

# The necropolitical *dispositif* of production and administration of forced migration at the United States-Mexico Border

## El dispositivo necropolítico de producción y administración de la migración forzada en la frontera Estados Unidos-México

Ariadna Estévez <sup>a\*</sup>  <https://orcid.org/0000-0002-5861-3956>

<sup>a</sup> Universidad Nacional Autónoma de México, Centro de Investigaciones sobre América del Norte, Mexico, email: [aestevez@unam.mx](mailto:aestevez@unam.mx)

### Abstract

The objective of the article is to develop the theory of the necropolitical *dispositif* for the production and management of forced migration. The methodological design is deductive, that is, it is based on fundamentally documentary sources through which theorization was reached. Even though it has the limitations of the method, the article is innovative because it systematically analyzes subjective phenomena —migrants, deportees, displaced and asylum seekers stranded or awaiting judicial decisions that live in rubbish dumps and other similar places— and structural phenomena —political and sexual violence, impunity and economic megaprojects— to propose a theorization of forced migration as an apparatus that operationalizes a series of policies, the purpose of which is the management the death of disposable populations for the reproduction of neoliberal capitalism, both legal and criminal, and the political and social circumstances that sustain it.

Keywords: forced migration, necropolitics, structural violence, criminal violence, United States-Mexico border.

### Resumen

El objetivo del artículo es argumentar y fundamentar la teoría del dispositivo necropolítico de producción y administración de la migración forzada. El diseño metodológico es deductivo, es decir, se basa en fuentes fundamentalmente documentales mediante las cuales se llegó a dicha teorización. Aun cuando tiene las limitaciones del método, el artículo es innovador porque analiza sistemáticamente fenómenos subjetivos —migrantes, deportados, desplazados y solicitantes de asilo varados o en espera de fallos judiciales que viven en basureros y otros

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\*Corresponding author: Ariadna Estévez, e-mail: [aestevez@unam.mx](mailto:aestevez@unam.mx)



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lugares similares— y estructurales —violencia criminal, estatal y sexual, impunidad y megaproyectos económicos— para proponer una teorización de la migración forzada como un dispositivo que operativiza una serie de políticas cuyo fin es administrar la muerte de poblaciones desechables para la reproducción del capitalismo neoliberal, tanto legal como criminal, y las circunstancias políticas y sociales que lo sostienen.

Palabras clave: migración forzada, necropolítica, violencia estructural, violencia criminal, frontera México-Estados Unidos.

## Introduction

On the US-Mexico border, migrants and the poor are not only left to die, they are pushed into scenarios from which they must escape and survive. In the 10 states that make up the border region (Baja California, Sonora, Chihuahua, Coahuila, Nuevo Leon and Tamaulipas on the Mexican side, and California, Arizona, New Mexico and Texas on the US side), necropower pushes migrants and the poor into urban areas that are not conducive to life. Fracking, drug cartels, femicide, massacres and murders of local officials, human rights activists and ecologists are the necropolitical forces behind the displacement of marginalized populations. Moreover, migrants who are waiting for their asylum applications to be resolved, or people who have been deported and are waiting for a new opportunity to cross to the other side, are swept to the periphery and to other barely livable urban spaces, such as garbage dumps and sewers. Likewise, criminal violence, impunity and a state of exception drive the poor from their homes located in places rich in natural resources.

Poverty, violence and other precarious living conditions for migrants and marginalized populations along the US-Mexico border make up what we propose calling the *necropolitical dispositif of production and administration of forced migration*—in other words, a set of policies and laws enacted to produce situations, times and places that force people to leave their homes or that lead them to situations and places of death. According to the annual report by the United Nations Commission on Human Rights (UNHCR), from 2006 to 2016, a total of 111 176 Mexicans fled the country. The most important report on worldwide internal displacement, by the Internal Displacement Monitoring Centre (IDMC), states that from 2006 to 2014, at least 481 000 people had been internally displaced in Mexico. According to the report, in 2014 alone, some 9 000 people were displaced in 23 mass events in the Mexican states of Sinaloa, Tamaulipas, Chihuahua, Veracruz, Michoacán, Chiapas, Oaxaca, Coahuila and Mexico City (IDMC, 2015a; 2015b).

The present article suggests that necropower institutes policies and laws in border regions that deliberately intend to lead asylum seekers and deportees to their deaths and to depopulate geographically strategic spaces, thus producing more migrants. To develop this argument, the idea of necropower in general and its application to migration studies is first examined. Then, the apparatus for production and administration of forced migration, which includes three necropolicies, is characterized: forced depopulation, asylum as a means of administering suffering, and disposability pockets.

## Understanding Necropower

Foucault gave the name “biopolitics” to the technology of power through which the life of the population is regulated and administered as a biological collective in order to allow some to live and others to die. The latter are usually racial minorities and groups deemed inferior. Biopolitics refers to a population, “a mass of coexisting, living human beings that have specific biological and pathological characteristics and are therefore placed under specific body of knowledge and technologies” (Foucault, 1997, p. 71).

The rationality—governmentality—of contemporary biopolitics is neoliberalism (Foucault, 1997, p. 67). In the Foucauldian framework, the word “government” does not refer to the institution of government but to “an activity aimed at leading individuals throughout their lives by placing them under the authority of a guide that is responsible for what they do and what happens to them” (Foucault, 1997, p. 67). Neoliberalism as government opposes state intervention and bureaucratic expansion in the name of economic freedom because it violates individual rights. Its main objective is to apply an economic discourse—concepts, objects, logic and language—to social analysis, thus erasing the differences between the two fields. The economic rationality model is used to justify and restrict government action. The national government—the governmentalized state—becomes a business administrator in charge of universalizing competition and inventing systems for individual and social action that are governed by the laws of the marketplace. In this manner, the economy ceases to be just one aspect of human life and instead encompasses all areas of life. Universalizing the economy enables an understanding of social aspects and an evaluation of state and social performance in economic terms (Foucault, 2004) in order to subordinate all spheres of life to market dynamics, including the criminal economy and human rights.

For this reason, neoliberal states have become managerial states that no longer only control individual behavior using discipline but also regulate and manage population growth and mortality such that the population reproduces itself through technologies of the self, in other words, techniques that make individuals responsible for their own health, education and everything involved in producing the “human capital” that each individual possesses. In order to transfer its social obligations to the individual, the neoliberal state uses various technologies of power, although only two are of interest here: norms and public policy (Foucault, 2006).

On one hand, within neoliberalism there is a “growing importance of the role of social norms at the expense of the legal system” (Castro, 2004, p. 219). However, it is not that:

...the law disappears or that the institutions of justice tend to disappear, but that the law works more and more as a social norm and the judicial institution is integrated more and more with a continuum of apparatuses (medical, administrative) whose functions are mainly regulatory (Castro, 2004, p. 219).

Furthermore, the neoliberal state implements public policies, which it defines as decision-making mechanisms to modify or guide social action. They take the form of legal, political and technical elements based on social knowledge (Guendel, 2009, p. 3). In neoliberalism, public policy is expected to regulate the health and growth of the population (Foucault, 1997, pp. 70-71), not via direct state intervention as in a welfare state but rather through policies aimed at individual self-responsibility. In neoliberal terms, this is expressed as “be your own boss.”

The role of the state in neoliberal public policy is characterized by a reduction of social policy to a minimum and the distribution of basic social benefits to the poor, primarily education and health, which are the services that guarantee the reproduction of “human capital.” Meanwhile, the better-off groups in society are encouraged to use the private sector to acquire education and health services. This policy transfers to the individual the exclusive responsibility of seeking the best “investment” for their capital. Ultimately, the emphasis on caring for oneself is presented as autonomy, whereby individuals from civil society are compelled to become involved in the design of public policy (Foucault, 2004).

Currently, in economically subordinated countries, population administration for the propagation of the neoliberal state is aimed not so much at regulating population growth but at managing the death of those who fail to insert themselves into “globalization” or who do so marginally, such as those at the lower end of the criminal economy. Biopolitics is transformed into necropolitics. According to the African philosopher Achille Mbembe, because the poverty, inequality, violence, massacres, privatization of violence (criminals, mercenaries, private guards) and markets for illicit goods that threaten life are such prevalent phenomena, then what is regulated and administered is clearly death (Mbembe, 2011). In that sense, in a world where the economy of illegal goods includes human life that is threatened or shattered, then life preservation, care and freedom are also a commodity, and likewise, its purchase and sale are a market (Valencia, 2010). In this scenario, population intervention is designed to make marginal social groups die off and to let live those favored by neoliberalism (rich white men from the West). It is an administration of death.

In Mexico, necropolitics has a peculiarity: the state shares its technologies and techniques for dominance and death management with the actors of privatized violence—in particular the criminal actors—giving rise to what can be called the necropolitical governmentalization of the Mexican state or the legal-criminal state. Indeed, death is clearly the objective of the public displays of extreme violence, such as massacres intended to intimidate, subjecting bodies to torture, executions, forced disappearance, persecution and death, in territorial enclaves where the challenge is to survive amidst the poverty, corruption, impunity and a minimal institutional presence of the state (Estévez, 2013a; 2013b; 2015). According to data from the Center for Economic Research and Higher Education (Spanish acronym-CIDE) and the VICE news agency, during Felipe Calderón’s presidential term (2006-2012), 68 massacres were recorded throughout the country (the only states with no massacres were Zacatecas, San Luis Potosí, Baja California Sur, Morelos, the federal district of Mexico City, Tlaxcala, Puebla, Chiapas and Campeche. In contrast, Tamaulipas, Chihuahua, Durango and Guerrero were the Mexican states with the most massacres, with 11 in Tamaulipas and Chihuahua, nine in Durango, and seven in Guerrero (Hernández, 2017).

The following were the most shocking massacres covered by the media: La Marquesa, state of Mexico (2008), 24 construction workers were kidnapped and killed by alleged members of *La Familia Michoacana*; Acapulco, Guerrero (2010), an armed commando group kidnapped 22 tourists from Michoacan, of which 18 were found dead days later; Villas de Salvárcar, Ciudad Juárez, Chihuahua (2010), alleged hit men fired at 60 students between 12 and 15 years old, killing 16 and injuring 12; Guadalajara, Jalisco (2011), alleged narcos left the bodies of 26 people at the *Arcos del Milenio* monument a few days after the Pan-American Games began in that city; Allende, Coahuila (2011),

the army broke into homes in the town, burned businesses and kidnapped 300 people who are still missing to this day; and San Fernando, Tamaulipas (2011), 72 migrants were killed by *Los Zetas* for refusing to work as hit men. There were also the massacres committed in Monterrey, Nuevo León (2011), alleged members of *Los Zetas* broke into and burned a casino where they shot the owner for an unpaid debt and killed 52 in the fire; Cadereyta, Nuevo León (2014), 49 torsos were strewn along a road; Ayotzinapa, Guerrero (2014), the kidnapping and forced disappearance of 43 students by police and military personnel; and Tlatlaya, Estado de Mexico (2014), the army executed 22 alleged criminals who had surrendered after being cornered; Tahuato, Michoacán (2015), the Federal Police also executed 42 alleged criminals who had already surrendered; Apatzingán, Michoacán (2015), police and military fired at self-defense groups killing 16 and wounding 44; Zitlala, Guerrero (2015), an armed commando killed seven people from that indigenous community; and Monterrey, Nuevo León (2016), criminals from *Topo Chico* prison battled each other in a bloody fight that left 49 dead (Hernández, 2017).

Mbembe (2011) states that necropolitical technologies are those techniques used for applying death, such as Nazi concentration camps or commonplace massacres such as those mentioned above. They are 'necro-anatomo-political' in that they do not simply discipline bodies but subject them to total destruction. However, I maintain that necropolitics, as well as biopolitics, also operates through technocratic technologies for regulation such as norms and public policies. Public necropolitics are implemented to manage and regulate the side effects of the application of death, such as social suffering.

## The *Dispositif* for Production and Administration of Forced Migration

According to Foucault, a *dispositif* is a network of discursive and non-discursive elements such as laws, institutions, and infrastructure with the specific function of maintaining power. In the era of neoliberal governmentality, such *dispositifs* are characterized by being inclusive because they tend to include more and more elements, permissive because they can be added, and exclusionary because they eliminate the object of their focus (Foucault, 2006, pp. 66-67).

Giorgio Agamben expanded on the *dispositif* concept, stating:

Further generalizing the already very broad class of Foucauldian *dispositifs*, I will literally call anything a *dispositif* that has some capacity to capture, guide, determine, intercept, model, control and ensure the expressions, behaviors, opinions and conversations of living creatures (Agamben, 2009, p. 14).

According to Agamben, what is found between a living being and a *dispositif* is a subject: "I call 'subject' whatever results from the relationship or, in a manner of speaking, from body to body between the living and the apparatuses" (Agamben, 2009, p. 14).

The necropolitical production and administration of forced migration refers to how people who are subject to criminal and legal violence, death, sex and labor trafficking, forced labor, and the criminal economy are left to die in their countries

of origin or while trying to cross borders that become increasingly protected and dangerous due to the illegalization of undocumented migration, obstacles to asylum and the deportability regime (De Genova, 2002). Thus, we suggest that the use of these *dispositifs* as an analytical tool implies that there are *dispositifs*, technologies and mechanisms used to ensure that the poor, the marginalized and the disposable die while trying to migrate.

The analysis of the governmentality of migration focuses on how institutions, laws, detention centers, courts, civil organizations and other bureaucracies are projected in different apparatus types that manage the lives of migrants. These analyses focus on the *dispositifs* through which migrants are constructed, managed and finally expelled. While this article pursues a strategy of analyzing neoliberal governmentality and its technologies (public policies), it does so from a decolonial perspective<sup>1</sup>—the analysis of necropower—that focuses on how people are pushed into deadly scenarios through neoliberal governmentality, and how it forces them to migrate or remain in a limbo of mobility.

As in the neoliberal governmentality of biopower, necropower is executed through death technologies, or necropolitics. However, the purpose of necropolitics is to administer and regulate death beyond life to ensure the propagation of criminal and legal capital. Necropolitics are technologies that aim to organize areas based on race, gender and class. In the context of the US-Mexico border, the necropolitical device of production and administration of forced migration contains three interrelated necropolicies: *a*) forced depopulation, which produces asylum seekers, refugees and the so-called undocumented migrants; *b*) asylum as an administration of suffering, which uses legislation and asylum institutions to control the time and location of asylum seekers, refugees and migrants, instead of providing them with legal protection against persecution; and *c*) disability pockets, which are the physical places of death in which asylum seekers, migrants and deportees are confined when asylum, the apparatus for administering suffering, is denied them.

### *Forced Depopulation of Border Areas*

Criminal violence forces people to leave Mexico and take refuge in the United States, or at least that is the most common narrative. Organized crime and drug trafficking have led to Mexico having one of the highest homicide rates in the world and therefore many flee the country. Mexico is ranked 23rd among the world's most

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<sup>1</sup> Decolonial philosophy is responsible for unmasking European hegemony in world thought. It has a long history in Latin America and can be traced back to the work of the Mexican Leopoldo Zea, the Cuban José Martí and the Peruvian José Carlos Mariátegui, among others. However, it was not until the 1990s that the exponents of this thinking established themselves as the Modernity/Coloniality Group and assumed the foundational task of decolonizing Eurocentric epistemology. The main exponents of decolonial thinking are Edgardo Lander, Enrique Dussel, Arturo Escobar, Michel Rolph Trouillot, Walter Mignolo, Aníbal Quijano, Fernando Coronil, Ramón Grosfoguel, Santiago Castro Gómez, Catherine Walsh, Nelson Maldonado Torres, Zulma Palermo, Eduardo Restrepo, Agustín LaoMontes, Freya Schiwy and Javier Sajinés. This is a mostly male group, which only raises racism and indigenous identity as determinants of the particular subjectivity of Latin America. There is a decolonial feminist wing that establishes the racial and ethnic particularities of Latin American women that separate them from the homogenizing concept of “the woman.” Among the decolonial feminists are Julieta Paredes, María Lugones, Silvia Rivera Cusicanqui and Yuderlys Espinosa.

dangerous countries and is undergoing a humanitarian crisis (The United Nations High Commissions for Refugees [UNHCR], 2016). According to the United Nations and the IDMC, criminals are the ones responsible (IDMC, 2015a; 2015b). However, this argument ignores two factors. First, Mexico is rich in natural resources, including metals (steel, lead, gold, nickel, zinc and silver) and hydrocarbons (shale gas) (Sinnott, Nash & De la Torre, 2010). Second, not all of the region's violence is related to the cartels: it includes femicide, killings of environmental activists, political assassinations and forced disappearances (Comisión Interamericana de Derechos Humanos [CIDH] y Organización de los Estados Americanos [OEA], 2015) Criminal violence, even when it is rampant, is only part of a dangerous cocktail that serves to "wipe clean" areas where local communities resist dispossession. This can be called forced depopulation.

According to the IDMC, of the 287 000 Mexicans displaced by violence and the 91 000 displaced by disasters, the majority are in the states of Chihuahua, Nuevo Leon, Tamaulipas, Sinaloa, Durango, Michoacan, Guerrero and Veracruz (IDMC, 2017). All these states are rich in minerals, non-renewable resources and shale gas. These states are also famous for their narco-trafficking-related violence. A significant number of forced disappearances have occurred in US border areas in which the army and criminal gangs are jointly involved (Comisión Nacional de Derechos Humanos [CNDH], 2016). For example, Ciudad Juarez, Chihuahua (across the border from El Paso, Texas), was the most violent city in the country in 2009 and 2010 (Ortega, 2010). Nuevo Leon, Coahuila and Tamaulipas are states controlled by *Los Zetas* (which is responsible for thousands of the 300 000 forced disappearances) and by the Gulf Cartel, whose leaders are protected by local politicians (Martínez, 2013).

These states are also located on top of a very important source of shale gas on the Mexico-Texas border called Eagle Ford Shale Basin in the United States and *Cuenca de Burgos* on the Mexican side (Lallanilla, 2015). Fracking, the method used to extract this shale gas, has important environmental consequences, as it requires the use of 7.6-15 million liters of water per extraction and also involves the use of polluting chemicals (Navarro & Bessi, 2015). Exploitation of the shale gas in Eagle Ford requires 27 000 wells, and in an arid area where water is scarce, its intensive use is damaging agriculture and provoking more and more protests (Grillo, 2014). Who are the victims of violence in these resource-rich territories coveted by criminal and legal corporations? According to a special report from the National Human Rights Commission (CNDH), the majority of displaced people in Mexico are peasants from communities with self-sustaining economies, environmental and human rights activists, small landowners, local authorities and journalists. Most of these groups represent a threat to the interests of extractive capital that want to appropriate their lands, either through explicit resistance (in the case of activists, authority figures not aligned with capital and peasants) or accusations (in the case of peasants). While the violent cartels certainly represent a major problem in Mexico that should not be ignored, there is a link between all of the depopulation strategies that reveals the role of transnational corporations, political elites and economic oligarchies in the daily displacement of people and creation of places of death in the region (CNDH, 2016).

The data indicate that in countries rich in natural resources, the coincidence between forced displacement and criminal, misogynist and political violence is not accidental. This murderous combination reflects a policy of forced displacement that aims to achieve a conflict-free exploitation of resources, as these resources are

increasingly valued in the global economy by the new technology, renewable resource and clean energy industries. To execute this strategy, a wide variety of armed actors—including drug traffickers and criminals as well as mercenaries, private security guards and hit men—sell their expertise in managing the technologies of death to powerful entities such as repressive governments or transnational corporations (or both) in what Mbembe (2011) has called the “indirect private government.”

This is the necropolitics—the politics of death—that Bobby Banerjee calls necrocapitalism, or the deaths appeased by economic profit. For Banerjee, necropolitics—which he defines as “practices of accumulation in (post) colonial contexts at the hands of specific economic actors [...] which involves dispossession, death, torture, suicide, slavery, habitat destruction, and the general administration of violence”—“is a new form of imperialism. The forced expulsion of peasants is followed by the control of natural resources that they once possessed” (Banerjee, 2008, p. 15), and this is what we find in the forced migration that occurs in Mexico.

This is directly related to what Rodríguez Garavito calls “social minefields,” that is, the territories of indigenous peoples that are rich in natural resources and are contested by transnational corporations, criminal groups and states. These territories are mined for having resources and for being dangerous. This is where the right to prior consultation is promoted, which is a legal mechanism for legitimizing with a purported consultation the previously made decision to exploit those territories (Rodríguez, 2012, pp. 5-6). So, let us be honest: why negotiate with poor indigenous communities sitting on rich deposits of oil, water, minerals and hydrocarbons if they can be expelled from their lands by indirectly instigating violence through private actors with economic-criminal or misogynist motivations?

While every Latin American country with high homicide rates also possesses minerals, precious metals and hydrocarbons, for the purposes of our forced depopulation argument, the extraction of hydrocarbons along the border serves as an example of how forced displacement, political repression, and criminal and misogynist violence in resource-rich territories all converge in the same place. Other academics have already established this connection between gas extraction and murders, forced disappearances, femicide and forced displacement (Correa-Cabrera, 2015).

Guadalupe Correa, for example, has stated that in the case of Coahuila and Tamaulipas, violence has been instigated by the elites to force corporations to contract private security. Correa-Cabrera argues that there is a spatial convergence of global flows and economic inequality. In this specific area, there are at least four of these flows: the *maquiladora* industry, the extractive industry, migration and transnational crime. The impact of these phenomena has led to an increase in income inequality in the region, as its internal dynamics widen the gap between rich and poor while reinforcing social inequality (Correa-Cabrera, 2015).

In her book, *Drug War Capitalism*, journalist Dawn Paley states that internal conflict and militarization occur in geographic areas that are crucial for energy and extractive projects. Her field work in Colombia, Guatemala and Honduras indicates that these phenomena also coincide with sociopolitical opposition to megaprojects such as oil extraction and exploitation, large-scale agriculture, hydroelectric projects and valuable hardwoods. Connections between the war on drugs, paramilitary violence and gas extraction are not uncommon because non-state actors use them to intimidate their opponents and control areas rich in natural resources (Paley, 2014).



According to this evidence and its different interpretations, it can be concluded that forced displacement is not collateral damage but rather the desired or intended result, namely, the forced depopulation of these regions. However, the state is not alone in this. Corporations are actively, although quietly, involved in supporting violence, as it allows them to argue that investment in these regions is too expensive, as a way of hiding their true interests. Ultimately, these corporate actors allow criminals to make extractions on their behalf.

### *Asylum as an Administration of Suffering*

Once people are expelled from their homes and request asylum in the United States, they face the suffering management *dispositif*, that is, the series of necropolitical *dispositifs* designed to control the space and time of the subjects. According to Kleinman, Das and Lock (1997), social suffering includes conditions that are usually categorized and studied separately and individually—violence, drug addiction, post-traumatic stress disorder, depression—and is used to link personal problems with social problems. This demonstrates that suffering is a social experience that afflicts both rich and poor countries but that primarily affects the marginalized and dispossessed classes.

For Kleinman et al. (1997), the dominant powers carry out various technological interventions to “treat” social suffering, which actually intensify the suffering due to their moral, economic and gender effects, and end up normalizing social pathologies or pathologizing the psychology of terror. These policies translate the local expressions of victims into the universal, professional language of complaint and restitution, such as the language of human rights. This in turn re-enacts the manifestations and experiences of suffering, bringing about the intensification of suffering itself. Das calls this the “judicial and bureaucratic appropriation of suffering” (Das, 2008). The bureaucratization of social suffering aims to manipulate the victims’ time because waiting is a symbolic dimension of political subordination (Auyero, 2013). The lives of those who suffer are lived in times that are directed by powerful agents, under a state of domination that “is lived as a waiting period: at first waiting with delusion, and then with impotence while others make decisions, and ultimately surrendering to the authority of others” (Auyero, 2013, p. 18).

The collection of public necropolicies that appropriate suffering in order to bureaucratize it and to symbolically dominate others by imposing waiting periods are the mechanisms for the administration of suffering. The *dispositifs for the administration of suffering* develop subjects that are of use to them and include different types of public necropolicies—committees and special commissions, regulations, victim assistance units—that function through technologies that regulate political agency. The first type of public necropolicy is inter-institutional complexity. Representatives of the executive and legislative branches are brought together in committees or councils in which organizations may or may not have representation but which function as collaboration forums without any real influence. This inter-institutional scaffolding sets in motion a complex set of bureaucratic procedures that give people the illusion that they are moving towards justice, even if the judicial branch is absent from the process, and whose main feature is waiting. As Auyero states:

The waiting produces uncertainty and arbitrariness. Uncertainty and arbitrariness produces a specific subjective effect among those who need the state to survive: they submit in silence to usually arbitrary state requirements. To put it bluntly, everyday political domination is what happens when apparently nothing happens, when people ‘just wait’ (Auyero, 2013, pp. 36-37).

The second type of public necropolicy is subjectification. Public necropolicies build passive subjects, who are the subject of intervention to “positively” manage their suffering and political agency through the “judicial appropriation” of their suffering (Das, 2008). The subjects become objects of a government intervention that they are always awaiting, and “the habitual exposure to long hours of delay shapes a specific set of submissive behaviors” (Auyero, 2013, p. 25). This has implications for political subjectification as will be seen later.

The US asylum system can be considered a *dispositif* for managing suffering, not only because its purpose is to control the time and space of asylum seekers—they cannot move from place to place while awaiting the judge’s decision—but also because it is composed of the whole set of necropolicies. As already mentioned, the law no longer delivers justice in biopolitics and necropolitics but is used to homogenize populations. In this case, there are clearly administrative elements of the exercise of law that show how the instruments for administering international justice—protection against persecution—are used by the United States for controlling immigration.

There are clearly administrative and procedural aspects of the exercise of the right of asylum that show how some instruments that should be used for the administration of international justice—such as the refugee treaty reflected in the Immigration and Nationality Act (INA)—are used to manage forced migration and the suffering of those fleeing their home countries. Administrative tactics facilitate migration control in different ways. First is the division of the system into affirmative and defensive procedures, and the semi-judicial nature of immigration management, which leaves much latitude for making decisions that are even more subjective and arbitrary than expected under Anglo-Saxon law, where the role of the judge and jurisprudence is more important than the laws derived from the Constitution. This division enables different treatment of applicants based on class and gender criteria.

On one hand, applicants in the affirmative procedure are those who enter the country with a visa, or who have an expired visa, or who do not have permission to work while in the country, and who have not been placed in deportation proceedings. These requests are reviewed by an official from US Citizenship and Immigration Services (USCIS), who, if he or she does not approve an application, refers it for judicial review by an immigration judge from the Executive Office for Immigration Review (EOIR). According to Kurzban: “The applications that have been first submitted to the AO (Asylum Officer) are called ‘affirmative applications’ because they do not intervene in deportation proceedings as a type of ‘defense’ against deportation” (Kurzban, 2014, p. 698).

On the other hand, this is the point at which the case becomes defensive. The applicant sees a judge in an immigration court as part of the deportation proceedings, hence the name “defensive procedure.” Immigration courts are administrative entities that resemble courts. According to Anna Jessica Cabot, legal coordinator of the Las Americas Immigrant Advocacy Center in El Paso, Texas, the immigration courts:

Although they're kind of like a court, they're in fact administrative bodies, and they say ok, immigration benefits are such that we must give people a place that looks like a court, primarily to ensure that their rights in this area can be appealed (Cabot, 2012).

Although immigration courts are administrative bodies that look like courts, the application of law in them is even more subjective than in criminal and civil courts. This is because, among other things, they provide little constitutional protection but rather a protection that, according to legal precedents, is restricted to the due process guaranteed by the Fifth Amendment, which applies to all people rather than just citizens. They also protect freedom of speech under the First Amendment, which allows non-immigrants to be members of communist and anarchist parties (Rafeedie vs. INS 1992, in Kurzban, 2014, p. 159). In fact, Cabot states that the law:

...can be changed according to the judge presiding over each court... each judge can bend the rules within their own courts and this gives them much wider discretionary powers than judges in other courts in the US such as criminal courts, civil courts... to change the rules to accommodate their prejudices and preconceptions expressed in other arenas (Cabot, 2012).

As for the defensive procedures, these were established in the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, which requires the immediate removal or deportation of undocumented persons. Undocumented immigrants at the border or those who are denied refugee status by an immigration officer (IO) are summarily deported unless they seek asylum before a judge. Undocumented immigrants can seek asylum and express a well-founded fear of persecution before an IO, who determines whether or not the person has a "credible fear" of persecution. If the applicant proves to have a credible fear of persecution he can obtain a humanitarian parole while his legal status is resolved, after providing proof of identity and sufficient evidence that he will appear at hearings and does not pose a threat to the internal security of the United States. If credible fear is not proven, applicants can request a review that takes up to seven days, during which time they remain in detention.

Once credible fear is verified, they go to a hearing with a judge in which they ask for asylum, deportation suspension, or protection under the United Nations Convention against Torture (Kurzban, 2014, pp. 181 and 698). If not, applicants remain in detention until they have their hearing, which can take considerable time to schedule. Although the amount of time in detention is not standard across all circuit courts, most have established precedents dictating that a "reasonable" detention timeframe cannot be "years," as has happened in cases in which applicants have remained in detention up to 4.5 years. In that particular case, the Ninth Circuit Court of Appeals ruled that a "reasonable time" could not be longer than six months (Nadarajah vs. González, cited in Kurzban, 2014).

The success of the credible fear interview depends entirely on the judge's perception. This prerogative is also found in the REAL ID Act (1996) that hands judges the:

...adverse credibility determination, with which they can decide that the applicants' stories are not credible, based only on inconsistencies in the story, even inconsistencies that have nothing to do with the background of the

application, such as the color of the house, the time of day when something happened, etc. This kind of subjective judgment is insufficient for the judge to dismiss the plaintiff's testimony (Cabot, 2012).

Cabot states that similar inconsistencies are very frequent in cases of Mexicans requesting asylum, given that:

They haven't seen a lawyer, and also many people flee to the border, literally run to the border. We know people who have been shot and taken to the hospital as soon as they cross; so they clean and drug them, then give them analgesics and send them back to the border for their interview. So they are under the effects of strong analgesics just hours after being shot, and say things that can hardly be consistent with anything they might say in the future, but their testimony is discarded (Cabot, 2012).

Later, Cabot confirms that this is a determining factor in the rejection of the application because:

If you have a judge with the preconceived notion that Mexicans do not deserve asylum, and with the power to decide that their story is not credible based only on small things, then it is incredibly easy for that judge to just say that their testimony is not credible (Cabot, 2012).

Crystal Massey (2012), the human rights defender from the Southwest Asylum & Migration Institute (SAMI), states that at least in the case of Mexicans, the division between affirmative and negative procedures serves as its own filter to see who can access the asylum system as an immunization against criminal violence, which does not mean that they obtain it only for that reason. Massey (2012) affirms that people who have a visa are generally middle class, well-informed Mexicans who have the means or knowledge to obtain documents that allow them to cross borders, or who know that expressing interest in asylum while at the border can get them placed in temporary detention. Massey believes that young men spend more time in detention because they are the ones involved in the drug trade or gangs. During detention people are abused, as they are forced to remain for long periods in degrading or uncomfortable conditions, or they are intimidated to pressure them into withdrawing their asylum claims. Young children are separated from their parents and told that they may remain separated for a long time. Another tactic that is used to prevent access to the asylum system is time because you cannot apply for asylum after having stayed one year in US territory. Applicants submit their applications (form I-589) along with their testimony and the supporting evidence during the first meetings with the judges, in their master calendar hearings. Because judges have heavy caseloads—there is a two-year backlog—some applicants who arrived in 2012 did not have their hearings until 2014. According to Ileana Holguín, lawyer and Executive Director of Diocesan Migrant & Refugee Services, Inc. in El Paso, Texas, case reviews go faster in detention courts because these are private and the government has to pay for each arrested applicant. As such, they hurry the cases along to save money (Holguín, 2012). However, many cases are lost because people do not receive any legal advice or do not know about the one-year time constraint. Holguín (2012) states that judges are aware of this situation and are more willing to expedite cases and have even committed to review three cases in three and a half hours, which also indicates that they already know what their decision will be.

### *Disposability Pockets*

On January 27, 2017, President Donald Trump issued an executive order on immigration that not only prohibited the entry into the US by citizens from seven Arab countries but also dealt a historic blow to the asylum and refugee system in general. The order suspended general refugee admissions for 120 days, and admissions of Syrians until further notice, and placed a 50 000-person limit on annual admissions (Obama accepted 150 000). Although the order imposes significant legal challenges on those who process asylum claims, there are important social and human implications that are not very evident in the consequences of those measures. One important consequence is the emergence of what are called disposability pockets, which refers to people who live around open-air garbage dumps waiting for some informal work to come their way, or around sewers and improvised migrant shelters. An unknown number of disposability pockets can be found in the border city of Tijuana, which is located near the border city of San Diego, California. Thousands of asylum seekers and migrants have been trapped in Tijuana since the executive order was revoked because they were waiting for their asylum applications to be processed.

In early February 2017, a visit was made to the migrant shelters to document this humanitarian crisis, where we expected to find a certain type of immigrant: Mexican women fleeing the cartels and gender violence as well as Guatemalans, Hondurans and Salvadorans fleeing gang violence in their countries. However, we also found unexpected immigrants: Haitians who sought refuge in Brazil after the 2010 Haitian earthquake but who later left Brazil because of the economic and political crisis there that has dramatically reduced employment possibilities. These Haitians are not necessarily the typical “economic” immigrants; many are engineers, doctors and architects between 20 and 30 years old. In fact, this small group makes up most of those who are trapped in Tijuana.

According to activist Soraya Vázquez (2017) of the Tijuana Humanitarian Aid Strategic Committee, six Haitians arrived in Tijuana on May 23, 2016. The next day there were 100. Two months later, there were 15 000, and by the end of 2016, there were some 30 000 Haitians stuck in Tijuana who had come from Brazil via a human trafficking network that according to Vázquez has not been documented. By comparison, some 10 000 Syrians sought asylum in the United States in the same period. Asylum seekers cannot work, do not have permanent residency, and, if they are Haitians, often do not speak Spanish. However, they must support themselves and their families while waiting for immigration officials to process their applications. To make matters worse, they have lost all possibility of establishing themselves in the United States after President Donald Trump decided to end the Temporary Protected Status that his predecessor, Barack Obama, had approved after a 7.0 earthquake hit the Caribbean island in 2010. In May 2017, it was extended for six more months, but in January 2018, it was ended, and Haitians were given 18 months to leave the United States or be deported in July 2019.

These people live in Tijuana in open-air garbage dumps, sewers and makeshift shelters. Many look for manual labor jobs in the black market, cleaning houses and offices, working in *maquilas* or delivering pizzas for miserable salaries. This whole situation on the border recalls what Henry A. Giroux calls the *machinery of disposability*:

“What has emerged in this new juncture is an intensification of the practice of disposability in which more individuals and groups are considered as waste, consigned to areas of abandonment, surveillance and imprisonment” (Giroux, 2014, par. 2).

People forced to flee natural disasters and unimaginable violence in their countries of origin become disposable; people are human waste in dumps and sewers at the gateway to one of the richest nations. In this way people are confined to social spaces defined by what Edward W. Soja calls the “political organization of space,” but with death as the main goal. Soja’s idea of spatial (in)justice establishes that wealth and poverty are distributed geographically according to class, race and gender (Soja, 2009). These forces determine what he calls “discriminatory localization,” which is created “by prejudices imposed on certain populations due to their geographic locations” and is “fundamental in the creation of social injustice and in the creation of spatial structures of privilege and advantage” (Soja, 2009, p. 3). Soja believes that “spatial organization [...] is a particularly powerful source of spatial injustice” (Soja, 2009, p. 3).

While his examples range from apartheid, residential segregation and militarization, I believe that national borders, such as those that divide the United States and Mexico, are important places of injustice due to economic inequality and the proliferation of economic projects such as road construction and mining activities. Soja states that:

Geographically, unequal development and underdevelopment provide another framework for interpreting processes that produce injustice, but as with other processes, it is only when this inequality solidifies into more lasting structures of privilege and disadvantage that intervention becomes necessary (Soja, 2009, p. 3).

Disposability pockets are therefore areas of spatial injustice in which vulnerable populations, especially migrant ones, are forced to live in inhumane conditions and work in illegal labor markets with the tacit approval of a government that should, in theory, and according to human rights legislation, be a protective government. It is a radicalized and spatialized version of what sociologists call “pockets of poverty,” that is, neighborhoods in which the extremely poor tend to be confined in ghettos, even as prosperity grows around them. They are emerging not only in Tijuana but all along the northern border of Mexico thanks to repression by the United States.

## Conclusions

This article proposes the idea that along the Mexico-US border there is a deliberate policy of forcing people to leave their homes through the use of different death technologies. I call this the necropolitical *dispositif* of forced migration. This relies on both the apparatuses and the application of the law that deliberately produces death, illegality and criminal violence to achieve its goal of depopulating, dispossessing and managing the poor while at the same time creating undocumented immigration and asylum seekers. In order to develop this argument, this article first examined the idea of necropower, which suggests that in the third world, power over death is more common than power over life. Then, the idea of the *dispositif* was explained as the technology of power with various avenues for managing and directing the behavior of its subjects. The necropolitical *dispositif* of forced

migration consists of three necropolicies: forced depopulation, asylum as managed suffering, and disposability pockets.

This analytical interpretation of what happens on the border in terms of forced migration is of utmost importance because it contributes to the debate in at least three ways. First, it applies a structural element to a discussion that frequently stagnates in subjective or administrative topics. The causal explanation of forced migration from the perspective of a managed administration of death allows us to see the variety of actors involved in persecution and displacement. It also proposes that the interests of these actors, even though they may appear to be criminal, are not so simple, as there exists a great diversity of interests, including legal and illegal economic interests. Second, this article proposes a conceptualization of the causes of forced migration and sees the latter as a deliberate process—a production process—of expulsion of individuals and human conglomerates in order to guarantee conflict-free spaces or of elimination of groups of people who are considered disposable by neoliberals. Finally, this article establishes the concept of the administrative and judicial asylum mechanisms as bureaucratic rollercoasters that serve the forced migration *dispositif* instead of guaranteeing protection to those suffering from persecution. There is no intention to protect victims but rather to contain a new forced migration.

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Ariadna Estévez

Mexican. PhD in International Relations and Human Rights (University of Sussex, United Kingdom); Master's in Political Sociology (City University, United Kingdom); Bachelor's in Communications (Universidad Nacional Autónoma de México-UNAM). Researcher for the Centro de Investigaciones sobre América del Norte-UNAM. Research areas: biopolitics and necropolitics in North America, forced migration and asylum

in North America, critical studies of human rights from a social science perspective, geographies of death and necropolitical spaces, poststructuralist methodology (genealogy, biopolitics, necropolitics and discourse analysis), and critical studies of political, private and gender violence. Recent publications: Estévez, A. & Vázquez, D. (Coords.). (2017). *9 razones para (des)confiar de las luchas por los derechos humanos*. Mexico: Cisan, Flacso-Mexico.