

2021-03-26

Violence, Causality, and the Emergence of Mexico's General Law on Forced Disappearance

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Cherinet, A. (2021). Violence, Causality, and the Emergence of Mexico's General Law on Forced Disappearance (Master's thesis, University of Calgary, Calgary, Canada). Retrieved from <https://prism.ucalgary.ca>.

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Violence, Causality, and the Emergence of
Mexico's General Law on Forced Disappearance

by

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A THESIS
SUBMITTED TO THE FACULTY OF GRADUATE STUDIES
IN PARTIAL FULFILMENT OF THE REQUIREMENTS FOR THE
DEGREE OF MASTER OF ARTS

GRADUATE PROGRAM IN POLITICAL SCIENCE

CALGARY, ALBERTA

MARCH, 2021

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Abstract

In November 2017, Mexico passed the General Law on Forced Disappearance, the first comprehensive legal measure of its kind to address the phenomenon of missing persons amidst rising insecurity. At the time of its enactment and after eleven years of extreme violence coinciding with the drug war, more than 35,000 people were considered officially disappeared. Today, it is widely suspected this figure surpasses 70,000. The advent of the General Law followed the emblematic events of the Ayotzinapa tragedy in 2014, which exposed the state-crime nexus and denoted an absolute political crisis for the regime of Enrique Peña Nieto. The case of the forty-three disappeared students received national and international attention as protests erupted throughout Mexico and abroad, and as pressure mounted against the State to finally act. But was there a causal relationship between Ayotzinapa and the Law's passage?

This thesis explores the historical and institutional contexts that led to disappearance as a phenomenon, the privatization of violence and discourses of collateral damage that exacerbated it, and traces the development of the General Law on Disappearance. Supported by first-hand interviews with law and policymakers, civil society, and security scholars in Mexico, this project argues that the real causal power of Ayotzinapa, as *la gota que derramó el vaso [the drop that spilled the glass]*, rests within a set of antecedent processes and mechanisms that might otherwise go unseen. Through counterfactual analysis, this paper demonstrates that the event is a proximate rather than ultimate cause of the General Law on Disappearance. Punctuated by Ayotzinapa, this milestone legislation is the hard-earned achievement of civil society and its allies over more than a decade, culminating in a landmark lawsuit against the Mexican State.

Preface

This thesis is original, unpublished, independent work by the author, Alem Cherinet. The research reported in Chapters 2-4 was covered by Ethics Certificate number REB19-0884_REN1, issued by the University of Calgary Conjoint Health Ethics Board for the project “Violence, Social Mechanisms, and the Emergence of Mexico’s General Law on Forced Disappearance”.

A Note on Primary Sources

Fieldwork performed for this project included first-hand interviews with civil society and international organizations, government representatives, and academic experts. A total of twenty-four interviews took place throughout the months of October and November 2019, in Mexico City. Sources were participants with knowledge of Mexico's General Law on Forced Disappearance, its phenomenon of missing persons, and socio-political responses to violence and insecurity. Many sources elected to be named participants, but those who wished to remain anonymous are represented as such with only an organizational affiliation noted, per their permission.

Acknowledgements

I am unyieldingly thankful to the Department of Political Science, to its professors and staff, for the guidance provided me throughout my graduate degree. Along with my cohort and the closest of friends, you have been a tremendous source of direction, inspiration, and encouragement. My academic career at the University of Calgary is marked by moments of fellowship, community, and growth that defined my path, and in doing so, brought me to the point of this writing. Dr. Denise Brown, you are one of those moments – the earliest, in fact. I would be remiss not to mention you by name.

Pablo, for years you have challenged me to master the method and rigor demanded by the field. You have pushed me to become a more discerning thinker, always sharper and more analytical, always *delving deeper*. But you have also emboldened me to think outside the frame of things, to question that which appears to be given, and to never forget the artistry. Thank you for working with me and for everything you've done. You might say it's just *par for the course*, but I'm a better researcher and a better person for it. I only hope I have proved equal to the task.

I remain astonished and humbled by those in Mexico who saw promise in the project and who opened doors for me to conduct this research. From the offices of international agencies to major political parties, academic institutions to civil society organizations on the ground, I am forever grateful to all those who offered their time, their resources, and their expertise to the study. Your partnership has allowed me to incorporate perspectives that are not yet present in the literature and to make this work representative of your voices. I owe very special thanks to the National Autonomous University of Mexico, to Dra. Montes de Oca Barrera, and to JC.

But there is no aspect of this project, no moment of its realization, that would have been possible without the resolute support of my parents whose devotion to us has never wavered. Not once. Not ever. Your example reminds me of the *good* in this world in those moments when I start to doubt. Any accomplishment that bears my name, anything good in me, is because of you. Your sacrifices and commitment are the reason there are words on this page, and on the many pages to follow.

Y finalmente, aunque mi nombre está en la portada, este proyecto también es tuyo, hija. Gracias.

[And finally, although my name is on the cover, this project is yours, too, hija. Thank you.]

For Abraham, Nathaniel, and Abinet.

Table of Contents

Abstract.....	i
Preface.....	ii
A Note on Primary Sources.....	iii
Acknowledgements.....	iv
Dedication.....	v
Table of Contents.....	vi
List of Illustrations, Figures, and Graphs.....	vii
List of Symbols, Abbreviations, and Nomenclature.....	viii
Chapter One: Introducing the Problem.....	1
1.0 A Seminal Event.....	2
1.1 The General Law on Disappearances Follows Ayotzinapa.....	3
1.2 Approaching the Problem.....	5
Chapter Two: Forced Disappearance <i>a la Mexicana</i>: The Makings of a Human Rights Crisis.....	8
2.0 Introduction: Violent Contexts.....	10
2.1 Formal Institutions, Informal Arrangements: PRI Clientelism and its Relationship to Violence.....	10
2.2 Dirty Wars and Disappearance During the Cold War.....	12
2.3 Political Change and the <i>Plaza System</i> 's Undoing.....	15
2.4 Drug War Violence and Disappearances.....	17
2.5 Structural Corruption and the Justice System.....	20
2.6 <i>Andaban en Malos Pasos</i> : Criminalization of the Disappeared as Political and Social Violence.....	22
Chapter Three: Development of the General Law.....	25
3.0 Introduction: Many Paths Converge.....	27
3.1 International Instruments, Constitutional Reforms, and Legal Precursors.....	27
3.2 Civil Society: We've Had It <i>Hasta La Madre</i> [<i>Up to the Mother/Up to Here</i>].....	31
3.3 <i>Sin Las Familias, No!</i> [<i>Without Families, No!</i>].....	33
3.4 Great Debates and Precarious Passage.....	39
3.5 The Law in its Final Form.....	43
Chapter Four: What Caused the General Law on Disappearance? A Counterfactual Analysis.....	46
4.0 Counterfactually Speaking.....	48
4.1 <i>What If...</i> Ayotzinapa Never Happened? Legislating in the Absence of the Forty-Three.....	49
4.2 <i>What If...</i> Only Ayotzinapa Happened? Abstracting the Background Conditions.....	53
4.3 <i>La Gota Que Derramó el Vaso</i> : The Whole as Greater Than the Sum of Its Parts.....	57
Chapter Five: Conclusion.....	60
References.....	65
Appendix.....	80

List of Illustrations, Figures, and Graphs

Figure 2.1: Rates of Homicide by Year, 1990-2017.....	17
Figure 2.2: Reported Cases of Disappearance by Year, 2007-2017.....	18
Figure 2.3: Disappearance by State.....	19

List of Symbols, Abbreviations, and Nomenclature

DFS	Dirección Federal de Seguridad [Federal Security Directorate]
DTOs	Drug Trafficking Organizations
FLACSO	Facultad Latinoamericana de Ciencias Sociales [Latin American Faculty of Social Sciences]
GIEI	Grupo Interdisciplinario de Expertos Internacionales [Independent Group of International Experts]
HRAs	Human Rights Amendments
IACHR	Inter-American Commission of Human Rights
INEGI	Instituto Nacional de Estadística y Geografía [National Institute of Statistics and Geography]
INGOs	International Non-Governmental Organizations
MNDM	Movimiento por Nuestros Desaparecidos en México [Movement for Our Disappeared in Mexico]
MPJD	Movimiento por la Paz, Justicia, y Dignidad [Movement for Peace, Justice, and Dignity]
NGOs	Non-Governmental Organizations
OAS	Organization of American States
PAN	Partido de Acción Nacional [National Action Party]
PRD	Partido Revolucionario Democrática [Revolutionary Democratic Party]
PRI	Partido Revolucionario Institucional [Revolutionary Institutional Party]
PT	Partido del Trabajo [Workers' Party]

RNPED Registro Nacional de Datos de Personas Extraviadas o Desaparecidas
[National Data Registry of Missing or Disappeared Persons]

UNAM Universidad Nacional Autónoma de México
[National Autonomous University of Mexico]

**Chapter One:
Introducing the Problem**

1.0 A Seminal Event

On the evening of September 26th, 2014, a group of young men were detained by authorities in the city of Iguala, in Mexico's southwestern state of Guerrero. This night, marred by confusion, panic, and violence resulted in the dispatching of several members of the armed forces, a subsequent shootout, the death of three students, and ultimately - the disappearance of forty-three others. The collection of actors involved in the case includes municipal and state police, military personnel, members of the Guerreros Unidos drug cartel, political agents, and Iguala's then-mayor. It continues to be unclear who is chiefly responsible for the vanishing of Ayotzinapa's student-teachers.

In Mexico, as well as abroad, the events were sensational. The hours after the students' abduction produced unrelenting media attention as the press, tipped off by colleagues in the area, descended on Iguala. In the days and weeks that followed, a picture of what occurred that night came into sharper focus. Timelines and simulations were constructed as theories about the young men's whereabouts were put forward. Searches were organized and inquiries opened while versions of the truth were tested and held up for ridicule. In early accounts authorities claimed the students, who had commandeered buses to travel to a protest in Mexico City,¹ had antagonized police officers and refused to comply when asked to disembark. Then, it was said that one of the buses obtained by students was carrying a drug shipment, thus placing the students in the crosshairs of the criminal underworld. In other versions, elements of the previous storylines were true, but the army was never involved in anything that took place. Later, the army was proven to have participated. In media reports, involvement of the mayor was discussed, and there were stories of his wife being central to commands ordering authorities to dispense with the students. Finally, there was the "historical truth", that the students were taken by corrupt officials in Iguala and handed to the Guerreros Unidos drug cartel.² As for their remains, in some descriptions their bodies were tossed into a dump site in a neighboring town. In others, the students were dismembered and put into garbage bags near a waterway. Then, it was stated they had been incinerated. To this day, there continue to be many uncertainties about what exactly happened that night.

In the wake of this tragedy, the brazen and undeniable entanglement of state officials, armed forces, and criminal operatives complicit in the students' disappearance was laid bare. Protests erupted throughout Mexico and tens of thousands marched on the capital. For its atrocious elements, the case became a national

¹ On October 2, 1968, a growing student movement gathered in Mexico City to protest its hosting of the Olympics. Hundreds of demonstrators were summarily killed at the hands of government forces in what is known as the *Tlatelolco Massacre*. It is commemorated annually and remains one of the most recognizable abuses of state power against Mexican citizens.

² The "historical truth" is the version of events put forward by former Attorney General of Mexico, Jesús Murillo Karam. His office developed and supported the theory that responsibility for the students' disappearance and death was substantiated by legal certainties pointing to corrupt, rogue police working with organized crime. This theory was discredited and refuted by experts who discovered a web of forced confessions, torture, and illegal arrests ordered by state officials. Murillo resigned in February 2015, facing backlash for his handling of the investigation and amidst allegations of perverting the course of justice.

political crisis fuelled by shock and indignation, triggering demonstrations around the world as a show of solidarity. Mexicans demanded the resignation of then-President Enrique Peña Nieto as the international community joined in calling out the Mexican Government for its human rights failures. Independent experts were brought in to investigate, forensic teams from Europe and South America lent their expertise to the case, special committees were formed, and as clandestine burial sites were uncovered throughout the country, it became clear to the greater public the problem was much, much deeper.

Since the events of *Ayotzinapa* unfolded, throughout the country civil society collectives and search teams have located hundreds of makeshift grave sites containing the remains of Mexico's *other* disappeared (Grandin 2014). All manner of topography and urban venue have borne evidence of the vanished. In these places, various forms of body parts, human skulls, bone fragments, clothing, and personal artifacts represent the last vestiges of identity for thousands who remain nameless. These discoveries speak not of localized or spontaneous acts of violence, but rather of a widespread phenomenon that in the twenty-first century has reached alarming heights.

1.1 The General Law on Disappearances Follows Ayotzinapa

Ayotzinapa crystallized the problem of disappearance and raised awareness both in Mexico and abroad. Intense public pressure and scrutiny from the international community meant the problem of disappearance could no longer be ignored in the agenda-setting circles of Mexico's political elite. Three years later, in October of 2017, the Mexican Congress passed the *General Law on Forced Disappearance of Persons, Disappearance Committed by Individuals, and of the National Search System* as a policy response to the epidemic. As a national-legal measure, the law is intended to harmonize procedures and standards across all thirty-two states within the federation. Exhaustive in its definition of the crime and related procedures, it contemplates measures for prevention, investigation, and punishment of crimes related to forced disappearance, and provides clear directives on jurisdictional responsibility alongside the implementation of search and information sharing infrastructures (Cámara de Diputados 2017b).

In the leadup to the Law and upon its advent, much reflection on its purpose and passing made mention of the Ayotzinapa case. In official communications now archived on the state's website, the Mexican government issued press releases and statements where the General Law was discussed with references to the forty-three disappeared students (Gobierno de México 2015, 2016, 2017, 2018). Its *Comisión Ejecutiva de Atención a Víctimas* produced a variety of reports in the same spirit (CEAV 2015, 2016, 2018) while similarly, international organizations like the United Nations, Organization of American States, Amnesty International, and Human Rights Watch published discourses that included the General

Law and Ayotzinapa in tandem.³ Anyone who has followed news of the case and the unveiling of policy in its wake has surely encountered the same trend. Alongside civil society groups on the ground in Mexico, writers, organizations, and global institutions were shining a critical light on the need for stronger legal-institutional and human rights frameworks, and Ayotzinapa was a tangible, widely understood point of reference for louder demands about citizen security. It seemed that at both social and political levels, Ayotzinapa shared some direct link to the passage of the General Law on Disappearance.

A great deal has been written about the missing forty-three student teachers as authors have traversed the details and circumstances of the tragedy. Indeed, entire books have been devoted to the subject (de Mauleón, ed. 2015; Greco 2017; Hernández 2019; Illanes 2015; Monáco Felipe 2017; REDH 2015) along with hundreds of NGO documents and independent news articles. For that reason, I leave the case-specific analyses to those who have already so meticulously covered its ground. The purpose of this thesis is to examine Ayotzinapa's position in the causal process of the Law's emergence alongside other important advancements that also contributed. There is no disputing the magnitude of this case for it became emblematic of extreme and senseless violence. It shocked the sensibilities of Mexican citizens, as well as those of onlookers throughout the international community. And though its connections to the passing of the General Law would make it appear that Ayotzinapa is a key causal factor in the enactment of that legislation, as though the State was leading the charge in responding to a distinct or emphatic catastrophe, Ayotzinapa's effect in the Law's development is part of a much more complex story of activism, collaboration, and political pressure that has been ongoing for more than a decade.

At the time of the Law's entry into force, more than 35,000 people were considered officially disappeared throughout Mexico (RNPED 2019). The real number is now estimated to be well in excess of 70,000 persons (Animal Político 2020). There is no way to know, for certain, how many people are actually missing. This *cifra negra* or *unknown figure*, represents the discrepancy in accounting for unlocated persons not registered in government databases. And while the *cifra negra* inhibits our true understanding of the problem's size and scale, what *is* visible is an upward, compounding trend in disappearances that coincides with Mexico's ongoing so-called *war on drugs*.⁴

Beginning in 2007, revised security policies to crack down on drug cartels and organized crime unleashed a heavily militarized state, waves of indiscriminate violence, and the proliferation of violent actors. In partnership with the United States, the Mexican government received more than \$1.9 billion

³ Examples include reports by the [Comisión Mexicana de Defensa y Promoción de los Derechos Humanos](#), [IACHR](#), [Trial International](#), and Amnesty's [2015 Report on Enforced Disappearance](#). Also, news articles such as those from [El País](#), [Human Rights Watch](#), and [TeleSUR](#).

⁴ Italics represent the author's position that *drug wars*, specifically those funded by the United States with respect to Latin America, are ineffective and interest-based policy agreements that do nothing to generate real or sustainable long-term solutions (Cherinet 2019).

USD for military equipment, weapons, personnel training, and enhanced cooperation measures (Paley and Narchi 2015). Consequently, the administrations of Felipe Calderón (2006-2012) and Enrique Peña Nieto (2012-2018) saw skyrocketing rates of violence, homicide, and disappearance unmatched by anything since the Mexican Revolution of 1910.⁵ Even in the early years of these counter-narcotics operations, the data was clear. Whereas homicide rates were at their lowest point in more than a decade by 2007, with some 8,867 murdered, the first years of the new *war* tripled that figure (INEGI 2020). Disappearances, which (officially) registered at an estimated 345 before 2007 more than quadrupled by 2010 (RNPED 2020). As of 2019, Mexico recorded its highest ever annual rates of homicide (INEGI 2020).

Within these contexts, the *cifra negra* and loss of life where disappearances are concerned raise questions about victimization and who the disappeared are. Actors and victims in Mexico's drug war include members or affiliates of organized crime groups, but also officers in law enforcement, the armed forces, political actors, and innocent and proximate civilians of all ages, professions, and circumstance. Insecurity and violence have been widespread since 2007, with civilians paying a heavy toll in the never-ending series of confrontations. In the ten years between the crackdown on Mexico's drug cartels, and the 2017 ratification of the General Law on Disappearance, tens of thousands are completely unaccounted for. Their families and communities know nothing of their whereabouts, creating waves of ambiguous loss throughout the country. Why was protective legislation not advanced sooner? Why were existing legal code and institutional frameworks insufficient in dealing with this epidemic in the first place? What was happening before Ayotzinapa?

1.2 Approaching the Problem

A rich body of literature exists about violence and insecurity in Mexico, and more generally in Latin America.⁶ Scholars analyze and address the political, social, economic, and institutional issues that affect security policies regionally and domestically. Indeed, Latin America is home to diverse experiences in this area. These range from civil wars to violent regime change, peasant uprisings to protracted clandestine conflicts, criminal insurgencies to criminal politics, and to economic inequalities that leave 191 million Latin Americans living below the poverty line – 72 million in extreme poverty (ECLAC 2020). And when it comes to the problem of disappearance, an issue that combines all these factors, the topic is often nested within broader discussions of insecurity, focused on case-specific incidents, or residing beneath larger

⁵ Direct battle deaths during the decade of the Mexican Revolution are numbered at some 500,000 but the demographic cost of war, including disappearance, immigration, and pandemic is approximately 2.1 million (McCaa 2003).

⁶ See *References* and authors including Anaya Muñoz (2018); Astorga (2007); Blanco (2013); Camp (2010); Concha Cantú (2006); Correa-Cabrera (2017); Cruz et al (2019); Cruz (2016); Denyer Willis (2015, 2017); Elizaga (2002); Freeman and Sierra (2015); Guerrero (2012); Knight (2012, 2013); Lajous and Piccato (2018); Maciel-Padilla (2021); Magaloni (2012); Mendoza Garcia (2016); Morris (2009, 2012, 2013); Ochoa (2019); Pansters (2012, 2018); Piccato (2014, 2019); Policzer (2009, 2018); Rochlin (2007); Rodríguez Ferreira (2016); Rosen and Zepeda (2016); Serrano (2012); Shirk (2012); Trejo and Ley (2017, 2020, 2021); and Zagato (2020).

narratives about drug conflicts. The aim of this thesis is to explain the development of the General Law on Disappearance as emerging out of and despite these contexts in Mexico. In this case study, institutional, social, political, and cultural influences converge to reveal how, until now, most disappearance victims have been written off as collateral, how normative cultures have made this type of violence permissible, and how these norms have gone on to exacerbate the problem. Ayotzinapa crudely revealed these truths with the forty-three, challenging notions about the permissibility of violence.

Given the timing of the Law's advent, what role has that seminal disaster played in the long-awaited federal reckoning? What other causal mechanisms have contributed to the Law and how? Tracing these causal processes and the elements that structure them (Bennett 2010; Hedström and Ylikoski 2010; Kalyvas et al 2015; Little 1996; Tilly 2001; Ylikoski 2011) is the only way to understand the General Law on Disappearance not as the product of a single event that seemingly elicited a State response, but as the result of a more than decades long struggle for justice on the part of families, collectives, activists, human rights organizations, policy leaders, and international contributors. There are micro-foundational explanations at play along the path to the Law's emergence (Schmid 2011) and this study is an analysis of those processes that might otherwise go unseen. What is revealed is that the real causal power of Ayotzinapa, as *la gota que derramó el vaso [the drop that spilled the glass]*, rests within a set of antecedent processes that made the General Law on Disappearance possible. Apart from clarifying the historical record in the Law's emergence, causality this case study reveals the significant advances being made through sustained and concerted activist efforts in Mexico. Civil society and its allies are in a long running project to hold the State accountable for violence, winning judgements and establishing precedents upon which a safer society can be built. Those efforts, which have drawn far less attention than Ayotzinapa, were critically important in laying the foundations for the passage of the General Law on Disappearance: no civil society, no Law.

Advancements like this, which aim at reducing violence and upholding justice, are ongoing and collective labours in Mexico, Latin America, and throughout the world. Highly collaborative efforts that aim at cooperation and peace have proven instrumental in decreasing violence; despite the many challenges still to be faced, progress is not only possible but historically evident as a result (Pinker 2011). Micro-level processes combined with broader, accompanying policy reform have been essential in our attempts to grapple with insecurity. This thesis is a contribution to the field of literature which examines violence, strategies toward its decline, and the incremental steps that are crucial for change.

Drawing on statistical, political, security, and sociological analyses, Chapter II examines the landscape of violence in Mexico, along with its relationship to the problem of disappearance. In this section, I explore historical precursors along with contexts of impunity, corruption, institutional weaknesses, and security policies as necessitating reform. Chapter III surveys the socio-political and technical development

of the General Law on Disappearance as having materialized not only despite the constraining contexts it surmounted, but as the product of civil society organization and international pressures. The fourth chapter uses a counterfactual method to then assess the impact of Ayotzinapa against the preceding factors that laid the foundation for the General Law to prior to September 2014. And finally, the thesis concludes with a discussion of findings, and a reflection on the future impact of Mexico's General Law on Disappearances. This research is based on first-hand interviews with government officials, law and policymakers, civil society organizations, and security scholars in Mexico with direct knowledge of the subject matter.

Chapter Two:
Forced Disappearance *a la Mexicana*: The Makings of a Human Rights Crisis

“

Mexico will have to keep the world's attention, because we are barely in the anteroom of hell. Because the footprint that will be left in Mexican society, the scar that Mexican society will leave, this violence... Who knows what this same Mexican society becomes later, right?

I am very radical in my opinions about Gabriel García Márquez. And I think he wrote a good book, a single good chronicle and good speech. Everything else to me seems rubbish. And his good speech, his only good speech – from my point of view – is a speech that if I remember correctly comes out in 1986. It's called the Damocles Cataclysm. In it, Gabriel García Márquez calls to create a kind of Noah's Ark that does not store animals, but saves the most representative works of human culture. He meant mostly arts, but he left it very open. In that kind of ark would gather all the most sublime knowledge and experience, to send it into space with a card that says, *“Well, this is what can be recovered from a race that could be the best and self-destroyed. And whoever finds this hopefully learns from our example”*.

I think we Mexicans should make our own ark and try to save from this fire a little bit and accompany it with a letter that says, *“Learn from our example, and don't follow it”*.

Paris Martínez,
Animal Político

2.0 Introduction: Violent Contexts

The crisis of forced disappearance did not begin with the drug war, in a state-cartel conflict of bounded violence - however much it might appear that way. Crackdowns on cartels and criminal organizations certainly produced tremendous levels of disappearance but the contexts are broader and deeper. As a phenomenon, disappearance is the result of historic political and institutional currents that shaped Mexico's security climate, produced a collection of violent actors, and which nurtured conditions for human rights abuses. Legacies of the *Partido Revolucionario Institucional* (PRI) and political discourses that criminalize victims are contributing factors to the security crisis now being reckoned with by policymakers and Mexican society, alike.

To understand how these contexts shaped the phenomenon of disappearance, and to appreciate what the General Law aims to overcome, we must see the ongoing drug war as a program which came after electoral defeat of the PRI regime to exacerbate an already fragile security climate. When the PRI lost political power to the election of Vicente Fox in 2000, its institutional architecture – reflecting decades of informal systems of clientelism, corporatism, and patronage – stayed in place. These practices relied on corruption and undermined the rule of law. This legacy is present in twenty-first century Mexico, just as it was operational during the Dirty War, when *enforced*⁷ disappearance was first systematically perpetrated. Militarized governance carried out during the Dirty War fused state terror with plausible deniability, privatizing violence while compounding corruption and loosening the reigns of accountability. The result of these combined and crucial elements has been the institutionalization of impunity, a persistent barrier to human rights and citizen security. Along with criminalizing disappeared persons, the present epidemic reveals that the State has been complicit, both directly and indirectly, in the production and reproduction of violence.

2.1 Formal Institutions, Informal Arrangements: PRI Clientelism and its Relationship to Violence

The PRI came to power in 1929 and ruled Mexico for seven decades, until democratic transition in 2000. Following years of revolutionary disruption, the PRI developed an authoritarian and highly centralized state. Formally, Mexico was a federal-presidential system founded on checks, balances, and the separation of powers; but in practice, the reality was different (Langston 2017). Informally, the legislature, judiciary, state, and local governments were controlled through unwritten norms of hyper-presidentialism, where

⁷ The term *enforced* disappearance is applicable to crimes carried out by state actors such as military personnel, or violations performed with the knowledge or acquiescence of state agents. *Forced* disappearance or *disappearance* are terms that refer to this deprivation of liberty in general, regardless of the perpetrator's identity.

executive orders were carried out regardless of official limits on power (Beer 2012, 119-122). Clientelism⁸ became a tenet of PRI governance that would open the doors for private violence and human rights violations of many forms.

Throughout its reign, the PRI used clientelist contracts with individuals placed in strategic positions of co-optation and coercive force. Labour union leaders, government representatives, heads of *ejidos* (communal land holdings), Indigenous leaders, and local influencers all dispensed status, power, and intangible rewards from the top down, throughout society, to informally establish policy, behaviour, and order (Roniger 1990, 57-95). A deeply embedded aspect of Mexican socio-political structure, clientelism generated social contracts that were unofficially enforceable. Those with power and connections could achieve ends without having to officially justify means.

In Mexico, the practice comes from historic patterns of *caciquismo*, where a *cacique* or local boss charged with authority acted as a strongman, responsible for the enforcement of a stratified, top-down social order that managed society outside of formal channels (Barta and Huerta 1980). As early as the 1930s, local politicians used *pistoleros* as bodyguards, hitmen, and enforcers accountable to their bosses as opposed to the State or justice system (Piccato 2014, 321-340). Privatization of violence mixed the criminal with the political from the outset of the PRI era (Piccato 2014, 321-340). Early on, a state-crime nexus was formed and as a result, existing criminal laws were violated as part of (un)official policy. On behalf of powerful figures, *pistoleros* and private actors exercised the use of force that was supposed to be reserved for the State and its armed services. The PRI institutionalized this form of rule, adding to it authoritarian, repressive, and violent dimensions that demonstrated the impunity associated with power (Cockroft 2010). Deeply joined to corruption, the practice of clientelism undermined formal institutions by allowing state-sanctioned actors to perform clandestinely, outside the realm of oversight as they evaded administrative and legal controls (Hicken 2011). This would have long lasting effects for it created an environment of illegality. Given the right connections and backing, armed citizens could literally get away with murder.

The dangers of Mexican clientelism became most evident in the middle of the twentieth century when social unrest in the countryside tested the PRI's tolerance for dissent. As with all forms of governance, clientelism requires an enforcement mechanism. When co-optation and negotiations failed to quell

⁸ Clientelism, as a form of reciprocal social exchange, leverages personal relationships between a patron and client in hierarchically ordered arrangement, dependent on trading favours and abiding by *quid pro quo*. Such relationships are based on transactions, with one party providing some form of support the other will repay. It is especially common with respect to voting. A political official might promise to deliver material goods to a community or to resolve an official matter in exchange for electoral support. But it goes beyond this, taking up roots in other forms of exchange to create norms of asymmetrical reciprocity. At its core, clientelism is a form of patronage that occurs between actors with unequal resources, economic status, or social standing (Hicken 2011; Schefner 2001). In the spirit of patronage, it establishes a system of informal relationships and rules that exist off the record. Favours may be dealt and repaid between civilians and politicians, but also within the political world for alliances, positions, career advancement, protections, and agenda setting.

uprisings in rural areas, or were deemed beneath the patience of the regime, military programs and clandestine actors were able to wreak havoc on behalf of the State (Aviña 2014). Abduction, murder, and disappearance became emblematic of the period. The drug war that followed compounded this legacy. Violent actors would take advantage of the impunity and weakness of formal institutions that could do little to counteract their crimes. Disappearance became a phenomenon during the drug war, but was established as practice during the Dirty War.

2.2 Dirty Wars and Disappearance During the Cold War

In the middle of the twentieth century, Mexico's Dirty War was part of a regional pattern of subterfuge and counterinsurgency. Dictatorships, military-authoritarian regimes, and the socio-political struggles that emerged within the Cold War paradigm in Latin America saw episodes of class mobilization, mass uprising, and violent regime change from the early 1950s throughout the 1990s. Disappearance was a key weapon of the state in quelling opposition. As the ultimate tools of repression during this period, state violence and disappearance exemplified both strategic and symbolic aggression against real and imagined political opponents. This was particular to those on the ideological left during Latin America's half century of devastating civil conflict. Mexico's Dirty War was one of many that took place throughout the Americas, a region of the world that effectively wrote the book on forced disappearance. Transformation of the State into a blatant instrument of oppression not only cemented power structures but allowed for a neutralizing of opponents through practical and psychological warfare (Kleinman 1987).

Some of the most notorious cases of human rights abuses began in Colombia following the *Bogotazo* riots of 1948. Political wars fuelled a decade of bloodshed known as *La Violencia*, which gave rise to revolutionary armed actors (Cherinet 2016). The Colombian Government partnered with the United States through *Plan Lazo* to eradicate insurgents during a period rife with human rights abuses (Brittain 2010; Livingstone 2003; Palacios 2006; Rochlin 2007; Simons 2004). Meanwhile, Guatemala experienced a protracted civil war in the aftermath of the US-sponsored coup against the progressive, reformist president Jacobo Árbenz (1954). Nearly four decades of internal fighting evidenced genocide against Indigenous populations who suffered at rates massively and disproportionately higher than those of *ladinos*, who were of non-Indigenous descent. Features of the Guatemalan war included insurgency and clandestine conflict met with brutally repressive policies, including disappearance, that rivaled any the region would see realized during this period (McCallister 2010; Molden 2015; Sabino 2008; Schirmer 1999; Weld 2014). In Brazil, the 1964 coup amidst fears of rising communist influence was less deadly than in many other parts in the region, but nonetheless defined by strict repression, political detentions, torture, and disappearances (Chirio 2018; Klein and Luna 2017; Pinheiro 2009; Sarzynski 2018). On 11 September 1973 in Chile, the administration of democratically elected socialist president Salvador Allende was toppled in an astonishing

CIA-supported military takeover. The ensuing dictatorship led to the creation of a veritable police state whose own security and secret services were responsible for an excess of 40,000 victims (Ensalaco 2000; Policzer 2009), more than 1,100 of whom were disappeared (Esparza 2007; Rettig Commission 1991). Argentina's military overthrow of President Isabel Perón's government in 1976 led to a dirty war during which more than 30,000 were disappeared through the systematic use of death squads (Crenzel 2011; Gatti 2012; Guest 1990; Marchak 1999; Wright 2006). And in Nicaragua (1979), the revolution incited by the leftist *Frente Sandinista de Liberación Nacional* drew the ire of the United States, bookending its Cold War interventions with an anti-communist resolve that devastated Nicaragua and pulled neighbouring countries into its sphere of horrific violence (Crandall 2014; González Arana 2009; Sánchez 1987; Solaún 2005). Meanwhile the cases of the Dominican Republic, El Salvador, Honduras, Uruguay, Paraguay Venezuela, and Peru during this time also laid claim to experiences of enforced disappearance through state terror.

For more than a decade beginning in 1969, Mexico experienced a dirty war of its own. In response to the country's left wing, anti-authoritarian activists and insurgents, the dynastic PRI undertook terror campaigns throughout rural areas and in key cities to extinguish revolutionary fervour. For all intents and purposes, the countryside became a laboratory for the experimentation of repressive tactics and human rights violations later used in urban settings (Pansters 2018). Enemies of the State were coerced, threatened, kidnapped, killed, and disappeared not only by the military, but by those who shifted identities to carry out State orders: the private enforcers (Aviña 2014). These exercises of power allowed military and secret regimes to brutalize and kill thousands under state mandate – mainly in poor and provincial regions, almost always without consequence. Missions were conducted under the banner of terminating enemies of collective security, and perpetrators enjoyed the impunity afforded them by government sanctioned violence. In many ways, the Dirty War set the stage for the present generation of disappearances whether perpetrated by state or by nonstate actors. In Guerrero, the same site as the Ayotzinapa disappearances nearly fifty years later, some of the most violent and large-scale human rights abuses took place at the hands of the armed forces and criminal associates, creating an open wound Mexican society contends with to the present day (Zazueta Aguilar et al 2009).

Clientelism and its catalogue of military and private enforcers allowed the PRI to deny responsibility by claiming plausible deniability for Dirty War abuses. Through the army, private contractors, and secret death squads, the PRI distanced itself from the horrors inflicted on rural populations. Military operatives were able to deny liability by citing their command structure (Concha Cantú 2006, 361-383). The military was civilian, only following orders handed down from powers above. Even in cases where questions of abuses were raised, prosecution fell to a separate, military judiciary not only subordinated to the powers of the executive branch but to a justice system not designed to uphold human

rights (Concha Cantú 2006, 361-383). Meanwhile, the *Dirección Federal de Seguridad* (DFS), the nation's federal intelligence agency, worked covertly as an anti-guerrilla death squad charged with information gathering, torture, kidnapping, and the murder of dissidents and suspected drug traffickers (Gómez-Céspedes 1999). They could not be easily blamed because their work was neither public nor official. DFS agents and their allies in other bureaus undertook campaigns to identify and physically eliminate armed revolutionary groups in the name of regime stability (Aviña 2013). It was a dirty war because the State *fought dirty*, suppressing and exterminating nonconformists in blatant violation of law, diffusing corruption across a spectrum of violent actors.⁹ State action was bolstered by rhetoric as the PRI refused to recognize insurgent actors as guerrillas, instead criminalizing them as bandits and thugs in the style, they claimed, of Central American dissidents (Mendoza García 2016). The labelling and discourse intended to discredit leftists simultaneously served to criminalize them, justifying a total suspension of civil liberties and the denial of legal recourses. The same strategy of defamation would be applied to disappeared persons in the twenty-first century.

Latin America's contribution to our understanding of disappearance is significant. Much international law, along with the establishment of various global human rights regimes, was born from the experiences of these civil wars and from the unleashing of state terror in the Americas beginning in the 1950s. Apart from atrocities committed by Nazi Germany during the Holocaust, mid-century Latin American political regimes are notorious for what is known, today, as *enforced disappearance*. As Dulitzky writes, the region has been "...a source of innovation and a progenitor both in developing and perfecting this heinous crime as well as in the construction of the national, transnational, regional, and international responses to it" (2019, 486).

After the end of the Cold War, in December of 1992, the United Nations General Assembly passed resolution 47/133, the *Declaration on the Protection of All Persons from Enforced Disappearance*, which defined the act of disappearance as both a criminal and human rights violation. The resolution describes that the Assembly was

"...Deeply concerned [sic, emphasis in original] that in many countries, often in a persistent manner, enforced disappearances occur, in the sense that persons are arrested, detained or abducted against their will or otherwise deprived of their liberty by officials of different branches or

⁹ Dirty War abuses were indiscriminate and well-documented. Though problems of censorship persist (Kerr 2018; Paxman 2020), Mexico's *Secretaría de Gobernación* (Interior Ministry) is home to one of the most extensive declassified Cold War archives in Latin America, and Mexico's human rights organizations have fought relentlessly to bring Dirty War cases before international committees in order to prosecute the heinous war crimes that characterized the period (Cedillo 2013).

levels of Government, or by organized groups or private individuals acting on behalf of, or with the support, direct or indirect, consent or acquiescence of the Government, followed by a refusal to disclose the fate or whereabouts of the persons concerned or a refusal to acknowledge the deprivation of their liberty, which places such persons outside the protection of the law...” (United Nations Resolution 47/133 1992)

As a founding member of the United Nations in 1945, Mexico was party to the Resolution. So, too, were Argentina, Bolivia, Chile, Colombia, Ecuador, Peru, Paraguay, Uruguay, and Venezuela in South America, along with the Caribbean and Central American states of Cuba, the Dominican Republic, Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua, and Panama. All had experience with the horrors of enforced disappearance. Like many of these countries, Mexico also signed and ratified its party commitments to the later *International Convention for the Protection of All Persons from Enforced Disappearance* in 2006 (United Nations Resolution 61/177 2007). Nonetheless, human rights abuses would continue in Mexico due, in part, to the routinization of clientelism, privatization of violence, and the momentum of impunity it created.

State practices that allowed for human rights violations, extrajudicial terror, and which protected those responsible created a form of positive feedback loop for perpetrators. Where enforced disappearance took place through strategic application, state and private agents were safeguarded by the protections of deniability and impunity, and came to believe in the acceptability of such violence (Osorio et al 2018). Unchecked and bolstered by a weak justice system, these internalized norms have in many ways survived over time. Actors of all stripes are incentivized by the possibility of impunity as they carry out both official and private violence. Never would this be truer than during the war on drugs.

2.3 Political Change and the *Plaza System*'s Undoing

For nearly a century and under the PRI, violence had been steadily declining even despite the Cold War theatre, save regional and isolated outbreaks (Imbusch et al. 2011; Lajous and Piccato 2018; Piccato 2018, 89-95). In fact, homicide rates were at an almost all-time low when in 2000, one-party rule came to an end. Democratic elections broke the seventy-one-year stronghold of the PRI, sending shockwaves throughout the country and triggering the beginning of violent disorder among drug trafficking organizations (DTOs) aligned with the old regime.

Although flagrantly corrupt, PRI reign and its strong patron-client relationships allowed DTOs and criminal groups to thrive. This took place through sophisticated networks of vertical and horizontal allegiance. An extension of the state-crime nexus, political involvement in crime was a partnership that

extended from the nation's executive corridors to operations on the ground. Intricate socio-institutional arrangements between political and criminal worlds were based on systems of mutual benefit, where the flow of resources was regulated and shared, upheld by unwritten codes of exchange (Eisenstadt and Roniger 1980; Gambetta 2009; Knight 2012). This was known as the *plaza system*, an exemplary and impressive racketeering design whereby organized crime was regulated through the highest offices and their representatives, in concert with powerful cartels (Trejo and Ley 2020). Under the PRI, drug trafficking formed an unofficial part of the State's commercial and political interests, marked by *plazas* that defined various urban and rural networks demarcating territory, leadership, affiliation, and a detailed system of payoffs, kickbacks, and protection measures. The state-crime marriage was elaborate and allowed crime to flourish, but violence was mostly strategically measured and controlled.

This system began to break apart following the 2000 presidential election of Vicente Fox. With the PRI stronghold removed, an historic reorganization of the country's political apparatuses took place. The system that had both facilitated and mitigated criminal organizations was inadvertently dismantled through nation-wide changes in political offices. Checks and balances that maintained order through the *plaza* structure were undone and with their breakdown at federal, state, and municipal levels, highly centralized control and its clientelist arrangements were drowned in the wave of democratization (Rosen and Zepeda 2016). The new regime under Fox was largely incapable of subordinating criminal organizations to its political authority, and criminal groups that already represented challenges to the State were fuelled by the transition, which generated factionalism in the newly created vacuum where patrimonial political supremacy once reigned. In the absence of strict control measures, Mexico's drug syndicates began to compete more violently for domination of territory and markets while simultaneously, political divisions between parties prevented agreements that might have better dealt with the problem (Correa-Cabrera et al 2015; Watt and Zepeda Martínez 2012).

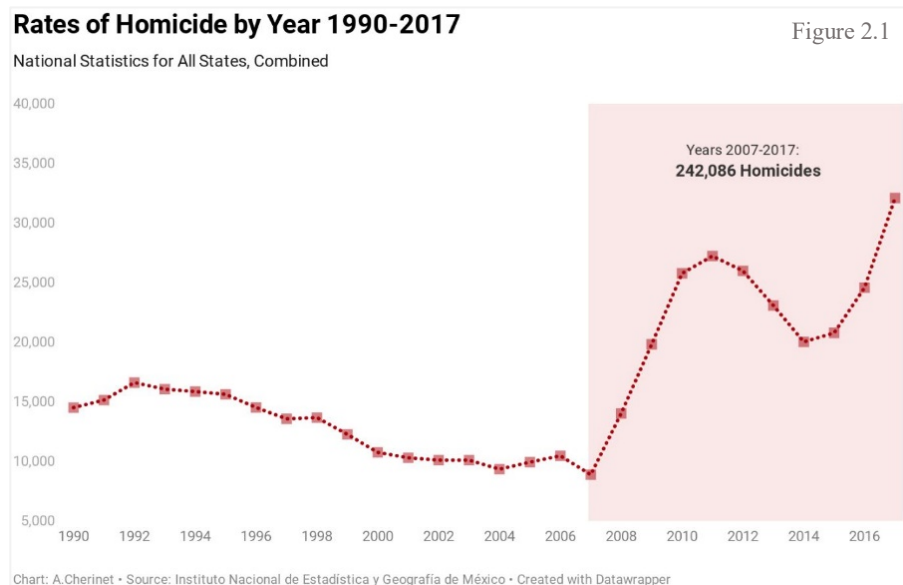
President Calderón's contested victory in 2006 was won against this backdrop of growing instability, spurring a mission to increase security and restore power to a weakened state. On one hand, his implementation of the drug war under the Mérida Initiative was a gesture and means to create actionable policy that might credit his administration with the authority it lacked.¹⁰ His inauguration had come within an atmosphere of electoral discontent. On the other hand, state militarization against DTOs supported US, elite, and neoliberal agendas to protect foreign direct investment and commercial sectors (Freeman and

¹⁰ The Mérida Initiative commenced Mexico's drug war in bilateral partnership with the United States. As an assistance package funded by the USA at the apparent request of Felipe Calderón, the security agreement provided Mexico with some \$1.9 billion USD at the outset for military equipment, security and special operations training, and other measures for enhanced cooperation measures (Paley and Narchi 2015). The drug war came on the heels of Plan Colombia's conclusion in 2000, a similar foreign policy arrangement that effectively pushed drug distribution routes from Caribbean corridors overland to Mexico, before arriving product at the US market.

Sierra 2005; Mercille 2011; Zagato 2020). As a tactic of the Mérida Initiative, Calderón’s regime pursued a kingpin strategy intended to target and remove key leaders of Mexico’s main criminal organizations. These campaigns were partly successful, but there were shocking consequences as well. Cartels splintered and fractured, adding to the already potent tensions between state and non-state groups, and among competing criminal organizations, themselves. Meanwhile, militarization of the armed and police forces not only cemented their place as constabulary branches of authority, focused fully inward on policing, but also led to the creation of new teams and divisions devoted to a veritable social cleansing of criminals and criminalized persons. Homicides and disappearances have skyrocketed and proliferated for more than a decade since.

2.4 Drug War Violence and Disappearances

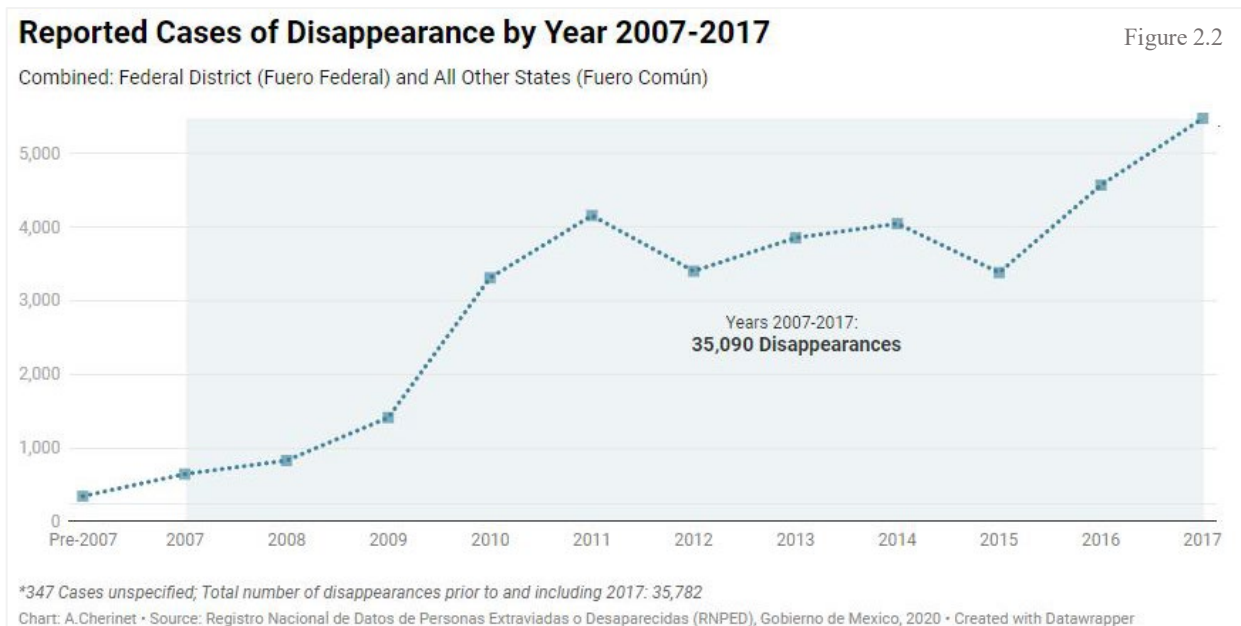
Homicide rates rose dramatically during the first years of the drug war.¹¹ Mexico’s *Instituto Nacional de Estadística y Geografía* (INEGI), which tracks homicide data as of the year 1990, shows a marked and continued increase in homicide rates throughout Mexico during the period of 2007 through



2017, when the General Law on Disappearance was finally passed. During this decade, more than 240,000 persons were recorded as murdered with the most violent years being 2011 and 2017 (INEGI 2020). Forced disappearance, which is measured through the governmental database *Registro Nacional de Datos de Personas Extraviadas o Desaparacencias* (RNPED) demonstrates that in tandem with Mexico’s drug war, recorded disappearances escalated exponentially. The largest spikes in reported cases coincide with the

¹¹ There are many inconsistencies with respect to reporting crime statistics in Latin America (Denyer Willis 2016). Murder rates tend to be a relatively reliable indicator of violence for the fact that they evidence crime by producing a body. A corpse is more likely to be recorded through official channels under the classification of homicide than are other crimes such as robbery, assault, rape, or disappearance – which are more difficult (or require more effort) to categorize and prove.

largest outbreaks of homicide in 2011 and 2017.¹² In addition to killings that numbered at ~27,000 and ~32,000 in those years, respectively, disappearances reflect ~4,100 and ~5,400.



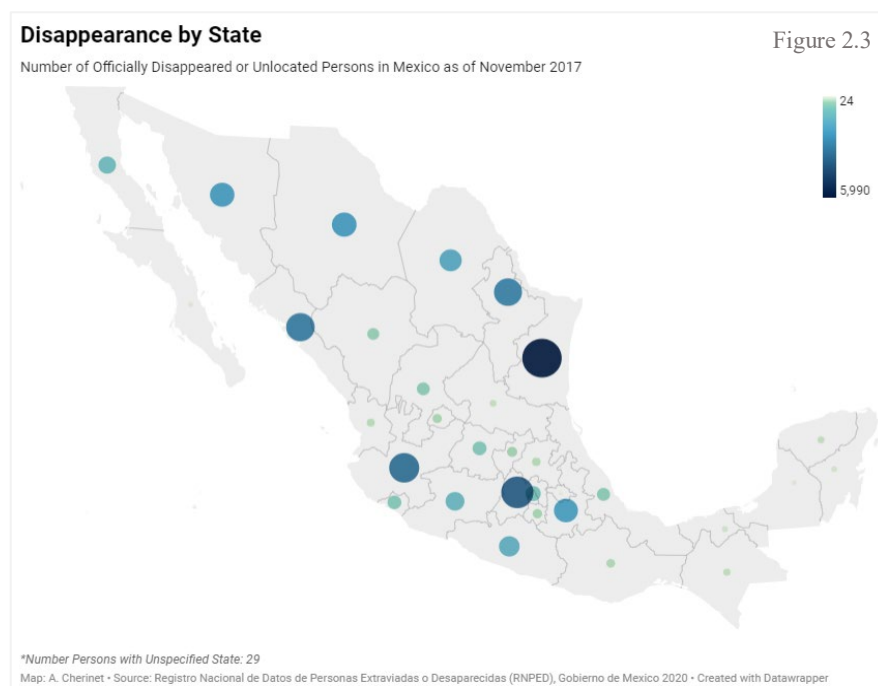
According to official records, some 345 disappearances took place prior to 2007 whereas more than 35,000 were on record ten years later. These figures are highly contested. The Dirty War, alone, is thought to have been responsible for more than 1,200 disappearances, immediately dismissing the “Pre-2007” data presented by RNPED. Part of the reason for these discrepancies lies in the recent creation of RNPED and the fact that there are ongoing inconsistencies in reporting (Elizondo García 2020).¹³ In some cases, missing persons are not reported at all. In others, case reporting is obscured by backlogs of data entry compounded by the inability of law enforcement to properly investigate the crime and consequently, categorize it. There have also been issues surrounding political will to acknowledge the depth of the crisis, with scores of accusations that government agencies have deliberately withheld data from the public.¹⁴ Many in government and outside it believe that the real number of disappeared persons is far north of 80,000 today

¹² For a death to be reported as a homicide, a body must be recovered. Persons considered to be disappeared or unlocated are those who are missing, and whose remains are unfound. When remains of the disappeared are located and positively identified through forensic analysis, the categorization of their case is changed from *disappeared* to *homicide*. If a person listed as disappeared is found alive, their name is removed from the database of missing persons - theoretically.

¹³ In-depth information about the RNPED system and broader statistics can be found through the Senate’s *Instituto Belisario Domínguez*. Their [April 2019](#) report entitled *Historia, retos de mejora y cifras del registro de personas desaparecidas [History, Improvement Challenges and Figures of the Missing Persons Registry]* provides a comprehensive overview of disappearance data.

¹⁴ The Calderón and Peña Nieto administrations did not want information about the scale of the disappearance epidemic to be public. RNPED registries, which were originally private Government intelligence, were leaked to the public in 2012, forcing the Calderón regime to release State records (Ruíz Reyes 2019). On November 29th of that year, the [Washington Post](#) published details of the registry with [InSight Crime](#) picking up the story one day later. Peña Nieto took office on December 1, 2012, fully inheriting the fallout.

(Gutiérrez 2019). This is the *cifra negra* in action, creating an unbridgeable gap between official, recorded data and the true extent of the problem. We can think of these figures, both the homicide and disappearance data, as a minimum or as a baseline which still makes one thing is clear: even in the first years of the crackdown on drug cartels, and as inter-cartel fighting increased, the production of extreme violence was apparent across all levels of society. Sustained violence has carried on while human and fundamental rights have been restricted, if not suspended, to justify a *war* once again deemed necessary to restore order (Anaya Muñoz 2012).



Like those who lose their lives to homicide, the disappeared represent many backgrounds. As violence plays out, victims can certainly be criminals but also, arbitrarily, victims are regular citizens: journalists, students, political figures, businesspeople, migrants, children, activists, tourists – anyone. The RNPED database and search system are elaborate in their

descriptions of disappeared persons and information is available to the public about individual cases of disappearance, along with the demographic details of victims. One can download a full roster of case files and in it, find the full name, age, physical description, home state, site of disappearance, and distinguishing features of every named person who is missing and registered.¹⁵ Notwithstanding the caveat that these records only form part of the picture, the data still provides a glimpse into the features of the epidemic. Geographically, Mexico’s hardest hit areas for disappeared persons are Tamaulipas (5,590), Estado de Mexico (3,890), Jalisco (3,362), and Sinaloa (3,027) (RNPED 2019). These states are closely followed by Nuevo Leon (2,895), Sonora (2,150), and Chihuahua (2,186) (RNPED 2019). The locations mark main

¹⁵ What is not clear, is how the individuals came to be disappeared or what involvement, if any, they may have had in the country’s drug conflict or with crime. This is currently an emerging area of research. Projects like The Observatory on Disappearance and Impunity in Mexico, a joint undertaking between the Universities of Minnesota, Oxford, and the Latin American Faculty of Social Sciences (FLACSO) in Mexico, are pioneering the search for answers about disappearance and victim links to crime. Working regionally by collaborating with local organizations, the Observatory’s teams have released findings for the state of Nuevo León that suggest 92% of disappearances in the northern state are not connected to organized crime, and that nearly half of all reported cases have the involvement of state and/or federal agents (University of Minnesota 2020).

corridors of overland routes for drug trafficking, the presence of Mexico's most powerful criminal organizations, and the areas most heavily targeted for anti-narcotics operations (Suárez Valencia 2019). Nearly 52% of victims of disappearance are between the ages of 15 and 34 years old and approximately 75% of all disappeared persons are male (RNPED 2019).

In the current drug conflict, the State lacks a monopoly on coercive force (Weber 1946) and the precedent of de-monopolization was established and cemented by clientelism's historic use of clandestine actors. As a result, state forces in this drug war confront criminal organizations that are well matched tactically and materially, an extension of the past's privatization of violence.¹⁶ Whereas the aim of state forces against narcos is to produce decisive outcomes by dismantling and disarming DTOs, these groups fight to constrain and deter the State to induce policy changes that cause it to withdraw (Lessing et al. 2015). The situation is a veritable revolving door whereby government forces, fighting wars on many fronts, continue to face one opponent after another – while these opponents also face off against each other, and some double for opposing teams. There are private security forces at play in this conflict, along with vigilantes and armed civilians who weaponize their need for self-protection (Cruz and Kloppe-Santamaría 2019). The traditional paradigm of two sets of actors in a two-sided war is obliterated by varied and changing identities. Really, the binary distinction was done away with long ago.

As killing has increased since the start of the drug war, rates of disappearance have moved in concert. At the time of this writing, Mexico is experiencing its highest ever annual homicide rates and if history is any indication, disappearances will follow suit. While democratic transition after the authoritarian PRI laid the groundwork for the outbreak of violence evidenced since 2007 (Trejo and Ley 2017), the drug war has compounded the insecurity crisis not only by producing heightened violence and a constellation of violent actors, but by failing to support the initiative with competent institutions that can investigate and prosecute criminal actors.

2.5 Structural Corruption and the Justice System

Mexico's formal institutions have long suffered from problems that rampantly undermine citizen security. These failures are reinforced through an iterative process that is met by *informal* socio-cultural understandings about how the State operates, who is to be trusted, and to what extent public security is possible. In the same way that corruption is a gateway to impunity, and vice versa, formal and informal institutions work in tandem. As we have seen, clientelism and the *plaza* system are testament to elaborate

¹⁶ There is no shortage of literature tracing the many armed actors who have worked for, moonlighted, and ultimately defected from the military, police, or other branches of the state in favour of criminal careers. Even the DFS infamously employed some of the country's most notorious crime bosses and cartel enforcers (Astorga 2007; Correa Cabrera 2017; Fazio 1997; Gomez-Céspedes 1999; Grayson 2012; Lopez-Montiel 2000; Maciel-Padilla 2021; Ochoa 2019; Ruíz Torres et al 2014).

patronage arrangements of bribery and the circumvention of legal standards through strategic coercion (Cruz 2016; Serrano 2012; Shirk 2012). But democratization did not mean the end of corruption; far from it. Morris contends that transitions to democracy in Latin America have often been accompanied by increases in corruption and this has been the case – certainly at the individual state level – in Mexico, where decentralization of power has had adverse effects on accountability (2009). Naturally, the issue with corruption is that it allows individuals and groups to operate outside the rule of law, evading consequences within an opportunistic model that rewards bad behavior. For Mexican society, the problem is structural.

Corruption affects various levels of state and society, undermining access to justice. Not only is it difficult to hold agencies accountable where corruption is prevalent, but it is also an immense task to root out corruption when accountability is lacking. Within the criminal justice system, a crucial mechanism for anti-corruption and accountability initiatives, legal instruments are ineffective when those responsible for them are corrupt or lack capacity to affect change (Unger 2013). The criminal justice system thus severely hinders the application of rule of law and by extension, the promotion of human security. Add to this its jurisdictional design, which rests on an archaic system of authoritarianism that has long now been laid to rest, and the problem is further complicated. By way of example, organized crime fits into both local and national jurisdictions which confuses processes of investigation and prosecution; day to day policing falls to the *Policía Judicial Federal* which has only preventative (not investigative) functions; and precious little criminal investigation is carried out because conviction rests in the hands of either a state or federal attorney general who depends on a public prosecutor not trained in investigation (Magaloni 2012, 90-94). Put simply, most crimes are never investigated or prosecuted at all. And in cases where crimes and abuses are perpetrated by state agents, inadequacies mean that misconduct rarely ever results in any form of legal sanction.

These realities have produced in Mexico extremely low levels of trust in government and many of its agencies. Ineffective and abusive law enforcement practices weaken institutions, regardless of proclaimed mandates to achieve public safety (Vivanco and Wilkinson 2010). Impunity rates as high as 97% go beyond the avoidance of consequences to include inefficiencies in investigation and punishment, lack of resources, weak professional standards, and competing political agendas (Morris and Bunker 2013). Returning to the discussion of the relationship between formal and informal institutions, the iterative process manifests here. The *Universidad Nacional Autónoma de México* (UNAM) released a 2018 study depicting that the lowest levels of public trust applied to police, syndicates, senators, presidencies, federal deputies, and political parties while the highest levels of trust were assigned to universities, followed by the Church, and then the army (UNAM Global 2018). There is disillusionment and scarce confidence toward the very institutions and agencies most responsible for citizen security and upholding human rights.

Insecurity and victimization are major negative factors in institutional trust, especially in policing and the judiciary, and where confidence is affected by the rise of drug trafficking activities (Blanco 2013). Substate actors who take policing, self, and community defense into their own hands do so in response to a system incapable of providing protection and justice. Crimes such as assault, robbery, express kidnapping, femicide, rape, homicide, and disappearance are among the violations often not reported due to lack of faith in legal processes. Those that are reported seldom result in proper investigation or conviction. And when it comes to forced disappearance, victims have been systematically criminalized, adding another layer of complication to the process of reporting and response.

2.6 *Andaban en Malos Pasos: Criminalization of the Disappeared as Political and Social Violence*

In Mexico, it is common to hear phrases like *son malos matando a malos* [*they're bad people killing bad people*] or *andaban en malos pasos* [*they were walking a bad path*]. These anecdotes refer to persons who are disappeared or killed because of suspected involvement with criminal organizations. Just as the Dirty War criminalized leftists and activists as “thugs”, so too has labelling painted today’s victims under one, broad stroke. Rhetoric like this has formed a significant part of official State discourse, creating a subtext about whose lives are valued and whose are completely dispensable. The presidencies of Felipe Calderón (2006-2012) and Enrique Peña Nieto (2012-2018) were particularly adept at constructing grand discourses about the value of life in the ongoing drug war, elevating in myth the ideas that those who die or disappear effectively deserved their fates due to involvement with organized crime (Aguilera 2019; Ansolabehere 2019; Chica 2019; Dávila Fernández 2019; de la Barreda 2019; de Pina 2019; Fray Juan de Larios 2019; García Campos 2019; Martínez 2019; Rodríguez Nava 2019; Suárez Valencia 2019). As for innocents whose lives have been lost in the conflict, they constitute regrettable but collateral damages in the fight between good and evil (Gutiérrez 2019). Though no such clarity exists, twenty-first century administrations have drawn a clear moral distinction between the State and its enemies, much like the distinction between *communists* and *patriots* in the sixties and seventies. Framing death – and disappearance – in this way has been part of a communicative political strategy of denial, a discursive technique to minimize and negate the scale of the epidemic while criminalizing the disappeared (Cohen 2001; Ölfvingsson 2016). Moreover, it has allowed Government to avoid official accountability for the drug war’s outcomes. This is highly problematic.

To begin, there is an impressive void of information about who victims in this conflict are. Victims and perpetrators overlap in blurred ways, making it difficult for society to distinguish actors, motives, and responsibilities amidst the lawlessness unbroken by impunity (Robledo Silvestre 2015; Rodríguez Ferreira 2016). The lack of procedural frameworks to properly investigate and define actors lends itself to a condition of homogeneity for victims, which is easily reinforceable by state discourses that lump victims

into one camp. It can neither be proven nor disproven who victims are, at any rate not easily; what levels of involvement – if any – they had with organized crime; or if hearsay about their criminality is true. There is a complete loss of personhood within the dysfunctional anomie (Elizaga 2002, 80) ascribed to victims by the State and in turn, by greater society. Disappeared individuals suffer doubly. First, they are repressed under the weight of grand narratives. This is a form of political violence. Second, disappeared persons cease to be individuals within the larger societal context, instead succumbing to a process of social labelling that decreases their importance as victims and as human beings (Ansolabehere 2019). They are simply criminals. This is social violence (Arnson 2012; Fracchia Figueiredo 2018; Rivera 2016).

The State and its forces can divest themselves of responsibility through systematic *othering* that straddles justification of death or disappearance on one side, and detachment on the other. Meanwhile, Government insistence that violence is the product of *malos matando a malos*, whether true in part or in majority, is wholly unsupported by credible data (Acosta 2010). This is another manifestation of the *cifra negra*, alive under different circumstances, this time disguising the truth of who is victimized and why. A dangerous form of imagined community is constructed where “good” people have nothing to fear, and “bad” criminals outside the community are expendable without question. *Andaban en malos pasos, so they deserve what they get*. Without addressing any root causes that lead to criminality, any discussion of social and economic disparity, these narratives prevail and set precedents for how some members of society are viewed or valued.

In this climate that claims to exhibit bounded violence, where certain things only happen to certain types of people, persons murdered or disappeared have been dehumanized and stripped of rights that are supposed to be inalienable. Even if it were the case that only criminals were being killed or disappeared, there are wide implications for being considered fully disposable. “Criminal” is a broad term. It refers to someone who has committed a crime and denotes some illegal act has taken place. But the term is vague, and unrepresentative. Surely there is a difference between the case of a fifteen-year-old boy who carries an illicit parcel from one location to another and a thirty-year-old *sicario*. There must be a difference between an armed group that opens fire on a crowded plaza and an unarmed group of peaceful, rural farmers who cultivate marijuana to make a living. A collection of students disappeared on the way to a protest is assuredly not the same as a collection of assassins who attempt a hit on a police chief. In official discourse and practice, the distinctions were unmade.

The criminalization of victims creates space for psychological defense mechanisms capable of detaching everyday society from painful realities they cannot control (Hathazy and Müller 2016; Popitz 2017; Schedler 2016; Vargas et al 2016). In its approach to characterizing the conflict and its impacts on Mexican society, the State has articulated who deserves what kind of treatment (Claassen 2016). To be

called a criminal is to be deserving of abuse, violation, death, or disappearance.¹⁷ Symbolically, meanings are manufactured with respect to whose lives matter and whose do not (Butler 2004). This trickles down into formal and informal institutions, and into civil society which is left to either accept this symbolic production or fight against it (Crane and Hernández 2019). Even though Mexico does not have the death penalty, its administrations have allowed the assignment of death sentences to an undifferentiated docket of “criminals”, the majority of whom are from underprivileged backgrounds, within a very unequal society where rights and representation are languishing. Civil society with allies in political, academic, and NGO communities have rejected the grand narrative and fight against the injustices of corruption and impunity.

Whereas we might only look at the drug war and its relationship to missing persons, the contexts explored in this chapter are key to understanding the very structures that gave rise to the phenomenon. They are the same structures that elicit reform and counteraction. A major policy achievement like the General Law did not emerge in a vacuum. Rather, it is the product of a long, slow process of gaining and holding ground in the face of these political and institutional failings. Such efforts involve challenging those in power to publicly recognize problems of disappearance and violence, and to have them see the issue as something more than a consequence for insignificant or marginal sectors. As we will see, Ayotzinapa helped in that challenge and in inducing major policy change – but it is not the only factor. The Disappearance Law, within the scope of missing persons, is a direct response to the historic precedents, institutional weaknesses, and discourses outlined here. It is not the work of the State in recognition of its shortcomings, but the work of a key mechanism: civil society. The objective? To clarify actors within a kaleidoscope of violent perpetrators, and to *obligate* the State, its institutions, and its agencies in the face of overwhelming institutional deficiencies.

¹⁷ Contexts of race and gender also come to bear on the question of victimization. Violence against women, Indigenous peoples, racialized groups, and migrants remains a human security problem apart from the classification of criminality. For further reading, see works such as those by Anaya Muñoz et al (2018); Berlanga Gayón (2015); Gall (2004); Mora (2017); Rangel Treviño and Hemmeken (2008); Velasco Cruz (2016); and Wright (2011).

**Chapter Three:
Development of the General Law**

Author:

The first question I have is... *how did this law come about?*

I understand that MNDM had an important role to play.

“

First of all, I'm going to give you my name. I am Araceli Rodríguez. I would really like to mention why I am sitting at this table. If my son, Luis Ángel, had not disappeared, maybe I would not be in this process of almost ten years. My son, Luis Ángel, is a Federal Police [officer who was] disappeared on November 16, 2009, in Zitácuaro, Michoacán, with six more federal policemen and one civilian. The Federal Institution does not give the means to safely reach your destination and so he disappeared along the way. He was kidnapped by the Michoacana Family...

Araceli Rodríguez Nava,
Movimiento por Nuestros Desaparecidos en México (MNDM)

3.0 Introduction: Many Paths Converge

Mexico's General Law on Disappearance is the result of many converging paths that came together to push the phenomenon of missing persons onto the public agenda. As drug war homicides rose year after year, along with the number of disappeared persons, outcry over human rights violations and insecurity demanded attention. Two great pillars can be thought of as responsible for the Law. The first contained within it civil-institutional processes that integrated international recommendations, constitutional and legal advancements in human rights, and the work of families alongside civil society. Together, these forces acted as necessary conditions for the Law. Without them and on its own, the Law might not have been realized when or as it was. From the visit of the UN Working Group on Enforced Disappearance through constitutional reforms; across social mobilizations and civil society partnerships; into the chambers of Government that passed the General Laws on Trafficking and Victims, the first pillar represents a series of precursors that conditioned a policy environment where forced disappearance could be legislated. The second pillar, Ayotzinapa, acted as a final push toward the Law's enactment that tipped the scales in favour of urgency and a comprehensive legal response. This chapter details the factors behind the first pillar, those which predated and were necessary for the Disappearance Law to emerge. The next examines the role of Ayotzinapa, itself, as a proximate cause for the Law's creation.

3.1 International Instruments, Constitutional Reforms, and Legal Precursors

In March 2011, the administration of Felipe Calderón received a delegation from the United Nations Human Rights Council. The *Working Group on Enforced or Involuntary Disappearances* was invited to analyze the problem of disappearance within the Mexican context, examine strategies to combat impunity and insecurity, and to provide policy recommendations to better deal with a phenomenon that was, even then, still in its comparative infancy. During its visit, the Working Group met with political representatives, policy and lawmakers, civil society organizations, and victims' families, giving international weight to the organizational process that would lead to broader demands for reform (Guerrero 2019).

The envoy examined two main periods of disappearance: that which coincided with the Dirty War, and that coinciding the drug war. Among the two, patterns of impunity, federal and jurisdictional issues, barriers to justice, and problems of access to truth were named as critical issues for the State to address, surely in terms of honoring its international treaty obligations but generally, in the interest of citizen security (Human Rights Council 2011). On completion of its mission, the Group reported its observations and called for the application of thirty-two recommendations. It highlighted that first and foremost, the matter of recognition had to be resolved: the Mexican Government needed to acknowledge the scale and realities of forced disappearance (Human Rights Council 2011, 17). Practices of denial or neglect could not lead to

any form of effective remedy, much less the implementation of substantive policy. Second, a comprehensive statistical database would be required for the analysis of disaggregated data concerning victim demography, case management, law enforcement, and a more comprehensive understanding of the crisis (Human Rights Council 2011, 17). The report also called for the elimination of preventive custody at state and federal levels; enhanced coordination among public safety officials; the right to truth through a national search system; a forensic exhumation program with trained specialists; the provision of appropriate resources to security agencies; reparations to victims; and protections for vulnerable groups including women, migrants, human rights activists, and journalists (Human Rights Council 2011, 17-21). Of highest importance, the Working Group advised that to fulfill its recommendations and stem the tide of higher incidences of disappearance, a general law must be developed and passed immediately.¹⁸

The need for a harmonized approach reflected limitations within the federalist system. Mexico is comprised of thirty-two state governments, now including Mexico City as the former Federal District. Each state within the federation has its own power to legislate, resulting in numerous definitions, interpretations, responses, and legal approaches to the problem of disappearance. Varying definitions of missing persons existed throughout the country, leading to inconsistencies in case labelling and interjurisdictional coordination, while some federal entities did not even contemplate a criminal typification of forced disappearance as its own offense (de Pina 2019). The only way to generate a coherent response across the authorities of the federation was to unify regulatory frameworks (García Campos 2019). To achieve this, a general law would distribute powers and competencies across all legal orders within the country, and act as a single legislative standard on procedural matters throughout the republic (Madero Estrada 2015). But for any general law to be applied, it must originate from within the powers and constraints of the Mexican Constitution. A unifying law to deal with the problem of disappearance, like those that would attend to other human rights violations, would first require constitutional reform.

Just months after the visit of the UN Working Group and after almost two years of debate, sweeping amendments were made to the Mexican Constitution, paving the way for a substantive focus on human rights. On June 10, 2011, the Human Rights Amendments (HRAs) were passed. Eleven constitutional articles were modified to introduce a universal focus on the defense and promotion of human rights, while strengthening the mandates of public human rights agencies (Plascenia Villanueva 2011). Among the most meaningful reforms were the formal recognition of human rights as constitutional guarantees, the enhancement of institutional mechanisms to safeguard them, State commitment to citizen education about these rights, and the recognition of international human rights treaties as constitutionally enshrined (Diario Oficial de la Federación 2011). In addition to creating Human Rights Commissions at federal and state

¹⁸ Read the full report of the Working Group's [Mission to Mexico](#).

levels, Mexican courts were opened to international standards, as well as adoption of the *pro homine*¹⁹ principle and the observance of *amparo*²⁰ (Collí Ek 2013). A legislative pivot directed toward humanitarian principles and legal reforms through the HRAs formed the foundation of general laws that would be drafted and implemented in the years to come. For the first time, all Mexican courts had the power to apply international standards in cases where human rights violations were concerned. And since Mexico had signed and ratified a host of international treaties, a new stage was set in the defense of human rights. From this, two general laws would follow and predate the General Law on Disappearance: the *Ley General de Trata de Personas [General Law of Trafficking of Persons]*²¹ and the *Ley General de Víctimas [General Law of Victims]*. Combined, these three pieces of legislation would form a parcel of human rights reforms.

The Trafficking Law was the first to be enacted and came into force in June 2012. Its passage marked recognition of thousands of criminally trafficked persons, 85% of whom were suspected to be girls and women (GAMP 2020). There had been immense social pressure for the creation of an anti-trafficking act, especially with demands to acknowledge trafficking for the purposes of sexual exploitation (Martínez 2019). As would take place with the Disappearance Law, here a broadening of legal definitions occurred to adapt Mexican institutional responses to the country's own, unique contexts. Whereas human trafficking is traditionally conceived of as crimes carried out in a cross-border context, the Mexican State made legal provision to incorporate a national character for the offense. Unlike in the UN Palermo Protocol to which Mexico was already a signatory,²² which in Article 4 describes acts of trafficking to be “transnational in nature” (United Nations General Assembly 2000), Mexico's anti-trafficking law contemplated *domestic* trafficking and exploitation along with exhaustive accompanying responsibilities for authorities (Ley General de Trata de Personas 2012). The law also provided for a specifically gendered perspective and enhanced protections for women, girls, and children as groups most vulnerable to detention, enslavement, and discrimination (Ley General de Trata de Personas 2012). Passed under the administration of Felipe Calderón, in his last year as President, implementation would fall to the incoming regime of Enrique Peña Nieto under whose government a second, important human rights framework would be ratified by Congress.

The General Law of Victims, passed in January 2013 and revised in March of that year, established rights held by those who suffered the consequences of crime or any form of human rights violation. In the

¹⁹ The *pro homine* principle is a key element in human rights law and is used to guide lawmakers and those responsible for their application toward the best and most favourable interest of the individual, above all else.

²⁰ *Amparo* is a form of judicial remedy, specialized process, and action to protect rights that are constitutionally enshrined. Lawyers in Mexico, namely those who litigate human rights cases, invoke *amparo* to bring cases before higher courts when acts of authorities threaten or violate the fundamental rights of citizens. It is a check on powers and a tool against corruption and impunity.

²¹ Full title: *Ley General para Prevenir, Sancionar y Erradicar Los Delitos En Materia de Trata De Personas Y para la Protección y Asistencia a Las Víctimas de Estos Delitos*. Translation: General Law to Prevent, Punish and Eradicate Crimes Regarding Trafficking in Persons and for the Protection and Assistance to the Victims of These Crimes.

²² Mexico Signed the Palermo Protocol, adopted by resolution A/RES/55/25, in December 2003 and ratified it in March 2004 (UNGA Resolution 2000).

first version of the law, two categories of victim were provided for, but the March reform amended the definition to allow for a third category. In accordance with Article 4, victims were those persons who could be classified as

- i. *Direct*, having suffered “...any economic, physical, mental, emotional or generally any harm or impairment of their legal property or rights as a result of the commission of a crime or violations of their human rights recognized in the Constitution and in the International Treaties to which the Mexican State is a party”;
 - ii. *Indirect*, as “...relatives or those individuals in charge of the direct victim who have an immediate relationship with him or her”;
- or
- iii. *Potential* victims, referring to “...persons whose physical integrity or rights are jeopardized by assisting the victim either for preventing or detaining the violation of rights or the commission of a crime” (Ley General de Víctimas 2013).

All branches of government were obligated, in line with this legislation, to meet victims’ needs for protection while ensuring rights to assistance, care, truth, justice, due diligence, and reparations through government programs (Ley General de Víctimas 2013, 2). With respect to disappeared persons, the right to immediate search along with the development of appropriate search protocols were not only the duty of the State, but also a right owed to victims (Martínez 2013). Procedurally, the State was outlining the responsibilities of its institutions toward victimization and bringing legal recourse in line with its new mandate on human rights. Its privileging of victims’ needs established clear criteria for those affected by acts of crime and served as the second piece of human rights legislation in a parcel of three specific laws. Direct, indirect, and potential victims, along with their representatives, could lay claim to provisions made in these legal directives and demand that State officials address their cases as prescribed by law. The Victims’ Act was important in and of itself, but it was also a foundational point of reference for those persons affected directly, indirectly, or potentially by forced disappearance.

Visitation by the UN Working Group, constitutional reform, passage of the Anti-Trafficking Law, and enactment of the Victims’ Law are important antecedents to the General Law on Disappearance. Together, they primed its legislative process. Recommendations of the Working Group illuminated areas of need and formally defined the initial contours of the phenomenon while at the same time, HRAs to the Constitution created legal space for general laws that followed as the first of their kind. The new legal code in Anti-Trafficking and Victims’ rights was a major milestone in procedural and substantive responses to

insecurity but these processes were not endogenous to the State. A broadly organized network of actors was pushing for change from below.

3.2 Civil Society: We've Had It Hasta La Madre [Up to the Mother/Up to Here]

Spurred by mass responses to violent episodes, civil society organizations gained momentum in influencing legislation. In March 2011, the son of Javier Sicilia, famed writer, journalist, and poet was found dead in the south-central state of Morelos, along with six other young men. Immediately following the tragedy, Sicilia founded *Movimiento por la Paz con Justicia y Dignidad* (MPJD),²³ demanding an end to the drug war and the horrors of violence it had unleashed. His movement, which became one of the earliest, strongest, and most visible collections of those affected by violence attracted support throughout the country as its *caravan for peace* toured one state after another. Within just ten days the caravan had covered nearly 4,000 kilometers, amassing a victims' lobby made up of thousands united in grief to denounce impunity and demand from the Mexican Government justice and peace (Camarena 2011). Allied with diverse civil society groups, the organization became a powerful actor and helped integrate a social movement that was politically unignorable. Under Sicilia, MPJD gained an audience with Felipe Calderón and proposed, directly to the President and his Executive, a *National Pact* with objectives for truth and justice; an end to the drug war and a revision of security policies; reforms against impunity and corruption; the combatting of economic sources and incentives for crime; emergency care for young people socially affected; and democracy that was participative for citizens and the media (Azaola 2012).

Sicilia's organization and its petitioning of the State became instrumental in the configuration of the Victims' Law of 2013. In the development of that legislation, MPJD was part of a participatory process that included civil society experts from different parts of the country and, along with policymakers, was able to enhance the scope and content of a law that would favour the lived experience of crime victims (Gutiérrez 2019). The movement was visible within Mexico and from afar, building a broad base of support that held fast until the Victims' Law became reality.²⁴ This was an important precedent. Sicilia's movement, its collective nature, the unrelenting political pressure it exerted, and its influence at the policy

²³ *Movimiento por la Paz con Justicia y Dignidad [Movement for Peace with Justice and Dignity]*.

²⁴ "Seeing all this great citizen mobilization, the Government of Calderón, in an attempt to maintain some legitimacy with a view to the 2012 election [entered] into a series of dialogues with the Peace Movement. The Peace Movement at the time did not bring together only loose victims, but also dozens of groups that came to have lawyers. The movement began to nourish itself. Social mobilization began to become more coordinated, more orderly, and their demands become more argued in terms of the Human Rights Code. Thus, Calderón is forced to have this negotiation with the victims. In fact, the first of the dialogues took place in Chapultepec, in the Chapultepec Castle, but when the law began to be drafted hand in hand with the Legislative Power, with the Executive Branch and by the victims, Calderón stopped it. And from my point of view he did so because he had to recognize the balances of the war. That is, that all those victims were the product of his policy." (Martinez 2019) The law was later published under President Enrique Peña Nieto.

table were forerunners not only to the massive collectives that formed to defend victims of disappearance, but to the General Law on Disappearance, itself, which was also built from below.

Before the events of Ayotzinapa in September 2014, Mexican civil society was already represented by teams and strategic activists focused exclusively on the problem of disappeared persons. Some organizations litigated cases from the Dirty War in national and international arenas to win judgements, others accompanied local cases of disappearance at state and municipal levels. Some focused on regional advocacy to push policy changes or conduct rigorous research, while others demonstrated and worked with the public to make visible the phenomenon. Academics and agencies like Amnesty International, the Red Cross, Open Democracy, and Human Rights Watch advocated in press, literature, and media. All the while, international organizations including the United Nations and the Inter-American Court of Human Rights monitored rising insecurity.

On the ground, one of the largest civil society associations formed to become *Movimiento por Nuestros Desaparecidos en México* (MNDM).²⁵ MNDM would be central in creation of the General Law on Disappearance. The seeds of the organization, dating to 2009 and not yet called by this name, were planted by families of the disappeared who rallied together in early press conferences, raising awareness about the horrors of disappearance (Ansolabehere 2019; de Pina 2019). Mexico's northern states, namely Nuevo León, Chihuahua, and Coahuila first became emblematic of the phenomenon. From these regions, primary collectives of missing persons were formed, creating expansive organizational capacities and opportunities for strategic partnership (Fray Juan de Larios 2019). During its visit, the UN Working Group met with these associations and similar groups in south-central areas. By the time Sicilia's movement came under way and culminated in the Victims' Law, dozens of groups were joining throughout the country to now make the problem of disappearance evident to greater Mexican society. With time, unofficially incubated under Sicilia's movement, MNDM grew to become a powerful commission, integrating participants from various regions, specialties, disciplines, and professional affiliations. By 2014, more than sixty different collectives were established under the aegis of MNDM, not including allied independent civil society organizations. The platform connected a nation-wide network of groups highly specialized for their regional experiences (MNDM 2020). The strength of MNDM lay not only in its representation of the present crisis, but in its ability to incorporate and work alongside groups advocating for disappearances that occurred during the Dirty War, as well (Anonymous, Instituto Belisario Domínguez 2019). In a single movement, a cross-section of the past and its long running current were present and demanding a State reckoning. It was not only about the drug war or the violence that coincided with it. The movement was centered on all injustices related to forced disappearance and the historic inability of the State to legitimately

²⁵ *Movimiento por Nuestros Desaparecidos en México* [Movement for Our Disappeared in Mexico].

deal with impunity. Just as Sicilia's movement had done with the Victims' Law, MNDM and its counterparts would advance a new framework.²⁶

3.3 Sin Las Familias, No! [Without Families, No!]

By 2014, legislative progress for a law concerning disappearance gained traction. In February of that year, Senator and head of the Senate Human Rights Commission, Angélica de la Peña Gomez, put forward the first initiative to establish a *federal* law on disappearance. The initiative was titled *Project Decree to Issue the Federal Law to Prevent, Punish and Eradicate the Forced Disappearance of Persons*.²⁷ It acknowledged the crime as a violation of human rights and cited the findings of the UN Working Group as well as Mexico's National Human Rights Commission, which registered an alarming spike in cases in the years prior (Federal Initiative 2014). The initiative named four groups as being particularly vulnerable to forced disappearance: human rights defenders, those with political militancy or involved in social movements, migrants, and those "who live in places where violence has increased as a result of the clash between national-public security forces and organized crime groups" (Federal Initiative 2014). A federal law, however, would be applicable only to the federal jurisdiction and would not establish competencies for all legal orders throughout the federation. In other words, Mexican states would not be obligated to

²⁶ *Movimiento por Nuestros Desaparecidos en México* is comprised of Red Eslabones por los Derechos Humanos; Red de Enlaces Nacionales; Fuerzas Unidas por Nuestros Desaparecidos en Coahuila (FUUNDEC-FUNDEM); Asociación Unidos por los Desaparecidos de Baja California; Siguiendo Tus Pasos; Colectivo *Sin Ellos, No*; Comité "Junax Ko'otontik"; Familiares Acompañados por el Centro de Derechos Humanos de las Mujeres (CEDHEM); Madres de Mujeres Desaparecidas Acompañadas por CEDIMAC; Familias Unidas por la Verdad y la Justicia; Buscando a Nuestros Desaparecidos BÚSCAME; Red Nacional de Enlaces; Red Eslabones por los Derechos Humanos; Fuerzas Unidas por Nuestros Desaparecidos Fundem-Centro; Familiares en Búsqueda María Herrera, A.C.; Fuerzas Unidas por Nuestros Desaparecidos Región Laguna; Fuerzas Unidas por Nuestros Desaparecidos en Coahuila (FUUNDEC-FUNDEM); Grupo V.I.D.A. Víctimas por sus Derechos en Acción; Colectivo Colibrí; Uniendo Cristales, A.C.; Colectivo Uniendo Esperanzas; Deudos y Defensores por la Dignidad de Nuestros Desaparecidos; Red Eslabones por los Derechos Humanos Estado de México; Colectivo Alondras Unidas en Búsqueda y Justicia de Nuestros Desaparecidos; Colectivo Con Justicia y Esperanza de San Luis de la Paz; AFADEM-FEDEFAM Guerrero; Comité de Familiares y Amigos Secuestrados, Desaparecidos y Asesinados en Guerrero; Familias de Acapulco en Busca de sus Desaparecidos, A.C.; Colectivos Juntos por Hidalgo; Familias Unidas por Nuestros Desaparecidos Jalisco; Por Amor a ElIxs; Comité de Familiares de Personas Detenidas Desaparecidas en México, COFADDEM "Alzando Voces"; Red Eslabones Michoacán, Red Eslabones por los Derechos Humanos Morelos; Regresando a Casa Morelos; Familias Unidas por Nayarit; Guerreras en Búsqueda de Nuestros Tesoros; Red Eslabones por los Derechos Humanos, Nuevo León; FUNDENL; Amores; Desaparecidos Querétaro; Desaparecidos Justicia, A.C.; Tesoros Perdidos Hasta Encontrarlos; Sabuesos Guerreras, A.C.; Unión de Madres con Hijos Desaparecidos de los 70s de Sinaloa; Voces Unidas por la Vida; unidas por el Dolor; Una Luz de Esperanza, Mazatlán; Rastreadoras por la Paz; Colectivo Independiente Culiacán María Herrera; Desaparecidos de El Fuerte y Zona Norte "Las Rastreadoras"; Guerreras Buscadoras de Sonora; De Frente Hasta Encontrarlos; Colectivo 21 de Mayo; Madres Unidas por Nuestros Hijos San Fernando, Tamaulipas; Red de Desaparecidos en Tamaulipas, A.C.; Colombiano Si Ayuda, A.C.; Colectivo de Familiares y Amigos Desaparecidos en Tamaulipas; Buscando a Nuestros Desaparecidos y Desaparecidas, Veracruz; Colectivo el Solecito de Veracruz; Madres en Búsqueda Belén González; Colectivo de Familiares y Amigos Desaparecidos en Tamaulipas; Enlaces Familiares Xalapa; Familiares de Desaparecidos de Orizaba y Córdoba; Familiares en Búsqueda María Herrera Poza Rica; Madres en Búsqueda Coatzacoalcos; Red de madres Buscando a sus hijos; Colectivo Solecito Córdoba; Colectivo Solecito Cardel; Colectivo Solecito Tierra Blanca; Colectivo Búsqueda Coatzacoalcos Zona Sur, Veracruz; Búsqueda María Herrera Xalapa; Madres en Búsqueda Coatzacoalcos; Familias Unidas en Busca de una Esperanza; Zacatecanos por la Paz; Comité de Familiares de Migrantes Desaparecidos de Guatemala (AFAMIDEG); Comité de Familias Migrantes Desaparecidos del Salvador (COFAMIDE); Comité de Familiares de Migrantes Desaparecidos del Progreso (COFAMIPOR), Honduras; Comité de Familiares de Migrantes Desaparecidos del Centro de Honduras (COFAMICENH) (MNMD 2020).

²⁷ For ease of reading, titles for the initiatives presented in this chapter have been translated to English. They are found in Spanish, in their original form, in the *References* section of this thesis.

apply it uniformly. This was a problem. Although in April 2001, forced disappearance was criminalized as an abuse of power under Article 215 of the federal criminal code, authorship of the crime was restricted to public servants (Código Penal Federal 2020) and did not contemplate those who might participate in or otherwise support the act. While the 2014 federal initiative would remedy that matter by contemplating disappearance as a crime committed by public officials *or* with the support or acquiescence of others, it would still not establish the much wider scope of private actors responsible.

Working in early consultation with civil society organizations, Senator de la Peña and the Senate Human Rights Commission received opinions that while a federal law was an initial step, a *general* law was needed (de la Peña 2019). This type of legislation could introduce protocols enforceable throughout the country, set a comprehensive legal standard, and clearly define both state and private actors. It would be a much larger undertaking and would first require another constitutional reform. But in the midst of these discussions, the events of Ayotzinapa detonated a serious political crisis.

In September of 2014, just seven months after the federal initiative was submitted, the vanishing of Ayotzinapa's student-teachers shone a light on Mexico's phenomenon of forced disappearance. The profile of victims, complicity of state and criminal actors, and the miserably failed State coverup brought tens of thousands into the streets. Demonstrations erupted, turned violent, and fueled public outrage. This increased the momentum for policymakers trying to push disappearance onto the public agenda alongside their partners in civil society (Delgadillo 2019). To alleviate pressure, then President Enrique Peña Nieto famously issued an eight-point *Decalogue for Peace, Unity and Justice*. In a speech at the National Palace in January 2015, he called on Mexicans to unite and be part of the strengthening of institutions. Police reform, preventative powers of the Federation, establishment of a 911 system for emergencies, and special operations with special forces were presented as solutions for insecurity and the tragedy of Ayotzinapa (Huerta Estefan 2015). More importantly, Peña Nieto promised the issuance of a general law.

Various civil society organizations alongside MNDM were already allied with Senator de la Peña and the Human Rights Commission. Following Peña Nieto's commitment, the organizations chose to present their own bill, introduced and advanced by Senator de la Peña and her team.²⁸ The slogan of MNDM, *Sin las familias, no!* [*Without the families, no!*] affirmed their status as champions and proponents of a law constructed in the interest of victims and their relatives (Guerrero 2019). The movement contended that no State framework could be effective, or even logical, without the direct input of families who lived and bore the consequences of disappearance. Nobody could take on a stronger *pro homine* stance than they.

²⁸ Civil organizations maintained they wanted to work with members of Congress and not with the Executive Branch. They felt the Executive had systematically broken its word and this reflected a total breakdown of trust. This moment opened a political opportunity with Legislative and Senate teams to work directly with civil society. (Aguilera 2019)

Families were impacted by the logistical stages of reporting and searching for missing persons. They understood interactions between civilians and authorities in policing, investigation, and case procedure. Families knew that many institutions operated under prejudices and constraints that so often made them ineffective. They lived revictimization by extension and knew what they wanted to see prioritized (Anonymous, Instituto Belisario Domínguez 2019; Fray Juan de Larios 2019; Salgado Ambros 2019). And so, 2015 became the year of proposals submitted for consideration to become the General Law on Disappearance.

Over a period of nine months, and aiming to address the phenomenon, five draft versions were brought before the Senate. To varying degrees, many general objectives were held in common. Every proposal explored definitions of the crime of disappearance. Each spoke to levels of participation for primary perpetrators and other parties along chains of relationship, command, and collaboration. Penalties and sentencing, with specification for reduced and increased punishments, were present in all drafts. So, too, were responsibilities of authorities in search and investigation. Measures for inter-jurisdictional coordination made up focused chapters in each submitted initiative, as did the creation of registries, databases, forensic programs, and training plans to implement effective search and cataloguing. And the rights of victims and their families were acknowledged by all proposals, with specific reference to the earlier Victims' Law of 2013. There were stark differences, however, as one by one, proposals were submitted to Government for analysis and opinion.

The first initiative came from Senator Roberto Gil Zuarth on behalf of the parliamentary group for the *Partido Acción Nacional* or PAN, on March 15, 2015. His proposal, entitled the *General Law to Prevent and Punish Crimes in the Field of Enforced Disappearance of Persons*, contained fifty-six articles and contemplated the crime in terms of violations perpetrated by public officials. Like initiatives that would follow, the PAN considered necessary measures for interjurisdictional coordination, punishment, and personnel training in procedures, forensics, and exhumation (PAN Initiative 2015). Article 44 provided that any government personnel aware of *enforced* disappearance must communicate it to the National Registry, while Articles 45 through 53 set standards for maintenance of the Missing Persons Registry and its operating procedures. With respect to the rights of victims and their families, the PAN initiative acknowledged the right to truth, memory, and recognition of legal personality of the victim (Articles 54, 55, 56). But overall, it failed entirely to account for crimes of disappearance committed *por particulares* – by private citizens, those not in authority or in positions of public service.

On March 24, less than two weeks later, Senator Angélica de la Peña submitted on behalf of the *Partido de la Revolución Democrática* (PRD) a draft decree issuing a *General Law to Prevent, Investigate and Punish the Disappearance of Persons*. This initiative classified the crime of forced disappearance

based on international protocols, accounting for those who acted as state agents, with their support, or with the acquiescence of a public servant – the standard discourse. However, in Article 7 consideration was given to perpetrators of “involuntary” disappearance, those individuals not of a public character who might carry out the act (PRD Initiative 2015). It was one of the earliest articulations of crimes by private actors. The 62 Articles submitted by the PRD parliamentary group contained a substantial section on the responsibilities of authorities during procedures of detainment. State officials were explicitly required to document detainees through registration into federal databases within six hours of arrest, hold persons deprived of liberty only in officially recognized places, and monitor the human rights of detainees.²⁹ Comprehensive emergency search procedures were addressed to outline responsibilities of specialized units to initiate search operations immediately, within the first 72 hours of a reported disappearance, and an entire chapter was dedicated to procedures for Declaration of Absence.³⁰ In short, the PRD initiative had done more to classify the crime and to consider the rights of victims and their relatives.

In mid-April, the third initiative was presented before the Senate. This time, it was brought forward by Senator Omar Fayad Meneses, representing the PRI. In just 27 articles, the main objectives of the PRI’s *General Law to Prevent and Sanction Forced Disappearance of Persons* were to comply with international treaty commitments, establish a Declaration of Enforced Disappearance mechanism (similar to Declaration of Absence), and to train and professionalize public security institutions with respect to human rights (PRI Initiative 2015). Compared to the previous two initiatives, it was lacking in depth and neglected to introduce any classification of crimes committed by private, nonstate actors. It dedicated seven of its twenty-seven articles to procedures for Declaration of Enforced Disappearance compared to just one article on protections and assistance to victims’ families. Though like other proposals, it was supposed to have been built in consultation with families, the PRI initiative bore no evidence of consultation. This caused chaos, outrage, and tensions that loudened demands and strained the relationship between the PRI Executive branch under Enrique Peña Nieto and proponents of a comprehensive law (Aguilera 2019).

In the months that followed, Senator de la Peña aligned with the PAN and the *Partido del Trabajo* (PT). As a coalition, the PRD, PAN and PT worked directly with civil society once again to prepare a fourth submission to the Senate. Also present in discussions were representatives from the United Nations High Commissioner for Human Rights, the Red Cross, independent civil associations, MNDM advocates,

²⁹ See Articles 16-27, PRD Initiative 2015: [Ley General para Prevenir, Investigar y Sancionar la Desaparición de Personas](#) (esp). Specifications went so far as to require, in Article 27, that land vehicles belonging to security forces be equipped and permanently monitored with geolocation technologies, and that records be maintained to reflect cross-referencing between locations travelled to, personnel on board, and corresponding dates and times.

³⁰ A Declaration of Absence recognizes and guarantees a victim’s identity and legal personality in order to provide protections to relatives with an ongoing relationship to the individual. Absence relates to matters of property, labour, financial commitments, and other aspects of legal personality. When a Declaration is granted, next of kin, the Public Ministry, legal counsel, or civil society organizations may claim access to information and action on behalf of a victim, as provided for by law.

and legal specialists. For Senator de la Peña and the Senate Human Rights Commission, it was critical that the final law be designed with the voices of families and that a single opinion be promoted as one that took into consideration the initiatives already put forward (de la Peña 2019). Those interested in the project would be appointed to the working committee based on two criteria. First, participants had to be those persons and organizations committed and installed at work, willing to attend all sessions and be formally named (de la Peña 2019). The second characteristic was that those involved required an understanding of legislative technique and the technical aspects of political processes (de la Peña 2019).³¹

Regional forums were convened to open dialogues. An extension of the mandate to incorporate experiences from across the country, forums allowed the Coalition to collect and prioritize citizen concerns.³² As part of this process, *Centro de Colaboración Cívica* and *Serapaz*, both highly specialized civil society organizations, promoted cooperation between society and policymakers by helping to facilitate an understanding of what should be included in the law not just in representation of victims, but in consideration of human rights organizations and international standards (Aguilera 2019, Guerrero 2019). Civil society foundations including *CNDH*, *I(dh) eas*, *FUNDAR*, and *Solecito* lent legal, technical, procedural, and contextual expertise throughout discussions and development stages. It was a national effort, bound together by a resolve to build the strongest possible piece of legislation put forward for opinion.

Several key events also took place in 2015, driving forward the need to prioritize public policy on disappearance. February saw the UN Committee on Enforced Disappearance call on Mexico to continue consolidating its commitments to improved security across all jurisdictional levels and cited that the events of Ayotzinapa "...had only highlighted the fact that Mexico has to continue to address issues related to corruption, poverty and exclusion" (UNCED 2015). In March, the *Grupo Interdisciplinario de Expertos Independientes*³³ (GIEI) submitted its first report on the Ayotzinapa case. Created in the fallout of that tragedy, the GIEI operated through agreement between the Inter-American Commission on Human Rights and the Mexican Government to investigate the incident and identify follow-up mechanisms. Its primary findings centered on the importance of search procedures, criminal investigation, attention to victims and families, and public policy toward a general law (GIEI 2015). For the rest of the year, the GIEI conducted its analysis of the Ayotzinapa case, writing two comprehensive reports that underscored the conditions of insecurity which predated, exacerbated, and carried on past the *forty-three*. Meanwhile, in July, Article 73 of the Constitution was reformed with respect to general laws. Fraction XXI underwent a revision to state

³¹ Many committees were invited to be part of the process, including *Eureka* which works with Dirty War cases. In addition to family members, teams from the Senate Justice Committee, Governing Committee, legislative advisors, and INGOs formed part of the permanent process. (De la Peña 2019)

³² Reference to the team allied with Senator de la Peña as a *Coalition* is the author's description.

³³ *Grupo Interdisciplinario de Expertos Independientes* [Interdisciplinary Group of Independent Experts].

that “General laws establish, as a minimum, types of criminal offenses and their respective sanctions in regard to kidnapping, enforced disappearances, other types of illegal restrictions to freedom, human trafficking, torture, and other cruel or dehumanizing treatments, as well as electoral crimes” (Diario Oficial de la Federación 2015). Disappearance and deprivation of liberties had been explicitly included in the definition of general laws which would establish *as a minimum* the application of general law standards. International pressures were bearing down from above while from below, civil society and its allies were a rising tide.

The team alongside Senator de la Peña presented her Coalition’s extensive final initiative on September 17, 2015. The draft was entitled *General Law to Prevent, Investigate, Sanction and Compensate the Enforced Disappearance of Persons and the Disappearance of Persons Committed by Individuals*. It was the only time crimes by individuals was put forward in a working title. In eighty-three articles, the collaborative spirit of the proposal was evident. There was a clear demarcation between crimes committed by state and non-state actors, with the language of both types of authors present in all chapters of the draft (Coalition Initiative 2015). In addition to the standard definitions of the crime, penalties, and applications of the law, Specialized Prosecutors would form an integral part of new personnel with Sub-Prosecutors specialized in two areas: immediate search, then investigation and monitoring (Articles 16-23). Their responsibilities involved immediate search within the first twenty-four hours of a reported missing person, an operational capacity every day and hour of the year, and the allowance of participation by victims’ relatives in the process of search and investigation (Articles 24-29). Regardless of whether a missing person’s case was suspected to be linked to another crime, search was obligatory without delay. A form of special consideration was given to children and adolescents, with a decree that a special body of auxiliary police be created to focus on missing persons under eighteen years of age (Art. 38-44) while penalties were iterated for failure to properly comply with any investigative, search, or prosecutorial procedure (Art.45-47). In this iteration, the Coalition called for the creation of a new National Registry of Missing Persons that would remain up-to-date and house case information from the Dirty War to the present (Art. 48-54). Also enunciated were the installation of a National Autonomous Forensics Institute, to be located within UNAM (Art. 55-60) and a National DNA Databank for Search and Identification (Art. 61-66), both enabled with necessary resources to prove and clarify crimes for authorities and families. Finally, Declaration of Absence, Reparation of Damages, and Prevention measures were rearticulated. In this initiative, clearly prioritized was the importance of search as well as the privileging of victims’ and families’ rights through high functioning institutions and increased standards for all authorities of the Federation.

As 2015 drew to a close, on December 14 the Executive Branch submitted the final draft decree for consideration: the *General Law to Prevent and Punish Crimes in Matters of Disappearance of Persons*. It

bore many similarities to the submission of the Coalition team, emphasizing different actors, victims' rights, search, coordinative measures, penalties, and the empowerment of scientific institutions (Executive Initiative 2015). However, differences were apparent in terms of language for assignment of responsibilities. Whereas in the Coalition's proposal, duties for various institutions and branches of authority were consistently defined in terms of *must*, the Executive submission referred to many procedures in terms of *may*, permission as opposed to requirement. It also deferred to the General Prosecutor, Local Offices, and other governing institutions to determine their own procedures. Search, for example, would be carried out "without delay" and within seventy-two hours of a report, but protocols for search would be determined on a jurisdictional basis in consultation with the Justice Department (Article 67). The original and problematic National Registry of Missing Persons would not be cross-checked and updated, but would be kept current and in the hands of local offices to coordinate and maintain (Art. 71-77). Forensic Records would be a tool of the National Search System managed by the Attorney General and Local Offices (Art. 78-87) and Declarations of Absence would follow the provisions allowed for in the civil law of the Federation and federal entities, with no initiation timeline or procedures accounted for (Art. 111-117). And with respect to Protection of Persons, namely those civilians involved in search efforts, the draft held that Specialized Units should establish programs for protection and *may* grant resources for protection (Art. 121-125). The Coalition and families sought to obligate State agents and institutions. The Executive sought maintain the discretion of existing State offices and instruments.

It would be two years until the General Law on Disappearance was passed. In the period between the Executive's submission and the Law's entry into force, there was intense discussion as to what should and should not be included in the final version. With all initiatives presented, strategic evaluation of proposals commenced and ultimately, the drafts of the Coalition and Executive became the main contenders from which to construct a final product. Civil society organizations, families, NGOs, and international agencies worked with Senate committees alongside Senator de la Peña's Coalition and the Human Rights Commission. Legal experts and technical teams consulted on all sides of the process while organizations like *Centro de Colaboración Cívica* helped broker concessions between the Coalition, Executive, and Congress.³⁴ A cycle of surging debates and stalled talks unfolded.

3.4 Great Debates and Precarious Passage

The earliest debates, even before legislation came under way, centered on the problem of recognition, if not outright denial by the highest offices in Government. On one hand, the logic of denial was contrary to

³⁴ "Public hearings were opened from the Senate for its members to formally hear the concerns of victims. In 2016, for the first time ever, [representatives] left the Senate compound to go out and listen to victims. That's unpublished. The sessions were convened and sponsored [in various regions]. It was the first time the Senate had done something like this. That is, they usually hold public hearings, but this was the first time they [travelled] to the places." (Aguilera 2019)

mounting evidence of a crisis; on the other, failure to acknowledge the phenomenon was a passive posture held by many policymakers (García Campos 2019). With successive regimes and their representatives in Congress, the Senate, and the Chamber of Deputies failing to address the scale of the crisis, creating political space to put disappearance on the policy agenda had been a difficult task. Problems of political will had implications at institutional levels throughout the federation. In a climate where disappearance was denied and unrecognized, there were neither infrastructure nor resources allocated to officially assess the problem (Martínez 2019). The lens that disappearance was tied to a necessary war on drugs and that collateral damages had to be tolerated blurred the need for an urgent response and buried the data (Dávila Fernández 2019; Dulitzky 2019; García Campos 2019; Ruíz Reyes 2019; Valencia Suárez 2019). Accurate reporting, case management, policing, investigation, statistics, trained professionals, and forensic science could produce the necessary evidence, but those systems were not aimed at proving a phenomenon. Institutional shortcomings instead made it possible for Government to avoid the extent of the emergency. That is, until the demands of civil society and human rights regimes grew louder than the narrative of denial.

One of the most critical pieces of deliberation centered on the distinction between *enforced* disappearance, committed by state agents, and acts of *involuntary* or *forced* disappearance committed *por particulares*, by private actors.³⁵ In legal and technical terms, “enforced” disappearance requires performance by a public agent. To this effect, state linkage had to be proven for the crime to have taken place. Between civil organizations and family members, there were essentially two positions on the matter. The first considered that every act of disappearance could be considered enforced: if the State does not properly investigate, it is a form of tolerance, allowance, and promotion of the crime (Guerrero 2019). Therefore, in theory, the State is always responsible. The second position held that while negligence could be considered a form of State tolerance, *enforced* disappearance takes on a dual character of being both a human rights violation and a crime with criminal consequences (Dulitzky 2019; de la Peña.). Given domestic security contexts where disappearance is perpetrated by non-state actors in spheres of private violence, the separation was necessary. The State, alone, could not bear full responsibility because individual authors needed to be brought to justice. This was especially true where investigative matters were concerned. For the crime to be classified as disappearance and not confused with kidnapping, trafficking, or as an ambiguous offshoot of organized crime, it needed its own articulation to initiate the correct responses in terms of search, logistics, investigation, and prosecution (Ruíz Reyes 2019).

The matter of search formed the basis of a third, intense debate. The Executive and its allies in Government focused on how to differentiate between persons who were forcibly disappeared versus those

³⁵ All participants interviewed spoke to the distinction between *enforced* and *involuntary* disappearance as a defining debate in the Law’s creation.

who were voluntarily absent, having left of their own volition. For victims' rights groups, the distinction was meaningless. The obligation of the State to search for missing persons was first and fundamental, after which point the need for further investigation could be determined (Ansolabehere 2019; de la Peña 2019). Myths about *having to wait seventy-two hours* before searching or tabling the search because one had simply *run off with their boyfriend or girlfriend* were widely held in policing institutions but had no basis in policy or law (de Pina 2019; Fray Juan de Larios 2019). The claim that others *andaban en malos pasos [were walking a bad path]* was also insufficient for families, an excuse for inaction and a kind of nefarious prejudice. Since the window for locating a missing person grows smaller with each passing hour and day, proponents of strong mechanisms for search pushed this point with conviction. Search had to be immediate, regardless of bias. Many in Government did not understand that the ultimate goal and guiding principle of search is to locate victims alive, rather than assuming a condition of death (de la Peña 2019).

The creation of a national search commission with operating authority to look for missing persons would be a solution to this problem, though had other security institutions functioned as designed, it would not have been necessary (Elizondo García 2019). Families wanted an empowered commission, autonomous as an institution, with its own resources and professionals in policing and search procedure; the Executive branch refused (Anonymous, Instituto Belisario Domínguez 2019; Guerrero 2019). This stage of negotiations intensified frictions and families maintained a total lack of trust in State institutions. Because the Federal government did not want to take on responsibility for a centralized commission, the concession was made to create the National Search System where federal *and* state authorities would coordinate across jurisdictions (Anonymous, Centro Prodh 2019; Dulitzky 2019; Frey 2019). In this same vein, all orders of the Federation would take responsibility for the crime of disappearance within their jurisdictions, applying requirements of the General Law in a manner that would not relieve them of any accountability but focus on principles of co-responsibility (Delgadillo 2019; García Campos 2019).

There was constant pushback not only from the Executive branch, but also from the Ministry of Finance and the Attorney General's office. For its part, Finance had budgetary concerns related to the operating costs of special police, search brigades, and the expenses generated by establishing new institutions (de Pina 2019). Resistance from the Attorney General's office stemmed from its desire to avoid taking on increased commitment for the law's application (de Pina.; Fray Juan de Larios 2019). A general law would mean the standardization of new procedures across all states as well as the implementation of new legal, technical, procedural, investigative, policing and training mandates, all of which required human capital and financial investment. When at the bargaining table, organizations and families pushed substantial demands in these areas, they were met with opposition justifiable in some instances but unfounded in others (de Pina 2019).

At the organizational level, the process of building a collaborative law that involved families and civil society faced challenges of its own. The construction of legislation is an intricate process that must originate from within the powers assigned by the Constitution and other orders of law. The consultation process was complex, sensitive, and had to be carefully navigated to maintain the integrity of the Coalition toward a unified final product (Dávila Fernández 2019; de la Peña 2019). Families pushing for an inclusive law favouring victims' rights and legal-technical experts faced instances where they found themselves at odds with one another. Demands being presented by families were not always possible given legal and political realities. Limitations of existing law, constitutional constraints, or nuances of political will were difficult for some families to appreciate, lengthening the process of development and at times straining inter-organizational relations (de Pina 2019; Guerrero 2019). Still, the fact that families could be involved in the process demonstrated a level of political maturity and literacy that shaped a comprehensive legal outcome.

Before the final law was passed in October 2017, exchanges between the Executive branch and the alliance with Senator de la Peña were characterized by strenuous debate. There were moments when talks stalled completely. In some instances, the Executive was not responsive to proposals, alternatives, or counterproposals made by the Coalition and there were periods of up to six months where no dialogue occurred (Aguilera 2019). This represented a serious political danger. Silences and delays could jeopardize the passage of the General Law within Enrique Peña Nieto's term³⁶ and push it past the deadline of the national budget. For the Coalition to bring a final proposal before the Senate (128 seats) and Chamber of Deputies (500 seats) for opinion and vote, the Executive and the PRI needed to be on side. The PRI held a plurality in both chambers with strong alliances to minority parties (Ribando Seelke 2012). If the Law could not be passed within Peña Nieto's sexennium, it would have been politically buried (Guerrero 2019). Simultaneously, there were suspicions the Executive and PRI were trying to run out the clock to delay aspects of commitment to the law and the costs of its implementation (Delgadillo 2019). Mexico's national budget must be approved annually by the Chamber of Deputies in plenary session on November 15,

³⁶ President Enrique Peña Nieto held office from December 1, 2012 through November 30, 2018.

meaning the Law had to be endorsed in advance of that date and certainly before the end of Peña Nieto's final year in office.³⁷

Through reluctant concessions and fierce negotiations, a conclusive agreement was reached. The General Law was brought before the Chamber of Deputies on October 12, 2017 and passed with 397 of 500 votes in favour (Cámara de Diputados 2017a). Those who had laboured and struggled for years in anticipation of the moment – victims' families, survivors, civil society, non-governmental agencies, human rights advocates, international organizations, academics, allied law and policymakers – celebrated the victory as the culmination of a long and difficult process where they often feared the law would not pass. In the end, the Law contained many transitional articles which were mandates for the future, a legal formula for Government to acknowledge the importance of commitments but pass them on to an incoming administration (Delgadillo 2019). It was enacted, nonetheless.

3.5 The Law in its Final Form

The *General Law on the Forced Disappearance of Persons, Disappearance Committed by Individuals, and the National System for Search of Persons in Mexico* became official State policy on November 17, 2017.³⁸

A combination of efforts by the Coalition and Executive, it distributes competencies across all orders of the Federation including procedural guidelines, coordination between authorities, search protocols and measures to clarify facts in cases of disappearance, as well as policies for prevention, investigation, punishment, and eradication of the crime whether committed by public agents or individuals (General Law on Disappearance 2017). Its title reflects an explicit incorporation of the crime with authorship by private

³⁷ “We had a problem at the end of the opinion of work because... there is a feature you need to know. The Human Rights Commission was chaired by Angelica de la Peña (speaker) [who] belonged to the PRD, the Justice Commission chaired by Ms. Pilar Ortega of the PAN, and the Governing Commission chaired by Senator Cristina Díaz, PRI. There was a big problem in the area of Justice in the PAN, as they were not in the opinion. One of [Ms. Ortega's] senators was telling us, was asking his colleague on the Justice Committee, that the law ‘had to have a change in format’. That is, separate it into two great books: search and investigation. Because that's how the Constitution was established. That is, the creation of the national search and investigative systems. Then we entered into a debate that delayed us. When you have counted the days to take commissions, approve commissions, then publish, carry plenary, and the process of the whole plenary, you have to give yourself a margin [of time] always, despite the discussions you may have. We were very concerned that we had very little room for the Chamber of Members to approve [the Law] as it is, from what we sent, so that it could be published before the budget was approved. That part was very delicate to us. The budget must be approved on November 15. Then the Law had to be published, passed by the Chamber of Deputies before the budget discussion. The problem is that we were already delayed because there was this discussion inside the PAN and of course, because the relatives were mortified that we dropped it. I tell you a very interesting anecdote, which takes a little away from the formality of the talk I am giving. It was so interesting the integration of Government officials together with the committees of the representatives of the families, that in the end we said we already have an opinion, and we were all happy. But when we had that problem with the PAN, who very carelessly did not support their fellow Justice Committee Chairwoman, I was upset. I was very upset and I said, ‘Let's support her. If it were any of us, or me, you would support me’. And I said, ‘We're going to support her, we're going in with the PAN to argue. We will get PRD's Advisor-Coordinator and go to the Legal Director’. The NGOs were outside because we called them. If we need them to come in, then they come in. So we spoke to the PAN, to the PAN directive, to see what are their questions and concerns. From there we beat them one by one [their arguments]. There was a little stubbornness so we said, ‘Good. Go ahead, and **you** tell the organizations and family members that you are stopping the law. We already had it scheduled in the plenary session of the Senate’. Anyway, that delayed us...” (De la Peña 2019)

³⁸ See link for the complete *General Law on the Forced Disappearance of Persons, Disappearance Committed by Individuals, and the National System for Search of Persons in Mexico* (esp).

actors along with an emphasis on the importance of institutions and practices devoted to search efforts. The Law's objectives include creation of the National Search System and a National Search Commission with Local Commissions in each state (Article 2). It further guarantees human rights as endowed by the Constitution and assures compliance with international treaty obligations, always favouring the *pro homine* principle and always creating opportunities for the participation of families (Articles 2-3).

The final iteration of the General Law dedicated forty-eight of its 173 articles to search procedures and investigative mandates, a testament to the work of families and achievements of the Victims' Law of 2013. A decentralized National Search Commission, operational across all levels of the country, oversees local search commissions that each federal entity is obligated to create (Art. 50-53). The National Search Commission administers the National Search Program and governs in the matter of search with fifty-four sub-articles describing the powers of this institution (Art. 50-58). It has its own Citizen Council, which acts as a consulting organ at the national level and is comprised of family members, human rights specialists, and representatives of civil society organizations who collaborate on programming, operations, training, and community outreach (Art. 59-64). Also at its command are specialized Search Groups comprised of public servants who follow an Homologated Search Protocol³⁹ generated by the National Search Commission (Art. 65-67). All public security institutions throughout the federation are required to "guarantee the immediate availability of specialized and trained personnel responsive to the National Search Commission and its local branches" (Art. 67) which house the National Registry of Missing and Unlocated Persons (Art. 102-110).

In the area of the justice system, the Attorney General and Local Prosecutors are obliged to create Specialized Prosecutors for investigation and prosecution of *enforced* disappearance and crimes committed by individuals. Both jurisdictions are responsible for all aspects of cooperation and coordinated efforts that "give impulse to [the] search for Missing Persons" (Art. 68-78). Competencies and orders of action are ascribed to all the Federation's levels of public security, requiring that each comply with features of the Law and implement policy accordingly, following the prescribed chains of command.

Unlike in the Coalition's final proposal, which called for a forensics program to be an autonomous instrument, in the General Law the National Forensic Data Bank along with the National Registry of Unidentified and Unclaimed Deceased Persons reside within the portfolio of the Attorney General's Office. The National Search and Exhumation Program, however, a new initiative created in final negotiations, is given to the National Search Commission (Art. 111-134). Declaration of Absence may take effect from three months after a report of disappearance has been made, triggering procedures for the protection of

³⁹ The Homologated Search Protocol is articulated only in the General Law and not in previous initiatives.

rights (Art. 142-149). Reparation measures for victims, Protection of Persons, and Prevention of Crimes (Art. 150-173) form the final chapters of the Law. This piece of legislation, apart from outlining penalties and sentences in its initial sections, has a strong focus on victims and their rights in a way that necessitates the State and all of its institutions to work from a continuous posture of *pro homine* [*pro person*].

In the development of the General Law, a highly participatory process saw bottom-up, grassroots mobilization work in concert with top-down pressures from international institutions. Leading political allies within the Mexican Government coordinated to champion its cause. Many necessary conditions were critically in place when, in September of 2014, the events of Ayotzinapa detonated a political crisis for the regime of President Peña Nieto. The specific role played by Ayotzinapa against this panorama is the focus of the following chapter. While this pivotal event is not alone responsible for the Law's emergence, it is a proximate cause with a causal power all its own.

Chapter Four:
What Caused the General Law on Disappearance? A Counterfactual Analysis

“

Now as I was saying, I believe that the events of Ayotzinapa certainly ended up pushing the Government to have to offer some kind of response to the human rights crisis and the crisis of disappearances. As you well realize in your documentation, you find that the organizational process of Ayotzinapa’s parents did not necessarily have the subject of the Law as a point of their demands. Rather, other groups of relatives, in particular the Movement for Our Missing in Mexico, took advantage of that moment and that juncture of the context of Ayotzinapa to promote the passage of the Law...

This law arises from that context, from a Government that wants to regain legitimacy and then announces it will make a law to regain that legitimacy. But it did not count on there being a group of organized families who were going to say, *“Okay, you’re going to make a law - but not just any law; a law that moderately responds to our needs”*.

Now it is also true that the law is too late – on that everyone is clear – that the law basically passed in the final stretch of Peña Nieto’s Government. Practically what the Government did was issue the law, but in its implementation it did nothing...

The Mexican Government rather always wanted to resist recognizing that there was a crisis of disappearances, but there came a time when that was unsustainable. And the Law is a reflection of that. The Government had only to admit that the President was in a crisis and that he needed a law on that matter.

Humberto Guerrero,
FUNDAR

4.0 Counterfactually Speaking

Causal relationships are critical to our understanding of outcomes. While at a macro-level it might sometimes appear that factor A led to outcome B, by delving deeper to examine the processes at work in a causal relationship we can identify factors that tell a different story or help us understand the outcome in a more nuanced way. The goal of causal analysis is not only to identify the mechanisms that link cause and effect, but also to understand *causal power* – the ability to produce a specific effect where appropriate antecedent conditions are present (Little 1996). What effect did Ayotzinapa produce? What role did antecedent conditions play in advancing the General Law? What caused it? These are the questions with which this thesis is ultimately concerned.

One way to examine causal power is to reverse engineer an analysis using a counterfactual approach. Counterfactuals are a powerful means of interpreting phenomena for they tell us about our uniquely human existence and the way our actions inevitably affect the world around us (Pearl and Mackenzie 2018, 259-98). This method hinges on asking *what if* and calls into question an outcome by imagining a counter-reality in which conditions are changed or abstracted. *What if Archduke Franz Ferdinand had not been assassinated in 1914? Would World War I have been averted? Or What if the PRI had stayed in power and maintained its authoritarian rule? Would there be less violence in Mexico today?* This line of inquiry applies a logic that forces us to look critically at the factors at play in a sequence of events to understand their role, the force of their effect, and their connection to overall, larger outcomes. Micro-processes and their mechanisms explain phenomena as a function of human agents and their relations, and in doing so can demonstrate that macro-level associations are the aggregated product of micro-level processes dynamically at work (Elster 1989; Hedström and Ylikoski 2010; Kalyvas 2003; King, Keohane, and Verba 1994). This line of analysis is a departure from the methodology of *covering* or *general* law (not to be confused with the material, general laws discussed in this paper) theories such as those made famous by Hempel (1965). Such approaches seek to explain events by relying on conditions which, whenever occurring, create a generalizable outcome and thus produce a kind of universal law relative to the explanandum and explanans present. However, covering and universal law theories do not necessarily help us understand causation, causal chains, or allow us to explain the mechanistic processes leading to larger outcomes (Bennett 2010; Elster 2007, 32-51; Glennan 2010; Ylikoski 2013). My aim is not to develop any kind of predictive model, nor to retrofit the analysis to an existing covering law theory. Rather, with a problem-driven approach, my goal is to ask the right types of causal questions that help explain a fuller picture of the Law's causality (Shapiro 2002).

When we look at a macro-outcome like the General Law on Disappearance and seek to understand Ayotzinapa's place versus the antecedent conditions that predated it, counterfactual analysis allows us to

isolate key variables and test the significance of those which remain. This chapter analyzes the emergence of the Law by asking a set of bivariate counterfactual questions. First, *What if Ayotzinapa never happened?* And second, *What if only Ayotzinapa happened but the antecedent conditions did not?* By framing an examination of causality in this way, we will see that the causal power of Ayotzinapa is resoundingly political though firmly rooted in the precursory conditions explored in the previous chapter. Taken separately, it is reasonable to infer that neither the momentum toward legislative action before September 2014 nor the impact of Ayotzinapa thereafter, would have led to the General Law on Disappearance in its final form. Its realization and characteristics are the unique product of both sets of processes, each responsible for a distinct effect.

To preface, in this analysis environmental contexts are held as constant. We imagine that the climate of insecurity produced by decline of the PRI and the drug war are unchanged. Institutional weaknesses concerning corruption, impunity, and shortcomings within the judicial system remain the same, as well. In this way, the analysis is bound spatiotemporally within the Mexican context so that salient features of processes toward the General Law can be more closely examined (Tilly 2001).⁴⁰ This analysis is also informed by field research and first-hand interviews with law and policymakers, academics, and civil society organizations with direct knowledge of the Law's development.

4.1 *What If... Ayotzinapa Never Happened? Legislating in the Absence of the Forty-Three*

Suppose the events of Ayotzinapa and the backlash it generated never occurred. The forty-three students from the Ayotzinapa Rural Teacher's College in Guerrero simply did not vanish. Suppose a wholly unremarkable journey took place as they set out on the evening of September 26th. There was no altercation with police, no military or State interference, no drug cartel enforcers colluding to carry out an abduction. There would be no media frenzy, no "historical truth", no related political crisis for the PRI under President Peña Nieto, and no massive public outcry for a tragedy that, in this exercise, never existed. The families of the disappeared students and their community might never have endured the horrors of losing loved ones in this way and instead would have seen the young men return from Mexico City as planned. What might have happened if Ayotzinapa never did?

In this first counterfactual scenario, the aim is to make predictions about the trajectory of State action on forced disappearance based on the major factors operating prior to September 2014. Since efforts to create some style of law only became undeniable discussions toward a *general* law in Ayotzinapa's wake (Ruíz Reyes 2019), we imagine in its absence that some form of legislation was inevitable. The character

⁴⁰ Also held constant are the roles and forces of media coverage. We imagine that reporting on the events of Ayotzinapa, other major movements, and violence are unchanged. To explore the effect of media would require a full analysis unto itself, within the scope of a separate project.

and strength, however, of that legal response might lack some of the robust features Ayotzinapa helped materialize.

We begin by considering that the first formal demands upon the Mexican Government to legislate the epidemic arose under the administration of Felipe Calderón. Some of the most significant calls for legal intervention came in the form of international monitoring, dating to the recommendations of the UN Working Group in 2011. These critiques served to authoritatively acknowledge the phenomenon when at a domestic level, the State had not done so. We recall that official discourses of the Calderón regime, and later those of Peña Nieto, criminalized victims of disappearance as either complicit in or as collateral damage of the drug war. The work of INGOs, including the United Nations, IACHR, OAS, Human Rights Watch, Red Cross, and Amnesty International to evaluate the extensive nature of disappearance and appraise the State for its part in victimization, including abuses committed during the Dirty War, were the beginnings of international pressure applied against the State. Concurrently, in international courts, Dirty War cases were being prepared and prosecuted,⁴¹ helping to expose both State culpability in the practice of *enforced* disappearance and the need for stronger civilian protections (De Pina 2019; Gutiérrez 2019).⁴² However, international frameworks and treaties to which Mexico was a party classified disappearance as *enforced* - involving state officials. While international pressures helped in terms of acknowledging disappearances authored by military and state personnel, and at the same time reiterated the problem of non-state actors, the administrations of Calderón and Peña Nieto were able to evade the sensitive subject of the state-crime nexus and disappearance because of restricted authorship in the language of international law (Chica 2019). In terms of working toward a broader definition of the crime that would incorporate acts of private violence, a lack of political will under both regimes remained a problematic obstacle.

The scrutiny applied by INGOs, however, did provide support to the constitutional Human Rights Amendments. Those reforms evidenced a pivot toward expanding legal frameworks and creating channels for legislative change. The enactment of the Anti-Trafficking Law of 2012 and the Victims' Law of 2013 are proof of this, sustained by rigorous civil society action. Through the installation of these Acts, legal and political space was being opened to see human rights enshrined alongside stronger prosecutorial

⁴¹ The famous case of Rosendo Radilla-Pacheco was brought before the Inter-American Court of Human Rights in the *IACHR Case of Radilla-Pacheco v. Mexico* in 2001. A landmark judgement was won against the Mexican State in 2009 for the forced disappearance of Radilla, a political activist and musician abducted by army officials in the state of Guerrero, in 1974. The IACHR found the State violated both the American Convention on Human Rights and the American Convention on Forced Disappearance of Persons. The Court's decision recognized the systematic application of forced disappearance during the Dirty War along with the State's failure to investigate and pursue justice on behalf of the victim. See *Radilla Pacheco Vs. Mexico*. Other historic human rights judgements include the cases of *Alvarado Espinosa et al. Vs. Mexico* and *Fernández Ortega et al. Vs. Mexico*. The *National Campaign Against Enforced Disappearance* and the *Eureka Committee* worked closely on the promotion of awareness for Dirty War cases and the prosecution of perpetrators during that period. (Anonymous, Instituto Belisario Domínguez 2019).

⁴² Mexico had been accumulating judicial scandals before the IACHR for human rights violations committed by military, and pressure to comply with these landmark sentences helped open the debate in Congress on constitutional human rights reform (Guerrero 2019).

agendas and the protection of victims' rights. In the leadup to 2014, a deeper focus on human rights signalled that the problem of disappearance could fall under the umbrella of a humanitarian agenda, classifying it under those tenets as a human rights issue more than a *disappeared persons* issue (Elizondo García 2019).⁴³ But despite the fact that disappearance was discussed as part of the promotion of the new human rights agenda, and alongside the Trafficking and Victims' laws, the subject was not a national priority (Anonymous, Centro Prodh 2019; De La Peña 2019).

Against this backdrop of international pressure and legal-constitutional change, civil society and activism were becoming more vocal and identifiable, achieving a heightened degree of organizational cohesion (Anonymous, Instituto Belisario Domínguez 2019; Martínez 2019; Rodríguez Nava 2019). The participatory process that saw MPJD take on an instrumental role in creating the Victims' Law, winning an audience with the Calderón Government, demonstrated the technical capabilities of these actors as well as their capacity to affect political and agenda-setting processes.⁴⁴ Families were at the heart of these movements but their consolidation incorporated lawyers, specialized legal teams, and allied experts whose portfolios increased opportunities for civil society to win outright political legitimacy (Guerrero 2019; Gutiérrez 2019). At the same time, collectives with mandates to search for missing persons, investigate disappearances, conduct legal and academic research, and litigate cases were collaborating with the support of international and non-governmental agencies (Fray Juan de Larios 2019; Frey 2019; Gutiérrez 2019; Suárez Valencia 2019). The momentum from civil society consisted of practical and regional approaches in the absence of State support, and collectives were working to make the problem of disappearance more visible to wider society. Cases that were once possible to deny as isolated incidents or as corresponding with geographic trends in violent outbreaks were being seen as belonging to national experiences (Fray Juan de Larios 2019). By early 2014, groups collaborating with the Senate Human Rights and Justice Commissions had leveraged advocacy and the legislative trajectory already in place. They were able to submit a proposal calling attention to the phenomenon of forced disappearance.

Under the leadership of Senator de la Peña, February 2014 saw the first *federal* proposal towards a law. This demonstrates that action was underway to legislate aspects of the crisis. However, there was no solid State commitment toward a *general* law although its necessity was clear. De la Peña's draft could cover only matters related to the federal jurisdiction and would therefore not be applicable to all Mexican

⁴³ Along with discussions for a law concerning forced disappearance, legislation to clarify the crime of torture was debated at the same time. The two subjects were closely tied together for their similarities and a need to articulate separate definitions for both, so appropriate legal remedies could apply to each case as distinct. (Elizondo García 2019)

⁴⁴ Paris Martínez described that although the Victims' Law was developed during the sexennium of Felipe Calderón, he refused to publish it before the end of his term. Enacting that legislation meant having to recognize drug war balances publicly and politically, accepting a form of responsibility for the violence produced by his policies. As incoming President, Enrique Peña Nieto published the Victim's Law as one of his first acts of power. (Martínez 2019)

states. It also spoke to the problem of *enforced* disappearance as committed by state authorities and in doing so, did not include applications for crimes carried out by non-state actors. This was an initial step toward legislation, but an adaptation to suit the Mexican context of private violence was not yet included or a priority to other policymakers (Ruíz Reyes 2019). It would be seven months until Ayotzinapa made headlines around the world and in that time, the federal initiative would be on the table with an understanding from civil society that it required a much more comprehensive scope. The problem was again a matter of political will to go beyond the federal initiative and affect reforms capable of penetrating all orders of the federation. The proposal, following its presentation to the Senate Chamber, remained in the records of the United Justice Commission until eventually its standards were adopted under the General Law of Disappearance three years later (Senado de México 2017).

The various factors at work in this counterfactual, where Ayotzinapa is abstracted, range from international recommendations to civil movements, to the presentation of the federal initiative. These antecedent processes suggest that in the absence of Ayotzinapa some form of legal solution would have been realized. A path toward strengthened human rights frameworks was paved with the 2011 constitutional amendments, and disappearance was a point of emphasis within the scope of a humanitarian focus. It was already supported by advocacy on the ground and at the international level. But prior to Ayotzinapa, a federal law might have been the stopping point for legislating forced disappearance. That, or the timing of a general law would have been delayed.

As with the Anti-Trafficking and Victims' Laws, a turn toward legal remedy had already taken place. The fact that a federal initiative was submitted and accepted by the Senate shows a degree of support for legislation in forced disappearance. Without State promise toward any type of general law, however, there was no pronouncement on the part of the Executive committing it to this route. Critically, and with the Victim's Law, the State believed it had addressed victimization, reparations, and considerations owed to those affected by crime and, in that vein, disappearance could be dealt with by extension (de Pina 2019). Otherwise said, the Victims' Law was thought by many legislators to be sufficient in covering victimization by disappearance as well. Although that Act did nothing to set out protocols, penalties, or consequences for the crime of disappearance, the logic was that it addressed the rights and needs of victims. If the Victims' Law could be relied on as a kind of solution, it would mean that no real institutional change or reform had to be made to deal with forced disappearance. Tackling the larger issue of non-state actors and creating new institutions like search commissions were not the priority for many decision-makers, or for the Executive branch, where existing law or a federal initiative could arguably satisfy the issue (Anonymous, Mexican Government 2019; Dávila Fernández 2019; de Pina 2019;). Advocates of a separate law vehemently rejected this rationale (de la Peña; de Pina 2019; Guerrero 2019; Gutiérrez 2019).

Politically, were a federal law deemed sufficient, it would have allowed the State to claim it had dealt with a problem it still did not want to publicly acknowledge (de Pina 2019). It could avoid recognizing the distinction between state and non-state actors, and the state-crime relationship. The discourse of *criminals killing criminals*, however loudly collectives were refuting the claim, might have been sustained in the absence of a focusing event so crudely capable of dispelling the myth. Problems are officially recognized when governments act (Dávila Fernández 2019). Taking *some* action – such as passing the federal initiative – would mean that *some* aspect of the problem was acknowledged. Without enhanced measures, the State could forestall discussing the more sensitive subjects of collusion, corruption, impunity, and a long-failing drug war. With only a federal act, those in power who had no interest in dealing with this other subject matter might have been able to avoid it in terms of concrete policy. Key in this analysis is an emphasis on the State’s desire to avoid having to comprehensively deal with the problem of disappearance; doing so meant acknowledging a host of other shortcomings in the State’s obligation to provide security.⁴⁵ Without full recognition, there is no need to implement reform at all levels of the federation. There is no need to restructure duties, allocate resources, or revise law and security practices. Lastly, there is no need to officially accept the political costs of inherited and ongoing violence. Without Ayotzinapa, a federal law might have sufficed. The State could have washed its hands, claiming to have produced a result.

Alternatively, were a more comprehensive piece of legislation to be passed, one that went on to include a state/non-state distinction, it likely would have taken longer given the recognition problem (Ansolabehere 2019; Dávila Fernández 2019; de la Barreda 2019; Frey 2019). Further, it is difficult to imagine a fuller law would have lived up to the features of the final General Law on Disappearance because, as seen in the previous chapter, it required from the Executive concessions it was reluctant to afford even in the context of tremendous pressure generated by Ayotzinapa. Yet we know that civil society, INGOs, and advocates were pushing more for a more embracing type of legislation, one that included a focus on private actors and expanded search features. To that end, we must consider the possibility of a more inclusive law after 2014, something that went beyond only federal, even without Ayotzinapa. Were that to be the case, which is highly reasonable to infer, the outstanding questions become how families’ demands would have been met and when such a law might have been passed.

4.2 What If... Only Ayotzinapa Happened? Abstracting the Background Conditions

Let us now imagine the effect of Ayotzinapa in the absence of all factors just surveyed. What impact might the event have had if the antecedent processes were non-existent? In this line of analysis, we remove the

⁴⁵ All participants interviewed shared this perspective.

legal-constitutional advancements made by the Human Rights Amendments and the two laws that followed. We also lose the weight of international recommendations, civil society movements, and pressures generated by the collectives of MPJD and MNMD thereafter. It stands to reason that the impact of cases litigated from the Dirty War and advocacy groups focused on that period are suspended, as well. And finally, it would be necessary to abstract the *Project Decree to Issue the Federal Law to Prevent, Punish and Eradicate the Forced Disappearance* as the February 2014 federal initiative. By confiscating these factors, we are left with Ayotzinapa as an act of violence represented as incident rather than sequence.

To begin, it would be reasonable to infer that the disappearance of Ayotzinapa's forty-three students would have had a powerful effect on Mexican society. The profile of victims captured attention in a way that few other cases had. It was not only about forty-three victims, but forty-three children.⁴⁶ Conservative Mexican culture, which places a high degree of importance on the family, made this detail intolerable and ignited a firestorm that blended indignation and empathy (Anonymous, Mexican Government 2019; de Pina 2019; Martínez 2019; Suárez Valencia 2019). As facts of the case unfolded and other descriptors were added to press releases, the public learned it was not just forty-three young people, but victims from Guerrero, one of the poorest states in the country, who were studying to be teachers, who were travelling to a march in Mexico City, who participated in civics, and whose individualities were gleaned with each passing news cycle. The descriptors humanized these students in a way that galvanized compassion across Mexico and internationally, affecting the sensibilities of onlookers from all over the world. At the same time, a cast of characters materialized in a changing account of kidnapping, murder, detention, and deceit. Revolving around state and criminal authors complicit in the student's abduction were various "official" versions put forward by the State to explain the events of that night, none of which were ever proven credible. The serialized story, which presented new information daily following the abduction, added to intrigue and fury for the participation of state officials alongside criminals.⁴⁷

Politically, the criminal exposure of the State produced by Ayotzinapa was a scandal. The event verified the deterioration and weakness of the Mexican State with a kind of force greater than other episodes (Dávila Fernández 2019; de la Barreda 2019; de Pina 2019). The State attempted to replicate a formula of

⁴⁶ Paris Martínez described that the victims' status as children was one of the most explosive elements of the case and the publicity it generated. This was echoed by all other participants. Had it been a case of forty-three women, he explained, "nobody would have cared" and the story likely would have lasted a couple of short weeks [a critique about attitudes toward violence]. Though femicide is a grave issue being grappled with in Mexico, violence evokes reactions in some cases but not others. Mr. Martínez is an acclaimed journalist and was one of the first reporters on site as the Ayotzinapa tragedy unfolded. Immediately after the students disappeared, the town of Ayotzinapa and its community closed their doors and began receiving legal advice from human rights group *Tlachinollan*. For a "matter of fate and luck", Mr. Martínez was granted *safe conduct*, a form of special permission, to conduct interviews. He is responsible for publishing the first photographs of the 43 and for putting faces to what was initially only a number. (Paris Martínez 2019)

⁴⁷ Every participant interviewed spoke to the way in which seeing the state-crime nexus laid bare in this case increased public indignation and fuelled lasting pressures.

expediency: offer an explanation like the “historical truth”, manipulate the investigation, announce legislative measures to calm the situation, and then bet that this form of simulation would quell social fury until the topic subsided (Guerrero 2019). That bet was lost. What began as a case about forty-three missing persons manifested the reality of tens of thousands unaccounted for. It became untenable and unsustainable, in the face of Ayotzinapa, for Government to continue denying the crisis of disappearance and the types of victims it produced (Ansolabehere 2019; de Pina 2019; Frey 2019). Here were innocent young people who, like so many other disappeared, had no affiliation with organized crime and did not serve the decade-old narrative about *walking a bad path* or being justifiable *collateral damage*. When Ayotzinapa occurred, it not only brought these discourses crashing to the ground, but also shattered Peña Nieto’s veneer of “Saving Mexico” (Guerrero 2019; Martínez 2019).⁴⁸ The episode revealed systemic patterns about State corruption and the altitude of cooperation between authorities and organized crime (Ansolabehere 2019; Fray Juan de Larios 2019).

Search efforts conducted for the disappeared students only made the phenomenon more visible. As clandestine graves were unearthed throughout Mexico, concentrating media attention, it became clear how vast and unrestrained victimization was. Families in all regions of the country had long been exasperated by the inability of authorities to conduct proper searches for missing persons (de Pina 2019; Elizondo García 2019; Fray Juan de Larios 2019; García Campos 2019; Mata Lugo 2019; Ruíz Reyes 2019; Salgado Ambros 2019; Suárez Valencia 2019). Now, a necropolis was being exhumed for all to see. Ayotzinapa underscored for the greater public the importance of search and, by orders of magnitude, revealed truths about how many were unaccounted for (Aguilera 2019; Elizondo García 2019; Ruíz Reyes 2019). As demonstrated by debates that unfolded in the creation of the General Law, search procedure would be a point of contention.⁴⁹ Search teams operating in the area where the students were abducted encountered one burial site after another, none holding the remains of the *forty-three*. And as media coverage intensified, findings in other parts of the country were exposed. The truth became clear to the public writ large: that in every state of the republic, there are burial pits. Mexico was coming to be known as an expansive graveyard where could “scratch the earth and chance finding a dead man” (Suárez Valencia 2019). The outrage and hatred toward the State, emblazoned by Ayotzinapa, was powerful not only for the profile of victims, but in a much larger sense for the pervasive necropolitical realism disclosed by a single event.

⁴⁸ In February 2014, just months before the student-teachers were disappeared, *Time Magazine* published an article including interview excerpts from President Peña Nieto. *Time*’s cover featured a statuesque President with the title “Saving Mexico: How Enrique Peña Nieto’s Sweeping Reforms Have Changed the Narrative in His Narco-Stained Nation”. Against rising insecurity and despite economic progress, Peña was vilified and scorned for the image of his Government produced by the article and its illustrious cover.

⁴⁹ All interview participants articulated the demarcation between *search* and *investigation*. The creation of a National Search Commission and institutions at state levels became a solution for the lack of trust in investigative and policing processes.

Within months of the headlines generated by Ayotzinapa, Peña Nieto's *decalogue* was issued. His promise of a general law triggered various initiatives developed for consideration by the PRD, PAN, PRI, Coalition, and Executive. The proposals took on an expedited character attributable to the unrelenting political pressures from Mexican citizens, civil society, and international organizations (Aguilera 2019; Chica 2019; García Campos 2019; Guerrero 2019). There was now a public obligation for the State to respond in full recognition of the phenomenon, finally admitting the magnitude of forced disappearance (de Pina 2019; de la Barreda 2019; Suárez Valencia 2019). To this end, the independent commission of the GIEI, within the scope of the OAS, was convened to investigate the case and determine courses of action. The team was an important actor not only for its mandate to clarify the facts of the crime, but also in its character of an international committee to advance recommendations and work alongside the legislative process. In Ayotzinapa's aftermath, GIEI representatives collaborated closely alongside policymakers to promote a general law and by advising Government on aspects of forced disappearance (Mata Lugo 2019; de la Peña 2019; Suárez Valencia 2019). But the GIEI was its own mechanism, aligned with Ayotzinapa. While its reporting spoke to the phenomenon in general, the group's focus was to accompany the search, investigative, and legal aspects related exclusively to that incident. Whereas Ayotzinapa had the GIEI, tens of thousands more victims had MNDM and its allies.⁵⁰

In this counterfactual, we see that Ayotzinapa generated a tremendous degree of social and political pressure. But had it occurred in isolation, it is difficult to imagine this single event would have produced a legal response on its own. To begin, initiatives presented toward a general law in 2015 on behalf of various political parties were an extension of gains won with the HRAs of 2011. Only the orders of the Constitution allow for the issuance of Law. Subtract the HRAs and there is no legal basis for any of the human rights frameworks that followed. The 2015 constitutional reform to legislate forced disappearance may well be subtracted with this logic, too. Anti-Trafficking and Victims' Laws were not only an outgrowth of the early reforms, but also precedent-setting measures with features adopted by the Disappearance law. Socially, the participatory nature of those frameworks, which was also a major factor in the process of the General Law on Disappearance, is reliant on antecedent conditions. Participation was rooted in social movements that created great coalitions, sophisticated organizations, and strong partnership networks.

Ayotzinapa accelerated the presentation of initiatives to produce a general law and cemented the commitment of Peña Nieto's Government toward it. But the power of its effect was enhanced precisely because it was a *compounding* factor, another episode of violence added to a sequence of other forerunning

⁵⁰ Families of the Ayotzinapa students worked with the GIEI but were not part of the direct legislative process to advance the General Law on Disappearance. Those efforts were a continuation of civil society aims attended to by collectives, collaborators, and legislators alongside MNDM, Senator de la Peña, and international partners (García Campos 2019; Guerrero 2019; Gutiérrez 2019; Martínez 2019; Rodríguez Nava 2019).

events. That a specialized group of international experts was brought in due to pressures created by a single case was unprecedented (Anonymous, Centro Prodh 2019) and the GIEI's mandate is best thought of as an extension of the collaborative spirit established by INGOs through the previous reforms and partnerships. Politically, the effect of Ayotzinapa can be thought of in a similar way for it did not occur in a vacuum. Mass protests, mobilizations, human rights advances, and government lobbying against pervasive violence and drug war policies characterize the already painted canvas onto which Ayotzinapa was rendered. Thus, this analysis suggests that Ayotzinapa is best regarded as an influentially proximate, but independently insufficient factor toward the General Law on Disappearance.

4.3 *La Gota Que Derramó el Vaso: The Whole as Greater Than the Sum of Its Parts*

Ayotzinapa is commonly referred to as *la gota que derramó el vaso*, literally meaning *the drop that spilled the glass*. The expression can be equated with *the straw that broke the camel's back* or *the last straw*. The counterfactual method applied in this chapter helps us see Ayotzinapa in precisely this way, as a final push in the installation of the General Law on Disappearance. A range of antecedent factors conditioned space for Ayotzinapa to trigger broad awareness about a human rights crisis, and to become emblematic of the phenomenon of forced disappearance. The General Law distinctly represents the convergence of two paths. The first is that characterized by precursory conditions, and the second is the path that contains the events of Ayotzinapa. Taken together, their result is the comprehensive legal tool that defines the crime of disappearance and related protocols, while also separating procedures for search and investigation

On its own, Ayotzinapa is an insufficient factor in the creation of the General Law. It is a proximate, but not ultimate cause. The ultimate element is the work of civil society and its allies whose efforts both before and after September 2014 culminated in the drafting of the General Law. We see that when we abstract for the precursors that so crucially defined the political, legal, and social spaces for legislation on forced disappearance, Ayotzinapa would not have had a foundation on which to produce a comprehensive response. This is because there would be no channels in place to achieve such an outcome. And when we isolate that emblematic event, it is evident that an impetus toward legislation was already in progress thanks to civil society, human rights advocates, and policy leaders. To that effect, and because legislation was underway before September 2014, some form of law would have passed irrespective of Ayotzinapa. I contend that the causal power of that event was innately political and strongly tied to the three outcomes: the timing of the law; the leverage it exerted to compel a response; and its influence on the creation of search commissions.

The phrase *crisis of legitimacy* has been used in many instances to describe the effect of Ayotzinapa on the administration of Enrique Peña Nieto. That an expedited legal process could take place as a political

reaction the phenomenon was a way to re-establish political competency, or the appearance of it (Anonymous, Instituto Belisario Domínguez 2019; Suárez Valencia 2019). Yet none of that process would have been possible were it not for the advances made in other areas of human rights legislation in years prior. In this way, the relationship between an accelerated legal response in forced disappearance and the broader picture of human rights reform are intimately connected. Enrique Peña Nieto issued his decalogue promising a general law in the months following Ayotzinapa, but had the Human Rights Amendments and steps toward other legislative change not already occurred, creating a general law would have faced many more obstacles. Realistically, it would have been exceedingly delayed without the prerequisites established since 2011. Furthermore, those prerequisites hinged on a host of other processes, actors, and outcomes. The pressure and unifying nature of the *forty-three*, which called forth demonstrations and condemnation to an impressive degree, made forced disappearance a national priority – but one to which a swift response was possible *only* because of pre-existing conditions. Ayotzinapa created a political “exit route” not just to quell the immense reaction of Mexican society and the international community by depressurizing an explosive situation, but through promise of a law, which allowed civil society and partners to capitalize on the moment to push through a bill they had *already* been fighting for (García Campos 2019; Guerrero 2019; Martínez 2019). And when it came to that law’s inclusions, in addition to distinctions between state and non-state actors, search protocols were paramount.

As outlined in Chapter Three, one of the great debates in the formation of the Law had to do with responsibilities for searching for missing persons. Families and advocates with little faith in State institutions wanted an independent commission while the Executive, in particular, was against this position and did not support search features as separate from investigative processes.⁵¹ Ayotzinapa and the publicity it generated with respect to search illuminated the importance of that procedure, certainly insofar as institutional trust was weak and authorities – including those complicit in such crimes – could not be relied upon to locate missing persons. Establishment of search committees was spurred by pressures to answer gripping questions of absence and ambiguous loss. This was true in the case of the forty-three students but by extension as far as tens of thousands more were concerned. Once disappeared persons were found, *then* crimes could be punished - but the emphasis on search was predominant (de la Peña 2019; Salgado Ambros

⁵¹ The Coordinator of the Legal Analysis Unit within the office of the UN High Commissioner for Human Rights, Mexico, described that constitutional reform was a tenuous process with respect to search. During a committee session on the development of the 2015 constitutional reform, which originally did not contain parameters for search, the Coordinator arrived and asked to extend the session’s time in order to discuss an amendment. He had a private audience with the Deputy Legal Counsel of the Presidency and urged that the search component be included. He was told it was not possible and rebutted that not only was it possible, but also necessary. The Coordinator contended that were it not approved, there would be a high legitimacy deficit in the reform, arguing that any anything is constitutionally possible if there is clear political will. In the end, the Deputy could not authorize any change but would make a telephone call. He stepped out to do so. When he returned, he explained to the Coordinator that a search feature would be incorporated, and from this the signal was given to senators to perform the adjustment that made search a feature of the treatises forming the basis for the General Law on Disappearance. (García Campos 2019)

2019). The concentration of fear, desperation, and the unknown that manifest when a loved one is unfound are those feelings which cannot be translated into a law, but could be translated into search commissions (Dávila Fernández 2019). Pressures from Ayotzinapa made this clear, allowing advocates to gain tactical concessions from those dissenting against demands for institutions devoted to search (Chica 2019; de Pina 2019). The event also increased public understanding about the State's lack of protocols in approaching the phenomenon from the outset, as well as the need for accurate information systems for *fosas comunes* [mass graves] in the theatre of high impact crimes (Aguilera 2019; Anonymous, Instituto Belisario Domínguez 2019; Fray Juan de Larios 2019; Ruíz Reyes 2019).

Given this counterfactual scenario, it is undeniable that forced disappearance would have been legislated despite the representative case of the *forty-three*. It is even reasonable to assume that a form of general law, such as that of the Anti-Trafficking or Victims' might have been realized and might have gone on to include a differentiation between state and non-state actors. However, whether the nature of that final product would have resembled the General Law on Disappearance, in its final form, is unknown. The causal power of Ayotzinapa is that of a cognitive mechanism that altered perceptions about the phenomenon and created a profound reckoning with forced disappearance (Tilly 2001). The level of recognition won by the case challenged official discourses about who disappears and why, making the epidemic undeniable and creating an avenue for processes already in motion to move forward with urgency. Apart from political forces that acted on the State and demanded concessions, the most practical evidence of Ayotzinapa's role is perhaps the leverage it exerted to win advancements in distinctions between public and private actors, the need for a law covering all jurisdictions, and the separation between search and investigation. What is clear is that the precise combination of antecedent conditions and fallout from Ayotzinapa are embodied within the contours of the General Law on Disappearance. But without the antecedent conditions, no such law would have been possible at all. At any rate, not for years to come.

**Chapter Five:
Conclusion**

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In Mexico, we have a very bad way: we have laws for everything. Our problems are not law. We have advanced laws on gender-based violence, on torture, on disappearance, on femicide. But it's already become a way of saying, "*I'm taking care of it, there's a law*". But it's just words because [the commitment] is not kept. They don't give money to institutions, they don't give them the capacity, and we in civil society have also made a big mistake.

As nothing progresses, we still owe a lot of [attention] to the great criminal reforms. Our prosecutions are a disgrace, but since we couldn't move them forward in blocks, everyone started fighting their piece. The femicide prosecutors are for femicide, the disappearance prosecutors with disappearance, the torture prosecutors, the journalist prosecutors, the migrants, etcetera. We've made islands, super-small prosecutors, peripheral, without power and without capacity, but everyone wants their part... where they are competing with the agendas of the rest.

Volga de Pina,
FLACSO Mexico

In the ten-year period between the start of the drug war and the passage of the General Law in 2017, tens of thousands were lost to Mexico's phenomenon of forced disappearance. The problem continues to this day with Guerrero's forty-three missing students the poster children for a horrific crime that represents so many more. The emblematic events of Ayotzinapa drew broad awareness to the epidemic, capturing international attention while provoking outright condemnation of Peña Nieto's regime. But the appearance of a causal relationship between Ayotzinapa and the Law's development, as though the State was finally leading the charge in dealing with the problem of disappearance, paints only part of a much larger picture.

The explosion of violence in twenty-first century Mexico produced extraordinary rates of homicide and disappearance, and a proliferation of violent actors. But the seeds for private violence were sewn decades earlier under the authoritarian and clientelist character of the PRI regime, where the reigns of accountability were first loosened. *Enforced disappearance* became unofficial practice under PRI-led state terror during the Dirty War, as political opponents were abducted and vanished by military and non-state operatives. This period demonstrated the dangers of clientelist infrastructures reliant on impunity and corruption to carry out human rights abuses. It went on to undermine the efficacy of justice institutions and set precedents for the future. Then, in the years before the drug war, the state-crime nexus which controlled and measured violence came undone with Mexico's turn to democracy. Factionalism set the stage for one of the most vicious ongoing civil conflicts in the Americas. From a dirty war to a drug war, victims of disappearance were criminalized, buried under discourses that labelled them incidental, if not disposable, with respect to larger security agendas as narratives of denial prevailed.

Despite the rising tide of violence, civil society and international monitoring have played an influential role in expanding human rights frameworks in partnership with policy leaders. Socio-political pressures from below and above have pushed forward constitutional change, creating avenues for protective legislation while mass mobilizations and coalitions such as those aligned with *Movimiento por la Paz, Justicia y Dignidad* and *Movimiento por Nuestros Desaparecidos en México* have engaged in promoting victims' rights and social awareness. As a reflection of their efforts, the Disappearance Law establishes a critical distinction between state and private perpetrators of forced disappearance, while also creating separated protocols for search and investigative procedures. Embodied within its contours is a prioritized focus on victims' rights. Applicable to all states within the Federation, the Law obligates state institutions and every branch of authority to operate under a single, homologous standard. Great debates characterized the process of the Law's development and in the end, its character is a compromise between the demands of victims' families and the position of the PRI Executive under Enrique Peña Nieto.

Ayotzinapa's causal power remains an undisputable cognitive mechanism for the way it helped solidify a critical piece of legislation in the face of State denial. When analyzed counterfactually, the event

is a clear influence on the timing and conditions that realized the General Law. Recognizing this is critical, because it allows us to see Ayotzinapa not as an isolated incident or the ultimate factor, but rather as an important link in the causal path toward advances in public security. Beyond clarifying the historical record, situating Ayotzinapa within this broader causal chain makes visible the other essential processes, actors, and factors at play in the Law's emergence. What becomes evident is that Ayotzinapa was a proximate cause of the General Law, but that a host of antecedent conditions were already building toward it. The critical efforts of civil society organizations might otherwise go unseen beneath the weight of the *forty-three*. In the face of successive regimes that sought to deny the problem of forced disappearance, Ayotzinapa atomized the crisis and detonated a political disaster that made disappearance irrefutable. It challenged notions about who is disappeared and why. But civil society and legislative allies were already hard at work advancing this kind of legislation. Together, both Ayotzinapa and the prior conditions merged to produce a comprehensive piece of legislation that culminated in a landmark lawsuit against the Mexican State.

Following its enactment, the General Law on Disappearance has been on the path toward implementation and at present, not all states have fulfilled its requirements. Problems of cooperation between state and federal authorities and failures to harmonize local legislation with the law mean even critical elements, such as updating missing persons registries, are incomplete (Naciones Unidas 2020). These processes take time and for the Law to be effective at reducing violence, comprehensive implementation is necessary. Many interview participants were tentative about the success of this legislation because for it to function properly, it must be part of greater, systemic change.

Currently underway are efforts by scholars, international agencies, civil society organizations, and Government to evaluate the impact of the Law and chart its implementation. Monitoring, both at domestic and international levels, remains important as social and political pressure have proved vital to security improvements and leadership accountability. But along with this, and it is no secret, further reform to the criminal justice system is essential. There will come a time when the most focused laws will have been built, and much of the legal landscape complete. Creating new legal tools as political strategies to mitigate unrest, respond to crises, or as points of demand for victims and civil organizations, will simply no longer be a form of solution: the laws will already exist. Although these frameworks are positive steps in the fight for improved security, the work is far from over. Persistent, glaring questions of the ongoing drug war reflect a campaign undermined by the justice system and nearly fifteen years of failed policies. Militarization has so far not succeeded in controlling drug cartels and violence has only increased under the current regime of Andrés Manuel López Obrador. New approaches are necessary if for no other reason than to limit the impact of violence on broader society. Does this require a more serious exploration of

shared governance alternatives to incentivize peace? What about transitional justice? Are unconventional methods a potential means of enhancing stability? And if corruption and impunity remain, can they be leveraged and recalibrated toward tighter controls on violence?

Despite the present structural contexts that make application of these new laws difficult, and so often undermine public security, structures are not static. The types of legislation that have materialized over the past decade are proof that change is possible, however difficult it may be, and however high the cost. It would be easy, if not forgivable, to be discouraged by an understanding of what it will take to see the General Law on Disappearance fully implemented in the face of so many institutional barriers. But as Policzer writes,

“...many of the institutions and the interests that we might think of as given, fixed, and limited, are in fact the product of a historically diverse and highly contingent set of circumstances: they are not given, or fixed, and they vary over time and space; they were created under particular circumstances, and can therefore be recreated under others” (2018, 4).

Mexico’s extra-institutional actors and their partners in policy have built a wide network that with every passing landmark is more capable, more knowledgeable, and more powerful as a force for policy change. If their weight were thrown behind the continuing project for criminal reform and pressure steadfastly applied, they could make great progress in the coming years.

Perhaps, looking ahead with a long lens, there will come a day when rates of violence drop and cases like Ayotzinapa become outliers. Acts of extreme violence might instead draw condemnation not for their regularity, not as events that *spill a glass* already teeming, but for their anomaly, because reform has managed to help *reform* human security.

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