	28.6	7.1	0
Japan	8.50	30.90	34.00	21.30	5.30
Mexico	8	15.2	27.5	39.9	9.4



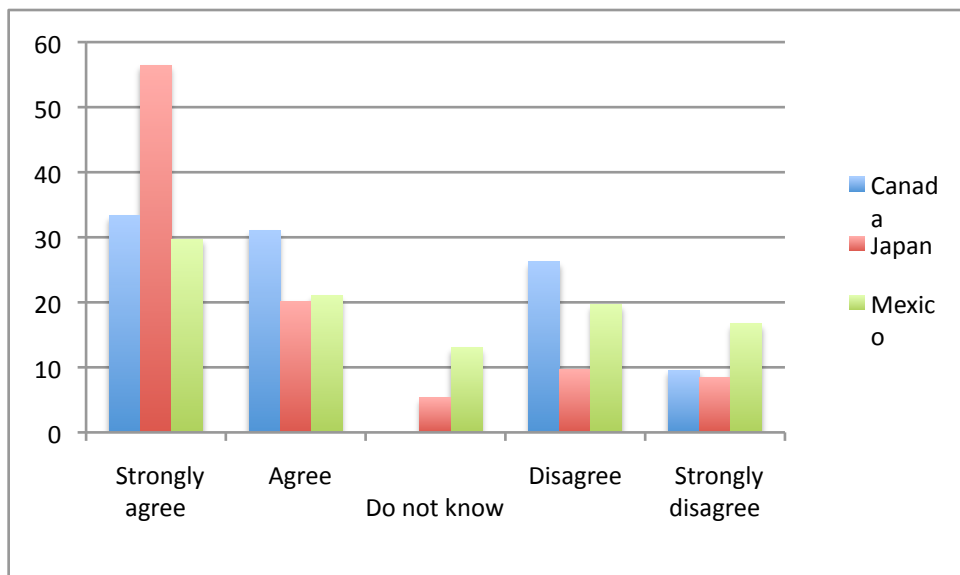
8. The authorities respect the laws.					Percentages
	Strongly agree	Agree	Do not know	Disagree	Strongly disagree
Canada	7.1	33.3	28.6	31	0
Japan	10.60	54.30	21.30	10.60	3.20
Mexico	2.9	8.7	31.9	33.3	23.2



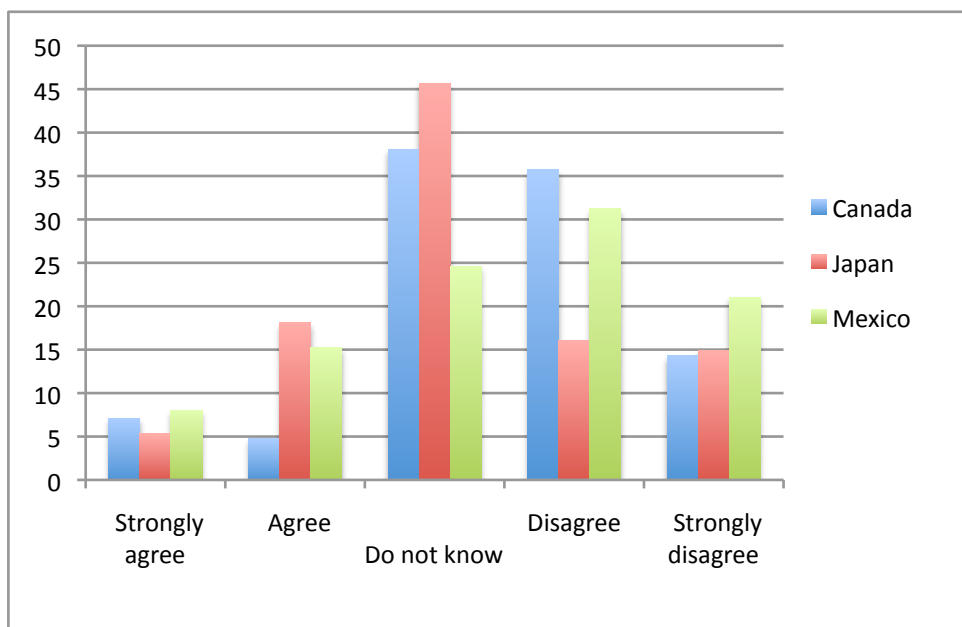
9. I think laws are effectively applied in my country.					Percentage
	Strongly agree	Agree	Do not know	Disagree	Strongly disagree
Canada	9.5	54.8	14.3	19	2.4
Japan	6.40	40.40	36.20	12.80	4.30
Mexico	7.2	7.2	23.2	34.8	27.5



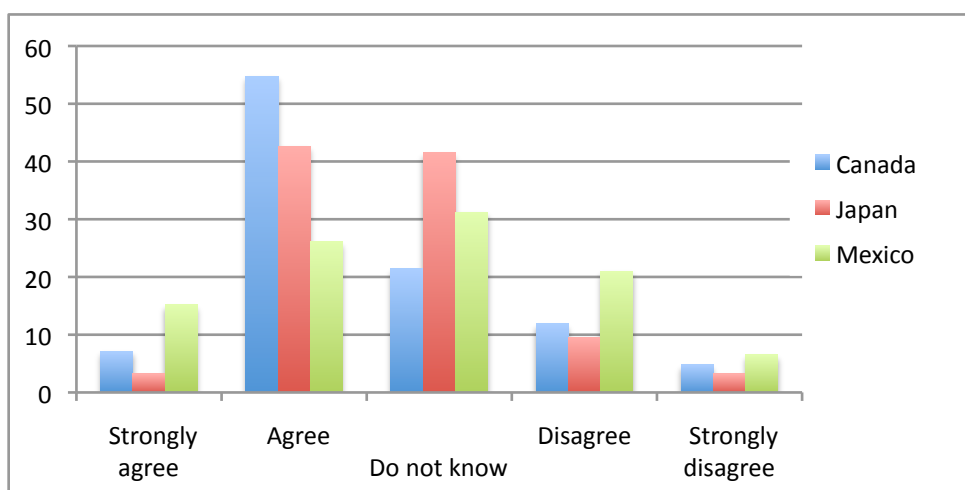
10. I have never required the services of a lawyer.					Percentages
	Strongly agree	Agree	Do not know	Disagree	Strongly disagree
Canada	33.3	31	0	26.2	9.5
Japan	56.40	20.20	5.30	9.60	8.50
Mexico	29.7	21	13	19.6	16.7



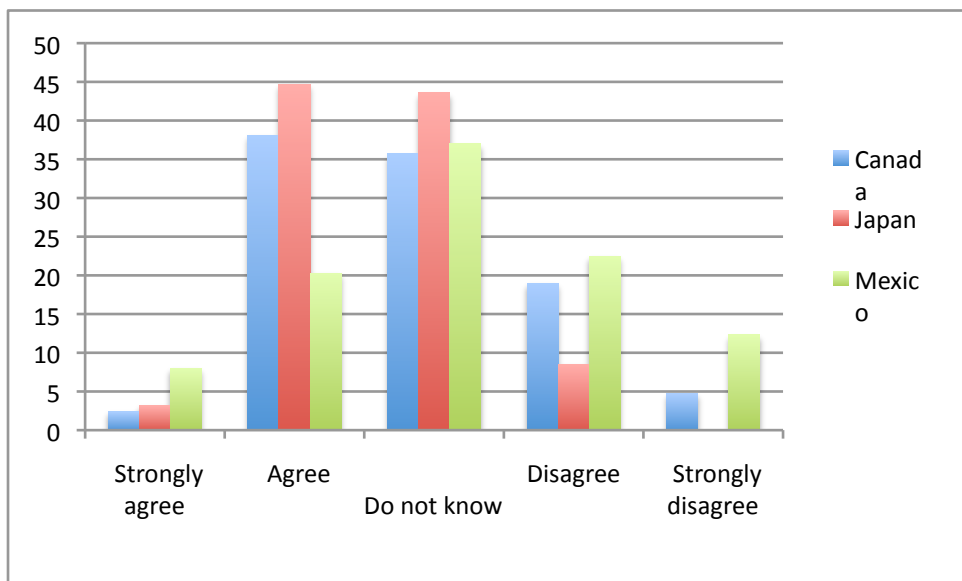
11. I think I will never need the service of a lawyer.					Percentages
	Strongly agree	Agree	Do not know	Disagree	Strongly disagree
Canada	7.1	4.8	38.1	35.7	14.3
Japan	5.3	18.1	45.7	16	14.9
Mexico	8	15.2	24.6	31.2	21



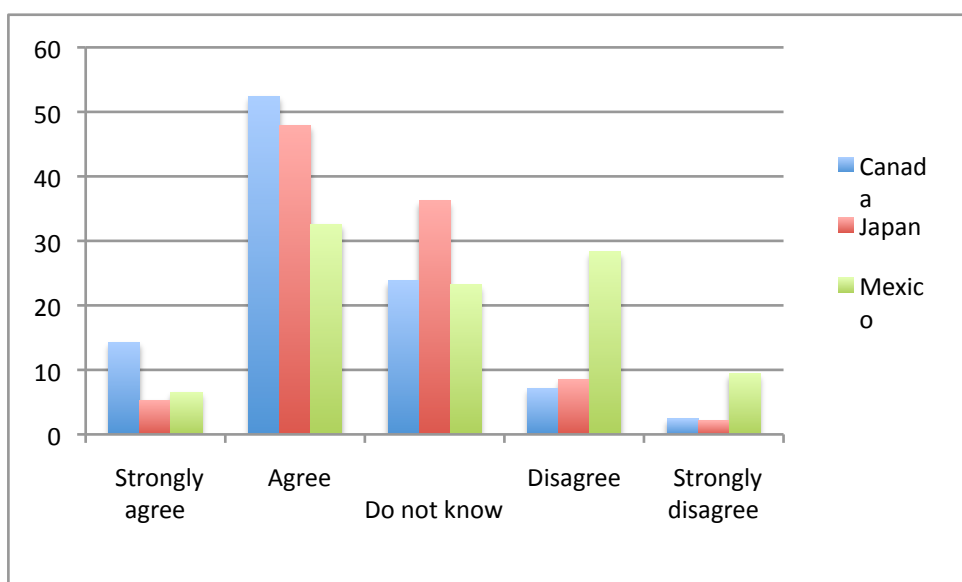
12. I trust the law.					Percentages
	Strongly agree	Agree	Do not know	Disagree	Strongly disagree
Canada	7.1	54.8	21.4	11.9	4.8
Japan	3.2	42.6	41.5	9.6	3.2
Mexico	15.2	26.1	31.2	21	6.5



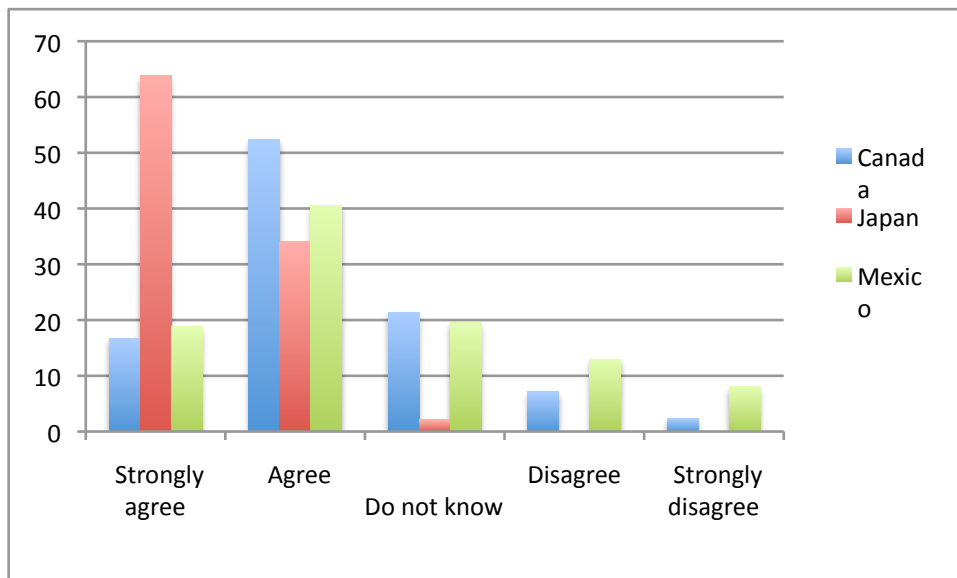
13. I trust lawyers.					Percentages
	Strongly agree	Agree	Do not know	Disagree	Strongly disagree
Canada	2.4	38.1	35.7	19	4.8
Japan	3.2	44.7	43.6	8.5	0
Mexico	8	20.3	37	22.5	12.3



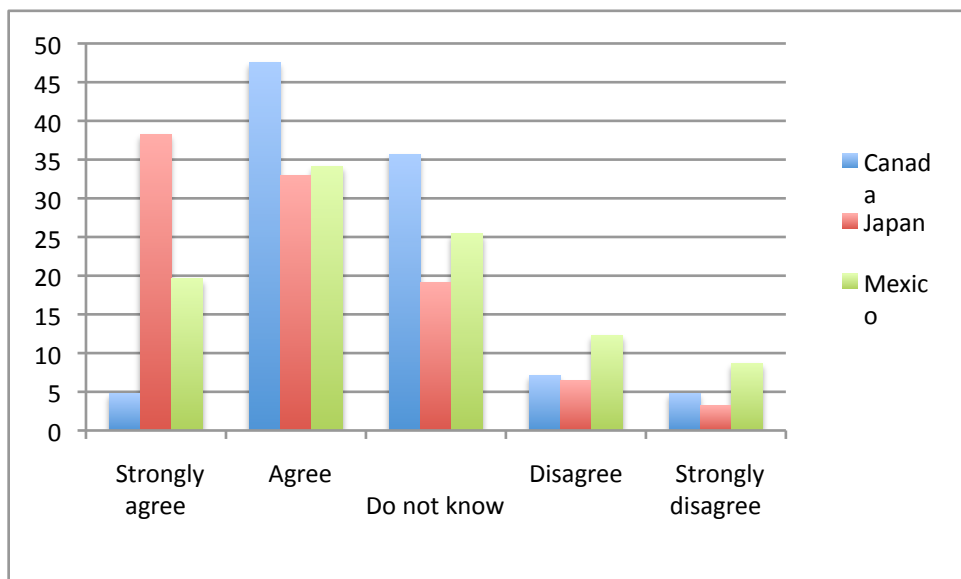
14. I trust judges.					Percentages
	Strongly agree	Agree	Do not know	Disagree	Strongly disagree
Canada	14.3	52.4	23.8	7.1	2.4
Japan	5.3	47.9	36.2	8.5	2.1
Mexico	6.5	32.6	23.2	28.3	9.4



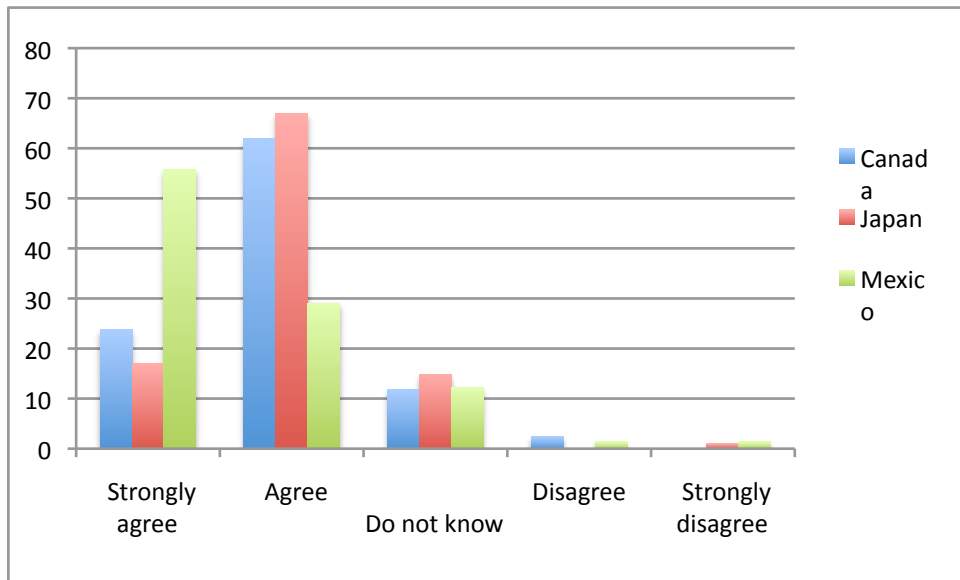
15. Courts and judges should be trusted.					Percentages
	Strongly agree	Agree	Do not know	Disagree	Strongly disagree
Canada	16.7	52.4	21.4	7.1	2.4
Japan	63.8	34	2.1	0	0
Mexico	18.8	40.6	19.6	13	8



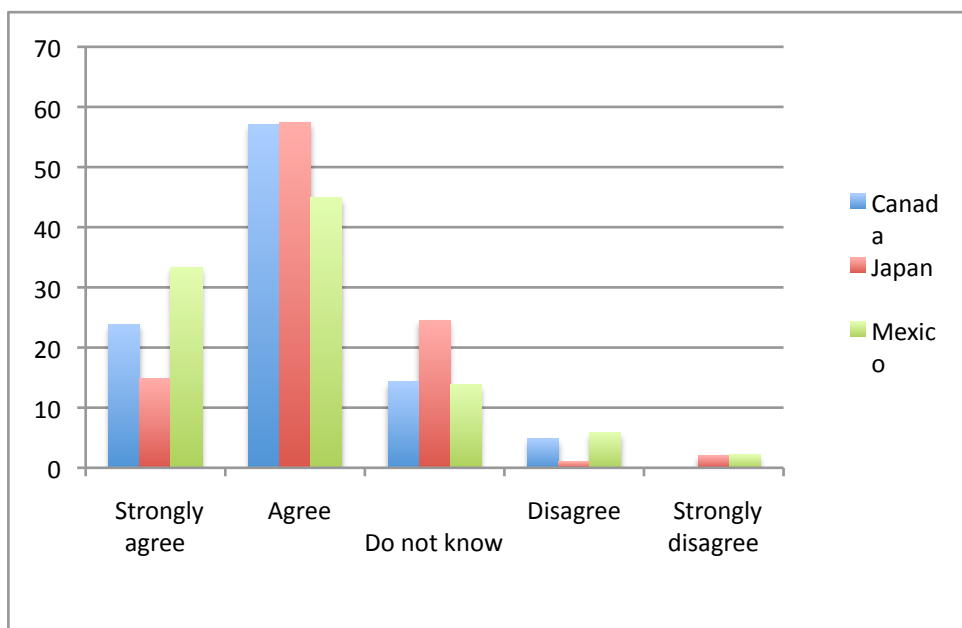
16. Authorities should be trusted.				Percentages	
	Strongly agree	Agree	Do not know	Disagree	Strongly disagree
Canada	4.8	47.6	35.7	7.1	4.8
Japan	38.3	33	19.1	6.4	3.2
Mexico	19.6	34.1	25.4	12.3	8.7



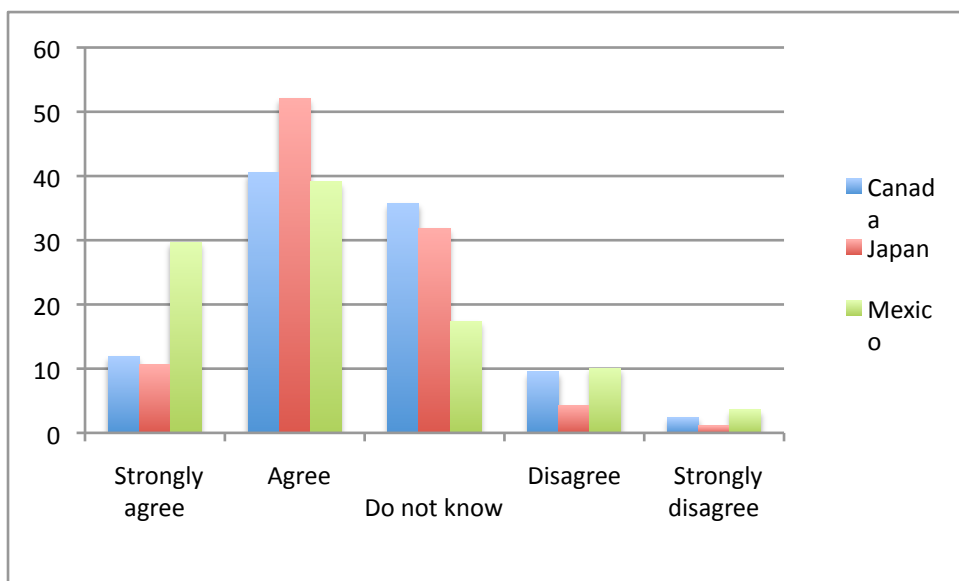
17. I respect the law.				Percentages	
	Strongly agree	Agree	Do not know	Disagree	Strongly disagree
Canada	23.8	61.9	11.9	2.4	0
Japan	17	67	14.9	0	1.1
Mexico	55.8	29	12.3	1.4	1.4



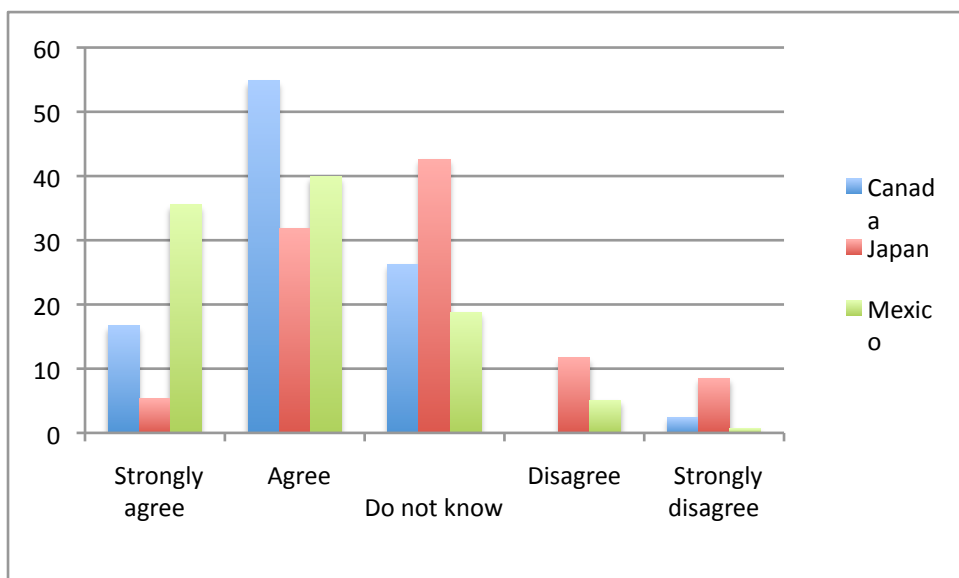
18. I respect judges and the courts.				Percentages	
	Strongly agree	Agree	Do not know	Disagree	Strongly disagree
Canada	23.8	57.1	14.3	4.8	0
Japan	14.9	57.4	24.5	1.1	2.1
Mexico	33.3	44.9	13.8	5.8	2.2



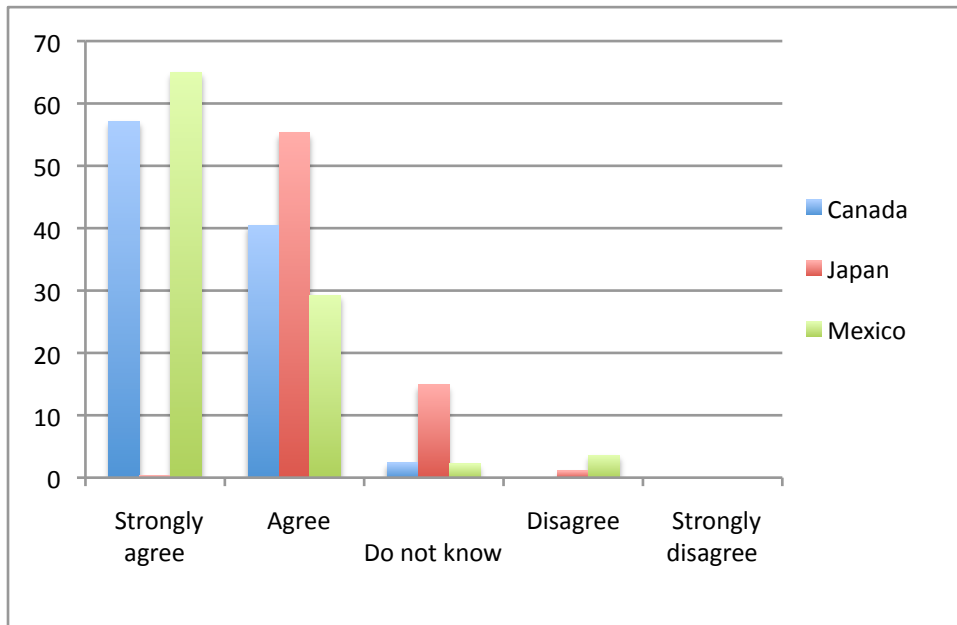
19. I respect lawyers.					Percentage
	Strongly agree	Agree	Do not know	Disagree	Strongly disagree
Canada	11.9	40.5	35.7	9.5	2.4
Japan	10.6	52.1	31.9	4.3	1.1
Mexico	29.7	39.1	17.4	10.1	3.6



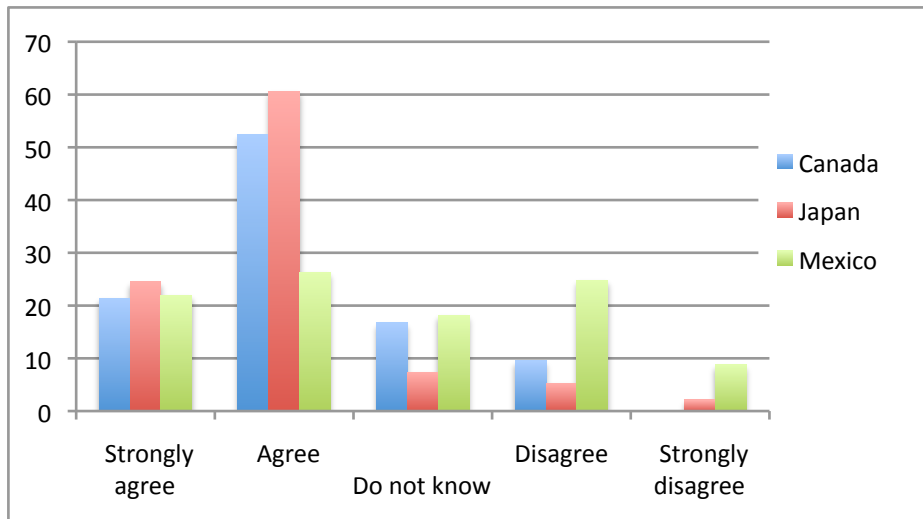
20. I respect the authorities.					Percentage
	Strongly agree	Agree	Do not know	Disagree	Strongly disagree
Canada	16.7	54.8	26.2	0	2.4
Japan	5.3	31.9	42.6	11.7	8.5
Mexico	35.5	39.9	18.8	5.1	0.7



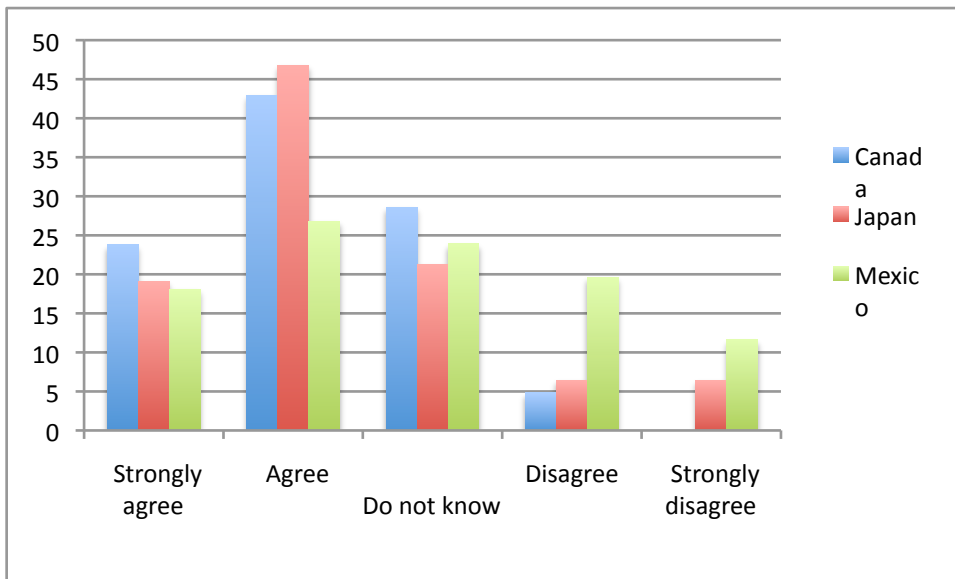
21. I am respectful to other people.					Percentage
	Strongly agree	Agree	Do not know	Disagree	Strongly disagree
Canada	57.1	40.5	2.4	0	0
Japan	28.70%	55.3	14.9	1.1	0
Mexico	65	29.2	2.2	3.6	0



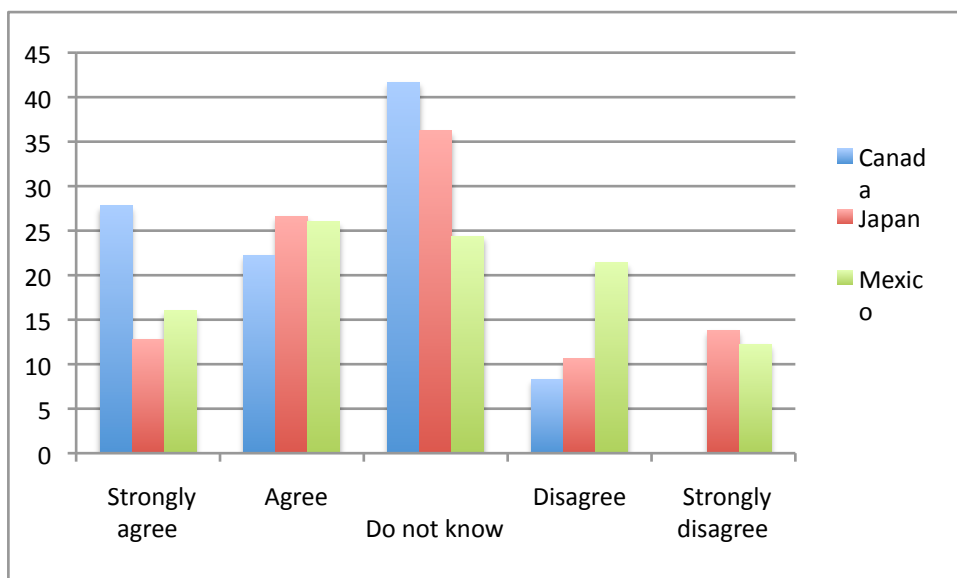
22. I obey the law in the same degree as people in my town/					Percentage
	Strongly agree	Agree	Do not know	Disagree	Strongly disagree
Canada	21.4	52.4	16.7	9.5	0
Japan	24.5	60.6	7.4	5.3	2.1
Mexico	21.9	26.3	18.2	24.8	8.8



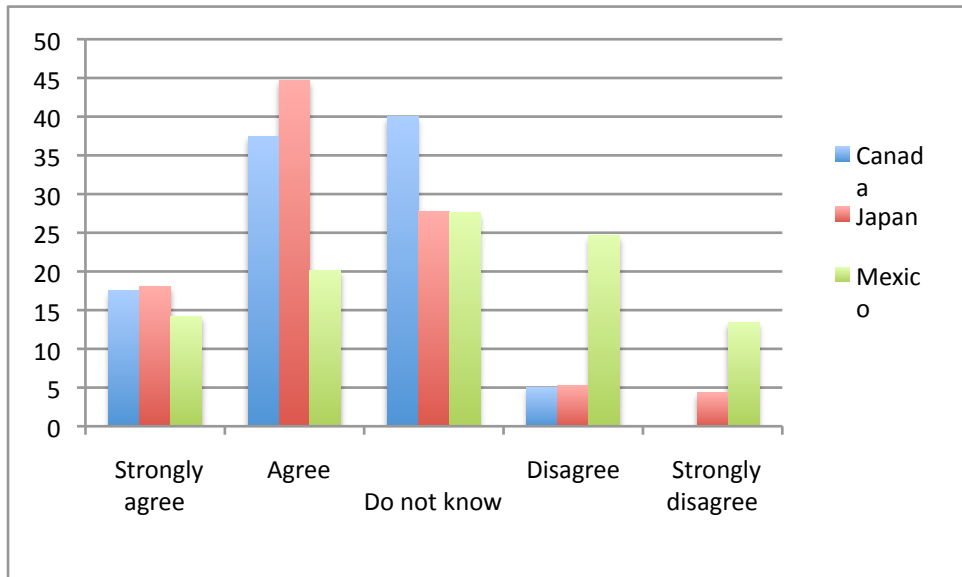
23. I obey the law in the same degree as people in my same					Percentages
	Strongly agree	Agree	Do not know	Disagree	Strongly disagree
Canada	23.8	42.9	28.6	4.8	0
Japan	19.1	46.8	21.3	6.4	6.4
Mexico	18.1	26.8	23.9	19.6	11.6



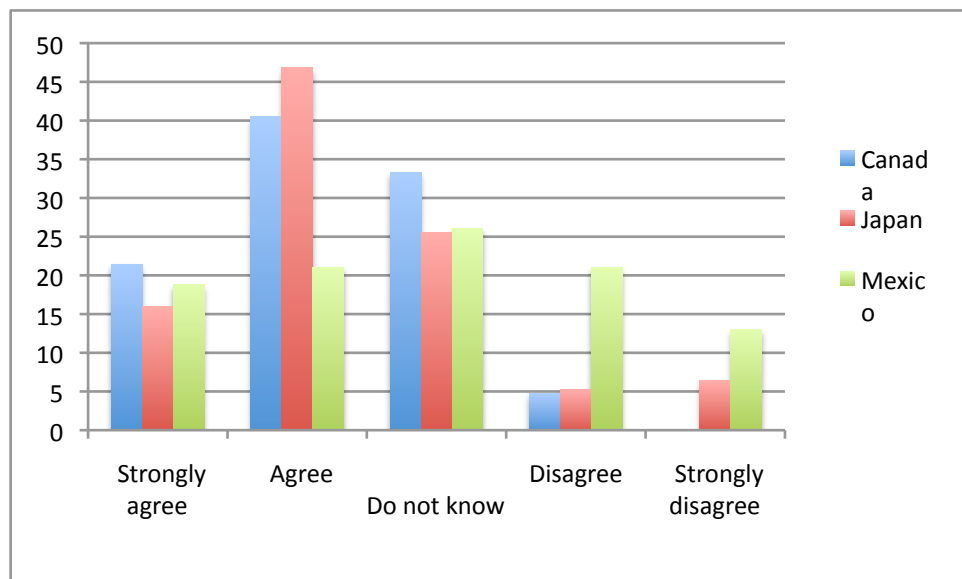
24. I obey the law in the same degree as people in my religio					Percentage
	Strongly agree	Agree	Do not know	Disagree	Strongly disagree
Canada	27.8	22.2	41.7	8.3	0
Japan	12.8	26.6	36.2	10.6	13.8
Mexico	16	26	24.4	21.4	12.2



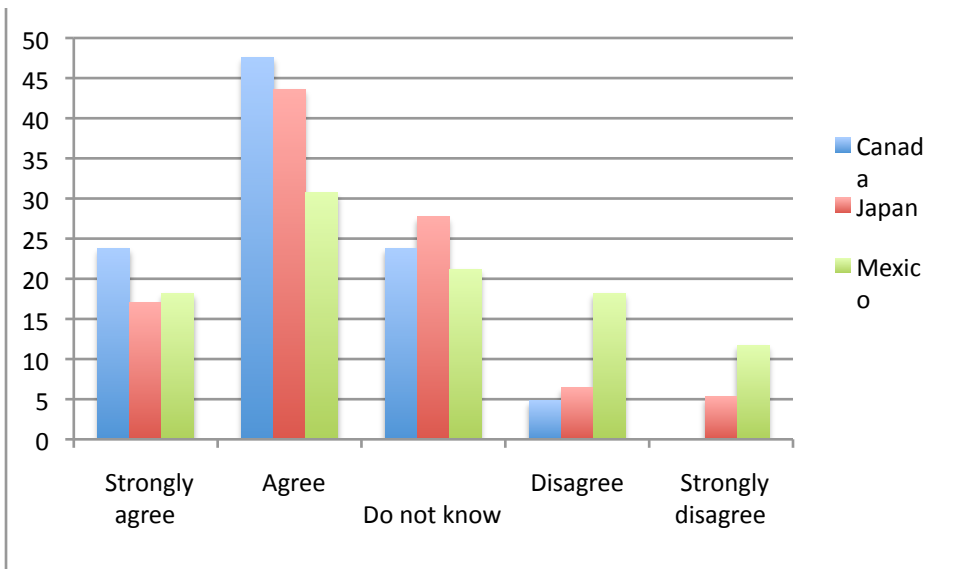
25. I obey the law in the same degree as people of my same					Percentage
	Strongly agree	Agree	Do not know	Disagree	Strongly disagree
Canada	17.5	37.5	40	5	0
Japan	18.1	44.7	27.7	5.3	4.3
Mexico	14.2	20.1	27.6	24.6	13.4



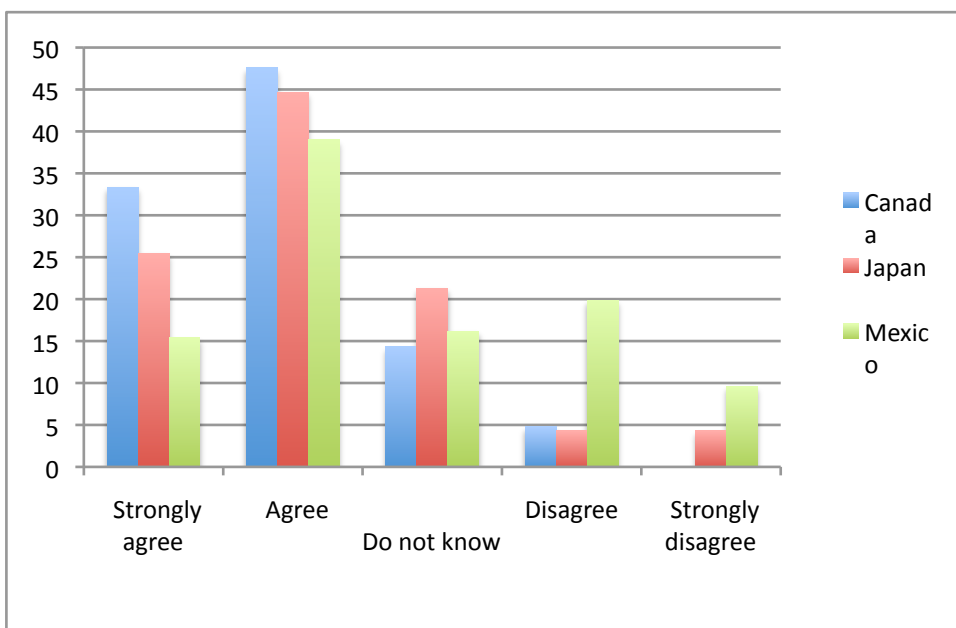
26. I obey the law in the same degree as people of my same					Percentage
	Strongly agree	Agree	Do not know	Disagree	Strongly disagree
Canada	21.4	40.5	33.3	4.8	0
Japan	16	46.8	25.5	5.3	6.4
Mexico	18.8	21	26.1	21	13



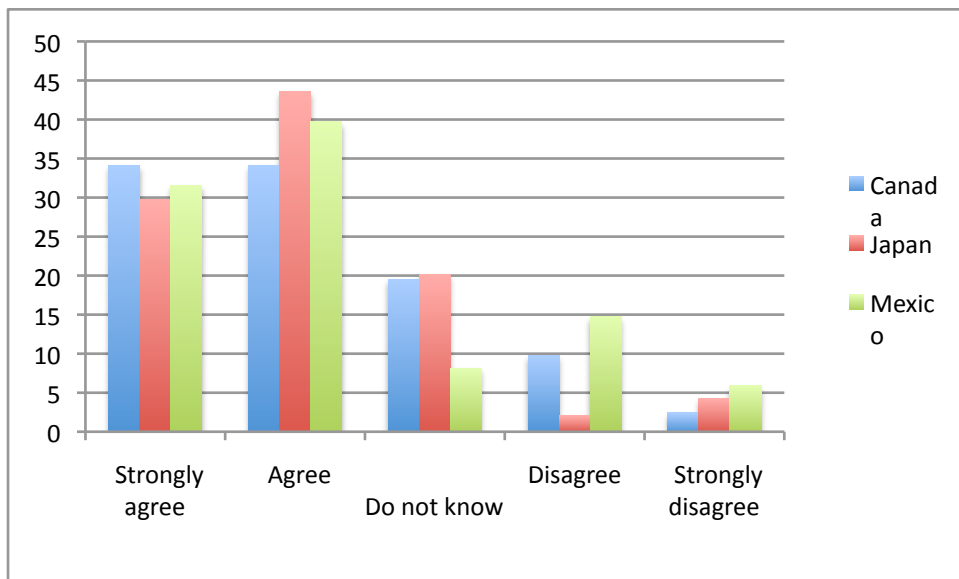
27. I obey the law in the same degree as people with similar					Percentage
	Strongly agree	Agree	Do not know	Disagree	Strongly disagree
Canada	23.8	47.6	23.8	4.8	0
Japan	17	43.6	27.7	6.4	5.3
Mexico	18.2	30.7	21.2	18.2	11.7



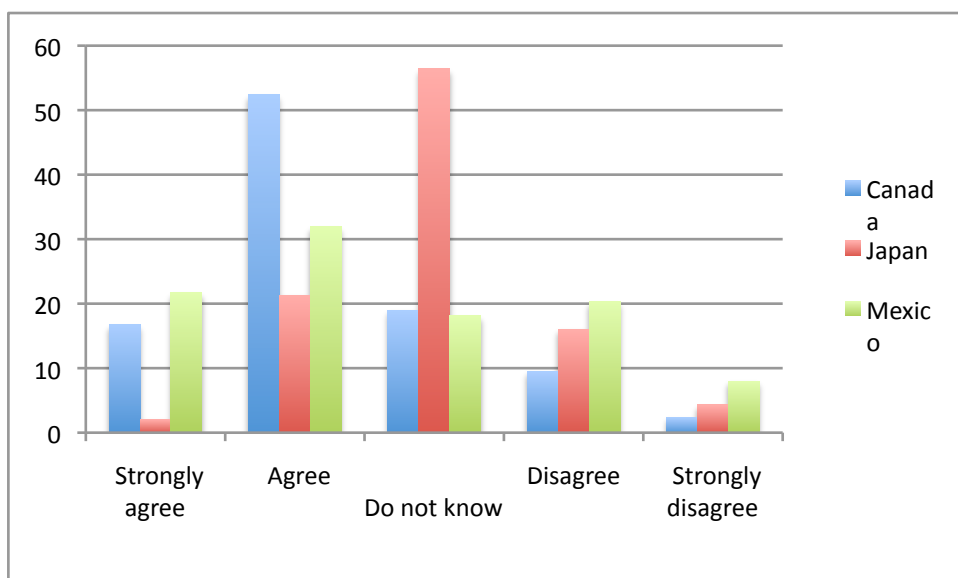
28. I obey the law in the same degree as people closer to me					Percentage
	Strongly agree	Agree	Do not know	Disagree	Strongly disagree
Canada	33.3	47.6	14.3	4.8	0
Japan	25.5	44.7	21.3	4.3	4.3
Mexico	15.4	39	16.2	19.9	9.6



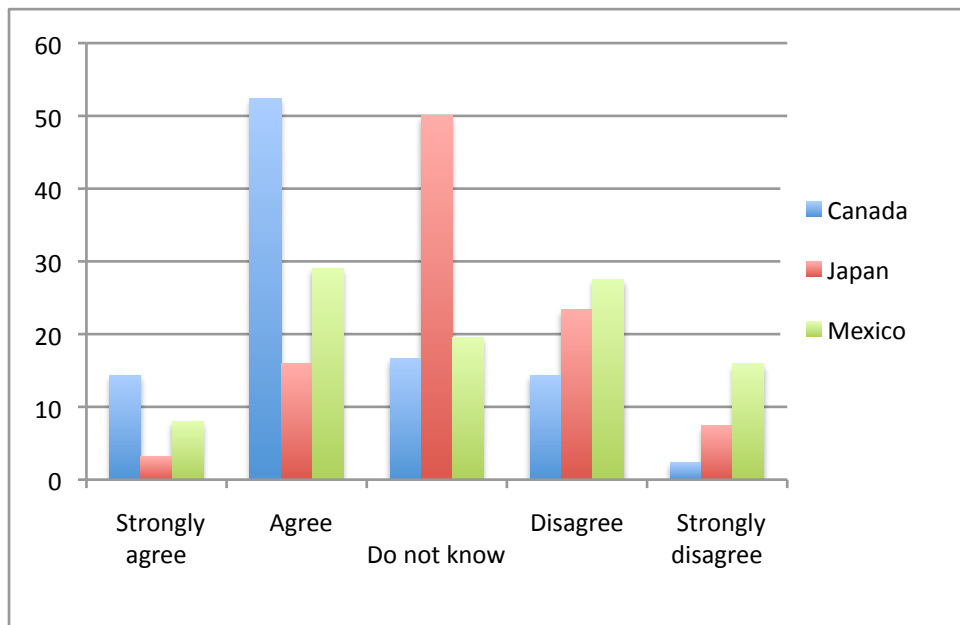
29. I obey the law in the same degree as the members of my					Percentages
	Strongly agree	Agree	Do not know	Disagree	Strongly disagree
Canada	34.1	34.1	19.5	9.8	2.4
Japan	29.8	43.6	20.2	2.1	4.3
Mexico	31.6	39.7	8.1	14.7	5.9



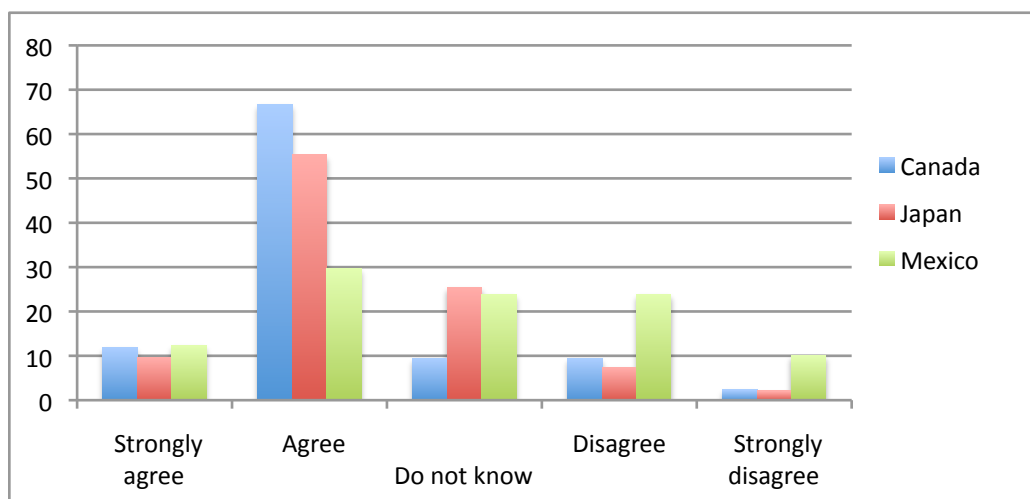
30. I think laws in my country are congruent with my own mo					Percentage
	Strongly agree	Agree	Do not know	Disagree	Strongly disagree
Canada	16.7	52.4	19	9.5	2.4
Japan	2.1	21.3	56.4	16	4.3
Mexico	21.7	31.9	18.1	20.3	8



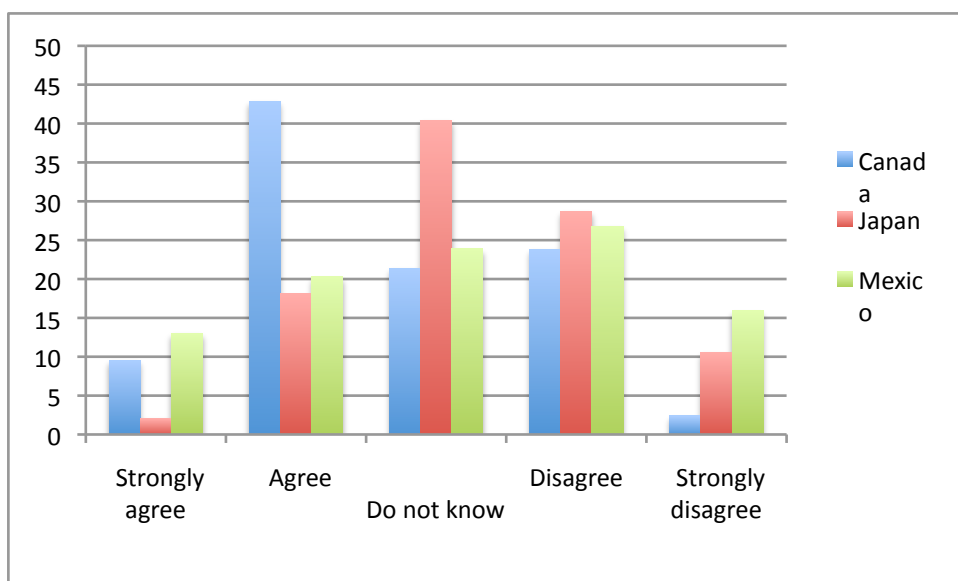
31. I think laws in my country are correspondent to the actual conditions of my country.					
	Strongly agree	Agree	Do not know	Disagree	Strongly disagree
Canada	14.3	52.4	16.7	14.3	2.4
Japan	3.2	16	50	23.4	7.4
Mexico	8	29	19.6	27.5	15.9



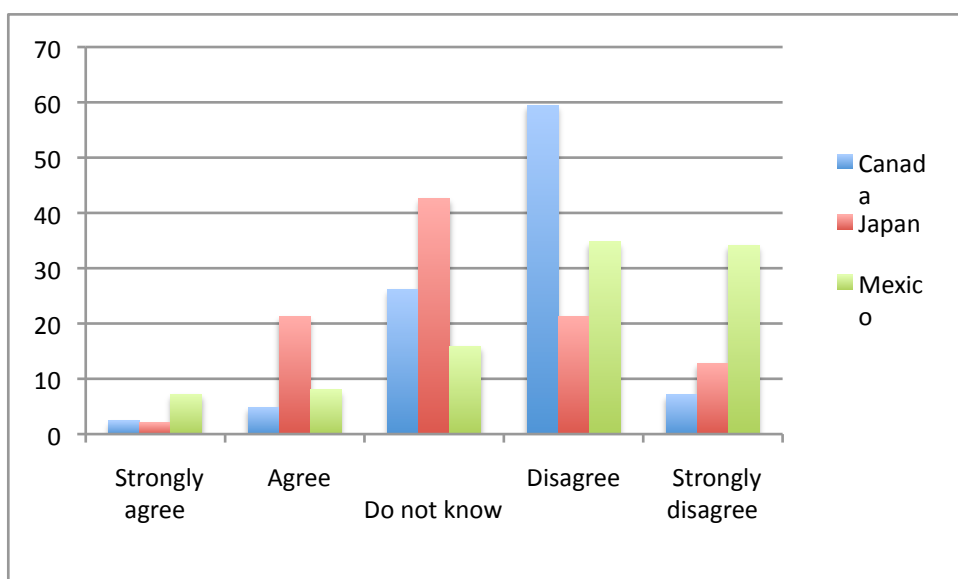
32. I think laws in my country are good.					
	Strongly agree	Agree	Do not know	Disagree	Strongly disagree
Canada	11.9	66.7	9.5	9.5	2.4
Japan	9.6	55.3	25.5	7.4	2.1
Mexico	12.3	29.7	23.9	23.9	10.1



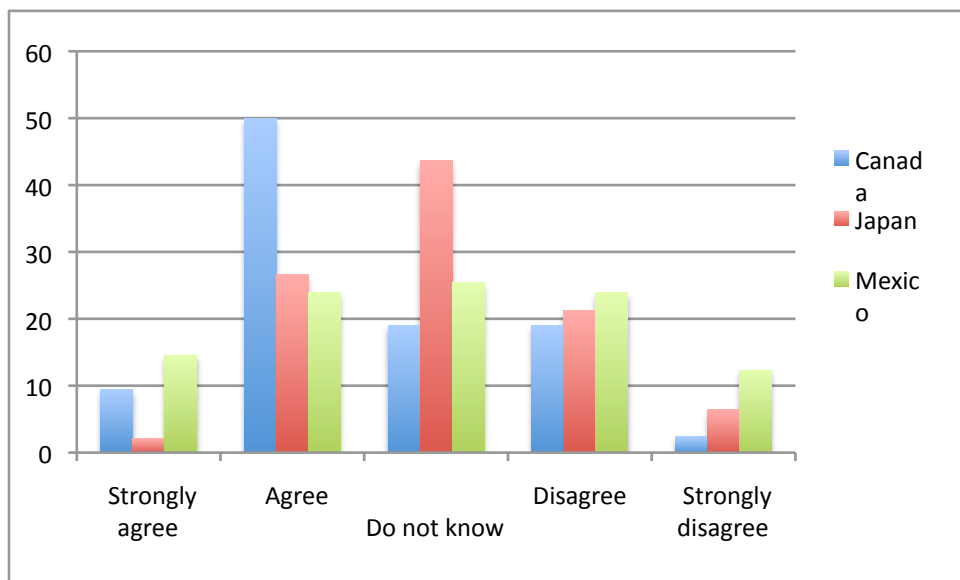
33. Laws in my country are accessible to all of those in need of using it.					
	Strongly agree	Agree	Do not know	Disagree	Strongly disagree
Canada	9.5	42.9	21.4	23.8	2.4
Japan	2.1	18.1	40.4	28.7	10.6
Mexico	13	20.3	23.9	26.8	15.9



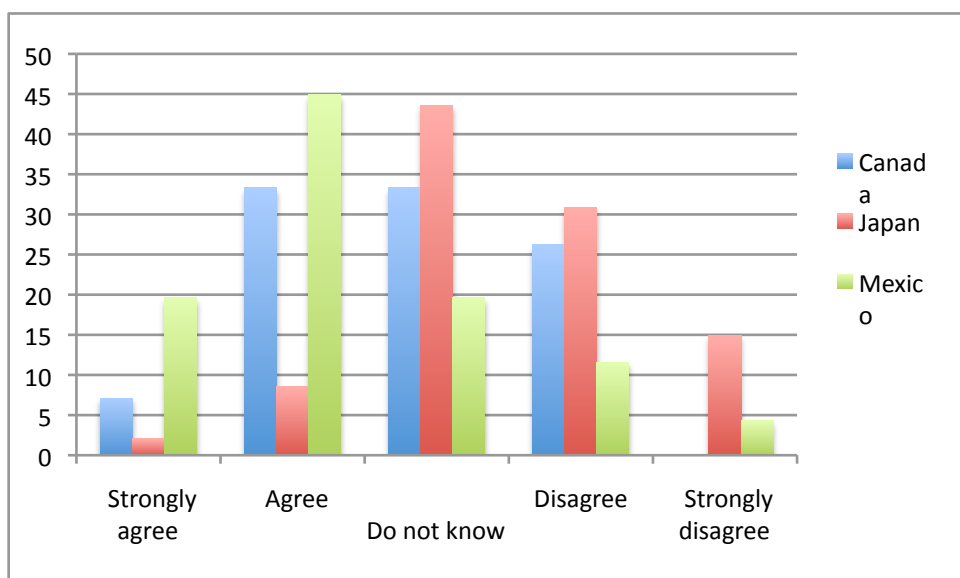
34. I think laws in my country are foreign ideas.					Percentage
	Strongly agree	Agree	Do not know	Disagree	Strongly disagree
Canada	2.4	4.8	26.2	59.5	7.1
Japan	2.1	21.3	42.6	21.3	12.8
Mexico	7.2	8	15.9	34.8	34.1



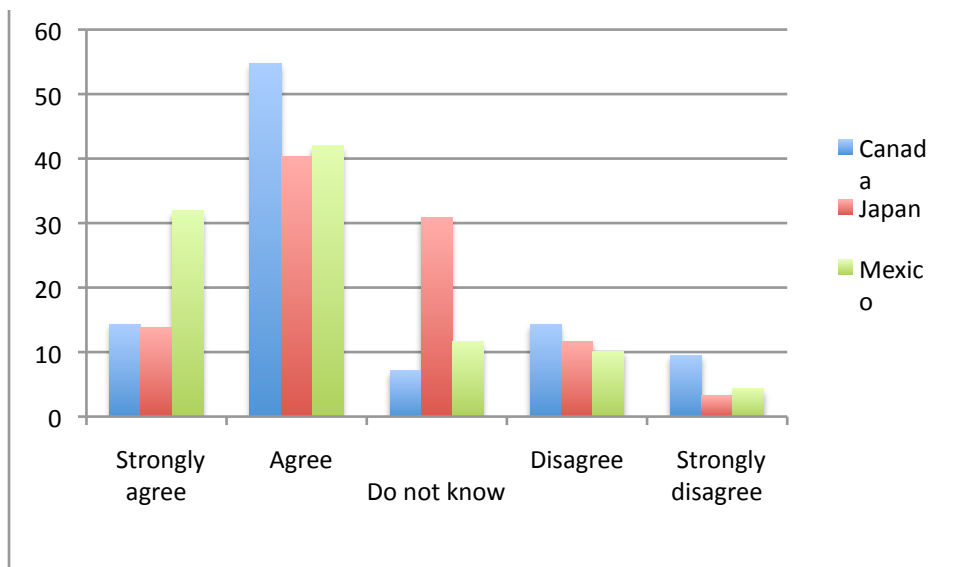
35. I think laws are the expressed will of the people of my country.					
	Strongly agree	Agree	Do not know	Disagree	Strongly disagree
Canada	9.5	50	19	19	2.4
Japan	2.1	26.6	43.6	21.3	6.4
Mexico	14.5	23.9	25.4	23.9	12.3



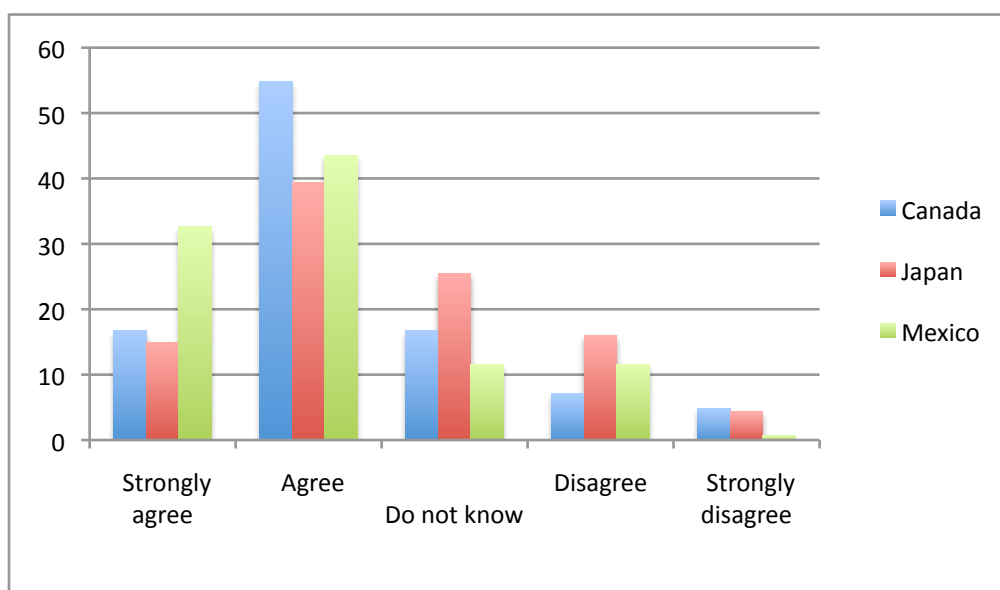
36. I think some laws have been imposed on my country.					Percentages
	Strongly agree	Agree	Do not know	Disagree	Strongly disagree
Canada	7.1	33.3	33.3	26.2	0
Japan	2.1	8.5	43.6	30.9	14.9
Mexico	19.6	44.9	19.6	11.6	4.3



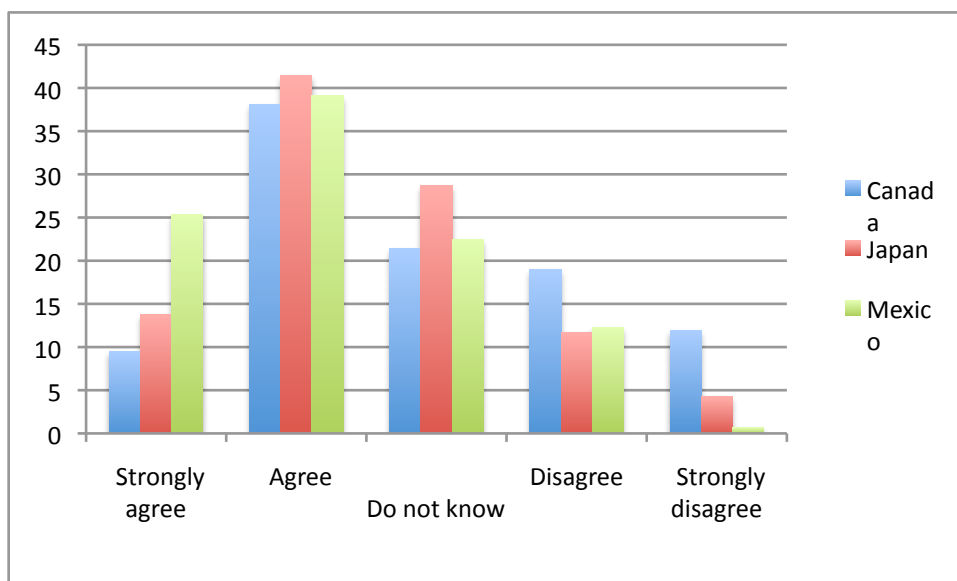
37. People in my country understand and use the laws differently depending on their hierarchical status.					
	Strongly agree	Agree	Do not know	Disagree	Strongly disagree
Canada	14.3	54.8	7.1	14.3	9.5
Japan	13.8	40.4	30.9	11.7	3.2
Mexico	31.9	42	11.6	10.1	4.3



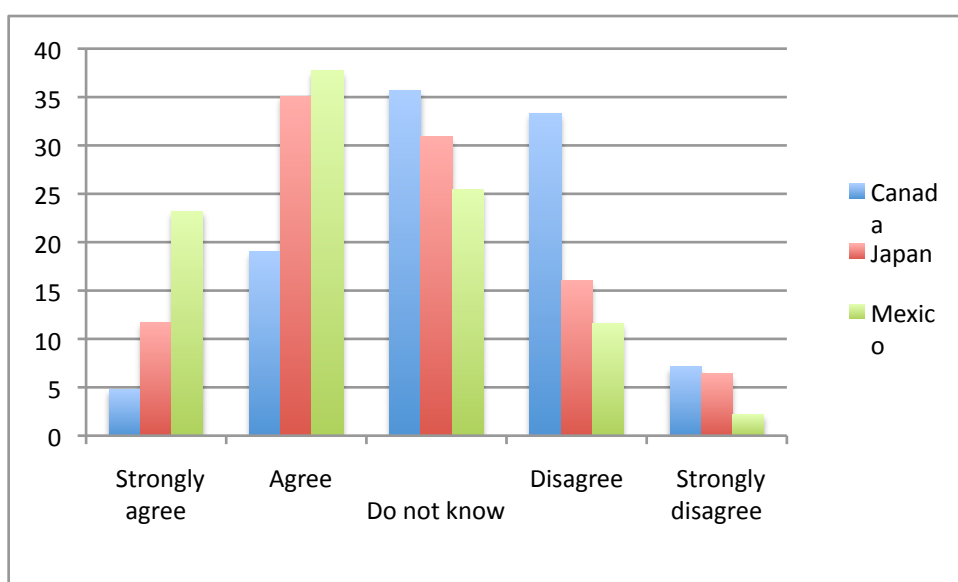
38. People in my country understand and use the laws differently					Percentage
	Strongly agree	Agree	Do not know	Disagree	Strongly disagree
Canada	16.7	54.8	16.7	7.1	4.8
Japan	14.9	39.4	25.5	16	4.3
Mexico	32.6	43.5	11.6	11.6	0.7



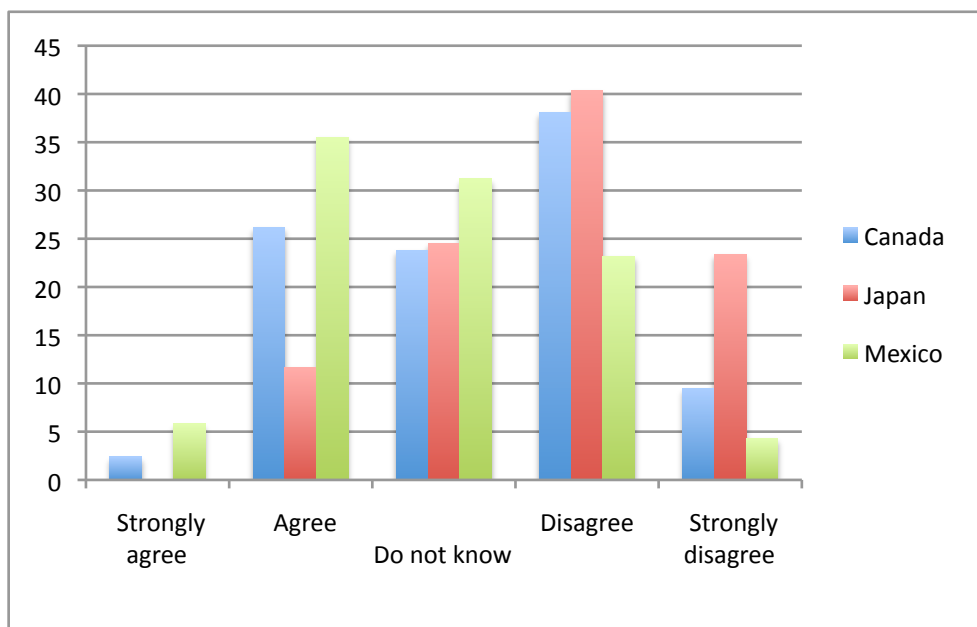
39. People in my country understand and use the law differently depending on the province/city					Percentages
	Strongly agree	Agree	Do not know	Disagree	Strongly disagree
Canada	9.5	38.1	21.4	19	11.9
Japan	13.8	41.5	28.7	11.7	4.3
Mexico	25.4	39.1	22.5	12.3	0.7



40. People in my country understand and use the law differently depending on the province/city					Percentages
	Strongly agree	Agree	Do not know	Disagree	Strongly disagree
Canada	4.8	19	35.7	33.3	7.1
Japan	11.7	35.1	30.9	16	6.4
Mexico	23.2	37.7	25.4	11.6	2.2

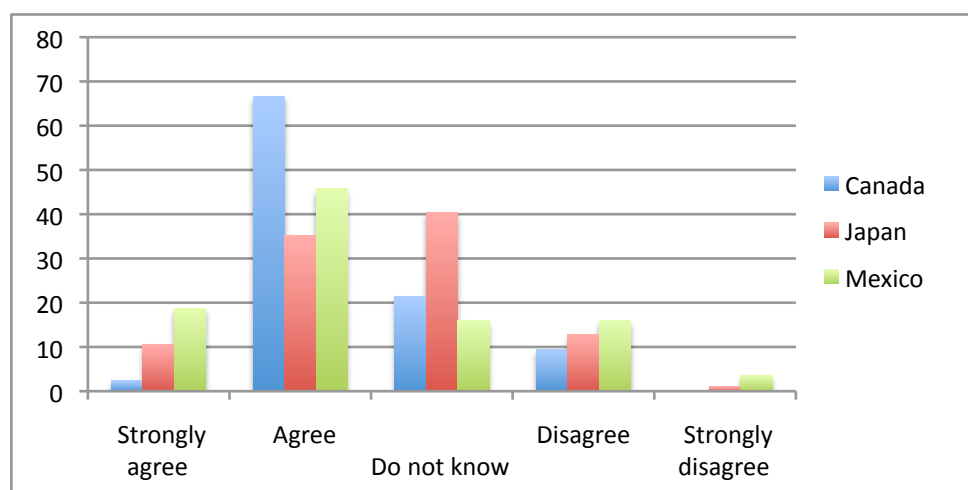


41. I think all people in my country understand and use the law similarly.					
	Strongly agree	Agree	Do not know	Disagree	Strongly disagree
Canada	2.4	26.2	23.8	38.1	9.5
Japan	0	11.7	24.5	40.4	23.4
Mexico	5.8	35.5	31.2	23.2	4.3

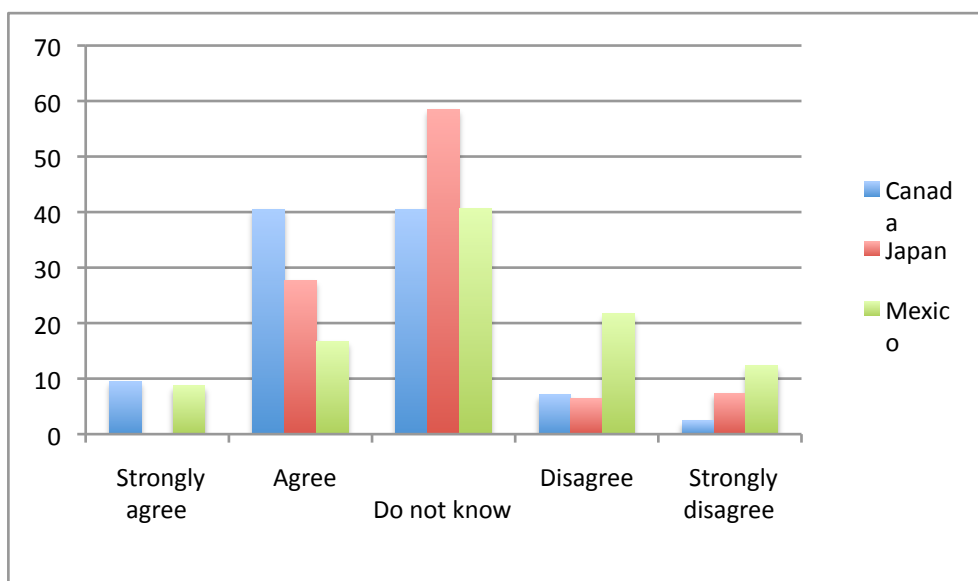


42. People in my country understand and use laws differently from other places in the world.

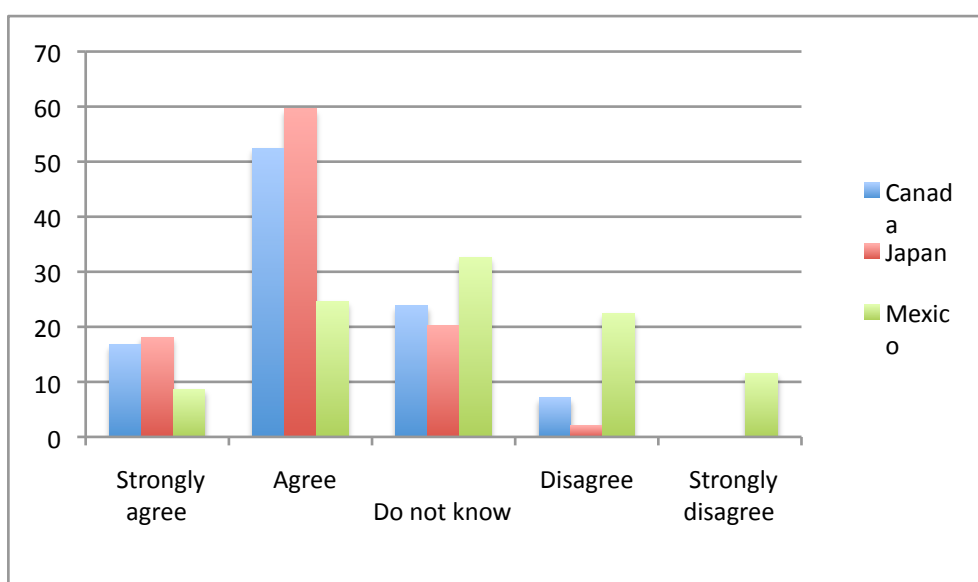
	Strongly agree	Agree	Do not know	Disagree	Strongly disagree
Canada	2.4	66.7	21.4	9.5	0
Japan	10.6	35.1	40.4	12.8	1.1
Mexico	18.8	45.7	15.9	15.9	3.6



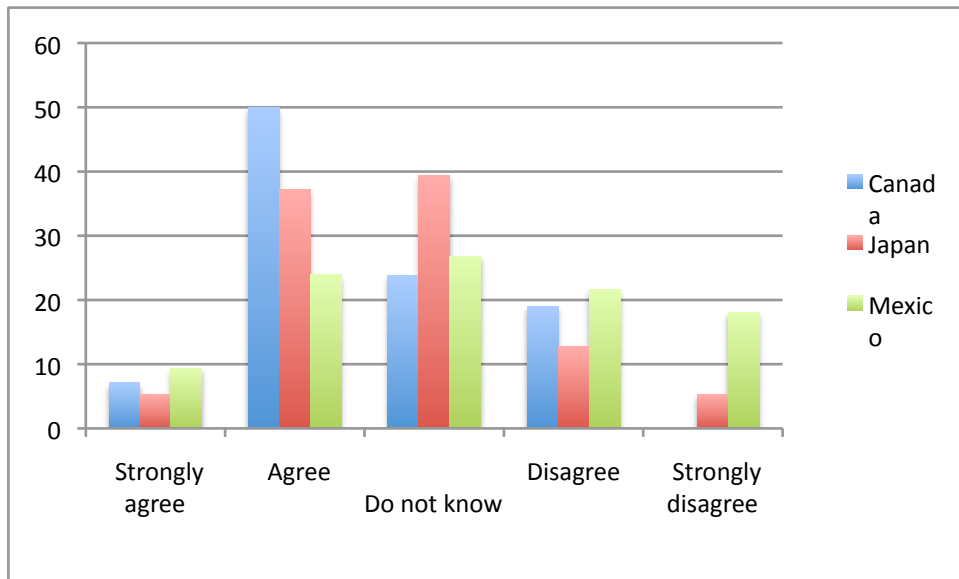
43. The decisions of the courts are/have been good for the country.					
	Strongly agree	Agree	Do not know	Disagree	Strongly disagree
Canada	9.5	40.5	40.5	7.1	2.4
Japan	0	27.7	58.5	6.4	7.4
Mexico	8.7	16.7	40.6	21.7	12.3



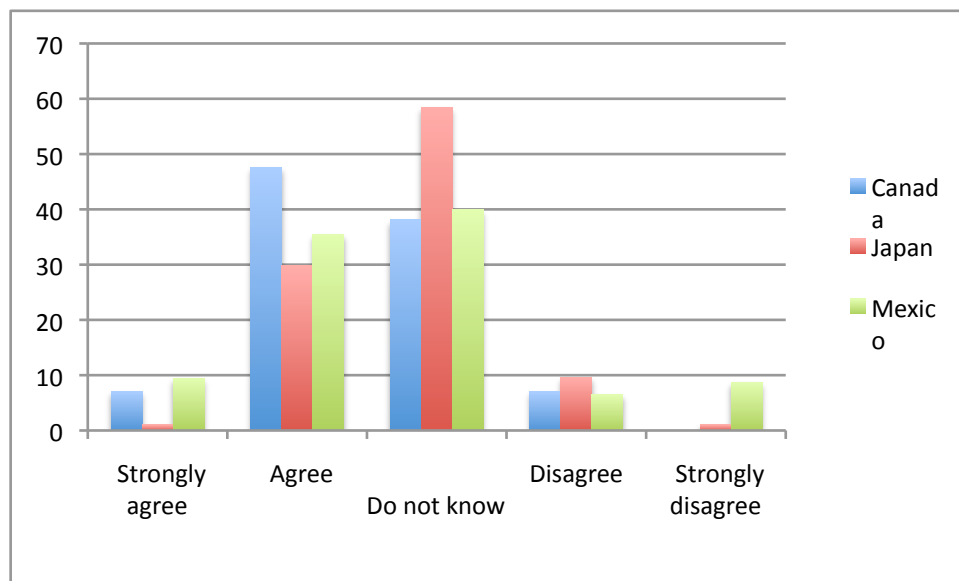
44. The decisions of the courts are/have been made in accordance with the law.					
	Strongly agree	Agree	Do not know	Disagree	Strongly disagree
Canada	16.7	52.4	23.8	7.1	0
Japan	18.1	59.6	20.2	2.1	0
Mexico	8.7	24.6	32.6	22.5	11.6



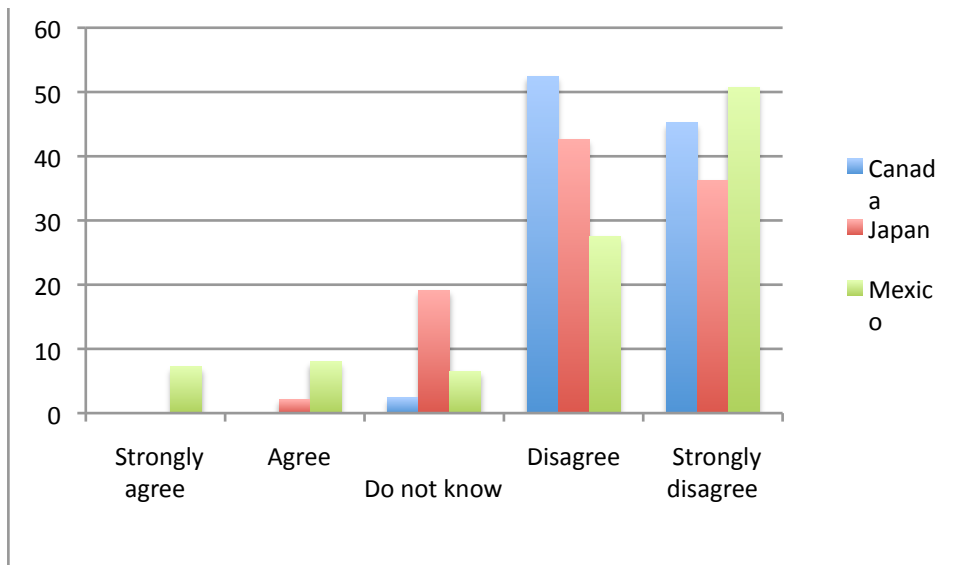
45. The courts and the judicial system are well-organized institutions.					
	Strongly agree	Agree	Do not know	Disagree	Strongly disagree
Canada	7.1	50	23.8	19	0
Japan	5.3	37.2	39.4	12.8	5.3
Mexico	9.4	23.9	26.8	21.7	18.1



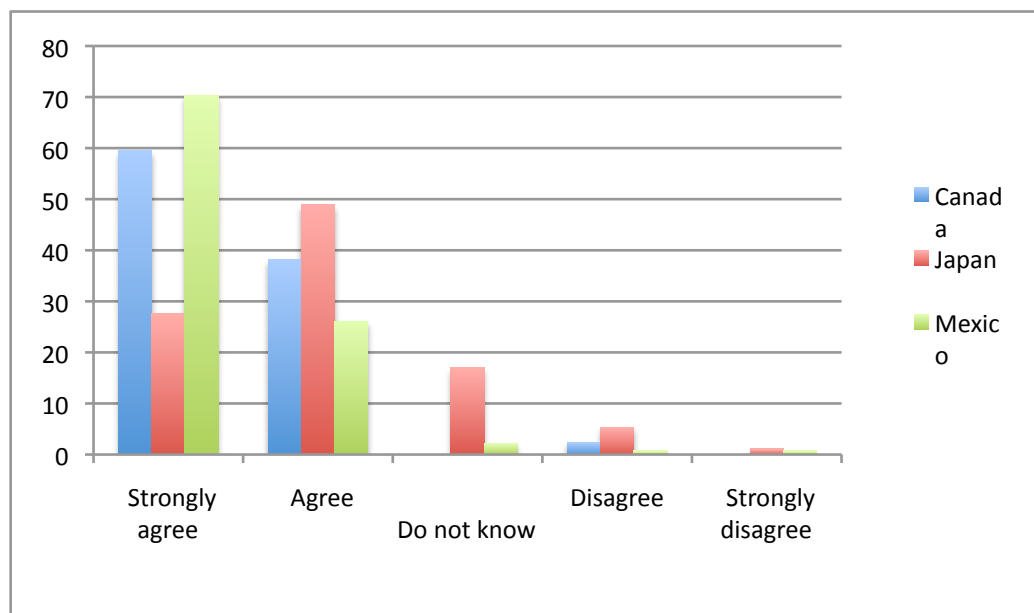
46. Lawyers associations and bars are well-organized institutions.					
	Strongly agree	Agree	Do not know	Disagree	Strongly disagree
Canada	7.1	47.6	38.1	7.1	0
Japan	1.1	29.8	58.5	9.6	1.1
Mexico	9.4	35.5	39.9	6.5	8.7



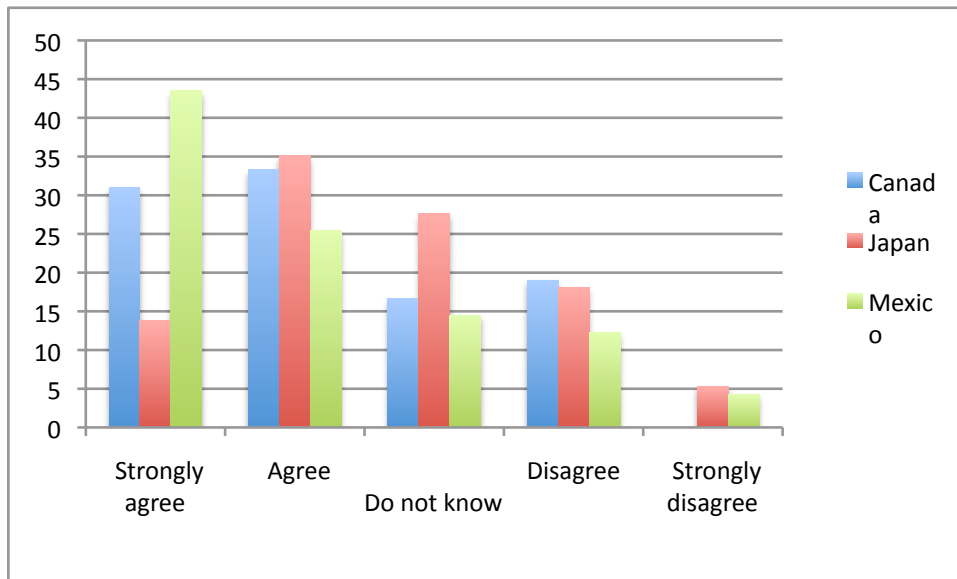
47. I think laws are none of my business.					Percentages
	Strongly agree	Agree	Do not know	Disagree	Strongly disagree
Canada	0	0	2.4	52.4	45.2
Japan	0	2.1	19.1	42.6	36.2
Mexico	7.2	8	6.5	27.5	50.7



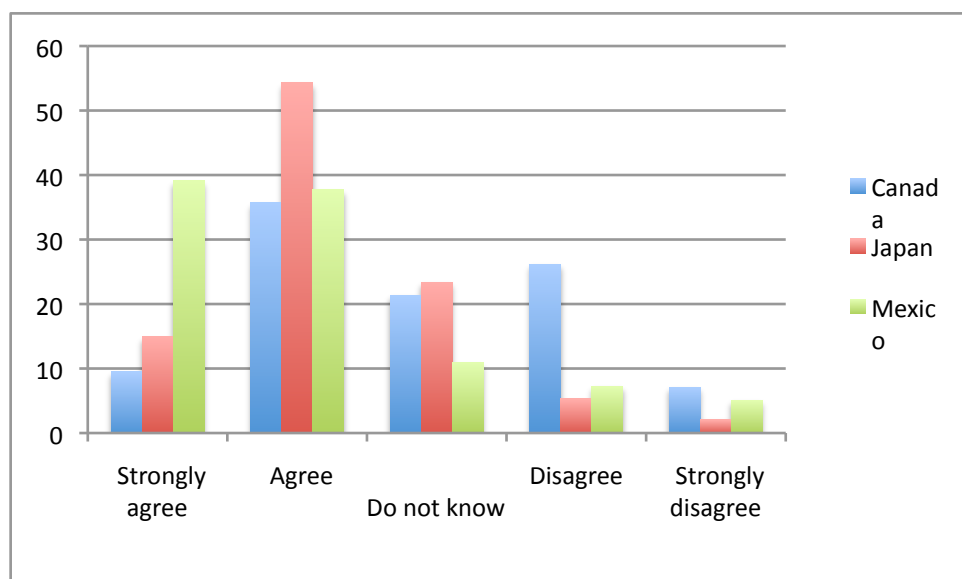
48. I think laws are important.			Percentage		
	Strongly agree	Agree	Do not know	Disagree	Strongly disagree
Canada	59.5	38.1	0	2.4	0
Japan	27.7	48.9	17	5.3	1.1
Mexico	70.3	26.1	2.2	0.7	0.7



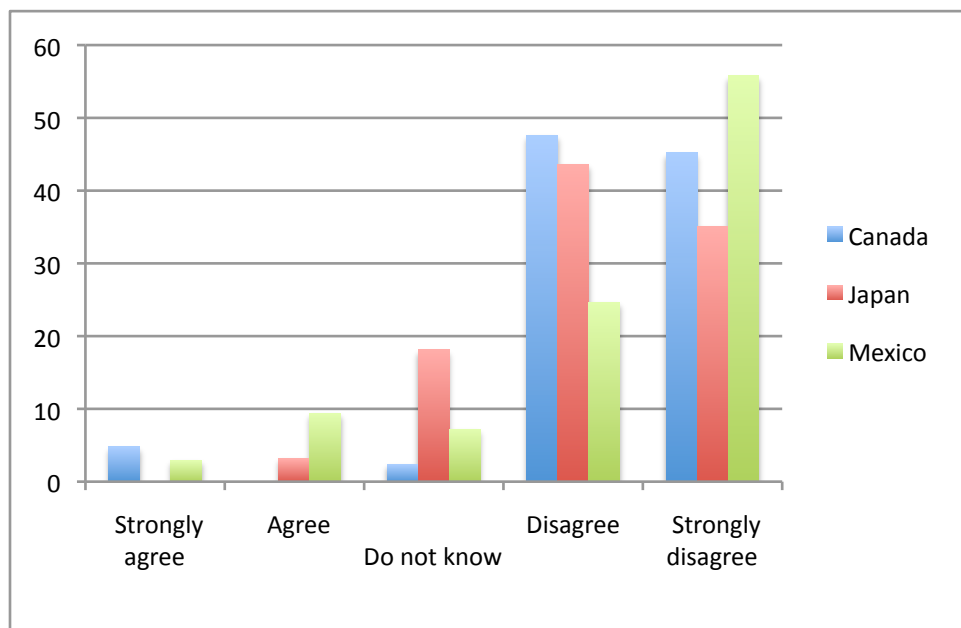
49. I think laws affect all aspects of my life.					Percentages
	Strongly agree	Agree	Do not know	Disagree	Strongly disagree
Canada	31	33.3	16.7	19	0
Japan	13.8	35.1	27.7	18.1	5.3
Mexico	43.5	25.4	14.5	12.3	4.3



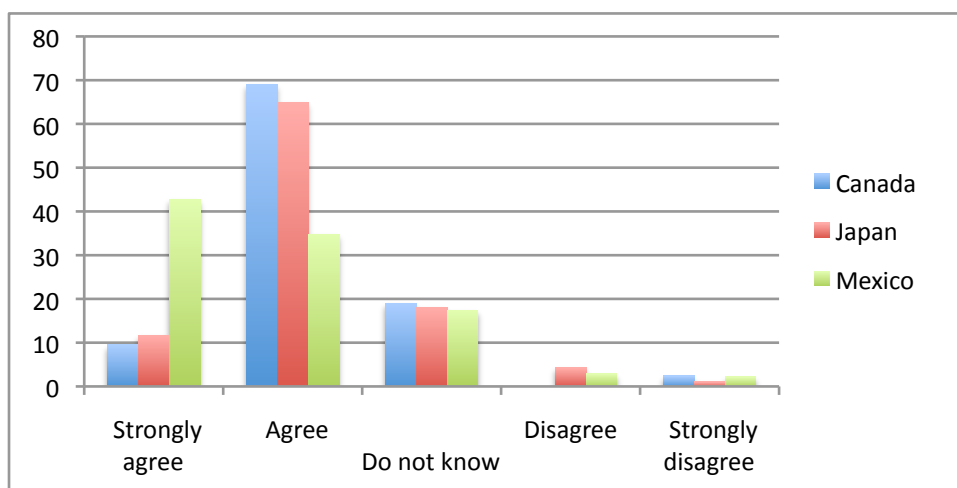
50. The most basic/fundamental laws can be found all over the world.					
	Strongly agree	Agree	Do not know	Disagree	Strongly disagree
Canada	9.5	35.7	21.4	26.2	7.1
Japan	14.9	54.3	23.4	5.3	2.1
Mexico	39.1	37.7	10.9	7.2	5.1



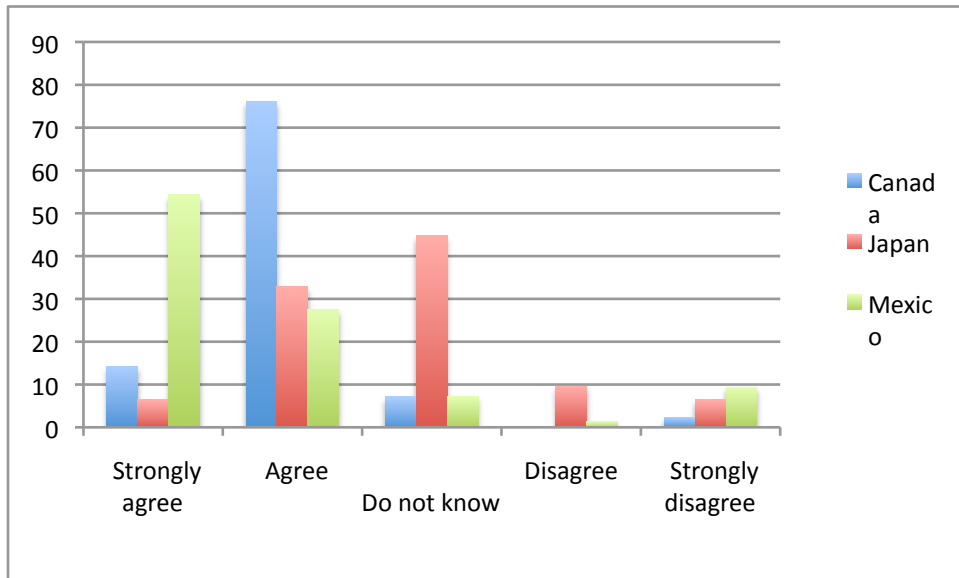
51. I think the idea of the law is essentially bad.				Percentages	
	Strongly agree	Agree	Do not know	Disagree	Strongly disagree
Canada	4.8	0	2.4	47.6	45.2
Japan	0	3.2	18.1	43.6	35.1
Mexico	2.9	9.4	7.2	24.6	55.8



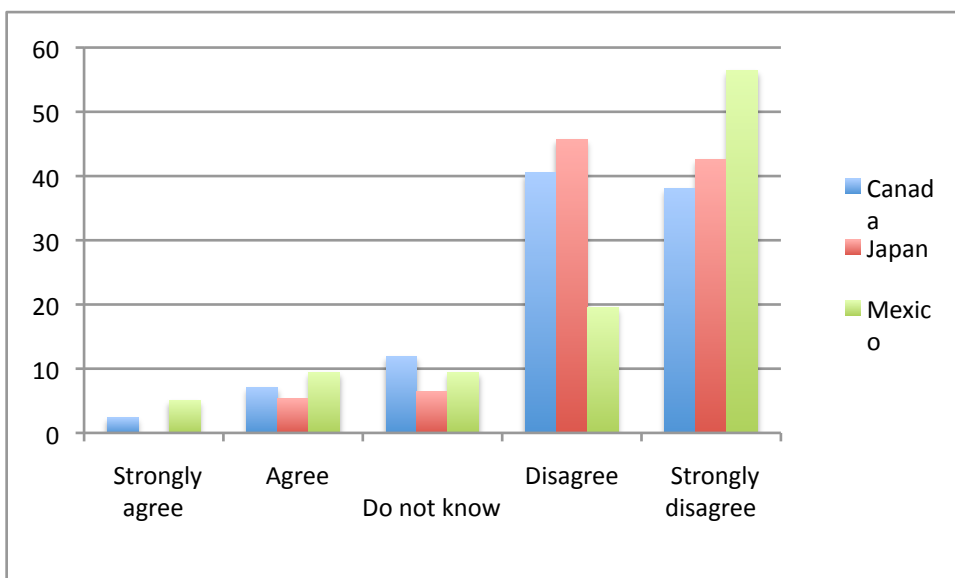
52. I think laws help achieve harmony				Percentages	
	Strongly agree	Agree	Do not know	Disagree	Strongly disagree
Canada	9.5	69	19	0	2.4
Japan	11.7	64.9	18.1	4.3	1.1
Mexico	42.8	34.8	17.4	2.9	2.2



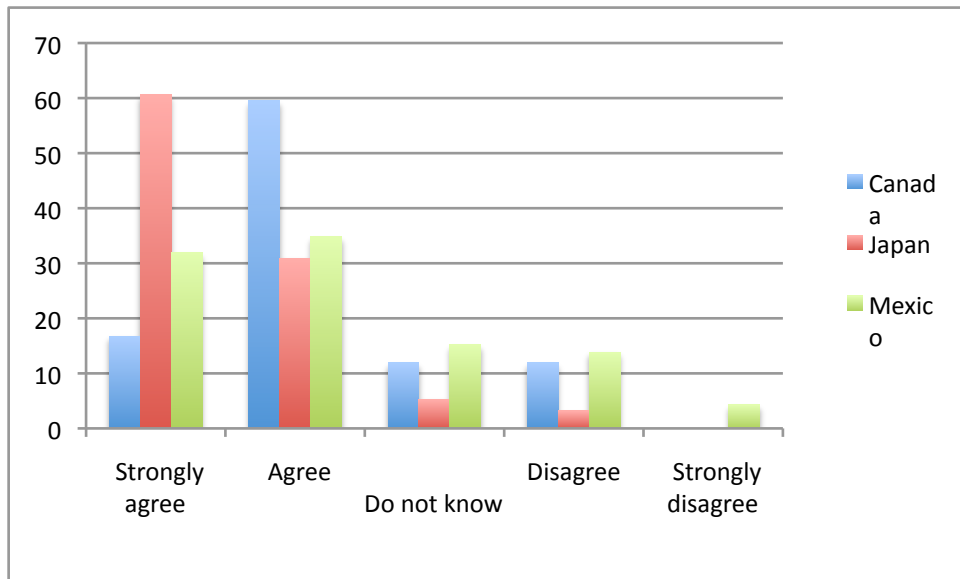
53. Laws are useful.					Percentages
	Strongly agree	Agree	Do not know	Disagree	Strongly disagree
Canada	14.3	76.2	7.1	0	2.4
Japan	6.4	33	44.7	9.6	6.4
Mexico	54.3	27.5	7.2	1.4	9.4



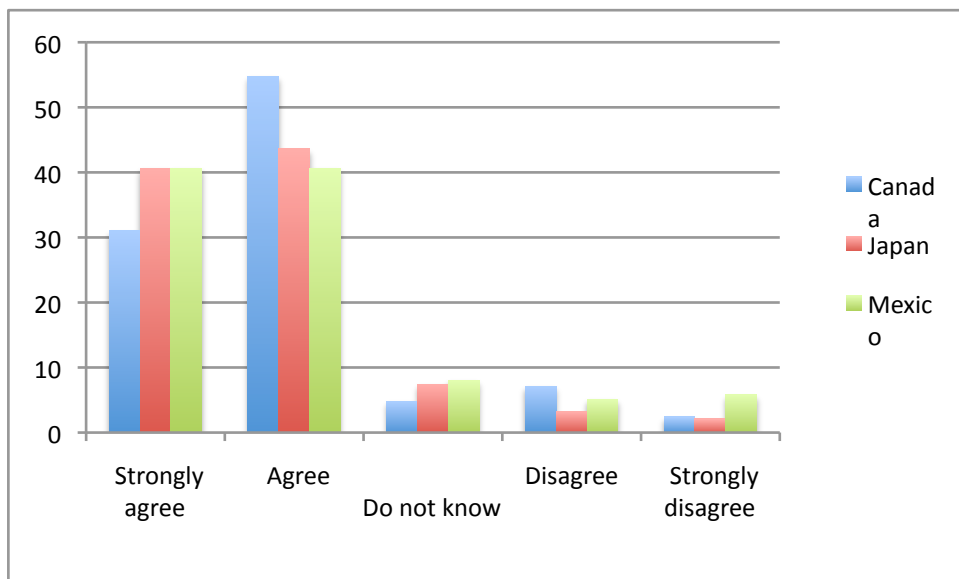
54. A society can survive without laws.					Percentages
	Strongly agree	Agree	Do not know	Disagree	Strongly disagree
Canada	2.4	7.1	11.9	40.5	38.1
Japan	0	5.3	6.4	45.7	42.6
Mexico	5.1	9.4	9.4	19.6	56.5



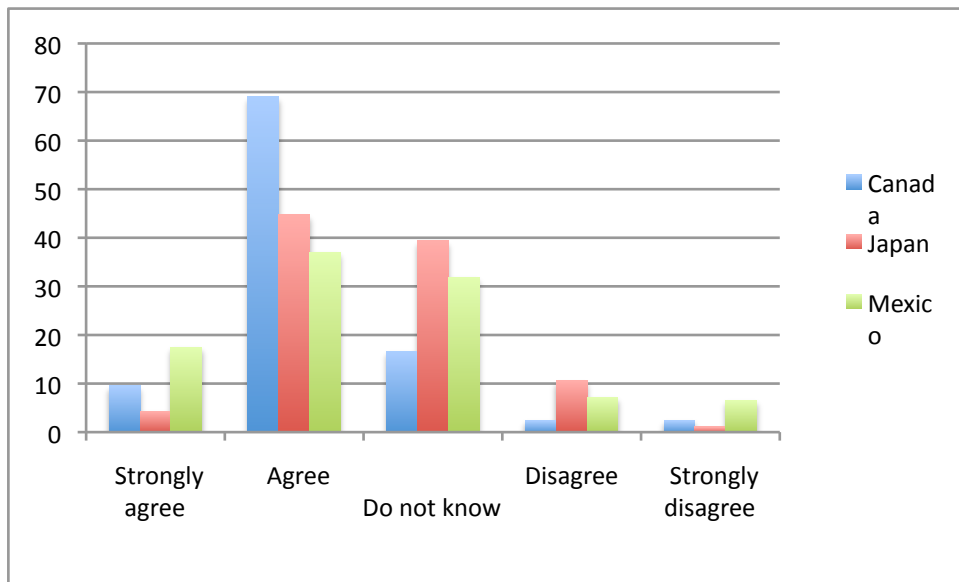
55. Legal language is difficult.					Percentages
	Strongly agree	Agree	Do not know	Disagree	Strongly disagree
Canada	16.7	59.5	11.9	11.9	0
Japan	60.6	30.9	5.3	3.2	0
Mexico	31.9	34.8	15.2	13.8	4.3



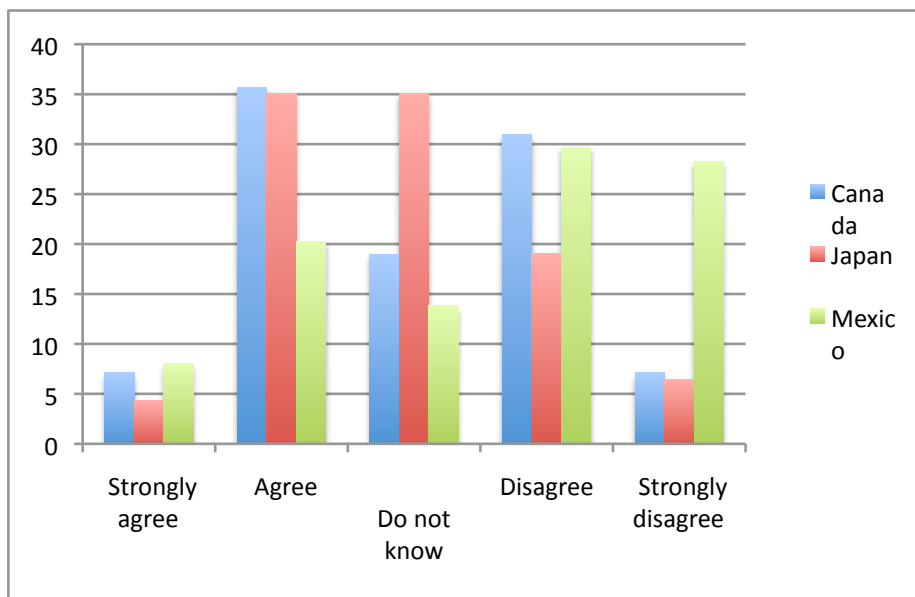
56. Legal language is different from the normal language					
	Strongly agree	Agree	Do not know	Disagree	Strongly disagree
Canada	31	54.8	4.8	7.1	2.4
Japan	40.6	43.6	7.4	3.2	2.1
Mexico	40.6	40.6	8	5.1	5.8



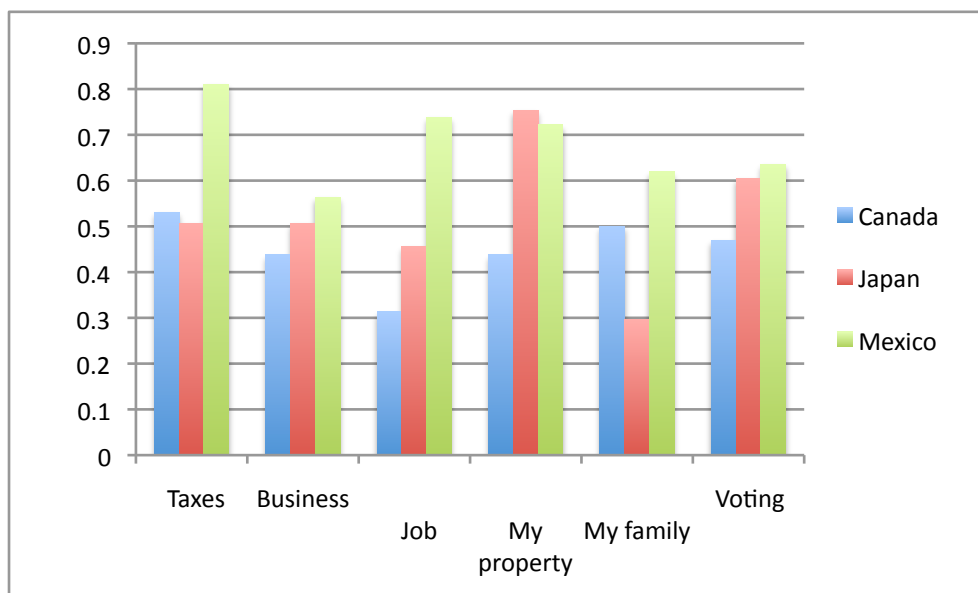
57. Laws always reflect a certain understanding about life.					Percentages
	Strongly agree	Agree	Do not know	Disagree	Strongly disagree
Canada	9.5	69	16.7	2.4	2.4
Japan	4.3	44.7	39.4	10.6	1.1
Mexico	17.4	37	31.9	7.2	6.5



58. I excuse certain illegal actions of others.				Percentage	
	Strongly agree	Agree	Do not know	Disagree	Strongly disagree
Canada	7.1	35.7	19	31	7.1
Japan	4.3	35.1	35.1	19.1	6.4
Mexico	8	20.3	13.8	29.7	28.3

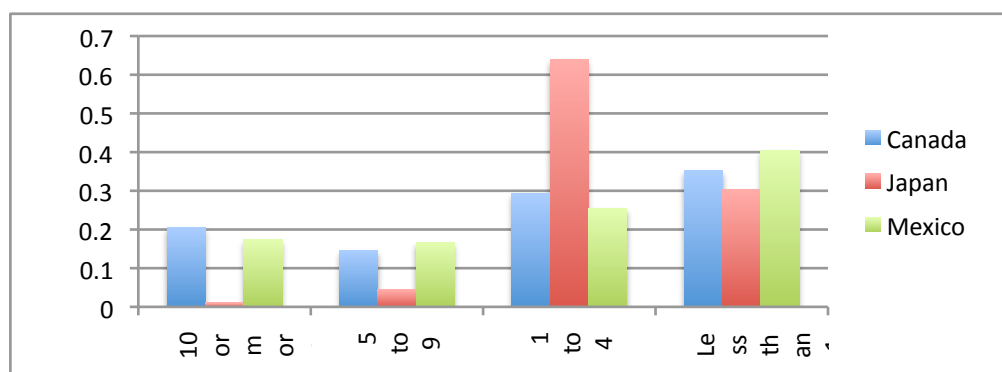


59. I worry about the law(s) when I think about:			
	Canada	Japan	Mexico
Taxes	53.10%	50.60%	81.00%
Business	43.80%	50.60%	56.30%
Job	31.30%	45.70%	73.80%
My property	43.80%	75.30%	72.20%
My family	50.00%	29.60%	61.90%
Voting	46.90%	60.50%	63.50%



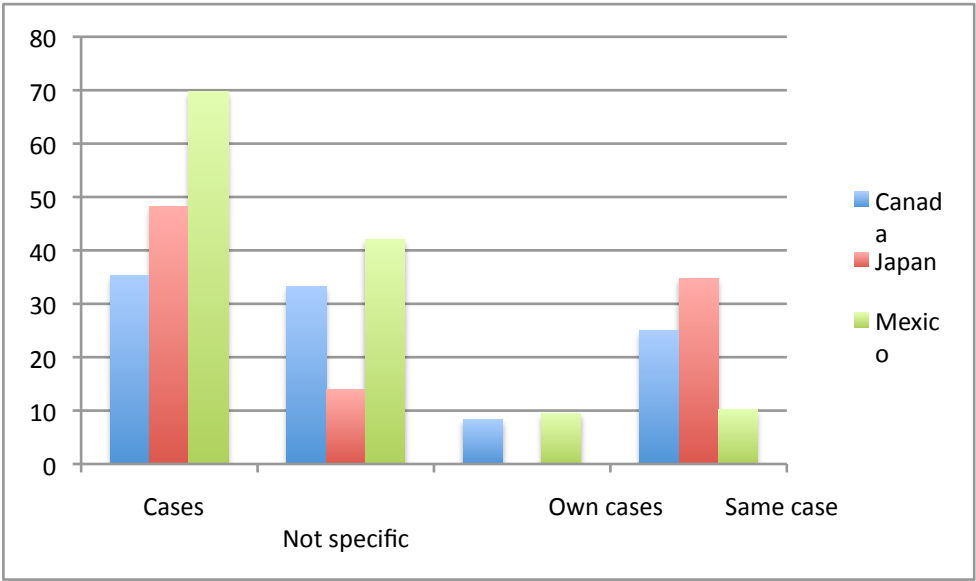
60. In one week, how often do you think about legal issues and/or cases/decisions of the courts?

	Canada	Japan	Mexico
10 or more	20.60%	1.10%	17.50%
5 to 9	14.70%	4.50%	16.70%
1 to 4	29.40%	64.00%	25.40%
Less than 1	35.30%	30.30%	40.50%



61. Mention any case you have heard about that has been resolved by the courts:

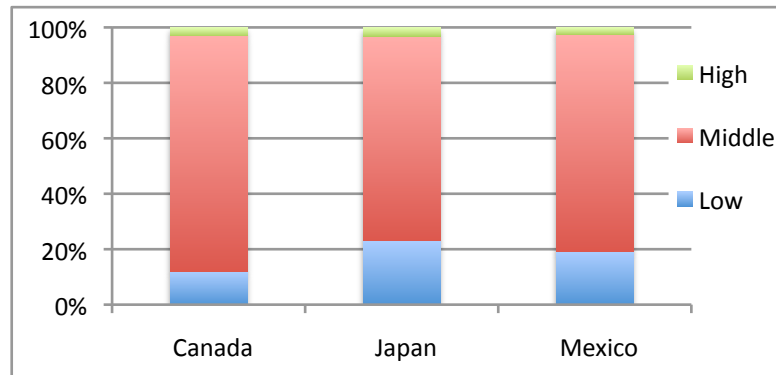
	Cases	Not specific	Own cases	Same case
Canada	35.29411765	33.33333333	8.333333333	25
Japan	48.31460674	13.95348837	0	34.8
Mexico	69.84126984	42.04545455	9.523809524	10.22



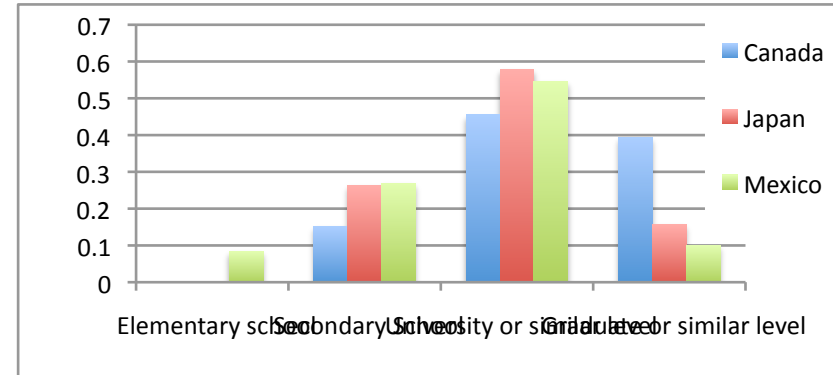
Survey Population: Summary			
	Canada	Japan	Mexico
Female	48.50%	50.50%	48.70%
Male	51.50%	49.50%	51.30%
	Canada	Japan	Mexico
Age Average	40.9	38.9	39.1
	Canada	Japan	Mexico
Immigrants	20.00%	0.00%	0.00%
	HK, Iran, Netherlands, Nicaragua, Mexico		
	Canada	Japan	Mexico
Elementary school	0.00%	0.0%	8.4%
Secondary School	15.2%	26.3%	26.9%
University or similar level	45.50%	57.9%	54.6%
Graduate or similar level	39.4%	15.8%	10.1%
	Canada	Japan	Mexico
Low	12.1%	23.2%	19.3%
Middle	84.8%	73.7%	78.2%
High	3.0%	3.2%	2.5%
	Canada	Japan	Mexico
Housewife	3.0%	13.7%	9.2%
Construction	6.1%	4.2%	5.0%
Education	18.2%	7.0%	6.7%
Legal	6.1%	2.1%	10.1%
Administrative work	3%	10%	2%
Technology related	3%	14%	5%
Commerce	4%	5%	18%
Student	18%	22%	13%
Gov. officer	1%	0%	16%
Other (please specify)	39%	25%	33%
Health care	9%	2%	1%
Retired	5%	6%	2%
Services	3%	9%	2%
Design/Art	0%	0%	2%

DEMOGRAPHICS

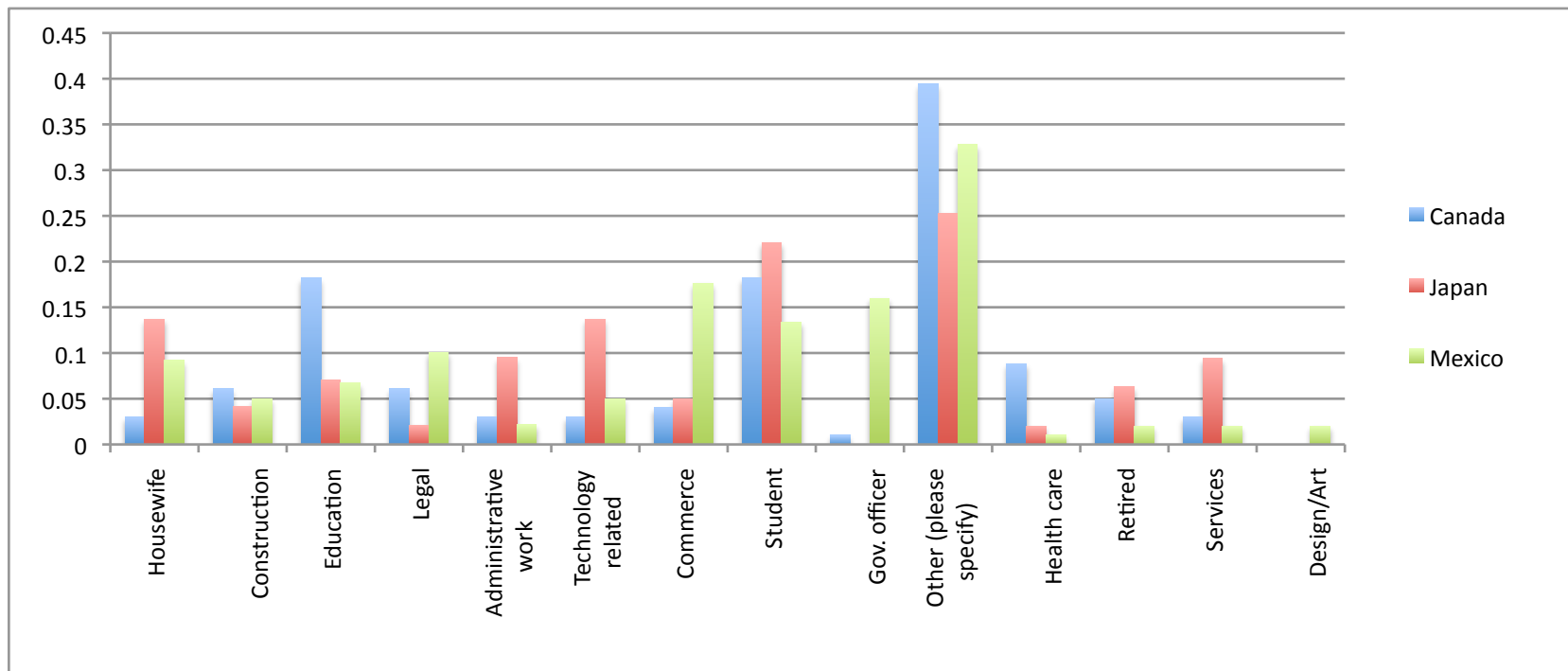
Socio-economic class



Education level



Profession

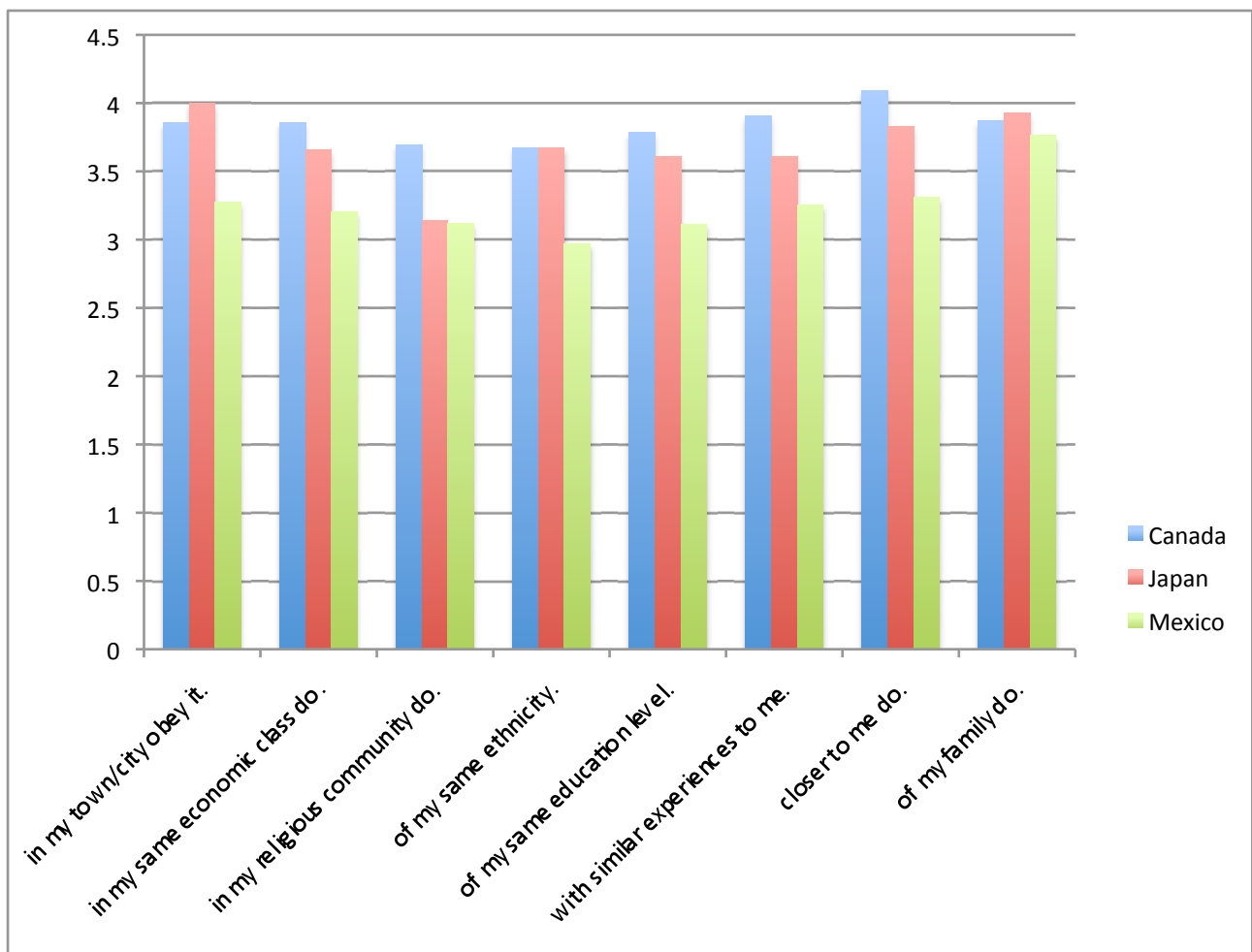


THEME GRAPHS:

- a) Communities and compliance
- b) Communities and understanding
 - c) Trust
 - d) Respect
 - e) Knowledge
 - f) Reliance
 - g) Closeness
 - h) Accessibility
 - i) Appropriateness
 - j) Natural law
- k) Questions with most similar results
- l) Questions with most different results

Communities and compliance

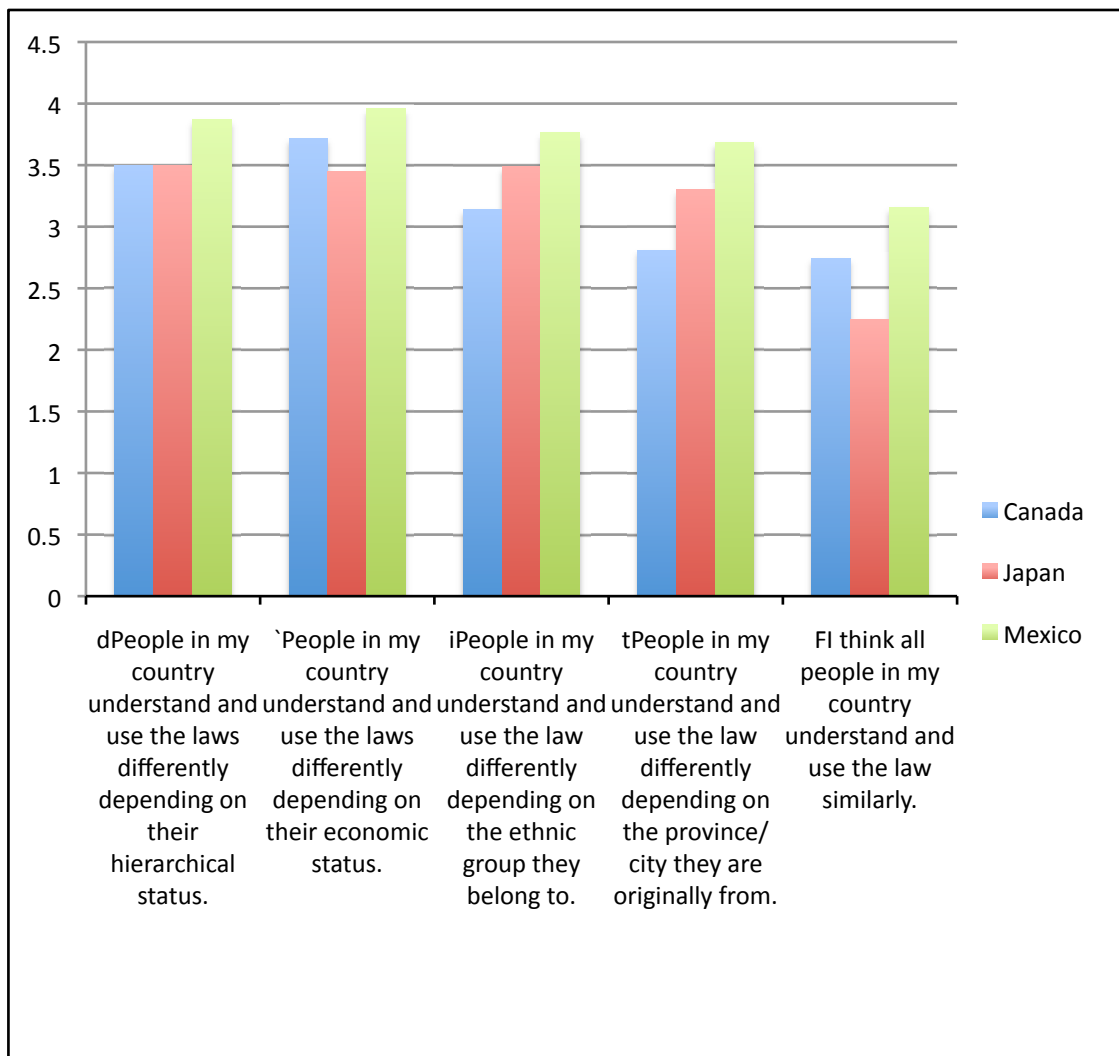
	I obey the law in the same degree as people:	Canada	Japan	Mexico
22	in my town/city obey it.	3.857	3.998	3.277
23	in my same economic class do.	3.86	3.658	3.202
24	in my religious community do.	3.695	3.14	3.122
25	of my same ethnicity.	3.675	3.673	2.968
26	of my same education level.	3.785	3.607	3.113
27	with similar experiences to me.	3.904	3.606	3.255
28	closer to me do.	4.094	3.831	3.31
29	of my family do.	3.874	3.925	3.764



- Means there is a considerable difference in the ratings among the three countries. (>1)
- Means there is a difference in the ratings among the three countries. (0.706 – 0.999)
- Means there is a similarity in the ratings among the three countries. (0.206 – 0.706)
- Means there is a considerable similarity in the ratings among the three countries. (<0.206)

Communities and understanding

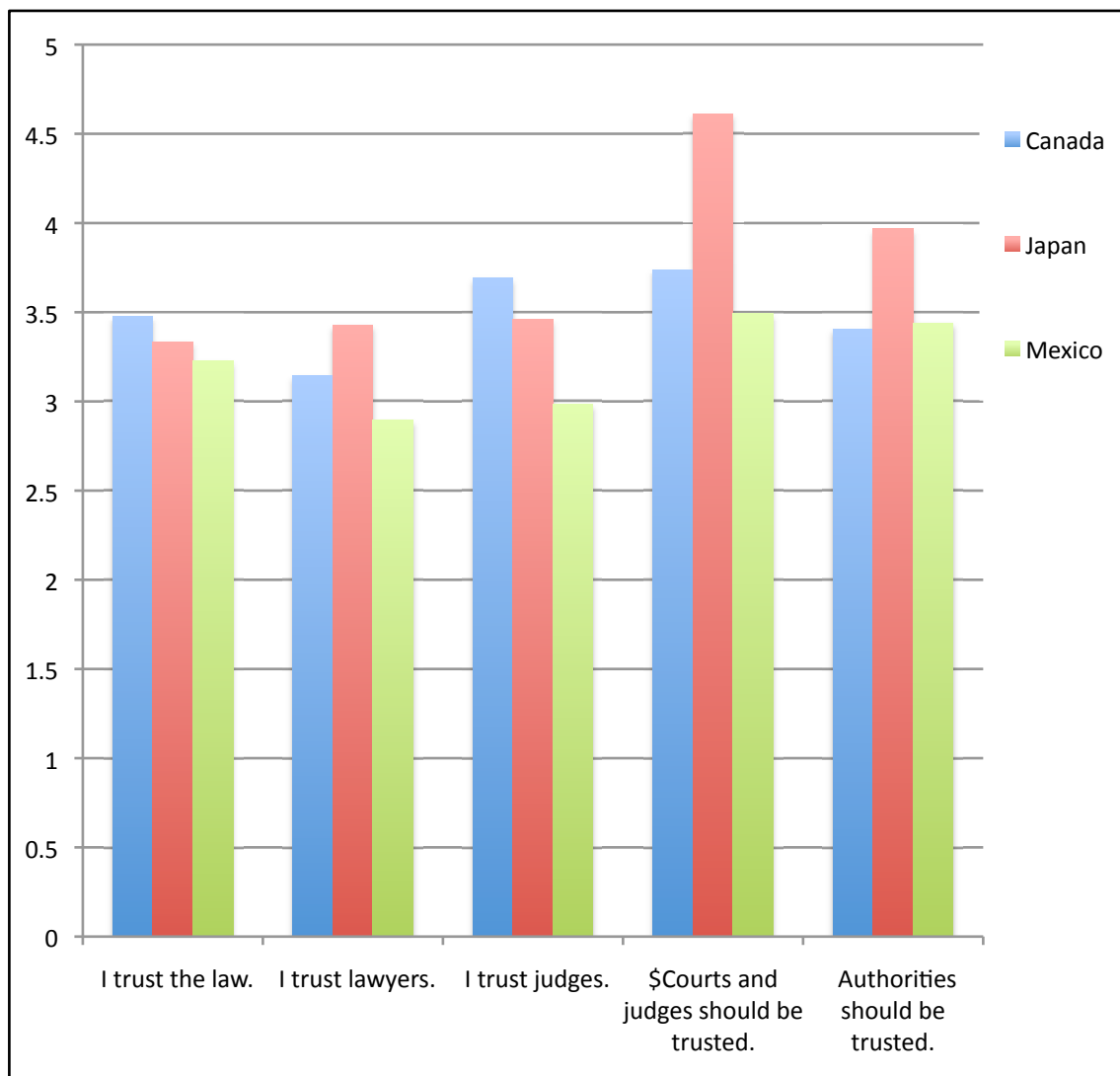
		Canada	Japan	Mexico
37	People in my country understand and use the laws differently depending on their hierarchical status.	3.501	3.499	3.868
38	People in my country understand and use the laws differently depending on their economic status.	3.718	3.449	3.957
39	People in my country understand and use the law differently depending on the ethnic group they belong to.	3.14	3.488	3.762
40	People in my country understand and use the law differently depending on the province/city they are originally from.	2.808	3.3	3.684
41	I think all people in my country understand and use the law similarly.	2.739	2.245	3.153



- Means there is a considerable difference in the ratings among the three countries. (>1)
- Means there is a difference in the ratings among the three countries. ($0.706 - 0.999$)
- Means there is a similarity in the ratings among the three countries. ($0.206 - 0.706$)
- Means there is a considerable similarity in the ratings among the three countries. (<0.206)

Trust

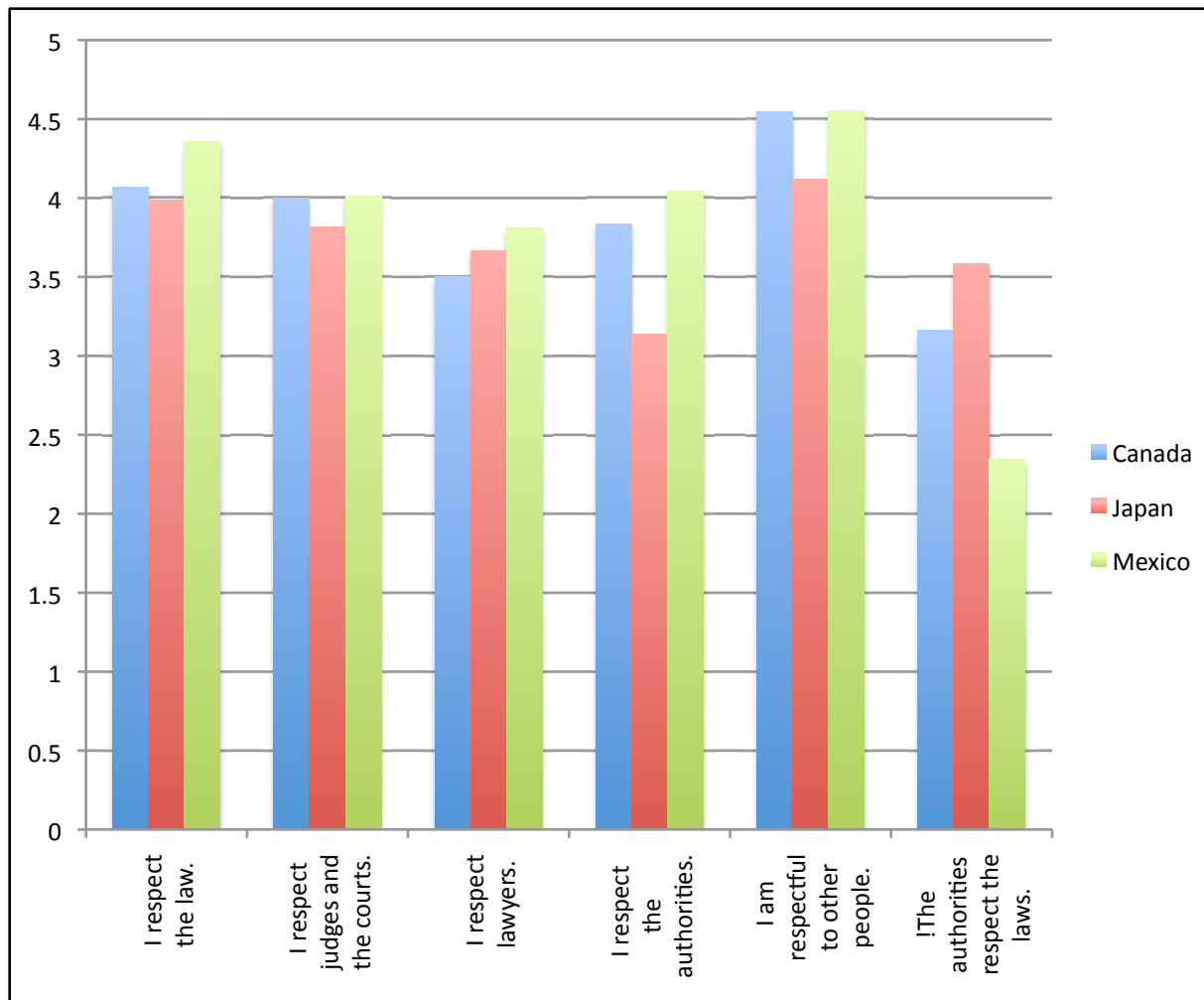
		Canada	Japan	Mexico
12	I trust the law.	3.475	3.333	3.225
13	I trust lawyers.	3.143	3.426	2.895
14	I trust judges.	3.691	3.458	2.985
15	Courts and judges should be trusted.	3.739	4.613	3.492
16	Authorities should be trusted.	3.405	3.968	3.439



- Means there is a considerable difference in the ratings among the three countries. (>1)
- Means there is a difference in the ratings among the three countries. ($0.706 - 0.999$)
- Means there is a similarity in the ratings among the three countries. ($0.206 - 0.706$)
- Means there is a considerable similarity in the ratings among the three countries. (<0.206)

Respect

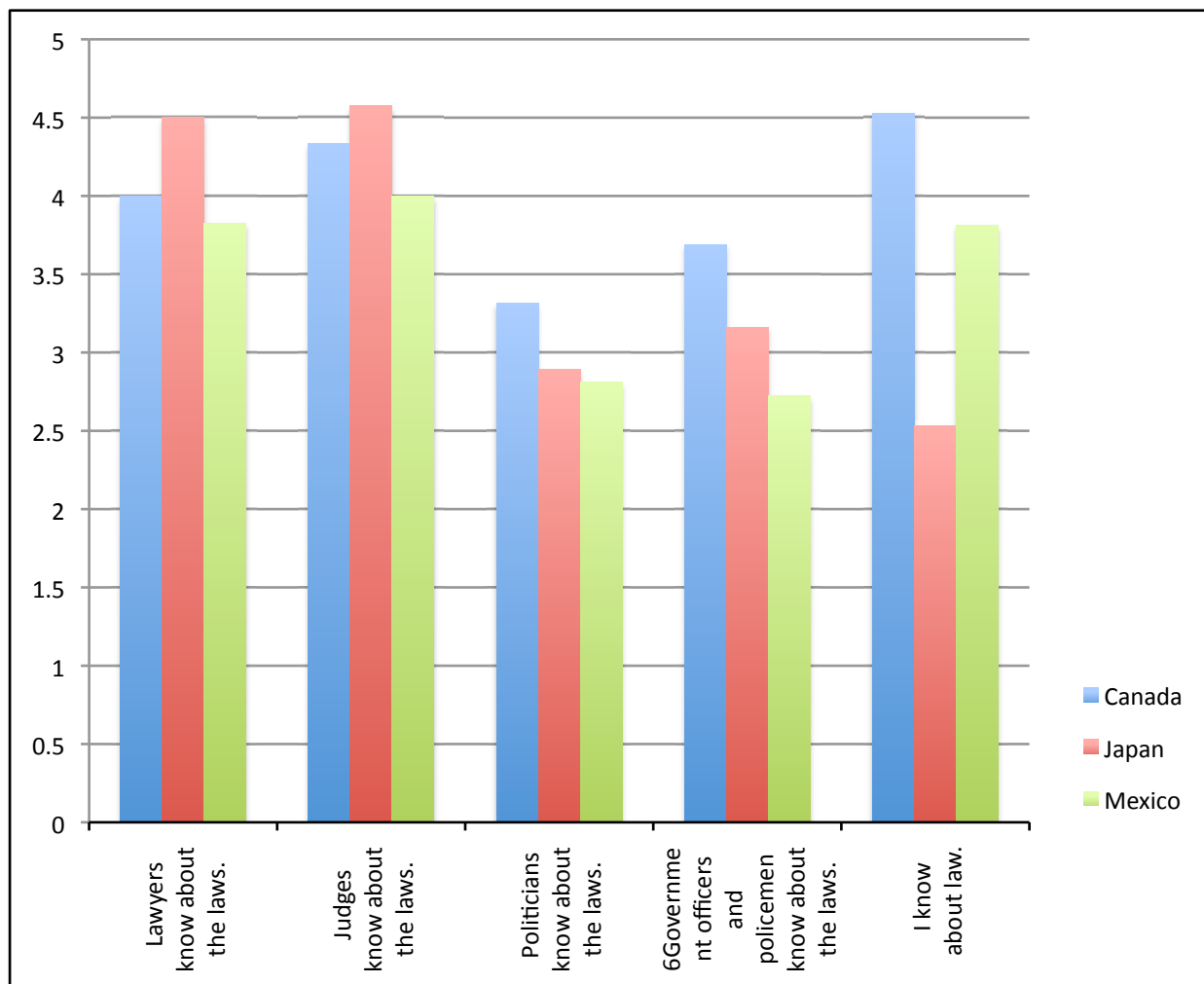
		Canada	Japan	Mexico
17	I respect the law.	4.071	3.988	4.361
18	I respect judges and the courts.	3.999	3.819	4.013
19	I respect lawyers.	3.5	3.668	3.809
20	I respect the authorities.	3.837	3.138	4.044
21	I am respectful to other people.	4.547	4.116	4.556
8	The authorities respect the laws.	3.165	3.585	2.348



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- Means there is a difference in the ratings among the three countries. (0.706 – 0.999)
- Means there is a similarity in the ratings among the three countries. (0.206 – 0.706)
- Means there is a considerable similarity in the ratings among the three countries. (<0.206)

Knowledge

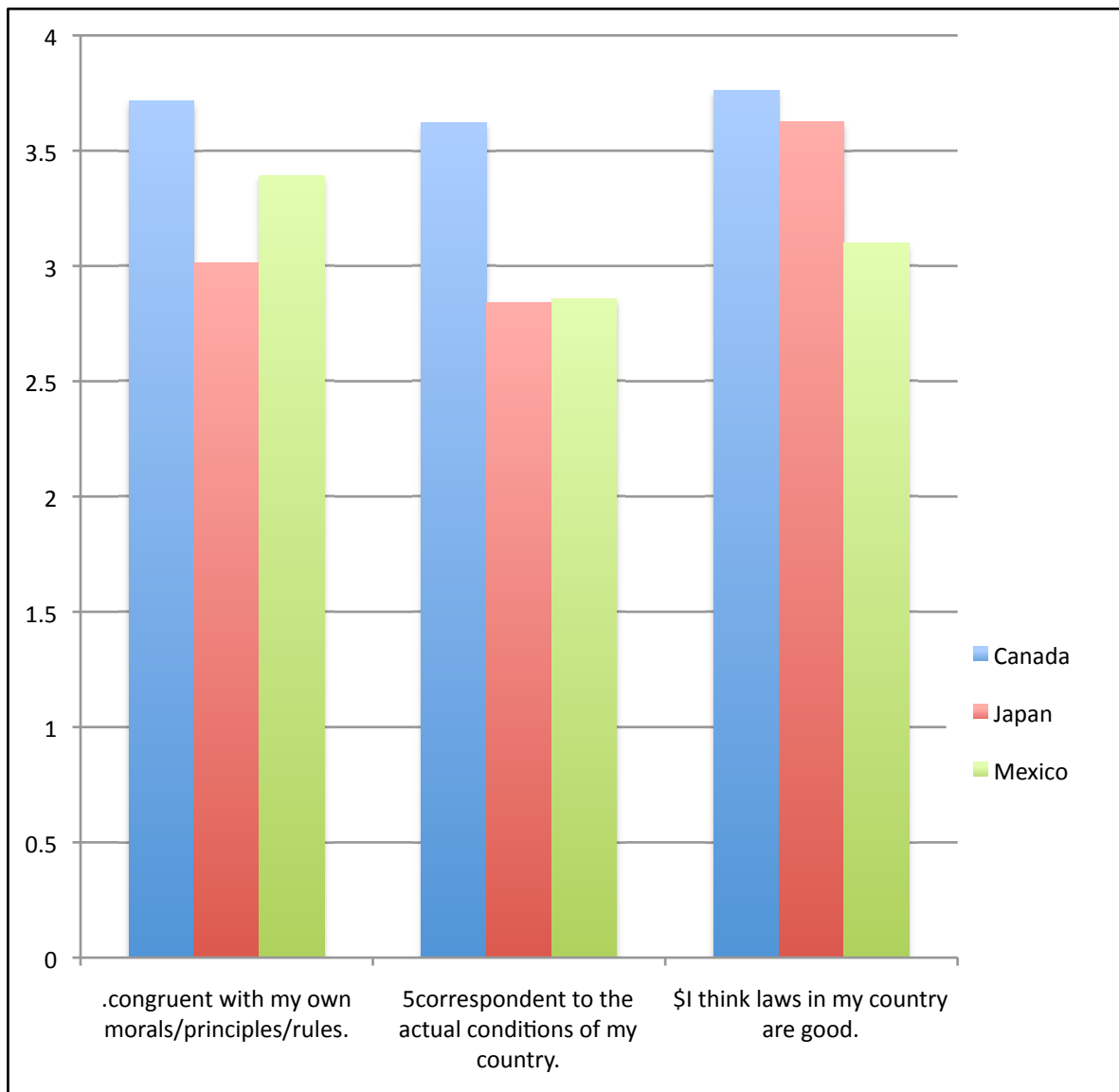
		Canada	Japan	Mexico
4	Lawyers know about the laws.	4	4.5	3.826
5	Judges know about the laws.	4.333	4.577	4.001
6	Politicians know about the laws.	3.313	2.894	2.811
7	Government officers and policemen know about the laws.	3.691	3.16	2.725
1	I know about law.	4.529	2.535	3.814



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- Means there is a difference in the ratings among the three countries. (0.706 – 0.999)
- Means there is a similarity in the ratings among the three countries. (0.206 – 0.706)
- Means there is a considerable similarity in the ratings among the three countries. (<0.206)

Appropriateness

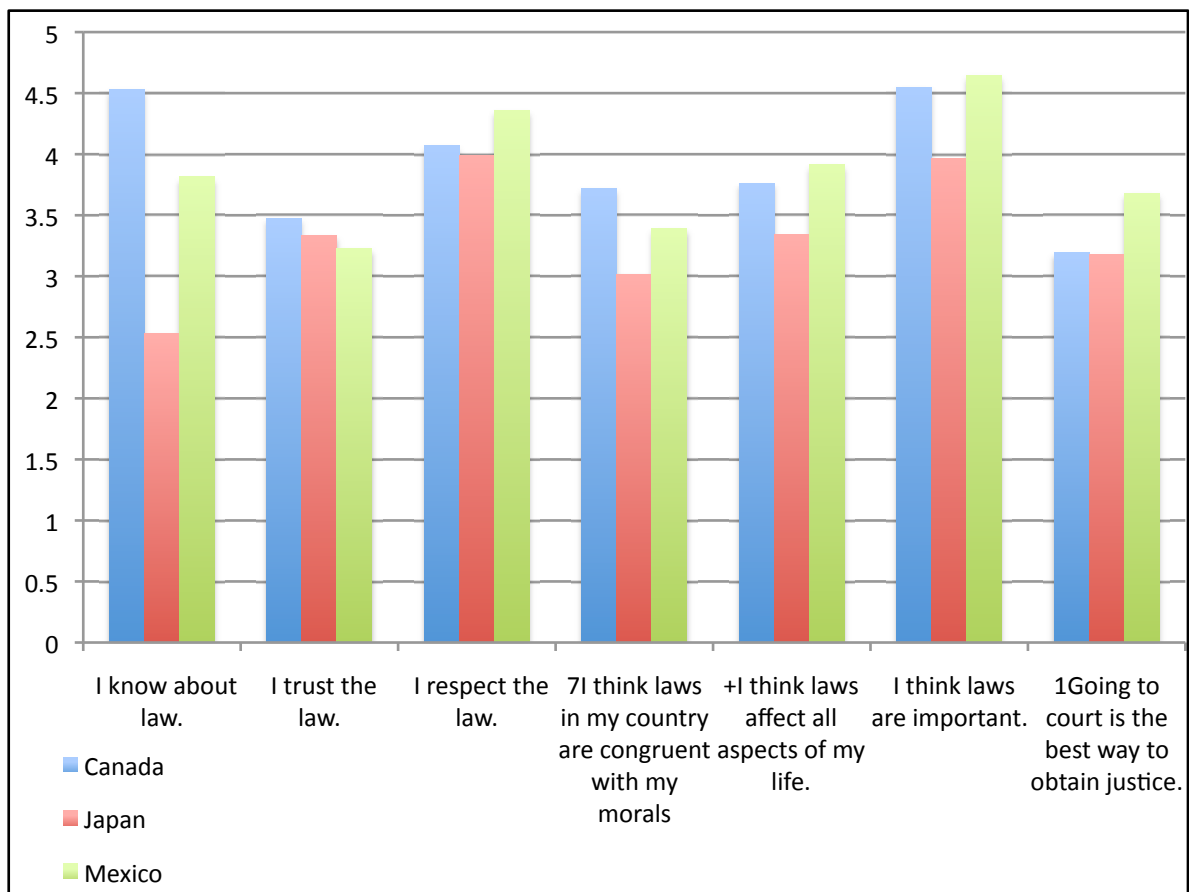
	I think laws in my country are:	Canada	Japan	Mexico
30	congruent with my own morals/principles/rules.	3.715	3.012	3.39
31	correspondent to the actual conditions of my country.	3.622	2.842	2.857
32	I think laws in my country are good.	3.762	3.626	3.099



- Means there is a considerable difference in the ratings among the three countries. (>1)
- Means there is a difference in the ratings among the three countries. (0.706 – 0.999)
- Means there is a similarity in the ratings among the three countries. (0.206 – 0.706)
- Means there is a considerable similarity in the ratings among the three countries. (<0.206)

Closeness

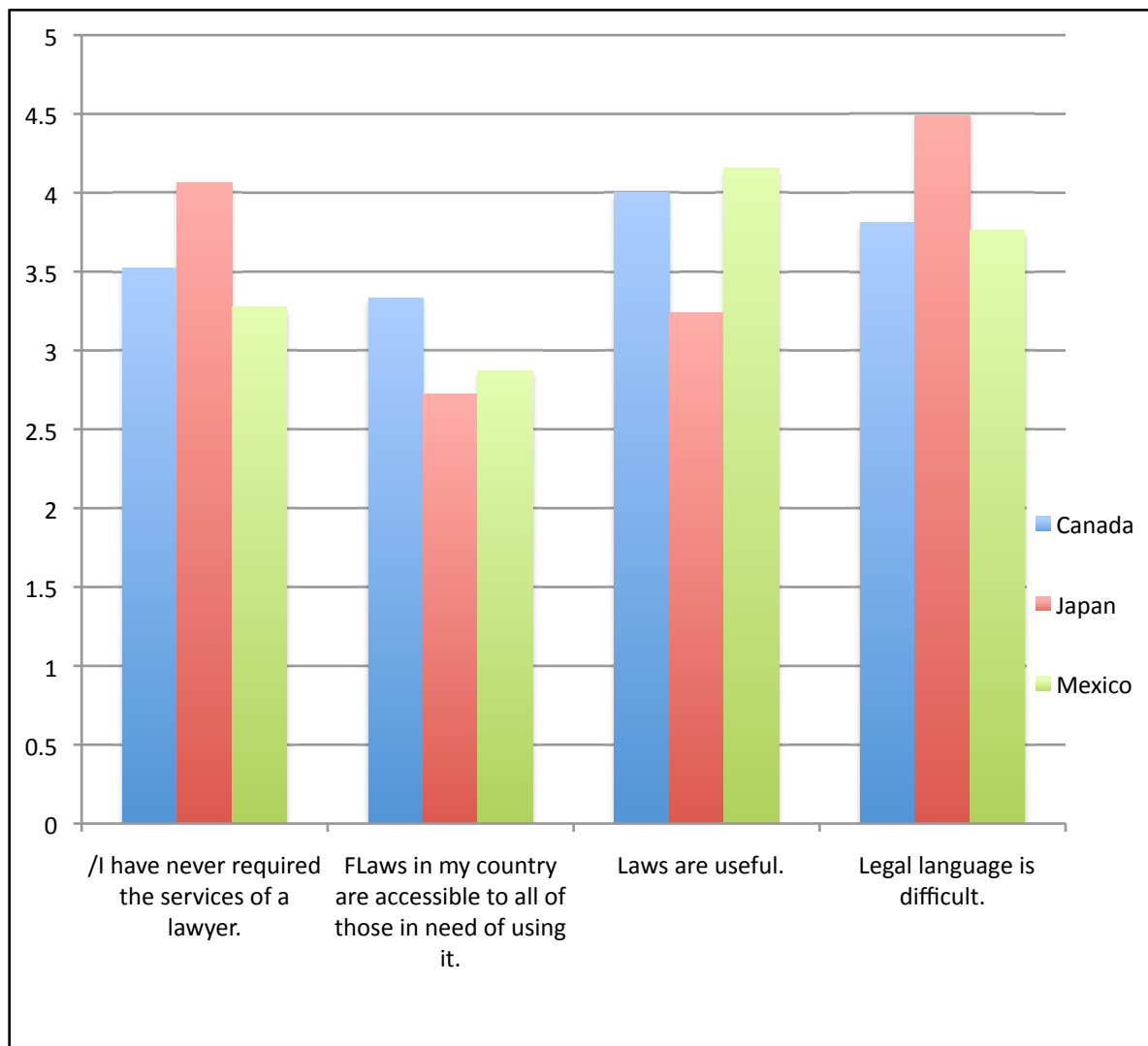
		Canada	Japan	Mexico
1	I know about law.	4.529	2.535	3.814
12	I trust the law.	3.475	3.333	3.225
17	I respect the law.	4.071	3.988	4.361
30	I think laws in my country are congruent with my morals	3.715	3.012	3.39
49	I think laws affect all aspects of my life.	3.763	3.34	3.915
48	I think laws are important.	4.547	3.968	4.646
2	Going to court is the best way to obtain justice.	3.193	3.181	3.681



- Means there is a considerable difference in the ratings among the three countries. (>1)
- Means there is a difference in the ratings among the three countries. (0.706 – 0.999)
- Means there is a similarity in the ratings among the three countries. (0.206 – 0.706)
- Means there is a considerable similarity in the ratings among the three countries. (<0.206)

Accessibility

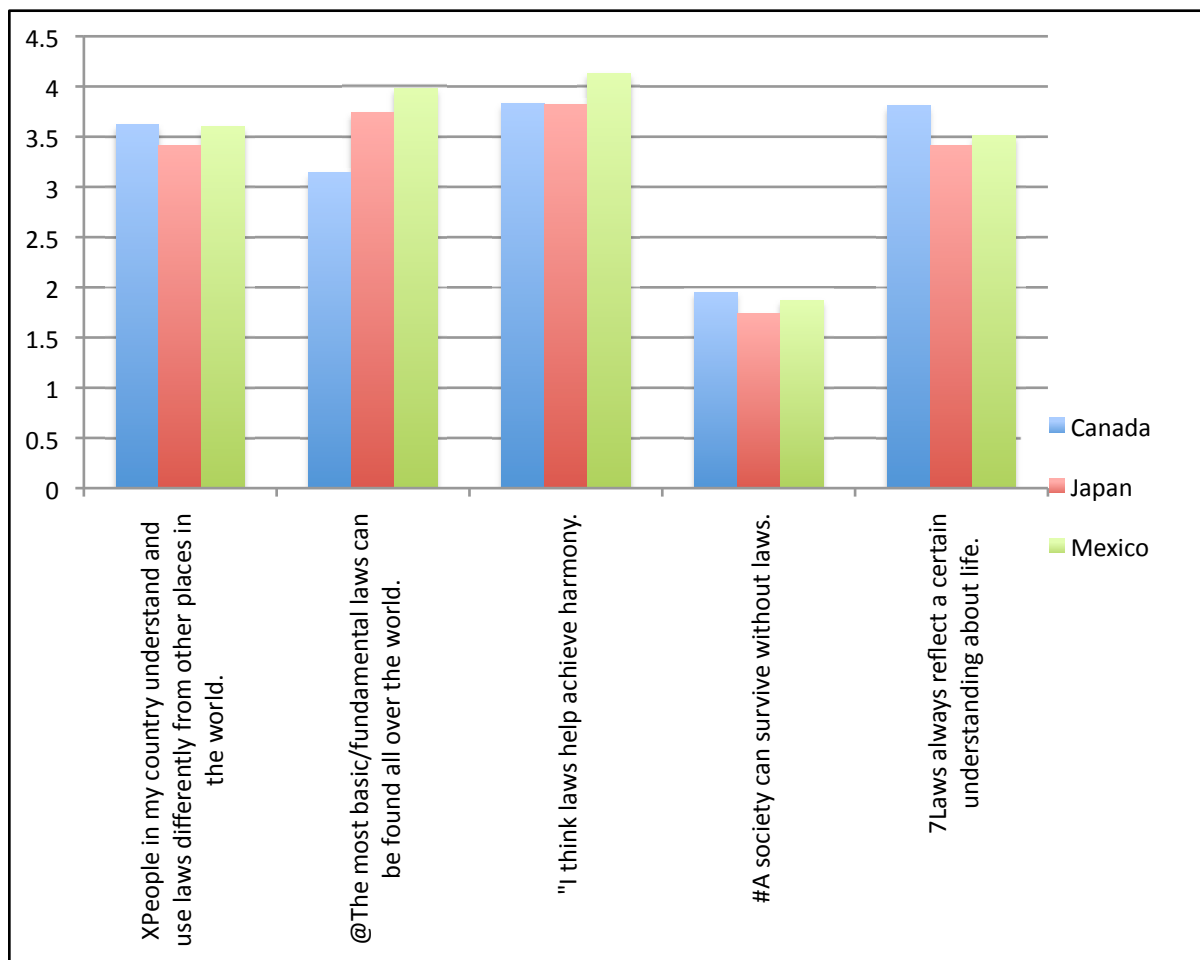
		Canada	Japan	Mexico
10	I have never required the services of a lawyer.	3.524	4.064	3.274
33	Laws in my country are accessible to all of those in need	3.333	2.721	2.874
53	Laws are useful.	4	3.237	4.153
55	Legal language is difficult.	3.81	4.489	3.762



- Means there is a considerable difference in the ratings among the three countries. (>1)
- Means there is a difference in the ratings among the three countries. ($0.706 - 0.999$)
- Means there is a similarity in the ratings among the three countries. ($0.206 - 0.706$)
- Means there is a considerable similarity in the ratings among the three countries. (<0.206)

Opinion about natural law

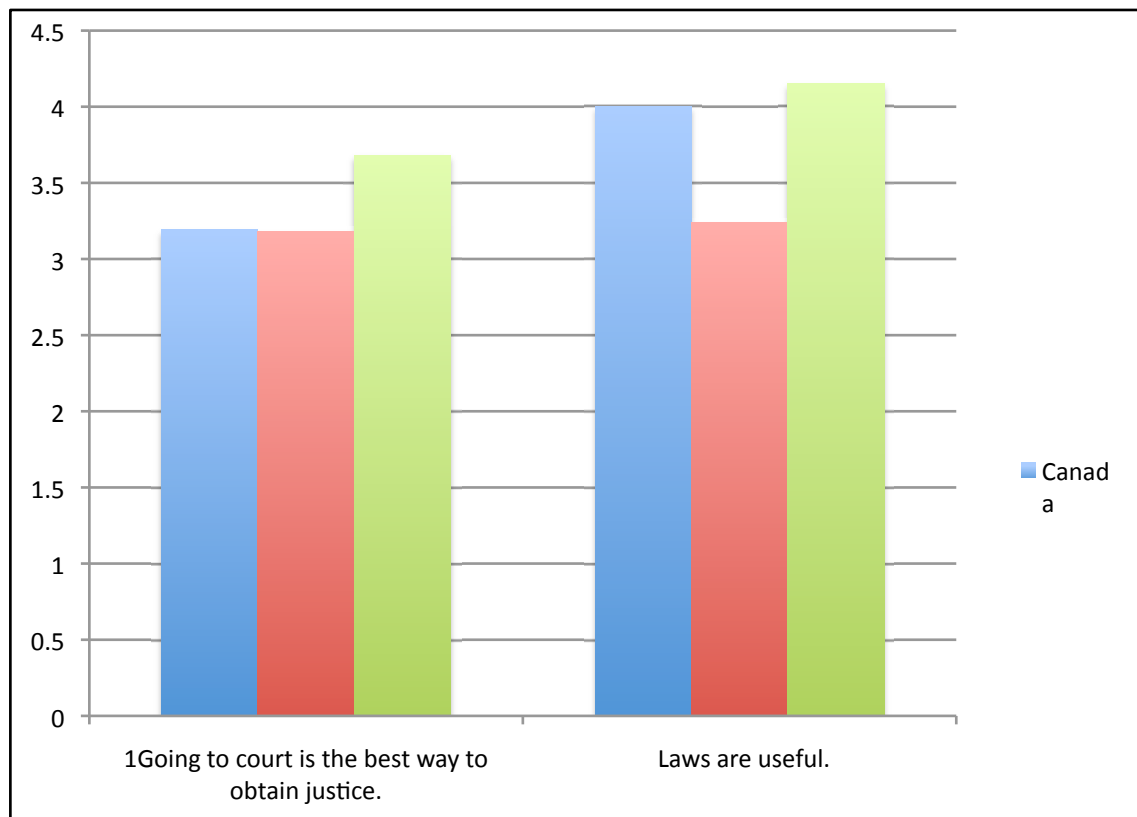
		Canada	Japan	Mexico
42	People in my country understand and use laws differently from	3.62	3.413	3.599
50	The most basic/fundamental laws can be found all over the world.	3.14	3.746	3.985
52	I think laws help achieve harmony.	3.829	3.821	4.134
54	A society can survive without laws.	1.952	1.744	1.87
57	Laws always reflect a certain understanding about life.	3.808	3.408	3.516



- Means there is a considerable difference in the ratings among the three countries. (>1)
- Means there is a difference in the ratings among the three countries. (0.706 – 0.999)
- Means there is a similarity in the ratings among the three countries. (0.206 – 0.706)
- Means there is a considerable similarity in the ratings among the three countries. (<0.206)

Reliance

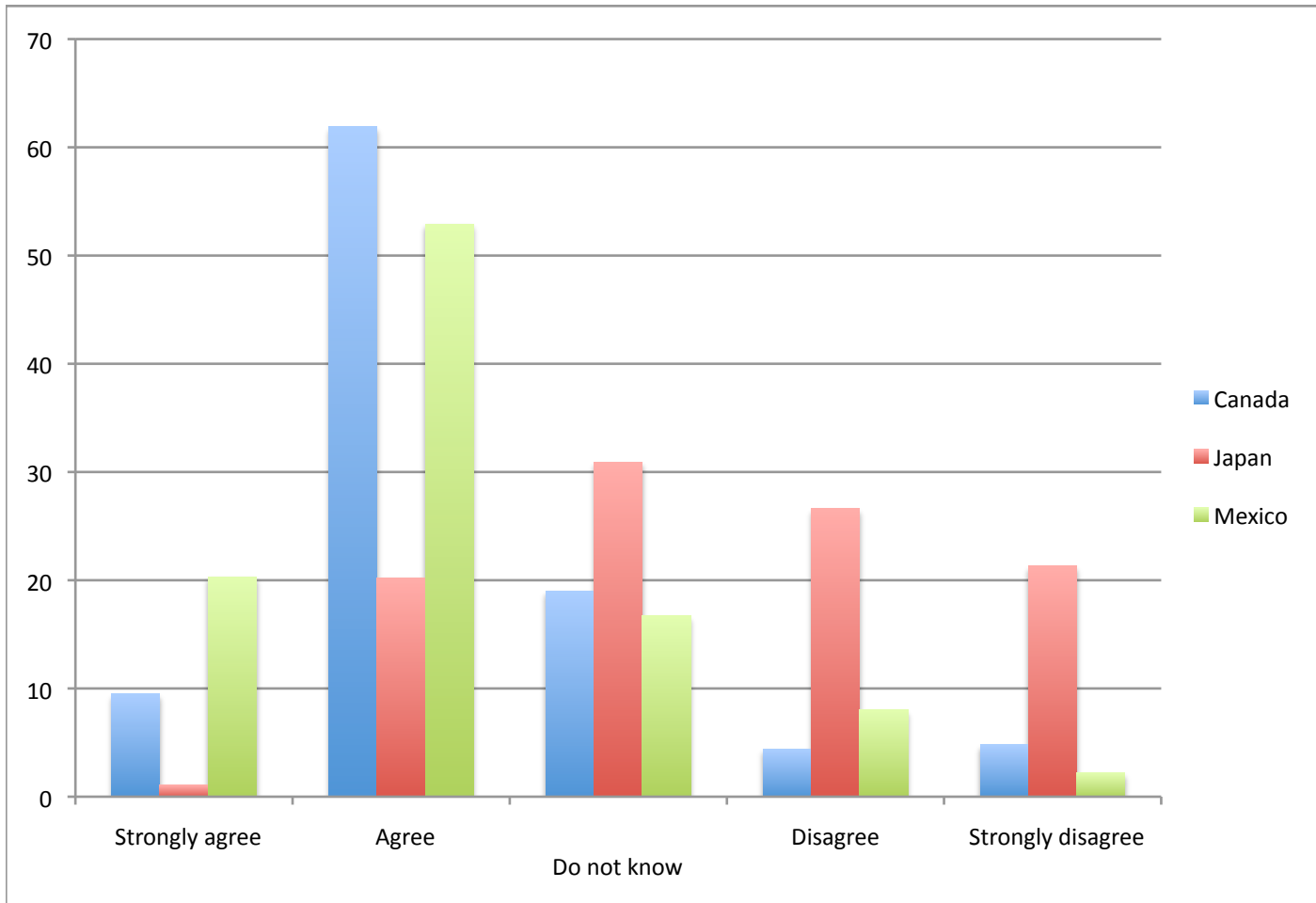
		Canada	Japan	Mexico
2	Going to court is the best way to obtain justice.	3.193	3.181	3.681
53	Laws are useful.	4	3.237	4.153



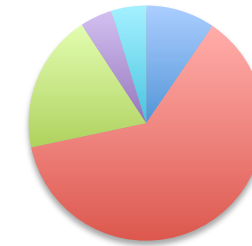
- Means there is a considerable difference in the ratings among the three countries. (>1)
- Means there is a difference in the ratings among the three countries. (0.706 – 0.999)
- Means there is a similarity in the ratings among the three countries. (0.206 – 0.706)
- Means there is a considerable similarity in the ratings among the three countries. (<0.206)

MOST DIFFERENT

1. I know about law					Percentages
	Strongly agree	Agree	Do not know	Disagree	Strongly disagree
Canada	9.5	61.9	19	4.4	4.8
Japan	1.10	20.20	30.90	26.60	21.30
Mexico	20.3	52.9	16.7	8	2.2

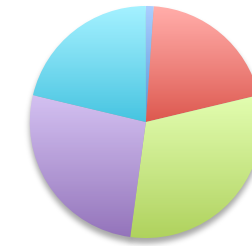


Canada



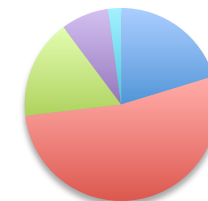
- Strongly agree
- Agree
- Do not know
- Disagree
- Strongly disagree

Japan



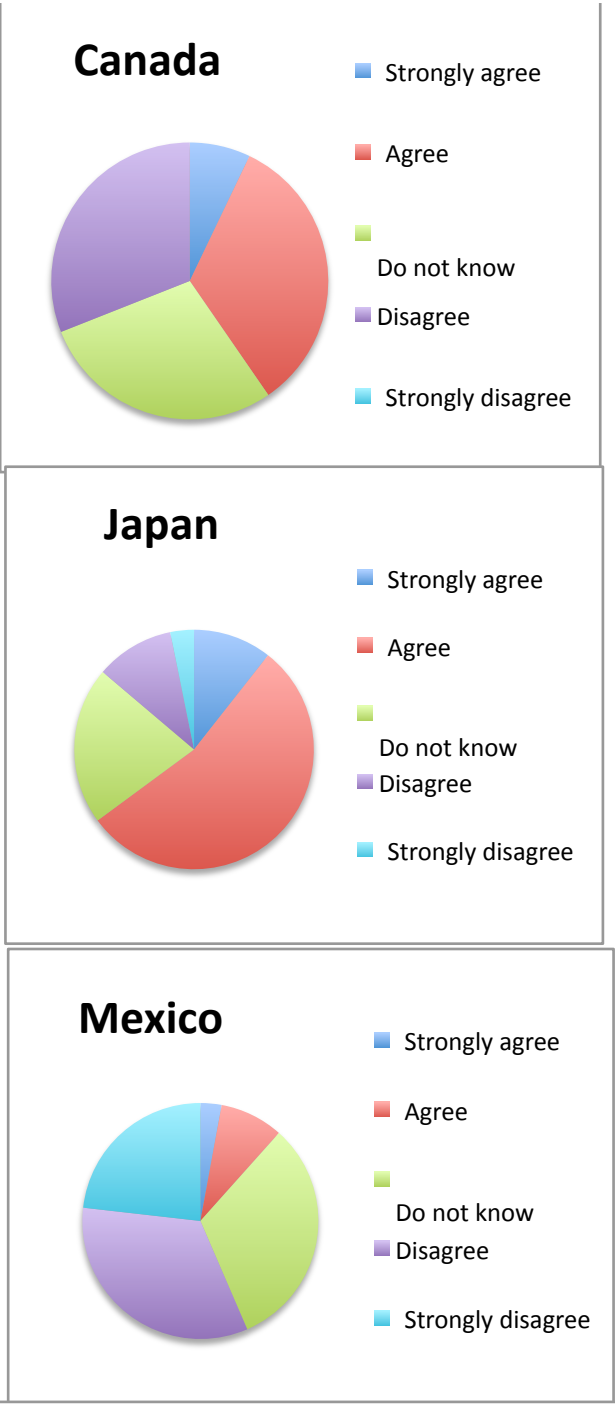
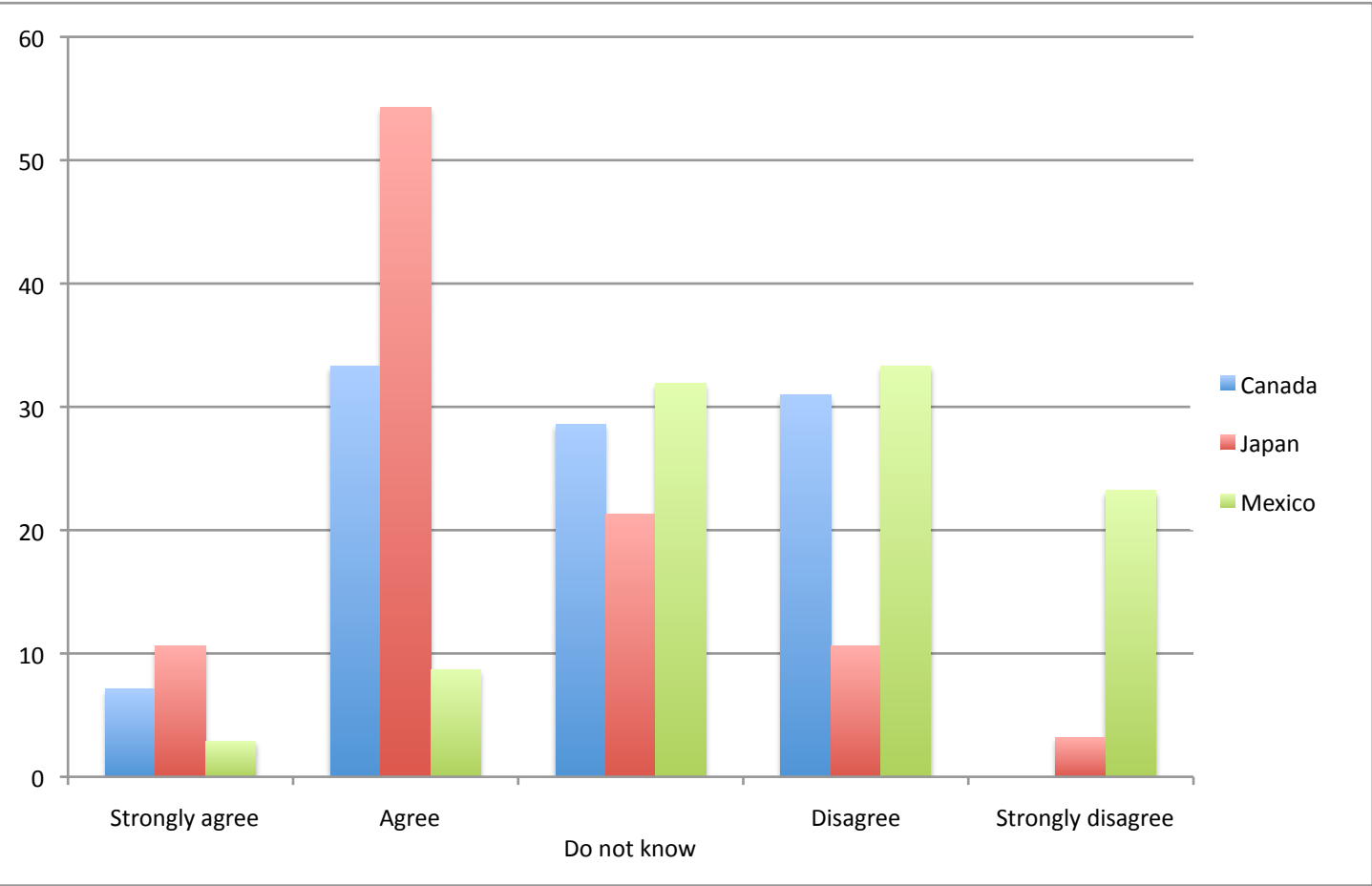
- Strongly agree
- Agree
- Do not know
- Disagree
- Strongly disagree

Mexico

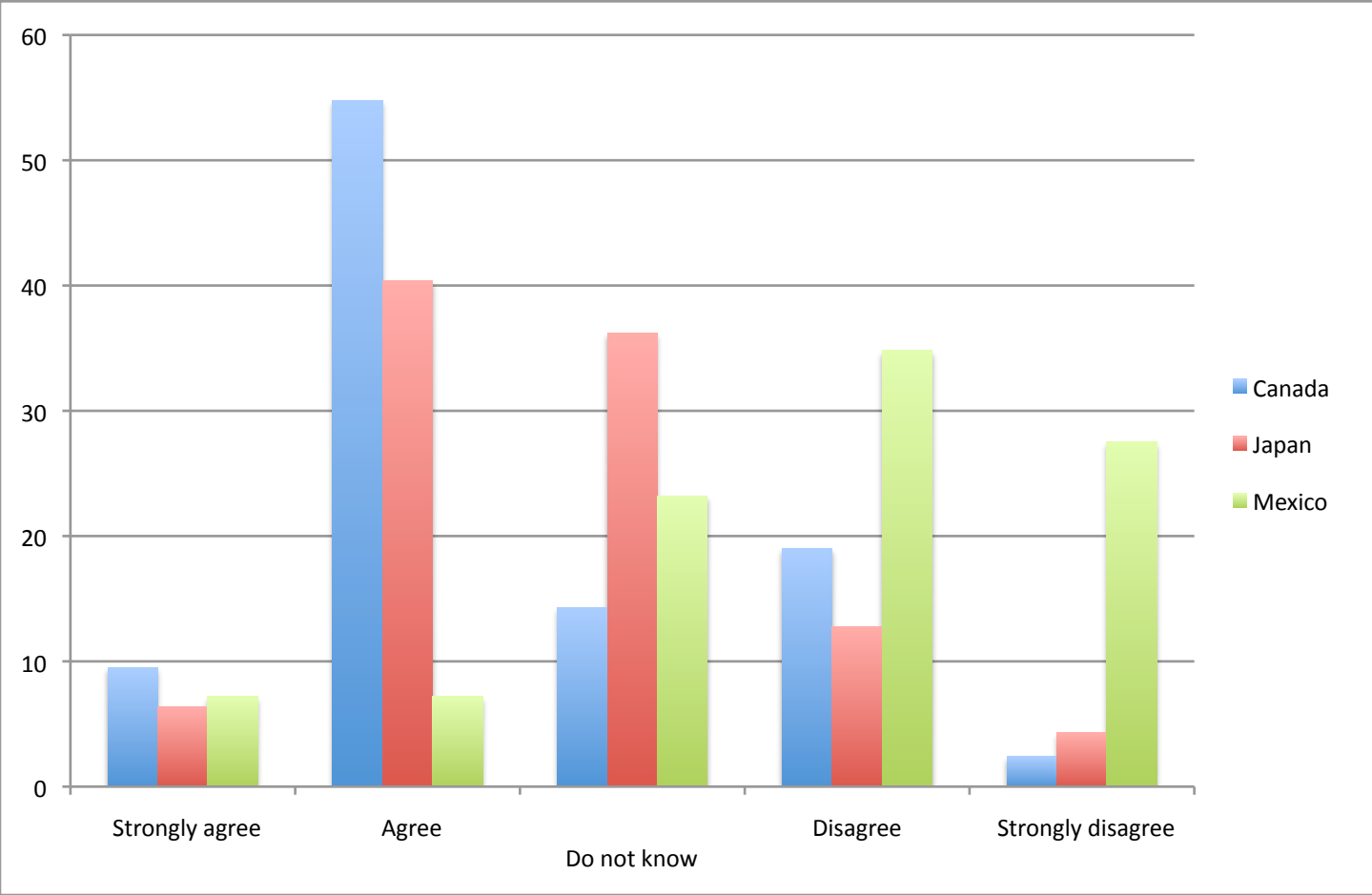


- Strongly agree
- Agree
- Do not know
- Disagree
- Strongly disagree

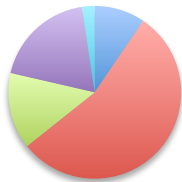
8. The authorities respect the laws.				Percentages	
	Strongly agree	Agree	Do not know	Disagree	Strongly disagree
Canada	7.1	33.3	28.6	31	0
Japan	10.60	54.30	21.30	10.60	3.20
Mexico	2.9	8.7	31.9	33.3	23.2



9. I think laws are effectively applied in my country.					Percentage
	Strongly agree	Agree	Do not know	Disagree	Strongly disagree
Canada	9.5	54.8	14.3	19	2.4
Japan	6.40	40.40	36.20	12.80	4.30
Mexico	7.2	7.2	23.2	34.8	27.5

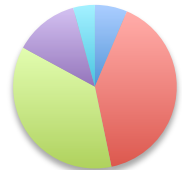


Canada



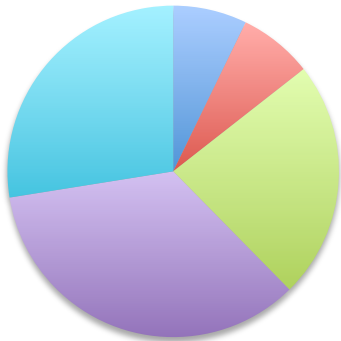
- Strongly agree
- Agree
- Do not know
- Disagree
- Strongly disagree

Japan



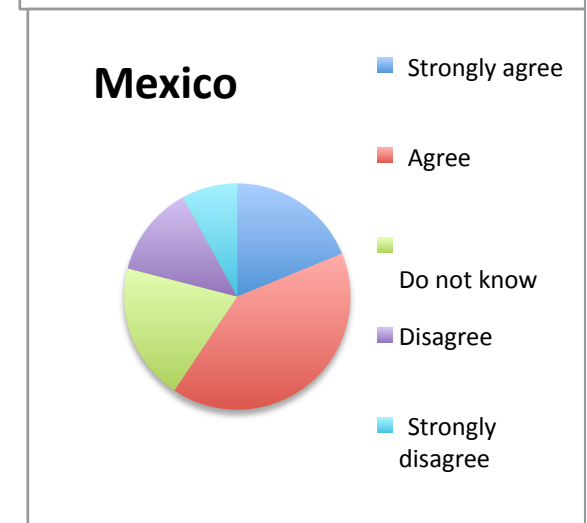
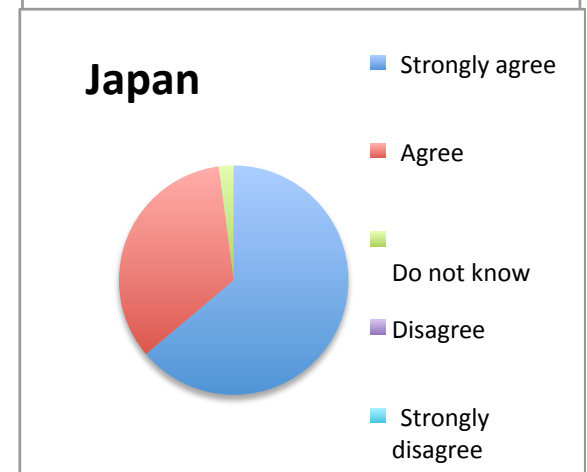
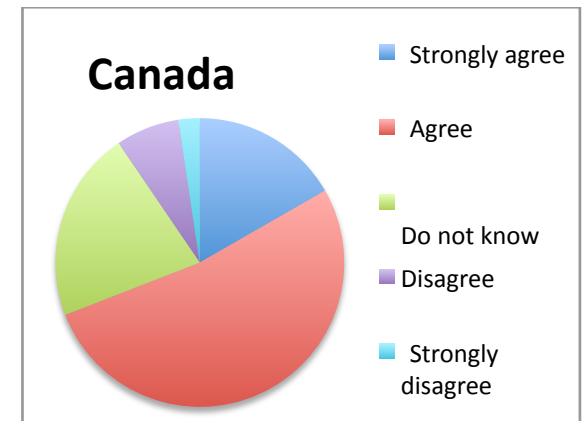
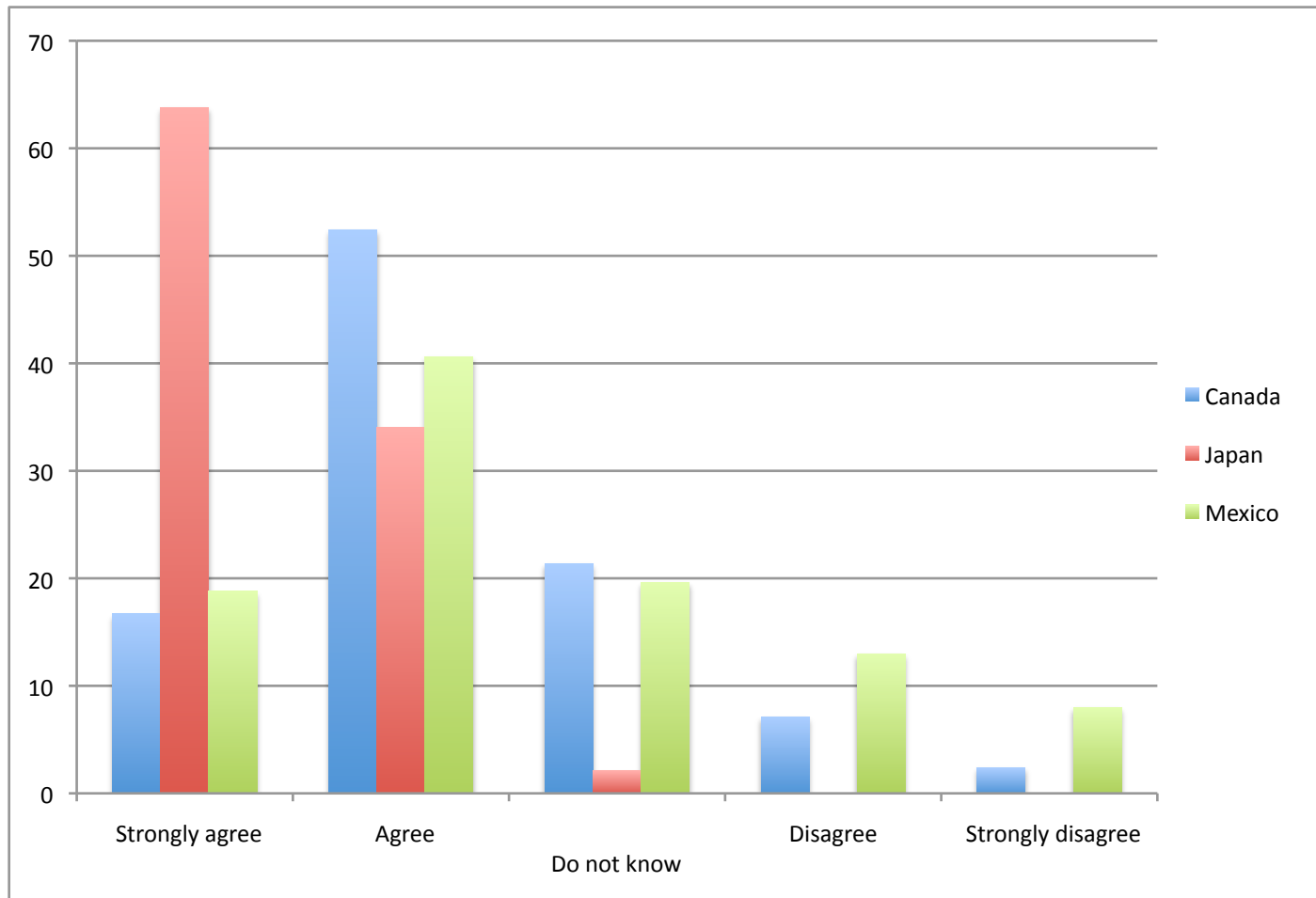
- Strongly agree
- Agree
- Do not know
- Disagree
- Strongly disagree

Mexico



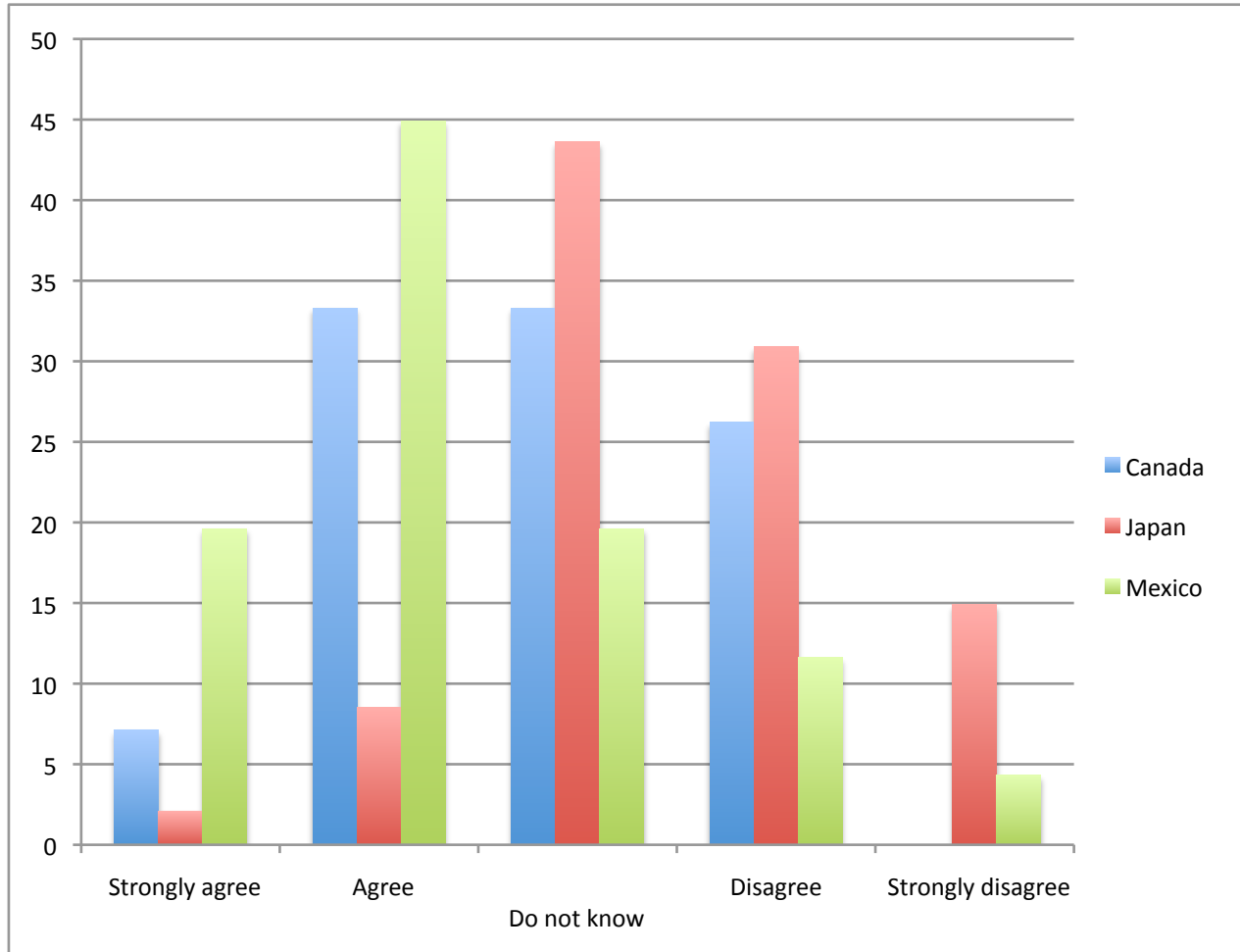
- Strongly agree
- Agree
- Do not know
- Disagree
- Strongly disagree

15. Courts and judges should be trusted.					Percentages
	Strongly agree	Agree	Do not know	Disagree	Strongly disagree
# Canada	16.7	52.4	21.4	7.1	2.4
Japan	63.8	34	2.1	0	0
Mexico	18.8	40.6	19.6	13	8

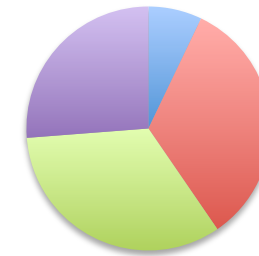


MOST DIFFERENT

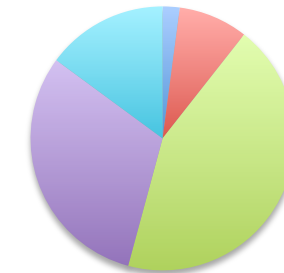
36. I think some laws have been imposed on my country.					Percentages
	Strongly agree	Agree	Do not know	Disagree	Strongly disagree
Canada	7.1	33.3	33.3	26.2	0
Japan	2.1	8.5	43.6	30.9	14.9
Mexico	19.6	44.9	19.6	11.6	4.3



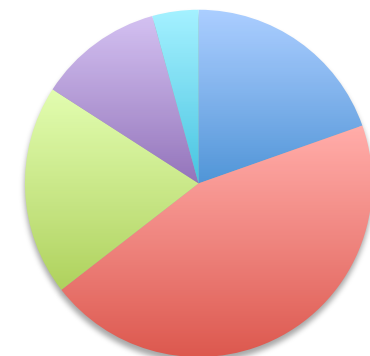
Canada



Japan

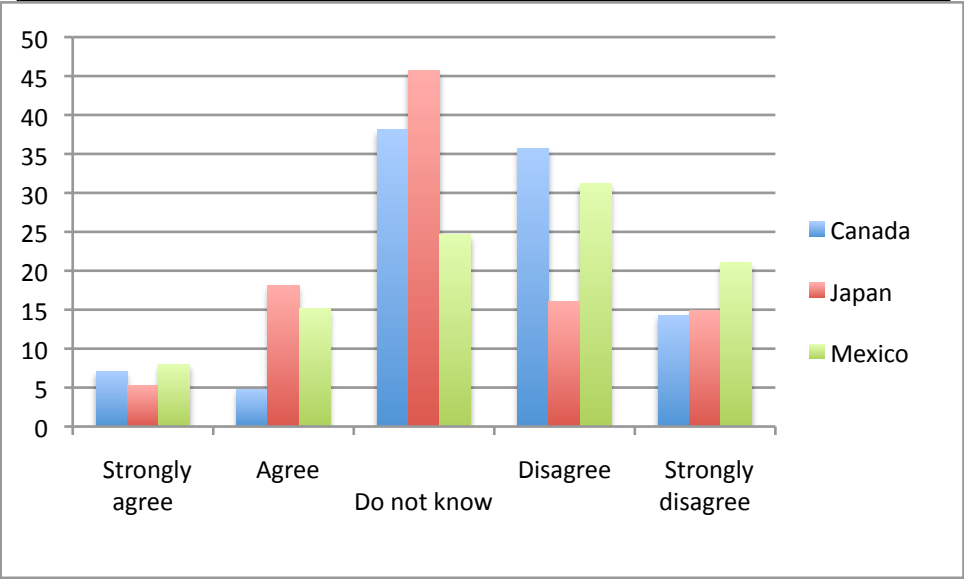


Mexico

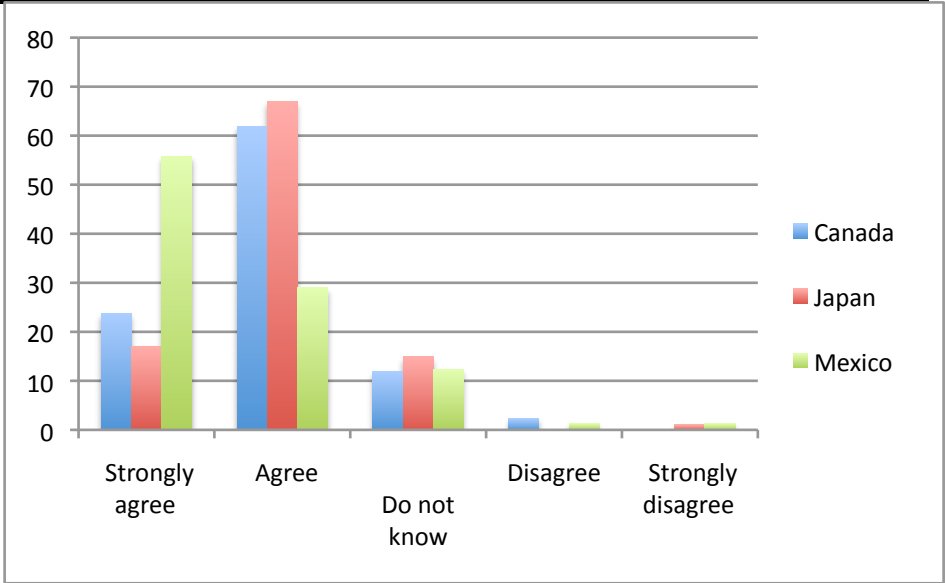


MOST SIMILAR

11. I think I will never need the service of a lawyer.					Percentages
	Strongly agree	Agree	Do not know	Disagree	Strongly disagree
Canada	7.1	4.8	38.1	35.7	14.3
Japan	5.3	18.1	45.7	16	14.9
Mexico	8	15.2	24.6	31.2	21



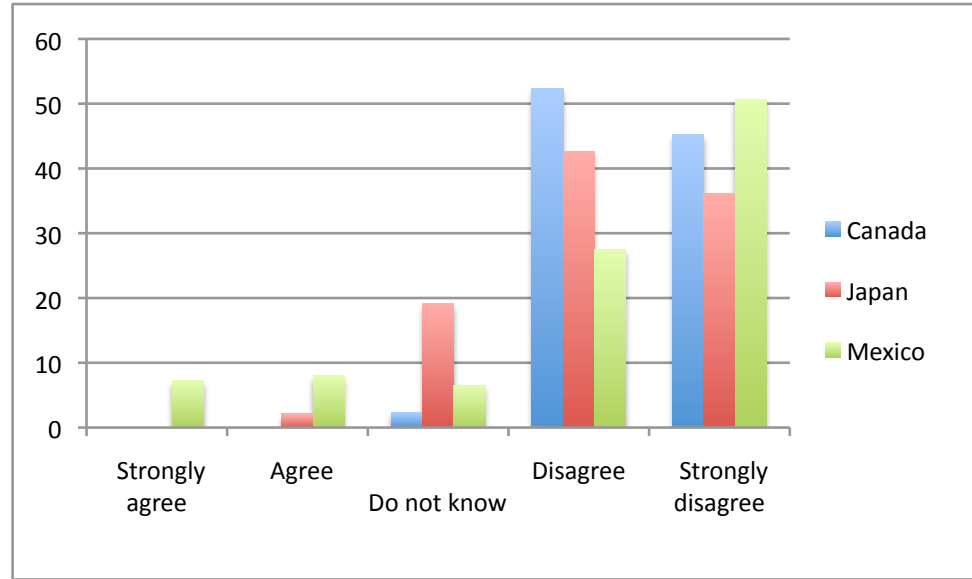
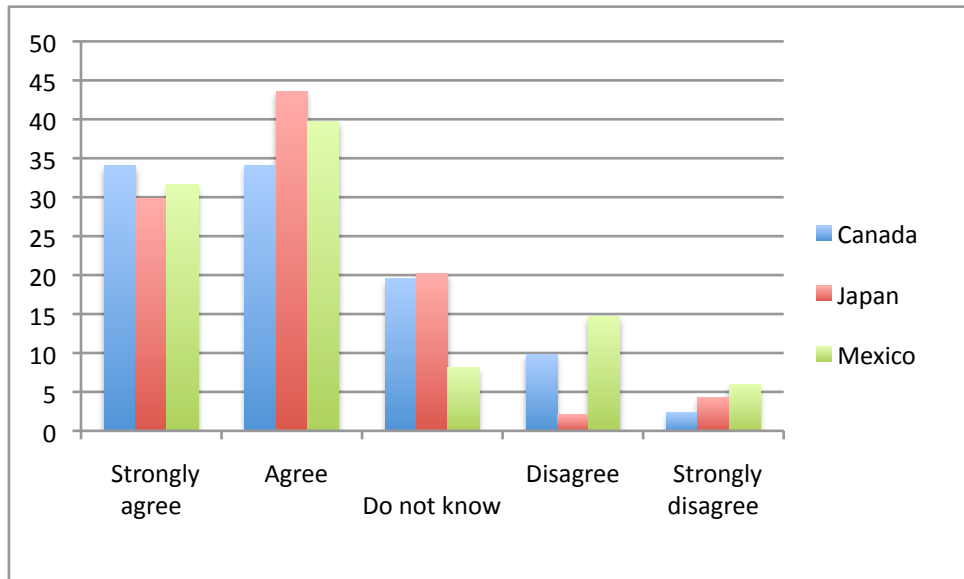
17. I respect the law.					Percentages
	Strongly agree	Agree	Do not know	Disagree	Strongly disagree
Canada	23.8	61.9	11.9	2.4	0
Japan	17	67	14.9	0	1.1
Mexico	55.8	29	12.3	1.4	1.4



MOST SIMILAR

29. I obey the law in the same degree as the members of					Percentages
	Strongly agree	Agree	Do not know	Disagree	Strongly disagree
# Canada	34.1	34.1	19.5	9.8	2.4
Japan	29.8	43.6	20.2	2.1	4.3
# Mexico	31.6	39.7	8.1	14.7	5.9

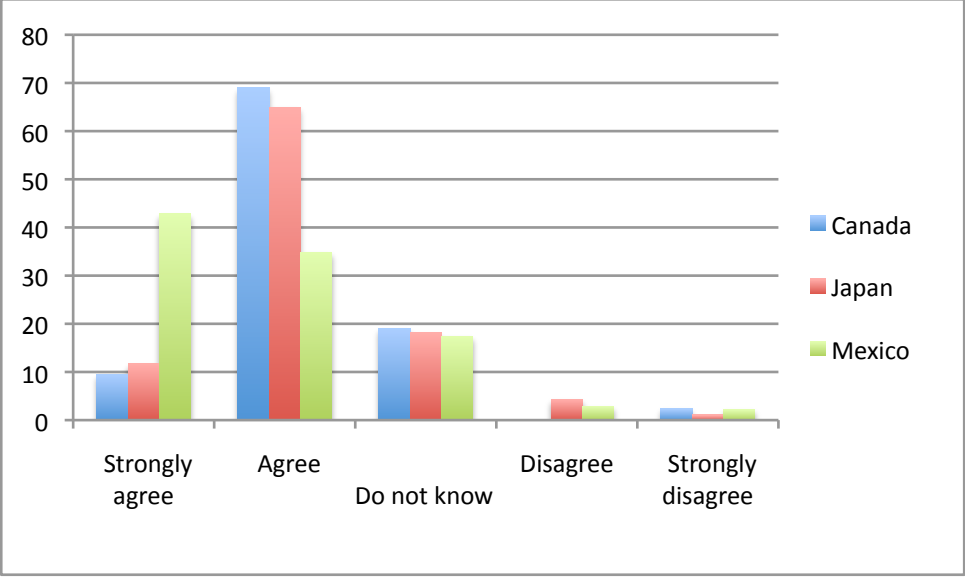
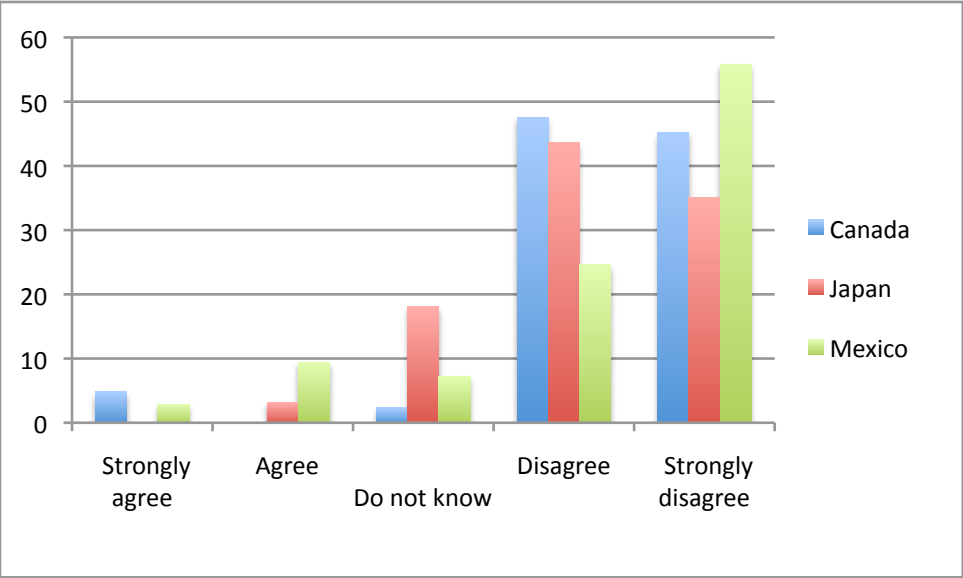
47. I think laws are none of my business.					Percentages
	Strongly agree	Agree	Do not know	Disagree	Strongly disagree
Canada	0	0	2.4	52.4	45.2
Japan	0	2.1	19.1	42.6	36.2
Mexico	7.2	8	6.5	27.5	50.7



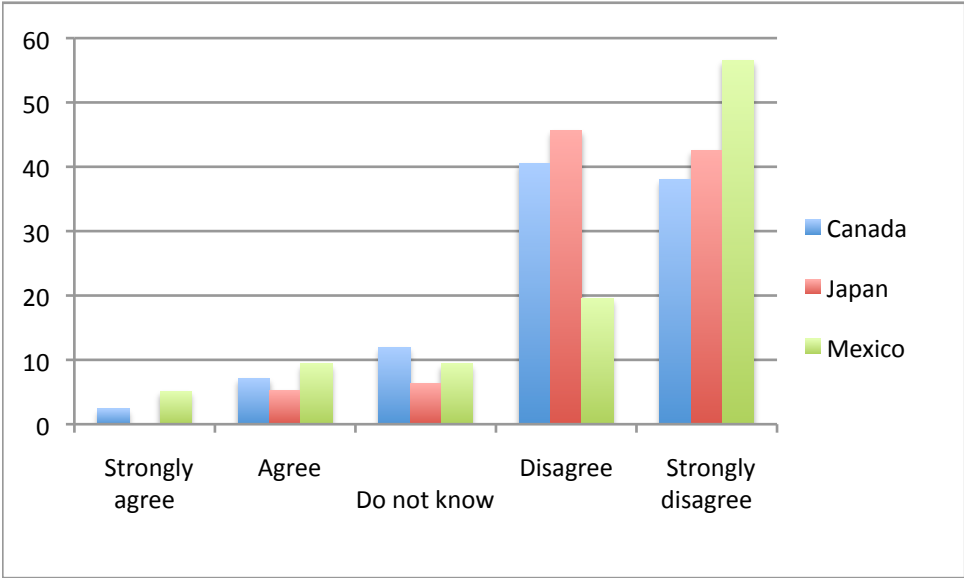
MOST SIMILAR

51. I think the idea of the law is essentially bad.					Percentages
	Strongly agree	Agree	Do not know	Disagree	Strongly disagree
Canada	4.8	0	2.4	47.6	45.2
Japan	0	3.2	18.1	43.6	35.1
Mexico	2.9	9.4	7.2	24.6	55.8

52. I think laws help achieve harmony					Percentages
	Strongly agree	Agree	Do not know	Disagree	Strongly disagree
Canada	9.5	69	19	0	2.4
Japan	11.7	64.9	18.1	4.3	1.1
Mexico	42.8	34.8	17.4	2.9	2.2



54. A society can survive without laws.					Percentages
	Strongly agree	Agree	Do not know	Disagree	Strongly disagree
Canada	2.4	7.1	11.9	40.5	38.1
Japan	0	5.3	6.4	45.7	42.6
Mexico	5.1	9.4	9.4	19.6	56.5



56. Legal language is different from the normal language					
	Strongly agree	Agree	Do not know	Disagree	Strongly disagree
Canada	31	54.8	4.8	7.1	2.4
Japan	40.6	43.6	7.4	3.2	2.1
Mexico	40.6	40.6	8	5.1	5.8

