

**VIOLENCE, NEOLIBERAL LEGALITY, AND HUMAN RIGHTS AS  
POLITICS OF CONTESTATION IN MEXICO**

by

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## **Abstract**

This thesis focuses on the co-existence of the human rights legal framework with violence in Mexico between 2006 and 2017. I will argue that this is due to the limitations of the Mexican human rights framework which was shaped by the context of neoliberalism. Parallely, human rights have become a field of contention that has served as a means for social movements to use the language of human rights to challenge neoliberal legality or for the state to repress social movements. An example of the latter can be seen in the struggle carried out by the Movement for our Disappeared in Mexico to achieve a broader protection of their economic and social human rights, and the response of the Mexican state with the enactment of Internal Security Law which expands state's power to repress social movements.

*To my family, for their endless support, encouragement and love*

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## Introduction

After the 'War on Drugs' was declared in 2006 the number of human rights violations increased dramatically in Mexico. While the numbers were growing, paradoxically, in 2011 the most important human rights constitutional reform in contemporary history was enacted. The enactment of the reform did not solve violence in Mexico, and after 12 years of the beginning of the war and 7 years of the promulgation of the reform, violence in Mexico has not been eradicated. However, the mobilization of civil society has been also important in Mexico, as some social groups have made significant changes to achieve a broader protection of their human rights. The case of Mexico is interesting and unique because it is a non-authoritarian country that is formally at peace. Yet, Mexico is the second most dangerous country in the world, as the number of homicides is higher than in countries such as Afghanistan and Somalia (DW 2017).

So, how and why can violence coexist with the human rights regime that evolved since the 1990s and consolidated itself in the 2011 constitutional reform on human rights in Mexico? What are the political processes behind this co-existence and how do legal mechanisms reflect political domination and contestation in Mexico? How and in what ways does the law work as a field of contestation, with potential to either affirm and extend state power or to affirm and extend human rights and social justice claims in ways that contain and limit state power?

In order to answer the questions raised above, it is necessary to move beyond mainstream studies that focus on the weakness of the Mexican state as the main reason behind the coexistence of violence and human rights. It is important to understand the interplay of the state as a site of political struggle, permeated by the balance of class forces within a given society (Poulantzas 2000), with neoliberalism and human rights. Neoliberalism is understood in this thesis as a historic specific class project and set of state policies that promotes individual freedoms, private property rights, free markets, and free trade (Harvey 2005). Human rights are considered as set of rights that aim at protecting every person “with regard to his life, freedom, equality, political and social participation, or any other fundamental aspect that affects his integral development as a person” (Bidart Campos 1989, 233). As human rights are also political demands for emancipation from domination and oppression they become a valuable tool to confront structures of power and privilege

These concepts are central to an understanding of Mexico’s contemporary violence from a critical economic political and legal perspective. Through these concepts, the thesis shows that the co-existence of a human rights legal framework with violence in Mexico between 2011 and 2018 is due to the limitations of the Mexican human rights framework in effectively protecting individual and collective political, civil, social and economic rights. These limitations were shaped by its emergence in the context of neoliberalism. The existing human rights legal framework emerged in Mexico as a way to legitimize

the neoliberal model throughout the 1990s and the 2000s to promote neoliberal legality. The latter involves the use of the law to protect private property rights, free markets, and free trade. At the same time, human rights are a field of contention and contestation that has served as a means for social movements to use the language of human rights to achieve progressive change and challenge neoliberal legality in Mexico.

### *Violence and the 'War on Drugs' in Mexico*

On Monday December 11, 2006, the Mexican government announced the Operativo Conjunto Michoacán (Joint Operation Michoacán), which marked the beginning of the fight against organized crime in Mexico, the so-called "War on Drugs." According to official data, around 7000 troops from Federal Police, Mexican Army and Navy were deployed in 2006 (Presidencia de la República 2006). The "War on Drugs" emerged in the aftermath of the 2006 presidential elections when Felipe Calderón Hinojosa (2006-2012) won a highly competitive election among allegations of electoral fraud (by a margin of .56%, that is, 233,831 votes). This war aimed at the intervention of the armed forces to dismantle criminal organizations and seize drug shipments (Pereyra 2012, 446). From President Felipe Calderón's inauguration on December 1, 2006 to September 30, 2011, there were over 47,500 documented organized crime-related homicides. In 2006, one drug-related homicide occurred every four hours. By 2011, there was one murder every 30 minutes (Molzahn, Rios and Shrik 2012, 3; Heinle, Rodríguez Ferreira and Shirk 2017).

In June 2011 a constitutional reform on human rights was published in the Federal Official Gazette (Plascencia 2011, 6). This reform changed the human rights paradigm in Mexico as it focused on recognizing human rights in the Constitution (formely known as Individual Guarantees). More specifically, it created a new institutional design for state organizations authorized to protect and defend human rights, and giving international human rights treaties constitutional rank (Pereyra 2012).

Despite the constitutional reform, violence related to organized crime and human rights violations by Mexico's security forces did not cease. From June 2011 to December 2017, 130,997 homicides were committed (Executive Secretariat of the National Security System 2018). The Secretariat of Interior declared 2017 as the most violent year on record in Mexico. There were 25,340 files for murder investigations, 23% more than in 2016 (Executive Secretariat of the National Security System 2018). The official number of disappeared persons is 37,435, and 92% of those missing persons were disappeared between 2007 and 2018 (National Register of Missing and Disappeared Persons Data 2018)<sup>1</sup>. As such, the constitutional reform did not have a visible and considerable effect in decreasing human rights abuses and violence in Mexico.

In fact, the Inter-American Commission on Human Rights (IACHR) noted in 2017 that disappearances and forced disappearances, extrajudicial

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<sup>1</sup> Official figures as April 2018.

executions, torture, the lack of access to justice, impunity as well as a deterioration of citizen security increased over the last decade (Inter-American Commission on Human Rights 2015, 17). The Inter-American Commission (2015) also explained that:

The militarization of citizen security—attributing to the armed forces roles that properly pertain to civilian police forces—as well as a policy of confronting organized crime and deploying joint operations between the armed forces and state and municipal security institutions in different parts of the country has resulted in an increase in violence and human rights violations, as well as higher levels of impunity.

The National Commission on Human Rights (Comisión Nacional de Derechos Humanos-CNDH) received nearly 10,000 complaints of abuses perpetrated by members of the National Army between 2006 and 2016 (including more than 2,000 during the Peña Nieto's administration 2012-2018). The number of cases where members of the Mexican Army and the Navy were involved in arbitrary executions, torture, forced disappearances or even in clandestine burials increased (Centro Prodh 2018, 58). The National Commission also found that in almost 100 documented cases the military committed serious human rights violations (Human Rights Watch 2017).

#### *Mainstream studies about violence in Mexico*

The existing literature tends to approach violence in Mexico as the result of state weakness, particularly the loss of the Mexican state's monopoly over its legitimate use of violence (Friedman 2010; Friedman 2008; Grayson 2010; Knight 2012; Serrano 2012; Zepeda 2018). These mainstream studies follow the

classical Weberian conception of the state as “an organization that claims a monopoly within a fixed territory over the legitimate use of violence” (Mitchell 1992). The state as the main responsible of protecting its citizens, and the sole source of the right to use physical force, even coercion (Vincent 2010, 159), acted against the drug cartels as they were competing and seeking for its power. The state is also seen as a homogeneous entity that must maintain its monopoly over violence through any means, and in the case of Mexico, through either militarization to fight organized crime or positivization of rights to preserve the rule of law.

Such studies also assume a clear separation between state and society, between the public and the private sphere. Where the public realm is the arena of security and human rights and the private realm is where the economy operates. The state rises as an institution above and outside society, as the guarantor of the common good in ensuring individual rights, that must place constraints on the desire for material gain, and allow the market to operate freely in civil society (Walzer 1984). Explanations provided by the mainstream literature about violence in Mexico are insufficient to address the coexistence of violence, human rights and neoliberal legality, as the separation between the public and private realm automatically depict these three processes as separate from each other, which are unable to intertwine. This connection is necessary to understand what has happened in Mexico during the last decades as it is a country that presents itself as in peace (no official war has been declared) and

as a promoter of human rights, yet the rates of violence are at their highest level ever.

*A novel approach to violence in Mexico*

The period of the study of this analysis is from 1990 to 2017. This period is characterized by the consolidation of the neoliberal model in Mexico through legal changes and constitutional reforms and the simultaneous development of a human rights legal framework. And the 2011 constitutional reform, which gives constitutional status to international human rights treaties, is a milestone in the human rights legal mechanism in Mexico.

This thesis is divided into three chapters. The first chapter presents a thorough literature review on Mexico's violence after 2006 and the response of the Mexican state to insecurity. In contrast to existing approaches that consider that state as an homogeneous and rational entity, the chapter explores a critical notion of the state as the complex materialization of economic, political and social power relations. The chapter also examines neoliberal legality as the specific form and role that law assumes under neoliberalism, facilitating economic relationships based on market mechanisms while restricting social bonds and collective rights. Both the critical notion of the state and the concept of neoliberal legality allow us to understand the coexistence of violence and the human rights framework set by the 2011 constitutional reform. These concepts show how the law is not a neutral mechanism but rather a reflection of relations

of domination as well as a field of struggle. This new approach offers an understanding of the ways the law can be used by different social forces, including the human rights legal mechanisms, to legitimize the neoliberal agenda and protect the private property and the sanctity of the contracts.

The second chapter discusses the development of the human rights legal framework in Mexico and its relationship with the neoliberal model after 1990. This is a period of Mexico's history characterized by the signing of the North American Free Trade Agreement (NAFTA), social upheaval of indigenous and popular populations against the government, social repression as well as the development of human rights institutions created by the Mexican state. The 2011 constitutional reform and the socio-political processes that led to it will also be analyzed in detail, in order to understand that human rights can become an instrument of dominant forces within the state to legitimize the neoliberal State. The above unravels the connection and parallel development of human rights, neoliberalism and violence in Mexico, illustrating how the state uses the law to enforce the neoliberal agenda (leading to violence and social unrest), while human rights are used as a legitimation tool.

The last chapter addresses human rights through the politics of contestation in Mexico after the enactment of the 2011 constitutional reform. It shows how subordinated groups managed to achieve important victories in the field of human rights. One of the most important examples is the approval and enactment of the 2017 General Law on Forced Disappearance of Persons,

Disappearances Committed by Individuals and the National System for the Search of Persons which brings broader protection to the rights of disappeared persons and their families. This example shows how the language of human rights is also a field of struggle and a space to make political demands by different groups, including subordinated ones. This chapter also analyzes the actions of the Mexican State to stop the advancement of civil society on human rights issues, through the approval of the Internal Security Law with which the army is given public security tasks. These two examples show how the law can be used either to resist, as in the case of the General Law on Forced Disappearance or contain social demands, as in the case of the Internal Security Law.

This is an historical and legal account on the ways law is shaped by different social actors. This study focuses on understanding concrete social processes through critical political economy and critical legal studies. Such an approach allows us to understand that law is always influenced by different dominant social actors with varied positions in the social hierarchy. Primary sources such as public statements of the families of the disappeared in Mexico were used to analyze their struggle against neoliberal legality. The statements by state officials were used to illustrate how they used the human rights discourse to legitimize their actions related to neoliberal policies and militarization. Secondary sources such as books, newspaper articles, and academic papers were used to elaborate the literature review and the theoretical

framework as well as to understand historically the balance of social forces in Mexico during the consolidation of neoliberalism throughout the 1990s and the 2000s. Government reports, legal documents and publications from international organizations were also used to gather official figures to examine the increase of violence in Mexico since 2006 and the legal and policy responses to it.

The theoretical contribution of this thesis is the combination of legal studies and political economy to understand the interaction of political and economic processes with the law, and the processes that create, sustain and transform unequal socio-economic and political relationships over time through legal mechanisms (Collinson 2003, 3). Therefore, a legal political-economic framework is key to unravel the political processes and negotiations behind the legal processes in Mexico.

The empirical contribution is a deeper understanding of the development of the human rights institutional and legal framework, and its consolidation in the 2011 constitutional reform on human rights in Mexico, in the context of neoliberalism. Little research has been done to analyze the impact of the 2011 Reform, as it has focused on the militarization of the War on Drugs. Most of the work done around violence in Mexico is to determine its causes or to measure the consequences of the State's response. Yet, the 2011 reform is not even mentioned in those studies, which seems odd as it is also part of the State response to violence.

This thesis is not only important for its contribution to the study of human rights framed in a neoliberal legality. Also, this study shows activists and lawyers alternative ways in which social movements have been able to challenge this neoliberal legality successfully, achieving substantive changes in the protection of their economic and social rights. The struggle must take place in both the legal and political fields, and from the cases presented in this thesis, it is possible to draw valuable lessons learned from other social groups that have had a successful fight for a broader protection of their collective economic and social human rights.

## **Chapter One**

### **Theoretical and Political Perspectives on Violence, Securitization and Human Rights in Mexico**

The 2011 constitutional reform on human rights emerged as a state response to the problem of insecurity and violence that intensified after the Calderon administration declared the war on drugs in 2006. Mainstream studies argue that the roots of violence in Mexico are the weakness of the Mexican state, the militarization of the drug war, intergovernmental discoordination, and even external influence (Zepeda 2018). Authors such as Friedman (2008; 2010), Grayson (2010), Knight (2012), Serrano (2012) and Zepeda (2018) agree that militarization of the 'war on drugs' along with the weakness of the Mexican state set the conditions for an increase in violence. As the state is a homogenous and rational entity that needs to maintain the monopoly over violence through either militarization to combat organized crime or positivization of rights to preserve the rule of law (in this case the 2011 constitutional reform). Positivization is understood as the process in which rights are incorporated into a legal instrument. This process is considered central to the respect, protection, and fulfillment of human rights within International Human Rights Law.

Those studies also assume a separation between state and society, between the public and the private realm: the public realm is the arena of security and human rights, while the private realm is where the economy

operates. This separation prevents us from understanding how human rights, neoliberalism and violence can coexist because these processes are depicted as separate from each other. For this reason, mainstream studies cannot explain how the development of the existing human rights legal mechanisms in Mexico was shaped by neoliberal legality, which privileges private property, free market and the sanctity of contracts. This limited human rights framework hindered the ability of subordinated social groups to defend their rights and exposed them even further to violence by state and non-state armed forces. In Mexico, human rights, neoliberalism and violence are therefore intertwined, as the neoliberal state uses the human rights discourse to legitimate the neoliberal agenda and maintain the needed stability for the economy to function. Under neoliberalism the people that does not fit the neoliberal agenda is therefore sidelined, generating more inequality and also rendering some sectors of the population more vulnerable against human rights violations, making it much harder for them to defend their rights. This process is not unique to Mexico, authors like Jean Comaroff, John Comaroff and Honor Brabazon (Brabazon 2017a; Brabazon 2017b; Comaroff and Comaroff, 2000; Comaroff and Comaroff, 2006; Comaroff and Comaroff 2007) have studied the relationship between human rights, violence and neoliberalism in other parts of the world (specifically Argentina, Brazil, Bolivia and some parts of Africa like Chad and South Africa).

This chapter firstly makes a thorough review of the literature about violence in Mexico, in order to pinpoint the flaws and gaps they incurred. Then it provides a new perspective on the issue, using the notion of the state, neoliberal legality and human rights as politics of contestation. With the above we will be able to understand how the human rights discourse was used to implement neoliberal legality in Mexico, and also how human rights have contributed either to maintain neoliberal legality or to resist domination from the State.

*The classical notion of the state and violence in Mexico*

Mainstream studies on violence in Mexico examine state weakness and the role of external influence as the cause of the loss of control over significant areas of the country (Friedman 2010; Zepeda 2018; Grayson 2010). Within this perspective, Friedman explains that Mexican government officials became loyal to one of the dominant drug cartels rather than the government (Friedman, Stratfor 2008). The Brookings Institution's "Government Weakness Index (2008)" listed the Mexican government as one of the weakest in the world, specifically in the indicators referring to "government effectiveness", "rule of law", "accountability", "control of corruption", "intensity of conflicts" and "political stability" (Guerrero 2009).

George Grayson (2010, 4) argues that the Mexican state faces not only a social crisis but an institutional one. He indicates that the weakness and failure of the Mexican state is evident in the rise of murders, sadistic executions,

kidnappings and prison escapes, as well as in the corruption of the police of all levels of government (local, state and federal), the non-observance of safety codes and the high levels of poverty and inequality (where 35 percent of Mexico's 120 million people live in poverty). According to this perspective, lack of coordination between federal, state and municipal levels contributes to the weakness of the Mexican state. Different levels of government dictate security policies independently of each other. With this situation, it was possible for drug cartels to avoid prosecution from one level of government if they cut a deal with another (Rios 2013a).

Viridiana Rios (Rios 2013b) explains that traffickers battling for turf to control competitive markets as well as increased government involvement in the 'war on drugs' also caused an escalation in drug-related violence in Mexico. After the arrest of criminal leaders, the weakness of the state set the conditions for the remaining criminal organization to keep battling to select a new leader (Rios 2013b). Brian Phillips explains that leadership removal is counterproductive as it creates group fragmentation, were would-be successors might try to demonstrate their power through the elimination of rival criminal groups (Phillips 2015, 326).

This state weakness perspective on Mexico also considers external decisions as influential on the rise of violence, specifically the Colombia Anti-Drug Strategy, the Merida Initiative and the expiration of the U.S. Federal Assault Weapons Ban. In 2006, the government of Colombia reduced attacks on

drug cultivation and focused on the interdiction of drug shipments and the detection and destruction of cocaine labs. This led to a reduction in the supply of Colombian cocaine to the United States. As a result, the power of Colombian drug cartels diminished in the US market, while Mexican drug cartels gained strength as distributors of cocaine (Garzon and Bailey 2015, 488). These analyses also consider that the expiration of the U.S. Federal Assault Weapons Ban in 2004 caused an immediate rise in violence within areas of Mexico located close to the American border, where sales of assault weapons became legal. This changes in policy in the United State facilitated arm trafficking into Mexico, fueling violence in the latter country (Dube, Dube and García-Ponce 2013, 485).

Analyses that focus on State weakness and external influence as the causes of violence in Mexico are based on the classical notion of the state based on the social contract. The state is seen as a neutral arbitrator among individuals in society and also as a referee that enforces laws in order to protect its citizens. This neutrality of the state and the law implies that the state enforces the law in the interests of all citizens and therefore represents the common good (Heywood 2013, 61).

Within this perspective, the chaos created by cartels is a consequence of a struggle for power, because as Hobbes stated in Leviathan “power is assumed to be unitary and indivisible; unless it is in the hands of an absolute sovereign, there would be anarchical chaos and civil war” (Shapiro 2003, 55). In other

words, the cartels were fighting for power against the State, which must be in the hands of the latter because otherwise, anarchy would reign (Carnoy 1984, 15). Marx Weber followed Hobbes' idea through his definition of the State as "an organization that claims a monopoly within a fixed territory over the legitimate use of violence" (Mitchell 1992, 82). Mainstream perspectives follow Weber's definition, as they consider that the ability to exert regulations and sanction through violence should be confined to the state. And in the case of Mexico, violence increased because of the weakness of the Mexican state (Cruz 2016, 378).

Within this approach, the Mexican state is the main institution responsible for protecting its citizens as well as the sole source of the right to use physical force, even coercion. For this reason, the state acted against the drug cartels as they were competing for power (Vincent 2010, 159). Such assumptions regarding the role of the state in society not only inform academic analyses but also policy. The policy implications of this perspective are therefore militarization as a way to regain control (monopoly over violence) and the need for a constitutional reform to strengthen the Mexican state and fulfill its obligation to protect its citizens. Both Calderon's (2006-2012) and Enrique Peña Nieto's (2012-2018) presidential administrations in Mexico used the Armed Forces to fulfill this task without a proper legal framework to support the role of the army and the navy in public security matters, as the 'Organic Law of the Mexican

Army and Air Force' did not enable them to carry out surveillance and patrolling tasks<sup>2</sup>.

Likewise, the 2011 constitutional reform on human rights was issued by the Mexican State as a panacea to remedy the consequences of the 'war on drugs.' Senator Manlio Fabio Beltrones, from the neoliberal populist Institutionalized Revolutionary Party (Partido Revolucionario Institucional or PRI), claimed in June 2011:

The central purpose of this reform is to strengthen the constitutional system of rights and guarantees against the risks that the State faces in the fight against transnational organized crime, as well as to promote the culture of human rights in the national education system (Presidencia de la República 2011).

Former President Felipe Calderón, from the centre right National Action Party (Partido Acción Nacional or PAN), expressed:

Without a doubt, Mexico faces today great challenges in the effort to consolidate itself as a country of laws and institutions. A Mexico of peace, with justice.

It is clear that the challenges facing us are very great, but equally great in all of us must be the conviction to move forward, confident that the enormous effort we are making will bear lasting fruit.

Overcoming impunity, subjugating criminality, making Mexico a country of laws, not only not sacrificing, but also extending the human rights and guarantees of those who are in the territory, is an enormous challenge,

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<sup>2</sup> Among the actions and programs for which the Mexican army is qualified and trained are: training, military service, Plan DN-III-E (disaster relief), Military Educational System, regulation of firearms (issuance of carry permits), ecological protection.

but one that we have taken on with punctuality (Presidencia de la República 2011).

Both statements show how State officials from two dominant political parties in Mexico presented the constitutional reform as the State's response to social demands. This state response was to embed human rights into institutions and legal instruments to defend citizens against abuses committed by the army, navy and security forces and criminal groups. Both statements also reveal the importance of the constitutional reform to restore the rule of law. Here, positivisation and constitutionalization of rights are a critical process (Chilcote 2000). Positivization is the process in which rights are included into a legal instrument (Bryner and Reynolds 1987, 7). Positivization of rights is a focal point within International Human Rights Law because it is considered central to the achievement of respect, protection, and fulfillment of human rights. The idea behind constitutionalization is to bring rights to a tangible document rather than leave them unmoored as an abstract "natural law" that compels states to protect citizens as a result of the 'social contract' (Ramírez García and Sánchez Barroso 2012, 244). This "trend" of constitutionalization of human rights is not unique in Mexico but is part of a process that was carried out throughout Latin America since the 1970s (Salazar Ugarte, Caballero Ochoa and Vázquez 2014, 17).

Such constitutionalization of human rights then became a way to renew the social contract. As John Bailey (2014, 15) explains, the absence of a new

contract contributes to limited public confidence in political institutions and to low compliance with the State's law, creating incentives for a legality, (indifference toward the law), and illegality (intentional law-breaking). Research does allude to the 2008 Criminal Justice Reform that introduced the Oral Adversarial Criminal Justice System, showing how the mainstream research tends to emphasize judicial reform (Bailey 2014, 12) and the necessity of the State to regain the monopoly over violence to dismantle a legality and illegality (Heinle, Rodríguez Ferreira and Shirk 2017; Shirk 2011). As such, academic analysts and state officials depicted the 2011 constitutional reform on human rights as crucial to the protection of individual rights and the state's legitimate monopoly over violence.

Perspectives that either focus on the state's legitimate monopoly over violence or the state's obligation to protect human rights as part of the social contract share the same theoretical assumptions, namely the separation between state and society, and between the public and the private sphere. A separation where the public realm is the arena of state security and human rights, and the private realm is where the economy operates. This separation prevents us from understanding how human rights, securitization and neoliberalism can coexist, because these social processes are defined as distinct spheres without connections to each other. By separating both spheres, it is assumed that both the law and the way in which the economy is organized are neutral, which does not allow us to understand how the law is used to dominate and legitimize an economic model that generates inequality. This

inequality renders the most underprivileged much more vulnerable to human rights abuses. The Inter-American Commission has noted that underprivileged people are subject to more human rights violations as they are unable to access certain rights such as civic participation, juridical personality, juridical protection (Inter-American Commission on Human Rights 2017). Also, their vulnerable economic position makes it harder for them to defend themselves against those abuses, as they do not have the means to access justice, and cannot support the costs and expenses of a potential long process or trial, and much less to hire a lawyer for that period of time.

This conception where the state is the sole entity with the monopoly over violence and the main responsible for protecting its citizens (through social contract) also prevents us from understanding the State as a balance of forces in political class struggle (Jessop 2009, 383) and as a terrain or site of struggle between dominant and subordinated groups through the use of law (and the human rights framework is part of that law). This is particularly important in the case of Mexico because dominant forces within the state have employed human rights language and legal framework to maintain political stability for implementation of neoliberalism and strengthen the state, particularly the monopoly over violence. At the same time, subordinated groups have used the law to resist and achieve a broader protection of their social and economic human rights, challenging neoliberalism along the way. Therefore, Mexico presents itself as a unique case. It is a non-authoritarian country that is formally

at peace that has robust human rights framework on its constitution. Yet, it is has been listed as the second most dangerous country in the world (DW 2017). Only Syria, which has been under civil war for the last four years, is more dangerous than Mexico.

Mainstream approaches that consider the weakness of the Mexican state as the reason behind violence in Mexico are insufficient to understand the coexistence of the human rights framework, violence and neoliberalism, as well as those legal mechanisms which reflect political domination and contestation. First, they fail to explain that the neoliberal state uses the human rights discourse to legitimate the neoliberal agenda and maintain the needed stability for the economy to function. Second, approaches to current violence in Mexico are unable to see that the development of a legality framed within neoliberalism has limited the ability of people to defend their human rights with the existing legal mechanisms. They cannot explain how the limited neoliberal conception of rights (which privileges private property, free market and the sanctity of contracts) limits an effective protection of individual and collective rights in a context of violence. Third, the assumptions regarding the monopoly of the state over violence through the law in the form of protection or coercion does not allow for an examination of the politics of domination and contestation. This is due to their view on the state is seen as a homogeneous and neutral entity that enforces impartial law and seeks the common good.

*Understanding violence in Mexico from a new perspective*

This thesis employs the concepts of the state, neoliberal legality and human rights as politics of contestation to understand how the human rights discourse was used to implement neoliberal legality. The research project also explores human rights as politics of contestation, namely the role of human rights in maintaining neoliberal legality or resisting domination from the State.

In contrast to previous approaches, this thesis examines the state as a site of political struggle, permeated by the balance of class forces within a given society (Poulantzas 2000). Therefore, the state does not act but rather it is an institutional and material site acted upon (Bratsis 2006). Coercion is not the only mean the state has to enforce decisions that reflect the existing balance of forces. The law is also a form of state intervention, which becomes a mechanism of legitimation and also a form of violence (Benjamin 1986, 295). From here on, when talking about “the state” we are referring to those dominant forces that operate within the state, that is the people and social groups that support the neoliberal agenda and the existing unequal structures in Mexico. In summary, this critical notion of the state presented by a critical political economy perspective allows us to understand the State not as just a homogenous entity, but as a set of practices, institutions and organizations that are not separated from society, but embedded.

Such an understanding of the state allows us to consider neoliberalism as a historic specific class project and set of state policies that claims that human well-being can be achieved by promoting individual entrepreneurial freedoms and an institutional framework aimed at protecting private property rights, free markets, and free trade (Harvey 2005, 2). Under neoliberalism collective rights are subordinated to individualism, competitiveness, and self-sufficiency (Springer 2012, 137). In this context the state sets an appropriate institutional framework to secure private property rights and to guarantee, even violently, the proper functioning of markets (Postero, 2010, p. 60). The state must intervene in this project through its monopoly of the means of violence to favour strong individual private property rights, and the institutions that allow free markets and free trade. These traits are what is considered essential to guarantee individual freedoms, namely freedom of action, expression, and choice (Harvey 2005, 64-65).

Within neoliberalism, state intervention is done through the law. Law plays an active role to intervene in areas of social life, shifting social relations, decision-making and dissent to the private sphere and abstracting citizens from their broader political contexts (Brabazon 2017a). This “neoliberal legality” refers to the specific form, mode, and role that law assumes in the neoliberal period in legitimizing the “new” legal order, fostering a particular world view and facilitating economic relationships while restricting social bonds (Brabazon 2017a, 2).

All neoliberal measures, such as the defunding of social government, as well as the privatization and cutbacks in the public sector, are underpinned by the law, becoming the “new” rule of law (Fregoso 2006, 111). This ‘new’ rule of law differs from the traditional ‘rule of law’ (of political equality) as it is selectively enforced by dominant forces within the state to privilege individual private property, free markets and the sanctity of contracts. This tendency to use the law to further implement the “neoliberal standard” and individual rights, falls into what Jean and John Comaroff (2006, 22) have defined as a “fetish of the law”, a way to protect the wealthy from lawlessness through the rule of law (Comaroff and Comaroff 2007, 145). For the neoliberal state, the law becomes the main political tool to construct social order, a way to deal with conflicts and enforce its policies in order to protect the free market (sanctity of contracts). This includes the discourse and legal framework of human rights, which can be used to justify neoliberalism’s social and political implications and contain social demands (Goodhart 2014, 42). In a neoliberal state, human rights are constructed narrowly as a set of individual property rights, curtailing other social and economic rights. This is a limited notion of human rights, which contrasts with other perspectives on substantial democracy which do not limit human rights to civil and political claims. Rather, this perspective emphasizes a broader set of rights that aim at protecting every person “with regard to his life, freedom, equality, political and social participation, or any other fundamental aspect that affects his integral development as a person” (Bidart Campos 1989, 233). As stated in the Universal Declaration of Human Rights and the American

Convention on Human Rights “the only way the ideal of free persons enjoying freedom from fear and want can be achieved only if conditions are created whereby everyone may enjoy his economic, social, and cultural rights, as well as his civil and political rights”.

Yet, human rights are not only a discourse and a legal framework of legitimation of dominant forces. Under neoliberalism, the language of human rights is contentious in two different ways (Goodhart 2014, 34). First, human rights represent a demand that the “powerful” must give up arbitrary power and inherited or unjustified privilege. This implies that those who enjoy power and privilege will fight to maintain that advantageous condition. Second, there are conflicts over the meaning of emancipation or empowerment within human rights even among those who support the language of human rights.

The politics of contestation within human rights are also reflected in its inherent contradiction. The state poses as both promoter of human rights and offender against such rights (Kapur 2006, 665). And this contradiction is shaped by the existing balance of social forces that the State reflects. This shows that human rights as politics of contention and contestation are highly political rather than technical legal matters. On the one hand, human rights are political demands because they invoke normative claims about how things “should” be. On the other hand, framing issues around human rights and using human rights legal instruments is a way to confront structures of power and privilege (Goodhart 2014). Thus, different groups with varied hierarchical positions

manipulate the legal framework and discourse of human rights to take a particular side and reflect a particular perspective (Goodhart 2014, 33). In this respect, social movements are crucial to the progressive interpretation and application of the human rights framework because they challenge structures of power in everyday life (Stammers 1999, 987-988).

A critical perspective on the state, neoliberalism and human rights sheds light on the way in which the human rights framework developed in Mexico since the 1990s, and consolidated in the 2011 Constitution reform, was part of the actions of the Mexican state against “lawlessness” in the context of neoliberalism. For this reason, the following chapter explores the rise of the human rights discourse after the implementation of the neoliberal model in Mexico, as well as the coexistence of violence with human rights and neoliberalism.

## Chapter Two

### Neoliberalism, Human Rights and Violence in Mexico

This chapter addresses the ways in which the deepening of the neoliberal model in Mexico in the 1990s enabled the development of a human rights legal framework in the same period. The 1980's the initial implementation of neoliberalism focused on economic changes, namely reducing inflation, stabilizing public finance and liberalizing trade. Then during the 1990's the deepening of neoliberalism not only emphasized economic reforms (specialy privatization of public sector), but also legal and constitutional changes aimed at turning Mexico into s stable political system with a favorable business climate for investors. This change in the economic model turned human rights into a priority issue in the state agenda as part of the demands of the international "liberal agenda": the promotion of free markets and human rights (Saltalamacchia and Covarrubias 2011, 17). First, this chapter addresses the development of neoliberalism in Mexico to show how the human rights framework was used as a tool to regain legitimacy and further implement the neoliberal agenda. Second, it explains the enactment of the 2011 constitutional reform within the context neoliberal legality and violence as a result of the 'war on drugs' launched by the Mexican state in 2006. The narrow construction of human rights under neoliberal legality, that is, understanding human rights solely as individual property rights (curtailing other social and economic rights) is one of the factors that can explain

the coexistence of the legal framework of human rights with violence in a neoliberal context.

*The development of the human rights framework within neoliberal legality in Mexico*

In order to understand the development of the human rights framework in Mexico, it is first necessary to address the development of neoliberal legality in the country along with the continuation of the one-party regime of the PRI that started in the late 1920's. When the PRI came to power in 1929, it followed, to some extent, the ideals of the Mexican Revolution that were along the lines of collective social and economic rights (ideas embodied in the 1917 Constitution). The PRI was a political party that relied in three important groups: workers, rural peasants and the lower classes of the population (Oliver 2012). The lower classes (workers and rural peasants) proved to be the most effective way to control opposition to the PRI, as social benefits were distributed through the unions, to the rest of the population (Oliver 2012, 207). During PRI one-party regime that lasted 70 years uninterruptedly (from 1929 until 2000), the strongest and largest unions were closely associated with the party, and became a pivotal constituency of the executive power (Suarez-Potts 2012, 18).

By the 1980s, the one-party regime emphasis on collective rights through legal and informal means began to shift to individualized rights in the 1980s. It was in 1982 as a result of the debt crisis, that the administration of Miguel de la

Madrid (1982-1988) from the PRI, with the support of the Congress, enacted a series of reforms aimed to restructure the economy. Following the International Monetary Fund (IMF) policy prescriptions, the presidential administration undertook economic measures aimed at reducing inflation, stabilizing public finance and liberalizing trade (Laurell 2015, 250). In order to improve its competitive position, the Mexican state reduced its social spending and subsidies aimed at protecting the poor (Speed 2007, 163). These ad hoc policies implemented by the executive power then became the initial implementation of neoliberalism in Mexico.

From 1988, a period of deepening of neoliberalism began in the country when Carlos Salinas de Gortari from the PRI (1988-1994) won the presidency under claims of electoral fraud. During this period the implementation of the neoliberal agenda continued through constitutional reforms and the signing of international treaties. An example of constitutional reforms is the privatization of the land as well as the privatization of the public companies. The signing of the North American Free Trade Agreement (NAFTA) meant deregulation and liberalization of capital flows (Harvey 2005, 101). Legally, NAFTA locked in policies and legal reforms implemented to facilitate the deepening of neoliberalism in the country, protect private property and the sanctity of contracts. These changes also meant a shift in Mexican politics centred on technocracy and the interest of large business away from corporativism based on the power of unions affiliated to the PRI (Centeno 1994, 40). Therefore,

social movements and unions had decreasing power in decision-making in Mexico. Instead, international organizations, such as the IMF, foreign investors and large national companies became influential in Mexican politics. In 1994, Forbes magazine's 'Ranking of Richest people in the World' revealed that after the implementation of economic restructuring policies in Mexico produced twenty-four billionaires. Out of this twenty-four, at least seventeen participated in the privatization processes carried out in Mexico (buying banks, steel mills, sugar refineries, hotels and restaurants, chemical plants, telecommunications companies, among others (Harvey 2005, 103). The law played a crucial role in the process of creation these billionaires, as it was through legal changes and constitutional reforms that the process of economic restructuring and privatization was carried out.

The emergence of the human rights framework also occurred during the Salinas administration. The latter carried out several constitutional and legal reforms that integrated human rights standards into Mexican law (Speed 2005, 35). Behind this "sudden" emergence was the negotiation of the NAFTA. There was strong political pressure by the United States and Canada for a lack of respect for human rights in Mexico. In order to avoid the U.S. Congress's rejection of Mexico as a NAFTA member, the National Human Rights Commission (CNDH) was created in 1990 (National Human Rights Commission n.d.). The commission depended on the Ministry of the Interior. This undermined the Commission's autonomy and maintained it under the control of the executive

(Ackerman 2007). In 1992, the Salinas administration enacted a constitutional reform which elevated the Commission's mandate to constitutional rank as a decentralised body, endowing it with its own legal personality and assets. This reform also established the creation of human rights commissions in all subnational states. Such legal framework on human rights was central to the approval of Mexico as a NAFTA member by the United States and Canada as they agreed that "the successful integration of the national economies would require a shared commitment to democratic practices and respect for fundamental civil rights" (Heredia 1994, 28; Saltalamacchia and Covarrubias 2011, 16; Velázquez Flores 2017, 147).

While the creation of the Human Rights Commission is crucial to the fight for human rights in Mexico, it is worth noting that its origin was due to two historical junctures. First, the creation of Human Rights Commission was part of the process of legitimation of the incoming presidential administration, which won under suspicious of electoral fraud (Steffan 2007). Second, the CNDH was created to avoid external criticism and ensure approval of NAFTA.

The 1990s reforms in the human rights legal framework show how human rights framed within neoliberal legality were used by the dominant forces within the state to contain opposition parties and social movements, in order to further implement the neoliberal agenda and privilege individual civil rights over social and economic rights. The executive not only saw human rights as the key to gain the acceptance of other countries and access the "new world order," but it

was also a legitimization tool. As Brown (1995, 98) explains, rights can become a regulatory discourse to obstruct or co-opt more radical political demands.

Under neoliberalism, human rights are one more tool at the disposal of the state to apply the rule of law, to ensure free markets and economic development (as a country without human rights is not very attractive for foreign investment).

In Mexico, changes to create a human rights legal framework and institutions entailed a clear emphasis on individual human rights, while de-emphasizing social rights, such as the right to land and to collective land holdings. The latter were deeply related with the post-revolutionary state and the 1910 Constitution (Knight 1998), which was actually conceived as “the Constitution for workers and peasants”, one of the first in the world to include social justice rights (Carbonell 2012, 128). These shift from collective rights to individual rights is a clear and immediate consequence of the neoliberal vision of human rights as it deflects the focus of collective economic or social rights violations to individualized violation of civil and political rights (Faulk, 2014).

Since the neoliberal agenda started to be implemented in Mexico, evidence of how human rights were limited by Mexico’s neoliberal legality and how there was no real interest in defending human rights can be seen in the process of privatization and the efforts of the dominant forces within the state to eliminate the ejido. Privatization of several sectors entailed the wholesale restructuring of labor contracts and the dismantling or disempowerment of unions. In other words, it meant favoring business interest over unions, by the

means of the law. In 1995, the executive with the approval of the legislative presented a constitutional reform that aimed at the privatization of Mexican National Railroads (Ferrocarriles Nacionales de México- Ferronales). As MacLeod (2004, 189) explains:

The virtual monopoly that railroads held over the transportation of export commodities and domestic goods also provided workers with significant leverage in their negotiations with owners, foreign and domestic as well as private and public. This leverage helped labor unions negotiate generous benefits for workers and placed a wide range of restrictions on managerial prerogatives over the organization of the railroads. The union's strength and its involvement in opposition politics also led the government to intervene in the operation of the railroad workers' union more systematically than in any other industry.

The above shows how railroad unions became a threat to the neoliberal agenda, and privatization through the law was a way to stop them. To that end it was necessary to amend article 28 of the Constitution, which reserved for the State the operation of the railways. The article was amended and a Railway Regulatory Law was enacted, which set the legal framework needed for privatization (Sacristán Roy 2006, 60-61).

The elimination of communal land or ejido was also undertaken in the 1990s prior to the signing of NAFTA. The latter required open markets in agricultural sectors. The reform of article 27 of the constitution facilitated the privatization of lands commonly held by peasants and indigenous people to open up the rural land market to large foreign agrobusiness (Dinerstein 2016). On January 1, 1994, the very same day NAFTA came into effect, the Zapatista National Liberation Army (Ejército Zapatista de Liberación Nacional or EZLN)

announced its armed resistance against the neoliberal policies that led to the economic, social and political marginalization of the indigenous people of Chiapas (Auger 2013, 7). Both the executive and the legislative branch agreed that it was necessary to suppress this insurgency as this uprising was against the rule of law (and also private property), so they sent in the Mexican Army. The repression and violence lasted 11 days and 300 people died. While the official discourse of the Salinas administration was the protection of human rights, social movements that sought to improve the conditions of the poorer classes were repressed (Richard 2013, 142).

Even though the one-party regime ended in 2000, the framing of human rights through neoliberal legality continued. In 2000, the centre-right party National Action Party (Partido Acción Nacional or PAN) won the presidency against the official party. The presidential administration from the PAN promised to turn human rights into the centre of policy. During his first days in office, the executive with the approval of the congress implemented a series of actions that opened the country to international human rights monitoring and scrutiny. The president signed agreements with the Office of the United Nations High Commissioner for Human Rights, issued an "open and permanent" invitation to all UN and OAS human rights bodies to visit the country, accepted the competence of UN treaty bodies to receive individual complaints, ratified pending international treaties, and withdrew some reservations to treaties it had previously ratified (Anaya Muñoz 2013).

Despite the above, human rights continued to be framed by neoliberal legality in order to protect the neoliberal agenda. During his 2000 presidential campaign, Fox announced the construction of a new international airport for Mexico City which would be the biggest project of his administration. The project planned to develop a rural area, with 75% financing from private investors. The project allowed 49% of direct foreign investment and 100% with authorization. On October 22, 2001, the executive issued the expropriation decrees for 5,376 hectares<sup>3</sup>. Of the thirteen municipalities affected, five were deprived of 80% of their surface area: San Salvador Atenco, Santa Isabel Ixtapan, Colonia Francisco I. Madero, Acuexcomac and Tocuila. One of the most affected municipalities, since 84% of its territory was expropriated, was San Salvador Atenco (Velázquez García 2004). The People's Front in Defense of the Land (Frente de Pueblos en Defensa de la Tierra- FPDT), comprised by peasants and dwellers of San Salvador Atenco, protested the prices fixed in the expropriation decree( 25 pesos (1.78 CAD) per m2 for irrigated land and 7.20 pesos (.50 CAD) m2 for rainfed land) as the land was going to be used for commercial purposes and it was “the only thing they had” (González 2008). While an ejidatario would be paid between 70,000 and or 250,000 pesos per hectare (between 5,000 and 17,800 CAD per hectare), once the airport terminal was finished the price of the land would increase substantially to approximately, in

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<sup>3</sup> Full expropriation decree available at:  
[http://dof.gob.mx/nota\\_detalle.php?codigo=761707&fecha=22/10/2001](http://dof.gob.mx/nota_detalle.php?codigo=761707&fecha=22/10/2001) (in Spanish)

one million pesos per hectare (Alfaro Izarraraz, Guízar Vázquez Jr. and Vizcarra Bordi 2011).

One day after the publication of the expropriation decree, the FPDT, armed with machetes, blocked an important highway near to San Salvador Atenco (Texcoco-Lechería). The mobilizations continued, and on November 14, 2001, around 1,500 inhabitants of San Salvador Atenco began to mobilize in the streets of Mexico City, carrying machetes. They clashed with police officers from Mexico City with blows and tear gas, with an official balance of two injured police officers and a detained peasant (González 2008). During the following seven months, they continued to carry out roadblocks. On July 11, 2002, the FPDT went to a political rally of the governor of the State of Mexico, and the state police closed their way, causing a confrontation with approximately 33 wounded people, including one of the ejidatarios who later died (Salinas Cesáreo and Ramón Alvarado 2002). Finally, on August 1, 2002, the executive announced that "given the refusal of the ejido communities" to sell their lands, it was decided to initiate proceedings to annul the expropriation decrees and cancel the airport project (Salinas Cesáreo 2018). The executive did not condemn the human rights abuses and in fact was upset about the loss of nearly 3 billion dollars of investment (Montaño Delgado 2002).

In this case the FPDT posed a serious threat to the neoliberal agenda carried out by the Mexican state, as they were fighting for collective rights (right to collective land, and fair compensation). This case is also interesting because

it shows how there was a continued implementation of neoliberal legality even after electoral competition which turned Mexico into an internationally recognized democracy. This example shows how the human rights (collective social and economic rights) were framed within neoliberal legality in order to protect private interests (foreign investors), the free market and the sanctity of contracts.

### *Violence and the 2011 constitutional reform on human rights*

In 2006, the incoming presidential administration of Felipe Calderón from PAN faced a legitimacy crisis after a close election, amidst claims of electoral fraud. Such crisis led the incoming administration to declare the 'war on drugs' to regain legitimacy, relying on the military for these political efforts as well as for local policing services (Bailey 2014; Grayson 2010; Pansters 2012). The results of this policy were not what was expected as from 2007 to 2012 the number of homicides reached 103,537, according to officially recognized numbers (Executive Secretariat of the National Security System 2018)<sup>4</sup>.

It is important to remark that the PAN had the financial backing of the major domestic oligopolies in the broadcasting and industrial sector as well as foreign investors such as financial investors and global investing companies in export processing zones during the 2006 presidential elections (Álvarez Béjar 2007). That is why although the executive was going through a crisis of

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<sup>4</sup> Official figures by June 2018.

legitimacy after the 2006 closed election, the dominant forces within the Mexican state offered strong support to the PAN and its policies (Álvarez Béjar 2007).

After the launch of the war on drugs in 2006, human rights became a central part of the political discourse to the extent that a major constitutional reform on human rights was published in the Federal Official Gazette in 2011. The Reform involved granting constitutional status to international human rights treaties and recognizing human rights within the constitution, which were formerly considered individual guarantees. It also involved operational or warranty sector changes, which affect the way each person can assert their rights through the law. (Carmona Tinoco 2011, 39-41). The reform involves the inclusion of two novel legal mechanisms: the Conforming Interpretation and the pro-personae principle. On the one hand, the Conforming Interpretation allows forces the Mexican state to effectively apply human rights protection mechanisms contained either in the Mexican constitution or in any other human rights treaty (Constitution of the United Mexican States, Article 2). On the other hand, the pro-personae principle is a juridical figure that requires the broad interpretation of any norm which guarantees or extend human rights and the narrow interpretation of those norms that limit or restrict human rights, that is to say, the judge must always follow the most favorable interpretation for the person (Piza 1986, 13).

The reform imposes on the Mexican state the obligations to prevent, investigate, punish and remedy human rights violations. The reform also

prohibits the signing of international treaties that alter or impair human rights contained in the Constitution and other ratified international human rights instruments. Finally, it also integrates the principles of universality, interdependence, indivisibility and progressivity which establish that human rights belong to all Mexicans, without distinction and the state is unable to take them away. These principles stipulate that human rights are interconnected, meaning that the state cannot pick and choose which ones are respected and which rights are not.

This reform was presented by state officials as the tool to achieve peace and to regain the power lost against the drug cartels. However, change in the human rights paradigm in Mexico did not change the context of widespread violence, as the state used human rights as tools of domination and oppression (Goodhart 2014). The 2011 constitutional reform is part of the process of positivization (or institutionalization in Goodhart's words) of human rights. But this process at any level tends to insulate the status quo from demands of structural change (Goodhart 2014, 38). Positivization of rights creates a set of categories in order to fragment social groups into individuals and recognize their individual human rights. For example, in Mexico, this fragmentation by the dominant forces within the state can be seen with the families of the disappeared people, as the state can pit one family against another by making progress in one case while neglecting others, even if the disappearances are intimately connected or part of the same event (Muñoz Martínez 2015). That is,

that the state 'breaks' the groups of families that are working together in the investigation of the disappearances, in order to stop their momentum. Therefore, positivization of rights becomes the tool for the dominant forces within the state to further implement neoliberal legality that privileges individual rights and free market, over collective social and economic rights.

Positivization of human rights in Mexico was carried out through the 2011 constitutional reform on human rights. This reform is part of what Gargarella (2018) calls "fourth wave" of Latin America's constitutional reforms, which took place between the late 20th Century and the beginning of the 21st century: Perú (1979), Nicaragua (1987), Brazil (1988), Chile (1989), Costa Rica (1992), Colombia (1992), Argentina (1994), Venezuela (1999), Dominican Republic (2003), Ecuador (2008), Bolivia (2009) and finally Mexico (2011). In general, all these reforms in Latin American constitutions gave a privileged constitutional status to all international human rights treaties signed during the last four or five decades. Treaties that aimed at punishing and preventing further massive human rights violations (Gargarella 2018, 202). Mexico was late in this process of constitutional changes (Salazar Ugarte, Caballero Ochoa and Vázquez 2014).

As explained above Perú, Brazil, Colombia and Argentina enacted similar reforms to those implemented in Mexico. These reforms were implemented in the 1990s in these countries and they include the constitutional hierarchy of international human rights instruments (Salazar Ugarte, Caballero Ochoa and Vázquez 2014, 44-47). Most of these reforms regarding human rights were

created as a response to the social turmoil that affected Latin America during the 1970s, especially authoritarian regimes that committed serious human rights violations. According to Nohlen (2017), an authoritarian regime has centralized power. The horizontal division of power into Executive, Legislative and Judicial, as well as a vertical one (different systemic levels with autonomous decision-making spheres) exist in a formal, but not real way. As such authoritarian regimes are characterized by lack of respect of civil, political and human rights which range from the absence of free speech and right to vote to disappearances and extra-judicial killings.

The consequences of those authoritarian regimes in Latin America lingered legally. That is why most of the constitutional reforms were promoted from below in order to change the authoritarian legal legacy from previous regimes (Gargarella 2018, 201). For example, the 1988 Constitution of Brazil can be read as a response to the 1967-69 Dictatorial Constitution which brought major changes such as the restriction of political liberties and political participation. The same applies to the Chilean 1989 constitutional reform which was enacted after Pinochet's dictatorial period (Cumplido Cereceda 2003).

In contrast, human rights law reforms were promoted by the dominant forces within the state in a neoliberal context in Mexico. The consolidation of the human rights framework through the 2011 constitutional reform on human rights was not a response to an authoritarian regime, but to the growing social discontent in relation to increasing violence and the defiance of drug traffickers

against the State. Just as in other countries of Latin America, human rights became the most effective tool of the Mexican state to regain the monopoly over violence. As explained in the first chapter, when the reform was enacted state officials presented the reform as the response to social demands for the state to defend their citizens from the drug cartels. As Roberto Buonamano (2006, 166) points out, the state depends upon the existence of individuals who possess rights because when human rights are declared or enforced, the legitimacy of the State is reinforced.

Since the 1990s there has been a consistent neoliberal framework of human rights. The 2011 reform was supposed to change this limited notion of rights as it changed the notion of 'individual guarantees' to 'human rights.' It also gave constitutional rank to international treaties and opened the door to international jurisprudence to be used in local courts. The reform does not reflect traces of neoliberal legality (it does not limit collective rights, nor does it focus on private property), but rather, having the reform shows Mexico as a country that promotes and protects human rights which automatically makes it a "safe" country to invest in.

Throughout the 1990's and the 2000's, the human rights framework was crucial to sustain neoliberalism and make Mexico a safe destination for investments as the strengthening of the judicial system and restoring the rule of law was deemed vital to promote legal stability and access to justice for potential investors (Botero 2018, 214). The human rights framework was also developed

along the lines of neoliberal legality for the state to gain legitimacy and at the same time be able to contain the demands of subordinated groups (as it was during the Zapatista uprising and the protest of San Salvador Atenco).

Just one year after the implementation of the 2011 constitutional reform on human rights, the PRI regained the presidency. The new administration continued with the strategy of human rights, militarization and neoliberalism that the previous administration was pursuing, reflecting a balance of forces or an agenda similar to that of the previous administrations. The human rights legal framework set by the 2011 constitutional reform in Mexico has not been able to help people assert their rights in the context of violence. And the figures are an indication of that. From 2013 up until today there has been 96,422 homicides and the number of disappeared persons during this period has increased to 37,435 (National Register of Missing and Disappeared Persons Data 2018)<sup>5</sup>.

This chapter showed that since 1994 there has been a consistent neoliberal framework of human rights. The parallel development of neoliberalism with a human rights framework sheds light on how dominant forces within the state employed the law and human rights to legitimize and sustain the neoliberal project. This chapter helps us to understand the coexistence of human rights and violence in the neoliberal period, from the late 2000's onwards because the scope of human rights was very limited as it was framed by a neoliberal legality.

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<sup>5</sup> Official figures as of by April 2018.

The latter favors individual rights over collective rights, prioritizes private property rights and the sanctity of contracts over economic and social rights. Therefore, the very limited way in which the human rights framework was established "from above" in Mexico, is one of the factors that explains the coexistence of the legal framework of human rights with violence in a neoliberal context.

## Chapter Three

### **Human Rights and the law: Politics of Contestation and neoliberal legality**

This chapter addresses the way social groups used the human rights framework as politics of contestation in Mexico, namely the 2011 constitutional reform on human rights to put forward legislation related to Forced Disappearance. Second, the use of neoliberal legality to contain the advancement of human rights, specifically the Internal Security Law as a way to legalize the use of the armed forces for public security tasks, is a clear effort by the dominant forces within the State to halt the advancement of social movements in human rights matters. The key for social movements to achieve the protection of their economic and social human rights goes along the lines of the process of legal learning and adaptation. The families of the disappeared managed to learn and appropriate legal language of human rights to engage with the legislative and legal processes in their struggle. Successful social movements learn to use what it is promoted by the state on their own term in this case human rights. As Daniel Goldstein explains, the notion of human rights is influenced by reality (culture, economics and politics). Human rights can operate in different ways, sometimes even contradictory, depending of whom is “using” them (Goldstein 2014). The main argument of this chapter is that in Mexico the human rights framework has been used in two completely opposite ways: either as neoliberal legality by the dominant forces with in the state or as politics of contestation by the families of disappeared people to challenge that

same neoliberal legality. And, even though the state is trying to suppress the momentum of these families through the same legal means (by promoting a law that legalizes the role of the army in public security tasks), the families are again using their appropriation of the human rights legal language to fight against it.

*Human rights as politics of contestation: The General Law on Forced Disappearances*

In order to understand human rights as politics of contestation it is central to consider the former as political demands for emancipation from domination and oppression (Goodhart 2014, 31). In the case of Mexico, this can be seen in the actions carried out by civil society, especially those from the families of the victims of forced disappearances. This heinous crime is defined by article II of the Inter-American Convention on Forced Disappearance of Persons as:

the act of depriving a person or persons of his or their freedom, in whatever way, perpetrated by agents of the state or by persons or groups of persons acting with the authorization, support, or acquiescence of the state, followed by an absence of information or a refusal to acknowledge that deprivation of freedom or to give information on the whereabouts of that person, thereby impeding his or her recourse to the applicable legal remedies and procedural guarantees (Organization of American States, Article II)<sup>6</sup>.

In Mexico, the families of disappeared persons have grouped into the Movimiento por Nuestros Desaparecidos en Mexico (Movement for our

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<sup>6</sup> It is also important to remark that the Rome Statute of the International Criminal Court considers forced disappearance as a crime against humanity.

Disappeared in Mexico) comprised by more than 35 organizations of relatives of disappeared persons in Mexico and about 40 NGO's that accompany them. The Movement for our Disappeared in Mexico pressured the Mexican state to provide them with a legal framework of human right protection, not only civil and political rights, but also economic and social rights as will be explained later. The movement used the law in their favour and used the human rights discourse and legal framework promoted by the neoliberal Mexican State throughout the 1990 and the 2011 constitutional reform in order to create a national law against forced disappearances (Movimiento por Nuestros Desaparecidos en México n.d.).

On November 2017, the Movement for our Disappeared in Mexico achieved the approval of the General Law on Forced Disappearance of Persons, Disappearances Committed by Individuals and the National System for the Search of Persons<sup>7</sup>, after almost 12 years of constant struggle. This is a unique law not only nationally, but internationally. It considers both forced and involuntary disappearances, namely disappearances committed by State agents or by individuals acting with the support, authorization or acquiescence of State agents (i.e. criminal organizations). This kind of law has never been enacted in any other country where there is no “formal” war or dictatorial regime.

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<sup>7</sup> Full Law available at: [http://www.diputados.gob.mx/LeyesBiblio/pdf/LGMDFP\\_171117.pdf](http://www.diputados.gob.mx/LeyesBiblio/pdf/LGMDFP_171117.pdf) (in Spanish).

One of the most important parts of this new law was the creation of a legal precept, the “Declaration of Absence by Disappearance” which entails the protection of social and economic human rights, which directly challenge the neoliberal model. For this reason, the precept of Declaration of Absence by Disappearance will be the focus of this chapter.

The “Declaration of Absence by Disappearance” is different from the ‘regular’ declaration of absence and presumption of death provided in civil legislation. Under civil law, a relative had to report the person's disappearance to a family judge in order to get access to the property of the disappeared person. Then after one year, the missing person could be declared absent. If after six years, his or her whereabouts were still unknown, the judge then declares the Presumption of Death. With this status, the family is able to access the property via probate or intestate (depending on whether or not he or she left a will)<sup>8</sup>. By declaring the Presumption of Death, the investigation and search of the disappeared person stops, which was in the state's best interest to quickly re-establish the rule of law.

In contrast, the declaration of absence by disappearance contained in the 2017 General Law on Forced Disappearances assumes that the disappeared person is alive as long as there is no doubt as to where the person is or until his

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<sup>8</sup> Article 705, Federal Civil Code

or her remains are found. This creates a new legal status of the person (not as dead, but as a disappeared person) that entails two new obligations for the state. First, the state must protect the legal personality and interests of the disappeared person while his/her location or whereabouts are being determined. Second, the state must enable the relatives of the missing person to exercise the rights of the disappeared person while his or her whereabouts are determined (Centro de Colaboración Cívica 2014). The new precept also provides measures to ensure the protection of the labour rights of the disappeared person, such as the employee collective rights and the employer's obligation to reinstate the person to his or her job if found alive.

The struggle of the “Movement for Our Disappeared in Mexico” was not only carried out in the political arena, that is lobbying with governors, deputies, senators (Mendoza Ortiz 2016) but also through the law. In order to challenge a law, social movements invoked legal procedures that were not intended to be used for social change, namely the “old” legal precepts of “Declaration of Absence” and “Presumption of Death” (Brabazon 2017b, 31). The tactic used by the Movement for Our Disappeared in Mexico was supported on the idea that the results of its struggle would be determined not only by individual legal cases but also by grouping together all cases and protesting in the political arena. This grouping of cases directly challenges the individualization of human rights entailed by neoliberalism. As a result, the Movement for Our Disappeared in

Mexico did not fight against the 'old' civil law just in the legal arena as it is intended by the State.

The movement recognized that their continued political pressure was necessary to win in the juridical realm. As law is inherently political, ultimately any struggle is going to be a political struggle (Brabazon 2017b, 30). The Movement had to fight against the state to prove that the civil legislation of "declaration of absence" and "presumption of death" was not adequate to provide comprehensive protection human rights as both figures do not allow the relatives of the disappeared person access to social benefits (such as pension or social security) until after 7 years from the day the disappearance is reported to the police. The above violated not only the victim's rights but also the rights of the family (Verástegui González 2016, 33). The movement took a law which was not intended to be used for emancipation, interpreted it in its own way and forced the State into accepting the movement's interpretation of the law and the movement's contribution in enforcing it. The movement 'judicial and political activism' demonstrated the state that the old civil law was not adequate and effective to protect them from further human rights violations, and in passing they managed to transform those demands into a completely new law (the 2017 General Law on Forced Disappearance).

The 2011 reform on human rights was crucial for the Movement in their judicial fight because it gave constitutional rank to human rights treaties. Aside from legal precedents, the Movement also used three legal instruments to

support their demands: the American Convention on Human Rights, the Inter-American Convention on Forced Disappearance of Persons, as well as the International Convention for the Protection of All Persons from Enforced Disappearance. All three legal instruments compel the Mexican state to protect the victims and families social and economic human rights. This provides legal support to the provision of the New Declaration of Absence by Disappearance and as the state is bound by those treaties and also have constitutional rank.

The families also used the Conforming Interpretation and the *pro-personae* principle within the reform to legally support their demands. As explained in Chapter Two, the Conforming Interpretation enables the courts to apply international standards, even though they are not in the Mexican legal framework. That is why, the Movement for Our Disappeared used the case *Rosendo Radilla-Pacheco vs. Mexico* of the Inter-American Court of Human Rights as precedent. In this case, the Court found that Mexico was internationally responsible for the disappearance of Rosendo committed by the Mexican army in 1974. The Inter-American Court of Human Rights issued its judgment on 2009, stating that in addition to constituting a gross violation of human rights, forced disappearance is a crime committed by the State; planned, ordered, executed and supervised by agents of the State who should protect the population. For this reason, it must be prosecuted and punished regardless of the political hierarchy, jurisdiction, or the economic condition of those who

commit it, punishing both the perpetrators and those who order it (Case of Radilla-Pacheco v. Mexico 2009).

The Court determined that the Mexican State violated the American Convention on Human Rights and the Inter-American Convention on Forced Disappearance of Persons. Mexico was also held responsible for the forced disappearance of Mr. Rosendo Radilla Pacheco, and should therefore conduct effectively, with due diligence and within a reasonable period of time, the investigation and, criminal proceedings related to the detention and subsequent forced disappearance of Mr. Rosendo Radilla Pacheco. The above, in order to determine the corresponding criminal responsibilities, effectively apply the sanctions and remedies, and to continue with the effective search for the victim. Mr. Rosendo Radilla Pacheco or, as the case may be, his mortal remains (Case of Radilla-Pacheco v. Mexico 2009). The Radilla-Pacheco case is most important one related to forced disappearances in Mexico, as it was the first case to heard before an international court.

In addition to this precedent, the Movement also used the case Anzualdo Castro v. Peru in order to prove that in cases of Forced Disappearances the victim is placed in a situation of legal uncertainty that prevents, impedes or eliminates the possibility of being entitled to or effectively exercise his or her human rights (Case of Anzualdo Castro v. Peru 2009). In both Radilla and Azualdo Castro judgments, the Court mandated the state to create an adequate legal notion for the victims of forced disappearance as the 'Presumption of

Death' precept leaves the victim in a 'juridical limbo' that automatically violates his or her human rights (Case of Anzualdo Castro v. Peru 2009; Case of Radilla-Pacheco v. Mexico 2009)

As for the pro-personae principle, it was also important as this legal precept requires that any law must be interpreted in a way that provides the best protection for the person: as the 'old' civil provisions of 'Declaration of Absence' and 'Presumption of Death' curtailed the human rights of the victims, and international treaties and court precedents provide a much broader protection of the person over national laws, the pro-personae principle allows them to invoke them as national law. The Movement invoked both the Confirming Principle and the pro-personae principle in their lawsuits in order to prove that the civil provisions were neither adequate nor effective for the protection of their human rights.

The use of both precepts also impacted the draft of the General Law on Forced Disappearances and can be found in two articles. Article 3 of the states that the law must be interpreted in accordance with the human rights established in the Constitution of the United Mexican States and in the International Treaties to which the Mexican State is a party, favouring at all times the pro-person principle. Also, article 151 stipulates that the remedies for victims of forced disappearances must follow the jurisprudence set by the Inter-American Court on Human rights in any of its cases (General Law on Forced Disappearance of

Persons, Disappearances Committed by Individuals and the National System for the Search of Persons 2017).

The Declaration of Absence by Disappearance challenged the neoliberal standard of privileging individual rights over social/economic rights, as it imposed economic obligations not only to the State but also to employers. The use of the existing human rights legal framework has allowed the Movement to question and challenge the neoliberal agenda despite the former's development within a neoliberal framework of legality. This shows that the relationship between neoliberal legality and human rights involves struggles and contention among differently positioned social actors in Mexico's existing power relations

The Movement achieved the enactment of the General Law on Forced Disappearance of Persons through a political and juridical struggle. In this case, the old civil law was used as a strategic opportunity to create a novel legal framework that included social and economic rights that are against the neoliberal agenda. They also learned that in order to achieve the desired change, lobbying and mobilization was not enough. The movement realized that in order to be able to fight neoliberal legality, they needed access knowledge that was exclusive to experts in the legal field. For economic reasons, the families did not have the economic access to this knowledge as they could not pay for a lawyer or afford law school to find their loved ones given the complicated legal process of requesting authorities to start a search for the disappeared.

For that reason, families requested support from human rights centres and NGO's such as Centro de Derechos Humanos Juan Gerardi, Centro de Derechos Humanos Miguel Agustín Pro Juárez, Centro Diocesano para los Derechos Humanos Fray Juan de Larios, Ciudadanos en Apoyo a los Derechos Humanos A.C., among others, and also international organizations such as Human Rights Watch, Amnesty International, United Nations High Commissioner for Human Rights, International Committee of the Red Cross (Redacción 2016). Together, they started periodical training workshops about legal and procedural issues necessary for their legal and political battle. In 2015, a technical team was formed by the United Nations Office for Human Rights and the International Committee of the Red Cross, aimed to translate the needs of families into legal language (Centro de Colaboración Cívica 2018, 11). Four regional forums were then held in the West, Centre, South and North of the country; and two thematic forums, one on disappeared migrants in Mexico and the other on the disappearances during the "dirty war" period (60's-70's). At the end, a national summit was held in Mexico City with the aim of bringing together the proposals from the regional forums a national document (Centro de Colaboración Cívica 2018, 22). The families were able to appropriate the language of human rights by vernacularization, what Goldstein explains as process of reception and transformation human rights into locally meaningful terms that are much easier to understand and defend (Goldstein 2014, 112).

*Human rights as neoliberal legality: The Internal Security Law*

As discussed above, the Movement for our Disappeared in Mexico invoked the existing human rights framework in order to confront structures of power and privilege. This led the Mexican state to respond with the one tool at its disposal to stop the advance of social movements in regard to social and economic human rights: neoliberal legality. The executive of the PRI, with the support both the PAN and the centre-left Party of the Democratic Revolution (Partido de la Revolución Democrática or PRD) in the Congress enacted a law in 2017 that enables the state to use violence despite its possible consequences regarding rising human rights violations.

On December 15, 2017, the Congress of the Union (Chamber of Deputies and Chamber of Senators) passed the Internal Security Law. A law that establishes the guidelines for the use and intervention of the National Armed Forces for public safety duties (Alcántara 2017). Such task that up until the enactment of the Internal Security Law was a de facto task that did not have an ad hoc legal framework. In other words, it legally authorizes the use of the Armed Forces for public security purposes (duty that was exclusive to the local police). This law lacks checks and balances. It grants sufficient power and authority to the president to request military intervention when he or she

considers there is a threat to internal security without congressional approval<sup>9</sup>. In addition to that, the law also authorizes the legitimate use of force by the Armed Forces and the use of techniques, tactics, methods, armaments, and protocols to control, repel or neutralize acts of resistance.

Conservative social groups such as Alto al Secuestro (Stop Kidnapping, led by Isabel Miranda de Wallace) and Mexico SOS (led by Alejandro Martí), as well as businesspersons of Mexico also endorsed the law publicly (Agencies 2017). Juan Pablo Castañón, president of the Consejo Coordinador Empresarial (CCE: Business Coordinating Council<sup>10</sup>) stated:

It is a law that we all require, that we have been insisting on giving a legal framework to the armed forces, it only means giving certainty to what is being done every day to combat violence in different regions of the country (Notimex 2017).

The endorsement mentioned above shows how this law reflected a particular hierarchy of social forces within and outside the state supporting the Internal Security Law. The economic power in Mexico sees the Internal Security Law as a guarantee of their investments, as a tool that may be valuable against

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<sup>9</sup> The Internal Security Law provides some cases in which Armed Forces are exempted from getting a 'Declaration of Protection to Internal Security' which is issued by the Congress. This means that the President, as the head of the Mexican Armed Forces, can request military intervention when he/she considers there is a threat to internal security.

Article 26, for example clearly states: "Federal authorities, including the Armed Forces ... shall carry out Actions of Internal Security that are necessary, relevant and effective to identify, prevent and address risks in those zones or geographical areas of the country, highways and strategic state facilities that require it... The actions carried out to identify, prevent and address risks to Internal Security are of a permanent nature and do not require the issuance of a Declaration of Protection to Internal Security..."

<sup>10</sup> This council comprises the most important business chambers of Mexico: Tourism, Manufacturers, Banks, Financial Institutions, Insurance Companies, among others.

social protests that could affect their businesses. The Internal Security Law becomes an important instrument to protect business, investments, contracts and private property.

In contrast, the Inter-American Commission of Human Rights (2017) reported that the law contains precepts contrary to human rights standards as it normalizes the permanence of the Armed Forces in public security tasks. This international body has also noted that in authoritarian regimes, the concept of security is associated with concepts such as "internal security", which are used with specific reference to State security. In non-authoritarian regimes, the concept of security against the threat of criminal or violent situations is associated with "citizen security" and is used in reference to the primary security of individuals and social groups (Inter-American Commission on Human Rights 2009, 8). What is interesting is that, although in Mexico there is a climate of free electoral competition (in other words, there is no authoritarian regime), the concept of Internal Security was chosen by the dominant forces within the state. The explanation for the latter can be traced back to neoliberal legality, and the necessity of the dominant forces within the state to protect private property, investments, contracts and contain those social movements that are demanding social and economic human rights (as they are a direct threat to the neoliberal agenda).

An example of the latter is the situation in Ayotzinapa, where 43 students were disappeared by local police in the state of Guerrero. After these

disappearances, the families started rallies and public demonstrations throughout the state and country. In response, businesspersons of the nearby city of Acapulco demanded the families to agree on “protest measures that do not affect the local economy, as they saw a drop in the number of hotel reservations” (Redaccion 2014). Protests were affecting the local economy, and local businesspersons were not at ease. The situation would have been completely different if the Internal Security Law had been in force, as the dominant forces within the state would be in a position to repress the protest, as it can be framed as a threat to the Internal Security. Just a call to the governor could be enough. Another example can be applied to the San Salvador Atenco case explained in the Second Chapter, where instead of the Federal Police, the Army could have been deployed in order to curtail or repress their protests, and the results would have been even more disastrous. In the case of Mexico, the dominant forces within the state decided to use the notion of Internal Security as it allows the state to have a much broader field of action against social movements or protests (Centro Prodh 2018).

Yolanda Morán, a member of United Forces for Our Disappeared in Mexico (FUUNDEM- Fuerzas Unidas por Nuestros Desaparecidos in Mexico), one of the NGO's that are part of the Movement for our Disappeared in Mexico, said (Díaz 2017):

The deputies decided not to listen to us, even though they were told that this would lead to more violence and more human rights violations [...] they justified themselves by saying that they already owed it to the Armed

Forces. If without the law in their hands, they did what the troops did, all the more reason, with the enactment of the law we believe violence is going to increase.

The Internal Security Law aims at curtailing not only the advancement of social movements, like the one achieved by the Movement, but also the effectiveness of laws that may challenge neoliberal legality, such as the General Law on Forced Disappearances. The latter law is particularly affected because in a State of Emergency or an Internal Security issue, the presence of the Army is directly related to the increase in the number of human right violations, among which are enforced disappearances (Inter-American Commission on Human Rights 2015, 36).

The state ignored the position of NGO's and international organizations such as Amnesty International (AI), Human Rights Watch (HRW), the Inter-American Commission on Human Rights (IAHRC), the United Nations High Commissioner for Human Rights (OHCHR), Center for Justice and International Law (CEJIL), Robert F. Kennedy Human Rights, among others (Animal Político 2017a; Animal Político 2017b), even though they warned about the risks of the law, which clearly is undermining the movement's and human rights organizations' field of action. The legislation clearly marks a precedent for the eventual permanent presence of Mexican armed forces in the public sphere in the absence of declared war. This which could lead to a greater militarization of the country, in addition to the risk of social protests being deemed a threat to internal security, enabling the state to repress them.

This law has the clear objective of restoring neoliberal legality to materialize a strategy to repress social movements and strengthen state power. The legalization of the use of the military for “internal security tasks” becomes the primary objective of the state in order to have a greater control over social protests. The law enables the State to repress social movements that, as explained earlier in this chapter, were gradually winning small battles for a greater protection of their human rights. It is important to note, that as shown in the public declaration of Yolanda Morán, one of the most vulnerable groups is the families of the disappeared as they have suffered abuses directly from the Mexican army and navy, even without a law that permitted public security tasks. The Internal Security Law also curtails the investigation of those disappearances as it does not forbid the military to lead criminal investigations in which they are directly involved (Centro Prodh 2018, 21).

The Internal Security Law clearly aims to achieve what was defined by Comaroff as lawfare, namely the dominant social forces’ resort to legal instruments and to violence inherent in the law to commit acts of political coercion (Comaroff and Comaroff 2007, 144). In this case, the law is the mechanism through which the dominant forces within the state ensure that neoliberal legality is been enforced to facilitate the free market, private property rights and the sanctity of contracts. At the same time, the law through the language and legal mechanisms of human rights has become a field of contestation to neoliberal legality.

It is important to understand the law as a field of political and social struggle where opposing forces dominate, negotiate and resist. Legal mechanisms such as the General Law on Disappearances and the Internal Security Law show how the law can be used either to dominate or to resist. The Movement for our Disappeared in Mexico, on the one hand, has achieved significant progress towards a broader protection of social and economic human rights by accessing legal knowledge previously exclusive of legal experts on human rights and criminal law. On the other hand, the Internal Security Law counteracts the progress made by subordinated groups towards greater protection of human rights by enabling the army to repress social movements and commit human rights violations. The struggle and success of the Movement for our Disappeared in Mexico with the General Law against Disappearances has set the conditions to increasingly question the notion of lawfare contained by the Internal Security Law, leading to a future struggle to repeal it or at least reform it.

The information presented in this last chapter sheds light on the ways subordinated groups can challenge an unjust or unfair law. The Movement for our Disappeared in Mexico used the existing human rights legal framework that emerged in the context of neoliberalism to counter neoliberal legality and guarantee the protection of a broader array of rights. Although the state responded with a law that indirectly criminalizes social protest, social movements and human rights organizations are challenging the Internal Security

Law, using notions and concepts introduced by the 2011 constitutional reform (namely the pro-personae principle and the conforming interpretation of the American Convention on Human Rights), in an attempt to repeal it.

This chapter showed how social movements employed the legal framework of human rights in Mexico to challenge and resist power despite the neoliberal framework in which the institutions and the legal mechanisms related to these rights emerged. The General Law on Disappearances, particularly the Declaration of Absence by Disappearance, is a direct challenge to the neoliberal model as it broadens economic and social rights of the victims.

The struggle is ongoing as reflected in the enactment of the Internal Security Law, which expands state's power over the use of the military and the repression of social movements, and the efforts of the families of the disappeared and other human right organizations to repeal this law through the 2011 constitutional reform on human rights.

## Conclusion

This thesis shows that the coexistence of a human rights framework with violence in Mexico during the last decade is partly due to its emergence in the context of neoliberal legality. The latter is the role that law assumes in the neoliberal period in legitimizing the “new” legal order, to favour strong individual private property rights and free markets, maintaining the rule of law even through militarization. This is evident in the simultaneous increase of violence since 2006, and the consolidation of the human rights framework in the 2011 constitutional reform, which gave human rights and human right treaties constitutional rank.

While the discourse and framework of human rights have been used by the state officials to legitimize neoliberalism, social movements in Mexico use the existing human rights legal framework to challenge and resist power. Those political processes behind the coexistence of human rights and violence show how the law can be used by the state to dominate social movements (i.e. Internal Security Law) or by social movements to contest neoliberal legality (i.e. General Law on Disappearances).

The thesis analyzes the Mexican case through a critical view of the state and its role in implementing neoliberal legality as well as human rights as politics of contestation. This approach is more adequate to understand socio-political processes behind the coexistence of human rights and violence. Mainstream

studies focus on state weakness. This reinforces policies of militarization, because their focus is the strengthening of the state through regaining control of the monopoly over violence or the strengthening of the rule of law through positivization and constitutionalization of rights. Mainstream studies that focus on the weakness of the Mexican state prevent us from understanding the coexistence between the human rights framework and violence. They consider the state as a neutral and homogeneous entity, separate from society and the economy. As a result, mainstream studies cannot see the connections between the public and private spheres, where the former is the arena of security and human rights and latter is where the economy operates. It is important to understand that this limited reach of human rights does not allow us to understand how human rights, securitization and neoliberalism can coexist. The latter are depicted as separated processes, and therefore the law and the way in which the economy operates are considered neutral. This does not allow us to understand how the law is used to dominate and legitimize an economic model that generates inequality. This inequality in turn makes parts of the population vulnerable to human rights abuses, and also make it harder for them to defend themselves against those abuses as they do not have the means to pay for a lawyer and be part of a full trial individually.

For this reason, the explanations these mainstream approaches provide are insufficient to fully understand the connections behind the co-existence of Mexico's current violence with an existing human rights legal framework.

In contrast, this analysis employs a critical perspective on the state, the economy and the law to understand the emergence of a human rights framework in the context of Mexican neoliberalism, and its resulting limited reach in effectively protecting human rights in the country. Chapter two shows how the human rights framework in Mexico was shaped by neoliberal legality during the 1990s and the 2000s. Neoliberal legality is understood as the use of the law in order to favour strong individual rights and restore the rule of law to sustain the functioning of market discipline. When the War on Drugs was declared in 2006, human rights became a fundamental part of the political discourse in Mexico, a valuable tool to regain the monopoly over power that was lost against the drug cartels. The above led to the enactment of the constitutional reform on human rights in 2011, a reform that was presented by state officials as the response to social demands for the state to defend their citizens and restore the rule of law.

The 2011 reform was also important to the neoliberal development of Mexico, as it attempted to set the legal framework to provide political stability and access to justice necessary to protect potential investors. The parallel development of neoliberalism with a human rights framework in Mexico, shows how dominant forces within the state used the law and human rights to legitimize and sustain the neoliberal project. The coexistence of human rights and violence in Mexico can be seen as a result of the limited scope of human rights contained within a neoliberal legality established “from above” that favors individual rights,

private property and the sanctity of contracts over collective economic and social rights.

A view on the human rights as politics of contestation in the 2011 reform allows us to see the legal framework of rights as a field of struggle where subordinated groups manage to achieve a broader protection of collective and social human rights. That is why, it is important to understand that human rights are not only a way of legitimizing the ruling class and the neoliberal model. But they can also be used as contesting policies, as social movements can use the same legal framework to defend their rights even when they are framed in a neoliberal legality. This is important in the case of Mexico because it sheds some light on how for a long-time neoliberal legality placed limits on the protection of human rights. Yet, the 12-year struggle of the families of the disappeared allowed them to understand and use the legal framework against the dominant forces within the state and against neoliberal legality, in order to defend their economic and social rights.

Chapter three focuses on how the families of the disappeared used the 2011 reform to force state authorities to pass the General Law on Forced Disappearance of Persons, Disappearances Committed by Individuals and the National System for the Search of Persons and the Internal Security Law. This chapter placed emphasis on the precept of Declaration of Absence by Disappearance because it directly challenged the neoliberal model and legality by demanding economic and social rights for the families of the disappeared.

This precept assumes that the disappeared person is alive as long as there is no doubt as to where the person is or until his or her remains are found. The disappeared status ensures the protection of the labor rights of the disappeared person, such as the employee collective rights and the employer's obligation to reinstate the person to his or her job if found alive. The above, directly challenging neoliberal legality of privileging individual rights over social-economic rights. The state reacted with the enactment of the Internal Security Law. A law that was drafted and passed relatively quickly (over one month) after the enactment of the General Law on Forced Disappearances. The enactment of the Internal Security Law has the potential of halting the legal advancement of social groups (e.g. the progress made by Movement for our Disappeared), because it formally enables the military to repress social movements and commit human rights violations, such as forced disappearances. Chapter three therefore shows how human rights and the law can be a field of political and social struggle. It also illustrates how the families used the existing neoliberal human rights framework including precepts from the 2011 constitutional reform on human rights. The above shows how human rights are highly political and therefore involves struggle over lawmaking, meaning and application of human rights.

This thesis is important especially as it relates to the development of the human rights legal framework in Mexico during the neoliberal period from 1988 to 2017. Neoliberal reform in Mexico included the creation and later

strengthening of a limited human rights legal framework that protected individual private property and free market. This impeded the ability of the population to defend their collective social and economic rights and exposed them even further to violence by state and non-state forces. As many of these legal reforms were enacted from above and framed within neoliberal legality, the human rights framework had limited effects to counteract the violence that started in 2006.

The contribution of this thesis to the study of politics and violence is that it presents a possible new way of rethinking authoritarianism and its relationship to violence and human rights. Mexico does not fit in the classical definition of authoritarianism as it does not have centralized power and it does have a clear and formal division of power. Rather, it has other traits that maybe sign of an authoritarian regime such as lack of respect of human rights, disappearances and extra-judicial killings. This study is also important as it addressed how after many years of struggle and learning, some other social movements have successfully challenged the state by using the same language and legal framework they put forward. Movements, such as the Movement for our Disappeared in Mexico have learned the legal language to fight against neoliberal legality and the individualization of human rights, to defend themselves and promote their collective social and economic human rights.

From the struggle carried out by the Movement for our Disappeared in Mexico, we can draw several 'lessons' that can be valuable for other movements in their path towards a broader protection of their human rights:

1. Grouping of cases: it is crucial to group those cases that share similar traits (could be perpetrator, human rights violations, victims, etc.). This way they are able to counteract the individualization of rights that neoliberalism seeks and protects. It also important to remark that the cases chosen for legal battle must be the most paradigmatic, that is to say, cases that do not allow doubt, cases in which it is easier to prove the claims the social movement is fighting for.
2. Collective political mobilizations: social movements must protest collectively not only in the legal field but also in the political arena. Movements must seek other kind of changes (legislative, policy, etc.) that may also be much faster and cheaper than the legal fight. It is dangerous to follow solely a legal fight as you only need one unfavorable judgment to disrupt the entire struggle. As the judgments are just a personal interpretation of the law, there are very high chances of getting unwanted results.
3. Use international treaties and jurisprudence: Movements must not forget to support their struggles at a national level with jurisprudence and international standards (set by international treaties), this way if the struggle does not end satisfactorily, they can access international justice as their last resort.

Beyond the cases presented, there are certain elements that determine why and when a neoliberal state can successfully use the law to limit human

rights. The state uses human rights law to repress because human rights are 'well received' by the population (as there is a positive perception of them). In order to be successful, the state must frame those human rights into the individual notion of human rights as that way is going to be able to protect private property, free markets and the sanctity of contracts. On the other hand, social movements can contest or confront the state using that same law that the state used to repress them. As human rights are political demands that invoke normative claims about how things "should" be, they successfully manage to challenge structures of power and privilege. But in order to be successful they must fight collectively, as it is more likely that they will be heard. This is particularly important for young lawyers as they may feel that once you have human rights in the laws, the protection and fulfilment by the state must follow automatically. The positivization, although important, does not guarantee respect to human rights.

There are limitations to this study which refer to the inability to show the empirical connection between neoliberal policies, poverty and violence. The interplay between neoliberalism, poverty and violence could result in another possible explanation to the coexistence of violence and human rights in Mexico. Also, this study did not incorporate notions of International Humanitarian Law to the analyzes of violence in Mexico. It could be argued that the 'War on Drugs' in Mexico falls into the concept of non-international armed conflict (under article 3 common to the Geneva Conventions of August 12, 1949). If the 'War on

Drugs' were framed as a non-international armed conflict that would change the obligations of the Mexican state towards the protection and fulfilment of human rights. This approach would be an interesting new take on when does International Human Rights Law stop and International Humanitarian Law starts.

There are two paths this thesis could follow as further research. First, the politics of contestation by indigenous communities in Mexico. These communities have been the main target of neoliberal legality as they threaten private property and economic development. The findings of this thesis suggest that indigenous communities in Mexico could follow similar strategies to those used by the families of the disappeared, namely the grouping of cases, collective political mobilizations and the use of international treaties and jurisprudence, in order to achieve a successful protection of their social and economic human rights. Second, the analysis of neoliberal legality and its coexistence with violence and human rights could be used in other states that may share similar traits with Mexico, for example Sub-Saharan African countries that are not ruled by an authoritarian regime, have high rates of violence and a robust human rights framework.

## References

- Ackerman, John M. 2007. *Organismos autónomos y democracia. El caso de México*. Mexico: Siglo XXI Editores- Instituto de Investigaciones Jurídicas UNAM.
- Agencies. 2017. "Miranda de Wallace y Alejandro Martí aprueban la Ley de Seguridad Interior." *El Heraldo de Mexico*, December 6.
- Aguilar, Jose Antonio. 2012. "Las Bases Sociales del Crimen Organizado y la Violencia en México." In *Las Bases Sociales del Crimen Organizado y la Violencia en México*, by Jose Antonio Aguilar, 9-33. Mexico: Centro de Investigaciones y Estudios de Seguridad.
- Alcántara, Suzzete. 2017. *Aprueban diputados Ley de Seguridad Interior*. December 15. <http://www.eluniversal.com.mx/nacion/politica/aprueban-diputados-ley-de-seguridad-interior>.
- Alfaro Izarraraz, Rafael, Francisco Guízar Vázquez Jr., and Ivonne Vizcarra Bordi. 2011. "El traslado fallido del Aeropuerto Internacional de la Ciudad de México a Texcoco." *Argumentos* 24 (65): 295-319.
- Álvarez Béjar, Alejandro. 2007. "Mexico after the Elections: The Crisis of Legitimacy and the Exhaustion of Predatory Neoliberalism." *Monthly Review* 59 (3).
- Anaya Muñoz, Alejandro. 2013. "Política Exterior y Derechos Humanos durante el gobierno de Felipe Calderón." *Foro Internacional* LIII (3-4): 771-793.
- Animal Político. 2017a. *No es una solución: ONU, CNDH y CIDH alertan sobre la Ley de Seguridad Interior*. December 4. <https://www.animalpolitico.com/2017/12/seguridad-interior-onu-cidh/>.
- . 2017b. *Organizaciones internacionales forman una coalición contra la Ley de Seguridad Interior*. December 18. <https://www.animalpolitico.com/2017/12/seguridad-organizaciones-coalicion/>.
- Auger, Frédéric. 2013. "El movimiento zapatista: ¿hacia una verdadera ciudadanía intercultural?" *Tinkuy* 6-22.
- Bailey, John. 2014. *The Politics of Crime in Mexico: Democratic Governance in a Security Trap*. Boulder, Colorado: First Forum Press.

- Benjamin, Walter. 1986. "Critique of Violence." In *Reflections: Essays, Aphorisms, Autobiographical Writings*, by Walter Benjamin. New York: Schocken Books.
- Bidart Campos, Germán. 1989. *Teoría general de los derechos humanos*. Mexico: Instituto de Investigaciones Jurídicas UNAM.
- Botero, Sandra. 2018. "Agents of Neoliberalism? High Courts, Legal Preferences and Rights in Latin America." In *Latin America Since the Left Turn*, by Falleti Tulia G. and Parrado Emilio A. Philadelphia: University of Pennsylvania Press.
- Brabazon, Honor. 2017a. *Neoliberal Legality Understanding the Role of Law in the Neoliberal Project*. New York: Routledge.
- . 2017b. "Occupying Legality: The Subversive Use of Law in Latin American Occupation Movements." *Bulletin of Latin American Research* 36 (1): 21-35.
- Bratsis, Peter. 2006. *Everyday Life and the State*. New York: Routledge.
- Brown, Wendy. 1995. *States of Injury: Power and Freedom in Late Modernity*. Princeton: Princeton University Press.
- Bryner, Gary, and Noel B. Reynolds. 1987. *Constitutionalism and the Politics of Rights*. Provo, Utah: State University of New York Press.
- Buonamano, Roberto. 2006. "Humanity and Inhumanity: State Power and the Force of Law in the Prescription of Juridical Norms." In *Evil, Law and the State: Perspectives on State Power and Violence*, by John T. Parry, 159-171. Amsterdam: Rodopi.
- Carbonell, Miguel. 2012. "Los Derechos Humanos en México durante el Siglo XX: Notas para su estudio." *Revista Mexicana de Historia del Derecho* (XXVI): 121-145.
- Carmona Tinoco, Jorge Ulises. 2011. "La reforma y las normas de derechos humanos previstas en los tratados internacionales." In *La reforma constitucional de derechos humanos*, by Miguel Carbonell and Pedro Salazar. Mexico: UNAM.
- Carnoy, Martin. 1984. *The State and Political Theory*. Princeton: Princeton University Press.

- Case of Anzualdo Castro v. Peru*. 2009. Series C, 202 (Inter-American Court of Human Rights, September 22).
- Case of Radilla-Pacheco v. Mexico*. 2009. Series C, 209 (Inter-American Court of Human Rights, November 23).
- Centeno, Miguel Angel. 1994. *Democracy within Reason: Technocratic revolution in Mexico*. Philadelphia: Pennsylvania State University Press.
- Centro Prodh. 2018. *Perpetuar el fallido modelo de seguridad*. Mexico.
- Centro de Colaboración Cívica. 2014. *Conjunto de Principios y Recomendaciones Ciudadanas para los Procedimientos de Declaratoria de Ausencia por Desaparición*. Mexico.
- Chilcote, Ronald. 2000. *Theories of Comparative Political Economy*. Boulder, Colorado: Westview Press.
- Collinson, Sarah. 2003. *Power, livelihoods and conflict: case studies in political economy analysis for humanitarian action*. London: Humanitarian Policy Group.
- Comaroff, Jean, and John Comaroff. 2007. "Law and disorder in the postcolony." *Social Anthropology* 15 (2): 133-152.
- . 2006. *Law and Disorder in the Postcolony*. Chicago: Chicago University Press.
- . 2000. "Millennial Capitalism: First Thoughts on a Second Coming." *Public Culture* 12 (2): 291-343.
- Constitution of the United Mexican States. 2011.
- Consejo Nacional de Evaluación de la Política de Desarrollo Social. 2017. *Medición de la Pobreza*. August 30.  
<https://www.coneval.org.mx/Medicion/Paginas/PobrezalInicio.aspx>.
- Cruz, José Miguel. 2016. "State and criminal violence in Latin America." *Crime, Law and Social Change* 66 (4): 375–396.
- Cumplido Cereceda, Francisco. 2003. "La Reforma Constitucional de 1989 al inciso 2° del Artículo 5° de la Constitución: Sentido y Alcance de la Reforma." *Ius et Praxis* 9 (1): 365-374.

- Díaz, Gloria Leticia. 2017. *Ley de Seguridad Interior: Ante la sordera legislativa, el repudio generalizado*. December 5.  
<https://www.proceso.com.mx/513823/ley-seguridad-interior-ante-la-sordera-legislativa-repudio-generalizado>.
- Dinerstein, Ana. 2016. "Zapatistas." In *The Wiley-Blackwell Encyclopedia of Globalization*, by George Ritzer. Wiley.
- Dissenting Opinion on the Advisory Opinion about the enforceability of the right to reply or correction*. 1986. OC-7/85 (Inter-American Court of Human Rights, August 29).
- Dube, Arindrajit, Oeindrila Dube, and Omar García-Ponce. 2013. "Cross-Border Spillover: U.S. Gun Laws and Violence in Mexico." *American Political Science Review* 107 (3): 397-417.
- DW. 2017. *Estudio: México es el segundo país más violento del mundo*. May 9.  
<https://www.dw.com/es/estudio-m%C3%A9xico-es-el-segundo-pa%C3%ADs-m%C3%A1s-violento-del-mundo/a-38770281>.
- Executive Secretariat of the National Security System. 2018. *Cifras de homicidio doloso, secuestro, extorsión y robo de vehículos 1997-2017*. Accessed April 30, 2018.  
[http://secretariadoejecutivo.gob.mx/docs/pdfs/cifras%20de%20homicidio%20doloso%20secuestro%20etc/HDSECEXTRV\\_052018.pdf](http://secretariadoejecutivo.gob.mx/docs/pdfs/cifras%20de%20homicidio%20doloso%20secuestro%20etc/HDSECEXTRV_052018.pdf).
- Faulk, Karen Ann. 2014. "Solidarity and Accountability: Rethinking Citizenship and Human Rights." In *Human Rights at the Crossroads*, by Mark Goodale, 98-108. New York: Oxford University Press.
- Fregoso, Rosa Linda. 2006. "'We Want Them Alive!': The Politics and Culture of Human Rights." *Social Identities* 12 (2): 109-138.
- Friedman, George. 2008. *Stratfor*. Accessed January 15, 2018.  
<https://worldview.stratfor.com/article/mexico-road-failed-State>.
- . 2010. *Stratfor*. Accessed January 30, 2018.  
<https://worldview.stratfor.com/article/mexico-and-failed-State-revisited>.
- Gargarella, Roberto. 2018. "Constitutional Changes and Judicial Power in Latin America." In *Latin America Since the Left Turn*, by Falleti Tulia G. and Parrado Emilio A. Philadelphia: University of Pennsylvania Press.
- Garzon, Juan Carlos, and John Bailey. 2015. "Displacement Effects of Supply-Reduction Policies in Latin America: A Tipping Point in Cocaine

- Trafficking, 2006–2008." In *The Handbook of Drugs and Society*, by Henry H. Brownstein, 482-504. Wiley-Blackwell.
- General Law on Forced Disappearance of Persons, Disappearances Committed by Individuals and the National System for the Search of Persons. 2017.
- Goldstein, Daniel M. 2014. "Whose Vernacular? Translating Human Rights in Local Contexts." In *Human Rights at the Crossroads*, by Mark Goodale, 111–121. New York: Oxford University Press.
- González, María de la Luz. 2008. *El Universal*. January 21. <http://archivo.eluniversal.com.mx/notas/475742.html>.
- Goodale, Mark. 2014. "Human Rights After the Post-Cold War." In *Human Rights at the Crossroads*, by Mark Goodale, 1-28. New York: Oxford University Press.
- Goodhart, Michael. 2014. "Human Rights and the Politics of Contestation." In *Human Rights at the Crossroads*, by Mark Goodale, 31-44. New York: Oxford University Press.
- Grayson, George. 2010. *Mexico: Narco-Violence and a Failed State?* New Brunswick, New Jersey: Transaction Publishers.
- Guerrero, Eduardo. 2009. *Narcotráfico, S.A.* Accessed January 22, 2018. <https://www.nexos.com.mx/?p=12885>.
- Harvey, David. 2005. *A Brief History of Neoliberalism*. New York: Oxford University Press.
- Heinle, Kimberly, Octavio Rodríguez Ferreira, and David A. Shirk. 2017. *Drug Violence in Mexico: Data and Analysis Through 2016*. Special Report, San Diego: Justice in Mexico Project.
- Heredia, Carlos A. 1994. "NAFTA and Democratization in Mexico." *Journal of International Affairs* (1): 13-38.
- Heywood, Andrew. 2013. *Politics*. New York: Palgrave Macmillan.
- Human Rights Watch. 2017. *2017 World Report*. Accessed April 20, 2018. <https://www.hrw.org/world-report/2017/country-chapters/mexico>.
- Ieven, Bram. 2006. "Legitimacy and Violence: On the Relation between Law and Justice According to Rawls and Derrida." In *Evil Law and the State*:

- Perspectives on State Power and Violence*, by John T. Parry, 199-210. Amsterdam: Rodopi.
- Inter-American Commission on Human Rights. 2009. "Report on Citizen Security and Human Rights." OEA/Ser.L/V/II. Doc. 57.
- . 2015. *Preliminary Observations on the IACHR Visit to Mexico*. October 2. [http://www.oas.org/en/iachr/media\\_center/PReleases/2015/112A.asp](http://www.oas.org/en/iachr/media_center/PReleases/2015/112A.asp).
- . 2015. "The Human Rights Situation in Mexico." OEA/Ser.L/V/II. Doc. 44/15.
- . 2017. *IACHR Expresses Concern regarding Draft Law on Internal Security in Mexico*. December 4. [http://www.oas.org/en/iachr/media\\_center/PReleases/2017/200.asp](http://www.oas.org/en/iachr/media_center/PReleases/2017/200.asp).
- . 2017. "Report on Poverty and Human Rights in the Americas." OEA/Ser.L/V/II.164 Doc. 147.
- Jessop, Bob. 2009. "The State and State Power." In *The SAGE Handbook of Power*, by Stewart Clegg and Mark Haugaard, 367-382. London: SAGE.
- . 2016. *The State: Past, Present Future*. Polity Press.
- Kapur, Ratna. 2006. "Human Rights in the 21st Century: Take a Walk on the Dark Side." *Sydney Law Review* 68 (665): 665-687.
- Knight, Alan. 1998. "Populism and Neo-Populism in Latin America, Especially Mexico." *Journal of Latin American Studies* 30 (2): 223-248.
- . 2012. "Narco-Violence and the State in Modern Mexico." In *Violence, Coercion, and State-Making in Twentieth-Century Mexico*, by Wil G. Pansters, 115-134. Stanford: Stanford University Press.
- Laurell, Asa Cristina. 2015. "Three Decades of Neoliberalism in Mexico: The Destruction of Society." *International Journal of Health Services* 45 (2): 246–264.
- MacLeod, Dag. 2004. *Downsizing the state: Privatization and the Limits of Neoliberal Reform in Mexico*. University Park, PA: The Pennsylvania State University Press.
- Mendoza Ortiz, Sandra Elizabeth. 2016. *El México de los desaparecidos: del dolor al activismo*. September 2. <https://www.univision.com/noticias/desapariciones/el-mexico-de-los-desaparecidos-del-dolor-al-activismo>.

- Mitchell, Timothy. 1992. "The Limits of The State: Beyond Statist Approaches And Their Critics." *American Political Science Review* 85 (1): 77-96.
- Molzahn, Cory, Viridiana Rios, and David A. Shrik. 2012. *Drug Violence in Mexico: Data and Analysis Through 2011*. Special Report, Trans-Border Institute, University of San Diego, San Diego: Justice in Mexico Project.
- Montaño Delgado, María Teresa. 2002. "Millonarias pérdidas para el Edomex en inversión directa." *El Universal*, August 2.
- Movimiento por Nuestros Desaparecidos en México. n.d. *Nosotros*. Accessed April 10, 2018. <https://sinlafamiliasno.org/nosotros/>.
- Muñoz Martínez, Hepzibah. 2015. "The politics of scale, place, and mobility in the Mexican peace movement, 2006–2012." *Canadian Journal of Latin American and Caribbean Studies* 40 (2): 157-175.
- National Human Rights Commission. n.d. *Historical Background*. Accessed March 20, 2018. <http://www.cndh.org.mx/Antecedentes>.
- National Register of Missing and Disappeared Persons Data. 2018. *Estadísticas Fuero Común*. April 30. <http://secretariadoejecutivo.gob.mx/rnped/estadisticas-fuerocomun.php>.
- Nohlen, Dieter. 2017. "Los Regímenes Autoritarios." In *Antologías para el estudio y la enseñanza de la ciencia política. Volumen II: Régimen político, sociedad civil y política internacional*, by Herminio Sánchez de la Barquera y Arroyo, 91-95. Mexico: Instituto de Investigaciones Jurídicas UNAM.
- Notimex. 2017. "CCE respalda aprobación de Ley de Seguridad Interior." *El Economista*, December 6: <https://www.eleconomista.com.mx/empresas/CCE-respalda-aprobacion-de-Ley-de-Seguridad-Interior-20171206-0065.html>.
- Office of the United Nations High Commissioner for Human Rights. 2015. *Statement of the UN High Commissioner for Human Rights, Zeid Ra'ad Al Hussein, on his visit to Mexico*. Accessed December 20, 2017. <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16578&LangID=e>.
- Oliver, Ranko Shiraki. 2012. "Mexico's dilemma: Workers' Rights or Worker's Comparative Advantage in the Age of Globalization?" *Global Business & Development Law Journal* 25 (2): 195-244.

- Organization of American States. 1994. *Inter-American Convention on Forced Disappearance of Personnas*.
- Pansters, Wil G. 2012. "Zones of State-Making: Violence, Coercion, and Hegemony in Twentieth-Century Mexico." In *Violence, Coercion, and State-Making in Twentieth-Century Mexico*, by Wil G. Pansters, 3-39. Stanford: Stanford University Press.
- Pereyra, Guillermo. 2012. "México: violencia criminal y "guerra contra el narcotráfico"." *Revista Mexicana de Sociología* (Universidad Nacional Autónoma de México-Instituto de Investigaciones Sociales) 74 (3): 429-460.
- Phillips, Brian J. 2015. "How Does Leadership Decapitation Affect Violence? The Case of Drug Trafficking Organizations in Mexico." *The Journal of Politics* (Southern Political Science Association) 77 (2): 324-336.
- Piza, Rodolfo. 1986. "Dissenting Opinion on the Advisory Opinion about the enforceability of the right to reply or correction". OC-7/85.
- Plascencia, Raul. 2011. "The Constitutional Reform on Human Rights." *Voices of Mexico* (Universidad Nacional Autonoma de Mexico) (91): 6-10.
- Postero, Nancy. 2010. "The Struggle to Create a Radical Democracy in Bolivia." *Latin American Research Review* 45: 59-78.
- Poulantzas, Nicos. 2000. *State, Power, Socialism by*. New York: Verso.
- Presidencia de la República. 2006. *Anuncio sobre la Operacion Conjunta Michoacán*. Accessed December 05, 2017. <http://calderon.presidencia.gob.mx/2006/12/anuncio-sobre-la-operacion-conjunta-michoacan/>.
- . 2011. *Diversas Intervenciones en la Promulgación de la Reforma Constitucional en Materia de Derechos Humanos*. Accessed February 3, 2018. <http://calderon.presidencia.gob.mx/2011/06/diversas-intervenciones-en-la-promulgacion-de-la-reforma-constitucional-en-materia-de-derechos-humanos/>.
- Ramírez García, Hugo Saúl, and José Antonio Sánchez Barroso. 2012. "La praxis de los derechos humanos en México a partir de la reforma constitucional de junio de 2011." *Cuestiones Constitucionales: Revista Mexicana de Derecho Constitucional* (27): 213-249.

- Redacción. 2014. "Empresarios de Acapulco piden tregua a padres de normalistas para mantener turismo." *Animal Político*, November 12: <https://www.animalpolitico.com/2014/11/empresarios-de-acapulco-piden-tregua-padres-de-normalistas-para-mantener-turismo/>.
- Redacción. 2016. *ONU, AI, Cruz Roja, ONGs y familias exigen al Estado mexicano ver y aceptar crisis de desaparecidos*. August 30. <http://www.sinembargo.mx/30-08-2016/3086183>.
- Richard, Analiese M. 2013. "Taken into Account: Democratic Change and Contradiction in Mexico's Third Sector." In *Neoliberalism, Interrupted: Social Change and Contested Governance in Contemporary Latin America*, by Mark Goodale and Nancy Postero, 137-166. Stanford: Stanford University Press.
- Rios, Viridiana. 2013a. "How Government Structure Encourages Criminal Violence: The causes of Mexico's Drug War." *Harvard University*. Accessed February 1, 2018. <http://nrs.harvard.edu/urn-3:HUL.InstRepos:11156675>.
- , Viridiana. 2013b. "Why did Mexico become so violent? A self-reinforcing violent equilibrium caused by competition and enforcement." *Trends in Organized Crime* 16 (2): 138-155.
- Sacristán Roy, Emilio. 2006. "Las privatizaciones en México." *Economía UNAM* 3 (9): 54-64.
- Salazar Ugarte, Pedro, José Luis Caballero Ochoa, and Luis Daniel Vázquez. 2014. *La reforma constitucional sobre derechos humanos: Una guía conceptual*. Mexico: Instituto Belisario Domínguez.
- Salinas Cesáreo, Javier. 2018. "Lucha de Atenco, en pie "más que nunca": Ignacio del Valle." *La Jornada*, May 2: <http://www.jornada.com.mx/ultimas/2018/05/02/lucha-de-atenco-en-pie-201cmas-que-nunca201d-ignacio-del-valle-4046.html>.
- Salinas Cesáreo, Javier, and René Ramón Alvarado. 2002. "Reprimen marcha campesina de Atenco; hay 33 lesionados." *La Jornada*, July 12: <http://www.jornada.com.mx/2002/07/12/052n2pol.php?printver=0>.
- Saltalamacchia, Natalia, and Ana Covarrubias. 2011. "La dimensión internacional de la reforma de derechos humanos: antecedentes históricos." In *La reforma constitucional de derechos humanos: un nuevo paradigma*, by Miguel Carbonell and Pedro Salazar. Mexico: UNAM.

- Serrano, Mónica. 2012. "States of Violence: State-Crime Relations in Mexico." In *Violence, Coercion, and State-Making in Twentieth-Century Mexico*, by Wil G. Pansters, 135-158. Stanford: Stanford University Press.
- Shapiro, Ian. 2003. *The State of Democratic Theory*. Princeton: Princeton University Press.
- Shirk, David A. 2011. *The Drug War in Mexico: Confronting a Shared Threat*. Council Special Report No. 60, New York: Council on Foreign Relations: Center of Preventive Actions.
- Shirk, David A., and Alejandra Ríos Cázares. 2007. "Introduction: Reforming the Administration of Justice in Mexico." In *Reforming the Administration of Justice in Mexico*, by Wayne A. Cornelius and David A. Shirk. Notre Dame: University of Notre Dame Press.
- Speed, Shanon. 2005. "Dangerous Discourses: Human Rights and Multiculturalism in Neoliberal Mexico." *Political and Legal Anthropology Review* 28 (1): 29-51.
- . 2007. "Exercising rights and reconfiguring resistance in the Zapatista Juntas de Buen Gobierno." In *The Practice of Human Rights: Tracking Law between the Global and the Local*, by Mark Goodale. New York: Cambridge University Press.
- Springer, Simon. 2012. "Neoliberalising violence: of the exceptional and the exemplary in coalescing moments." *Area* 44 (2): 136-143.
- Stallings, Barbara, and Wilson Peres. 2000. *Growth, Employment, and Equity: The impact of the Economic Reforms in Latin America and the Caribbean*. The Brookings Institution Press and ECLAC.
- Stammers, Neil. 2009. *Human Rights and Social Movements*. New York: Pluto Press.
- . 1999. "Social Movements and the Social Construction of Human Rights." *Human Rights Quarterly* 21 (4): 980-1008.
- Steffan, Mara. 2007. "The Political Impact of NAFTA on the Mexican Transition to Democracy, 1988-2000." *The SAIS Europe Journal of Global Affairs*. Accessed March 22, 2018. <http://www.saisjournal.org/posts/the-political-impact-of-nafta-on-the-mexican-transition-to-democracy-1988-2000#cite>.
- Suarez-Potts, William J. 2012. *The Making of Law: the Supreme Court and labor legislation in Mexico, 1875-1931*. Stanford: Stanford University Press.

- Velázquez Flores, Rafael. 2017. "Política exterior y derechos humanos en México: tendencias a finales del siglo XX y prioridades a inicios del XXI." *IUS* 11 (40): 137-157.
- Velázquez García, Mario Alberto. 2004. "La violencia y los movimientos sociales en el gobierno de Vicente Fox, 2001-2002." *Región y Sociedad* XVI (29): 45-74.
- Verástegui González, Jorge. 2016. *La Personalidad Jurídica en la Desaparición Forzada*. Mexico: CNDH.
- Vincent, Andrew. 2010. *The Politics of Human Rights*. New York: Oxford University Press.
- Walzer, Michael. 1984. "Liberalism and the Art of Separation." *Political Theory* 12 (3): 315-330.
- Watt, Peter, and Roberto Zepeda. 2012. *Drug War Mexico*. London and New York: Zed Books.
- Zepeda, Raul. 2018. "Siete tesis explicativas sobre el aumento de la violencia en México." *Política y Gobierno* (Centro de Investigación y Docencia Económicas) XXV (1): 185-211.

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