

Redefining Security and Reexamining Policy to Identify the Causes of Insecurity in Mexico¹

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Introduction

In recent years in Mexico, we have suffered an escalation in violence that has thrown into question the capacity of the State to provide security to its citizens. Some voices even suggest that Mexico is a failed state. In this essay, with the aim of offering a critical perspective of the situation, I propose a definition of the concept of security that joins public safety and national security. Both notions are closely related to the concept of the State itself, which makes them useful for schematically reconstructing the institutional evolution in Mexico towards a constitutional State. The promising side of this progress will be contrasted with certain particularly serious examples of recent violence. The essential section of the work is comprised by the analysis of four possible causes for the rise in violence and observations of some of the flaws and ominous consequences of the strategy adopted by President Calderón's government.

I. Notes on the concept of security.²

Definitions are necessary for discussion and debate with others. If we endow concepts with different meanings, in all likelihood we will only sow misunderstandings. But definitions can vary according to the context – theoretical, historical, social, etc. – in which the concepts are

¹ Agradezco a Mauricio del Toro, Catalina Pérez Correa, Francisca Pou, Pablo Larrañaga, Mónica González, Paula Vásquez y Roberto Lara sus comentarios y sugerencias.

² Translator's note: the explanation that follows might seem unclear because the Spanish word *seguridad* denotes both 'security' and 'safety' and the adjective *seguro* has the additional connotation of 'certain' or 'sure'. Because this translation is an altogether hasty one, the choice of which of the English words to use was made on the basis of a quick appraisal of the immediate context in each case.

used. For this reason, in order to clarify how I will be using the term throughout this piece, I will first offer an analytic/conceptual delimitation of “safety.”

Safety can be characterized in the strict sense as the certainty that something will be averred, but also, in a broader sense, as that state of things that offers cover or guarantee to some degree of certitude (and, therefore, predictability) for a good or set of goods (that are considered valuable).³ We say something is safe when it is protected. In this last sense, security in Spanish is not only understood as a logical/causal relationship between a fact and its consequences the way the term ‘surely’ operates in the phrase: “given the meteorological conditions, it will surely rain,” but is also closely related to the absence of harm or danger or, when these do exist, to the existence of a guarantee or protection. For this reason, for the purposes of this work, the conception of “legal security” that is limited to the prospect of affirming with certainty the consequences of our actions under the logic of imputation (If A, then necessarily B) is insufficient.

Following the conception which I have proposed we say, for example, that a person is safe when there is no predictable risk of harm to her physical integrity (or, if we want to broaden the notion, to her properties) in her present situation, whether it be because the situation is non-dangerous or because she has protection against the danger. In the same way that we say that an investment is secure when we do not risk – on the basis of the correct information available – losing it, we maintain that a means of transport is safe when, with a high degree of probability, it will not break down and will eventually arrive at its destination. In all of these cases, as can be seen, the concept of security is associated with the idea of guarantee and not only with the idea

³ Según el diccionario, “seguro” es algo “cierto, indubitable y en cierta manera infalible” o “Firme, constante y que no está en peligro de faltar o caerse”. También algo “No sospechoso” o un “Lugar o sitio libre de todo peligro”. Diccionario de la Lengua Española de la Real Academia Española.

of certainty that is implicated in the use of the term when we say, for example, that “in all certainty [*seguridad*], one day, we will die;” nor with the notion of legal certainty contained in the idea that “to action X corresponds the normative consequence Z.” Certainty, without doubt, is a central element in the notion of security, but in the use that interests us, it happens to be intimately tied to the notion of guarantee: we are certain of X because there exists the guarantee Y. In fact, the idea of security translates into an imperative: to offer protection of a valued good.

To synthesize, the notion of security operating in my reflections, besides legal certainty, requires some armor, not only legal but also material in order to offer protection to certain valued goods or situations: rights such as the right to life or physical integrity; public goods such as stability, democracy, or peace; etc. This is the sense in which the notions of public safety and national security will be configured.

II. State, public safety, and national security.

When we speak of national security⁴ and public safety we use the concept of security/safety in an instrumental sense and we refer to the protection that the State, in the last instance through physical force, provides in the first place to its own integrity, stability, and viability against external and internal threats⁵ and in the second place to basic fundamental goods

⁴ La Ley de Seguridad Nacional mexicana, en su artículo 3º, propone la siguiente definición: “Por seguridad nacional se entienden las acciones destinadas de manera inmediata y directa a mantener la integridad, estabilidad y permanencia del Estado mexicano...”. Una definición académica, para mi gusto demasiado amplia, puede ser la siguiente: “(...) La capacidad de preservar la integridad física de la nación y de su territorio; de mantener sus relaciones económicas con el resto del mundo en términos convenientes; de proteger su naturaleza, sus instituciones y su gobierno de los ataques provenientes del exterior, y de controlar sus fronteras.” Brown, Harold., “Reflexiones acerca de la seguridad nacional” XXX,p. 9. Desde la perspectiva de las amenazas a la misma, Richard Ullman, afirma lo siguiente: “A more useful (although certainly not conventional) definition might be a threat to national security is an action or sequence of events that (1) threatens drastically and over a relatively brief span of time to degrade the quality of life for the inhabitants of a state, or (2) threatens significantly to narrow the range of policy choices available to the government of a state, or to private, nongovernmental entities...within the state”. Ullman, R., “Redefining security” en *International Security* 8 (1), 1983, p. 133.

⁵ Como puede observarse, esta noción de seguridad guarda una estrecha relación con el concepto de soberanía en su doble dimensión interna y externa. Cfr. Ferrajoli, L. *La sovranità nel mondomoderno*, ANABASI, Milán, XXXX.

such as the life, the physical integrity, the property, the freedom, etc., of people. The link between these two notions is not immediately evident but is possible: a crisis of public safety⁶ might turn into a threat for national security. Carrying out action whose purpose is to ensure that this does not occur is not only essential for the legitimacy but also for the continued existence of the State itself.

Behind this definition lies the definition of state proposed by Max Weber as the legitimate monopoly of force. This idea expressed sociologically by Weber had already been identified by Thomas Hobbes. In fact, as Norberto Bobbio tells us, “We can say without fear of mistake that, for Hobbes, the State is, in the words of Weber, the monopoly of legitimate force, as well as it is for Weber, in the words of Hobbes, “that which exclusively detains coercive power.”⁷

This is why Pablo Larranaga is correct when he warns that public safety, or even in extreme cases national security, is not a right but a necessary condition for the existence,

⁶ Ofrezco al lector dos posibles definiciones de seguridad pública: “La seguridad pública puede entenderse como el conjunto de políticas y medidas coherentes y articuladas que tienden a garantizar la paz general a través de la prevención y represión de los delitos y las faltas contra el orden público, mediante el sistema del control penal y la policía administrativa”. González Ruiz, S., “Seguridad Pública y Derechos Humanos: Acciones positivas estatales para su efectiva garantía”, en Peñaloza, J. (coord.), Seguridad Pública. Voces diversas en un enfoque multidisciplinario, Porrúa, México, 2005, p.283. O, bien, con un enfoque más completo: “Public security is understood broadly to encompass citizens security (both crime prevention and protection), the provision of justice (proper authorities undertake relevant inquiries in response to an apparent illegal act), the administration of justice (a judge determines if sufficient basis is shown to take action and proceeds accordingly) and, where necessary, imprisonment and social readaptation”. Bailey J., and J. Chabat (eds.), *Transnational Crime and Public Security. Challenges to Mexico and the United States*, Center for US-Mexican Studies, UCLA, San Diego, 2002, p.15. Sobre el tema, Cfr., también, Álvarez de Icaza, E., “Seguridad Pública, Constitución y Derechos Humanos”, en Peñaloza, J. (coord.), Seguridad Pública. Voces diversas en un enfoque multidisciplinario, Porrúa, México, 2005.

⁷ La siguiente definición hobbesiana hace eco, además, con la idea de seguridad nacional como ha sido propuesta párrafos arriba: “Estado es una única persona, cuya voluntad -en virtud del pacto suscrito recíprocamente por un grupo de individuos- debe considerarse como la voluntad de todos éstos, donde puede hacer uso de la fuerza y de los bienes de los individuos para mantener la paz y para la defensa común”. Hobbes, T., *De Cive*, XXXXX

satisfaction, enjoyment, etc., of individual rights.⁸ I will use the oeuvre of Locke to fill out the idea. In his theory, in order to provide guarantees for the natural rights of life, liberty and property, individuals must only renounce one of the rights we had in the state of nature: that of carrying out justice with one's own hand. Locke does not give up the Hobbesian thesis that the key separating the State of Nature from the Nature of the Civil State is the renunciation of private violence to give rise to the legitimate monopoly of public violence; yet, in contrast to Hobbes, he believes that the legitimacy of the State depends on whether said violence is oriented such that it offers a guarantee for (no longer natural but rather) civil rights.

In the model of the classic liberal State (which precedes the contemporary constitutional State), the use of private violence is indeed renounced in exchange for the state administration of an impartial justice system that guarantees a set of valued goods (no longer only life). The process of organization thus affords an arrangement that pacifies coexistence. Because of this, in this model of the State, providing security is not only a condition for the existence of state order and one of the very duties of the state, but also a “non-right” of persons. On a theoretical note, this “non-right” – the non-exercise of private violence – in fact constitutes another necessary condition that must be met before the State can offer any guarantee for individual rights. And in this sense it is a condition for both the existence and at the same time of legitimacy of a modern liberal/constitutional State.

To synthesize, when we think of public safety and national security, the concept of safety/security is tied to the very notion of the modern State. Legitimately monopolizing the use of force is directly tied to the very concept of the modern State (which can be absolute or liberal,

⁸ Aclaro, como me lo ha sugerido Mauricio del Toro, que no considero la noción de “seguridad personal”, recogida como derecho fundamental en diversos ordenamientos jurídicos porque, para los efectos de este ensayo, es asimilable a la libertad personal.

autocratic or democratic). Yet, if we want the State to have a liberal/constitutional character, that monopoly should be oriented to provide protective guarantees to a more or less broad set of individual rights. This necessarily requires that: a) a State exist, that is, that there exist a monopolization of force over a determined territory (which implies that there not be armed groups within the territory that dispute the authority's control of physical force); b) the State itself not constitute a threat to the rights of persons (that is, that it not be an absolute State); c) in the face of events and situations that infringe on the rights of individuals in charge of other people, justice be dealt by the State itself (which becomes "the impartial judge" that applies the law "known to all").⁹

III. Notes on the construction of the Mexican State.

Schematically summarizing (and inevitably, over-simplifying), we can say that over the last hundred years, on Mexican territory, an institutional evolution has taken place that started with a situation comparable to the natural state that became a democratic and constitutional one (fragile and incipient but authentic). Over the course of this complicated and prolonged process reigned – for at least seven decades – an absolute (and autocratic) State model, one that Giovanni Sartori baptized the "hegemonic party system."¹⁰

In the first stretch of the 20th century, during the revolution and until the consolidation of the hegemonic party system, for practical purposes the country was submerged in a civil war. The same can be said for the previous century. Porfirio Diaz explained his conception of state building in the following way: "in order to avoid spilling torrents of blood, it was necessary to

⁹ Cfr. Locke, J., *Dos tratados*

¹⁰ Cfr. Sartori, G., *Ingeniería constitucional comparada*, XXX.

spill a bit.”¹¹ To speak of the existence of a Mexican State in those years, from a theoretical perspective, then, is difficult. It is only upon the consolidation of the Institutional Revolutionary Party (PRI) regime (let us say starting in the 1930s) that it is possible to announce the construction of a state entity resulting from a gradual process of monopolization of force. At the beginning the state was erected along authoritarian lines. We can say that, symbolically, we went from a state of nature to a Hobbesian state. For practical purposes, notwithstanding what was written in the 1917 constitution, political power became concentrated, through the PRI and in absolutist and autocratic fashion, in the hands of the President of the Republic. Some authors characterize this phenomenon using the suggestive idea of “metaconstitutional faculties” for the Mexican president in power.¹²

In the 1970s (studies situate the paradigmatic changing point in 1977), little by little, the hegemonic party system started to give way under the pressure of political and social forces that started to form opposing currents and to suffer from a few internal fractures as a result of which the system moved towards a model of electoral, multi-party, competitive democracy.¹³ Along with this gradual process of political change – that led to the composition of divided governments at the national level from 1997 and political alternance in the executive branch in 2000, in the mid-1990s the justice system, in its formal dimension (constitutional/legal), began to adopt a more constitutional tenor. Above all, this was due to a profound reform of the federal judiciary and particularly changes in the Supreme Court of Justice of the Nation. The Hobbesian state, to continue our analogy, slowly made room – albeit more in terms of norms rather than in practice – for a liberal/constitutional state politically organized on a democratic basis (something

¹¹ Cfr., Silva Herzog, J., *Breve historia de la Revolución mexicana*, FCE, México, 1980.

¹² Cfr., Carpizo, J., *El presidencialismo mexicano*, Siglo XXI, 1987, México.

¹³ Becerra, R., Salazar P., Woldenberg, J., *La mecánica del cambio político en México. Elecciones partidos y reformas*, Cal y Arena, México, 2000.

like a Lockean/Kelsenian state). In this way, the “rights agenda” contained in the 1917 Constitution – that for decades had been the political banner and legitimating discourse of the party in power¹⁴ – was slowly and timidly established as a criterion for measuring the legitimacy of the Mexican State itself.¹⁵

There is much evidence clearly demonstrating this. The issue of security, in contrast to what is implied by common sense and recent experience, also provides examples of how the country went through a process of pacification, meaning how the use of force was monopolized and the organization of the State became ever more liberal/constitutional. If, that is, we accept the statement that one of the finalities of the constitutional democratic model is to pacify coexistence as a condition for the provision of guarantees for individual rights.¹⁶ Let us observe some statistics from a study by Fernando Escalante that portrays the evolution of homicide rates in Mexico between 1990 and 2007. I have chosen this reference because it is a reliable source and based on a crime for which hard data exists.¹⁷ In fact, Escalante uses all the homicides that occurred in the country and not only those related to organized crime in general or the drug traffic in particular.

Escalante’s study shows that, although important contrasts exist in the different parts of Mexico’s territory,¹⁸ when we look at the period from 1990 to 2007 (which coincides with the

¹⁴ Cfr. Cossío, J. R., XXXXXXXXXXXXX

¹⁵ Cfr., Saltalamacchia, N., XXXXXXXXXXXXX

¹⁶ En ese sentido, Norberto Bobbio sostenía que la paz, la democracia y los derechos eran tres etapas de un mismo movimiento histórico. Cfr. Bobbio, N., *El Futuro de la Democracia*, FCE, México, XXX.

¹⁷ Según Escalante los datos de la policía y el registro civil permiten contar con una tasa alta de información que, a diferencia de otros delitos, no se traduce en una “cifra negra” que impida realizar análisis empíricamente confiables

¹⁸ Hay algunos estados que a lo largo de todo el periodo, de manera consistente, tiene tasas de homicidios muy inferiores a la nacional: Yucatán, Nuevo León, Aguascalientes, por ejemplo, con índices de entre dos y cinco homicidios por cada 100 mil habitantes; Tlaxcala, Querétaro e Hidalgo, entre tres y ocho. Hay otro grupo de estados cuyas tasas son siempre superiores a la nacional, del doble o mas: Guerrero, Michoacán, Oaxaca, Sinaloa, que en los primeros años noventa registraban tasas de hasta 40 homicidios por cada 100 mil habitantes, y hacia 2007 de entre 15 y 20.

final stretch of the democratic transition and the first phase of actual operation for this form of political organization and Mexican constitutional justice), in general the homicide rate in Mexico dropped following the same tendency found in developed countries. If we look at the figures (see appendix), “between 1992 and 2007 there is a systematic diminution, year by year, in both the national rate as well as the overall number of homicides. The rate went from a maximum of 19.72 in 1992 to a minimum of 8.04 in 2007.”¹⁹ This, according to Escalante, contradicts the implications of some comparisons (common in journalism and academia) that, since the 1990s, Mexico is host to the same kind of violence that rocked Colombia during its worst security crisis. The figures reveal a different reality: “according to the homicide statistics from the National Police there were 24,304 victims in Colombia in 1990, in 1991 the number reached 28,280, and in 1992 there were 28,225. Figures that are all above the 6,290 homicides attributable to organized crime registered in Mexico in 2008.”²⁰ Our trends are more similar to those of the United States where, although not an ideal model to follow, the trends are constantly decreasing (see appendix). And it is worth mentioning that this, definitively, does not match the perception in Mexican public opinion.

As I remarked, the national trend for homicide rates is not uniform across the country. Escalante conclude that the northern frontier (Baja California, Sonora, Chihuahua, and Sinaloa) and the western coast (Tierra Caliente de Guerrero and Michoacán) are without doubt the most violent areas in the country. This, in principle, is closely related to the activities of organized crime: one city alone, Ciudad Juárez, offers ominous proof of this fact: there, in January 2010, the homicide rate was 143 for every hundred thousand inhabitants (one of the highest in the

¹⁹ Escalante, F., *El homicidio en México entre 1990 y 2007. Aproximación estadística*, COLMEX, Secretaría de Educación Pública Federal, México, 2009, p. 117.

²⁰ Escalante, F., “Homicidios 1990, 2007” en *Nexos* 381, septiembre 2009, pp. 27-31.

world).²¹ In fact, according to Escalante, unlike what happens in other countries, there does not exist in Mexico a direct correlation between urbanization (the size of the cities) and violence or, to the surprise of many, between marginalization and violence. The most that can be said is that “the level of education of the homicide victims is appreciably lesser than that of the Mexican population as a whole,”²² and that, from this perspective, except in contexts directly affected by organized crime activity, the variable that best explains the cause of violence is “the very weak State presence ... It is not only the absence of police, but also the lack of communication means and basic health and education resources.”²³ If Escalante’s hypothesis is on target, we can affirm that, as indicated by the theory, the trend in Mexico towards peaceful coexistence is the result of a process in which the State simultaneously affirms itself and, where this happens, acquires legitimacy.

Escalante’s study ends in 2007 and the author only offers a few figures from 2008 in a subsequent article.²⁴ For the most recent period from 2008 – 2010 we have little systematic information but do possess knowledge of some alarming numbers (we know, for example, that in this period more than 16,000 assassinations presumably related to organized crime have taken place in the country²⁵). It is too early to affirm that the trends Escalante found and documented are reversing in definitive manner but it is undeniable that, in the past three years, the country is confronting new unusual forms and expressions of violence that disturb public safety and put national security in jeopardy. In what follows, for argumentative rather than anecdotal purposes I

²¹ FUENTE

²² Escalante, F., *El homicidio en México entre 1990 y 2007. Aproximación estadística*, cit., p. 120.

²³ Ibid., p. 121. Esta hipótesis, compartida por quien esto escribe, supone que la seguridad pública exige ofrecer garantías, más allá del derecho y de las instituciones de policía y administración de justicia, a bienes (derechos) sociales fundamentales. En este ensayo no abundaré en este tema.

²⁴ Cfr., nota No. 12.

²⁵ FUENTE

describe a few events whose seriousness demonstrates the level of the crisis that the consolidation of the constitutional Mexican State will have to navigate in the 21st century.²⁶

IV. Three postcards from barbarity.

4.1 On September 5, 2008, the national holiday when Mexicans celebrate their independence, thousands of people gathered for the occasion in the main square, as they do every year, of the colonial city of Morelia in the central state of Michoacán. Shortly before midnight, when the celebration was reaching its peak, two grenades were exploded, taking the lives of eight people and injuring another hundred. For a few months, the “*plaza*” (the term used by drug traffickers to designate a territory) had been disputed by two of the most violent drug trafficking cartels: the *zetas* and the Michoacan family. For the first time in the so-called “war against drug trafficking” undertaken by the Mexican government, traffickers had directly attacked civilians. Some time later, the three presumed authors of the crime were turned into the authorities by the cartels themselves. As far as we know the police investigation ended there.

4.2 The message, posted on a pedestrian bridge, was clear and precise: “If the Chief of Police of Ciudad Juárez does not resign from his position, we will kill one agent every 48 hours.” At first no one paid any heed to it. Two days later the first two policemen murdered were found. The chief of the municipal police, Roberto Orduña Cruz, a retired army major who had been sent there to restore order and remove the stain of corruption from the police force accused of collaboration with the drug traffickers, handed in his resignation in light of the events. The so-called “*narcomantas*” (bedsheets painted with messages) had become a recurrent phenomenon. Another example, this time in Sinaloa in 2009: “To the little tin soldiers, the federal strawmen.

²⁶ Seguramente los ejemplos, obtenidos todos de la prensa consultable en la red, pudieron ser otros (por desgracia son muchos más) pero los que elegí transmiten a suficiencia los problemas que pretendo documentar.

This is Arturo Beltrán's territory."²⁷ In some cases, these "narco-grams" are accompanied by the cadavers of people who were tortured, executed, and mutilated.

4.3 Since the second half of 2009 and up to the present, an official message from the Mexican government can be heard over radio and television: "we continue to work so your children will be safe from drugs; among other actions, the federal government detained Teodoro García Simental, a.k.a. the 'pozolero' [a person who digs wells], suspected hit man for the cartel of Arellano Félix, who dissolved his victims' bodies in acid" (cited from memory). On January 22, 2009, it so happens, after being tipped off, the army detained an individual, along with other people, whose horrifying task it was to get rid of the bodies of rivals assassinated by the criminal organization through decomposition in acid. According to the confession made after arrest, he had dissolved 300 cadavers in caustic soda. In exchange for 600 dollars a week. Today he is awaiting trial.²⁸

These three images provide, among other worrying lessons, powerful indications of what is occurring: a) as the case in Morelia demonstrates, the violence provoked above all by drug trafficking constitutes a threat to both public safety and national security because this attack, technically, can be qualified as an act of terrorism; b) as the case of the "narcomanta" in Ciudad Juárez proves, the capacity of organized crime to force the State to bow is real and implies there is an objective fracture in the legitimate monopoly of violence; c) this same example shows how

²⁷ Probablemente por ello y, como prueba de que la barbarie se contagia, en diciembre de 2009, miembros de la marina mexicana, en la Ciudad de Cuernavaca, después de dos horas de balacera en un barrio residencial, masacraron a balazos a Arturo Beltrán Leyva y su cuerpo desnudo y cubierto de billetes fue fotografiado y exhibido a la prensa. Cfr. De Mauleón, H., "La ruta de sangre de Beltrán Leyva" en Nexos, Febrero 2010.

²⁸ Cfr. De Mauleón, H., "El la colina del pozolero" en Nexos 380, Agosto 2009, México, p. 37-42. Debido a esta clase de eventos, en el lenguaje de los medios de comunicación nuevos términos han venido adquiriendo una turbadora carta de identidad: "levantado" es una persona que ha sido secuestrada y seguramente será ejecutada; "encobijado" es un sujeto que ha sido asesinado y arrojado con una manta; "encajuelado" es el cadáver abandonado en la cajuela de un automóvil. Poco a poco, hemos descubierto que nuestro país está viviendo un nuevo tipo de barbarie.

violence has become an instrument of communication that simultaneously spreads fear and numbs the capacity of Mexican society for indignation; d) el “Pozolero,” in fact, is the symbol of a society that is decomposing in a spiral of absurd violence and the publicity made of his arrest by the government is the emblem of the advertising rhetoric that simultaneously distorts the meaning of justice and contributes to the “banalization of evil.”²⁹ In fact, as I will argue near the end of this essay, the Federal Government has responded to these events with a strategy that, far from reducing the violence, has increased it and, contrary to what the official discourse maintains, has converted security forces (especially the army) in many parts of the country into an additional security threat to public safety. Put together it is becoming a serious threat to national security. There is a question floating in the air, one that academia has yet to answer satisfactorily: how did we get here?

V. Four possible (and probably complementary) explanations.

In recent months, studies and analyses of the phenomenon of rising violence in Mexico have advanced different hypotheses in the search of an answer to this question. I take up, propose, and develop four structural causes for the spiral of violence that seem convincing to me. I am looking at endogenous causes because I take as givens the following exogenous causes: a) the enormous demand for drugs in the United States; b) the arms traffic that flows from this country, providing sophisticated instruments of warfare to criminal groups; c) the global dimensions of organized crime that, with the opening up of the world implicated in the phenomenon of

²⁹ Tomo con cautela pero con conciencia de sentido la expresión acuñada por Hanna Arendt para una realidad y una forma de violencia muy diferente pero igualmente incorporada en el imaginario colectivo al grado de quedar inmunizada contra la indignación y el rechazo social.

globalization, operates locally but is globally interconnected.³⁰ Parallel to these causes are grouped the following internal factors:

5.1 The transition to democracy in Mexico was successful in political terms: in only 30 years, the country, through a process of political electoral reforms (principally in 1977, 1986, 1990-91, 1994, and 1996), went from a system of government by a hegemonic party (in which the presidency of the Republic, the absolute majority of the Federal Congress, the 31 states of the Republic, and Mexico City, along with the respective legislative organs and practically every municipality in the country, were governed by the PRI) to a multi-party competitive system in which the various political factions occupied positions at different levels and in which there are real checks and balances between the executive and legislative branches (especially since 1997 at the federal level).³¹ This implied a profound transformation in the political practices and

³⁰ Son muchas las definiciones de crimen organizado, por ejemplo, Abadisky lo define de la siguiente manera: "Crime with the following characteristics: it has no ideological beliefs or objectives, but it is interested in money and power, as a result it usually seeks political protection for its illegal activities. It has a clear vertical power structure from which authority flows; there may be different ranks between the top boss, the lieutenants and soldiers. There tends to be some strict requirements for memberships of an organized crime group.[...]. The group is ongoing and not generational. In such group violence is a readily available and accepted resource; bribes are used to protect its operations and members. Division of labour occurs for functional reasons to make the group more efficient and, therefore, successful. Such group seeks domination over a particular territory or industry; to do this, it must eliminate competition and form a monopoly, restraining free trade to increase profits. Like all types of legitimate organizations this groups have rules and regulations which must be respected by all members". (cfr., A., *Organized Crime*. Chicago, Nelson Hall, 1990). Por su parte, la Convention against Transnational Organized Crime of the United Nations ofrece la siguiente definición: "Structured group of three or more persons existing for a period of time and acting in concert with the aim of committing one or more serious crimes or offences [...] in order to obtain directly or indirectly a financial or other material benefit". En lo particular, por la manera en la que subraya el carácter transnacional de estas organizaciones, me quedo con la siguiente caracterización propuesta por Fabio Armao: "Organize crime as a *genus*, including many different *species* depending on the geopolitical and historical context. In other words, we may imagine a sort of *continuum*, starting from organized crime in the sense of a group of individuals who act together to commit crimes of different types, even on a transnational basis; then, moving on to crime syndicates as well structured criminal groups with different hierarchical roles devoted to the search for profits, acting first of all as entrepreneurs; and finally at the other end of the *continuum* mafia, as the most specialized criminal group, also using politics (which means the totalitarian control of a territory) to obtain profits" (Armao, F., "Why is organized crime so successful?" in, Allum, F., y R. Siebert (eds.) *Organized Crime and the Challenge to Democracy*, Routledge, London, 2003, p. 28). Sobre el tema en general y su vinculación con la democracia, Cfr., Allum, F., y R. Siebert (eds.), *Organized Crime and the Challenge to Democracy*, Routledge, London, 2003.

³¹ Cfr., Becerra, R., Salazar P., Woldenberg, J., *La mecánica del cambio político en México. Elecciones partidos y reformas*, cit.

dynamics that enable us to assert the democratization of the Mexican state.³² There exists more freedom in Mexico today than 30 years ago, there are institutional checks in place that were not there before, plurality coexists on the basis of institutional legitimacy, etc..

As with every far-reaching structural transformation, however, the transition to democracy had side effects – some of which are undesirable and many unforeseen – in various domains of social life. Although democratization should be celebrated and defended, for structural and circumstantial reasons it also increased the vulnerability of society and the state of itself to organized crime in Mexico (above all, to drug trafficking).

Some authors, such as Eduardo Guerrero, maintain that democratization had two negative effects on the State's combat against drug trafficking: a) on the one hand, institutionalized plurality, and with the activation of the system of checks and balances between the governmental branches, weakened the governments' (federal, state, and municipal) capacity to confront organized crime; b) on the other, the beginning of political alternance meant the end of an informal arrangement between government and criminals that allowed the former to ensure

³² Esto es así si observamos las reglas concretas ("universales procedimentales") que, según Norberto Bobbio, permiten decretar la vigencia de un sistema democrático: 1) Todos los ciudadanos que hayan alcanzado la mayoría de edad sin distinción de raza, religión, condición económica, sexo, etcétera, deben gozar de los derechos políticos, o sea, del derecho de manifestar a través del voto su opinión y/o de elegir quien la exprese por ellos; 2) el sufragio de cada ciudadano debe tener un peso igual al de los demás (debe contar por uno); 3) todos los ciudadanos que gocen de los derechos políticos deben ser libres de votar de acuerdo con su propia opinión formada libremente, es decir, en el contexto de una competencia *libre* entre grupos políticos organizados; 4) los ciudadanos deben ser libres también en el sentido de que han de ser puestos en condición de seleccionar entre opciones diferentes; 5) tanto para las decisiones colectivas como para las elecciones de representantes vale la regla de la mayoría numérica; 6) ninguna decisión tomada por mayoría debe limitar los derechos de la minoría (en particular el derecho de convertirse, en paridad de circunstancias, en mayoría). Cfr. N. Bobbio, *Teoria Generale della Política*, Einaudi, Turín, 1999, p. 381. En el mismo sentido, aunque con algunas diferencias más o menos relevantes, otros autores, como Giovanni Sartori o Robert Dahl, han enlistado las reglas y/o instituciones que, desde su perspectiva, caracterizan a la democracia moderna. Cfr. Sartori, G., *Partidos y sistemas de partidos*, Alianza Editorial, Madrid, 1988; Dahl, R., *Los dilemas del pluralismo democrático, autonomía versus control*, Conaculta y Alianza Editorial, México, 1991.

acceptable levels of security to the general population – without fighting or confronting crime – and allowed the latter to continue operations without running serious risks.³³

Both hypotheses imply that, behind the authoritarian regime of the PRI, existed in reality a weak State with a poor level of institutionalization. Accepting this implication does not mean rejecting the thesis I proposed at the outset that a political and social process had taken place in Mexico resulting in the construction of a State, at first authoritarian, and gradually more constitutional and democratic; but it does imply that behind the authoritarian regime were not strong state institutions but rather efficient political arrangements. The Mexican State did indeed gradually grow but, for decades, the regime in power took its place. That is why the weakness of the State was revealed when regime underwent the democratic transition.

For this reason, even though both hypotheses can be argued independently, together they explain an important aspect of the current situation: a weak, disorganized State confronting organized criminal groups (not limited to drug trafficking even though that is their most powerful manifestation) who, no longer able to negotiate deals with political leaders, opted for co-opting or, when that method was not successful, for eliminating the people whose responsibility was fighting them.

5.2 Mexico, following the North American model, adopted the federal system of state organization.³⁴ Given the nature of the regime under the PRI, for decades federalism was

³³ Según Eduardo Guerrero, “...en distintos momentos las autoridades federales estuvieron dispuestas a tolerar las actividades de los narcotraficantes si éstos se comprometían a cumplir ciertas reglas. Recientemente, un ex gobernador mexicano las enumeró en un “decálogo”: “1. No muertos en las calles; 2. No drogas en las escuelas; 3. No escándalos mediáticos; 4. Entrega periódica [al gobierno] de cargamentos y traficantes menores; 5. Derrama económica en las comunidades; 6. No proliferación de bandas; 7. Cero tratos con la estructura formal del gobierno (policías o funcionarios judiciales); 8. Cobrar errores con cárcel, no con la vida; 9. Orden y respeto en los territorios; 10. Invertir las ‘ganancias’ en el país”.³ El sexto punto es clave pues induce la formación de monopolios regionales o locales”, Guerrero, E., “Narcotráfico S.A.” en Nexos, XXXX, México.

³⁴ Cfr. Serna, J. M., XXXXXXXXXXXXXXX

simulated: the President of the Republic governed at all levels of management from the center of the country. The reason was simple: whoever occupied the executive was simultaneously the head of the government, of the State, and of the party upon which all of the political careers of anyone with a state mandate depended.³⁵ This is why, in practice, Mexico really was, during the hegemonic party regime, a centralized country. With the transition and rise of political plurality in different positions of control, the process of autonomy of the state entities with regards the federal branches adopted a dynamic previously unheard of.³⁶

To the surprise of some and the liking of others, however, this political dynamic has not resulted in federalism efficiently organized under a logic of national coordination. Certain experts on the matter – such as Mauricio Merino and Enrique Cabrero – have warned that the country is making its way towards a type of postmodern feudalism, not towards genuine democratic federalism. This, when we think of public safety and national security, has important consequences. Although the fight against organized crime in Mexico (not only against drug trafficking) is a task that falls to federal authorities, in order for the fight to be successful, coordination between the different levels of government (federal, state, and municipal) is indispensable; especially between the different police forces (that number over 1,600 in the country). This, however, does not occur. In 2010, there is not even a uniform information system for the different national security corps. To top it all, the theme of national security has become, during run-ups to elections, the most disputed political terrain (even defining campaigns) between leaders from the various parties³⁷, demonstrating that the national political actors have

³⁵ Cfr. Carpizo, J., *El presidencialismo mexicano*, op. cit.

³⁶ En abril de 2010, el Partido Acción Nacional (de derecha) gobierna en el ámbito federal y en siete entidades federativas, el Partido de la Revolución Democrática (de izquierda) gobierna en otras seis entidades (incluyendo a la Ciudad de México) y el Partido Revolucionario Institucional gobierna en 19 estados.

³⁷ Para ilustrar el punto conviene narrar un caso: en mayo de 2009, el gobierno federal, en un operativo altamente mediatizado, detuvo (por supuestos vínculos con el narcotráfico) a altos funcionarios estatales y municipales del

not understood that the challenge posed by organized crime is not only faced by the government but in fact by the State as a whole.

In this way, the “feudalization” of the Mexican State represents a window of opportunity for drug traffickers because it disperses the institutional efforts to combat crime. In turn doors are opened allowing organized crime to appropriate public officials in strategic positions (the typical situation with municipal police) or even infiltrate political campaigns by means of resources and support in order to propel their representatives into representative and government positions. The problem does not lie in federalism; it lies in the form which federalism has evolved in the current Mexican context. The challenge lies in conserving the federal arrangement while preventing that this constitute an advantage for criminals.

5.3 The system for the administration of justice in the country is relatively unprofessional and ineffective.³⁸ It suffers from a structural flaw that runs through it at all levels of the government: obtaining justice depends politically and structurally on the people who hold power in the executive branch. Due to the subordination of justice to politics, there lack, among other things, mechanisms for settling accounts based on technical criteria. Since the structure for administering justice is wholly vertical and integrated, there lack external controls on police operations. To this must be added the lack of a governmental watchdog agency for professional

Estado de Michoacán (gobernado el Partido de la Revolución Democrática). Fueron arraigados un juez, 17 funcionarios del gobierno y 10 alcaldes. El caso generó una fuerte tensión política en el país y, para muchos constituyó una iniciativa electoral del Presidente de la República (oriundo de dicha entidad) en pleno año electoral. En febrero de 2010, prácticamente todos los funcionarios, que habían sido arraigados, comenzaron a ser liberados por falta de pruebas.

³⁸ Se trata de un sistema que, además, con frecuencia es denunciado por permitir y fomentar la corrupción. Sobre el tema de la administración de justicia en México, a partir de un estudio de caso, cfr. Perez Correa C., A., Madrazo, *Transparencia y procuración de justicia en el Distrito Federal*, Instituto de Acceso a la Información Pública del Distrito Federal, México, 2008.

conduct.³⁹ This absence can be partly explained by the deep mistrust of those charged with meting out justice. This mistrust is shared by the population and by the political actors themselves (governors and legislators). What follows is a normative example included to illustrate how absurd the situation has become:

In 2008, an important constitutional reform regarding the justice system was passed (and is currently in the process of being implemented⁴⁰) that undertook the creation, following Article 21 of the Constitution, of a National System for Public Safety.⁴¹ In the same reform, however, in Article 123 of the Constitution, it was established that when an official in the justice administration system (prosecutors, investigators, police officers, etc.) is forced to resign from their post because of a supposed dishonest act but later it is judicially determined that the demission was unjustified, the State will be obliged to economically indemnify the individual but “in no case will the person be restored to their position.”⁴² What kind of professional standards can be built on the foundation laid by this constitutional absurdity that allows someone to be

³⁹ Sobre el tema, cfr., Zepeda Lecuona, G., *Crimen sin castigo. Procuración de justicia penal y ministerio público en México*, México: FCE-CIDAC, 2004.

⁴⁰ Algunos expertos han denunciado el “alma esquizofrénica” de dicha reforma porque, por ejemplo, incorporó en la constitución, al mismo tiempo, el principio de presunción de inocencia y la figura del arraigo hasta por ochenta días en los casos de delincuencia organizada a petición del Ministerio Público.

⁴¹ El texto de la norma, en lo que nos interesa, es el siguiente: “La seguridad pública es una función a cargo de la Federación, el Distrito Federal, los Estados y los Municipios, que comprende la prevención de los delitos; a la investigación y persecución para hacerla efectiva [...]. Las instituciones de seguridad pública serán de carácter civil, disciplinado y profesional. El Ministerio Público y las instituciones policiales de los tres órdenes de gobierno deberán coordinarse entre sí para cumplir los objetivos de seguridad pública y conformarán el Sistema Nacional de Seguridad Pública que estará sujeto a las siguientes bases mínimas: a) La regulación de la selección, ingreso, formación, permanencia, evaluación, reconocimiento y certificación de los integrantes de las instituciones de seguridad pública”.

⁴² El texto de la norma (artículo 123 reformado, apartado Apartado B, fracción XIII) es el siguiente: “Los agentes del Ministerio Público, los peritos y miembros de las instituciones policiales de la Federación, el Distrito Federal, los Estados y Municipios, podrán ser separados de sus cargos si no cumplen con los requisitos que las leyes vigentes en el momento del acto señalen para permanecer en dichas instituciones, o removidos por incurrir en responsabilidad en el desempeño de sus funciones. Si la autoridad jurisdiccional resolviere que la separación, remoción, baja, cese o cualquier otra forma de terminación del servicios fuese injustificada, el Estado sólo estará obligado a pagar la indemnización y demás prestaciones que tenga derecho, sin que en ningún caso proceda su reincorporación al servicio, cualquiera que sea el resultado del juicio o medio de defensa que se hubiere promovido.” Esa disposición fue confirmada en el artículo 60 de la Ley General del Sistema Nacional de Seguridad Pública (LGSNSP) a probada ese mismo año.

forced out of their position (to serve the interests of their supervisor, for example) while denying any possibility for that person to regain their position by proving their innocence?

All of this helps explain why in Mexico research is not undertaken in the interest of determining methods to prevent crime, why the police forces are highly politicized, and why there is an enormous level of mistrust in those responsible for ensuring security.⁴³

5.4 Behind these institutional defects and problems there exists a deep structural problem: the lag in social progress that results in a fragmented, unequal society incapable of offering opportunities to the new generations. Every year, approximately 500,000 young people who reach working age or who complete their studies do not find opportunities for work and so must make do with unstable or underemployment. This is happening at a unique time in the modern history of the country: when the combined capacity of the young people for producing, working, and generating wealth has never been greater (it is precisely in 2010 that the age group between 15 and 24 will reach its widest point in the population pyramid, but it is also this year that the proportion of young adults will start to decrease in comparison with the other age groups). The problem is that this “demographic boon” is starting to dissipate before we have produced the necessary employment to take advantage of it. Nor are there sufficient educational prospects to match this opportunity: three out of every four people of the appropriate age do not pursue college studies (we are talking about more than 7,250,000 young adults).⁴⁴

⁴³ La encuesta más confiable en materia de Cultura Política, la ENCUP del año 2008, nos indica que el 45.1% de los mexicanos no tienen nada de confianza en la policía y el 27.5% le tiene poca confianza. Cfr.

[http://www.encup.gob.mx/encup/cuartaENCUP/Anexo_2_Resultados_ENCUP_2008_\(Frecuencias\).pdf](http://www.encup.gob.mx/encup/cuartaENCUP/Anexo_2_Resultados_ENCUP_2008_(Frecuencias).pdf)

⁴⁴ En las dos últimas décadas, de 1990 al 2010, la población ha aumentado en 24.5 millones de personas, y en las próximas dos décadas aumentará unos doce millones más. El Instituto de Estudios para la Transición Democrática advierte que “La transición poblacional sigue madurando y el bono demográfico se está perdiendo ante la falta de inversiones y la escasa generación de empleos”. No es casual, sentencia, que “en la última década, hayan emigrado alrededor de 450 mil personas al año”. Por no ser materia directa de este texto y para ser consistente con la interpretación que propone Escalante y que no permite establecer relaciones directas entre marginalidad y pobreza,

I do not intend to establish a direct relationship between the absence of opportunities for young people and insecurity (to make such an affirmation requires data that can only be obtained through empirical methods). Yet I am convinced that “social cohesion” is a necessary condition for protecting constitutional, democratic States against the “savage” powers – to use Ferrajoli’s terminology – that attack its institutions and elude its normative obligations.⁴⁵ Organized crime is probably the most powerful savage power challenging contemporary Mexico. Social exclusion and fragmentation contribute to the insecurity because they weaken the social fabric. Organized crime – particularly drug trafficking – possesses an attractive force that understandably pressures young people: why not become part of an organization called, for example, “The Michoacan Family,” that offers identity, a sense of belonging, and a wage when the State, the government, and society have abandoned you?⁴⁶

VI. The wrong door: the mistakes and consequences of Calderón’s strategy.

The Mexican government as well as certain experts on security has insisted that, given the situation in the country and the degree to which drug trafficking had infiltrated all aspects of

no me detendré en este aspecto característico de la sociedad mexicana de lado. Sin embargo, dejo constancia de los datos: los mexicanos en pobreza alimentaria pasaron de 14.4 millones a 19.5 millones entre 2006 y 2008 (de 13.8% a 18.2%), esto es, se han generado más de 5 millones de pobres extremos en sólo dos años, sin contar todavía el efecto envolvente de la crisis financiera internacional. La pobreza de capacidades afectó en 2008 a 26.8 millones, por 21.7 millones en 2006 (pasó de 20.7% a 25.1% de la población). En una situación de pobreza patrimonial hubo 50.5 millones de mexicanos en 2008, (creció de 42.6% a 47.4%), 5.8 millones más que en 2006. De hecho, según estimaciones oficiales (SEDESOL) en 2010 habrá alrededor de 57 millones de mexicanos en pobreza. Cfr.

Documento e diagnóstico del Instituto de Estudios de la Transición Democrática.

⁴⁵ La cohesión social, nos dice la CEPAL, es necesaria para que “los miembros de la sociedad sigan vinculados a ella con una fuerza análoga a la de la solidaridad mecánica premoderna”. Cfr. CEPAL, Cohesión social. Inclusión y sentido de pertenencia en América Latina y el Caribe, Chile. 2007. Sobre la criminalidad en la region, cfr.: Solis, L., y F. Rojas (eds.), *Organized Crime in Latin America and the Caribbean. Summary of Articles*, FLACSO, Costa Rica, 2009

⁴⁶ En una entrevista publicada en el periódico español El País, Monte Alejandro Rubido, Subsecretario de Seguridad Pública de México, a pregunta expresa respondió, entre otras cosas, lo siguiente: (en la disputa entre dos bandas de Narcotraficantes por el dominio de Ciudad Juárez, los Carrillo vs el Cártel de Sinaloa “ambos carteles están utilizando a las pandillas (de jóvenes) para vender drogas y para acciones de vicariato. Las pandillas más violentas hoy son los Aztecas, que en su momento fue fundada como Familia Azteca y (...) los Artistas Asesinos”. “Entre Juárez y el Paso (Texas) –continuó– puede haber alrededor de 400 o 450 pandillas, y al menos 30 son de altísima peligrosidad”. Entrevista a Monte Alejandro Rubido, El País, 25 de marzo de 2010, Internacional, p. 7.

national activity, when President Calderón assumed the presidency in 2006 he had no other choice but to send the army into the streets.⁴⁷ Some of the arguments put forward by those who defend this decision are suggestive and, given that we do not possess official information to verify the actual state of affairs at that time⁴⁸, speculating about what were possible alternatives seems pointless. It is true, however, that from the point of view of results – and ignoring the conspiracy theory that holds that the maneuver was really part of a strategy to gain legitimacy for his government – the tactic has come up short.

Calderón declared in a rhetorical flourish, “a war against organized crime” focused, above all, on the military approach. In choosing it, he implicitly abandoned the path drawn out by ordinary constitutional procedures for fighting crime and wagered on the expediency of the use of force. Official discourse notwithstanding, up until this point the strategy has proved ineffective in affording public safety or bolstering national security and has also had three intimately interconnected and very delicate side effects: a) in the fight against crime in Mexico, it is easier to count the bodies left behind from confrontations between the authorities and criminal groups than it is to count the number of people detained and processed in the courts; b) the army, according to complaints from citizens and from accredited public and private organizations (such as the National Commission for Human Rights itself), has engaged in serious human rights violations⁴⁹ and, consequently; c) the military has begun to lose credibility. The first comprises a

⁴⁷ Uno de los defensores de la decisión del gobierno calderonista ha sido Joaquín Villalobos, exguerrillero salvadoreño, experto en seguridad y consultor en la materia, quién publicó un artículo que fue objeto de merecida polémica. Villalobos, J., “Doce mitos de la guerra contra el narco”, en Nexos, enero, 2010.

⁴⁸ Conocemos las cifras de Escalante a las que he hecho referencia pero que se centran en el tema del homicidio y lo que se argumenta desde el gobierno es un grado de infiltración e influencia del crimen organizado sin precedentes.

⁴⁹ El pasado 20 de marzo, concurrieron ante la Comisión Interamericana de Derechos Humanos, 6 organizaciones mexicanas dedicadas a la protección de los derechos humanos a denunciar que en los dos primeros años del gobierno de Calderón se sextuplicaron las denuncias por violaciones a los derechos humanos cometidas por el ejército. En el comunicado de prensa de aquella reunión puede leerse lo siguiente: “Según los datos obtenidos por estas organizaciones a través de solicitudes de acceso a la información, el número de quejas que la Comisión Nacional de los Derechos Humanos (CNDH) ha recibido en contra de la Secretaría de la Defensa Nacional se ha

deviation from the constitutional route, that is part of every democratic system, to confront the criminal groups; the second, once this government leaves power, will probably result in criminal investigation of military officials (it is not difficult to imagine a “truth commission” in the near future); the third represents a serious blow to the image of one of the few state institutions that enjoyed the trust of the Mexican population.

President Calderón’s strategy has created a crisis in the Mexican constitutional system because the decision to use the army violates Article 129 of the Constitution.⁵⁰ For practical purposes, it has also produced subsequent constitutional infringements that create problems for the judicial institutions (particularly for the Supreme Court which has backed the presidential strategy with feeble arguments⁵¹). For example, respecting the decisions of military courts after discovering cases involving civilians (violating Article 13 of the Constitution⁵²), that were upheld by the Supreme Court (which, on these occasions, instead of acting as a check on

incrementado de 182 en 2006 a 1,230 en 2008. Las quejas incluyen cateos ilegales, detenciones arbitrarias, violaciones sexuales, torturas, y en 28 casos, según notas periodísticas, las presuntas violaciones de derechos humanos cometidas por militares culminaron en muertes”. Las organizaciones denunciadoras son: Comisión Mexicana de Defensa y Promoción de los Derechos Humanos, AC (CMDPDH), Centro de Derechos Humanos “Miguel Agustín Pro Juárez”, Centro Prodh, Fundar, Centro de Análisis e Investigación, A. C., Centro por la Justicia y el Derecho Internacional, CEJIL, Centro de Derechos Humanos de la Montaña, Tlachinollan, Red Todos los Derechos para Todos y Todas, Centro de Derechos Humanos Fray Bartolomé de las Casas, Centro de Derechos Humanos “Fray Francisco de Vitoria”. <http://www.fundar.org.mx/pdf/boletin2dh.pdf>

⁵⁰ Artículo 129. “En tiempo de paz, ninguna autoridad militar puede ejercer más funciones que las que tengan exacta conexión con la disciplina militar. Solamente habrá Comandancias Militares fijas y permanentes en los castillos, fortalezas y almacenes que dependan inmediatamente del Gobierno de la Unión; o en los campamentos, cuarteles o depósitos que, fuera de las poblaciones, estableciere para la estación de las tropas”.

⁵¹ Es particularmente relevante la resolución de la acción de inconstitucionalidad 1/96. “Leonel Godoy Rangel y otros” del 5 de marzo de 1996. Aprobada de manera unánime por los ministros de la Corte. Cfr., Semanario Judicial de la Federación y su Gaceta, Tomo XI, Abril de 2000, Tesis: P./J. 38/2000, página 549. El Tribunal Pleno, en su sesión privada celebrada el veintisiete de marzo de ese mismo año acordó, con apoyo en su Acuerdo Número 4/1996 de veinticuatro de agosto de mil novecientos noventa y seis, relativo a los efectos de las resoluciones aprobadas por cuando menos ocho votos en las controversias constitucionales y en las acciones de inconstitucionalidad, que la tesis que antecede (publicada en marzo de ese año, como aislada, con el número XXVIII/96), se publique como jurisprudencia, con el número 37/2000. México, Distrito Federal, (veintisiete de marzo de dos mil).

⁵² Artículo 13. “Nadie puede ser juzgado por leyes privativas ni por tribunales especiales. Ninguna persona o corporación puede tener fuero, ni gozar más emolumentos que los que sean compensación de servicios públicos y estén fijados por la ley. Subsiste el fuero de guerra para los delitos y faltas contra la disciplina militar; pero los tribunales militares en ningún caso y por ningún motivo, podrán extender su jurisdicción sobre personas que no pertenezcan al Ejército. Cuando en un delito o falta del orden militar estuviese complicado un paisano, conocerá del caso la autoridad civil que corresponda”.

executive power and a guarantee for individual rights, chose to affirm the government's strategy⁵³), that were denounced by the Inter-American Court of Human Rights, and that in all probability will, given its decision, require modifications to the laws and jurisprudence of the country. The Mexican government has yet to respond to the decision but the role of international courts could be helpful in understanding why the only constitutional instrument for legally dealing with the situation the Government has created in broad swaths of the country has been avoided: the suspension of rights (known in doctrine as the "state of exception") considered in Article 29 of the Constitution. In the immediate future, it is certain that the cases and complaints of abuses committed by military officials will continue to increase at an alarming rate (at the moment I am writing, the press describes the murder of Bryan and Martín Almanza, five and three years old, machine gunned as they drove down the Tamaulipas freeway on their way to the beach with their family by a group of soldiers who opened fire on the family vehicle for no apparent reason⁵⁴). Reading stories like this one in the press every day, I cannot help thinking of paragraph 93 in John Locke's *Second Treatise on Civil Government*:

As if when Men quitting the State of Nature entered into Society, they agreed that all of them but one, should be under the restraint of Laws, but that he should still retain all the Liberty of the State of Nature, increased with Power, and made licentious by Impunity. This is to think that Men are so foolish that they take care to avoid what Mischiefs may be done them by Pole-Cats, or Foxes, but are content, nay think it Safety, to be devoured by Lions.

We Mexicans are trapped in an absurd and dangerous limbo: between the incapacity of the State to protect us from the criminals and the excesses of that same State committed in the effort to definitively vanquish the drug traffickers. We could say that the policy of the Mexican

⁵³ Cfr., También se recomienda ver la sentencia al el amparo en revisión 989/2009 resuelto el 10 de agosto de 2009 por el pleno de la SCJN con una mayoría de 6 votos.

⁵⁴ Las contradicciones entre la versión de la familia y la versión oficial fueron recogidas en: Rocha, R., "Soldados asesinos", El Universal, 13 de abril de 2010, p. 2.

government has exposed the population to the foxes and wild cats of drug trafficking on one side and the claws of the lion of the State on the other. The reality in many parts of the country, as if a perverse echo of the disastrous official discourse – which has placed the State and the criminals on the same plane of “enemy combatants” – has given rise to an authentic climate of war that has nothing to do with the security policies that characterize democratic constitutionalism. A war between rival drug trafficking gangs in which the entity that is supposed to be “above the rest” is now participating. For this reason, in some parts of the country, individuals are once again living in a Hobbesian state of nature instead of Locke’s civil state.

It is true that all of the responsibility is not the federal government’s. I have already remarked how different political actors (party leaders, legislators, governors, etc.), far from realizing that national security is threatened and that coordinated political action is required, have often chosen to exploit the situation to their advantage politically and avoid their duties. We could say something similar of another actor that has not been examined in this work but that plays a very important role: the print and electronic communication media that, more often than not, have chosen sensationalism and have even used coverage of the war against drug trafficking as a means to pressure the government (in 2007, for example, when an electoral reform was approved that affected the economic interests of powerful radio and television concession holders).⁵⁵ But it is undeniable that the President and his government is directly responsible for the decision to adopt a military strategy.

Conclusions

⁵⁵ Cfr. Trejo, R., XXXX. Consultar también la página de la AMEDI, cfr.

In broad swaths of Mexican territory, the authorities are currently unable to provide protections, guarantees, and rights to the population – and in this sense we can say that Mexico is undergoing a public safety crisis – or to the integrity and stability of the state institutions – and in this sense we can say that national security is threatened. The Mexican State is failing because of defects and excesses. That is why the only thing we can safely say is that we are not safe. Given the government's incapacity to protect our basic rights we are certain that anything can happen to us. This is why, even though Mexico is a country that functions and that is making progress in many aspects of its institutionalization, in recent years, given the magnitude of the security crisis, it does not seem mistaken to affirm that, although we are not dealing with a failed State, the State could indeed fail. And it is doing just that in some cities and areas. To use an apt metaphor taken from Guillermo O'Donnell, we can say that gray zones in the Rule of Law continue to spread in Mexico.

To rejoin the axes of this piece, there is a threat to the form of government, to the rights of individuals and, potentially, because of the crisis of legitimacy entailed and the virtual loss of the monopoly over violence, to the stability and integrity of the State itself.

Being rather taken with the unsatisfied realism of Bobbio, however, I still feel that organized crime does not constitute a natural disaster but rather a calamity stemming from human decisions and behavior.⁵⁶ Despite its virulence and rising death toll, then, it can be defeated. I am convinced that the path of the constitutional, democratic State in the end provides the best means to do this. The first step, for situations like the one Mexicans find themselves in – and Latin America in general – where in the transition to democracy a triangle between democracy, poverty, and inequality was thrown together, is to make the social agenda the top

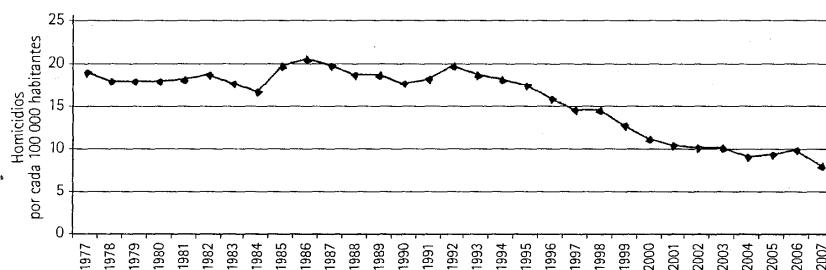
⁵⁶ Cfr. Garzón V., *Calamidades*, Gedisa, XXX, XX.

national priority. Only through a set of inclusive, universal, social policies can Mexican society make room for itself within the confines of the State, see itself represented in its institutions, and imagine for itself a life with dignity within the state order.

Remaining on the opposite path of repressive policies will continue to heighten social fragmentation and driving out new generations, forcing them to adopt other projects and alternatives for extra and/or anti-institutional belonging and action. Social policy also constitutes a policy for prevention with regards insecurity.

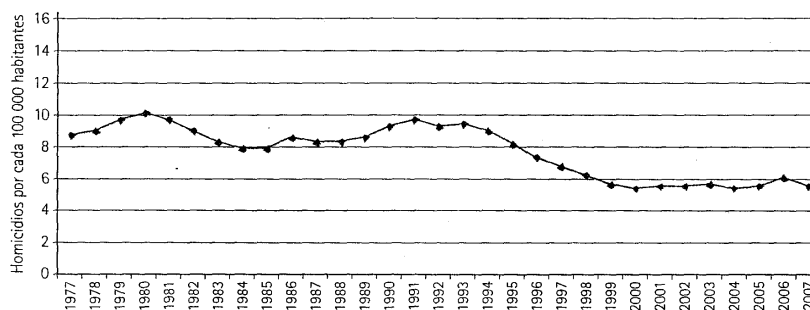
Appendix

Gráfica 2.1 Evolución de la tasa de homicidios en México, 1977-2007



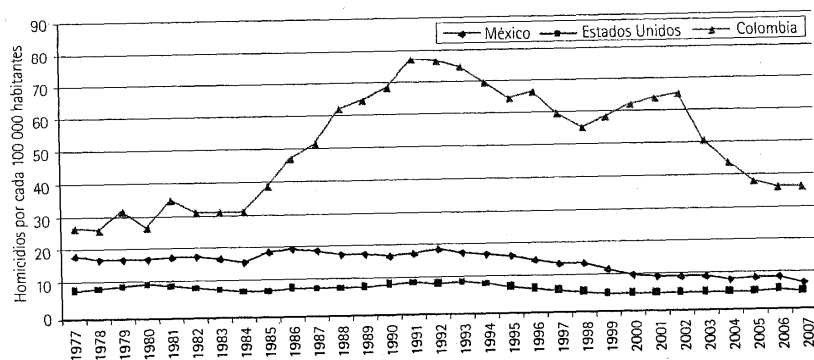
Fuente: INEGI.

Gráfica 2.2 Evolución de la tasa de homicidios en Estados Unidos, 1977-2007



Fuente: Bureau of Justice Statistics.

Gráfica 2.3 Evolución de la tasa de homicidios en Estados Unidos, Colombia y México, 1977-2007



Fuente: Bureau of Justice Statistics, Policía Nacional de Colombia e INEGI.