

Europa Country Perspectives

The *Europa Country Perspectives* series, from Routledge, examines a wide range of contemporary political, economic, developmental and social issues from areas around the world. Complementing the *Europa Regional Surveys of the World* series, *Europa Country Perspectives* will be a valuable resource for academics, students, researchers, policymakers, business people and anyone with an interest in current world affairs.

While the *Europa World Year Book* and its associated Regional Surveys inform on and analyse contemporary economic, political and social developments at the national and regional level, Country Perspectives provide in-depth, country-specific volumes written or edited by specialists in their field, delving into a country's particular situation. Volumes in the series are not constrained by any particular template, but may explore a country's recent political, economic, international relations, social, defence, or other issues in order to increase understanding.

Haiti: From Revolutionary Slaves to Powerless Citizens

Essays on the Politics and Economics of Underdevelopment, 1804–2013

Alex Dupuy

Darfur's Political Economy

A Quest for Development

Hamid Eltgani Ali

Contesting Spain?

The Dynamics of Nationalist Movements in Catalonia and the Basque Country

Edited by Richard Gillespie and Caroline Gray

Catalonia: A New Independent State in Europe?

A Debate Over Secession Within the European Union

Edited by Xavier Cuadras-Morató

Russian Nationalism and Ethnic Violence

Symbolic Violence, Lynching, Pogrom, and Massacre

Richard Arnold

Beyond the Drug War in Mexico

Human Rights, the Public Sphere and Justice

Edited by Wil G. Pansters, Benjamin T. Smith and Peter Watt

Beyond the Drug War in Mexico Human Rights, the Public Sphere and Justice

Edited by

**Wil G. Pansters, Benjamin T. Smith and
Peter Watt**

 **Routledge**
Taylor & Francis Group
LONDON AND NEW YORK

First published 2018
by Routledge
2 Park Square, Milton Park, Abingdon, Oxon OX14 4RN

and by Routledge
711 Third Avenue, New York, NY 10017

Routledge is an imprint of the Taylor & Francis Group, an informa business

© 2018 Wil G. Pansters, Benjamin T. Smith and Peter Watt for selection and editorial material and Routledge for other content

The right of Wil G. Pansters, Benjamin T. Smith and Peter Watt to be identified as the authors of the editorial material has been asserted in accordance with sections 77 and 78 of the Copyright, Designs and Patents Act 1988.

All rights reserved. No part of this book may be reprinted or reproduced or utilized in any form or by any electronic, mechanical, or other means, now known or hereafter invented, including photocopying and recording, or in any information storage or retrieval system, without permission in writing from the publishers.

Trademark notice: Product or corporate names may be trademarks or registered trademarks, and are used only for identification and explanation without intent to infringe.

Europa Commissioning Editor: Cathy Hartley
Editorial Assistant: Eleanor Simmons

British Library Cataloguing in Publication Data
A catalogue record for this book is available from the British Library

Library of Congress Cataloging in Publication Data
A catalog record for this book has been requested

ISBN: 978-1-85743-909-0 (hbk)
ISBN: 978-1-315-09860-9 (ebk)

Typeset in Times New Roman
by Taylor & Francis Books

Contents

<i>List of tables</i>	vii
<i>List of contributors</i>	viii
<i>Acknowledgements</i>	ix
<i>Abbreviations and acronyms</i>	x

Introduction: Beyond the drug war: the United States, the public sphere and human rights	1
WIL G. PANSTERS, BENJAMIN T. SMITH AND PETER WATT	

PART I	
Securitization, militarization and human rights	31
1 U.S. pressure and Mexican anti-drugs efforts from 1940 to 1980: Importing the war on drugs?	33
CARLOS A. PÉREZ RICART	
2 Mexico: A humanitarian crisis in the making	53
MÓNICA SERRANO	
3 Effects of militarization in the name of counter-narcotics efforts and consequences for human rights in Mexico	76
LAURA CARLSEN	

PART II	
The public sphere and the press under siege	95
4 Violence, co-optation and corruption: Risks for the exercise of journalism and freedom of expression in Mexico	97
ARMANDO RODRÍGUEZ LUNA	

vi *Contents*

5	State of denial: Crime reporting and political communication in Sonora	111
	VÍCTOR HUGO REYNA GARCÍA	
6	Social movements in support of the victims: Human rights and digital communications	126
	RUPERT KNOX	
PART III		
	Justice and reconciliation from below	147
7	Beyond disorder and the Constitution: Thinking about the law in regions of violence (the case of Cherán)	149
	ERIKA BÁRCENA ARÉVALO AND ORLANDO ARAGÓN ANDRADE	
8	Combing history against the grain: The search for truth amongst Mexico's hidden graves	164
	CAROLINA ROBLEDO SILVESTRE	
	<i>Index</i>	185

List of tables

5.1	Type of criminal risk in <i>El Imparcial</i> (2003–2012)	114
5.2	Location of criminal risk in <i>El Imparcial</i> (2003–2012)	115
5.3	Dominant source in <i>El Imparcial</i> (2003–2012)	119

7 Beyond disorder and the Constitution

Thinking about the law in regions of violence (the case of Cherán)

*Erika Bárcena Arévalo and
Orlando Aragón Andrade*

Introduction

Asking about the place of law in regions of violence may have an obvious if rather flippant answer: it is non-existent. However, in the Mexican case, as in many others, the application of judicial remedies and the use of the language of rights as a means of supporting social struggle, promoting state legitimacy, and even to protect the actions of private companies, are definitely growing. The trend allows us to ponder the relationship between the law and violence, to think about its emancipatory potential, and to speculate whether it can be used, particularly by social movements, to reverse patterns of everyday violence. In this respect the example of Cherán is particularly revealing. San Francisco Cherán is an indigenous community of the Purépecha people. Over the past five years, it has gained a degree of notoriety since in 2011 the people of San Francisco Cherán (called from now on the *comuneros*) started a social movement both against the deforestation of their lands and against the violence inflicted on the community by neighbouring groups involved in organised crime.

In the absence of a response from the municipal, provincial or federal authorities, the *comuneros* combined the mobilisation of their community with a judicial process designed to legitimise their movement. This culminated in a favourable judgement, which is now considered paradigmatic in relation to the human rights of indigenous people. For the first time, the Mexican state was forced to recognise indigenous peoples' claim to self-determination, autonomy and self-government as a judicial right. As a result, Cherán is today the first formally recognised indigenous municipality, governed by a municipal government structure which is chosen according to its *usos y costumbres*, the customary and traditional legal and social institutions of indigenous communities.

Unlike the model of the *ayuntamiento*, or town council, inherited from the Spanish colonialists, the current municipal government of Cherán consists of a series of collegiate bodies or councils, which are in charge of different agendas and are directly responsible to the assemblies of each of the four districts into which the community is divided. Councils include one devoted

to communal property, one to honour and justice, one to social, economic and cultural programmes, one focused on young people, and one directed at women. The overarching authority representing all the councils is the Greater Council of Communal Government.

This process of self-determination, autonomy, and self-government has made Cherán one of the safest municipalities in Michoacán. In fact, Cherán provided a model for many of the more scrupulous members of the *auto-defensas*, which rose up against the state's drug trafficking organisations in 2013.¹ Law and the legitimacy that springs from it have been key to the project's success. For the past two years we, as members of *Emancipaciones*, a collective devoted to critical studies of the law and the humanities, we have given judicial advice to the comuneros of Cherán.² In so doing, we have managed to gain unparalleled access to these communal ideas of the role of law. This, in turn, has led us to consider the relationships between law and violence and between law and political emancipation. We rely on two theoretical models. The first comes from US anthropologists Jean and John Comaroff, and the second has been developed by Julieta Lemaitre and concerns the sociology of law. Both engage with the relationship between law and violence and what they term 'legal fetishism'.

Only law and disorder?

One of Jean and John Comaroff's most forceful statements flips traditional ideas of development and growth on their heads. According to the anthropologists, the countries of Africa are not slowly developing into capitalist, Western democracies. Instead, capitalist Western democracies are becoming more and more like the nations of sub-Saharan Africa (Comaroff and Comaroff 2006; 2012). Here, the expansion of neoliberalism has restructured relationships affecting the state, market and violence, and generated niches for the production and circulation of capital which do not rest on legal foundations. The most damaging consequences of such restructuring, such as government corruption, the rise of criminal groups and the expansion of criminal economies, are particularly noticeable in the global south. But, this is more a result of the West's claim to universal 'knowledge' rather than the global south's unique proclivity for crime or corruption (Comaroff and Comaroff 2006; 2012). Such corrupt practices are also embedded in the political economies of the global north, but here they are more effectively concealed by a moral charade of adherence to the law.

However, in *Theory from the South* (Comaroff and Comaroff 2012), the authors do not simply point out that the faults of the post-colonial nations exist, albeit surreptitiously, in the north. They also argue that certain global structural processes are disrupting the established geographies of centre and periphery, relocating some of the most innovative and dynamic modes of value production to the orient and the south.

What we suggest ... is that contemporary world historical processes are disrupting received geographies of core and periphery, relocating southward – and of course eastward as well – some of the most innovative and energetic modes of producing value. And, as importantly, part or whole ownership of them. Which is one of the things that makes contemporary capitalism distinctive, thus to alter the lineaments of global modernity tout court.

(Comaroff and Comaroff 2012: 7)

For the Comaroffs, post-colonial nations constitute a reality towards which the global order is moving. As a result, they are legitimate sources of knowledge, which must shape the theories of the social sciences. The particular area of theory which we wish to examine looks at the consequences of these new forms of capital circulation and particularly the growing confluence between the previously dichotomous values of law and disorder. As the Comaroffs argue, in many post-colonial states rising rates of violence are accompanied by paradoxical increases in appeals to state law and a certain legal fetishism.

According to the authors' argument, post-colonial nations are often associated with disorder; they are the archetypes of chaos. Neoliberal policies have latched on to these nations' tendency towards informality and traditions of economic exploitation to create flourishing parallel economies involving a mix of formal enterprises, criminal groups and the state. These parallel economies often intersect the 'decadent markets fostered by liberalization' (Comaroff and Comaroff 2009: 19). Consider, for example, the market of forced displacement, which provides significant gains, both for the networks of people who transport displaced people and for those who supply them with the false documents necessary to cross borders: 'zones of deregulation are also spaces of opportunity, of vibrant, desperate inventiveness and unrestrained profiteering' (Comaroff and Comaroff 2006: 9).

At the same time, the policies of dismantling the welfare state increasingly demand the privatisation of government functions, for example, by subcontracting public services. This, in turn, has led the state to mutate from a set of bureaucratic institutions to an administrator of concessions, which simply legalises dispossession and shows its full strength only when these concessions are threatened.

Here, the Comaroffs employ William Reno's concept of the 'shadow state', which accounts for how 'a realpolitik of thuggery and profiteering is conducted behind a facade of formal administrative respectability', and involves a range of actors and practices more or less violent and more or less illegal' (Comaroff and Comaroff 2006: 16). This, in turn, leads to the fragmentation of sovereignty where the distinctions between authority and criminality and between legality and illegality have become so blurred that they do not seem to exist at all. This does not imply that the sovereignty of the state disappears altogether, only that in post-colonial nations 'the dispersal of state authority in patchworks of partial, horizontal sovereignties is far more advanced' (Comaroff and Comaroff 2006: 41).

In Mexico, this scenario is palpable. On the one hand, functions that were formerly the exclusive domain of the state, like tax collection, public security, and the administration of justice, are now performed by different groups, which are mainly but not exclusively criminal. Working under the law of the strongest, these groups are expanding the territories where the state seems to be absent and illegality is the rule. On the other hand, many 'legal' groups also pay for the performance of violence. Transnational extractivist enterprises such as Canadian mining companies not only violate fundamental rights and cause substantial ecological damage, but also often push for the criminalisation of social movements which have emerged to counteract their predatory behaviour. They also often team up with organised crime groups (Reuters 2014).

Michoacán is located in the Bajío of Mexico, where the south-central part of the state, known as the Tierra Caliente, has historically been a marijuana-producing area (Maldonado Aranda 2012). Since 2006 it has been at the front line of the war on drugs. One of President Felipe Calderón Hinojosa's first acts was to send thousands of troops to the state to deal with the 'problem' of organised crime. The confrontation between drug trafficking organisations and the state generated a climate of violence, which reached into non-drug-producing areas of the state, including the so-called Meseta Purépecha.

The indigenous community of San Francisco Cherán lies at the heart of the Meseta Purépecha. According to the 2010 census, it is home to 18,141 inhabitants and it has a territory of 20,826 hectares, most of which is forest. Historically, the principal economic activities of the area have been related to forestry (Beals 1992; Castile 1974; Calderón Mólgora 2004). It is the only indigenous community that is also the head of a municipality.

Clandestine logging has always gone on. However, in 2007, with the start of a new municipal administration, the practice grew and became increasingly linked to organised crime. Trucks laden with wood crossed the town at all hours of the day. They were guarded by heavily armed men, who boasted of the theft of the wood and threatened those who dared intervene, telling them to keep their eyes down as they passed. At the same time, drug trafficking, kidnapping and the practice of 'cobro de piso', or protection racketeering were introduced. Throughout the community, businesses were shaken down for protection.

Despite the patently criminal nature of these practices, the municipal authorities took no action. No one was arrested, even for easily provable federal offences, like carrying unauthorised weapons in public. Such negligence persuaded many that the municipal authorities were complicit. Then, on 15 April 2011, a group of women left mass and confronted a group of the illegal loggers who were driving three trucks loaded with wood which, on this day, were not accompanied by armed guards. Equipped only with sticks and stones, the women stalled the convoy, rang the bells of the church, and called the community to join their protest. The rest of the community duly assembled. At this point, the truck drivers managed to get out a call to their

backers from organised crime, who arrived and threatened the community with automatic weapons. But the protestors held firm, using fireworks to drive away the armed thugs. They then arrested the truckers and kept them under guard for five days before handing them over to the municipal police. Confirming the community's suspicions of complicity, the authorities immediately freed the drivers.

As the Comaroffs argue, the global south's zones of liberalisation and increasing violence are also sources of opportunity. The sympathies of the municipal authorities were obvious and there was a well-founded fear that the criminals would return and attack again. As a result, the comuneros decided to close off the town and provide the security the state was unable to deliver. To do this, they made use of traditional forms of community organising. Barricades were placed in each one of the community's entrances; bonfires were lit every day in each one of the community's four barrios where comuneros would meet to discuss recent events and share food, and a community patrol was formed to monitor the streets and the barricades. The structure of the municipal government was dissolved, the municipal president left the community, and a series of collegiate commissions were organised to administer services in the town. They were led by the Greater Council of Communal Government. The commissions were in charge of everything from garbage collection to the delivery of justice.

Thus, from a relatively ad hoc response to immediate security concerns emerged a popular government inspired by indigenous customs. And in September 2011, Cherán's authorities demanded from the Mexican state the formal recognition of what in the language of rights is called self-determination. This claim, which we will review later in detail, was the result of a very particular context. 2011 was an election year in Michoacán and the comuneros of Cherán wanted to expel the representatives of the formal political parties, who had caused divisions, teamed up with members of organised crime, and remained utterly ineffective in solving such basic issues as guaranteeing public safety.

Today Cherán is undoubtedly one of the safest places in Mexico. The municipal police were replaced by the community patrol and a body of forest rangers who, though not without great effort, have succeeded in keeping organised crime at bay. Indiscriminate logging has ceased and levels of petty crime in the community are extremely low. At the same time, the judicial recognition of the community's right to self-determination by Mexico's two highest courts – the Supreme Court of Justice of the Nation and the Electoral Tribunal of the Judiciary of the Federation – has been crucial to the project's survival and success. Legitimated authorities can now channel public resources towards essential community-based projects. For example, there is now a nursery which produces trees for reforestation, as well as generating dozens of permanent and temporary jobs. There is a resin factory, a paving stone factory, and the largest rainwater collector in Latin America. But, above all, the structure of government is chosen according to the traditional forms of the

community – that is public assemblies. These are called on a regular basis so that the population has a direct and constant dialogue with their authorities. By radicalising democracy and relocating politics outside the formal institutions, the comuneros of Cherán have managed to escape the violence brought by electoral democracy and the economics of plunder.³ Thus, the view from the global south not only brings to the fore the consequences of untrammelled neoliberalism, as the Comaroffs argue; it can also suggest solutions to the increasing levels of violence and conflict generated by these structural changes.

The Comaroffs also emphasise the fetishisation of the law in those regions of the global south which have suffered an exacerbation of violence. In this way, we can see how different sectors of society which resent the effects of neoliberalism can resort to the judicial and legislative powers to secure an effective recognition of their rights. However, such fetishisation is also adopted by certain 'kleptocracies' and others who infringe the law. They use the language of rights to protect their interests (Comaroff and Comaroff 2006). Taken together, such fetishisation means that conflicts that were previously solved through politics are increasingly solved in the courts. In this way the law gradually displaces and becomes a substitute for politics. Thus the law becomes:

a repertoire of more or less standardized terms and practices that permit the negotiation of values, beliefs, ideals, and interests across otherwise-impermeable lines of cleavage. Hence the displacement of so much politics into jurisprudence. Hence the flight into constitutionalism, which, in its postcolonial guise, embraces heterogeneity within the language of universal rights – thus dissolving groups of people with distinctive identities into aggregates of persons who may enjoy the same entitlements and enact their differences under the sovereignty of a shared Bill of Rights. Furthermore, because social, spiritual, and cultural identities tend increasingly to cross frontiers, resort to the jural as a means of commensuration also transects nation-states, which is why there is so much talk nowadays of global legal regimes. Meanwhile, the effort to make human rights into an ever more universal discourse, and to ascribe ever more authority to it, gives impetus to the remapping of the cartography of jurisdictions.

(Comaroff and Comaroff 2006: 32–33)

In general, this is correct. As the Comaroffs argue, with a few notable exceptions (like the World Social Forum) most of the time the law is inclined to favour the interests of capital. But, outside such broad international contexts, the law can also have emancipatory potential at the local level. Here, as in the case of Cherán, the law has not so much replaced politics as been used as a tool at the service of politics. Though Mexican law is often an instrument of power that preserves the status quo, it also has cracks that can be exploited by social movements to their own advantage (Santos 2003).

The comuneros of Cherán exploited such cracks. Indigenous rights to self-determination had already been recognised and were introduced into the Constitution in 2001. And in June 2011, in a climate of increasing violence, a major reform was made to the Federal Constitution. From this point on the international treaties on human rights ratified by Mexico were incorporated into the country's legal system. Authorities were now mandated to respect the principles of human rights. Yet, despite these two constitutional changes, the Electoral Institute of Michoacán (IEM) decided not to recognise Cherán's right to stand outside the usual electoral procedures. The IEM argued that the state's electoral law overrode such considerations.

Despite this initial decision, the comuneros of Cherán decided to challenge the ruling by filing a complaint before the highest court in electoral matters, the Superior Court of the Electoral Tribunal of the Federal Judicial Branch (TEPJF). The trial was unprecedented; in most of the country the 2001 indigenous right to self-determination was a dead letter. And the comuneros' willingness to file the complaint did not demonstrate any great faith in the country's legal system, but was rather a defensive measure designed to counteract the stigmatisation of the movement as illegal by its opponents. It was also designed to give the movement greater space to manoeuvre, by trying to keep at least one foot in the institutional world (Aragón Andrade 2013).

On the day the challenge was filed in September 2011, the movement was five months old. The decision did not arrive until November that year. During the interim period, the community was still lined by barricades and dotted by bonfires. The comuneros tried to maintain solidarity by using the time to complete community work. All offers of help from representatives of organised crime or the government were repelled. Thus, politics was not subsumed by the law. Rather, the law acted as an adjunct to political action.

In November 2011, the TEPJF finally decided to recognise Cherán's right to self-determination. In so doing, it determined that the local authorities could be chosen by *usos y costumbres* rather than by the procedures of electoral democracy. The state government was forced to execute the court ruling, stopped imposing electoral rules on the town, and now recognised the indigenous government of the Purépecha municipality of Cherán as a valid interlocutor and political actor. The ruling also had broader consequences. For example, in 2014 the Supreme Court of Justice of the Nation (SCJN) issued a judgement on the State Constitution of Michoacán. According to the comuneros of Cherán and other indigenous population centres, they had not been consulted on changes to the Constitution with regards to indigenous rights. The SCJN acknowledged the validity of their case and ordered the state government to consult with the municipal authorities on all legislative reforms affecting indigenous matters. Today the right to indigenous consultation is recognised in the law of citizen participation of the state. Here, the effects of the consultation are binding (Aragón Andrade 2015a).

That is why, even when political action continued despite pressure from law enforcement, the decree injected new energy into the movement: the TEPJF

recognised the community's right to self-determination and that it would be elected according to local customs rather than via the usual electoral process.

With this ruling the state government was forced to implement the court's mandate and recognise the customs explicitly outlined in the resolution. It also had to recognise what was now the Purépecha Municipality of Cherán as an interlocutor and a relevant actor in the political context. This was particularly pertinent in 2014 when the Supreme Court of Justice issued a judgement on proposals advanced by the traditional authorities of the municipality for a reform to the Constitution of Michoacán concerning indigenous rights. The SCJN acknowledged, as part of the powers of municipal authorities, the right to prior, free and informed consultation as specified by legislative reforms in indigenous matters. It thus gave Cherán a victory over the state's executive powers and the Michoacán legislature, allowing the municipality to achieve the right to indigenous consultation as recognised by law (Aragón Andrade 2015a).

It could be argued that in this case the law legitimised violence and simply created more sources of sovereignty. But the project is in fact a relative oasis of calm amid chaos. As such, the experience of Cherán suggests that there is space between law and disorder. In this instance, the violence which created the autonomous municipality is qualitatively distinguishable from other forms of violence. At the same time, the law is not reduced to a fetishistic practice that substitutes jurisprudence for politics.

Against the fetishisation of the Constitution

To deepen our understanding of this question it is worthwhile to examine Lemaitre's (2011) essay about 'constitution and barbarism', which attempts to rethink the law in 'lawless' areas. It reflects on the Colombian experience and seeks to examine the relationship between violence and the law. In particular the essay looks at how daily practices of violence affect the way law is viewed and treated in such areas.

Lemaitre suggests that Marxist theories primarily focus on the power dynamic of the relationship between law and violence. In doing so, they do not sufficiently reflect on the role of the law in areas exposed to daily violence. She suggests that poststructuralism's contribution to understanding law and violence is more illuminating. The idea that law is socially situated in certain geographical and temporal contexts and that its authority has no other foundation than custom resonates with Derrida's (1997) remarks on the mythical foundations of justice and law. She also draws on Pascal's comments on religion and the way in which the daily reading of texts considered sacred evolves into rites and dogmas, thereby convincing people of the existence of God. Lemaitre takes this formulation and reflects on the implications it has for the progressive legal academy, which reproduces and defends the rites and discourses of law and the belief that its foundation is justice, which frequently

leads to the moralisation of law and to seeing 'zones without law' as an expression of barbarism and the opposite of civilisation. She notes that:

Because of this moralizing tendency of the progressive legal academy, it is important to insist on the two arguments that provide greater clarity in the theorization of law on the violent zones that run through and mark Latin America: the first is that both violence and the law are social realities without greater metaphysical foundation than that provided by custom itself. The second is that, while it is true that both progressive law and violence reflect very different social meanings of the value of human life, the advocacy that progressive lawyers make of law is a political commitment, a political will, rather than a metaphysical truth about the nature of law or justice.

(Lemaitre 2011: 57)

A consequence of this premise, as developed by Lemaitre, is that where custom is the law we find varying zones of legality. Where custom involves violent practices we find areas of illegality, but in both cases custom makes people naturalise and normalise the law or violence. The absence of the law in some areas (where violence is customary and denotes what is normal) means that judicial prescriptions do not necessarily affect reality, or at least not all realities, nor is the law normalised everywhere.

In the case of the second premise, Lemaitre argues that, even if we acknowledge that in certain areas there exists a convergence of zones where the norm is the law and others where the norm is violence, one simply cannot accept, as per the Comaroffs, the myriad sovereignties (and therefore illegalities) that this assumes. Quite the contrary, we must distinguish what the realms of violence and progressive law say about the humanity of the Other and from there establish a political commitment. The difference is that while the latter is clearly humanist, for violence such a criterion is non-existent, especially with one's enemy. Political commitments must relate to the defence of progressive law; to the extent that the recognition of common humanity is accepted as normal, extreme violence will disappear.

The author furthermore insists:

That is the political commitment of law, and its necessity makes law not only a practice in some areas of our countries, but also a political project. What unites us in taking sides with the law [...] is the political will to give value to these bodies, to insist on their secular sacralization, to try to build the social consensus that makes it part of the common sense shared in the societies in which we live.

(Lemaitre 2011: 64)

But if violence or law as social realities have no more foundation than custom, how do zones of violence move towards progressive law? How do

they subvert what is 'normal'? Walter Benjamin argues that, hypothetically, violence can serve purposes that are considered legal if they have a 'universal historical recognition' (2007, 116). He points to the fact that the legal order denies people the right to use violence and as a result violence is monopolised by legal frameworks. He points out that:

the law sees violence in the hands of individuals as a danger undermining the legal system. As a danger nullifying legal ends and the legal executive? Certainly not: for then violence as such would not be condemned but only that directed to illegal ends.

(Benjamin 1978: 280)

As a result, the law does not monopolise violence to safeguard legal ends, but to safeguard itself, because violence has the ability to found a new order of relations and thus a new kind of law (Benjamin 2007).

To claim that violence and the law are mutually exclusive is equivalent to denying the fact that daily violence occurs in places like Colombia or Mexico as a result of the processes of neoliberalisation that are facilitated by the state. Among the clearest examples of this are the areas where the state has granted massive concessions to private capital, often for the exploitation of natural resources. Although such concessions may be legal, they usually result from the legalisation of displacement. The state shows its full force in the face of challenges by local peoples, either via repression or the use of paramilitarism, a privatised way of exercising police functions. The 'norm', then, is not necessarily either the law or violence, but both are clearly related in increasingly complex ways.

In fact, situations of severe violence have come to coexist with a constant appeal to the law and state tribunals. As a consequence, the creation or modification of public policies through judicial decisions, the legitimisation or revocation of legislative or executive decisions and the creation or extension of individual and collective rights, have been increasingly subject to judicial decision-making since the 1980s, giving rise to a particular phenomenon known as the judicialisation of politics (Sieder et al. 2011).

As noted above, a common effect of this trend has been to substitute the law for politics, with a wide range of actors employing human rights and other kinds of law to achieve their objectives. Human rights legislation, for example, is not exploited exclusively by progressive movements but also by big transnational institutions like the World Bank.

If, as Lemaitre points out, violence is normalised in areas where progressive law is seen at best as a farce, reversing such trends is extremely complex. Normalisation adds to the fact that violence may even have legal origins and can be based directly or indirectly on human rights. In the case of Cherán, the movement emerged in a context of violence, but far from normalising violence and living with it, the community decided to face it and subvert it. Although we are observing a case which has managed to construct an

alternative to violence, which is far from the rule, we do now see in many areas the emergence of new social movements which are reacting against plunder and violence.

As Cherán demonstrates, the popular government that emerged as a result of social mobilisation highlighted the dignity and humanity of those involved. This did not happen as a result of state law but instead developed from the community's own customs and practices. They attempted to respond to the crisis of legitimacy of the major political parties and to the inevitable violence engendered by the pursuit of neoliberal policies.

The Constitution and international treaties do provide legality and institutional support to Cherán, but this is more as a result of a process of hybridisation, where state law is employed to complement local knowledge and culture. It is a rather complex context and one in which, as Lemaitre (2009) advocates, the political commitment of activists should be with progressive law and rights. At the same time, she asks whether this does not suggest that progressive laws can function only if they are grounded in justice. The existence of a progressive legislation which recognises the humanity of the Other and has this as its central premise can depend not only on the socio-historical and geographical context but also on the promotion of a legal framework which in turn promotes and establishes a political commitment. Again, Lemaitre is useful here for an understanding of the utility of progressive law as a means to an end:

The description of the self divided between 'I know ... and yet' fits with my own reaction, and that of activists and academics I have interviewed on the subject of attachment to the law. We know well what the problems are in the application of the law, and we also know that this is not, or should not be, more than an instrument to reach an end. And yet desire, pleasure, and pain exist in a space that is beyond any calculation of usefulness resulting from victory or defeat.

(Lemaitre 2009: 388)

The question thus becomes one of establishing a political commitment to the law while recognising its limits and the myriad problems relating to its implementation. There exists a tendency among activists to subject political struggle to the times, procedures, places and language of the law, without realising that instead they should be using it as a tool in the service of political struggle.

This position has been fundamental in the activities in which we have been involved in Cherán. As noted above, the TEPJF judgement recognised the right to self-determination for members of the community who pushed for a judicial decision. This made possible the appointment of traditional authorities to be elected according to the customs of the now indigenous municipality. Although those involved numbered about 2,000, they did not represent the entire community. As a result, a consultation with all the comuneros and

comuneras was organised so that they could articulate their views on whether to be governed by local customs or whether to continue with a system led by political parties.

The ruling indicated that the consultation had to be carried out in accordance with international standards, which meant that it should be culturally relevant and in coordination with the community. In the first meeting with the staff of the Electoral Institute of Michoacán commissioned to organise the consultation process, we were told that it should be done by means of a secret ballot and that people should be identified by presenting their voting cards.

Accepting this mechanism would have been detrimental in the sense that we would have lost control of the consultation process, which was indispensable given that there were various actors ready to defend the interests of political parties and thus forestall government by indigenous customs. Such parties would undoubtedly have employed the usual tricks which characterise the electoral process in Mexico, such as vote-rigging or vote-buying.

The strategy we followed was to organise consultations which were sensitive to the local culture and customs in a similar manner to those established by the Inter-American Court of Human Rights. In this way, the community would decide on the mechanisms of consultation, thus ensuring that they would have greater control and encourage an atmosphere of openness and democracy. This also had the advantage of discouraging intrusion from unwanted actors who generally operate clandestinely in order to subvert popular democratic participation.

But perhaps a clearer example of the importance of focusing the activist commitment on politics can be seen in the ruling issued by the SCJN and the constitutional controversy that we and the traditional Cherán authorities provoked. The ruling was only declarative because, although it recognised the right to prior, free and informed consultation, it did not support the Congress of Michoacán's legislative power to revoke the reform made to the local constitution on matters of rights.

If our political commitment had been to indigenous law and not with Cherán, what could we have done about it by conforming to a ruling that, while a huge step forward on the path to recognition of indigenous rights, was something of a defeat because we were unable to make the rights applicable? What we did do, however, was reinforce the relevant parts of the Court's ruling, which recognised Cherán as an indigenous municipality and therefore *sui generis*, since it is unlike any other municipality in the country. This was also incredibly significant in the sense that an indigenous municipality overcame the executive and legislative powers of the State of Michoacán. This strengthened Cherán's position as an obligatory interlocutor, particularly in the local Congress, to the extent that today the right to self-determination and the right to consultation are widely recognised and are now a reality for other communities in the region.

As discussed above, the law has emancipatory potential and we should not forget that it was never an instrument originally intended for subordinate

groups but was instead designed to maintain the stability of the dominant order and social and racial hierarchies (Benjamin 2007). Political commitment must always be embedded within movements that make counter-hegemonic use of the law (Santos 2003). If those of us involved in the activism of legal accompaniment of social movements know this, in practice we often ignore such fundamental issues and inevitably fall into a kind of fetishisation of the law which makes us resist, often mistakenly, the effects of neoliberalism, though we will never be able to make even minimal changes to its structure.

As we have argued, the literature discussed in this chapter has made significant contributions to studying the place of law in regions dominated by violence. At the same time, it tends to ignore some fundamental aspects which would help to deepen our understanding of its role. Through our experience as lawyers of the Purépecha community of San Francisco Cherán we have tried to show these shortcomings, placing particular emphasis on the importance of building counter-hegemonic political processes as well as new projects of social coexistence.

We argue that the proposition of anthropologists John and Jean Comaroff overlooks the fact that while the contemporary period is one of myriad types of sovereignty and violence, we cannot not take them all into account, given that they rarely share the same aims. In this sense, there are kinds of violence that, while they do not originate with the state, clearly contribute to maintaining and strengthening forms of domination exercised by the neoliberal state. Others, as in the case of Cherán, promote alternative projects of peace, security, democracy and coexistence, thereby including qualitatively different elements to those of other previous comparable cases.

It is for this reason that Julieta Lemaitre's humanist project of progressive law cannot be accepted as belonging uniquely to the realms of the Constitution and state law. The experience in Cherán clearly demonstrates that a humanist project, and perhaps one with great transformative potential, can be built from indigenous forms of justice. This is why in this chapter we give equal weight to the emancipatory potential of state law, community rights and indigenous justice. The Purépechas of Cherán did not need to be jurists or constitutionalists to expand their knowledge and formulate a humanist political project, which also included protection of the local environment. This is why one cannot favour the Constitution over indigenous justice, nor consider that it is an exclusive component of such a humanist project or defence of life. It is no coincidence that popular rights and indigenous justice are usually more acceptable to those practising and benefiting from them than are the law of the state and the Constitution.

These two approaches allow us to understand the law in a pluralistic manner and how it can play an important counter-hegemonic role. The fetishisation of the role of law, as theorised by Comaroff and Comaroff, often functions to preserve systems of domination. However, this does not exclude the notion that the law can be utilised effectively in social struggle. The experience of Cherán demonstrates just how this political project, which

emerged from the movement which began on 15 April 2011, was underpinned by a counter-hegemonic use of state law, and how this intervention has been crucial in achieving stability to this day.

Affirming the emancipatory potential of the judicial system should not lead us towards a fetishism of the law nor to articulate our political commitment to the law, as Lemaitre argues. We agree instead with Boaventura de Sousa Santos (2003) that the law is transformative only when it backs the potential of the political projects of groups and social movements, which use it to mobilise change. In other words, our commitment should not be to the law but to politics and their transformative potential, while recognising that the law can function as an effective tool in bringing about progressive change.

Notes

- 1 See this interview: 'Entrevista al Dr. Mireles con Carmen Aristegui', www.youtube.com/watch?v=WODxRRq2YQ4.
- 2 For the work of the Colectivo Emancipaciones, consult its web page, <https://colectivoemancipaciones.org/>.
- 3 In this respect Aragón Andrade (2015b) argues that the experience in Cherán has generated practices that tend towards a dismantling of the market, patriarchy and neo-colonialisation, which are implicit in the hegemonic view of Mexican democracy.

Bibliography

- Aragón Andrade, O. (2012) 'Opinión sobre la viabilidad, legalidad y constitucionalidad para la elección por 'usos y costumbres' de la comunidad purépecha de Cherán, Michoacán', *Expresiones. Órgano Oficial de Difusión del Instituto Electoral de Michoacán*, 15.
- Aragón Andrade, O. (2013) 'El derecho en insurrección: el uso contra-hegemónico del derecho en el movimiento purépecha de Cherán', *Estudios y pesquisas sobre las Américas*, 7(2).
- Aragón Andrade, O. (2015a) 'El derecho después de la insurrección: Cherán y el uso contra-hegemónico del derecho en la Suprema Corte de Justicia de la Nación', *Sortuz. Oñati Journal of Emergent Socio-legal Studies*, 7(2).
- Aragón Andrade, O. (2015b) 'Otra democracia es posible: aprendizajes para una democracia radical en México desde la experiencia política de Cherán'. Lecture, Department of Spanish and Portuguese, University of California–Berkeley.
- Benjamin, W. (1978) *Reflections: Essays, Aphorisms, Autobiographical Writings*, New York: Harcourt Brace Jovanovich.
- Benjamin, W. (2007) 'Para una crítica de la violencia', in *Concepto de filosofía de la historia*, Argentina: Editorial Caronte Filosofía, pp. 113–138.
- Beals, R. L. (1992) *Cherán: un pueblo de la sierra*, Zamora: El Colegio de Michoacán.
- Calderón Mólgora, M. A. (2004) *Historia, procesos políticos y cardenismos*, Zamora: El Colegio de Michoacán.
- Castile, G. P. (1974) *Cherán: la adaptación de una comunidad tradicional*, México DF: Instituto Nacional Indigenista.

- Comaroff, J. and Comaroff, J. L. (2006) 'Law and Disorder in the Postcolony: An Introduction', in J. Comaroff and J. L. Comaroff (eds), *Law and Disorder in the Postcolony*, Chicago, IL: University of Chicago Press.
- Comaroff, J. and Comaroff, J. L. (2009) *Ethnicity Inc.*, Chicago, IL: University of Chicago Press.
- Comaroff, J. and Comaroff, J. L. (2012) *Theory from the South: Or, How Euro-America Is Evolving toward Africa*, London: Routledge.
- Derrida, J. (1997) *Fuerza de ley: el fundamento místico de la autoridad*, Madrid: Tecnos.
- Gledhill, J. (2012) 'Limites da autonomia e da autodefesa indígena: experiências mexicanas', *Mana*, 3(18).
- Lemaitre Ripoll, J. (2009) *El derecho como conjuro: fetichismo legal, violencia y movimientos sociales*, Bogotá: Siglo del Hombre Editores y Universidad de los Andes.
- Lemaitre Ripoll, J. (2011) '¿Constitución o Barbarie? Cómo repensar el derecho en las zonas "sin ley"', in C. Rodríguez Garavito (ed.), *El derecho en América Latina: un mapa para el pensamiento jurídico del siglo XXI*, Buenos Aires: Siglo Veintiuno Editores.
- Maldonado Aranda, S. (2012) 'Drogas, violencia y militarización en el México rural. El caso de Michoacán', *Revista Mexicana de Sociología*, 1(74).
- Olmos, J.G. (2015) *Batallas de Michoacán: autodefensas, el proyecto colombiano de Peña Nieto*, Mexico DF: Ediciones Proceso.
- Reuters (2014) 'Controlan caballeros templarios exportación de mineral de hierro', *La Jornada*, 20 July.
- Santos, B. S. (2003) 'Poderá o direito ser emancipatório?', *Revista Crítica de Ciências Sociais*, 65.
- Sieder, R., Schjolden, L. and Angell, A. (2011) 'Introducción', *La judicialización de la política en América Latina*, Mexico City: Centro de Investigaciones y Estudios Superiores en Antropología Social/Universidad Externado de Colombia.