

MEXICAN IMMIGRATION POLICY: CANDIL EN LA CALLE,  
OSCURIDAD DE LA CASA

AN ABSTRACT

SUBMITTED ON THE TWENTY-FIRST DAY OF OCTOBER 2013

TO THE DEPARTMENT OF LATIN AMERICAN STUDIES

IN PARTIAL FULFILLMENT OF THE REQUIREMENTS

OF THE SCHOOL OF LIBERAL ARTS

FOR THE DEGREE

OF

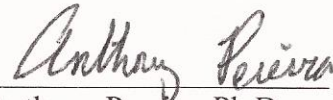
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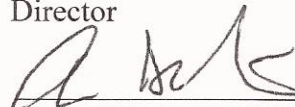
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This dissertation addresses the theorization of immigration policymaking from a perspective that encompasses all possible roles held in migration management. It discusses how simultaneous roles as a sending, receiving and transit country in the migration phenomenon can become intertwined and inherently affect policymaking on all fronts. Using Mexico as a case study, this dissertation finds that the most compelling variables in the construction of immigration policy are: consideration of the state's relationship with its emigrant population; grievances expressed by civil society; and complaints of regional partners. Mexico combined emigration and immigration policy in order to produce an optimal situation for all aspects of migration management, which was done through the strategy of soft reciprocity. By utilizing international human rights norms in the construction of its new Migration Law, Mexico was able to secure legitimacy and moral authority to broaden emigration policy and enhance protection of Mexicans abroad.

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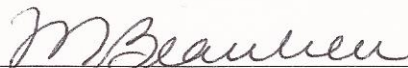
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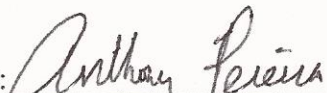
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## Chapter 1: Primary Components of the Migration Law: International Regimes and Soft Reciprocity

### 1.0 **Introduction**

On August 24, 2010, 72 bodies were found in a mass grave in the Northern state of Tamaulipas, Mexico.<sup>1</sup> Their fate was only revealed because one man managed to escape the bloody scene and alert nearby authorities, despite a bullet wound in the neck. Upon investigation, it was determined that the 58 men and 14 women were citizens of Guatemala, Ecuador, Honduras, El Salvador and Brazil. They were migrants in transit, attempting to discretely cross Mexico in order to reach the United States and realize dreams of economic prosperity. However, these dreams were aborted just 100 miles south of the border at the hands of the Zetas, a criminal organization that has quickly become one of the strongest and most violent drug cartels in Mexico. It was already well known that the shake up in internal security by former President Felipe Calderón had major, and often violent, implications for the Mexican people, but this massacre exposed the consequences of counternarcotics violence for transmigration and the precarious position of insecurity faced by migrants in Mexico; an insecurity exacerbated by their unregulated status and lack of protection under Mexican law.

Mexico has traditionally been viewed as a country of emigration, with a massive outflow of citizens towards the United States. This largely economic emigration has

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<sup>1</sup> Randal C. Archibold, "Victims of Massacre in Mexico said to be Migrants," *New York Times*, August 25, 2010, <http://www.nytimes.com/2010/08/26/world/americas/26mexico.html>.

increased substantially in recent years, responding to labor market demands in the United States and poor economic conditions in Mexico. This has led to an exponential growth of remittances and an augmentation in the political and economic importance of Mexican emigrants in Mexican domestic politics. In addition, Mexicans comprise one of the largest immigrant populations in the United States, situating this migration phenomenon as a priority in geopolitical relations between the two countries. Therefore, Mexico's role as a sending country has been the most discussed and theorized in academic and diplomatic circles alike.

However, as shown by the traumatic massacre in Tamaulipas, Mexico holds two other roles in international immigration, as a country of immigration and transmigration. Despite the existence of few economic and labor opportunities, there is a flow of immigration that provides a small foreign labor population mainly concentrated in Mexico's southern region. Additionally, there is a large flow of transmigration, which refers to migrants who cross through Mexico with the goal of entering the United States. These largely undocumented transmigrants generally originate from Central America and often consider the passage through Mexico to be incredibly dangerous and daunting. This is due to large-scale corruption among local immigration and enforcement officials in addition to the proliferation of gang violence along the route. As the push and pull forces of international immigration have become intensified with political unrest and economic stagnation, transmigration has quickly become a more visible problem for the Mexican government.

Mexico's additional positions as a receiving and transit country hold serious responsibility and subsequent consequences for large populations migrating within and

through Mexico. Historically, this legislative responsibility has been ignored, leaving the government to use the outdated and nativist 1974 General Population Law (LGP) as the principal legal authority on immigration in the glaring absence of an official immigration policy. However, this inaction on behalf of the Mexican government ended with the adaptation of the new Migration Law on May 24, 2011. The passage of this progressive law, steeped in a language based in human rights discourse and guaranteeing a myriad of previously unrecognized rights to migrants, marked a drastic shift in Mexico's immigration policy strategy.

### 1.1 *Research Questions*

This dissertation endeavors to explore how countries with a power disadvantage seek to gain and maintain international legitimacy in order to progress certain national interests. I find that international regimes are often used in order to help correct the power imbalance and lend legitimacy and moral authority to countries that are trying to enact change in a certain issue area. By gaining a more advanced level of international legitimacy, the acting country is better placed to perform as a leader in the given issue area and pass avant-garde policy. I argue that Mexico employed this strategy, which I refer to as soft reciprocity, through the passage of the Migration Law in the attempt to better protect and advocate for Mexicans in the United States and to assuage civil society and regional concerns of the mistreatment of Central American migrants in Mexico.

Therefore, this dissertation seeks to answer two fundamental questions concerning the Migration Law. The first is primarily concerned with timing. Why now? After so many years of indifference, what compelled the Mexican government to act quickly and efficiently in developing a coherent immigration policy? What were the main causal

factors contributing to its development? The second question examines the overall direction of the law and its usage of human rights language. What mechanisms were in place to influence the normative and progressive undertones of the law? Why did the Mexican government choose to promote universal rights as opposed to the restrictionism exhibited by the United States?

## 1.2 *Key Explanations*

I argue that three interrelated factors prompted a change in Mexican immigration policy, affecting not only the timing of the passage of the Migration Law but also the underlying principles of human rights protection. The principal factor was Mexico's relationship with its emigrant community abroad and its preoccupation with emigrant protection, which served as the main instigator of change. The supplemental factors were regional leadership concerns and civil society activism. These three factors reinforced each other and helped influence the direction of change in addition to its timing.

As stated, the state's relationship with the Mexican emigrant community residing in the United States played a crucial role in the adaptation of a new migration law. This was primarily due to the massive importance of the Mexican emigrant community to the Mexican government and the crucial role the United States retains in their protection and wellbeing via US immigration policy. The Mexican government became increasingly invested in safeguarding this population's rights as they grew in economic and political might, an endeavor which became complicated due to the nature of US immigration policy. Throughout the 1990s and 2000s, the United States began passing progressively more restrictive policies, negatively affecting Mexican immigrants, undermining the Mexican government's ability to protect its citizens abroad and prompting a Mexican

outcry against such tendencies. However, these objections were overwhelmed by the power imbalance in favor of the United States and proliferating claims from US policymakers that Mexico was hypocritical due to the fact that the LGP afforded even less rights to foreigners than any US immigration law.

The government's frustration with its own inability to adequately protect Mexican emigrants was compounded by the two supplemental factors of regional leadership considerations and civil society activism. In the case of Mexican immigration policy, regional leadership principally speaks to Mexico's relationship with its Central American neighbors, specifically: Guatemala, Honduras, El Salvador, and Nicaragua. There has been a large push for regional integration and a united front against the challenges of international immigration. Due to the fact that Mexico considers itself a leader in the region and holds a geographically important position at the US southern border, Mexico has sought to work in tandem with neighbors to the South and avoid criticisms of excessively harsh treatment of Central American migrants.

In addition, civil society activists increased pressure on Mexican lawmakers to protect the rights of foreigners in Mexico. Due to rampant corruption and illegality embedded in Mexican politics and enforcement agencies, migrants have been increasingly susceptible to human rights violations in the last few years. This has been a mobilizing issue for many civil society groups, domestic and international in nature, which has obliged the government to react accordingly with a new immigration policy.

The three causal factors of protection of the Mexican emigrant community, regional leadership considerations, and civil society opinions coalesced and exposed two major problems, one with the treatment of Mexicans abroad and the other with Mexican

immigration policy and the treatment of foreigners in Mexico. In approaching this dilemma, Mexico wanted to appease regional neighbors and civil society in addition to gain leverage in its fight for the rights of Mexicans in the United States. The solution to these two problems leads us to the question of the human rights dialogue underlying the Migration Law.

I argue that Mexico sought to solve these two problems with the one strategy of soft reciprocity through the employment of the international human rights regime. Soft reciprocity refers to entering into an informal agreement or adhering to an international regime with the expectation that all member states of the regime will exhibit a general commitment to the regime's standards of behavior. Soft reciprocity, as opposed to specific or diffuse reciprocity, does not require a strict equivalence of benefits between actors and is most relevant in cases of obligations *erga omnes*.<sup>2</sup> It is often utilized in order to procure certain interests and can lend to domestic and international legitimacy in addition to moral authority in the regime issue area. Furthermore, soft reciprocity is most likely to be utilized by countries on the weak end of the power balance due to the fact that sanctions or force would not work on their more powerful counterparts.

In terms of Mexican immigration policy, soft reciprocity refers to the idea that Mexico, in accordance with the international human rights regime, must guarantee the same rights for foreigners in Mexico in order to advocate for those very rights for Mexicans in the United States. Therefore, Mexico drafted and passed the Migration Law, which assured a variety of rights to immigrants in Mexico, in order to primarily gain

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<sup>2</sup> *Erga Omnes* means "towards all" in Latin. Obligations *erga omnes* refer to statutory rights, meaning that certain rights are universal and enforceable against anyone violating such entitlements. This is in contrast to rights that are established via contracts.



leverage in its own struggle for Mexican emigrants and secondarily mollify regional and civil society concerns.

The most important aspect of Mexico's implementation of the policy of soft reciprocity is that it employed the international human rights regime. This is useful due to the fact that it provided Mexico with the weight and legitimacy of the international community in its reactions against US immigration policy. It is also important to note that Mexico did not adhere to international human rights norms as a result of purely altruistic motives in an endeavor to protect migrant rights; rather, the implementation of this international norms tool was meant to boost Mexican legitimacy and add weight to criticisms against US immigration policy. Therefore, self-interest was a primary catalyst. However, there is a normative aspect underlying the strategy of soft reciprocity. Mexico utilized this international regime in order to amass moral authority in its policy of emigrant protection. If there were no normative belief in the goodness of this approach, then the strategy of soft reciprocity would not yield the benefits hoped for by the Mexican government.

Another important consideration is the feasibility of this approach-will the strategy of soft reciprocity really sway the United States into passing more progressive immigration policy? It is still too soon to tell the feasibility and tangible benefits of soft reciprocity in terms of US policy; however, I argue that this was not the primary goal of soft reciprocity. Although a positive change in US immigration policy would certainly have been welcomed, Mexico engaged in soft reciprocity in order to more legitimately and effectively advocate for Mexicans abroad. In the absence of the harmonization of national laws with international norms, Mexico would still be susceptible to criticisms of

hypocrisy and would be lacking a degree of leverage and legitimacy. Without this legitimacy, Mexico's emigration policy of continued protection for Mexicans abroad was weakened, thereby jeopardizing Mexico's relationship with the most influential sector of its population. Therefore, soft reciprocity is more likely to yield benefits in terms of legitimacy and moral authority.

This dissertation addresses two important theoretical issues. The first concerns the theorization of immigration policy in academic literature. The overwhelming majority of immigration policy theory is developed from the perspective of receiving, developed countries. Countries of immigration automatically have the advantage in managing migration, as they are the ones with the power to decide the nature and terms of admission and incorporation. However, this power balance becomes complicated when countries of immigration are also countries of emigration, as is Mexico. When emigration flows are greater than immigration flows, the former inevitably takes precedence in policy considerations. The consideration of emigrant communities in policy formation is especially important due to the fact that the state's ability to exert control and protection over this community is inherently limited as a result of the transnational nature of immigration and the political and legal might of the receiving country. However, immigration policy theory does not take this complicated dynamic into consideration. By including the state's relationship with its emigrant community as an independent variable, I seek to address this discrepancy in the theorization of immigration policy.

In addition, this dissertation supplements theories on international regimes in two important ways. First, I argue that states maintain agency even in the presence of international forces. When immigration policy is theorized from an international relations

perspective, it is often found that international components impose norms on the state and the state is subsequently compelled to harmonize domestic practices with international standards; the agent of change is international. However, I contend that the state retains agency and that the utilization of such international norms is not compulsory, it is essentially elective and employed based on the needs of the state.

Furthermore, it is often assumed that the observance of international norms is not only fueled by international forces, but that it is mainly supplemented by altruistic motives on behalf of the state. Although this may be the case in some instances, I contend that it is not a universal truth. Adherence to such norms can also be a useful, and sometimes pragmatic, tool in procuring vital interests of the state. These two modifications of international regime theory also address the primary criticism that international regimes and institutions are not a viable explanatory factor due to the fact that they are lacking enforcement mechanisms. Instead of disregarding them as useful components in processes of change, they can instead be viewed as a vital influence in the direction of change and a useful tool in the protection of interests.

### 1.3 *Methodology*

My methodology encompasses a mixed-method nature through the use of interviewing, observation, data collection, and the use of materials such as legislation, congressional records and newspaper and journalistic articles. In order to ascertain the character and evolution of Mexican immigration policy, it was imperative to construct a panoramic vision of the policymaking process in terms of actors, agents of change, official strategy, influences, and incentives for change while conducting research. As such, I utilized both primary and secondary sources through the course of my research,

including legislation, newspaper articles, governmental reports, and information provided by civil society groups, and personally conducted interviews.

Interviews generally occurred in the field, with a variety of public and private actors involved in the immigration debate. Representatives from the Instituto Nacional de Migración (INM), the Consejo Nacional de Población (CONAPO), the Secretaría de Relaciones Exteriores (SRE), and the Comisión Nacional de los Derechos Humanos (CNDH) were all interviewed. Nongovernmental actors included academics from the Colegio de México and the Colegio de la Frontera Norte, along with social society activists from groups such as Voces Mesoamericanas and Iniciativa Ciudadana.

Other relevant information was mainly obtained through publications and reports produced by governmental groups such as the INM in addition to information amassed by other research groups such as Migration Policy Institute (MPI) and Latin American Working Group (LAWG). Pertinent legislation examined includes the new Migration Law, the Mexican Constitution, the Ley General de Población (LGP) and the Reglamento de la Ley General de Población, agreements concerning the Immigrant Detention Centers (Estancias Migratorias), and work visa agreements between Mexico and Guatemala, especially in relation to the Forma Migratoria de Visitante Local (FMVL) found in Chiapas and Quintana Roo. In addition, I utilized the INM library, which holds many publications by the Mexican government and academics on the topic of immigration policy that are not available elsewhere. Finally, newspaper articles from a variety of Mexican and Latin American newspapers will provide a backdrop of information concerning the framing of the immigration policy debate and reaction to U.S. immigration policy. Through the examination of these sources, I was able to analyze the

chronology of the policymaking process and the emergence of popular ideas and theoretical strategies that contributed to the tone and direction of the Migration Law.

## 2.0 **The Argument**

The theory put forth in this dissertation pays special attention to state interests and the utilization of international norms to protect those interests. I argue that, in the primary interest of ensuring the protection of Mexican emigrants and the secondary interests of mollifying civil society and regional complaints, Mexico has employed the international human rights regime and the strategy of soft reciprocity. Both of these dimensions will be described in the remainder of this chapter.

### 2.1 ***International Human Rights Regime***

The contemporary international human rights regime began with the adoption of the 1945 UN Charter and the subsequent drafting of the Universal Declaration of Human Rights. This provided a legal basis for the universal protection of human rights and thus stimulated the modern framework for the recognition of basic human rights and the provision of safeguards against their violation.<sup>3</sup> This international regime enjoys widespread legitimacy and is often viewed as a paradigm shift in the structure of international society in the aftermath of WWII.

This is particularly true in the field of international immigration. As the international human rights regime has continued to gain strength and universal recognition, the definition of core human rights has expanded and is especially applied to vulnerable populations such as migrants. Specifically, the United Nations Convention on the Protection of the Rights of all Migrant Workers and Members of their Families seeks to

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<sup>3</sup> Emilie M. Hafner-Burton and Kiyoteru Tsutsui, "Human Rights in a Globalizing World: The Paradox of Empty Promises," *American Journal of Sociology* vol. 110 no. 5 (March 2005): 1374.

provide protection for those that find themselves in between countries and perhaps without a regularized status. Signed in 1990 and entered into force in March 2003, this treaty is primarily subscribed to by sending countries as opposed to receiving countries of immigration and is viewed as an important vehicle to protect citizens living abroad. Therefore, the international human rights regime has become an increasingly more viable option for those countries seeking to cultivate immigration policy around a platform that will benefit their own citizens in addition to foreign populations that are directly affected by their immigration laws. This is especially true in the case of Mexico's new Migration Law.

#### 2.1.1 *The International Human Rights Regime and the Migration Law*

With the passage of the new Migration Law, Mexico not only changed strategies, but also approaches. As previously stated, the LGP placed emphasis on issues of national identity and security in terms of immigration policy. Conversely, the Migration Law switched to a focus on the protection of migrant rights, subscribing to the international human rights regime. I argue that Mexico employs certain norms according to corresponding national interests in immigration policy.

However, it should be noted that although I am prioritizing pragmatism as opposed to altruism as the primary catalyst for undertaking the international human rights norm, this does not entirely discount a normative subscription to such international regimes. It is best to approach soft reciprocity as a crossroads of pragmatism and altruism in that it finds an alternative beneficial to Mexico that is within the bounds of accepted international norms. Mexico was mainly interested in better protecting its emigrants, a goal thought best achieved through the application of the international human rights

regime in order to gain moral authority and legitimacy in the issue area. However, if Mexico did not retain a normative belief in the altruistic benefits of such a regime, then such efforts would be rendered useless.

In the aftermath of the Mexican Revolution, at the time when the LGP was drafted, Mexican nationalism was at its pinnacle. After years of a prolonged, violent revolution, the Mexican government was concerned with establishing a unified national identity, which called for the repatriation of Mexicans abroad and the exclusion of foreigners. Therefore, the LGP was characterized by restrictive access to rights and created an inhospitable environment for foreigners in Mexico.

However, this began to change as Mexico's geopolitical positioning changed with respect to international immigration flows. Consequently, a few factors combined to influence Mexico's decision to employ the international human rights regime. First, the collective memory of the violent revolutionary years subsided as emigration and transmigration became overpowering phenomena and the Mexican community abroad began to take on increasingly important economic and political roles in Mexico. Therefore, Mexico decided to utilize a strategy of soft reciprocity in order to better protect Mexicans in the United States. Secondly, due to Mexico's leadership role in Central America, it was imperative for Mexico to regain legitimacy in migration management and provide better treatment for Central Americans in Mexico. This would not only solidify Mexico's regional relationships, but it would also serve as a useful tool in applying pressure to the United States in the interest of advocating for emigrants abroad. Finally, application of the international human rights norm to immigration policy coalesced nicely with civil society demands to curb human rights violations against

migrants in Mexico. The act of employing human rights norms in its immigration policy allowed Mexico to fully implement the strategy of soft reciprocity, which will be delineated in the following section.

## 2.2 *Soft Reciprocity*

The concept of soft reciprocity expands upon previous theories of specific and diffuse reciprocity and particularly speaks to the use of soft reciprocity in tandem with specific international norms such as human rights. Therefore, this dissertation puts forth a theory of soft reciprocity that is further delineated below.

### 2.2.1 *The Role of International Regimes and Egoistic Self-Interest*

Stephen Krasner defines international regimes as, “sets of implicit or explicit principles, norms, rules, and decision-making procedures around which actors’ expectations converge in a given area of international relations.”<sup>4</sup> According to institutionalists, regimes are meant to promote cooperation among nations in an anarchic world order. Through the production of iterated games, regimes facilitate the protection of long-term interests via cooperation even if this results in the forfeit of immediate, short-term interests.<sup>5</sup>

There is a particularly important dichotomy between altruism and egoistic self-interest that must be addressed in any discussion of international regimes. The debate between motivation, purpose and utilization of international regimes generally revolves around this dichotomy. I argue that self-interest is commonly the predominant factor in the actual employment of international regimes, especially when utilized by countries with a power disadvantage. Although states may agree with regimes or norms morally or

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<sup>4</sup> Stephen D. Krasner, “Structural Causes and Regime Consequences: Regimes as Intervening Variables,” in *International Regimes*, ed. Stephen D. Krasner (Ithaca: Cornell University Press, 1983), 2.

<sup>5</sup> Ibid, 3.



in an altruistic manner, it often takes a degree of egoistic self-interest for that state to fully adhere to the main proponents of that particular regime. “But beneath this seeming selflessness an underlying ‘egoism’ can be discovered; the tendency to help others is frequently motivated by the expectation that doing so will bring social rewards.”<sup>6</sup> If there is no tangible or at least perceived benefit to the state, it is less likely that the state will allocate resources or change policy in accordance with the regime.

Egoistic self-interest is often cited as a main causal factor in the initial creation of international regimes. Some scholars argue that international regimes are brought into existence by hegemons that are interested in protecting a group of interests. “International regimes should not be interpreted as elements of a new international order ‘beyond the nation-state.’ This means that, as Realists emphasize, they will be shaped largely by their most powerful members, pursuing their own interests.”<sup>7</sup> However, for the purposes of this dissertation, it is imperative to discuss not only the role of self-interest in the creation of international regimes, but also in their application.

It is easy to assume altruism as the primary motivating factor in the adherence to international regimes, especially when discussing areas such as international human rights norms. However, I argue that although there might be an element of altruism in the initial acceptance of some international regimes, self-interest is the principle reason for the complete observance of international norms and regimes. “Such norms need not imply altruism. Norms can consist of standards of behavior which are widely regarded as

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<sup>6</sup> Peter M. Blau, *Exchange and Power in Social Life* (New York: John Wiley & Sons, Inc., 1964), 17.

<sup>7</sup> Robert O. Keohane, *After Hegemony: Cooperation and Discord in the World Political Economy* (New Jersey: Princeton University Press, 1984), 63.

legitimate; they do not necessarily embody ethical principles that override self-interest.”<sup>8</sup>

This means that states will only fully partake in international regimes if there is a perceived benefit to an important interest held by that state. This assumption of self-interest in fully implementing an international regime has an important implication concerning the use of international norms as leverage.

The application of self-interest as an explanatory factor in fully observing international regimes helps to understand the rationale behind the utilization of international norms by less powerful countries.

Within this multilayered system, a major function of international regimes is to facilitate the making of specific agreements on matters of substantive significance within the issue-area covered by the regime. International regimes help to make governments' expectations consistent with one another. In other words, regimes are valuable to governments where, in their absence, certain mutually beneficial agreements would be impossible to consummate.<sup>9</sup>

Therefore, regimes can be used by states in order to procure outcomes that might otherwise be unavailable. This is especially true of less powerful states that are trying to promote change in a certain issue area and have no other recourse when dealing with more powerful counterparts.

If the assumption holds that self-interest is responsible for the active application of international norms, then it should follow that all states expect some kind of benefit from adhering to international norms. Robert Keohane claims that this is an underlying truth for most regimes and refers to it as “generalized commitment” while others refer to it mainly as reciprocity. “An important principle that is shared by most, if not all, international regimes is what Jervis calls ‘reciprocation’: the belief that if one helps

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<sup>8</sup> Robert O. Keohane, “Reciprocity in International Relations,” *International Organization* vol. 40 no. 1 (1986): 21.

<sup>9</sup> Robert O. Keohane, “The Demand for International Regimes,” in *International Regimes*, ed. Stephen D. Krasner (Ithaca: Cornell University Press, 1983), 150.

others or fails to hurt them, even at some opportunity cost to oneself, they will reciprocate when the tables are turned.”<sup>10</sup> The topic of reciprocity has been theorized extensively and merits further discussion here.

### 2.2.2 Reciprocity and International Regimes

The idea of reciprocity is most commonly associated with areas of international law or trade. It refers to the concept that when two actors enter into a reciprocal agreement, the behavior of one actor will be mirrored by the other actor, resulting in an equivalence of benefits or costs on both sides. This has been a guiding principle in trade regimes such as GATT and easily lends itself to the reduction of trade barriers and deregulation. However, the idea of reciprocity has also been theorized in relation to other fields of international regimes and norms.

Robert Keohane puts forth a theory of reciprocity in international relations, recognizing the two qualities of contingency and equivalence as important parameters of strategies of reciprocity.<sup>11</sup> Contingency refers to the idea of conditional action, which can relate to both positive and negative patterns of behavior. Furthermore, Keohane argues that in order to engage in a reciprocal relationship a rough equivalence of benefits must be present.<sup>12</sup> This indicates that states entering into any kind of reciprocal relationship are fueled by self-interest due to the fact that there is a general expectation of future benefits.

Keohane also differentiates between two types of reciprocity: specific and diffuse reciprocity. Specific reciprocity is mostly used in traditional issues of foreign trade due to the fact that it stresses a clearly demarcated equivalence of benefits.

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<sup>10</sup> Ibid, 158.

<sup>11</sup> Keohane, “Reciprocity in International Relations,” 5.

<sup>12</sup> Ibid, 6.

I will use specific reciprocity here to refer to situations in which specified partners exchange items of equivalent value in a strictly delimited sequence. If any obligations exist, they are clearly specified in terms of rights and duties of particular actors.<sup>13</sup> Therefore, specific reciprocity tends to discourage defection, works best in bilateral situations and yields benefits that are easily identifiable and measurable.

Conversely, the concept of diffuse reciprocity first began in theories of social exchange, which allowed for more flexibility in parameters and outcomes in terms of equivalence.

In situations characterized by diffuse reciprocity, by contrast, the definition of equivalence is less precise, one's partners may be viewed as a group rather than as particular actors, and the sequence of events is less narrowly bounded. Obligations are important. Diffuse reciprocity involves conforming to generally accepted standards of behavior.<sup>14</sup>

According to Keohane, diffuse reciprocity relies heavily on obligation, which is virtually absent from discussions of specific reciprocity. Since the equivalence of benefits is diluted in diffuse reciprocity and valuable outcomes might not be as apparent, then cooperation is founded in a general sense of obligation.<sup>15</sup>

In sum, beyond reciprocity as a pattern of exchange and beyond folk beliefs about reciprocity as a fact of life, there is another element: a generalized moral norm of reciprocity which defines certain actions and obligations as repayments for benefits received.<sup>16</sup>

Therefore, any kind of reciprocity must be characterized by at least a rough equivalence of benefits and a basic foundation of contingency. Keohane's two variants of reciprocity mainly differ in the strictness of beneficial exchange and the efficacy of bilateral versus multilateral interaction.

Although the concept of reciprocity is helpful, it is inherently limited. As discussed earlier, if self-interest is at the forefront of a state's decision to fully partake in an

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<sup>13</sup> Ibid, 4.

<sup>14</sup> Ibid.

<sup>15</sup> Ibid, 20.

<sup>16</sup> Alvin W. Gouldner, "The Norm of Reciprocity: A Preliminary Statement," *American Sociological Review* vol. 25, no. 2 (1960): 170.

international regime, then there is an underlying and pervasive expectation of benefits, regardless of the issue area. However, it has been stated that reciprocity cannot exist in instances of obligations erga omnes. “Reciprocity cannot be invoked where norms of fundamental value and importance to the international community as a whole are concerned.”<sup>17</sup> This was decided by the International Court of Justice and includes acts of aggression, genocide, and human rights among others.<sup>18</sup> Therefore, traditional theories of reciprocity cannot account for adherence to such international norms. This does not fit with assumptions of self-interest as a motivating factor. As discussed, although altruism might lend to a country’s initial agreement with an international norm such as human rights, egoistic self-interest has to account for allocating resources and policymaking power in order to completely adhere to such norms.

In addition, the concept of reciprocity very specifically states that all parties involved must be at the receiving end of comparable benefits. Equivalence of benefits is widely viewed as a standard requirement of reciprocal relationships. However, this does not account for instances in which other benefits such as international and domestic legitimacy and moral authority in a certain issue area might be just as beneficial to the acting state as explicitly reciprocal benefits. This scenario might be particularly true of states that are at the weaker end of a power relationship that are trying to gain leverage in a certain area. By adhering to the relevant international norm, the weaker state can hope to gain moral authority and legitimacy in order to procure certain national interests and demonstrate its dedication to a particular set of alternatives in a specific policy area. This may or may not result in reciprocal action, but it will clearly demonstrate the weaker

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<sup>17</sup> Elisabeth Zoller, *Peacetime Unilateral Remedies: An Analysis of Countermeasures* (New York: Transnational Publishers, Inc., 1984): 26.

<sup>18</sup> Ibid.

state's commitment to a particular standard of behavior, amass international legitimacy and possibly impose pressure on the stronger state to adjust relevant policy. Therefore, the concept of reciprocity is limited in terms of its restrictions in certain issue areas and the strict reliance on an equivalence of benefits. I seek to adjust and expand the concept of reciprocity to account for these theoretical shortcomings.

### 2.2.3 *Components of Soft Reciprocity*

As stated, the concept of soft reciprocity seeks to develop traditional concepts of reciprocity to better account for international regimes covering obligations *erga omnes* and situations in which the equivalence of benefits is not overtly apparent. Through addressing these theoretical shortcomings, soft reciprocity can be viewed as a helpful tool in gaining legitimacy and leverage over certain issue areas by less powerful countries.

Soft reciprocity is based on the idea that egoistic self-interest fuels decisions to fully adhere to international norms and regimes. This means that when states decide to fully partake in an international norm, then they automatically expect that this decision and subsequent actions will yield benefits relevant to that issue area. This is the most basic component of reciprocity: expecting something comparable in return for your actions. Keohane refers to this as generalized commitment in order to separate the concept from strict definitions of tit-for-tat reciprocity.<sup>19</sup> I refer to it here as soft reciprocity, which is the fundamental beginning of adhering to international norms based on self-interest.

This assumption of self-interest as motivation is often contested in certain issue areas. There are some international norms that more naturally appeal to the humanistic sensibilities of states and international actors. These norms generally fall in the category of obligations *erga omnes*. It is hard to argue on principle that violations against human

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<sup>19</sup> Keohane, "The Demand for International Regimes," 158.

rights and racial discrimination should not be stemmed through international standards of behavior. Therefore, many states may become signatories of important international accords and agree in theory to such norms immediately from an altruistic standpoint. However, there is often a lag, sometimes indefinite, between this initial agreement and the actual implementation of stated obligations. This lag illustrates the weakness of purely altruistic motives. In order for these norms to be applied in practice, there must also be an underlying reason based in egoistic self-interest. Soft reciprocity helps explain the application of such norms.

Furthermore, traditional reciprocity cannot account for areas in which negative acts of non-cooperation are seen as unethical. Traditional concepts of reciprocity rest on a tit-for-tat ideal.<sup>20</sup> This is a strategy, which, "...cooperates on the first move and then does whatever the other player did on the previous move."<sup>21</sup> In terms of international trade and liberalization, this would mean that the actors involved would cooperate on the first round and subsequent acts of cooperation by actor A would be rewarded by similar actions by actor B. Conversely, if actor A imposed sanctions in the second round, actor B would reciprocate with comparable sanctions. Therefore, reciprocal action resting on a tit-for-tat strategy matches good with good and bad with bad.

However, when it comes to international norms such as the protection of human rights and anti-genocide regimes, it is unethical to match violations or acts of negative cooperation with comparable reprisals. Therefore, traditional concepts of reciprocity cannot explain why states would adhere to such norms, due to the fact that they are built on concepts of tit-for-tat. Soft reciprocity is mostly applied to situations in which tit-for-

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<sup>20</sup> Robert Axelrod, *The Evolution of Cooperation* (New York: Basic Books Inc. Publishers, 1984): 20.

<sup>21</sup> Ibid.

tat does not apply and subsequently does not require that negative actions are met with similar acts of non-cooperation. Barrington Moore refers to this as mutual obligation, “...a term that does not imply equality of burdens or obligations.”<sup>22</sup>

One of the benefits of reciprocity is that the actors involved are able to impose sanctions when partners are not holding up their end of the deal. However, as is apparent in the area of obligations erga omnes, this option of retribution is not a possibility. Without this recourse, then the question begs to be asked how soft reciprocity yields any beneficial outcomes. If they cannot force the hand of their partner into compliance via sanctions, then how does soft reciprocity apply to these situations? I argue that states partake in international norms, particularly those falling under the umbrella of obligations erga omnes, when doing so also coincides with state interests in procuring legitimacy and moral authority in that issue area.

At risk of reductionism, it can be assumed that most forms of transnational cooperation are in some way or another linked to the perceived interests of liberal states in international peace, preventing the spread of civil conflict or insecurity, and free trade. And attachment to human rights regimes is no exception in this respect. To be sure, liberal beliefs and values do have some explanatory autonomy: they help define the range of feasible and legitimate policies. Moreover, states may also have an interest in building an international reputation as liberal, or humanitarian, or committed to human rights.<sup>23</sup> Therefore, soft reciprocity allows the acting state to exhibit a commitment to a specific standard of behavior and shores up international and domestic legitimacy in relation to that particular regime. This legitimacy allows for a degree of leverage within this area that would be void without the acting state’s demonstrated dedication to the international norm. This essentially equates soft reciprocity with the Golden Rule: one should treat others as one would like others to treat oneself.

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<sup>22</sup> Barrington Moore Jr., *Injustice: The Social bases of Obedience and Revolt* (New York: M.E. Sharpe Inc., 1978): 506.

<sup>23</sup> Christina Boswell, “Theorizing Migration Policy: Is There a Third Way?” *International Migration Review* vol. 41 no. (2007): 186.



This reliance on good faith has a couple of implications for soft reciprocity. The first is the importance of the shadow of the future. Time, energy and resources would not be invested into a certain international regime if the promise of possible future benefits were not looming. Due to the fact that benefits rest on future occurrences, it is impossible for states to predict tangible outcomes. Keohane speaks to this in terms of generalized commitment:

This norm requires action that does not reflect specific calculations of self-interest: the actor making a short-run sacrifice does not know that future benefits will flow from comparable restraint by others, and can hardly be regarded as making precise calculations of expected utility. It rests on the premise that a veil of ignorance stands between us and the future, but that we should nevertheless assume that regime-supporting behavior will be beneficial to us even though we have no convincing evidence to that effect.<sup>24</sup> Therefore, soft reciprocity is not characterized by a strict or even rough equivalence of benefits, but rather by a vested interest in the possibility of future benefits.

The second implication is that countries with a power disadvantage most commonly utilize soft reciprocity. Those countries with a surplus of power often have more alternatives and more resources to demand a situation more akin to tit-for-tat and specific reciprocity. However, less powerful countries often only have their own reputation and legitimacy to depend on in order to stimulate change. Therefore, soft reciprocity is a strategy most beneficial to countries with less resources.

Finally, soft reciprocity is most similar to diffuse reciprocity due to the fact that it can function in situations that are not strictly bilateral and that it relies on obligation. Soft reciprocity requires that all members of an international regime must buy into that regime in order to gain legitimacy and contribute to a widespread application of its standards of behaviors. Therefore, interaction does not have to be on a strictly bilateral basis.

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<sup>24</sup> Keohane, "The Demand for International Regimes," 158.

In situations characterized by diffuse reciprocity, by contrast, the definition of equivalence is less precise, one's partners may be viewed as a group rather than as particular actors, and the sequence of events is less narrowly bounded. Obligations are important. Diffuse reciprocity involves conforming to generally accepted standards of behavior.<sup>25</sup>

Consequently, the main difference between diffuse and soft reciprocity is that the equivalence of benefits is not necessary in soft reciprocity as its benefits are found in obtaining legitimacy and leverage within that norm.

Therefore, soft reciprocity embodies the following principles:

1. Soft reciprocity is based on motivations fueled by self-interest.
2. Soft reciprocity refers to the underlying assumption that adhering to an international norm will result in benefits in the future.
3. Soft reciprocity does not admit specific calculations of self-interest due to the fact that projected benefits will only be revealed in the future.
4. Soft reciprocity is most often applied to international norms in which negative reprisals are not possible, such as is the case with obligations *erga omnes*.
5. Legitimacy resulting in leverage is a benefit of soft reciprocity.
6. Countries with a power disadvantage most often utilize soft reciprocity.
7. Soft reciprocity is applicable to multilateral situations.

#### 2.2.4 *Soft Reciprocity and Immigration*

In terms of immigration policy, Mexico has utilized the strategy of soft reciprocity for very specific reasons. The logic underlying the utilization of this strategy is as follows: if Mexico applies the international human rights regime in its treatment of Central American immigrants in Mexico, then it will gain legitimacy and leverage in the international discourse surrounding immigration policy. This is most helpful to Mexico in

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<sup>25</sup> Keohane, "Reciprocity in International Relations," 4.

its relationship with Mexican emigrants in the United States. With Mexico's newfound moral authority in the coupling of the human rights regime and immigration policy, Mexico now has the legitimacy needed to more completely advocate for its emigrant population and serve as a regional standard in socially responsible migration management.

It is important to note that the usefulness of this strategy does not lie in the influence that Mexico exerts over the United States in the hopes of altering policy, an influence greatly inferior to the political power of the US, but rather in Mexico's membership in the international human rights norm itself. This belonging, or legitimacy, is solidified with the new Migration Law and its underlying foundation of the protection of migrant rights. This international legitimacy usefully dispels claims of hypocrisy, which greatly fortifies Mexico's emigration policy of transnational emigrant incorporation, or extended incorporation. Therefore, even if this strategy does not yield specific benefits in the form of less restrictive US immigration policy, it still offers Mexico the ability to better advocate for Mexicans abroad, which is a vital aspect of Mexican emigration policy.

Soft reciprocity as used in immigration policy is inherently different from specific or diffuse reciprocity. If Mexico were to use a strategy of specific reciprocity, then it would have to confer the protection of migrant rights to US immigrants in Mexican territory in return for humane treatment of Mexicans in the US. However, this would not be a viable strategy due to the low numbers of US citizens living in Mexico. Similarly, diffuse reciprocity also requires a somewhat stricter equivalence of benefits than is apparent in this situation. Therefore, soft reciprocity via the application of the international human rights regime is used in the hopes that this will yield indirect benefits to Mexican

emigrants in the United States. Although this is not a traditional form of reciprocity, it is still predicated on the expectation that adherence to a certain standard of behavior will result in mutual benefits. This loose equivalence of benefits and the issue area of human rights is the foundation of the concept of soft reciprocity.

### 3.0 **The Plan for the Dissertation**

The remainder of this dissertation will examine the case study of Mexico's new Migration Law to explore the application of soft reciprocity through the implementation of the international human rights regime. Chapter two discusses the main proponents of immigration policy theory, paying special attention to domestic versus international factors. Chapter three analyzes the two additional flows of immigration and transmigration in Mexico. It especially concentrates on the traditional violation of migrant rights in Mexico and calls from civil society and Central American partners to enact legislative change. Chapter four speaks to the historical evolution of emigration and emigration policy in Mexico. This specifically concentrates on the importance of Mexican emigrants abroad, how Mexican emigration policy has evolved to reflect the importance of this population, and the impact that US immigration policy has on them. Chapter five examines the creation and adaptation of the Migration Law and how it sought to solve the issues brought forth by the three previously discussed causal factors through the strategy of soft reciprocity. Chapter six examines the timing of the passage of the Migration Law, drawing a chronological correlation between restrictive immigration initiatives in the U.S. and liberalization of Mexican immigration policy. Finally, chapter seven discusses the main findings of the dissertation, demonstrating the use of soft

reciprocity through the application of the international human rights regime and examining the possibility of future research.

## Chapter 2: Explaining Immigration Policy: Theoretical Foundations and Contributing Factors in Mexico

### 1.0 **Introduction**

This dissertation seeks to explain the passage of the Mexican Migration Law, concentrating specifically on the factors contributing to its timing and usage of a progressive human rights discourse. I argue that the Mexican government undertook a strategy of soft reciprocity, which resulted in the passage of the Migration Law, in order to effectively address concerns about the Mexican emigrant community, Mexican regional leadership role, and civil society objections of human rights abuses. In order to understand the impetus behind the new Migration Law, it is first important to review competing explanations of immigration policymaking and explore how various theories have informed this particular theory. This chapter will provide a review of standing literature in addition to delineate my specific argument of soft reciprocity and the three variables of change listed above.

### 2.0 **Reimagining Immigration Policy Theory**

Academics have long attempted to theorize the formation of immigration policy. However, there has been much argument concerning the main causal factors in policy change and the appropriate level of analysis. State centric accounts of immigration policy tend to focus on national economic and political trends whereas internationalists place the agent of change in international power structures, institutions and regimes. Such

divergent policy models have even cast doubt on the possibility of theorizing a phenomenon spawning such varied explanations.

Current immigration policy theory either focuses exclusively on one domestic feature that does not adequately represent the complexity of immigration policymaking or it focuses on the altruistic influence of international norms, ignoring the pragmatism of state interests. My immigration policy theory explicitly addresses these shortcomings and provides alternatives. When theorizing the construction of immigration policy, there are two things that must be taken into account: state interests and relative geopolitical power. For that reason, I argue that three variables were instrumental in the creation of the Mexican Migration Law: the relationship of the state with the emigrant community abroad; the activism of civil society; and Mexico's desire to maintain a prominent regional leadership role. Many theorists have concentrated exclusively on one prominent variable to explain the stimulus behind the construction of immigration policy. While these theories are helpful, I have employed an amalgamation of such variables to build a more comprehensive theory. The evolution of immigration theory and various contributing factors have heavily informed the theory put forth in this dissertation.

In the apparent shortcomings of overly parsimonious theories, a group of academics have sought to rectify the problem of theorizing immigration policy by constructing models with various independent variables, merging economic and political factors. Two such scholars are Michael LeMay and Eytan Meyers. LeMay claims that shifts in US immigration policy have historically followed similar trajectories.<sup>1</sup> According to LeMay, each shift was influenced by the four primary considerations of economics, race,

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<sup>1</sup> Michael C. LeMay, "U.S. Immigration Policy and Politics." In *The Gatekeepers: Comparative Immigration Policy*, ed. Michael C. LeMay (New York: Praeger, 1989), 5.

nationalism, and foreign policy issues.<sup>2</sup> Although his analysis is weak in the area of explicating foreign policy as a major element, he illustrates an immigration policy theory that nicely combines political and economic factors.

Eytan Meyers follows suit in his examination of immigration policymaking. He argues that five major factors affect the construction of immigration control policy: the state of the economy, the volume of immigration of diverse background, wars, foreign policy issues, and foreign policy cycles.<sup>3</sup> Meyers puts forward a series of hypotheses concerning the effect of these five factors on the construction of immigration policy. He further speculates that the type of immigration, i.e. temporary labor, permanent, refugee, or illegal, determines the relative weight of each explanatory factor.<sup>4</sup> This is a particularly strong aspect of his argument, as most theorists treat immigration flows as largely homogenous and fail to differentiate between the various challenges each flow presents. In addition, Meyers is particularly adept at pointing out the political implications of foreign policy issues, viewing immigration policy as an important political tool to advance regional relationships. Although the various factors make this theory a bit messy, Meyers is able to encapsulate a highly complex phenomenon into a comprehensive theory.

This dissertation heavily borrows from the strengths of these theories, which lie in the structure of multi-variable models and the blending of economic and political factors. However, an immensely important consideration is missing. Although these multi-faceted theories attempt to better reflect the complex factors that affect the construction of

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<sup>2</sup> Ibid.

<sup>3</sup> Eytan Meyers, *International Immigration Policy: A Theoretical and Comparative Analysis* (New York: Palgrave Macmillan, 2004), 12.

<sup>4</sup> Ibid, 17.



immigration policy, they focus primarily on countries that are at the receiving end of immigration. They do not adequately address countries such as Mexico that hold more than one role in international immigration. One of the defining characteristics of Mexico in the immigration debate is that its outflow of citizens far outweighs the inflow of foreigners. Therefore, it is of extreme importance to consider this dynamic when theorizing immigration policy within the context of Mexico and other similar countries. I argue that when emigration eclipses immigration, then the state's relationship with that emigrant population becomes paramount in all discussions of immigration policy. Therefore, these theories fail to address this most valuable relationship between the state and its citizens when developing a model for the construction of immigration policy.

### ***2.1 Emigrants and Extended Incorporation***

Mexico's primary role in international immigration is as a sending country. Emigration out of Mexico has traditionally reached much higher levels than immigration into Mexico. In addition, the vast majority of Mexican emigrants migrate to the United States, constituting the largest foreign-born population in the United States. There are two implications to this dynamic. First, the Mexican emigrant population in the United States has continued to grow in sheer numbers, which has resulted in a subsequent increase in economic and political capital. Therefore, the Mexican government has been forced to adapt and provide a greater framework for inclusion for those living abroad. It is in the interest of the Mexican government to do their best to incorporate this population as they hold a substantial amount of influence. This has led to the creation of an emigration policy based on a strategy of extended incorporation, which focuses primarily on extending policy and protection to the emigrant population abroad.

Secondly, due to the power imbalance between the United States and Mexico, Mexico has continuously been at the mercy of US immigration policy when it comes to providing greater protection for Mexican emigrants abroad. Since the US has consistently treated immigration as a domestic issue, immigration policy has been enacted unilaterally without the input from regional partners. Therefore, Mexico has been forced to deal with US policy implications retroactively. As the political and economic might of Mexican emigrants has grown concurrently with the passage of increasingly restrictive US immigration laws, the Mexican government has been more inclined to actively voice its opposition to such laws and seek ways to alleviate the negative consequences for Mexican emigrants.

This is consistent with the turn towards extended incorporation: the Mexican government is prepared to go to great lengths to protect the wellbeing of Mexican emigrants in the United States; however, this endeavor was hindered by US criticisms of hypocrisy based on previous Mexican immigration policy enshrined in the LGP. Mexican attempts to advocate on behalf of Mexican emigrants were silenced by US policymakers citing Mexico's lack of moral authority to demand for immigrant rights suppressed in Mexico's own domestic laws. Therefore, the Mexican government eliminated the source of contention and replaced the LGP with a new, more progressive immigration policy, the Migration Law. The importance of this variable is mostly predicated on the growing political and economic capital of the Mexican emigrant population residing in the United States. Immigration theories have long focused on economic and political impetuses for policy change and direction.

### 2.1.1 *Immigration Theory and Economic Explanations*

Traditional immigration policy theory has often focused on economic influences as an explanatory factor in the construction of immigration policy. Some theorists tend to focus primarily, if not exclusively, on the impact of business cycles on immigration policy.

These theories generally view immigration in a strict dichotomy. When the economy of the host nation is healthy and exhibits low levels of unemployment, governments have a tendency to pass more liberal immigration policies. Conversely, when the receiving country is in an economic recession with high levels of unemployment, the government responds with more restrictive policies.<sup>5</sup>

My theory takes business cycle theories and applies them in a different way. I acknowledge the importance of economic factors and the health of the domestic economy; however, my variable is the source of money as opposed to the general status of the economy. Although they have been in steady decline for the past 13 months, remittances comprise the second largest source of foreign income after oil exports in Mexico, totaling \$5.88 billion in the second quarter of 2013.<sup>6</sup> According to traditional economic theories of immigration policy, it would hold that Mexico would pass policy to facilitate the continued growth of the domestic economy. In this instance, the most important economic factor associated with migration policy in Mexico is the inflow of remittances due to the fact immigration numbers are negligible in Mexico. As noted, the protection of this emigrant population was endangered due to hypocrisy in Mexican immigration policy. Therefore, Mexico sought to rectify this situation by enacting a new

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<sup>5</sup> Thomas Straubhaar and René Weber, "On the Economics of Immigration: Some Empirical Evidence in Switzerland," *International Review of Applied Economics* vol. 8 (1994): 108.

<sup>6</sup> El Economista, "Remesas hila 13 meses a la baja en Julio," September, 2013. Available online: <http://eleconomista.com.mx/finanzas-publicas/2013/09/02/remesas-mexico-cayeron-12-julio>

immigration policy to attain moral authority in this issue area and better advocate for Mexicans abroad.

However, there are shortcomings with holding economic influences as sole variables. If the state of the economy is given exclusive explanatory power, then other crucial political and cultural variables are dismissed. Oftentimes, the state of economic cycles is buttressed by additional factors that help influence the timing and direction of policy change. Additionally, unless changes in economic patterns are dramatic, ranging from extreme pinnacles to extreme lows, it is difficult to allocate all predictive power to one factor. Those theories focusing exclusively on the upswing and downswing of business cycles cannot fully account for a drastically progressive shift in Mexico's immigration policy. If the passage of this law were solely attributable to economic factors, then this type of law would have to be accompanied by a sustained economic boom, or a sustained high remittance rate in this instance. Although the rate of remittances was high at the time of the passage of the Migration Law, they have since dropped along with the total number of emigration to the United States. If business cycles were solely responsible for the direction of immigration policy, then the decreased economic impact of the emigrant population since the Migration Law passage would mandate another change in policy. However, since this has not occurred, other political factors must be considered in tandem with the economic importance of the emigrant community.

#### 2.1.2 *Political Economy Explanations*

Other theorists try to rectify this theoretical limitation by blending economic and political factors. A comparable account can be found in Gary Freeman's argument for the formation of immigration policy. Freeman claims that matters of immigration affect

various interest groups. Those groups that are affected most poignantly, either positively or negatively, will have the most incentive to address these concerns with policymakers. Freeman continues to argue that policymakers are primarily concerned with appeasing those interest groups that are best organized and most vocal concerning the immigration debate. This results in policies that best reflect the desires of the most powerful and effective interest groups, which might not necessarily address the opinion of the majority of voters.<sup>7</sup>

This political economy approach holds true in the case of the passage of the Mexican Migration Law. There were various groups intrinsically affected by Mexican immigration policy. First and foremost, restrictive provisions in the LGP directly impacted immigrants and transmigrants in Mexico. However, due to their low numbers, lack of economic capital and inability to formally organize, these groups failed to aggressively address Mexican immigration policy and make claims against certain injustices. Secondly, Mexican emigrants in the United States were indirectly affected by Mexican immigration policy due to the fact that the Mexican government's efforts to advocate for emigrant rights were thwarted by US accusations of hypocrisy. As stated, the sheer economic and political importance of this group stimulated the government to act on its behalf, first through extended incorporation and secondly through the passage of the Migration Law. Economically, their importance could be found in the volume of remittances sent back to Mexico annually. Politically, laws extending the domestic vote abroad and allowing for dual citizenship magnified the significance of this community.

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<sup>7</sup> Gary P. Freeman, "Modes of Immigration Politics in Liberal Democratic States," *International Migration Review* vol. 29, no. 4 (1995): 884.

My theory also addresses a shortcoming exhibited by Freeman's theory. Freeman largely views the state as a broker of interests, often supporting the most weighted argument and devising policy accordingly. However, this negates the existence of state interests, representing it instead as a submissive actor yielding to powerful societal groups. It ignores the fact that the Mexican government had something to gain from the passage of such a law. Valuable state interests that are closely associated and influenced by the economic and political might of the Mexican emigrant population were a vital factor in the Migration Law. By drafting a law that widely recognized the protection of immigrant rights, the Mexican government was able to claim that it was at the forefront of migrant protection, which was particularly important for Mexicans abroad.

It is not feasible to claim that the state is not an independent actor, just as it would be short sighted to annul the role of civil society interests in the formation of policy. The interests of the two groups are both considerations in the formation of policy. Therefore, I recognize the fact that the state has interests it wishes to pursue in terms of optimizing the economic and political capital of its emigrant community. In addition, my theory attributes additional explanatory power to two other variables: Mexican civil society and the demands of regional partners. A conflation of these interests and variables resulted in the Migration Law.

## ***2.2 Civil Society Activism***

An immigration flow that has become increasingly important and prevalent in Mexico is transmigration. The movement of Central Americans through Mexico to get to the United States has grown exponentially in the last 20 years. This has many implications for Mexico, including the visibility of increased violence against foreigners in Mexico

and subsequent greater international and domestic attention to the matter of migrant rights in Mexico. Therefore, the two other factors of civil society activism and regional leadership concerns emerged and greatly influenced the timing and tone of the Migration Law.

As transmigration increased along with immigrant violence, civil society organizations began to mobilize around the issue of migrant rights. This active participation in the human rights debate began with the Central American refugee crisis in the 1980s and was solidified with the political liberalization of Mexico in 2000. A number of civil society organization, including Sin Fronteras and the Catholic Church, have held instrumental roles in the legislative changes to Mexican immigration policy and have been successful in marrying the protection of human rights to immigration debates in Mexico.

In its recent past, especially in the era of political liberalization and eventual democratization, Mexico has demonstrated a preoccupation with appeasing public consensus. An example of this can be seen in the renovation of the Instituto Federal Electoral (IFE). The IFE was created in 1990 as a response to public outcry over the overtly fraudulent presidential election of 1988.<sup>8</sup> There was a call for an institution that was charged solely with organizing elections. However, initially, the IFE was firmly in the hands of the PRI and lacked legitimacy, resulting in continued fraudulence in various elections. This once again instigated civil unrest and spurred a process, referred to as *ciudadanización*, over the span of the 90s in which the IFE was eventually granted autonomy from the federal government and constituted solely by citizens.

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<sup>8</sup> Leonardo Avritzer, *Democracy and the Public Space in Latin America*, (Princeton: Princeton University Press, 2002) 146.

The *ciudadanización* of the IFE was also linked to the action of multiple social actors. The actions leading to the creation of an autonomous IFE were linked to specific negotiations with either political or civic actors as a result of specific cases of electoral fraud.<sup>9</sup>

Therefore, this was a process implemented top-down by the government, yet greatly influenced by civil society concerns, demonstrating two important implications for the passage of the Migration Law. The first is that the government has traditionally shown concern for popular civil society complaints during political liberalization and democratization. Secondly, the federal government has been open to civil society suggestions throughout the policymaking process in the past, especially when it threatened the democratic veneer of the Mexican government.

The Mexican government has a vested interest in demonstrating a dedication to the consolidation of democracy to the international community. Therefore, the Mexican government has reciprocated this activism with an equal commitment to the inclusion of civil society organizations in policymaking and issue articulation. This willingness on behalf of the Mexican government to lend credence to civil society organizations is especially evident in the passage of the 2002 Law of Transparency and Access to Public Information in addition to the 2003 Law to Enhance the Social Development Activities Performed by Civil Organizations. Resultantly, civil society demands have held an increasingly relevant role in the liberalization of Mexican immigration policy. This commitment is further evident throughout the drafting and passage of the Migration Law.

### 2.2.1 *Interest Groups, Social Movements, and Immigration Policy*

Another body of literature is concerned with the impact of social movements in the development of immigration policy. Marco Giugni and Florence Passy recognize three

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<sup>9</sup> Ibid, 148.



relevant social movements: far right groups, migrant groups, and solidarity movements.<sup>10</sup> They find that migrant groups have relatively no impact on policymaking, whereas far right groups are the most successful and solidarity groups have somewhat ambiguous results in the attempt to influence policy. Furthermore, the authors argue that a variety of political, economic, and socio-demographic resources are most helpful in advancing the sway of these movements.<sup>11</sup>

The most helpful aspect of the argument posited by Giugni and Passy is their usage of the political opportunities structure theory and its application to analyze not only the emergence of these social movements, but also their success in obtaining their goals for mobilization. This affords them two theoretical advantages. First, it considers the political context within which these groups emerge and the environment most conducive to their success. Secondly, it emphasizes the importance of institutional allies, namely political parties that are ideologically or strategically aligned with the objectives of the social movements.<sup>12</sup>

Other immigration policy theories focus specifically on which interest groups play a role in the policymaking process, whether they are considered members of the states or outsiders. Triadafilos Triadafilopoulos and Andrej Zaslove argue that Freeman's account of an impartial state is invalid with the increased politicization of immigration and the emergence of political parties as influencing factors in the construction of immigration

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<sup>10</sup> Marco Giugni and Florence Passy, "Influencing Migration Policy from Outside: The Impact of Migrant, Extreme-right, and Solidarity Movements." In *Dialogues on Migration Policy*, ed. Marco Giugni and Florence Passy (New York: Lexington Books, 2006), 193.

<sup>11</sup> Ibid, 208.

<sup>12</sup> Ibid.

policy.<sup>13</sup> The authors argue that political parties and their strategic interests influence policy outcomes in tandem with other lesser factors, such as international human rights and liberal norms.<sup>14</sup> However, this model is based on a theory of conflict and partisan politics, and does not take into account consensual policymaking as was the case in the passage of the Mexican Migration Law.

My theory allows for collaborative efforts in the policymaking process, using the same logic employed by Triadafilopoulos and Zaslove. Due to the extreme political importance of the three variables outlined in my theory, it was in the best interest of all Mexican political parties to ensure the passage of the Migration Law. Throughout the legislative process, the Migration Law enjoyed widespread support that transcended partisan divisions and unanimously passed both the Senate and Chamber of Deputies with 432 affirmative votes. This is significant, given that in the same session in the Chamber of Deputies, only 21% of bills were passed unanimously, all ranging from 309 to 422 total votes. In contrast, 40% of votes were split and 38% of votes were cast with at least one instance of abstention.<sup>15</sup> This indicates the multi-partisan popularity of the Migration Law, demonstrated by both the unanimity of the vote and number of total votes.

This confluence of public and governmental interests is apparent in Mexico in terms of immigration policy and the adoption of the Migration Law. With the democratization of Mexico, there was a political opening in which public opinion became an important force in Mexican politics. A number of initiatives and laws reinforced the significance of civil society in the policymaking process and the accountability of elected officials.

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<sup>13</sup> Triadafilos Triadafilopoulos and Andrej Zaslove, "Influencing Migration Policy from Inside: Political Parties." In *Dialogues on Migration Policy*, ed. Marco Giugni and Florence Passy (New York: Lexington Books, 2006), 172.

<sup>14</sup> Ibid, 189.

<sup>15</sup> Mexican Cámara de Diputados official website: <http://www.diputados.gob.mx/Votaciones.htm>

Therefore, democratization provided an invaluable political opportunity for the organization and emergence of pro-migrant social movements, which in turn helped influence the liberalization of immigration policy and the utilization of the international human rights regime by the Mexican government, eventually resulting in widespread partisan support of the Migration Law.

The political opportunities structure posited here indicates that it is necessary to consider additional factors in explaining the policymaking process. Therefore, these social movements must be considered concurrently with other political factors and sources of power. This is also true in the case of Mexico. As will be proven in this dissertation, the three factors of the Mexican emigrant population, civil society and issues of regional leadership all combined in order to influence the drafting and passage of the Migration Law. The third variable will be reviewed below.

### **2.3 *Regional Leadership***

The issue of harsh treatment of Central American immigrants on Mexican soil has also gained the negative attention of regional partners. Immigrant violence has especially increased with the advent of Mexico's campaign against drug cartels beginning in 2006 under the Calderón administration. Countries such as Guatemala, Honduras, Nicaragua and El Salvador have all voiced opposition to the inhumane treatment of transmigrants in Mexico. This has had a negative impact on Mexico's role as a regional leader; a role that Mexico has a demonstrated interest in reinforcing.

An example of this prominent leadership role can be found in Mexico's promotion of the Contadora Process in the 1980s. The Contadora Process was a regional initiative to find a peaceful resolution to violent Central American civil wars. At first the Contadora

Group worked in tandem with the United States to find such a solution; however, this bond was soon broken as Mexico and other partners denounced US unilateral action and officially recognized the legitimacy of the FMLN and the FDR in El Salvador.<sup>16</sup>

Although the Contadora Process failed to bring an end to Central American political violence, it still demonstrated the capacity of Mexico to act as a regional leader. Mexico continued to cultivate this role and still views itself as a natural leader in Central America.

In recent years, there have been a number of regional initiatives to conduct a multilateral approach to responsible migration management. These initiatives were undermined by Mexico's legislative history of restricted human rights for foreigners in Mexico and contributed to the passage of the Migration Law. By aligning immigration policy with the sensibilities of regional partners in addition to utilizing internationally legitimized human rights norms, Mexico was able to reinforce its regional leadership role and enhance its own moral authority and leverage in the immigration debate. This is especially helpful in its fight for greater inclusion for Mexican emigrants in US society.

### 2.3.1 *International Norms and Institutions*

Many immigration theories have taken into account the transnational nature of immigration policymaking in addition to the usage of international human rights norms. Neoliberal institutionalists address the international component of immigration policymaking by including international institutions and norms in their theories. Yasemin Soysal puts forth a postnational model, claiming that individual rights have now morphed

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<sup>16</sup> H. Rodrigo Jauberth, "The Triangle and the Negotiations Process," in *The Difficult Triangle: Mexico, Central America, and the United States*, eds., H. Rodrigo Jauberth, Gilberto Castaneda, Jesus Hernandez, and Pedro Vuskovic, (Boulder: Westview Press, 1992).

into human rights and find their legitimacy in international ideals and norms.<sup>17</sup> This reveals a paradox between traditional notions of sovereignty and universal human rights. Conventionally, the protection of individual rights has fallen under the umbrella of citizenship: members of a nation-state were granted protection by that nation-state. However, under the postnational model, Soysal argues that individuals are entitled human rights based on their essential personhood. Furthermore, she maintains that the idea of personhood has now pervaded world culture, granting its legitimacy to international norms while still placing the onus of responsibility of enforcement on the nation-state.<sup>18</sup> David Jacobson continues this argument, claiming that citizenship is in decline due to the deterritorialization of the nation-state and that membership has gained more importance in the quest for the protection of human rights. He contends that this stems from the international regime of human rights founded in the 1948 United Nations' Declaration of Human Rights.<sup>19</sup> The Declaration states that human rights are not contingent on legal belonging; they are instead carried by individuals across borders and political lines.

This concept of personhood and the application of universal human rights is vital to my theory, especially in relation to both Mexico's relationship with its emigrant population and the progressive ideals underlying the Migration Law and the subsequent treatment of foreigners in Mexico. The evolution of the nation-state and the increased importance of international norms such as the Declaration of Human Rights provided Mexico with the tools to act at the vanguard of migration management in the region.

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<sup>17</sup> Yasemin Soysal, *Limits of Citizenship: Migrants and Postnational Membership in Europe* (Chicago: The University of Chicago Press, 1994), 3.

<sup>18</sup> Ibid, 143.

<sup>19</sup> David Jacobson, *Rights Across Borders: Immigration and the Decline of Citizenship* (Baltimore: The Johns Hopkins University Press, 1996), 2.

### 2.3.2 *Domestic and International Theories Combined*

This final variable of regional leadership introduces another important aspect of my immigration policy theory: the combination of domestic and international theories. Oftentimes, theorists work from one particular level of analysis and do not care to connect external and internal impetuses for change. However, when discussing issues of immigration, it is vital to take both aspects into account.

James Hollifield's theory of immigration policy works specifically to combine domestic and international factors within a neoliberal institutionalist context. Hollifield couches his argument in terms of economic and political liberalism, examining what he calls a liberal paradox within the issue area of immigration.<sup>20</sup> Economic liberalism requires an unregulated labor market in which labor is seen as a commodity. However, political liberalism requires the extension of rights to all members of society. Therefore, when immigrants, especially guestworkers, are treated as a labor commodity in an unregulated labor market, their political liberties are automatically violated, as they cannot be sold and bought as any other commodity.<sup>21</sup>

In explicating policy responses to immigration flows within the context of this liberal paradox, Hollifield argues that the political cannot be separated from the economic; that "political and social principles are 'embedded' in market relations."<sup>22</sup> This embedded liberalism therefore yields a rights based regime in which economic liberalism is conditioned by political liberties espoused by international regimes. Therefore, the employment of the rights based politics at the domestic level stems from the relationship between immigration and changes in the international system.

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<sup>20</sup> James F. Hollifield, *Immigrants, Markets, and States* (Massachusetts: Harvard University Press, 1992), 7.

<sup>21</sup> Ibid.

<sup>22</sup> Ibid, 10.

An important aspect of Hollifield's argument is the role of the state. He argues that the international rights based regime grants a series of possible policy alternatives, providing a set of liberal constraints that must be respected by the state. However, he also contends that the application of these liberal norms will vary according to domestic factors such as institutions and the domestic political system. Therefore, although the international system is given priority in explicating change, it is also conditioned by considerations of domestic political institutions and processes.<sup>23</sup> Therefore, the state retains a degree of agency.

A weakness in his theory is why the state is compelled to adhere to international liberal norms. Hollifield claims that embedded liberalism is reflective of the values of hegemonic states, and that other states must therefore apply liberal principles to immigration solutions. "The primacy of rights leads states to exercise caution and restraint in dealing with migrants."<sup>24</sup> Since there are no international institutions with the ability to forcibly impose liberal constraints (not to mention that this would be illiberal in nature), then it must be assumed that only states with underlying liberal beliefs or altruistic motives are inclined to employ the rights-based regime. Although Hollifield does argue that domestic institutions would affect the extent of the realization of liberal norms, his argument is weak due to the fact that the initial implementation is predicated on a belief system that is difficult to prove.

The Mexican Migration Law heavily borrows from international human rights norms due to the fact that immigration is transnational in nature and Mexico is invested in becoming a source of leadership in regional migration management. However, the

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<sup>23</sup> Ibid, 29.

<sup>24</sup> Ibid, 28.

theories outlined above do not account for why Mexico chose this alternative as a plan for action. Many would like to argue that Mexico took a particular interest in the international human rights regime because it was a norm that the government believed in and wanted to support for altruistic reasons. However, if this were the case, then there would not have been such a long lag from the ratification of the United Nations Convention on the Protection of the Rights of all Migrant Workers and Members of their Families in 2003 and the concerted effort of the Mexican government to harmonize domestic immigration policy with the tenets of this agreement. Due to this lag in implementation, it must be assumed that certain state interests were influential in the decision to finally fully adhere to the principles of the treaty. I rectify this theoretical shortcoming with my concept of soft reciprocity.

### 3.0 **Soft Reciprocity**

Mexico's increased efforts to become a more vocal advocate for emigrant rights in the U.S. have been confronted by an overwhelming roadblock: US allegations of hypocrisy in terms of Mexico's own history with immigration policy. The LGP and the Mexican Constitution have long been criticized as violating basic human rights of foreigners in Mexico and were examples of the very kind of legislation the Mexican government opposed in the United States. This prevented Mexico from amassing the moral authority necessary to continue emigrant outreach and protection. Due to the growing importance of Mexico's relationship with Mexicans abroad, emigrant incorporation was a primary goal, which also required a higher degree of international



legitimacy in migration management and would hopefully reap economic benefits and political loyalty in the future.

Therefore, Mexico started a campaign to liberalize its own immigration policy, which eventually led to the construction of the Migration Law. Theoretically, this would afford Mexico greater moral authority in the area of immigration policy and provide much needed legitimacy and leverage, in addition to international backing, to its struggle for advocating for emigrant protection in the United States. The optimal result would be a progressive change in US immigration policy that would better benefit Mexican emigrants. At the very least, the liberalization of immigration policy would prove to Mexican emigrants that the Mexican government was intently focused on eliminating all obstacles to aid in their wellbeing.

Christina Boswell picks up on this theoretical debate and addresses the motivation of nation-states to follow international human rights norms in the construction and implementation of immigration policy. In the spirit of neoliberal institutionalism, Boswell recognizes the importance and influence of international regimes, such as human rights norms. However, she claims that the existence of liberal ideas and tendencies within a nation-state is not sufficient in explaining the employment of international norms in domestic policy in the absence of enforcing institutions.<sup>25</sup> She therefore argues that all forms of transnational cooperation are linked to the interests of the nation-state. In terms of immigration policy, the state interests can be found in the search for legitimacy in the areas of fairness, accumulation, security and institutional legitimacy.<sup>26</sup> Therefore, although she credits liberal values with providing a range of policy alternatives, she

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<sup>25</sup> Boswell, 80.

<sup>26</sup> Ibid, 91.

ultimately credits the employment of liberal norms to the protection of state interests. This is especially helpful in the evaluation of Mexican immigration policy and is the theoretical foundation for the concept of soft reciprocity.

Although this is not a common strategy, there have been other instances in which smaller nations have employed an international norm in order to attain moral authority and serve as a model for how certain issues could be better managed by larger countries. One such example was the preemptive eradication of HCFCs in the Maldives, ten years prior to requirements imposed by the Montreal Protocol.<sup>27</sup> HCFCs are damaging greenhouse gases that are most commonly found in refrigerators and air conditioners. In 2010, President Nasheed announced a national initiative to be completely free of HCFCs by the year 2020. “The Maldives hopes that by leading the way and discontinuing the use of HCFCs early, we can demonstrate that an early phase-out is possible and practical, leading the way for other countries to follow suit.”<sup>28</sup>

This is an ambitious strategy that might not have much bearing on the overall effects of greenhouse gases, but will serve as an example to other countries with more influence. The reality of the situation was expressed by President Nasheed. “What we do is not going to save the planet, but it will save us. And we can tell the world, look it works.”<sup>29</sup>

This illustrates the fact that he recognized his actions may not have staggering effects, but

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<sup>27</sup> “Maldives is Walking the Talk: Phasing Out Ozone-depleting Substances.” United Nations Environment Programme press release, June 2010, on the United Nations Environment Programme website, <http://www.unep.org/documents.multilingual/default.asp?DocumentID=628&ArticleID=6622&l=en&t=long>, accessed May 2013.

<sup>28</sup> “Maldives Takes the Lead on HCFC Phase-Out.” Republic of Maldives, Ministry of Environment and Energy press release, [http://www.google.com/url?sa=t&rct=j&q=&source=web&cd=1&ved=0CC0QFjAA&url=http%3A%2F%2Fwww.environment.gov.mv%2Fv1%2Fdownload%2F10&ei=GQSxUdHSJe\\_eyQH084CABQ&usg=AFQjCNFYJDnQtbLfSD1nQ6NGcBFO\\_fazDA&sig2=kmDFjz-9400inhZpkHcwRA&bvm=bv.47534661,d.aWc](http://www.google.com/url?sa=t&rct=j&q=&source=web&cd=1&ved=0CC0QFjAA&url=http%3A%2F%2Fwww.environment.gov.mv%2Fv1%2Fdownload%2F10&ei=GQSxUdHSJe_eyQH084CABQ&usg=AFQjCNFYJDnQtbLfSD1nQ6NGcBFO_fazDA&sig2=kmDFjz-9400inhZpkHcwRA&bvm=bv.47534661,d.aWc), accessed May 2013.

<sup>29</sup> Kunda Dixit, “Maldives to Phase out HCFCs, Super Greenhouse Gases, 10 Years Early.” *Inside Climate News*, June 14, 2010, accessed May 2013, <http://insideclimatenews.org/news/20100614/maldives-phase-out-hcfc-super-greenhouse-gases-10-years-early>.

that it would at least grant moral authority and legitimacy to the international norm in question. This is relatable to the Mexican Migration Law. Even though Mexico's Migration Law might not have as much bearing on international migration management as comprehensive immigration reform in the United States would, it is still at the vanguard and positions Mexico to better advocate for progressive reform abroad. It also grants international credibility to a national initiative.

Therefore, important state interests that would benefit from a strategy of soft reciprocity largely influenced the usage of international human rights norms in the Migration Law. The most important state interest in this case was the emigrant community and its relationship with the Mexican state. Two secondary considerations were civil society and regional concerns surrounding the LGP.

#### 4.0 **Conclusion**

By utilizing the three independent variables of the state's relationship with its emigrant community, civil society activism, and regional leadership concerns, this immigration policy theory takes into account important and complex dynamics of international migration. It allows for the theorization of immigration policy from a primarily sending standpoint as opposed to a receiving position. In addition, it takes important geopolitical factors into account that are usually overlooked due to the disproportional focus on the immigration policies of receiving countries. Furthermore, it explores how politically disadvantaged countries can use international tools to pursue the protection of vital state interests.

There are several strands of immigration policy theory. Some focus primarily on domestic factors while others grant more importance to international norms and institutions. Although many of these theories have valuable insight, they fall short of providing a full explanation of immigration policy formation. This is especially true in cases in which the deliberating country is at a power disadvantage and holds multiple roles in the migration phenomenon. This dissertation seeks to rectify these shortcomings, focusing on a combination of internal and external influences while also taking into consideration the primarily migration role a country may hold. The following chapter will discuss the role of immigration and transmigration in Mexico, including the state's evolving relationship with its immigrants and subsequent claims of hypocrisy by both domestic and international actors.

## Chapter 3: Mexican Immigration and Transmigration Policy: Historical Trends and Criticisms

### 1.0 **Introduction**

In this chapter, I will shift focus to the two flows of immigration and transmigration into and through Mexico. I will discuss the various types of immigration into Mexico and the more recent development of transmigration. I will examine the legislative initiatives that have traditionally dealt with foreigners in Mexico. This chapter will also discuss the dissonance between international human rights norms and Mexican domestic policy and the subsequent emergence of dissenting opinions concerning the violation of migrant rights in Mexico.

The purpose of this chapter is to illustrate how Mexico's official treatment of migrants, immigrants and transmigrants has been characterized by corruption, the violation of human rights, and a weak legal foundation for protection, which eventually served as a basis for the mobilization of civil society and regional partners to call for reform in Mexican immigration policy. Civil society and regional complaints constitute two of the three variables that created an impetus for the creation of the Migration Law. These two factors emerged in the early to late 2000s, and amassed importance due to a Mexican focus on both democratization and magnification of regional leadership. They therefore then created a pressure to liberalize immigration policy, eventually leading to the Migration Law.

## 2.0 **Mexico and Immigration**

There are two types of flows coming into Mexico. These include immigrants who seek to settle and work in Mexico and transmigrants whose objective is to pass through Mexico in order to arrive to the United States in order to settle and/or work. Although these are historically two distinct flows, there are areas of overlap. They have therefore solicited a similar reaction from the Mexican government due to the traditionally restrictive policies against foreigners.

The immigration flow was relatively slow until the advent of Central American crisis, which greatly augmented refugee flows into Southern Mexico. As conflict subsided and Central American problems shifted from political to economic, this refugee flow became an economic migration. However, due to the fact that Mexico has experienced economic crisis in recent years and a deflation of the domestic labor market, this economic immigration flow partly morphed into a transmigration flow heading toward the United States. Consequently, the Mexican government has had to amend policy in order to accommodate increased immigration along its Southern border, with the aim of accommodating both economic immigrants and transmigrants. This section will review the histories of these flows and the corresponding policy responses.

### 2.1 ***Traditional Immigration and Legal Precedents***

Immigration flows into Mexico have traditionally been much lower than emigration flows towards the United States. As Table 1 illustrates, immigration beginning in 1895 was virtually nonexistent. As it grew slightly over the years until 1980, the largest immigrant-settling group came from the United States, which still only accounted for less than one percent of the total population.

**Table 1: Selected Foreign Nationals in the Mexican Censuses, 1895-1980 (in thousands)**

	1895	1900	1910	1921	1930	1940	1950	1960	1970	1980
<i>British</i>	3	3	5	4	5	4	2	2	1	2
<i>Canadian</i>	-	-	-	-	8	1	6	5	3	3
<i>Chinese</i>	1	3	13	14	19	7	6	5	2	*
<i>French</i>	4	4	5	4	5	3	3	4	3	4
<i>German</i>	2	3	4	4	7	4	5	7	5	5
<i>Guatemalan</i>	14	5	22	14	17	8	8	9	7	4
<i>Japanese</i>	-	-	2	2	4	2	2	2	2	3
<i>Lebanese</i>	-	-	-	-	4	4	5	4	2	2
<i>Spanish</i>	13	16	30	29	47	29	37	50	31	32
<i>U.S. citizens</i>	12	15	21	11	12	19*	83	98	97	157

*\*misleading or missing census data*

*Source: Mexican Census Records*

Other regions of origin to note are Europeans, most of which were influenced by push factors of geopolitical instability in their country of origin and the pull factors of commerce and industry opportunities in Mexico.<sup>1</sup> Although eclipsed by North American numbers in 2000, many European groups have remained since colonial times, including people of Spanish, Italian, German, French, British, Irish, Polish, Portuguese, Russian and Swiss decent. In addition, as illustrated by Table 3, South American immigrants began to arrive in the late 1970s and 1980s due to political unrest in source countries. This flow especially included Argentines, Chileans, Uruguayans, Peruvians, and Colombians. This has turned into an economic immigration, with its primary contributors from Argentina and Colombia. This is similar to the situation confronted by Central Americans; however, the majority of Central Americans continue on to transmigrate through Mexico to get to the United States. Despite these various regions of origin, the

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<sup>1</sup> Mexican Chamber of Deputies, "Gaceta Parlamentaria," Friday, April 29, 2011. Gazette number 3251-III.

number of immigrants residing in Mexico is fairly low, only accounting for .86% of the total population.<sup>2</sup>

Jurgen Buchenau recognizes three main eras of immigration and immigration policy in Mexico prior to the General Law of Population (LGP).<sup>3</sup> The first phase, from 1821-1876 was marked by a somewhat idle flow of immigration into Mexico due to political instability and a lack of economic opportunities. The second phase lasted from 1876-1910 and was largely characterized by governmental policies of “whitening” by European immigrants. The third phase began in the age of revolution, starting in 1910 and ending in 1973. Buchenau argues that this final stage incorporated a strategy of shutting down borders to immigration and the encouraging of assimilation by foreign populations already within Mexico.<sup>4</sup> Due to the purposes of this dissertation, I will examine only the end of the third phase and its relevance to the construction of the LGP and then move into the contemporary era of Mexican immigration policy.

The year 1910 was ushered in along with an intensely violent revolution that endured nearly ten years in Mexico. Once the fighting ended, political and economic stability were slow to come to Mexico, due to massive recession and World Wars. This did not create a hospitable environment for foreigners, and instead fostered a restrictive immigration policy steeped in Mexican nationalism. “The recession spurred on two responses to the foreign presence that had long simmered in Porfirian Mexico: elite economic nationalism, and popular xenophobia.”<sup>5</sup> This was a reaction to foreign

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<sup>2</sup> Ibid.

<sup>3</sup> Jurgen Buchenau, “Small numbers, great impact: Mexico and its immigrants, 1821-1973,” *Journal of American Ethnic History*, vol. 20, no. 3 (2001).

<sup>4</sup> Ibid.

<sup>5</sup> Ibid, 37.



intervention and was seen as an attempt to maintain a high degree of sovereignty in domestic affairs. This nationalism was reflected in the 1917 National Constitution.

There are three main articles of the Mexican Constitution with specific repercussions for foreigners. Article 27 declares all land and mineral resources a patrimony of the nation and placed extreme restrictions on foreign ownerships of such resources.<sup>6</sup> Article 33 states that the President holds the power to expel any foreigner whose stay is considered inconvenient, without granting the foreigner the right of due process. It further states that foreigners are forbidden to participate in any political matter within Mexico.<sup>7</sup> Finally, Article 123 states that preferential treatment of foreign workers is prohibited as it simultaneously grants the right to collective bargaining and striking for Mexican citizens.<sup>8</sup> These articles reinforced the need of the Mexican government to build a unified citizenry that often excluded any and all foreigners.

As the year 1974 approached, levels of immigration had increased in Mexico due to the influx of Central American refugees. The previous policy of whitening was eradicated as Mexico faced new challenges. Therefore, the government amended the standing legislation and created the modern version of the LGP, which was in place for roughly 37 years.

The Mexican government increasingly came to see that the future of the country's demographic dynamics depended instead on its ability to provide employment, education, and healthcare to an ever-increasing population. In 1974, this changing government perception was expressed in revisions to the General Law of Population of 1947, and with its approval, Mexico virtually closed its doors to immigrants.<sup>9</sup>

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<sup>6</sup> Instituto Nacional de Migración. *Legislación migratoria e instrumentos jurídicos para la gestión de la migración en México, 2009*. (México, D.F: Instituto Nacional de Migración, 2009), 36.

<sup>7</sup> Ibid, 37.

<sup>8</sup> Buchenau, 16.

<sup>9</sup> Laura V. González-Murphy and Rey Koslowski, *Understanding Mexico's Changing Immigration Laws*, (Washington DC: Woodrow Wilson International Center for Scholars, Mexico Institute, March 2011).

Therefore, the LGP was meant to protect the interests of the native population and stated as its objective, “to regulate those phenomena that affect the populace with respect to the volume, structure, dynamics, and distribution of same within the national territory, in order to ensure that the populace may share fairly and equally the benefits of economic and social development.”<sup>10</sup> The LGP was largely considered a nativist law that created a formidable environment for foreigners in Mexico, and went to great lengths to restrict the rights of foreigners in Mexico.

The LGP further stated that only immigrants deemed “useful” would be permitted entry into the country.

The Department of the Interior shall be able to impose conditions upon those foreigners who enter the country, with respect to the activities they shall be allowed to pursue, as well as the areas where they shall be allowed to reside. The Department shall also ensure that the immigrants represent useful elements to the country, and that they receive sufficient income to support themselves and, if applicable, such persons as may depend on them economically.<sup>11</sup>

In addition, the LGP established two different groups of foreigners in Mexico. A non-immigrant was a foreigner who had permission to temporarily enter the country. A non-immigrant could gain access to Mexico under one of the following categories: tourist, transmigrant, visitor, religious minister or associate, political asylee, refugee, student, distinguished visitor, local visitor, temporary visitor, or correspondent.<sup>12</sup> An immigrant was a foreigner who legally entered Mexico with the purpose of residing and ultimately obtaining the status of Permanent Resident. The categories of immigrant included:

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<sup>10</sup> Mexican Government, *Ley General de Población (LGP)*, Article 1. Translation by Marc W. Mellin and David D. Spencer.

<sup>11</sup> LGP, Article 34.

<sup>12</sup> LGP, Articles 41 and 42.

pensioner, investor, professional, confidential employee, scientist, technician, family member, artist or athlete, or an assimilate person.<sup>13</sup>

The LGP stated that illegal entry into Mexico was a crime and was punishable by either steep fines or time in jail. Articles 119-124 explicated the consequences for foreigners who violated the LGP as shown in Table 2.

**Table 2: LGP Articles and Criminal Offenses**

Article	Offense	Punishment
119	Remaining in the country illegally due to non-compliance with or violation of the administrative or legal provisions upon which his/her stay was conditioned after initially having legally obtained authorization to enter the country	Imprisonment of up to 6 years and a fine of up to 5,000 pesos
120	Performing activities for which the foreigner is not authorized in conformance with the LGP or the entry permit granted by the Department of the Interior	A fine of up to 3,000 pesos and imprisonment of up to 18 months
121	Violating the terms governing the foreigner's stay in the country by performing unlawful or dishonest acts	Imprisonment of up to 2 years and a fine of up to 10,000 pesos
122	Maliciously making use of or claims to hold an immigration status different from that granted to him/her by the Department of the Interior	Imprisonment of up to 5 years and fine of up to 5,000 pesos
123	Entering the country illegally	Imprisonment of up to 2 years and fine between 300-5,000 pesos

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<sup>13</sup> LGP, Article 48.

The LGP also authorized enforcement responsibilities to the Secretary of the Interior (SEGOB) and the Federal Preventive Police Force. These two governmental groups were given permission to carry out the following tasks: verification visits; cause a foreigner to appear before immigration authorities; reception and presentation of complaints and testimony; request reports; migration inspection operations on routes or at temporary points different from the established inspection locations; and obtain such other elements of proof as may be necessary for the application of the LGP.<sup>14</sup>

The LGP and pertinent Constitutional articles placed many restrictions on foreigners in Mexico. Furthermore, the LGP did not propose to coordinate Mexican emigration and immigration policy, nor did it delineate specified areas of incorporation for Mexican emigrants in the exterior. Instead, it sought to promote repatriation and incorporation into the domestic economy. Discussed in greater detail later, the Mexican government began to liberalize the LGP through various amendments and related initiatives, seeking to incorporate Mexican emigrants from afar along with granting greater rights to foreigners in Mexico.

#### 2.1.1 Mexican Immigration/Refugee Policy 1978-1983

Mexico's Southern border began to experience sizeable flows of migration in the late 1970's due to the outbreak of Central American civil wars, especially the Guatemalan conflict. Larger numbers of refugees began to cross into Mexico in the early 1980s, which established a flow that has been maintained until today, although it has changed from political to economic push factors in recent years. The increase of immigration flows forced Mexico to redefine immigration policy. Beginning in the mid 1970s until the

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<sup>14</sup> LGP, Article 151

end of Central American conflict, Mexico changed strategies due to geopolitical positioning and domestic crisis.

Mexico's initial reaction to Central American conflict resulted in the construction of a foreign policy based on the idea that, "...stability in the area would be impossible without the conditions for sociopolitical change."<sup>15</sup> Therefore, the Mexican government followed a strategy based on support for Central American forces initiating change. Mexican support of the anti-Somoza struggle in Nicaragua caused conflict with the United States in 1978 due to the fact that very different ideologies were being pursued in a close geographical context.<sup>16</sup> Mexico's foreign policy was often seen as anti-imperialist and essentially anti-American which is often attributed to a difficult history with the United States and continuous threats to sovereignty.

The country's foreign policy is clearly internationalist in scope, the consequence of a history of humiliation, but also of just aspirations and firm positions-a foreign policy that defends the right of peoples to self-determination, peaceful international coexistence, equality among nations, and the right to asylum, just as it condemns the arrogance of any powerful nation that lords its position over a small one.<sup>17</sup>

The ideological beliefs held by Mexico were manifested in the construction of foreign policy as Mexico sought out a more autonomous international position that would counterbalance U.S. hegemony in Central American and Mexican issues.<sup>18</sup>

Under Mexican law, the status of refugee is not recognized due to the fact that Mexico is not a signatory of the United Nations Convention on the Status of Refugees. Instead, Mexico has always focused on the designation of political asylum, which

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<sup>15</sup> H. Rodrigo Jauberth, "Introduction," in *The Difficult Triangle: Mexico, Central America, and the United States*, eds., H. Rodrigo Jauberth, Gilberto Castaneda, Jesus Hernandez, and Pedro Vuskovic, (Boulder: Westview Press, 1992), 6.

<sup>16</sup> Ibid.

<sup>17</sup> Jesús Hernández, "Mexican and U.S. Policy Toward Central America," in *The Difficult Triangle: Mexico, Central America, and the United States*, eds., H. Rodrigo Jauberth, Gilberto Castaneda, Jesus Hernandez, and Pedro Vuskovic, (Boulder: Westview Press, 1992), 20.

<sup>18</sup> Luis Maira, "Reagan and Central America" in *Trouble in our Backyard: Central America and the United States in the Eighties*, edited by Martin Diskin, (New York: Pantheon Books, 1984), 65.

necessitates proof of political persecution.<sup>19</sup> However, with the arrival of Guatemalan refugees in the early 1980s, Mexico entered into a bilateral agreement with the United Nations High Commissioner for Refugees (UNCHR), which promised refugee status to Guatemalans fleeing into Mexico.

Mexico also created the Comisión Mexicana de Ayuda a Refugiados (COMAR) in July of 1980 to synchronize actions by the Secretariats of Foreign Relations, Labor and Social Welfare.<sup>20</sup> The three main objectives of COMAR were, "...to oversee emergency assistance to the Central American refugees; to provide them with political representation; and to design temporary and long-term projects for employment and self sufficiency."<sup>21</sup> COMAR worked alongside UNCHR and severely restricted the obstruction of additional international forces, such as NGOs, hoping to maintain national sovereignty in dealing with the refugee situation.<sup>22</sup> In addition, Mexico was extremely hesitant to militarize its Southern border during this time in fear of offending Central American governments, particularly the Guatemalan government.<sup>23</sup> These policies all showed a willingness on the part of the Mexican government to work in solidarity with Central America as a regional leader.

To reinforce this position, Mexico and France both officially recognized the Farabundo Marti Front for National Liberation (FMLN) and the Democratic Revolutionary Front (FDR) as legitimate political forces in El Salvador. Additionally, at

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<sup>19</sup> Americas Watch Committee, *Guatemalan Refugees in Mexico: 1980-1984*, (New York: Americas Watch Committee, September, 1984), 22.

<sup>20</sup> Rosalva Aída Hernández Castillo, Norma Nava Zamora, Carlos Flores Arenales, and Jose Luis Escalona Victoria, *La Experiencia de Refugio en Chiapas: Nuevas Relaciones en la Frontera Sur Mexicana*, (Mexico City: Copilco Universidad, 1993), 50.

<sup>21</sup> María Cristina García, *Seeking Refuge: Central American Migration to Mexico, the United States, and Canada*, (Berkeley: University of California Press, 2006), 49.

<sup>22</sup> Ibid, 51.

<sup>23</sup> Americas Watch Committee, 32.

this time Mexico entered into the Contadora Group with other Central American countries with the goal of finding a peaceful solution and offsetting U.S. presence in Central America.<sup>24</sup> Simultaneously, the Reagan administration initiated the Tegucigalpa Bloc with Costa Rica, Honduras, and El Salvador, which sought solutions in direct contradiction with the goals of the Contadora Group.<sup>25</sup> Reagan declared Mexico's actions at this time as extremely "irresponsible" and declared that Mexico did not accurately assess the threat to national security introduced by revolutionary forces. Therefore, throughout the early eighties, Mexico and the United States often took contradictory stances on Central American conflict. Furthermore, Mexico continued to see itself as a regional leader and sought to undercut American hegemony whenever possible. However, this began to change as Mexico entered into a period of crisis and the world system underwent major transformation.

#### 2.1.2 *Transition to Economic Immigration*

The territorial boundary between Mexico and Guatemala was established in 1882, although it did not affect the daily social interaction or movement between the two countries. Instead, it produced a lively transborder community based on commerce, labor, and cultural ties that still exist today.<sup>26</sup> Guatemala and Belize flank Mexico's southern border, which runs 1,149 kilometers long, 193 kilometers of which are framed by Belize.<sup>27</sup>

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<sup>24</sup> Hernández, 33.

<sup>25</sup> H. Rodrigo Jauberth, "The Triangle and the Negotiations Process," 66.

<sup>26</sup> Instituto Nacional de Migración, Consejo Nacional de Población, El Colegio de la Frontera Norte, Secretaría de Gobernación, Secretaría del Trabajo y Previsión Social, Secretaría de Relaciones Exteriores, *Encuesta sobre Migración en la Frontera Guatemala-México, 2004-2007*, (México, D.F: Instituto Nacional de Migración, Consejo Nacional de Población, El Colegio de la Frontera Norte, Secretaría de Gobernación, Secretaría del Trabajo y Previsión Social, Secretaría de Relaciones Exteriores, 2004).

<sup>27</sup> Ibid.



The four Southern border-states in Mexico are Chiapas, Tabasco, Campeche and Quintana Roo from west to east. Geographically, the border starts in coastal areas along the western edge, marked by the Suchiate River and moves east along the Southern border of Chiapas, which is where the most immigration occurs. Tabasco's border area is small in comparison to Chiapas and is located within dense jungle areas. Despite its geographical formidability, flows through Tenosique, Tabasco have increased over the past couple of years. Campeche's border is lined by the Petén, an equally daunting jungle on the Guatemalan side and therefore experiences scarce immigration. Quintana Roo's border with Belize also yields low immigration numbers.

In 1993, the Internal Regulations of the Department of the Interior created the Instituto Nacional de Migración (INM), a governmental organism responsible for the



implementation and enforcement of all immigration matters in Mexico.<sup>28</sup> The INM is a subsidiary of the Department of the Interior, but acts independently in order to carry out the task of immigration services in Mexico. It is charged with the planning, execution, control, supervision and evaluation of migration services and is ordered to work in accordance with other governmental entities also working in the field of immigration.<sup>29</sup> One of its responsibilities is to monitor the Southern border and the passage of immigrants into and through Mexico.

The INM recognizes twelve official crossing points along the Mexican Southern border. Two are found in Quintana Roo, one is in Tabasco, and the remaining nine are in Chiapas.<sup>30</sup> There are INM officials located along the Southern border, with varying degrees at each crossing point. Busier crossing points in Chiapas contain a high degree of officials and vigilance along the border; however, low volume rural areas barely distinguish the actual physicality of the border. In some areas, the border is delineated by markings in the grass and a series of small white statues. The Southern border is notorious for its porosity due to lack of enforcement resources and established transborder traditions of commerce and quotidian activities.

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<sup>28</sup> Mexican Government, Internal Regulations of the Department of the Interior, Section 5, Article 55.

<sup>29</sup> Ibid.

<sup>30</sup> Ibid, 23. The following are the ten crossing points: Subteniente López, La Unión, El Ceibo, Frontera Corozal, Carmen Xhan, Ciudad Cuauhtémoc, Unión Juárez, Talismán, Suchiate II, and Ciudad Hidalgo.

## Map of Chiapas and International Crossing Points



### Key to Map:

1. Palenque: Aerial entrypoint
2. Frontera Corozal
3. Nvo. Orizaba
4. Carmen Xhan
5. Ciudad Cuauhtémoc
6. Mazapa de Madero
7. Unión Juárez
8. Talisman
9. Ciudad Hidalgo
10. Suchiate II
11. Tapachula: Aerial entrypoint

After the establishment of the border, it was discovered in the late 20<sup>th</sup> Century that Southern Mexico had abundant natural resources that were quickly capitalized upon. Great strides were made in agricultural development, especially in the production of coffee and cocoa, especially in the Soconusco region.<sup>31</sup> This agricultural phenomenon, along with the increased emigration of Mexican rural workers, spurred the creation of an economic labor flow from Central America that continues today. The main destinations

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<sup>31</sup> Ibid. The Soconusco region is comprised of the most southern region of the state of Chiapas, with the economic center of Tapachula and separated from Guatemala by the Suchiate River.

for temporary workers from Central America are located in Southern Mexico. These destinations include the four border-states in addition to Yucatán and Veracruz. The main labor sector is agriculture, followed by construction and then domestic services.<sup>32</sup>

The majority of temporary workers are found in the cities and rural areas close to the Pacific Coast. This is the area with greatest amounts of available labor and commerce, and the highest quality of infrastructure in terms of highways and trains. This migrant population mainly comes from Guatemala, from either Tecún Uman or el Carmen and cross into Chiapas through either Ciudad Hidalgo or Talismán.<sup>33</sup> These migrants are Guatemalans primarily from the municipalities of San Marcos, Quetzaltenango, Huehuetenango, and Retalhuleu, which are all located in the Southwestern part of Guatemala.

As noted, temporary laborers primarily work in agricultural and service sectors and stay in Mexico various amounts of times, depending on the type of work and travelling distance from their homes. Agricultural workers tend to stay in Mexico longer, whether weeks or months. The period of highest labor migration is between the months of October and January. Many family members usually participate in agricultural jobs due to the fact that there is a higher demand for manual labor and payment is in accordance with the amount of work done.<sup>34</sup> Although agricultural labor has a longer tradition in Southern Mexico, jobs in construction and services are increasing in availability. The

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<sup>32</sup> Daniel Cortez Pérez, Carlos Cáceres Ruiz, and Roselí Venegas Cheyral, *Diagnóstico General de los Flujos de Trabajadores Temporales de la Frontera Sur de México*, (Mexico City: Centro de Estudios Migratorios, Instituto Nacional de Migración, 2005).

<sup>33</sup> INM, *Encuesta sobre Migración en la Frontera Guatemala-México, 2004-2007*, 25.

<sup>34</sup> *Ibid*, 27.

majority of migrants that work in these sectors find jobs in Tapachula or other border towns, crossing the border daily.<sup>35</sup>

In addition to the transborder movement of temporary workers, there is also a population of what is known as “local visitors.” Local visitors are defined as people who migrate in a daily fashion for family, service, or commerce reasons. These populations generally reside in the border regions of Guatemala or Belize and migrate to the nearest urban centers in Mexico. This is a more prominent phenomenon in Tapachula and Comitán, Chiapas and Chetumal, Quintana Roo.<sup>36</sup>

The Mexican government has responded to these daily flows through the establishment of two temporary visas. The first is the Migratory Form for Border Workers (FMTF), created on March 12, 2008. The FMTF is meant to facilitate workers from Guatemala and Belize who wish to work in one of the four border-states. It can be obtained at an official crossing point or INM offices near the border.<sup>37</sup> It is not sector-specific, it can be obtained in one day, and workers can bring spouses or children with them as economic dependents. Beneficiaries include Guatemalans or Belizians, without a criminal record, who can verify a legitimate offer for work from a Mexican employer. The FMTF provides permission for the temporary worker to remain in Mexico for a year. In order to obtain the FMTF, potential workers must present proof of residence or a passport, two pictures, written job offer, and a fee of 1,904 pesos.<sup>38</sup> Temporary border workers must always carry the FMTF with them and must only use it for its specified

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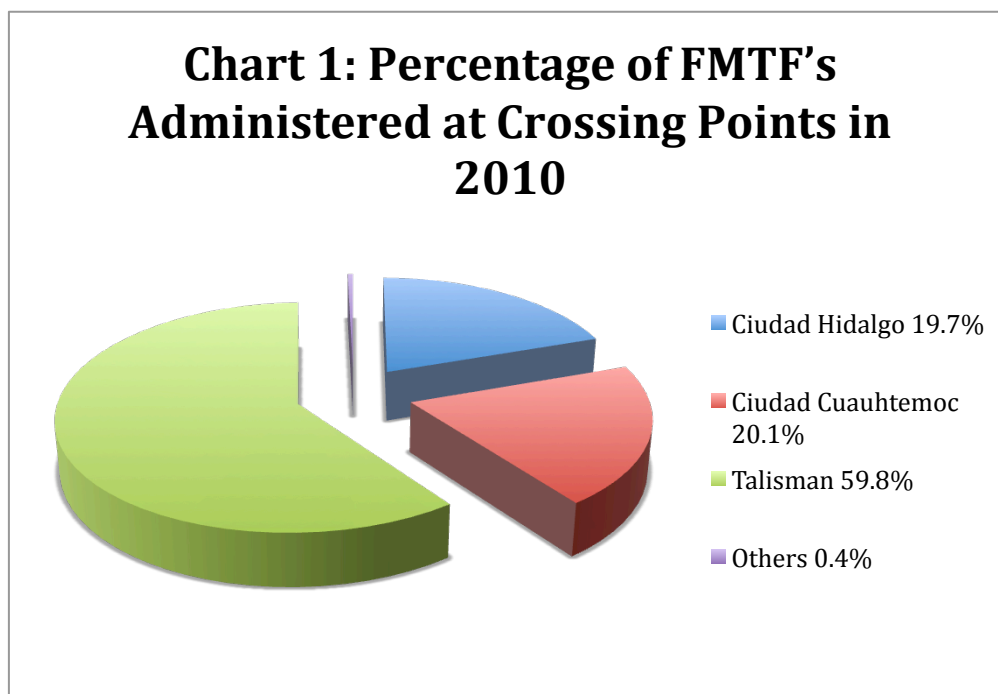
<sup>35</sup> Ibid.

<sup>36</sup> Ibid.

<sup>37</sup> INM website. Available online: <http://www.inm.gob.mx/index.php/page/FMTF>

<sup>38</sup> Ibid. If the projected salary is below minimum wage, this fee is waived.

purposes within the border region. In addition, they must promptly leave the country or obtain a renewed visa at the end of its tenure.<sup>39</sup>



*Source: INM, Center of Migratory Studies<sup>40</sup>*

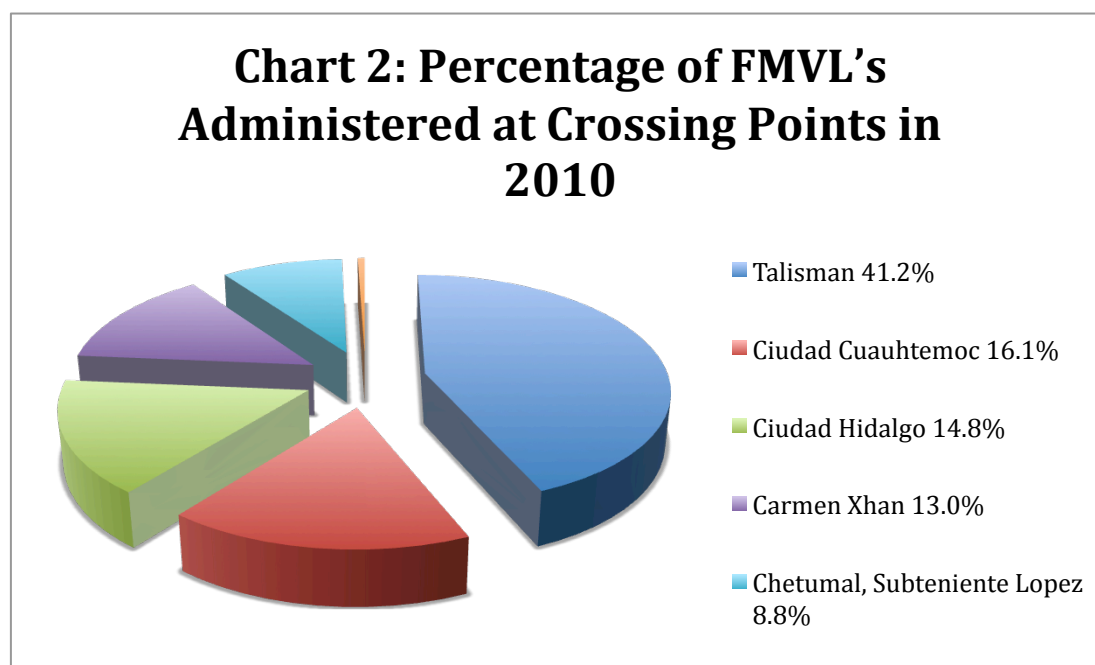
Chart 1 above illustrates that the vast majority of FMTF's was administered through Talismán, Chiapas, at 59.8%. According to the INM, only 28,269 FMTF's were produced during the year of 2010. All but one of these were given to Guatemalans, with 28,570 dispensed in Chiapas. This demonstrates that the FMTF is primarily utilized in the state of Chiapas and that overall numbers are relatively low.

The second temporary visa established by the Mexican government is the Migratory Form for Local Visitors (FMVL), also created on March 12, 2008. The purpose of the FMVL is to allow temporary visitors to come into Mexico's border region for three days

<sup>39</sup> Ibid.

<sup>40</sup> INM, "Síntesis 2010: Estadísticas Migratorias del INM," (Mexico City: Center of Migratory Studies, 2010).

only.<sup>41</sup> Once again, it can be obtained along the border with proof of residency or passport and two photos. It is free for applicants and requires that unaccompanied minors have written permission from their parents. It is offered only to residents of the Guatemalan states of Quetzaltenango, San Marcos, Huehuetenango, Quiché, Petén, Retalhuleu, and Alta Verapaz.<sup>42</sup> The FMVL does not permit any kind of labor for remuneration and requires that its holders must leave Mexico by the end of three days.



*Source: INM: Center of Migratory Studies<sup>43</sup>*

Chart 2 above shows that the majority of FMVL's, or 41.2%, is rendered through the official crossing point at Talismán, Chiapas. In 2010 alone, 84,309 registered Guatemalans entered into Mexico with the FMVL. 79,267 of those entered into Chiapas, with the destination of Talismán for 38,075 of those beneficiaries.<sup>44</sup> Although this is a

<sup>41</sup> INM website. Available online: <http://www.inm.gob.mx/index.php/page/FMVL>

<sup>42</sup> Ibid. The FMVL states that those who enter Mexico through Ciudad Hidalgo or Talismán can travel as far as Tapachula and those who enter through Ciudad Cuauhtémoc or Carmen Xhan can travel as far as Comitán.

<sup>43</sup> INM, Center of Migratory Studies, "Síntesis 2010: Estadísticas Migratorias del INM."

<sup>44</sup> INM website. Available online: [http://www.inm.gob.mx/index.php/page/Boletines\\_Estadisticos](http://www.inm.gob.mx/index.php/page/Boletines_Estadisticos).

fairly large number of users, it is not representative of the daily transborder flows between Mexico and Guatemala. Due to the high porosity of the border, there are many that cross without applying officially for the FMVL.

The low numbers attributed to the distribution of FMVLs and FMTFs exhibits either one of two trends. The first assumption is that the labor and visitor flow into Mexico from its Southern neighbors is relatively low. This is quite possible and on trend from Mexico's lower numbers of historical immigration and struggling economy. The second assumption is that it is only the documented flow that has not increased. This means that, although documented immigration into Mexico is low, undocumented immigration has continued to increase over the years. This augmentation of undocumented flows can be seen in the following discussion of transmigration, which is the largest source of undocumented migration.

### **3.0 Mexico and Transmigration**

Transmigration has become an increasingly recurrent phenomenon in Mexico. A variety of factors have affected economic and political stability in Central America in recent years. A major stimulus for this particular immigration has been the result of natural disaster, particularly Hurricane Mitch in 1998 and Hurricane Stan in 2005. This has forced the displacement of many Central Americans and has spurred their migration to the North. However, as economic opportunities in Mexico have waned, this northward journey more often than not has ended in the United States.

As previously noted, the legal context is not favorable for foreigners in Mexico. Therefore, the route for Central American migrants through Mexico to the United States

border is inherently clandestine and dangerous. Due to the fact that they do not have adequate documentation, Central American transmigrants must move into and through Mexico undetected. Due to the porosity and magnitude of the Mexico-Guatemala border, many cross simply by walking over. As illustrated in Table 3, of 450,427 migrants interviewed in 2007 in the series of EMIF Sur, 361,667 stated they had crossed the Mexican border by walking, which is 80.3% of total population interviewed.<sup>45</sup> The popularity of this mode of crossing remains true for 92.6% of those crossing with some sort of migratory documentation. However, this trend changes slightly for the undocumented population, which can be more closely identified with transmigrants. Of the 73,310 undocumented migrants interviewed, only 12,313 or 16.8% declared walking as their mode of crossing. While 30,172 chose the category of “other,” another 30,378 or 41.4% of the interviewed sampling declared some sort of inner tube or raft as their form of transportation across the border. In addition, 98.8% denied the use of a human smuggler, or coyote, to cross into or through Mexico.<sup>46</sup>

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<sup>45</sup> INM, *Encuesta sobre Migración en la Frontera Guatemala-México, 2004-2007*, 72. It should be noted that, although these surveys followed a strict methodology, interviews of vulnerable populations can sometimes yield unreliable results due to the subject’s precarious status and situation.

<sup>46</sup> Ibid.



**Table 3: Guatemalan Migrants Migrating from Guatemala to Mexico: Documentation Status to Enter Mexico and Mode of Passage into Mexico, 2007**

<b>Documentation Status to Enter Mexico and Mode of Passage into Mexico</b>	<b>Total Numbers</b>	<b>Percentages</b>
<b><i>Total</i></b>	<b><i>450,427</i></b>	<b><i>100.0</i></b>
None or walking	361,667	80.3
Inner tube or raft	39,902	8.9
Tricycle	4,382	1.0
Bus or car	616*	0.1
Other	43,860	9.7
<b><i>With Documentation</i></b>	<b><i>377,117</i></b>	<b><i>100.0</i></b>
None or walking	349,354	92.6
Inner tube or raft	9,524	2.5
Tricycle	3,935*	1.0
Bus or car	616	0.2
Other	13,688	3.6
<b><i>Without Documentation</i></b>	<b><i>73,310</i></b>	<b><i>100.0</i></b>
None or walking	12,313	16.8
Inner tube or raft	30,378	41.4
Tricycle	447**	0.6
Other	30,172	41.2

Source: EMIF Sur, 2007, 72.

\*Data expanded from samplings between 10 and 29 observations or cases

\*\*Data expanded from samplings less than 10 observations or cases

In addition, a large number of those deported declare the United States as their main destination. As shown by Table 4, of the 52,157 migrants deported migrants interviewed in 2007, 39,655 of migrants stated the United States as their final destination. Nearly 100% of this population did not use a smuggler to enter into Mexico, with the vast majority simply walked across the border. Only 75.9% of migrants intending to stay in Mexico were looking for work, whereas 97.4% of those migrating onto the United States stated work as their primary motive for migration. Finally, 94.6% of those migrants with the intention of continuing on to the United States did not have proper documentation to

be in Mexico. These numbers seem to indicate that undocumented migrants are in similar positions in Mexico, regardless of final destination.

**Table 4: Guatemalan Migrants Deported by Migratory Mexican Authorities: Characteristics of Passage to Mexico, according to Stated Destination at Moment of Detention, 2007**

	Totals			Percentages		
<i>Characteristics of Passage into Mexico</i>	<i>Stated Destination at Moment of Detention</i>			<i>Stated Destination at Moment of Detention</i>		
	<i>Mexico</i>	<i>U.S.</i>	<i>Total</i>	<i>Mexico</i>	<i>U.S.</i>	<i>Total</i>
Use of Human Smuggler	12,502	39,655	52,157	100.0	100	100
Yes, used smuggler	22 **	426	448	0.2	1.7	1.2
Did not use smuggler	11,482	23,920	35,402	99.8	98.3	98.8
Unspecified	998	15,309	16,307	NC	NC	NC
<b>Mode of Transportation to arrive to the Mexico-Guatemala Border</b>	<b>12,502</b>	<b>39,655</b>	<b>52,157</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>
None: walking	11,315	34,319	45,634	90.5	86.5	87.5
Inner tube, raft	1,071	4,096	5,167	8.6	10.3	9.9
Bus	23 **	132*	155*	0.2	0.3	0.3
Other	93*	1,108	1,201	0.7	2.8	2.3
<b>Reason for Migration**</b>	<b>12,502</b>	<b>39,655</b>	<b>52,157</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>
* To work or look for work (in Mexico or U.S.)	9,489	38,618	48,107	75.9	97.4	92.2
Other	3,014	1,036	4,050	24.1	2.6	7.8

**Status of**

**Documentation to cross**

<b>into Mexico</b>	<b>12,502</b>	<b>39,655</b>	<b>52,157</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>
With						
Migratory						
documentation	1,501	2,123	3,624	12.0	5.4	6.9
Without						
migratory						
documentation	11,001	37,525	48,526	88.0	94.6	93.0
Unspecified	-----	7 **	7 **	-----	NC	NC

Source: EMIF Sur 2007, 129.

\*Data expanded from samplings between 10 and 29 observations or cases

\*\*Data expanded from samplings less than 10 observations or cases

\*\*\*Refers to the activities to be done in place of destination

Note: Percentages are estimated with respect to the total valid responses, omitting the "unspecified" answers, in addition to incomplete questionnaires, referred to hear as NC (Not Calculable).

In order to cross through Mexico to reach the United States, migrants choose between walking, taking a bus and avoiding Mexican authorities, or riding on the tops of a series of freight trains that cross through Southern Mexico all the way to the Mexico-US border. In 2007, 87.5% of the population interviewed had crossed through Mexico via bus, while only 1.4% declared the use of the trains, down from 8.2% in 2004.<sup>47</sup> Although incredibly dangerous due to fatal injuries and mutilation, corruption, and the patrolling of gangs along the route, riding the trains allowed migrants to pass virtually unnoticed through Mexico. One of the two main routes began in Tapachula, travelled west to Arriaga, up through the state of Oaxaca and ended in Mexico City where another group of trains continued north to the Mexico-US border. However, Hurricane Stan in 2005 left a large area of virtual destruction, including train tracks all the way from Tapachula to Arriaga. This forced the undocumented flow eastward towards Tenosique, where the second train route began, running through the state of Veracruz and stopping in Mexico City.<sup>48</sup>

Due to the fact that transmigration is a clandestine flow, it is difficult to accurately determine the numbers of transmigrants crossing through Mexico. Numbers tracking

<sup>47</sup> Ibid, 211.

<sup>48</sup> Jennifer Johnson, *The Forgotten Border: Migration and Human Rights at Mexico's Southern Border*, (Washington DC: The Latin American Working Group Education Fund, 2008), 12.

deportations cannot guarantee that all migrants have been accounted for due to the fact that some may go by unnoticed and without being detected. Furthermore, the same migrant can also distort deportation numbers due to multiple attempts. This means that, once deported, the same person can continue to attempt to cross into Mexico and may be counted in deportation numbers more than once, thus inflating numbers.

**Table 5: Number of Migrants Deported by Mexican Authorities 2002-2010**

<b>Country of Nationality</b>	2002	2003	2004	2005	2006	2007	2008	2009	2010
<b>Total</b>	**	**	**	**	**	113,434	87,769	64,447	65,802
<b>Central America</b>	**	**	**	**	**	**	**	62,773	63,608
<b>Belize</b>	79	119	227	259	116	57	41	22	26
<b>Costa Rica</b>	116	110	186	110	110	**	**	17	10
<b>El Salvador</b>	16,802	28,979	35,270	42,282	26,930	16,364	12,992	9,963	10,502
<b>Guatemala</b>	54,620	83,572	93,667	99,315	84,657	53,598	41,069	28,924	28,706
<b>Honduras</b>	33,350	59,952	73,046	77,730	59,013	37,344	28,990	22,946	23,580
<b>Nicaragua</b>	1,396	2,075	2,224	3,761	3,666	2,370	1,524	897	779
<b>Panama</b>	**	**	38	**	**	**	**	4	5

*Source: INM*

*\*\* Unavailable*

*Numbers include deportations and voluntary repatriations*

Table 5 illustrates that deportation numbers far outweigh labor immigration numbers, indicating a higher number of undocumented migrants than documented workers. Despite the abovementioned issues with measuring undocumented immigration flows with deportation numbers, the table yields certain important tendencies. First, Guatemalans consistently lead the group with higher numbers for all nine years. Additionally, there is a spike in deportations during the year of 2005, indicating the detrimental effects of Hurricane Stan during this time. In addition, immigration from El Salvador and Honduras

significantly increase around the same time. Lastly, there is a general decline after 2005 across all nationalities.

### 3.1 *Governmental Initiatives along the Southern Border*

Mexico did not develop a specific policy for its Southern border until the year 2001 and the advent of the Plan Sur (Southern Plan) under the Fox administration. Vicente Fox implemented El Plan Sur in June 2001. Plan Sur was an “unprecedented” attempt to stem illicit flows through Mexico’s Southern border. Plan Sur was to be established through increased militarization of the border and augmented enforcement including roadblocks.<sup>49</sup> The Mexican government budgeted \$11 million annually to contribute to the different aspects of Plan Sur, including anti-corruption campaigns and an increased budget for Grupo Beta to provide more equipment.<sup>50</sup> The United States pledged \$2 million per year to assist in the deportation of Central American migrants through Plan Sur, although this was quickly retracted in the aftermath of September 11<sup>th</sup>.<sup>51</sup>

Plan Sur nicely complemented anti-terrorist rhetoric at the time. In the immediate aftermath of September 11<sup>th</sup>, border militarization became a popular policy alternative in the attempt to safeguard the region against terrorists. Due to the fact that Mexico’s porous Southern border was viewed as a gateway into the United States as transmigration increased, Plan Sur fit neatly into the US border approach. For this reason, many viewed Plan Sur as a replication of the militarization policies traditionally opposed to by the Mexican government along the Northern border. “With the Plan, the Mexican government is recreating the US border control model in operation on the Northern

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<sup>49</sup> Ibid, 15.

<sup>50</sup> George W. Grayson, “Mexico’s Forgotten Southern Border: Does Mexico Practice at Home what it Preaches Abroad?” Center for Immigration Studies, July 2002, accessed May 2011, <http://www.cis.org/articles/2002/back702.html>.

<sup>51</sup> Ginger Thompson, “Mexico Worries about its Own Southern Border,” *New York Times*, June 16, 2006.

border.”<sup>52</sup> This new strategy drew much criticism as it was viewed as hypocritical and unjust to Central American migrants. The same grievances were named against militarization in the South as for militarization in the North, including human rights abuses, the criminalization of migrants, and the institutionalization of smuggling networks.

However, due to the deficiency of fiscal and human resources, the Southern border has remained incredibly porous and very easily breeched by Central American migrants. “It did fail to integrate and implement a strategy to solve short, medium and long term issues in a historic and up to date dynamic.”<sup>53</sup> Plan Sur was considered a failure and virtually abandoned by the Mexican government and officially terminated in 2003.

Due to the extreme porosity of the Southern border and the failure to replicate the militarization prevalent on the U.S. side of the Mexican border, the INM has installed a variety of roadblocks and revision checkpoints in the Southern region of Mexico, both in the interior and close to border crossing points. Since 2002, the majority of these efforts have been concentrated in the region located between the Southern border and the Isthmus of Tehuantepec, which is approximately 200 miles to the north of the border.<sup>54</sup> As Table 6 shows, the majority of deportations in 2010 took place in the four states of Chiapas, Tabasco, Veracruz, and Oaxaca respectively. This illustrates that the INM is following the route of transmigrants, first slightly to the north and then veering west in the direction of the United States.

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<sup>52</sup> Philippe Revelli, “Mexico, Devourer of Migrants” *Le Monde Diplomatique*, July, 2003.

<sup>53</sup> Instituto Nacional de Migración, *Propuesta de política migratoria integral en la frontera sur de México*, (México, D.F: Instituto Nacional de Migración, Centro de Estudios Migratorios, 2005).

<sup>54</sup> Johnson, “Mexico’s Forgotten Border,” 14.

**Table 6: Deportations by Federal Entity, 2010**

Federal Entity	Deportations	Voluntary Repatriati on	Deportation of Minors	Total
<b>Total General</b>	<b>9 005</b>	<b>51 947</b>	<b>4 850</b>	<b>65 802</b>
Aguascalientes	10	367	16	393
Baja California	435	-	62	497
Baja California Sur	28	-	-	28
Campeche	50	732	3	785
Chiapas	1 342	20 064	2 658	24 064
Chihuahua	961	-	46	1 007
Coahuila	20	773	17	810
Colima	9	5	-	14
Distrito Federal	907	729	637	2 273
Durango	25	192	13	230
Estado de México	2	1 211	8	1 221
Guanajuato	-	1 082	-	1 082
Guerrero	43	63	4	110
Hidalgo	6	1 473	45	1 524
Jalisco	21	158	3	182
Michoacán	-	74	9	83
Morelos	4	66	-	70
Nayarit	1	248	11	260
Nuevo León	52	708	32	792
Oaxaca	860	3 780	26	4 666
Puebla	29	822	15	866
Querétaro	-	491	16	507
Quintana Roo	30	89	13	132
San Luis Potosí	1 063	1	4	1 068
Sinaloa	1 117	-	33	1 150
Sonora	1 296	-	47	1 343
Tabasco	12	11 405	730	12 147
Tamaulipas	181	1 500	124	1 805
Tlaxcala	19	1 364	5	1 388
Veracruz	92	4 461	238	4 791
Yucatán	72	23	14	109
Zacatecas	149	66	17	232

Source: INM, Centro de Estudios.

### 3.2 *Vulnerability of Migrant Rights*

The previously discussed aspects of the LGP and Mexican Constitution written in regards to foreigners applied to transmigrants in Mexico as well. This means that their rights were greatly restricted, which rendered them vulnerable to abuse by a variety of actors, including governmental officials. This emerged as one of the main problems with transmigrants in Mexico. They became a population with few protections and were increasingly the target of violence and corruption.

The National Commission of Human Rights (CNDH) is charged with the registration of complaints against the Mexican state in terms of abuses of rights. The CNDH has been a long-time advocate of migrant rights and submitted a series of reports concerning the violation of their rights, especially in regards to abuses committed by immigration officials. In 2005, the CNDH created the Fifth General Inspection Unit with the sole purpose of examining the violation of human rights of migrants in Mexico.<sup>55</sup> Once the CNDH receives complaints, there are four possible lines of action. First, the CNDH can reject the complaint due to an insufficient amount of proof.<sup>56</sup> Secondly, the CNDH can declare the process concluded due to evidence against the person who registered the complaint or demonstrated disinterest by the parties involved. Thirdly, the CNDH can suggest actions of conciliation such as reparations or advice on the administrative aspect of processing and addressing the complaint. Finally, the CNDH can issue recommendations to the offending party as to how to amend the situation. This last situation is the gravest action on behalf of the CNDH and is done when there is sufficient

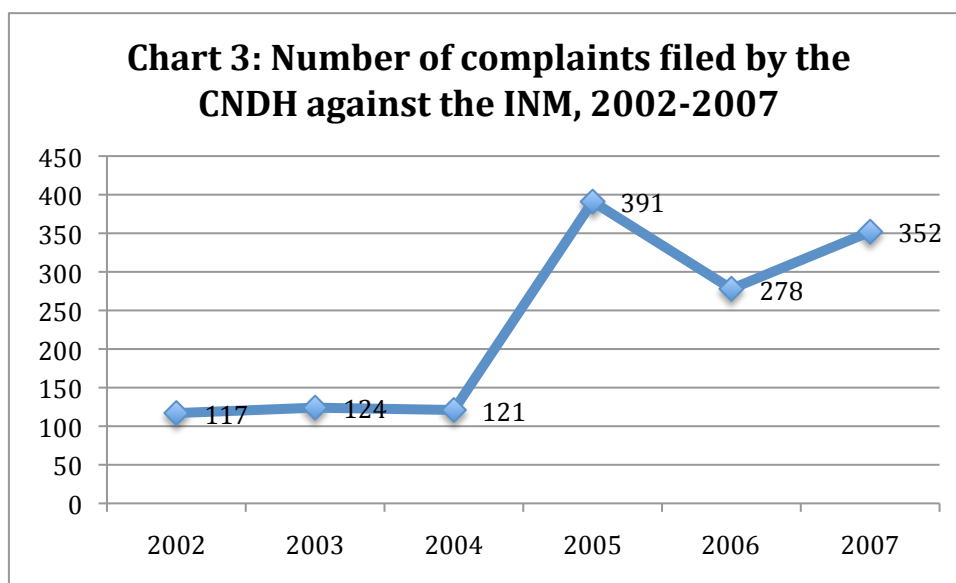
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<sup>55</sup> Juan Carlos Calleros Alarcón, *El Instituto Nacional de Migración y los derechos humanos de los migrantes en México*, (México, D.F: SEGOB/Instituto Nacional de Migración/Centro de Estudios Migratorios, 2009).

<sup>56</sup> Ibid, 108.



proof to the existence of the violation. The offending institution can choose to either accept or reject the recommendation.<sup>57</sup>



*Source: INM*

Chart 3 illustrates the amount of complaints filed by the CNDH on against the INM.<sup>58</sup> The years 2002 through 2004 were relatively stable, hovering around 120. However, there was a large spike in 2005 to 391 complaints. The INM accounts for this sudden increase due to the simultaneous creation of the Fifth General Inspection Unit with the objective of filing complaints of rights violations.<sup>59</sup> According to the INM, this allowed for migrants to come out of the shadows and report abuses that had been occurring in previous years but that did not receive proper attention. Therefore, the INM attributes this increase in an increase in the report of abuses, not the actual number of abuses committed. There was a dip in numbers of abuses to 278 in 2006, only to increase again to 352 in 2007.<sup>60</sup> It is important to note that these numbers are not representative of the total number of human rights violations occurring during this time in Mexico. Due to the

<sup>57</sup> Ibid, 109.

<sup>58</sup> Once again, data gathered through interviews of migrant populations is not always reliable due to the vulnerability of their status or fear of divulging information incriminating immigration authorities.

<sup>59</sup> Ibid.

<sup>60</sup> Ibid.

clandestine nature of transmigration and the tradition of weak protection of migrant rights, it is unlikely that an undocumented migrant will seek retribution for violations committed, thereby compromising their tenuous status in Mexico.

The main filers of complaints were from Guatemala, Honduras, and El Salvador, constituting 23.3%, 31.4%, and 10.7% of the total numbers respectively in the year 2007.<sup>61</sup> The majority of these were filed by men accounting for 62.9% of total complaints in 2007, aged between 21 and 30 years of age. In addition, the bulk of these complaints were filed by undocumented migrants, with a high percentage of 88.7% of total complaints in 2007. The state of Chiapas was consistently the site of the majority of abuses, followed by Mexico City. Furthermore, the INM received the most complaints, comprising 69.7% of all complaints from 2005 until 2007.<sup>62</sup>

Table 7 illustrates that these complaints were generally concerned with the basic rights guaranteed to immigrants under the LGP Regulations. In 2005, the highest number of complaints was related to being falsely detained. In 2006 and 2007 alike, the most consistent complaint was the detainment by an authority other than an immigration official. There are also instances of extortion and poor conditions. From 2005 until 2007, these complaints resulted in six official recommendations and 99 were thrown out as a result of lack of proof.<sup>63</sup>

**Table 7: Complaints Made in Specified Areas of Violations of Rights, January-April 2005, 2006, 2007**

	<b>2005</b>		<b>2006</b>		<b>2007</b>	
	<i>Complaints</i>	<i>Percentages</i>	<i>Complaints</i>	<i>Percentages</i>	<i>Complaints</i>	<i>Percentages</i>
Detention with Legal	21	16.5	8	9.5	9	5.7

<sup>61</sup> Calleros, 129.

<sup>62</sup> Ibid, 136.

<sup>63</sup> Ibid, 139.

status						
Inadequate detention centers	12	9.4	8	9.5	17	10.7
Physical abuse	12	9.4	11	13.1	18	11.3
Detained by another authority	15	11.8	15	17.9	21	13.2
Psychological Abuse	4	3.1	3	3.6	5	3.1
Rejection	4	3.1	2	2.4	1	0.6
Failed Extortion	4	3.1	4	4.8	1	0.6
Completed Extortion	4	3.1	2	2.4	7	4.4
Without food	10	7.9	3	3.6	5	3.1
Prolonged administrative process	12	9.4	0	0	9	5.7
Robbing	2	1.6	2	2.4	2	1.3
Poor conditions	5	3.9	1	1.2	3	1.9
Lack of communication	1	0.8	3	3.6	2	1.3
Prolonged detention	3	2.4	1	1.2	2	1.3
Without medical attention	4	3.1	2	2.4	13	8.2
Hotel Operations	0	0	0	0	4	2.5
Sexual Abuse	0	0	1	1.2	3	1.9
Other	14	11	18	21.4	37	23.3
Total	127	100.0	84	100.0	159	100.0

Source: INM, Juan Carlos Calleros 134.

In addition to concentrating on the violation of migrant rights by state officials, the CNDH has also focused on the increasing occurrence of migrant kidnappings by transnational criminal organizations in Mexico. The CNDH first issued a report on this

phenomenon in 2009, in which it estimated that as many as 9,578 migrants had been kidnapped over a six month period between 2008 and 2009.<sup>64</sup> 55% of the kidnappings took place in Southern Mexico and approximately 25 million dollars was garnered as ransom during this time period.<sup>65</sup> The CNDH also found that Mexican officials participated in at least 91 kidnapping cases, revealing a complicit relationship between authorities and criminal organizations.<sup>66</sup> In a follow up report in 2011, the CNDH found a total of 214 kidnappings, involving 11,333 total victims over a six-month period in 2010.<sup>67</sup> The majority of victims were Honduran and 67.4% of the kidnappings took place in the Southeastern region of Mexico.<sup>68</sup> In addition, 8.9% of the reported abuses indicated collusion between Mexican officials and criminal networks.<sup>69</sup>

Therefore, Mexico's relationship with undocumented migrants has largely been characterized by the violation of rights and weak legislative tools to rectify this situation. This was in direct conflict with Mexico's international commitment to the protection of human rights. This contradiction between Mexican domestic policy and international treaties served as a mobilizing factor in societal and international opposition to Mexico's immigration policy and will be outlined in the following section.

#### **4.0 Criticism of Immigration Policy**

As discussed, Mexican immigration policy largely ignored the rights of migrants and provided discretionary space for the continual violation of their rights by both state and

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<sup>64</sup> Comisión Nacional de los Derechos Humanos, *Informe Especial sobre los casos de Secuestro en contra de Migrantes*, (Mexico, DF: Comisión Nacional de los Derechos Humanos, June 15, 2009).

<sup>65</sup> Ibid, 12

<sup>66</sup> Ibid, 14

<sup>67</sup> CNDH, 26

<sup>68</sup> Ibid, 27

<sup>69</sup> Ibid

nonstate actors. This was in direct contradiction with Mexico's proclaimed international commitment to the protection of migrant rights. This inherent hypocrisy served as the basis for complaints by both civil society and regional actors concerning the treatment of foreigners in Mexico, which would eventually serve as a catalyst for the creation of the Migration Law. This section will examine the contradiction in norms and policy in addition to the emergence of these variables and grievances articulated by civil society and regional partners.

#### **4.1 *International Human Rights Norms Versus Domestic Policy***

Mexico has continuously been at the forefront of international human rights protection. Mexico has actively participated in a number of forums and conventions concerning increasing safeguards against the violation of human rights and is a signatory of a number of prominent international human rights treaties. However, this international eagerness to embrace human rights norms has not always translated into comparable domestic policy. This section will review Mexico's relationship with the international human rights regime and outline the inherent contradictions stemming from a lack of harmonization of international commitments and domestic law.

In its history, Mexico has consistently been a proponent of the development of international and regional human rights law. Mexico played an instrumental role in establishing the mandate of the Special Rapporteur on the human rights of migrants by the Commission on Human Rights in 1999.<sup>70</sup> Mexico also helped install a paragraph concerning migrants' rights in the Declaration and Programme of Action of the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance

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<sup>70</sup> United Nations Human Rights Council, "Report of the Special Rapporteur on the Human Rights of Migrants, Jorge Bustamante: Addendum: Mission to Mexico" March 9-15, 2008. Available online: <http://www.unhcr.org/refworld/type,MISSION,,MEX,49e88e952,0.html>.

in 2001. Regionally, Mexico has taken a lead position with the Global Forum on Migration and Development. In its second meeting in 2008, Mexico assured that a human rights perspective was observed before assuming Chairmanship in 2009 and hosting the fourth meeting in 2010.<sup>71</sup>

In addition, Mexico is a signatory of most major international and regional human rights treaties.<sup>72</sup> The most important treaty in terms of the protection of migrant rights is the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. This Convention was signed by the Mexican government in 1991 and ratified in March 1999 and finally entered into force on July 1, 2003. The Convention on Migrant Workers explicitly links migration and human rights and clearly delineates the rights of all people in a migratory state.

However, despite Mexico's commitment to the letter of the law, its spirit and implementation were often lost in domestic territory. According to Mexican law, there is a set hierarchy of international and domestic legal instruments. The Mexican Constitution reigns supreme in all matters, followed by international treaties and then federal laws. As has been noted, the Mexican Constitution, especially in terms of foreigner rights, was outdated and restrictive. Therefore, the majority of the rights protected under the myriad

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<sup>71</sup> Amnesty International, "Invisible Victims: Migrants on the Move in Mexico," (London: Amnesty International Publications, 2010).

<sup>72</sup> Mexico has signed and ratified the following treaties: the Universal Declaration of Human Rights; the International Convention on Civil and Political Rights; the International Convention on Economic, Social and Cultural Rights; the UN Convention against Torture; the International Convention on the Elimination of all Forms of Racial Discrimination; the Convention on the Rights of the Child; Convention on the Elimination of All Forms of Discrimination against Women; the Protocol to Prevent, Suppress and Punish Trafficking in persons, Especially Women and Children; the Protocol against the Smuggling of Migrants By Land, Sea and Air; the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; Convention on the Rights of Persons with Disabilities; the International Convention for the Protection of All Persons from Enforced Disappearance

of international treaties of which Mexico is a signatory was nullified under the Mexican Constitution.

The primacy of the Constitution set the foundation for a series of contradictions concerning the protection of human rights in Mexico. Rights that were protected under international law were stripped by the Mexican Constitution, especially as certain articles were continuously upheld in the protection of national interests. In addition, domestic legislation such as the LGP consistently contradicted principles put forth by various international treaties. This was evident immediately after the ratification of the Convention on Migrant Workers when Mexico issued an interpretive declaration holding reservations against article 22, paragraph 4. This reservation was issued due to the fact that this specific article was in direct contradiction with article 33 of the Mexican Constitution, which allowed for arbitrary expulsion of migrants without due process by the executive if they were considered a nuisance. In addition, it was in opposition to article 125 of the LGP, which allowed for undocumented migrants to be subjected to criminal proceedings. Although international treaties were higher up in the legal hierarchy, they were not all ratified and certainly were not entirely observed. This lag in implementation of international treaties allowed for domestic law to set precedents and cultivate policy responses to certain human rights issues.

The lack of legislative harmonization between international and domestic law has been continuously cited by a variety of reviewers and critics of Mexican immigration policy. The Special Rapporteur on the Human Rights of Migrants visited Mexico twice, in 2002 and again in 2008. Both times, the Rapporteur issued a report outlining the contradictions inherent in Mexican immigration policy, recognizing the gap between

Mexico's international fervor and domestic complacency in the protection of migrant rights. "Despite Mexico's leadership role at the international level in promoting a human rights framework for the protection of migrants, there remain significant gaps in its domestic legal framework, existing laws and practice."<sup>73</sup> In Mexico's 2005 report to the Committee on the Protection of the Rights of all Migrant Workers and Members of their Families, Mexico recognized this legal dissonance.

In view of these legal gaps and contradictions, the Government of Mexico is reviewing the current legal framework in the area of migration management so that its basic premise is strict respect for the human rights of migrants and also so that it responds to the country's migration regulation needs and the commitments assumed by Mexico internationally.<sup>74</sup> The Committee responded with the suggestion that Mexico rectify this legal contradiction with the development of a new migration law that better adhered to the standards put forth by the Convention on Migrant Workers.

This contradiction in international commitment to the protection of migrant rights and the restrictive nature of Mexican immigration policy served as an important grievance and mobilizing force for Mexican civil society and regional partners in the migration phenomenon. Eventually the demands of these groups would serve as a catalyst to change and liberalize Mexican immigration policy. The main actors and their complaints will be outlined below.

#### ***4.2 The Emergence of Variables***

As stated, the two variables of civil society and regional concerns conflated to provide an impetus for the passage of the Migration Law. However, these variables did

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<sup>73</sup> UN Human Rights Council, 6.

<sup>74</sup> UN Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families (CMW), *Consideration of reports submitted by States parties under article 73 of the Convention : International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families : initial reports of States parties due in 2004 : Mexico*, November 18 2005, CMW/C/MEX/1, available at: <http://www.refworld.org/docid/4731cfe10.html> [accessed 17 June 2013].



not begin to emerge until the early 2000s, with regional pressure intensifying even closer to 2010. The nonexistence of these variables prior to 2000 helps explain the persistence of the restrictionist nature of the LGP and the delayed liberalization of Mexican immigration policy. Civil society began to gain notoriety and importance in the aftermath of democratization whereas regional partners especially began to express discontent with Mexican migration policy as violence intensified against Central Americans. As these two factors gained momentum, pressure to modify Mexican immigration grew exponentially.

#### 4.2.1 *Democratization and the Political Importance of Mexican Civil Society*

In addition to civil society's success in issue articulation and mobilization, the importance of this group was also augmented by Mexico's transition to democracy. Vicente Fox of the National Action Party (PAN) won the Mexican presidency in 2000, stripping the PRI of its 71-year reign of political dominance. As a newly democratic country interested in strengthening democratic institutions and increasing international legitimacy, Mexico was forced to refocus on public opinion and civil society.

Mexico began opening access to civil society, particularly with the passage of the Federal Law of Transparency and Access to Public Information Act of 2002 and the Law to Encourage the Activities of Civil Society Organizations of 2004. The latter supports federal funding of the civil society sector and encourages collaboration between civil society organizations and various governmental entities.<sup>75</sup> Therefore, there were specific political circumstances and opportunities that allowed for Mexican civil society to flourish and lent more credence to their demands. In addition to the need to consolidate democracy, the new administration recognized the importance of appeasing the

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<sup>75</sup> Gonzalez-Murphy, 5.

electorate. Therefore, their criticisms of the Mexican government in the realm of protecting migrants was a force to be reckoned with and was not taken lightly by the administration. As a result, civil society demands held considerable weight in the liberalization of immigration policy, including in the actual drafting of the Migration Law.

The process of democratization augmented the saliency of civil society demands from the year 2000 until the present. Prior to 2000, the Mexican government did not feel real consequences for the disregard of societal demands as a result of lacking accountability in a semi-authoritarian regime. However, once democratization occurred, the government had more of an impetus for including civil society in important policy consideration and decisions. This is evident in the passage of the Migration Law. The growth in civil society relevance held specific repercussions for Mexican immigration policy and strategy independently but also collectively because it correlated with other important factors. These factors included: increases in Mexican immigration; the growth in importance of Mexican emigrants; intensified dedication to extended incorporation; the higher flow of Central American transmigration and regional concerns over their subsequent treatment. All of these variables coalesced to create an impetus for comprehensive immigration reform.

#### 4.2.2 *Increased Transmigrant Violence and Regional Discontent*

The increase in violence against transmigrants can be closely correlated with former President Felipe Calderón's campaign against established drug cartels in Mexico. Prior to his presidency, several cartels coexisted, albeit uneasily, within an understood status quo that respected territory and domain.

Crime and violence have increased dramatically in Mexico and Central America in recent years, driven in part by a shift in cocaine-trafficking routes throughout the region and, in part, by the incomplete transition from authoritarian to democratic ways of upholding the rule of law...Some of the rise in violence can be attributed to fights among the major Mexican organized-crime groups for control of the illegal drug trade and their push to establish a presence in Central America in order to preserve trafficking routes into the United States.<sup>76</sup>

Therefore, although Mexico had long been an active participant in regional politics,

concerns over Mexico's leadership role were not questioned until migrant violence

escalated under President Calderón's campaign against the drug cartels. Felipe

Calderón's presidency and his aggressive drug policy began in 2006, which coincides

with the beginning discussions of congruence and reciprocity in Mexican immigration

policy. This is when liberalization of Mexican immigration policy began to materialize.

Weak legislative protections compounded with raising rates in migrant kidnappings inflamed regional discontent and stimulated Central American governments to become more vocal about dissatisfaction with Mexico's role in protecting migrants in domestic territory.

Along with domestic advocates, external actors have also called for Mexico's immigration laws and regulations to be updated. In recent years, Central American governments have dramatically increased their pressure and activism in defense of their nationals transiting through Mexico. For instance, during official visits the presidents of El Salvador and Guatemala have both raised the issue of migration, which has become a regular topic of bilateral discussions.<sup>77</sup>

Central American dissonance has been most evident in governmental reactions to mass kidnappings and assassinations of Central American citizens.

Many regional governments have reacted publicly to the threat of violence against Central American migrants in Mexico. This apparent frustration with Mexico was

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<sup>76</sup> Andrew Selee, Cynthia J. Arnson, and Eric L. Olson, "Crime and Violence in Mexico and Central America: An Evolving but Incomplete US Policy Response" (Washington DC: Migration Policy Institute, January 2013). Available Online: <http://www.migrationpolicy.org/pubs/RMSG-EvolvingPolicyResponse.pdf>.

<sup>77</sup> Ibid, 14.

compounded by subsequent acts of violence and increased migrant kidnappings and further exacerbated by the finding of the mass grave of 72 assassinated migrants in Tamaulipas, Mexico in August, 2010. Many regional leaders criticized both the act of violence and the lack of response by the Mexican government. The Honduran government demanded that the Mexican government clarify the details of the kidnapping and the specific acts of violence suffered by the murdered migrants, claiming that the Mexican investigation was lacking in transparency and had exhibited little forcefulness.<sup>78</sup>

The regional outcries continued after another particularly large scale kidnapping of 50 Central American migrants in Oaxaca, Mexico in December of 2010. The Guatemalan government issued a strongly worded diplomatic release in which it demanded the Mexican government actively investigate the incident and punish those responsible for the kidnapping.<sup>79</sup> “Guatemala vehemently condemns this and any other act which violate the fundamental rights of human beings and puts at risk the physical and moral integrity of immigrants, regardless of their legal status.”<sup>80</sup> In addition, the Guatemalan government asked Mexico to create a specialized department that would deal solely with crimes committed against migrants, pointing out that kidnappings such as the one that occurred in Oaxaca proved evidence of rising violence against undocumented immigrants.<sup>81</sup> Mexico responded to the diplomatic release, stating that such accusation undermined regional cooperative efforts to tackle immigration issues. However, despite such defensiveness, the Mexican government was quick to point out that “significant

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<sup>78</sup> Shinji Harper, “Gobierno de Honduras exigirá esclarecer secuestro de migrantes en México,” *Periodismo de Paz: Ciudadanía Express*, December 28, 2010. Available Online: <http://ciudadania-express.com/2010/12/28/gobierno-de-honduras-exigira-esclarecer-secuestro-de-migrantes-en-mexico/>

<sup>79</sup> Elena Michel, “Guatemala exige investigar plagios: Presenta nota diplomática a la candiller Patricia Espinosa,” *El Universal*, December 29, 2010. Available online: <http://www.eluniversal.com.mx/nacion/182814.html>

<sup>80</sup> Ibid.

<sup>81</sup> Ibid.

advances” had been made on a “vanguard” new Migration Law initiative that enjoyed the preliminary political support of all major parties.<sup>82</sup>

The pressure on Mexico to create greater protections for Central American migrants sharply increased and expanded as a result of such violations of migrant rights in Mexican territory.

National and regional legislatures, notably the Regional Parliamentary Council on Migration (COPAREM), have also issued statements advocating reform, and Central American diplomats in Mexico have expanded their action in the area of protection of their nationals in transit. The broader international community-including the UN Commission on the Rights of Migrant Workers and Their Families, the UN Special Rapporteur on the Human Rights of Migrants, and the Inter-American Commission on Human Rights-have also issued statements in favor of reforms.<sup>83</sup>

The persistence of violence and the legislative intolerance of migrant rights in Mexico undermined both the steps towards regional cooperation as exhibited by the initiatives discussed above and Mexico’s role as a leader in finding sustainable solutions to regional migration and related acts of violence.

Mexican civil society and regional complaints surrounding Mexican immigration policy began in the early 2000s, and intensified until a policy change was enacted with the new Migration Law. As these variables developed were better able to articulate grievances, the Mexican government was forced to respond with policy liberalization in order to protect interests related to consolidating a fledgling democracy and increasing regional leadership.

#### ***4.3 Civil Society Players and Complaints***

Mexican civil society has traditionally been incorporated into the vertical structure of Mexican authoritarianism under the Institutional Revolutionary Party (PRI). This brand

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<sup>82</sup> Elena Michel, “México responde a críticas de Guatemala,” *El Universal*, December 29, 2010. Available online: <http://www.eluniversal.com.mx/notas/733764.html>

<sup>83</sup> Castillo and Alba, 14.

of corporatism did not allow for much autonomy or ideological freedom for civil society for the majority of the 20<sup>th</sup> Century. However, this began to change in the 1980s amidst economic crisis and the weakening of the PRI. Mexican civil society really began to evolve and gain independence in the aftermath of the 1985 Mexico City earthquake. In the absence of governmental leadership, civil society played a leading role in the reconstruction of the city and unifying the community. This activism grew in many areas, but particularly in the realm of refugee and immigration policy.

As discussed, Central American immigration into Mexico began largely as a refugee flow as a result of a rash of civil wars in the 1980s. Mexico was ill prepared to deal with such an influx of refugees, both legally and in terms of infrastructure. This became a mobilizing issue for civil society activists and they were able to successfully lobby for inclusion of the term refugee into the LGP.<sup>84</sup> Prior to this, Mexico was only legally able to grant asylum to those who could prove they were fleeing political persecution. This victory solidified the role that Mexican civil society would play in the development of immigration policy and its evolving relationship with the protection of human rights.<sup>85</sup>

There are two main actors in Mexican civil society that have played an important role in advocating for migrant rights: Sin Fronteras and the Catholic Church. The president of Sin Fronteras, Fabienne Vinnet, became involved with refugee and immigrant rights in 1989 during her time with UNHCR. Once the refugee flow into Mexico dissipated with the end of Central American civil wars, Vinnet decided to refocus her efforts to the

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<sup>84</sup> Laura Valeria González-Murphy, "Change and Continuity in Mexico's Immigration Policy: How Civil Society Organizations Influence the Policy Process" (PhD diss., University at Albany, State University of New York, 2009), 215.

<sup>85</sup> Ibid.

general migratory experience, creating Sin Fronteras in 1995.<sup>86</sup> Its mission consists of enacting change to ensure that international migration and asylum occur within a human rights framework in Mexico. Sin Fronteras operates in many fields, including in the legislative arena. One of its main objectives is to aid in the legal harmonization of domestic laws with international human rights norms. “To promote the development and implementation of a legal framework, comprehensive programs and public policies in accordance with international human rights standards.”<sup>87</sup> Since its conception, Sin Fronteras has been a major actor in the advocacy of migrant rights and has achieved international recognition for its efforts.

The Catholic Church has been equally instrumental in providing goods and services to migrants who are trying to cross through Mexico clandestinely. The Catholic Church is a major provider of services and protection to migrants in Mexico mainly through an extensive network of migrant shelters throughout the country.<sup>88</sup> These migrant shelters provide housing, food, clothes, medical attention, and often offer informative sessions about migrant rights and dangers along the migratory route. They are placed at strategic locations along migrant routes and also endeavor to collect information about transmigrants in order to better understand this migratory flow.

The main grievances put forth by civil society activists revolved around the issue of migrant rights. The three main issues were the exhibited hypocrisy on behalf of the Mexican government in terms of international human rights norms and lack of protection under domestic law resulting in the blatant violation of migrant rights by a variety of state

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<sup>86</sup> Sin Fronteras, official website. <http://sinfronteras.org.mx/index.php/es/acerca-de/quienes-somos#historia>.

<sup>87</sup> Ibid.

<sup>88</sup> The most significant shelter networks are the *Casa del Migrantes* and the *Pastoral de Movilidad Humana*.

and nonstate actors; the emulation of US style militarization along border areas and restrictive internal regulations, especially under Plan Sur; and the lack of a cohesive immigration policy. Many members of civil society continued to criticize the Mexican government for failure to protect the human rights of migrants and called for the creation of more socially responsible policy.

The government cannot discriminate, it cannot fail in its obligation to guarantee every single person the ability to exercise his or her rights. This has to do with the Universal Declaration of Human Rights. What the Mexican government can do is regularize the conditions in which foreigners can live or move through Mexico.<sup>89</sup> This illustrates the importance of international accords to Mexican civil society and the widespread popularity of the movement to harmonize domestic law with international human rights norms.

In order to address these issues, various groups organized in 2000 to form *Foro Migraciones*, a civil society forum for the discussion of the challenges confronting immigrants in Mexico that continues today. Their stated objective is to, “Create a space for dialogue, analysis and complaints in order to influence the promotion and defense of the human rights of migrants.”<sup>90</sup> After a series of meetings, the *Foro Migraciones* published an “Alternative Report” in 2005, which critically analyzed the application of the Convention on Migrant Workers in Mexico. The report found that there was little coherence between the Convention and Mexican laws, specifically the Mexican Constitution and the LGP.<sup>91</sup> It particularly cited articles 11 and 33 of the Constitution and

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<sup>89</sup> Mexican academic, interviewed by Marcelle Beaulieu, June 28, 2010, Mexico City.

<sup>90</sup> Sin Fronteras, official website.

<sup>91</sup> Sin Fronteras: Foro Migraciones, “Informe Alternativo: Aplicación de la Convención Internacional Sobre la Protección de los Derechos de Todos los Trabajadores Migratorios y sus Familiares,” December, 2005: 9, accessed June 2013, [http://www2.ohchr.org/english/bodies/cmw/docs/fmigraciones\\_sp.pdf](http://www2.ohchr.org/english/bodies/cmw/docs/fmigraciones_sp.pdf).



the fact that the LGP did not mention the rights of migrants, which created a large discretionary space in defining such rights in Mexico.<sup>92</sup>

The Report also criticized the Mexican government for continuing to pursue a militarized strategy in immigration and border control policy.

We acknowledge that immigration policy in Mexico has a militaristic and inquisitorial focus oriented toward the control, repression and containment of transit migration through Mexico, especially at points of entry along the Southern border.<sup>93</sup>

As a solution, the Report offered a series of recommendations that centered around the application of the Convention of Workers and the rigorous protection of migrant rights.

Specific recommendations included rejecting all domestic policies that impeded migrant rights and passing an immigration law that respects and protects such rights.<sup>94</sup> The Report also recognized the inalienability of human rights regardless of status, the need to focus on especially vulnerable populations such as women and children, and the importance of divorcing immigration policy from the rhetoric of national security. The ability of Mexican civil society to organize and aid in issue articulation solidified its importance in the liberalization of Mexican immigration policy.

#### ***4.4 Regional Partnerships and Complaints***

As discussed, Central American migration northward has increased drastically since the 1980s, initially as a result of civil wars and afterwards as a consequence of economic crisis. This augmentation in the movement of people has required the cooperation of Central American countries, including increased collaboration with Mexico. Over the last several years there has been a concerted effort to develop a regional approach to

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<sup>92</sup> Ibid.

<sup>93</sup> Ibid.

<sup>94</sup> Sin Fronteras: Foros Migraciones, 10

challenges of migration management. Therefore, Mexico has been held more accountable to regional partners in the development of its immigration policy strategy.

Traditionally, Mexico has viewed the United States as its primary bilateral partner in immigration issues. While this predominance still stands, transmigration through Mexico has necessitated a better working relationship with Central American regional partners. As a result, there have been many several recent initiatives to promote regional cooperation in migration management.

Mexican cooperation with Central American neighbors on the issue of migration began in the refugee crisis in the 1980s. Mexico began to focus more on bilateral cooperation with Guatemala in 1986 with the creation of the Binational Commission and the subsequent 1989 creation of the Binational Sub-commission on Migration Issues, which focused on humanitarian issues connected to the refugee crisis in addition to functional topics of work visas and the rise of illegal migration.<sup>95</sup>

One of the most important initiatives that has emerged in order to facilitate regional cooperation is The Regional Conference on Migration (RCM). The RCM is a “multilateral regional forum on international migration which involves countries that, from different perspectives, share a common problem, based on experiences relating situations of origin, transit, and destination for migration.”<sup>96</sup> The RCM first convened in Mexico in 1996, and seeks to facilitate discussion of immigration issues, protect the human rights of migrants, and strengthen regional immigration laws, borders and national

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<sup>95</sup> Francisco Alba and Manuel Angel Castillo, “New Approaches to Migration Management in Mexico and Central America,” (Washington DC: Migration Policy Institute, Regional Migration Study Group, October 2012). Accessed online, June 2013: <http://www.migrationpolicy.org/pubs/RMSG-MexCentAm-Migration.pdf>.

<sup>96</sup> Regional Conference on Migration, official website: <http://www.rcmvs.org/Principal.html>.

security.<sup>97</sup> The three main issue areas of the RCM are migration management, human rights, and establishing a relationship between migration and development. The RCM endeavors to exchange best practices in these issue areas among its 11 member states: Belize, Canada, Costa Rica, the Dominican Republic, El Salvador, Guatemala, Honduras, Mexico, Nicaragua, Panama and the United States.

Mexico has been an active member in the establishment and consolidation of the RCM, serving as President Pro-T  mpore three times, in 1996, 2003, and 2010. In addition, Mexico is the third largest financial contributor of the RCM, accounting for 11.8%, or \$33,364, of the annual contribution by member countries.<sup>98</sup> The RCM has become an important tool for regional cooperation in migration issues and signifies Mexico's willingness to engage in dialogue with regional leaders.

In addition to the RCM, the Mexican Institute for International Cooperation was established in 1998 with the goal of creating a single agency purposed with coordinating collaborating activities with Central America and the Caribbean. This morphed into the Plan Puebla-Panam   in 2000 and established a forum to discuss unemployment issues in the region in order to temper pressure for citizens to emigrate.<sup>99</sup> The PPP focuses on the four issue areas of energy, transportation, regional integration of telecommunications, tourism, commercial exchanges and regional competitiveness, human development, and sustained development.<sup>100</sup> In 2007, the PPP was transformed into the Mesoamerican

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<sup>97</sup> Regional Conference on Migration: Technical Secretariat, "Regional Conference on Migration: Fostering and Strengthening Regional Dialogue and Cooperation," October 2011: 4. Accessed online, June 2013: <http://www.rcmvs.org/Publicaciones/docs/CRM%2015%20A%F1os-INGLES%20final%20mayo%202012.pdf>.

<sup>98</sup> Ibid, 17. The United States is the leading contributor, at 50%, followed by Canada at 24.05% of annual contributions.

<sup>99</sup> Alba and Castillo, 13.

<sup>100</sup> Ibid.

Initiative to expand its reach into Colombia in addition to refocus on infrastructure and regional competitiveness in order to mitigate emigration out of the region.

The increased regional cooperation in recent years illustrates that Mexico seeks to be an active leader in regional initiatives to increase cooperation in migration management. However, regional partnerships and collaborative efforts have been undermined as violence within Mexico has increased and Central American transmigrants constitute a rising share of kidnappings and victims of violent crimes. As previously discussed, the vulnerability of migrant rights has been magnified due to increased violence in Mexico and the traditional lack of protection of migrant rights under Mexican domestic law.

Central American outcries for more humane treatment of migrants intensified during President Calderón's tenure and the campaign against drug trafficking, creating a stimulus for change. Mexico paid special attention to such grievances due to the fact that it was trying to secure a regional leadership role, especially in migration management. As this variable developed and became more outspoken as a result of increased transmigrant violence, Mexico's leadership position was threatened, therefore causing Mexico to search for an alternative to appease Central American political partners.

This coincided with an increase in civil society activism and democratization, in addition to the increasing importance of the strategy of extended incorporation. Therefore, in order to assuage such pronounced regional and international concerns, Mexico had to search for a solution that would simultaneously reinforce Mexico as a regional leader, protect national interests and satisfy human rights norms. This solution would eventually materialize in the Migration Law, which will be discussed in greater detail in Chapter 5.

## 5.0 **Conclusion**

The history of migratory flows in Mexico is extensive. Although most people automatically associate emigration from Mexico to the United States as Mexico's primary experience with migration, immigration and transmigration have continued to increase in importance. These distinct flows have presented various challenges to the Mexican state, all of which have been addressed and criticized in separate ways.

Although immigration into Mexico has not been quite as prominent as emigration towards the United States, this flow has held significance for Mexico. What began primarily as a refugee flow from political persecution in Central America, quickly transitioned into an economic flow ushered in by neoliberal restructuring and economic hardship. Until May of 2011, there was no specific law to regulate this flow, as all immigration policy emanated from the 1974 General Law of Population and specific aspects of the 1917 Constitution. The resulting product was a harsh atmosphere for foreigners in Mexico in which rights were few and protections were not guaranteed for immigrants.

Another important migratory flow in Mexico is the transmigration flow that has increased dramatically in recent years. Transmigration refers to the movement of migrants, predominantly undocumented, into and through Mexico in order to gain access to the United States. This population is largely Central American and is seeking work in the United States, a market they find more favorable than the Mexican market. Transmigrants are subject to the same treatment as immigrants under the provisions of the LGP and the Constitution. The lack of protection, along with increased instability and

violence throughout Mexico has led to an augmentation in kidnappings along with a high level of reported abuses and violations of migrant rights.

Rampant abuses of migrant rights are in contradiction to Mexico's leadership role in the realm of international human rights norms. Despite the fact that Mexico is a signatory of all major human rights treaties and conventions, domestic laws have often illustrated a rather large gap between Mexico's stated commitment to international norms and the reality on the ground. This resulted in a large outcry from civil society organizations and regional partners in Central America. They repeatedly pointed out Mexico's hypocrisy in its poor protection of migrants despite its progressive role in international human rights, calling for reforms of Mexico's migration laws. Their criticisms were detrimental to the consolidation of democracy in Mexico along with Mexico's role as a regional leader and therefore held importance. These objections to Mexican migration policy, compounded with the role of emigration policy and Mexico's relationship with the United States, led to the eventual construction of the new Migration Law.

## Chapter 4: Mexican Emigration Policy: Extended Incorporation and Accusations of Hypocrisy

### 1.0 **Introduction**

This chapter will explore the flow of emigration out of Mexico into the United States. It will discuss how this flow has become increasingly important politically and economically and how the Mexican government has adapted emigration policy to accommodate the changing structure of emigration and the corresponding influence of Mexican emigrants. The first purpose of this chapter is to illustrate that the Mexican community abroad has become a vital component of Mexican economics and politics, both domestically and abroad. Therefore, the Mexican government has sought various ways in which to better incorporate this population, advocate for their welfare abroad, and alleviate the negative consequences of increasingly restrictive US immigration policies.

This chapter will also discuss Mexico's reaction to the US tightening of immigration control in recent years and a resulting restrictive trend in both federal and local immigration legislation. This more restrictive direction within the United States was in direct opposition with the Mexican government's endeavor to increase protection of Mexican emigrants and demand for greater inclusion abroad under its strategy of extended incorporation. The insistence of protection of Mexican emigrants in the United States opened Mexico up to US criticisms of overstepping and claims of Mexican hypocrisy in terms of migrant rights. Therefore, the second objective of this chapter is to

examine the consequences of Mexico's reaction to the resulting policies, the most prominent consequence being US criticisms of Mexican hypocrisy.

This chapter is vital to the overall argument of this dissertation because it examines the most heavily weighted variable in the passage of the Migration Law: Mexico's relationship with its emigrant community. This dissertation argues that Mexican policymakers created the Migration Law as a result of three different variables. The first two variables, civil society and regional concerns increased in saliency due to democratization and increased violence against transmigrants respectively, creating pressure on policymakers to enact a change in immigration policy. The final and most important variable is Mexico's relationship with its emigrant community. My logic follows that as this community increased in economic and political might, the Mexican government found great incentive to further incorporate emigrants abroad. However, this strategy of extended incorporation was hampered due to intense accusations of hypocrisy by United States policymakers. Therefore, in an effort to amass more moral authority and prove that nothing would inhibit attempts to extend protection to Mexican emigrants, Mexico passed the Migration Law. The chapter will delineate the emergence of a powerful emigrant population and Mexico's political responses.

## **2.0 Mexico and Emigration**

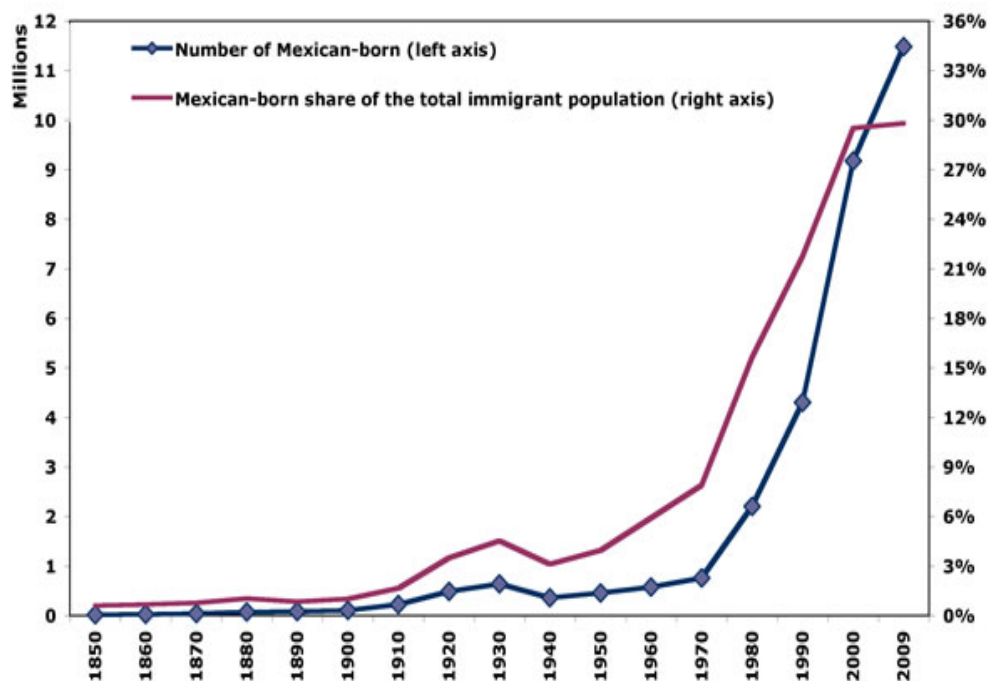
Globalization has intensely affected the flow and prevalence of international migration. Structural changes of the global world system have created a space for migratory populations and necessitated their existence. Increased economic and political interdependence between countries of varying developmental stages have also affected



international migration, as policy decisions in one country can shape migration opportunities and restrictions in another country. Furthermore, technological changes and accessibility of information due to globalization have both facilitated the act of migration.

This increase in immigration in the aftermath of the latest intensification of globalization is evident in the Mexican case. Mexican emigration has been on a steady incline throughout the last century due to a variety of reasons, including US immigration policy, displacement of Mexican rural farmers, economic and political crisis, and increased integration due to globalization. Due to the fact that the United States is the primary destination of Mexican emigrants, Mexican emigrants will be discussed in terms of this northern flow.

**Chart 4: Mexican-born Population in the United States**



Source: Migration Information Source: Data Hub. Available Online:  
<http://www.migrationinformation.org/DataHub/charts/fb-mexicans.cfm>

Chart 4 illustrates this upward trend in Mexican emigration from 1859 until 2009. In 1859, Mexican emigration to the United States was virtually nonexistent with numbers of only 13,317 emigrants. However, the total share of Mexican emigrants has increased to account for nearly 36% of the total immigrant population in the United States by 2009 with a staggering number of 11,478,413 Mexican emigrants. A steep increase in Mexican emigrants can be noted beginning in the eighties and continuing on today. In 1970, the total number of Mexican-born immigrants in the United States amounted to 759,711. This number had increased to 2,199,221 in 1980 and had doubled to 4,298,014 by 1990. This reflects renewed initiatives of interdependence and neoliberal restructuring along the lines of current globalization measures.

**Table 8. Annual Family Remittances,  
1990-2006  
(Millions of Dollars)**

Year	Family Remittances	Rate of Growth
1990	2,494	NA
1991	2,660	6.7
1992	3,070	15.4
1993	3,333	8.6
1994	3,475	4.2
1995	3,673	5.7
1996	4,224	15.0
1997	4,865	

		15.2
1998	5,627	15.7
1999	5,910	5.0
2000	6,573	11.2
2001	8,895	35.3
2002	9,815	10.3
2003	13,650	39.1
2004	16,730	22.6
2005	20,284	21.2
2006	23,742	17.1

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*Source: Bank of Mexico, Sistema de Información Económica (SIE) Available Online: [www.banxico.org.mx](http://www.banxico.org.mx).*

Naturally, this increase in Mexican immigrants in the United States also augmented the amount of remittances sent back to Mexico annually. Table 8 exhibits this trajectory from 1990 until 2006. In 1990, annual remittances totaled \$2,494,000, rising to \$23,742,000 in 2006.<sup>1</sup> Remittances have become one of the highest revenues in Mexico, important not only on the national level, but also at the municipal level. These remittances serve as a resource for the state, but also help exponentially in the every day lives of average Mexicans. This level of economic influence has contributed to the growing importance of Mexican emigrants in the United States.

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<sup>1</sup> Bank of Mexico official website. Available Online: <http://www.banxico.org.mx/>

The vast increase in emigration and the corresponding financial aspect of familial remittances have made Mexican emigrants a priority in economic, political, and social aspects of Mexican domestic policy. The progression of this policy can be traced along with the evolution of this flow. In order to explicate the changing dynamics of Mexican emigration policy, I utilize Rachel Sherman's theory of incorporation.<sup>2</sup> This theory states that there are two distinct forms of emigrant incorporation as recognized by the state. The first is introverted incorporation, which focuses on the immediate repatriation of Mexican emigrants abroad and does not seek to extend protection to those Mexicans who have chosen to reside abroad indefinitely. The second type is extended incorporation, which views emigrants abroad as an extension of the national citizenry. In this case, repatriation is not highlighted, and instead emigrants are viewed as valuable components of the population within their role as emigrants. This results in extended policies of economic, political, and cultural incorporation on behalf of the Mexican state.

These elements are especially important in the historical trajectory of Mexican emigration policy. However, I would argue that an important factor missing is the intervening factor of United States immigration policy. Oftentimes, Mexican emigration policy is reactionary to previously implemented US policy, which intrinsically shapes the foundation of new legislation and popular attitudes. This reactionary impulse also holds true for contemporary Mexican immigration policy, which will be addressed later in the discussion of the strategy behind the new Migration Law. Due to the fact that emigration from Mexico is so closely linked to its northern neighbor, US policy initiatives will always bear consequence for domestic strategies and decisions in this field. Therefore,

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<sup>2</sup> Rachel Sherman, "From State Introversion to State Extension in Mexico: Modes of Emigrant Incorporation, 1900-1997," *Theory and Society*, vol. 28 issue 6 (1999).

Mexican emigration and emigration policy cannot be divorced from US immigration policy and will be discussed in conjuncture with each other.

In addition to the changing strategy of incorporation, I also evaluate the ways in which this incorporation is implemented by the Mexican government. In order to do this, I employ Robert Smith's theory of the transnationalization of politics.<sup>3</sup> This theory is concerned with ideas of citizenship and membership within a globalized, geopolitical context. Smith argues that politics have become increasingly extra-territorial in Mexico, which is in concert with Sherman's idea of extended incorporation. As the Mexican diaspora has grown, the Mexican government has taken steps to institutionalize their political, economic, and cultural participation. These membership practices find their foundations in four different processes and institutions. The first is domestic politics and the need of the ruling party and competing partisan blocks to secure legitimacy and support. The second is the dependence of Mexico's development on its relationship with the United States. The third is the growing autonomy of the transnational Mexican population in the United States. Finally, the fourth factor is the acceptance of various Mexican groups in the United States.

It is vital to understand the strategy of incorporation in Mexican emigration policy and the resulting transnationalization of politics in order to later grasp the idea of soft reciprocity in the formation of the new Migration Law. The emigrant community holds extreme importance in Mexican domestic political life, which will be duly illustrated in the following synthesis of the history of the flow and subsequent policy decisions by the Mexican government.

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<sup>3</sup> Robert C. Smith. "Migrant Membership as an Instituted Process: Transnationalization, the State, and the Extra-Territorial Conduct of Mexican Politics" *International Migration Review*, vol. 37 no. 2 (Summer, 2003): 298.

The state's posture towards emigrants has consistently changed according to various moments in nation-building, nationalistic rhetoric, interaction with the US, and most recently, neoliberal restructuring of the economy. Therefore, it is crucial to develop a theoretical approach that recognizes particular national interests and state agency. Below, I will delineate a brief history of Mexican emigration policy and the nature of the state's changing relationship with emigrants. The three main eras of Mexican emigration took place in the aftermath of the Mexican Revolution, the Mexican Miracle and during neoliberal restructuring beginning in the 1980s.

### 2.1 *The Mexican Revolution and Nationalism*

Directly following the revolution, Mexican officials initiated a campaign of national identity in order to foster a feeling of loyalty to la patria. This inherently affected emigration policy as Mexican policy approached an era of what Sherman calls introverted incorporation. Introverted incorporation discouraged emigration as a long term and permanent solution.<sup>4</sup> The prevention of emigration and the repatriation of emigrants were seen as vital to the strengthening of the state, especially in its vulnerable beginning. The years immediately following the revolution were times of political crisis as Mexico struggled to consolidate authority and centralize state power. The creation of the PRI and its corresponding growth and evolution required a unified constituency and a stable political situation. Therefore, in congruence with Sherman's theory of incorporation, Mexico utilized its emigrants as a valuable resource in gaining political legitimacy both domestically and abroad. As a unified country, Mexico could further consolidate political and economic authority.

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<sup>4</sup> Sherman, 852.

The Mexican state implemented policies that facilitated repatriation and emphasized the hardships of living abroad. Prior to emigration, Mexican emigrants were forced to show proof of a working contract abroad including benefits and wages in addition to the agreement of the employer to pay for the emigrant's return. In addition, the state offered to subsidize repatriation and extended benefits to those citizens that agreed to return. The Consultive Council on Mexico and the National Repatriation Committee were created in 1930 and 1931 respectively to accommodate those who returned in response to the Great Depression in the US.<sup>5</sup>

During this time, Mexican consuls in the United States were extremely involved in protecting the rights of Mexican citizens and providing services. The state was particularly instrumental in creating schools and libraries in addition to ensuring medical attention to those who were in need. In addition, the Mexican state was seen as an advocate of workers rights for its citizens working in the US. Consuls were actively involved in educating Mexican emigrants in US law and work related conflicts and rights.<sup>6</sup>

However, despite the active role of the state in supporting emigrants, political rhetoric continuously reinforced the preferred option of living within the borders of Mexico in order to escape discrimination and find comfort. This form of political nationalism was meant to reinforce ties to Mexico through mechanisms such as education and media. The main objective of the Mexican state in facilitating emigrants was not to make life easier

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<sup>5</sup> Ibid. 852-853. This exhibits the dependency of Mexican workers' livelihood on the US economy, a trend that would re-emerge at the end of the Century.

<sup>6</sup> Ibid, 854

in the US; rather, it was to construct a national identity that induced strong feelings of loyalty and nostalgia towards Mexico.<sup>7</sup>

Directly following the Revolution, the Mexican state found itself in a crisis of political legitimacy in the wake of years of violence and instability. The creation of the PRI by Elias Calles demanded a centralized, sturdy state that had control over all sectors of society.<sup>8</sup> The primary national agenda became the construction of an identity founded in solidarity and within territorial confines. The popular and governmental definition of citizenship was inseparable from the traditional territorial boundaries. Only those that lived within the country or emigrants that exhibited strong feelings of loyalty and intentions to return were considered true Mexicans. Therefore, although emigrants were seen as a resource and were invested into to a certain degree, the Mexican state was determined to retain the majority of its population within national boundaries. Accordingly, introverted incorporation occurred in order to protect the interests of the fledgling state and produce a sense of legitimacy among the citizenry.<sup>9</sup>

## ***2.2 The Bracero Program and Mexican Miracle***

In the wake of political instability due to the revolution and the massive repatriation of Mexican emigrants due to the Great Depression, the Mexican government changed strategies and looked towards the implementation of Import Substitution Industrialization (ISI). Lázaro Cárdenas was largely responsible for implementing this nationalistic, autonomous economic model in the late 1930s. This was a way to decrease dependence

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<sup>7</sup> Sherman, 855.

<sup>8</sup> Ibid, 856.

<sup>9</sup> Ibid.



on international markets (mainly the U.S.) and expand a more industrialized, internal market.<sup>10</sup>

ISI largely involved urban industrialization and modernization of the agricultural sector. President Manuel Ávila Camacho, 1940-46, implemented the Green Revolution, which had as its main objective, "... an increase in [agricultural] output aimed at subsidizing industrial growth."<sup>11</sup> However, these initiatives inherently displaced rural workers, failed to modernize the entire agricultural sector, and did not produce equitable benefits to all societal groups. Rebellions emerged, such as the Cristero and the Sinarquista Movements, in order to threaten political legitimacy and undermine state policy.<sup>12</sup>

Simultaneously, WWII broke out and created a labor shortage in the United States, which fashioned necessary circumstances for a guest worker program. The Bracero Program emerged, allowing for the US to utilize displaced Mexican workers in exchange for financial aid to assist Mexico in the modernization of the agricultural sector. US assistance greatly advanced the growth of the Mexican economy, even though Mexico still advocated an isolated, protectionist economic strategy. In addition, Mexican officials led US immigration recruitment officials to those areas of the country that had been most active in the previous political rebellions, helping to alleviate tensions. Therefore, the Bracero Program, at least in its initial stages, relieved both economic and political difficulties for the Mexican state.<sup>13</sup>

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<sup>10</sup> Casey Kane-Love, "In the Shadow of a Giant: The Role of Anti-Americanism in Modern Mexican Nationalism" (PhD diss., Tulane University, 2004).

<sup>11</sup> James A. Sandos and Harry E. Cross, "National Development and International Labour Migration: Mexico 1940-1965," *Journal of Contemporary History*, vol. 18 (1983): 50.

<sup>12</sup> Ibid, 51-53.

<sup>13</sup> Ibid, 52-53.

Consequently, the length of the Bracero Program coincided with the pinnacle of the Mexican Miracle. ISI flourished and the PRI consolidated power in order to rule effectively and in a centralized manner. This relative stability led to indifference in Mexican policy towards emigrants. As Sherman would argue, emigrants were no longer needed as a political tool to generate legitimacy within the country leading to a decrease in incorporation measures by the state. Mexican officials failed to provide emigrant services, protect workers rights, and react to discrimination in the attempt to ease hardships that bracero workers endured. Emigration became a non-issue within Mexican political debates and public discourse, "...rather than publicize mistreatment of workers as it once had, the government tried to keep such news out of the press to avoid public condemnation of its failure to control emigration and protect emigrants."<sup>14</sup> The Mexican government essentially found no incentive to spend revenue on social programs or outreach to its emigrants.

Even in the face of extreme unilateral US measures, Mexico did little to ensure protection of emigrants, reacting with little more than disinterest. Operation Wetback was a US initiative in 1954 meant to stem illegal immigration under the auspices of the Bracero Program. The U.S. independently decided to deport thousands of Mexicans that immigrated illegally to work as guest workers, using intimidation tactics and a reinforced Border Patrol. Operation Wetback reached a daily average peak of 1,727 apprehensions. Due to a lack of organization and high levels of exploitations, many Mexican emigrants felt exposed and resorted to voluntary departure in order to avoid deportation by the

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<sup>14</sup> Sherman, 844.

INS.<sup>15</sup> The Mexican government did little to protest the operation or assist emigrants who were deported back to Mexico. Although Mexican officials advocated a more bilateral approach to the immigration issue, there were no concrete measures taken or any performance of substantial acts of defiance. The U.S. once again acted unilaterally in 1964 when the termination of the Bracero Program was announced, in spite of Mexican protests.<sup>16</sup>

In terms of policy, there was no comprehensive law that exclusively dealt with immigration or emigration policy. The one piece of legislation that briefly addressed these flows was the 1974 General Law of Population. Although not considered an official law of immigration, it did refer to emigration flows. In terms of the act of emigration, the LGP only briefly states that the Department of Foreign Affairs (SRE) is responsible for creating mechanisms to protect Mexicans abroad and that the Department of the Interior (SEGOB) is responsible for investigating core causes for emigration.<sup>17</sup> The remaining four articles in the Emigration section in Chapter IV mainly dealt with administrative issues of emigration.<sup>18</sup> Chapter V is primarily concerned with issues of repatriation, stating that the Department of the Interior should encourage the repatriation of Mexican citizens and help them reintegrate into the domestic economy.<sup>19</sup> This is only a cursory

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<sup>15</sup> Julian Samora, *Los Mojados: The Wetback Story* (Notre Dame: University of Notre Dame Press, 1971), 52-53.

<sup>16</sup> Manuel García y Griego and James W. Wilkie, "La Migración de Mexicanos a Estados Unidos y la Posibilidades de Cooperación Bilateral: Cuatro Marcos Conceptuales," in *La Cooperación Internacional en un Mundo Desigual*, ed. Soledad Loaeza (DF, Mexico: El Colegio de México, 1994), 244-245.

<sup>17</sup> *Ley General de Población*, article 76.

<sup>18</sup> LGP, Articles 77-80

<sup>19</sup> LGP, Articles 81-84

mention of emigrants and does not accord much importance to administrative support for either citizens abroad or repatriated citizens.<sup>20</sup>

### ***2.3 1980's: Liberalization and Extended Incorporation***

The decade of the eighties was transformative for the Mexican state in several different areas. The 1982 debt crisis devastated Mexico in addition to numerous other Latin American countries. The PRI, quickly losing legitimacy both politically and economically, was searching for a quick fix to regain recognition on both domestic and international fronts. Meanwhile, Communism was facing its demise and the neoliberal paradigm had firmly taken hold of developed countries, most notably the United States. Desperate to recover authority, the PRI began a top down transition towards a market economy and economic liberalization, strictly adhering to the provisions of the Washington Consensus. International financial organizations such as the IMF and World Bank became ultimate authorities in debt restructuring, calling for rigorous structural adjustments and austere economic measures. Free trade became the solution for regaining both political legitimacy and economic stability.

The debt crisis severely weakened the Mexican economy and state of political affairs. The election of 1988 and the rise in popularity of Cuauhtémac Cárdenas and oppositional parties led the PRI to establish a focused strategy to increase legitimacy. Initially, the PRI attempted to further centralize political power and advance federal over legal authority. However, it was quickly realized that centralization was not compatible with neoliberal reforms. Neoliberalism inherently changes the role of the state, effectively reducing state interference into the economic realm. Although structural reforms were strictly

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<sup>20</sup> According to LGP article 81, a repatriated citizen is, "A Mexican citizen who returns to the country after residing abroad for at least two years."

implemented top-down, neoliberalism took away the possibility of the PRI to fall back on the patronage of the previous welfare state. This paradoxical imbalance and resulting policies of neoliberalism greatly affected the role of the modern nation-state, the definitions of borders and citizenship, and consequently, Mexican emigration policy.

US immigration legislation in the 1980s also changed the context of dialogue concerning the Mexican emigration issue. The passage of the 1986 Simpson-Rodino Law or the Immigration Reform and Control Act (IRCA) authorized amnesty for millions and also imposed sanction on employers for hiring undocumented workers. IRCA led to an underclass of workers, leading to mass exploitation of employees and a rush towards naturalization. Despite initial intentions, illegal immigration increased and the community of Mexicans living within the United States grew substantially.

The Mexican government was anxious about negative affects of IRCA for three main reasons. The first concern involved human rights violations due to increased border militarization. Second, the deterioration of worker' conditions was a possibility due to the creation of a virtual underground workforce. Finally, Mexico feared the deleterious effects on the Mexican economy as a result of decreased remittances relational to amnesty procedures and the effects of employer sanctions on the ability of the US economy to absorb Mexican workers and provide a job market.<sup>21</sup> All of these factors combined with changing global paradigms and structures forced Mexico to alter its emigration policy.

Sherman argues that the Mexican government switched to a strategy of extended incorporation in 1988 in relation to emigrants living in the United States. This ongoing

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<sup>21</sup> Carlos Rico, "Migration and US-Mexican Relations, 1966-1986," in *Western Hemisphere Immigration and United States Foreign Policy*, ed. Christopher Mitchell (University Park: The Pennsylvania State University Press, 1992), 263.

strategy was initially a reaction to crises in economic and political legitimacy suffered by the PRI. Compounded with increased interdependence and economic integration between the US and Mexico, emigrants once again became a valuable resource and a part of the national citizenry. Sherman states that extended incorporation is,

“...characterized by the state’s explicit redefinition of the nation as transcending borders, and of Mexican emigrants as central to the national project even without return; concretely, the state has taken measures to allow participation in Mexican affairs from abroad. The emphasis on permanent return is almost completely absent.”<sup>22</sup>  
The Mexican government began to enact legislation that reflected this renewed

perception of the importance of emigrants. Of course, US policy also played an integral part in Mexican policy, as Mexican legislation and implemented programs were often seen as a reaction to the anti-immigrant US rhetoric and policies in the nineties.

### 2.3.1 *US Policy and Restrictive Tendencies*

IRCA began the first of many restrictive US immigration policies that have continued until today. While the United States has been the leader in regional free trade initiatives and the reduction of trade barriers to increase capital flows, labor has not been included in these initiatives. US policy has steadily become more restrictionist when concerning labor flows from Mexico, which does not support the market-structured neoliberalism that has recently emerged,

“Against all logic, we wish to create an integrated, continent-wide economy characterized by the free movement of all factors of production except one. This schizophrenia is manifest in the fact that, since the mid-1980s, we have moved in two diametrically opposed directions, at once promoting integration while simultaneously seeking separation.”<sup>23</sup>

As stated earlier, immigrant flows into the US are perceived as a threat to national

security, which has led to this disparity in policy. Therefore, US immigration policy has

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<sup>22</sup> Sherman, 855.

<sup>23</sup> Douglas S. Massey, “Closed-Door Policy: Mexico Vividly Illustrates how U.S. Treatment of Immigrant Workers Backfires,” in *American Prospect*, vol. 14 no. 7 (2003): 27.

increasingly turned towards the militarization of the border in addition to withholding citizen rights from undocumented immigrants to deter immigration. This absence of the institutionalization of labor flows between the U.S. and Mexico has greatly affected the construction of emigration policy in Mexico.

In response to the challenge of escalated illegal immigration and to citizens' fears of further impending increases in immigration, the United States has adopted a strict border policy directed at the US/Mexico border region. Wayne Cornelius studies the evolution of US/Mexican border policy and the consequences that have emerged due to its implementation. Beginning with the Clinton administration in the early nineties, stricter border policy became an issue, as the budget for the Immigration and Naturalization Services (INS) increased exponentially. The build up of the border, a practice that continued with the Bush administration, is concentrated in mainly urban areas that have experienced the highest concentration of illegal crossings.<sup>24</sup>

The strategy that has been consistently utilized follows the advice of a 1993 study managed by the Sandia National Laboratories, which is a government-supported facility with the aims of conducting military research. The results reported that the wisest tactic could be found in prevention-through-deterrence. By reducing illegal immigration through known, urban passageways, immigrants would be required to attempt crossing through the most geographically challenging areas.<sup>25</sup> The main point of the study implied that these increased costs to the immigrant would discourage additional crossings.

A number of programs have resulted from this strategy, the most visible being Operation Gatekeeper at the San Diego/Mexican border, implemented in 1994. Other

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<sup>24</sup> Wayne Cornelius, "Death at the Border: Efficacy and Unintended Consequences of US Immigration Control Policy," in *Population and Development Review*, vol. 27 no. 4 (2001): 661.

<sup>25</sup> Ibid, 661-663.

such programs include Operation Hold-the-Line in El Paso, Operation Safeguard in Arizona and Operation Rio Grande in the Rio Grande Valley of Texas.<sup>26</sup> The increased militarization of the Mexican border has become the standard for US border policy. This is a very deliberate, calculated approach with intended costs and deadly consequences. Immigrant deaths have increased substantially since the implementation of such border policy.

“...the current US border enforcement strategy has significantly raised the costs and physical risks associated with illegal entry. These should not be treated as ‘unintended’ consequences, since they were an integral part of the INS’s ‘prevention through deterrence’ strategy from its inception. Indeed, the theory underlying the strategy was that raising the costs, the physical risk, and the probability of apprehension on each entry attempt would eventually discourage the migrant and cause him (or her) to return to the location of origin.”<sup>27</sup>

Cornelius argues that regardless of cultural and economic contributions, immigrants are perceived as a burden to society that should be forcefully dealt with.

In addition to policies enforcing the militarization of the border, more legislation has passed regarding immigrant rights and corresponding citizen rights. An example of this can be found in Proposition 187, or the “Save our State” Initiative passed in California in 1994. Advocated by Governor Pete Wilson, Proposition 187 sought to refuse public service to unauthorized immigrants in the state of California. It was thought that denying such benefits would deter immigration and stem illegal flows of immigrants.<sup>28</sup> Also, the 1996 Illegal Immigration Reform and Immigrant Responsibility Act, combined with the Antiterrorism and Effective Death Penalty Act, the Welfare Act, and INS initiatives placed further restrictions on immigrants in the US, whether legal or undocumented.<sup>29</sup>

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<sup>26</sup> Ibid, 663-664.

<sup>27</sup> Ibid, 667.

<sup>28</sup> Binational Study on Migration, *Migration between Mexico and the United States*. (Mexico: Binational Study on Migration, 1997): 55. Available online: <http://www.utexas.edu/lbj/uscir/binational/full-report.pdf>

<sup>29</sup> Ibid, 57-58.



## 2.4 *Mexican Policy and Incorporation: 1988-2000*

In accordance with a renewed outlook on emigrant incorporation and in reaction to US restrictive tendencies, the Mexican government enacted renewed programs and policies. These programs were aimed at maintaining the wellbeing of Mexican nationals in order to integrate them more fully into the Mexican population, regardless of the country of current residence. They also coincided with a national shift in the perception of citizenship and the regeneration of legitimacy in the Mexican state.

In the late 1980s, President Carlos Salinas created the Paisano Program through the Ministry of Foreign Relations in order to protect immigration from abuses suffered at the hands of police and border officials.<sup>30</sup> In addition, the General Directorate for Mexican Communities Abroad (DGMCA) was created in 1990 in order to foster closer ties between Mexicans living on both sides of the border. The DGMCA was also established as an institutional body to establish hometown committees and provide certain services to emigrants.<sup>31</sup>

The Program for Mexican Communities Abroad (PMCE) was begun in 1990 under the direction of President Salinas in response to demands from the Mexican-American community during his 1988 presidential campaign. The PMCE is placed under the jurisdiction of the Secretariat of Foreign Affairs (SRE) and includes many different institutional tools to obtain its goal of emigrant incorporation. The PMCE's mission is to, "...raise awareness among Mexicans around the world that the Mexican Nation extends beyond the territory contained by its borders and to implement international cooperation

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<sup>30</sup> Sherman, 855.

<sup>31</sup> Peggy Levitt and Rafael de la Dehesa, "Transnational migration and the redefinition of the state: Variations and explanations," *Ethnic and Racial Studies*, vol. 26 no. 4 (2003): 590.

projects offered by Mexico for the benefit of its diaspora.”<sup>32</sup> The PMCE was converted into the Institute for Mexicans Abroad (IME) in 2000, which holds the function of carrying out the goals of the PMCE and coordinating efforts by varying governmental agencies in the interest of the wellbeing of emigrants abroad.<sup>33</sup> The IME has many different purposes in various fields.

The declared mission of the IME includes the promotion of human rights, increased communication among communities abroad, to act as liaison between state and diaspora, to coordinate national and municipal initiatives, facilitate implementation of programs, to organize educational seminars and conferences, and to provide a succinct interpretation of the needs of emigrant communities with the aims of social development.<sup>34</sup> With these goals in mind, the IME has implemented a variety of programs that advance both citizenship and membership as they relate to the Mexican community abroad.

The Mexican state holds much importance in the preservation of Mexican culture regardless of where Mexicans have decided to live. Therefore, the IME concentrates on cultural maintenance and enhancement through a variety of programs. The IME states that,

The preservation of Mexican identity and culture is, for all of our communities abroad, one of their most essential characteristics. For the IME, to promote the familiarity of our culture, traditions, and values is a way of increasing the standard of life among Mexican communities.<sup>35</sup>

This coincides with Smith’s idea of the promotion of membership to extra-territorial populations. Membership focuses more on the cultural links to the nation rather than political links to the state.

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<sup>32</sup> Carlos Gonzalez Gutierrez, “Fostering Identities: Mexico’s Relations with its Diaspora” *The Journal of American History*, vol. 86 no. 2 (Sep. 1999), 545.

<sup>33</sup> Instituto de los Mexicanos en el Exterior, official website. Available online: <http://www.ime.gob.mx/>

<sup>34</sup> Ibid.

<sup>35</sup> Ibid, Author’s translation.

Membership is pursued through many different mediums, one of which being sports, specifically soccer. The IME has collaborated with the Comisión Nacional y Cultura Física y Deporte along with Mexican consulates in the United States to develop sports programs among Mexican and Mexican-Americans. Some of the enacted plans include Sports Clinics in which Mexican trainers and coaches impart information including sports technique and tactics. These Sports Clinics last three days for roughly four to six hours daily. Another program is the Plan Vacacional, which operates during the summer months and is aimed at endorsing Mexican customs and language through sports activities. The Plan Vacacional is for children 6-14 years of age and takes place in community centers, churches, schools, etc. Finally, the Mexican-American Sports Association was established in order to create networks between different communities of Mexican-Americans and Mexican emigrants. It is thought that with better communication and organization, the quality of life will improve.<sup>36</sup>

Education is another area in which the IME is highly involved. The IME seeks to develop the individual and the collective through education with the hopes of strengthening the Mexican nation both in Mexico and the United States. The Binational Program for Migrant Education (PROBEM) was created to facilitate those who endure schooling in Mexico and the United States. PROBEM also includes a teacher exchange between Mexico and the United States. This is to promote cultural sensitivity among educators in order to provide a balanced education that is relevant to the student, regardless of location and/or cultural background. The Secretary of Public Education (SEP) also ensures that all children receive a basic level of education, especially upon deportation. Therefore, a transfer document has been created to guarantee the immediate

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<sup>36</sup> Instituto de los Mexicanos en el Exterior, official website.

matriculation of students returning from the United States in their community schools.<sup>37</sup>

Lastly, IME Becas was developed to aid in the attainment of higher education by immigrants of Mexican origin. IME Becas is in conjunction with the University of California and provides financial incentives for pursuing higher education.

Another area emphasized by the IME is the field of gastronomy. The IME sponsors an annual Trinational Gastronomy Week with the purpose of authenticating Mexican food in the exterior and drawing connections to Mexican culture through food.

“Its objective is to contribute to the reaffirmation of native identity of Mexican residents through gastronomy, keeping in mind that is one of the most powerful factors of our cultural profile.”<sup>38</sup> In addition to the organized Trinational Weeks is the Seminar on Mexican Gastronomy. Once again, the focus of the Seminar is authenticity along with cultural meanings and influences in Mexican gastronomy.

The IME is also influential in the organization of Mexican emigrants in the United States. The main form of organization is through the Clubes de Oriundos, or Hometown Associations, in which Mexicans from the same region or community in Mexico form a group in which they send money and support for local infrastructural projects in their home communities. This shows a commitment on behalf of the IME in not only contributing to the development of Mexicans abroad, but also to local communities that need broader support and financial backing. This is done through the dissemination of information through the Directorio de Organizaciones y Clubes de Oriundos in addition to collaboration with private and public sector groups who are also interested in donating time and money.

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<sup>37</sup> Ibid.

<sup>38</sup> Instituto de los Mexicanos en el Exterior, official website.

The IME is also charged with running the program, Ventanilla de Salud (VDS), which is dedicated to fostering a culture of knowledge among emigrants abroad concerning health issue and physical wellbeing. The VDS is also concerned with increasing accessibility to health services on behalf of the Mexican community in the United States.<sup>39</sup> The IME provides information, references and education about disease prevention and general health in order to elevate the quality of life for Mexicans abroad.

Another responsibility of the INM is the disbursement of the Mexican identification card, the Matrícula Consular. Although this document was established officially in 1871, it has undergone a renewal in legitimacy and importance. The Matrícula Consular is meant exclusively for Mexicans and is to be used as an identification card and not in any other capacity. Its purpose as an identification card can be used with the police, with governmental offices, public libraries, and to obtain a driver's license in some states. It cannot be used as a passport and is not a document with the ability to regularize citizenship status in the United States.<sup>40</sup>

In addition to government initiatives, civil society also reawakened due to liberalization and the increased quantity and resulting organization of emigrants abroad. The Grupo Unidad Mexicana (GUM) began in 1987 with the intentions of more accurately representing the demands and rights of emigrants. GUM is an organization, composed of Cardenistas that has continuously fought for emigrant rights, including issues of emigrant suffrage and fair elections. In addition, GUM has organized several conferences to establish networks and raise awareness.<sup>41</sup>

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<sup>39</sup> Ibid.

<sup>40</sup> Ibid.

<sup>41</sup> Leticia Calderón Chelius and Jesús Martínez Saldaña, *La Dimensión Política de la Migración Mexicana*. (Mexico, DF: Instituto de Investigaciones, 2002), 221.

In addition to protecting emigrants in the United States, Mexico also sought to protect Mexicans in the actual act of migrating. Therefore, the first Grupo Beta was founded in Tijuana in 1990.<sup>42</sup> The main objective of Grupo Beta was to save the lives of migrants that were in danger along the border. Due to its high success rate, a second Grupo Beta was created in Nogales in 1994, along with two more in 1995 in Tecate and Matamoros. The increase in Grupo Betas was also in direct correlation with the process of militarization on behalf of the United States along the U.S.-Mexico border. Therefore, the Grupo Beta protocol quickly spread along the Mexico-U.S. border, resulting in 16 groups by 2010. Furthermore, Grupo Beta spread down to the Mexican Southern border in order to provide the same services for immigrants entering Mexico.<sup>43</sup>

The legal basis of Grupo Beta can be found in the LGP Regulations, Articles 137 and 138:

Article 137: The Department (of the Interior) shall be able to create protection groups for migrants within the country, with the objective of such groups being the protection and defense of said migrants' human rights, physical and economic integrity, regardless of their nationality or documentation status. Such groups shall be created within the framework of those coordination agreements entered into for such effects with state executives, taking into consideration in all cases the participation that may correspond to municipal governments.

Article 138: The Institute (INM) shall coordinate the operation and functioning of the groups referred to in the preceding article, in which shall jointly participate federal, state, and municipal public security elements.<sup>44</sup>

The motto of the Grupos Beta is "Vocation, humanitarianism, and loyalty," and they adhere to three main responsibilities. The first is search and rescue, the second is the

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<sup>42</sup> INM website, [http://www.inm.gob.mx/index.php/page/Grupo\\_Beta](http://www.inm.gob.mx/index.php/page/Grupo_Beta).

<sup>43</sup> Ibid.

<sup>44</sup> LGP Regulations, Articles 137, 138.

protection of human rights, and the third is orientation and assistance.<sup>45</sup> There are 16 total sectors of Grupo Beta along both borders.<sup>46</sup>

The organization of Grupo Beta has been instrumental in the protection of migrant rights along Mexico's Northern and Southern borders. In 2010 alone, more than 4,000 migrants were rescued; nearly 800 of those were wounded or hurt, as demonstrated in Table 9.

**Table 9: Services Provided by Grupo Beta**

	<b>Migrants Rescued</b>	<b>Assistance to wounded or hurt migrants</b>	<b>Lost and found migrants</b>	<b>Social assistance to migrants*</b>	<b>Orientation provided to migrants**</b>
<b>2002</b>	3,179	487	288	49,757	268,407
<b>2003</b>	3,338	595	205	60,901	480,420
<b>2004</b>	3,364	750	183	120,025	661,044
<b>2005</b>	5,839	1,530	140	143,563	769,056
<b>2006</b>	7,945	739	149	109,720	630,112
<b>2007</b>	6,231	538	158	107,032	301,063
<b>2008</b>	3,166	596	123	144,191	204,846
<b>2009</b>	3,753	737	168	213,693	230,621
<b>2010</b>	4,163	794	190	184,587	226,150

Source: INM website.

\*Social assistance to migrants includes the following: food, refuge, minor medical attention, transportation to medical centers, and assistance in administrative matters.

\*\*Orientation includes: providing information either verbally or through the handout of pamphlets concerning the physical risks of migration and informing migrants of their rights. This service can be rendered to any migrant, regardless of nationality and/or status.

As is evident, services provided by Grupo Beta have remained somewhat consistent since 2002. There is a spike in numbers across the board in 2005, which can be attributed to the detrimental effects of Hurricane Stan throughout Central America. Thousands of

<sup>45</sup> INM website, [http://www.inm.gob.mx/index.php/page/Grupo\\_Beta](http://www.inm.gob.mx/index.php/page/Grupo_Beta)

<sup>46</sup> The 16 Grupos Beta are found in the border states of Baja California, Sonora, Chihuahua, Coahuila, Tamaulipas, Veracruz, Tabasco and Chiapas. The separate delegations can be found in the following cities: Tijuana, Tecate, Mexicali, San Luis Rio Colorado, Sonoyta, Sasabe, Nogales, Agua Prieta, Ciudad Juárez, Palomas, Piedras Negras, Matamoros, Acayucan, Tenosique, Comitán, and Tapachula. INM website, [http://www.inm.gob.mx/index.php/page/Grupo\\_Beta](http://www.inm.gob.mx/index.php/page/Grupo_Beta)

migrants a year are assisted by members of Grupo Beta, which has led to an increase in awareness of certain rights and access to migratory services by foreigners in Mexico.

1994 could be considered a watershed year for Mexico. It marks the initiation of NAFTA, the peso crisis, and the Zapatista uprising. Throughout this time period, political and economic legitimacy were extremely undermined both in the eyes of foreign investors and Mexican citizens. Mexico had to attempt recovery as quickly and painlessly as possible to the financial crisis. Although the Clinton administration hesitated at first, the U.S. eventually came through with a bailout package; however, the majority of the damage was already done. Countless investors had pulled out and massive capital flight left a destructive wake. In addition, the Zapatistas were demanding autonomy and recognition in the South, while at the same time condemning Mexico's participation in NAFTA. The PRI had to rely on all resources and sources of possible political support. Therefore, the strategy of incorporation grew in strength as the Mexican state reached out to emigrants in order to rebuild legitimacy.

In addition, the unprecedented law of no pérdida de la nacionalidad (no loss of nationality) was passed in 1997, which states that Mexican emigrants who became naturalized US citizens can retain their Mexican nationality. This law was passed in order to promote dual citizenship so emigrants could receive the benefits offered by both states. In line with the protection of Mexican nationals abroad, naturalization was perceived as the best way to secure rights and safeguard against discrimination in the United States.<sup>47</sup> This law allows Mexican emigrants to strengthen civic ties to the United States while simultaneously reinforcing and advocating the continuance of an economic and political

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<sup>47</sup> Sherman, 855.



relationship with Mexico. This also facilitates the extension of membership and citizenship, albeit in a transnational situation.

Mexico sends the most important message it can transmit to its diaspora, a message of belonging and of plurality: regardless of the natural loyalty that most Mexicans and Mexican-American youths feel toward the country where they were born or that their parents adopted, it is legitimate to feel simultaneously part of the Mexican nation. Mexico is concerned for and expresses solidarity with Mexicans living abroad.<sup>48</sup> It also proved that the Mexican state was willing to sacrifice a degree of sovereignty for the wellbeing of Mexicans abroad.

Furthermore, in March of 1996, it was decided that those living abroad would be able to participate in the Mexican domestic vote. Although this proposition endured years of debate and an initial resistance by PRI officials, Mexican emigrants were allowed to cast votes in the 2006 presidential election. This absentee vote combined with the dual citizenship measures further demonstrates the deterritorialized redefinition of citizenship and the level of incorporation offered to emigrants during this period.<sup>49</sup> Consular action also increased exponentially to further facilitate the needs of emigrants and provide much needed education and health services.

A 2005 national survey found that the extension of the right to vote to emigrants abroad was popular with Mexicans in Mexico. 54% of Mexicans agreed with the principal behind the absentee vote, illustrating the fact that most Mexicans consider migrants abroad as an integral part of political life in Mexico.<sup>50</sup> Logistical problems still were not solved by the 2000 presidential election; therefore, it was decided that the absentee vote would not be implemented until the 2006 presidential election. This

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<sup>48</sup> Gonzalez Gutierrez, 565.

<sup>49</sup> Chelius and Saldaña, 111.

<sup>50</sup> William Chiu and Marisol Raquel Gutierrez, "Migration and Political Involvement," in *Impacts of Border Enforcement on Mexican Migration: The View from Sending Communities*. eds. Wayne A. Cornelius and Jessa M. Lewis (La Jolla: Center for Comparative Immigration Studies, USCD, 2007), 150.

decision passed legislation in mid-2005 and was pushed through partly as a result of extensive public support.<sup>51</sup>

The SRE and IFE are in collaboration to spearhead the organization and implementation of the absentee vote. In order to increase availability of information about the process for Mexicans abroad, the IFE instituted a weekly bulletin, "*Lazos: Votos en el Exterior*."<sup>52</sup> The Boletín Lazos is primarily concerned with establishing a connection with Mexicans abroad, focusing on the extension of civil and political liberties. This has helped enforce both membership and citizenship practices by creating a forum through which Mexicans abroad can learn not only about the presidential campaign, but also about their explicit contribution and the difference their vote makes.

The electoral year has concluded and along with it has ended the period, through the Boletín Lazos, in which we have established a form of regular communication with Mexican citizens who reside beyond our national borders. The nation has succeeded in amplifying its political community to include those that live outside our political territory.<sup>53</sup>

The Boletín Lazos is an example of the implementation of extended incorporation and follows the strategy of deepening ties to the Mexican nation-state through both cultural and political connections.

However, it is important to note that the success of the absentee vote is highly contested. Voter turnout was extremely low among Mexican emigrants. Only 33,131 absentee voting ballots were cast, representing a miniscule 0.06% of Mexico's registered voting population and only 0.46% of eligible voters living in the United States.<sup>54</sup> This could either reflect apathy towards Mexican politics, but it most probably is indicative of

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<sup>51</sup> Ibid.

<sup>52</sup> Ibid.

<sup>53</sup> Instituto Federal Electoral: Boletín Lazos, No. 47. September 28, 2006. Accessed July 2011, [http://www.ife.org.mx/documentos/votoextranjero/pdf/boletin\\_lazos/47.pdf](http://www.ife.org.mx/documentos/votoextranjero/pdf/boletin_lazos/47.pdf)

<sup>54</sup> Chiu and Gutierrez, 152.

the difficulty of registering and receiving the accurate documentation to participate in the absentee vote. Most Mexicans in the United States do not have an IFE voting card. In order to circumvent this issue, voting booths were set up in Mexican border cities, but it is believed that only 15% of the votes was cast by emigrants.<sup>55</sup> This is a relatively new process that has yet to develop and does not have capabilities to terminate implementation and enforcement flaws. However, despite its incipient character and slow beginning, there are still very real consequences of this Constitutional amendment.

Although it took years to reach actual implementation, the debate surrounding the Constitutional amendment and the mere possibility of an absentee vote illustrated the political importance of the Mexican diaspora. The passage of this amendment was in line with the theory of extended incorporation and proved the political leverage held by Mexican emigrants. This initiative also reinforced both the institutionalization of membership and citizenship as delineated by Smith. “In addition to enabling migrants to influence political processes in their home country, the absentee vote serves as a symbol of their ties to Mexico, ties that extend beyond cash remittances.”<sup>56</sup> An official political right recognized by the state was extended to Mexican emigrants, which facilitated a feeling of belonging and increased affinities with Mexico.

During this period of extended incorporation, Mexican policy shifted directions towards a more inclusive citizenry and pervasive benefits. This has been the product of the regeneration of legitimacy, the utilization of emigrants as a base of support, increased integration with the United States and the improved protection of emigrants against US restrictive policies.

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<sup>55</sup> Ibid, 150.

<sup>56</sup> Smith, 299.

## ***2.5 The Fox and Calderón Administrations: Continued Extended Incorporation and the Transnationalization of Politics***

President Vicente Fox (2000-2006) was the first to capitalize on this marginalized community and focused his campaign and presidency on the migration debate, as it related to domestic politics and U.S.-Mexico relations. He relied heavily on migrant rights and incorporation in his 2000 presidential campaign, starting a new trend for following presidential hopefuls. “Especially since President Vicente Fox championed the migrants’ cause beginning in his campaign for the presidency in 2000, the Mexican government has become a proponent of increased political participation by U.S.-based migrants.”<sup>57</sup> This focus on migrant rights is evident in the remainder of his presidency and bilateral immigration negotiations held with the United States.

Fox’s election to the Mexican presidency marked the end of PRI rule and the beginning of a new democracy in Mexico. His validation as a democratically elected president afforded him a more aggressive approach towards the immigration debate with the United States. His first plan of action was to appoint well-known scholar Jorge Castañeda as Foreign Minister. Castañeda, a close friend of Fox’s and who possessed substantial political influence, had many progressive views of the direction that immigration policy should take as a bilateral subject. Under Castañeda’s influence, Fox initially proposed a plan called “NAFTA plus” that would include the free flow of labor in addition to other NAFTA initiatives. Although this was unlikely due to massive wage differentials, it was a bold move on Fox’s part.<sup>58</sup>

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<sup>57</sup> Chiu and Gutierrez, 151.

<sup>58</sup> Jeffrey Davidow, *The US and Mexico: The Bear and the Porcupine; Testimony of the US Ambassador to Mexico 1998-2002* (Princeton: Markus Weiner Publishers: 2004), 233.

Bush and Fox met in February of 2001 at Fox's Guanajuato ranch. Fox's plan had somewhat shifted to focus more on amnesty for those living in the United States and a guest worker program. As a result of this meeting, a bilateral group was commissioned to further develop immigration negotiations. The group agreed on an agenda that included, "...regularization, a guest-worker program, a special regime for granting more visas to Mexican workers, security for and humane treatment of Mexican migrants, and economic development as a means of reducing incentives for migration."<sup>59</sup> Furthermore, Mexico demanded that the package be deliberated upon and enacted at once in opposition to partial negotiations, advocating a "Whole Enchilada" approach.<sup>60</sup> This was the most ambitious migration plan ever put forth by a Mexican president. Although it would not ultimately be successful, it illustrates the growing importance of Mexican migrants and the influence of their political capital.

Immediately after his election, Fox also created the Special Office for Mexicans Abroad which was headed by a Juan Hernandez, a Mexican-American. Through this office, Fox tried to benefit politically from elements of membership exhibited by the Mexican community abroad. "Local cultural values are deeply engrained in all Mexicans, no matter where they live or whatever their circumstances for leaving in the first place. It was these strong ties to Mexico that the Fox government decided to strengthen."<sup>61</sup> Although this office closed in 2002 due to ambiguous responsibilities and purpose, it still illustrated the importance of Mexican migrants to the Fox administration.

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<sup>59</sup> Luis Carlos Ugalde, "U.S.-Mexican Relations," in *Mexico Under Fox*, eds. Luis Rubio and Susan Kaufman Purcell (Boulder: Lynne Rienner Publishers, 2004), 126

<sup>60</sup> Jorge G. Castañeda, *Ex Mex: From Migrants to Immigrants* (New York: The New Press, 2007).

<sup>61</sup> Andrés Rozental, "Fox's Foreign Policy Agenda: Global and Regional Priorities," in *Mexico Under Fox*, eds. Luis Rubio and Susan Kaufman Purcell (Boulder: Lynne Rienner Publishers: 2004), 101.

Fox continued the approach of extended incorporation that began in 1988, with an even more cooperative counterpart in the United States. Emigrant inclusion and advancements in joint immigration policy in the United States were continuously seen as an important resource to further solidify democracy and increase legitimacy. Fortified by recent democratization and the endurance of NAFTA, Fox sought to further extend citizenship status beyond paper legislation. True protection of Mexicans, regardless of where they carry out their everyday lives, was the ultimate goal of the Fox administration.

President Felipe Calderón followed Fox's lead and emphasized the immigrant population in the United States both during his campaign and his presidency. During his campaign, Calderón focused on the creation of jobs to alleviate economic difficulties felt both by Mexicans in Mexico and those living abroad. He argued that an increase in the employment rate was the only way to ease the problems of migration. He focused on the importance of Mexican emigrants and the need of the Mexican government to address their daily struggles.

The entire world will be amazed at the enormous power of emigrants in the United States. They are demanding a legitimate recognition of their labor condition. From here, I offer my solidarity and support to those Mexicans in the United States who are involved in this fight.<sup>62</sup>

In the aftermath of the 2006 May Day protests in the United States, Calderón recognized the need to extend membership and citizenship to Mexican emigrants. His desire for further incorporation was indicative of their importance as a result of economic contributions in the form of remittances and also political influence due to their position in the United States and the implementation of the absentee vote. President Calderón

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<sup>62</sup> Sergio Javier Jiménez, "Calderón ofrece crear un millón de empleos al año," *El Universal*, May 3, 2006, Accessed May, 2001, <http://www.eluniversal.com.mx/notas/346574.html>. Author's translation.

consequently vowed to provide protection to all Mexican citizens, stating, “Where there is a Mexican, there is Mexico.”<sup>63</sup> This demonstrates the increased consequences for domestic politics and national rhetoric in terms of immigration as membership is being extended in an unprecedented manner.

Campaigns and presidential trips have increasingly included stops in the United States in order to address Mexican emigrants who now have access to the absentee vote. The growing importance of Clubes de Oriundos and the extension of the domestic vote have made Mexican emigrants an incredibly important constituent.

Once ignored, Mexicans are now being romanced by the Mexican government. They have become so influential that it is now political suicide in many mayoral and gubernatorial races in Mexico not to campaign in the United States as well as at home.<sup>64</sup> Fox flew to the United States just two months before his election in order to secure his vote abroad. This support is instrumental as Mexicans abroad can often heavily influence their family and friends at home.

The transnationalization of politics can also be seen through the actions of Felipe Calderón. During a 2008 trip to the United States, Calderón avoided Washington and instead chose to devote his time abroad to Mexican communities in New York, Boston, Chicago, Sacramento and Los Angeles.<sup>65</sup> This confirms the political importance of Mexican emigrants. “Mexican migrants have become an extension of Mexico’s own

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<sup>63</sup> Traci Carl, “Mexico Blasts U.S. Immigration Policies,” *The Associated Press*, September 2, 2007, accessed May, 2011, <http://www.washingtonpost.com/wp-dyn/content/article/2007/09/02/AR2007090200958.html>.

<sup>64</sup> Kevin Sullivan and Mary Jordan, “Mexican Campaign Trail now reaches U.S. Cities,” *The Washington Post*, August 18, 2001, accessed August 2006, <http://www.latinamericanstudies.org/mexico/mexico-campaign-01.htm>.

<sup>65</sup> James C. McKinley Jr., “Mexican Leader to Visit U.S., Outside the Beltway,” *The New York Times*, February 8, 2009. Accessed May 2011, [http://www.nytimes.com/2008/02/09/world/americas/09mexico.html?\\_r=1&scp=1&sq=mexican+presidential+candidates+in+US&st=nyt](http://www.nytimes.com/2008/02/09/world/americas/09mexico.html?_r=1&scp=1&sq=mexican+presidential+candidates+in+US&st=nyt).

politics, and ignored only at great peril.”<sup>66</sup> The extension of citizenship rights has greatly affected the way in which Mexican politicians relate to the community in the United States.

### 3.0 **US Criticisms of Hypocrisy**

One of the ways in which the Mexican government has implemented the strategy of extended incorporation is through cultivating a more critical role in opposition to restrictive US immigration policies. As will be discussed in greater detail in Chapter 6, the United States has recently experienced a period of increasingly restrictive immigration policies, at both the federal and state level. Due to the Mexican government’s desire to extend protection and membership to emigrants abroad, the Mexican government has maintained a highly critical role in this policy debate. This resulted in direct accusations by the United States officials of Mexican hypocrisy in terms of migrant rights, specifically citing the deleterious effects of the LGP and the Mexican Constitution on foreigners in Mexico. This section will examine Mexico and U.S. interaction in the aftermath of two highly contentious periods immediately following the failure of comprehensive immigration reform in 2006 and the passage of Arizona SB 1070 in 2010.

#### 3.1 ***Failed Comprehensive Immigration Reform: 2004-2006***

Between 2004 and 2006, the United States Congress went through an extremely divisive debate concerning the direction of comprehensive immigration reform.<sup>67</sup> In highly politicized terms, US Senators and Representatives argued about the advantages

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<sup>66</sup> Ibid.

<sup>67</sup> For a more in-depth analysis, please reference Chapter 6.



and disadvantages of focusing primarily on border enforcement and militarization as opposed to internal controls and pathways to citizenship. This debate eventually ended, falling far short of comprehensive immigration reform and instead resulting in the 2006 passage of the Secure Fence Act, which called for the construction of a border wall along the U.S.-Mexico border. This resulted in massive immigrant protests across the country and stern criticisms from the Mexican government in which former President Calderón described the act of building a border fence as “offensive.”<sup>68</sup>

Both President Calderón’s remarks about the border fence and the outpouring of immigrant opposition to restrictive immigration policies as manifested by the protests of May 1, 2006 provoked many in the United States Congress to speak out. Of particular concern to US legislators was the level of hypocrisy in the Mexican government’s opposition to restrictive immigration policy and claims that it would both criminalize Mexican immigrants and violate their rights. The US criticisms of hypocrisy were based on the claim that the same tenets of immigration control could be found in Mexico’s immigration policy as outlined by the LGP.

Representative Ric Keller (R-FL) objected against the massive protests and the implicit hypocrisy involved with these demonstrations. He addressed these concerns to the House of Representatives on May 10, 2006 and again on May 17, 2006.

Last week, street protests revealed a lot about the hypocrisy of Mexico. With a great deal of bluster and self-righteousness, the protestors objected to the House-approved border security bill. . . Well, a new study just released by the Law Library of Congress reveals that Mexico itself is far harsher on illegal immigrants than the United States. For example, in Mexico, it is a felony punishable by 2 years in prison merely to be an illegal immigrant. In contrast to giving them citizenship, Mexico actually deported 250,000 illegal immigrants last year. Mexico even put their military soldiers on their southern

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<sup>68</sup> AP, “Rechaza Calderón el Muro en Frontera con EU, en Davos,” *The Universal*, January 26, 2007. Accessed May 2011, <http://www.eluniversal.com.mx/notas/402876.html>.

border to stop illegals from going into Mexico from Guatemala. Hypocrisy has crossed the border. It makes you wonder, were they protesting the wrong country last week?<sup>69</sup>

Mexico has its own serious illegal immigration problems... What did Mexico do about it? Did they put out a welcome mat? Did they grant everyone citizenship? No. They got tough. Mexico put their military at the southern border to stop illegals... Now Mexico hypocritically criticizes out having National Guard troops on the border. We have a saying in this country: Actions speak louder than words.<sup>70</sup>

The fact that Mexico did not uphold the same ideals that were being demanded of the

United States was a point of contention of US legislators. It was effectively used as a defensive mechanism to deflect Mexican opposition.

Representative Patrick McHenry (R-NC) reiterated the hypocrisy inherent in Mexico's protests on May 25, 2006.

Let's talk about Mexico. What is striking here is that foreign born Mexicans can't even hold office in either house of their congress. They are also banned from state legislatures, the supreme court and all governorships. We don't do that here in America. We allow immigrants to participate in the process. In fact, they are even encouraging a ban on firefighters, police and judges from being non-natives. It is amazing to me what Mexico is doing. Madam Speaker, we are a Nation that respects immigrants and embraces them, unlike Mexico, and I just ask their respect of their immigrants as well.<sup>71</sup>

With these speeches, it became apparent that Mexico would be unable to legitimately

support this specific line of criticism concerning U.S. immigration policy, which

inherently weakened its policy of extended incorporation and subsequent relationship

with Mexican emigrants. This greatly contributed to the concept of the soft reciprocity

strategy and provoked Mexico to continue in its endeavor to realign immigration policy accordingly.

### 3.2 *Arizona's SB 1070*

On April 23, 2010, an extremely controversial immigration bill passed the Arizona state legislature, which served as an excessively potent catalyst for Mexican emigrant

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<sup>69</sup> *U.S. Congressional Record*, 109<sup>th</sup> Cong., 2d sess., May 10, 2006: H2343.

<sup>70</sup> *U.S. Congressional Record*, 109<sup>th</sup> Cong., 2d sess., May 17, 2006: H2647.

<sup>71</sup> *U.S. Congressional Record*, 109<sup>th</sup> Cong., 2d sess., May 25, 2006: H3232.

advocacy. Widely viewed as the most restrictive immigration bill in the country, Senate Bill (SB) 1070 made the undocumented status of an immigrant a state crime, in addition to the failure of carrying documentation to prove status.<sup>72</sup> SB 1070 also made it a crime to harbor an undocumented immigrant, including family members, and also criminalized the failure to act on the knowledge of the undocumented status of a person. However, the crux of the controversy surrounding the bill was found in the authorization of state officials to verify status in the presence of “reasonable suspicion” that their status may not be legal.

For any lawful contact made by a law enforcement official or agency of this state or a county, city, town or other political subdivision of this state where reasonable suspicion exists that the person is an alien who is unlawfully present in the United States, a reasonable attempt shall be made, when practicable, to determine the immigration status of the person.<sup>73</sup>

SB 1070 was the latest in a trend of increasingly restrictive immigration legislation in Arizona, which can be attributed largely to the growing numbers and visibility of the undocumented population in the border state.<sup>74</sup>

There was a strong reaction to SB 1070, as many legislators and civil society organizations viewed it as discriminatory and a promoter of racial profiling. President Obama stated that the legislation would, “...undermine basic notions of fairness that we cherish as Americans, as well as the trust between police and our communities that is so

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<sup>72</sup> Muzaffar Chishti and Claire Bergeron, “Supreme Court Rules that Attorneys Must Inform Criminal Defendants of the Immigration Consequences of Pleading Guilty,” *Migration Information Source*, April 15, 2010. Accessed June 2011, <http://www.migrationinformation.org/usfocus/display.cfm?ID=778>.

<sup>73</sup> State of Arizona, Senate Bill 1070. April 2010. Accessed June 2011, [http://www.azleg.gov//FormatDocument.asp?inDoc=/legtext/49leg/2r/bills/sb1070s.htm&Session\\_ID=93](http://www.azleg.gov//FormatDocument.asp?inDoc=/legtext/49leg/2r/bills/sb1070s.htm&Session_ID=93).

<sup>74</sup> A series of propositions from 2006, 2008 and 2009 had greatly limited the provision of benefits to undocumented immigrants in Arizona. The state of Arizona had the fifth largest population of undocumented immigrants in 2010. Passel and Cohn, “Unauthorized Immigrant Population: National and State Trends, 2010.”

crucial to keeping us safe.”<sup>75</sup> SB 1070 also provoked a strong reaction from the Mexican government. The Mexican government was becoming increasingly outspoken about restrictive immigration policies in the United States due to the fact that they were perceived to adversely affect the Mexican community. Therefore, President Calderón requested a joint meeting to address the U.S. House of Representatives and Senate concerning the bilateral management of migration and the Arizona legislation on May 20, 2010.

Due to the divisive nature of the legislation, there was a substantial amount of hostility to the presence of President Calderón in the United States Congress on such a sensitive issue. His arrival was preceded by a speech given by Representative Ted Poe (R-TX) on May 18, 2010. In his speech, Representative Poe outlined the hypocrisy of Mexican exhortations for immigration reform in the US and opposition to SB 1070 due to the restrictive nature of the LGP.

Mr. Speaker, Mexican President Felipe Calderón says he thinks Arizona’s new illegal immigration enforcement law will open the door to ‘intolerance, hate, discrimination and abuse in law enforcement.’ Calderón’s coming to the White House to talk to our President about it tomorrow. I wonder if they’ll discuss whether or not Calderón supports his own country’s immigration policy...The Mexican Government bars any foreigner from immigrating to Mexico if they upset ‘the equilibrium of the national demographic.’ I wonder if President Calderón thinks that’s racial or ethnic profiling...Mexico has long been doing the job of illegal alien deportation, and it seems to me it’s hypocritical of Mexico and President Calderón to criticize the United States or Arizona for enforcing our illegal immigration laws. They are far less severe than Mexico’s illegal immigration laws. So when President Calderón comes here tomorrow to complain about American and America’s illegal immigration policy, perhaps Calderón would prefer America adopt Mexico’s immigration policies. And that’s just the way it is.<sup>76</sup>

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<sup>75</sup> Randal C. Archibold, “Arizona Enacts Stringent Law on Immigration,” *New York Times*, April 23, 2010. Accessed June 2011, <http://www.nytimes.com/2010/04/24/us/politics/24immig.html>.

<sup>76</sup> *U.S. Congressional Record*, 111<sup>th</sup> Cong., 2<sup>nd</sup> sess., May 18, 2010: H3516.

Once again, the issue of Mexican hypocrisy was a standard defense against Mexican criticisms of US immigration policy, despite the fact that many amendments had been made in the interim years to modernize Mexican immigration policy.

Mexican President Felipe Calderón spoke in a joint meeting before the US House of Representatives and Senate on May 20, 2010 in order to address their bilateral relationship and express concerns over SB 1070. He spoke about various areas of cooperation before he turned to the issue of immigration. He stressed the changes Mexico had made, calling Mexico a “country in transformation.” He emphasized the idea that Mexico was willing to do its part in the war on drugs and various aspects of border security. President Calderón then turned to the issue of immigration policy, specifically SB 1070.

I am convinced that comprehensive immigration reform is also crucial to secure our common border. However, I strongly disagree with the recently adopted law in Arizona. It is a law that not only ignores a reality that cannot be erased by decree but also introduces a terrible idea: using racial profiling as a basis for law enforcement. And that is why I agree with President Obama, who said the new law ‘carries a great amount of risk when core values that we all care about are breached.’ I want to bridge the gap of feeling and emotions between our countries and our peoples. I believe in this. I believe in communication, I believe in cooperation, and we together must find a better way to face and fix this common problem.<sup>77</sup>

The principle of shared responsibility is clearly demarcated in this speech, which served as an important contributor to the ideals of congruence and reciprocity. President Calderón expressed great discomfort with SB 1070 and the negative effects it could have in the form of racial profiling, once again attempting to protect the Mexican population abroad.

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<sup>77</sup> *U.S. Congressional Record*, 111<sup>th</sup> Cong., 2<sup>nd</sup> sess., May 20, 2010: H3664.

President Calderón was immediately criticized by US Representative John Fleming (R-LA) due to the disconnect between his demands placed on the United States and Mexico's immigration policy.

But what's very interesting about President Calderón is that the rules for immigration into Mexico from its southern border are far more onerous than our own laws. In fact, ours are much more generous, and yet he's again criticizing us. That really makes no sense. It doesn't add up. It's hypocritical, of course.<sup>78</sup>

Here, Representative Fleming mirrors the same issues with Mexican hypocrisy as outlined by Representative Poe. Once again, Mexico's attempt to protect the rights of Mexicans in the United States was hindered by its own restrictive immigration laws. Mexican demands for less restrictive policies in the United States were void of legitimacy, which would soon be overcome by the application of the strategy of reciprocity in the revision of Mexican immigration policy. Although this did not prevent Mexico from filing suit against Arizona in June of 2011, citing issues of unconstitutionality, these efforts were hampered by a lack of legitimacy resulting from Mexico's own restrictive policies.<sup>79</sup>

### ***3.3 Implications of Extended Incorporation***

Although these criticisms of hypocrisy by US legislators could be discounted as simple political rhetoric, their claims held considerable weight for Mexico. This was partly due to the fact that Mexico was extremely invested in advocating for Mexican emigrants for very pragmatic reasons. Anything that obstructed this objective was viewed as detrimental to fundamental national interests. Accusations of hypocrisy stripped Mexico of legitimacy and moral authority in the realm of migrant rights. Therefore, the

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<sup>78</sup> *U.S. Congressional Record*, 111<sup>th</sup> Cong., 2<sup>nd</sup> sess., May 20, 2010: H3664.

<sup>79</sup> "Mexico files court brief against Arizona immigration law," *CNN U.S.*, June 22, 2010. Accessed August 2011, [http://articles.cnn.com/2010-06-22/us/mexico.arizona.lawsuit\\_1\\_court-mexico-mexican-government?\\_s=PM:US](http://articles.cnn.com/2010-06-22/us/mexico.arizona.lawsuit_1_court-mexico-mexican-government?_s=PM:US).

United States was easily able to deflect any criticisms by the Mexican government, even if its analysis of certain policies were founded in legitimate concerns. This imperiled the strategy of extended incorporation that had become a cornerstone of popular political dogma.

The inability of the Mexican government to correctly implement extended incorporation due to hypocrisy was also recognized by domestic actors. In an interview with one prominent Mexican scholar, this hypocrisy was explicitly addressed.

When the Mexican government begins to file complaints against the U.S., there is an internal pressure or push to make these complaints coherent. Like it has been said many times before: I cannot ask the United States to respect Mexican immigrants if I don't respect immigrants from other countries here. It's an obligation. It's an obligation of the state.<sup>80</sup>

As will be discussed later, this lack of congruence served as a principle component in the passage of the Migration Law.

In addition, these claims held legitimacy due to the unbalanced power dynamic between Mexico and the United States. As the political and economic giant in the bilateral relationship, the United States can exert considerable influence in Mexican domestic policy debates, although the same might not be true in reverse situations. This also demonstrated that Mexico would have to find a better way to leverage its own criticisms in order to have a bigger impact on US policy, if possible at all. Finally, these denunciations of hypocrisy further highlighted the lack of harmonization of immigration and emigration policy in Mexico and missing congruence with international accords and human rights norms.

It is important to note that Mexico's relationship with its emigrant community did not emerge and fully form until the late 1990s and the early 2000. This is when emigration

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<sup>80</sup> Mexican scholar, interviewed by Marcelle Beaulieu, July 2, 2010, Mexico City.

vastly increased to the United States, along with augmented financial empowerment through high levels of remittances. This economic might was compounded by the magnified political relevance of this group with the passage of dual citizenship and the right to vote in domestic elections abroad. This meant that politics reached an unprecedented level of transnationalization, forcing politicians to recognize the deterritorialized redistricting of valuable constituencies and reevaluate their political approach. When this process occurred, Mexico's emigrant population became an important player in the restructuring of immigration policy, although only tangentially related, eventually resulting in the new Migration Law.

#### 4.0 **Conclusion**

Mexican emigration policy has evolved over the years to include a strategy of extended incorporation. This signifies the economic, political, and cultural importance of Mexican emigrants abroad due to sheer numbers, influences, and monetary value in the form of remittances. The strategy of extended incorporation has been carried out through the establishment of inclusive policies, institutions and laws. This has led to the transnationalization of politics and the endeavors of various political parties to extend their political support base to include Mexicans in the United States. As Mexican emigrants increase in influence and importance, the Mexican government has found ways to incorporate them more fully with the aim of securing national interests and in the attempt to secure legitimacy and reap electoral, monetary and other political benefits.

The development of this policy has also been deeply influenced by United States immigration policy. Due to the power imbalance and unilateral nature of the U.S.



decision-making process in this policy area, the realm of possibilities available to the Mexican government in terms of its emigrant community has always been inherently shaped by direct consequences of U.S. policy. As the United States continued to pursue more restrictive immigration policies, the Mexican government switched to a strategy of extended incorporation and became more diligent in its endeavor to better protect Mexican emigrants.

This influential relationship between the Mexican government and its emigrants later served as a motivating factor in Mexico's decision to become an even more vocal opponent of US immigration policy and attempt to gain leverage and moral authority in this debate through its strategy of soft reciprocity. However, there were some important unintended consequences of this strategy. The first was that it made Mexico more vulnerable to criticisms of hypocrisy by the US government. As Mexico denounced US initiatives by citing the violation of migrant rights, the U.S. was easily able to point out the invalidity of these criticisms due to Mexico's own history with the poor treatment of foreigners in its territory. This presented an alarming problem to Mexico: the strategy of extended incorporation was jeopardized due to a lack of moral authority in the area of migrant rights.

In addition, it demonstrated the fact that accusations coming solely from Mexico without the international backing and legitimacy of the human rights regime were insufficient in attaining the immediate goal of increasing moral authority and the tenuous future goal of affecting change in regional immigration policy. Therefore, Mexico was forced to reevaluate the implementation of extended incorporation and critically analyze the factors that were fundamentally weakening this important strategy. This desire to

strengthen ties with the emigrant community and counteract restrictive US immigration policy served as an important factor in the development of soft reciprocity and the resulting Migration Law. The next chapter will examine how the three motivating factors of Mexico's relationship with its emigrant community, civil society concerns, and Mexico's role as a regional leader all coalesced to inform a strategy of soft reciprocity and a resulting renovation of Mexican immigration policy.

## Chapter 5: Mexico's Migration Law: Emerging Principles and Soft Reciprocity

### 1.0 **Introduction**

The Mexican Migration Law was passed after years of overtly restrictive and nativist policy under the LGP. This dissertation seeks to explore why there was a radical change in approach and strategy in terms of immigration policy. Thus far, I have posited that three variables were instrumental in the liberalization of immigration policy and the eventual passage of the Migration Law: the importance of Mexico's relationship with its emigrant community, civil society grievances, and regional concerns of violence against transmigrants.

These three variables emerged due to the fact that Mexico holds many diverse roles in the migration phenomenon. As a sending, receiving, and transit country, Mexico has experienced a variety of challenges in terms of creating adequate policy to manage these flows. Mexican immigration and transmigration policy has continuously been viewed as outdated and nativist, providing few protections for migrants and oftentimes violating fundamental migrant rights. Mexican civil society and regional partners in Central America have been at the forefront of these accusations and have demanded an innovation in Mexican immigration policy. These two variables did not gain notoriety until democratization in 2000 propelled civil society to the forefront of policymaking and violence against transmigrants became a byproduct of President Calderón's antinarcotics policy.

In addition, in recent years, the Mexican emigrant population has increased substantially in sheer numbers, economic power and political relevancy, which are trends highlighted by unprecedented levels of remittances and domestic legislation facilitating the increased political participation of Mexicans abroad. Mexican emigration policy has subsequently subscribed to a strategy of extended incorporation in order to better capitalize on the economic and political might of this population. As a result, the Mexican government became increasingly critical of US immigration policies that were perceived to have negative effects on Mexican emigrants. This provoked sharp criticisms of hypocrisy from the United States due to Mexico's ill treatment of its own immigrants and the rampant violation of migrant rights in Mexico. In order to stem these criticisms and expand extended incorporation, the Migration Law was passed to match domestic policy with international rhetoric.

This chapter will explore the confluence of the three factors of civil society activism; regional partnerships, and Mexico's relationship with Mexican emigrants and the resulting strategy of soft reciprocity employed by the Mexican government in order to rectify stated criticisms and pursue important national interests. I will outline the concept of soft reciprocity in relation to the new Migration Law and exhibit the evolution of this strategy throughout the liberalization of Mexican immigration policy and the policymaking process. The strategy of soft reciprocity is contingent on the linking of emigration and immigration policy in Mexico, which I will also discuss in this chapter.

## 2.0 **Confluence of Variables**

Thus far, I have examined various criticisms of Mexican immigration policy. The first came from civil society organizations that pointed out the discrepancy between international human rights norms and Mexican immigration policy. The second originated from regional partners, demanding better treatment of Central American immigrants in Mexico. Finally, the United States leveled intense accusations at Mexico pointing out the hypocrisy underlining the uneasy relationship between the strategy of extended incorporation and the restrictive provisions of the LGP and the Mexican Constitution. This final criticism handicapped Mexico in its vital endeavor to protect Mexicans abroad and the crucial political and economic capital they contributed to Mexico.

They influencing factors did not begin to bear influence on Mexican immigration policy until shortly after the year 2000 due to various political and economic contexts. Even then, it took time for these factors to fully consolidate and help produce significant change in Mexican immigration policy, which was exhibited through the passage of the Migration Law. Civil society activism was tempered by the authoritarian nature of the PRI until Mexico's transition to democracy in 2000. Since then, the Mexican government has been more cognizant of societal demands and has passed legislation promoting transparency and public involvement. This will be illustrated through civil society's participation in the drafting of the Migration Law.

Criticisms from Central American counterparts and subsequent fears of losing legitimacy and a regional leadership role gained momentum in the aftermath of former President Calderón's crackdown on the illicit drug trade in Mexico, beginning in 2006.

The drug cartels were forced to diversify their operations, causing many to expand into the business of human smuggling. Since then, there has been an increase in immigrant kidnappings and violence that has garnered international attention and served as a rallying cry for neighboring countries whose citizens have been affected. This regional dissatisfaction with Mexico's immigration policy and its lackluster application of human rights norms became an increasingly poignant consideration for the Mexican government.

Finally, Mexico's relationship with its emigrant community continued to grow in importance and solidified the strategy of extended incorporation as sheer numbers of emigration increased as well as remittances. However, the strategy of extended incorporation was not truly challenged until immigration became a high politics issue in the United States and more restrictive policies began to pass at both the state and federal level. It was in the aftermath of the failure of comprehensive immigration reform from 2004-2006 and the onslaught of state led initiatives resembling Arizona's SB 1070 in 2010 that Mexico began to hear more accusations of hypocrisy from US officials and had to find another way to solidify its strategy of extended incorporation.

Therefore, in the early 2000s, these three variables began to coalesce and produce real challenges to Mexican democracy, regional leadership, and its policy of extended incorporation. They were all focused on slightly different issues; however, they all addressed the fundamental mistreatment of migrants in Mexico under the LGP and the Mexican Constitution. Although Mexico began to slowly liberalize immigration policies over the course of the early 2000s, the simple existence of the LGP and certain Constitutional articles jeopardized Mexico's relationship with civil society, Central American partners, and its emigrant community abroad. All of these factors reached a

critical turning point in 2010, which prompted Mexico to take serious action, resulting in the strategy of soft reciprocity and the Migration Law.

### 3.0 **Initial Liberalization of Immigration Policy**

As discussed, Mexico faced a few challenges in terms of its immigration policy, emigration policy and the validity of crucial relationships. First, the discrepancy between international human rights norms and Mexican immigration policy was clearly highlighted by civil society activists, regional partners, and the United States. Second, the strategy of extended incorporation was greatly hindered by the aforementioned hypocrisy. Third, Mexico lacked the leverage it needed to impose legitimate criticisms against US immigration policy. Lastly, Mexico's role as a regional leader in migration management was jeopardized due to increasing violence against Central American immigrants and the subsequent exacerbation of regional partners. These various problems were all linked to the one issue of Mexico's immigration policy.

Therefore, Mexico developed a strategy of soft reciprocity to rectify these various challenges. This began as a slow process of liberalization of immigration policy as Mexico began to gradually link immigration policy with its own strategy of extended incorporation. In addition, the concept of shared responsibility in migration management began to emerge as discussions of immigration in Mexico became steeped in human rights rhetoric, both publicly and politically. This chapter will review the process of liberalization, the development of soft reciprocity as a leading strategy, and the drafting of the Migration law according to these principles.

### 3.1 *Amendments and Regulations: Changes to the LGP*

Due to the previously reviewed issues, the Mexican government eventually began to modernize and liberalize the LGP. Due to international and domestic criticisms, the need to incorporate the protection of human rights into Mexican immigration policy became increasingly evident. Therefore, the General Population Act Regulations was passed on April 14, 2000 and again updated on November 29, 2006. The Regulations state its objectives in the first article.

The provisions of these Regulations are public in nature and are set forth in order to regulate, in accordance with the General Population Act, the application of domestic population policy; the linking of such policy to national development planning; the organization, attributes, and functions of the National Population Council; the promotion of the principles of equality between men and women; the coordination of activities with federal and municipal agencies dealing with population matters; the entry into and exit from the country of persons; the activities pursued by foreigners during their stay within national territory; and the emigration and repatriation of Mexican citizens.<sup>1</sup>

The purpose of the LGP Regulations is to provide a more detailed and specified administrative support system for matters pertaining to immigration. The Regulations largely delineate specific procedures to be followed by immigration officials and immigrants alike.

An important aspect of the LGP Regulations was its explicit link to Mexican population policy. The authors of the Regulations also took this opportunity to announce the arrival of the human rights discourse to population and immigration policy together.

Respect for the individual rights embodied in the Political Constitution of the United Mexican States, respect for human rights, respect for gender equality, and respect for the cultural values of the Mexican people, shall be the guiding principle underlying domestic population policy and any related programs, as well as migration programs and programs dealing with respect for women's rights.<sup>2</sup>

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<sup>1</sup> Mexican Government, *Ley General de Población, Reglamiento*. Diario Oficial de la Federación, April 14, 2000, article 1.

<sup>2</sup> LGP Regulations, article 5.



This constructs an even greater link between immigration policy and human rights, which became a crucial connection as the Mexican government sought legitimacy for the new Migration Law. Prior to this, there were few legal documents that specifically spoke to the protection of migrant rights in Mexico.

The LGP Regulations also expand the responsibilities of the INM to include the promotion of population flows that are beneficial in a humanitarian sense to Mexico.<sup>3</sup> Article 134 states that the INM must act in such a way that guarantees “full respect for human rights.”<sup>4</sup> In regards to emigration, the LGP Regulations states that the Department of the Interior will ensure that processes to hire Mexican labor abroad will be carried out in such a way that is respectful of the workers’ human rights.<sup>5</sup> Furthermore, the LGP Regulations delineates specific procedures to be conducted in immigration detention centers. This included a list of provisions to be provided for foreigners under detainment. These provisions include: a medical examination; telephone communication; the notification of consular representatives; an inventory of personal effects which will be safeguarded; informing the detainee of his/her rights and reasons for detainment; decent living space, food, and basic personal hygiene items; the right to visitation; the unification of families within detention centers; and the return of all personal items upon the end of the period of detainment.<sup>6</sup>

The passage of the LGP Regulations illustrates a change in direction for Mexican immigration policy. It explicitly introduced human rights and their specific application to the treatment of migrants in Mexico. This is a direct response to accusations of hypocrisy

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<sup>3</sup> LGP Regulations, article 134.

<sup>4</sup> Ibid

<sup>5</sup> LGP Regulations, article 213.

<sup>6</sup> LGP Regulation, article 209

in terms of international human rights standards. In addition, it was a way to garner legitimacy in the international immigration debate, especially in terms of gaining leverage in the fight for extended incorporation and exerting pressure on the United States to extend more benefits to Mexican immigrants.

These are primary principles of soft reciprocity: it is a strategy used by countries with a power disadvantage that are seeking to gain leverage in a multilateral situation. Additionally, although there may be altruistic considerations, the timing illustrates that self-interest was the primary motivation. If altruistic reasoning were the primary catalyst, then Mexico would have implemented more concrete changes at the time of either signing or ratifying various international human rights accords. Therefore, the passage of the LGP Regulations marks the beginning of the strategy of soft reciprocity. This strategy was better developed over the course of the following years and eventually began to show concrete consequences in Mexican immigration policy.

### 3.1.1 *Modification of Southern Border Policy*

The human rights discourse and soft reciprocity further materialized as the INM developed a new strategy for the Southern border as a result of the failure of the Southern Plan and the previously reviewed criticisms of Mexican immigration policy. The search culminated in a series of forums in 2005 in which a variety of academics and governmental representatives discussed the creation of a more responsible and efficient Southern border policy. The first forum took place in Tapachula, Chiapas on May 20, 2005. There were three round table discussions at the first forum on the topics of the facilitation of flows, the human rights of migrants, and border security.<sup>7</sup> The second forum occurred in Villahermosa, Tabasco on July 1, 2005. The second forum also

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<sup>7</sup> INM website, <http://www.inm.gob.mx/index.php/page/Foros>

contained three round table discussions that elaborated on the topics covered in the first forum. The first and second forums were also accompanied by a tour of the Southern border. The third and final forum took place in Mexico City in November 2005, with the principle objective of discussing the impact of Hurricanes Wilma and Stan on the immigration situation in Mexico.<sup>8</sup>

In addition, the third forum produced a final document providing a synthesis of the previous forums and a new strategy for Southern border policy. This document was titled, *Integral Migratory Policy Proposal for the Mexican Southern Border*. It outlined four major strategic lines to be followed by the INM in regards to the Southern border. The first strategic line is concerned with the “facilitation of documented migratory flows with Mexican southern border states as final destination.”<sup>9</sup> This objective is mainly concerned with administrative actions to be taken in order to ease the process of documented migration. Programs that have been implemented in accordance with this strategic line are the extension of the documentation of temporary migratory workers and visitors along the Southern border in addition to the dissemination of information concerning the realm of possibilities of migratory documentation.<sup>10</sup>

The second strategic line deals with the “protection of the rights of migrants entering through the Mexican Southern border.”<sup>11</sup> It’s general objective is “to respect and protect the rights of migrants entering Mexico through the Southern border, according to national legislation and international treaties the Mexican government has subscribed to.”<sup>12</sup> This

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<sup>8</sup> Hurricanes Wilma and Stan both occurred in October, 2005 and greatly affected Mexican and Central American populations and livelihoods.

<sup>9</sup> INM, *Propuesta de política migratoria integral en la frontera sur de México*, (México, D.F: Instituto Nacional de Migración, Centro de Estudios Migratorios, 2005), 9.

<sup>10</sup> Ibid.

<sup>11</sup> Ibid, 14.

<sup>12</sup> Ibid.

includes initiatives to expand the capacity of INM personnel to distribute information concerning the rights of migrants in addition to expediting official responses to violations against migrants during migration. In addition, this strategic line endeavors to cultivate a culture of making public grievances concerning the violation of migrant rights.<sup>13</sup>

The third strategic line involves the “contribution of security measures along the Mexican Southern border.”<sup>14</sup> This strategic line seeks to strengthen official controls along the border in order to better regulate exits and entries. This is meant to combat human smuggling and mistreatment of migrants in addition to corruption among migration authorities. This strategic line includes humane processes of repatriation and detention.<sup>15</sup> The final strategic objective is the “modernization of the management of migratory flows and migration policy, taking into consideration the particularities of the situation on the Southern border.”<sup>16</sup> This specifically involves the innovation of migratory services, the evaluation of programs already in place, and the adaptation of migratory legislation that appropriately deals with the challenges of contemporary immigration.<sup>17</sup>

The failure of the Southern Plan and the creation of the Integral Migratory Policy Proposal led to a new era of attempting to create a cohesive immigration policy that would address the three roles of Mexico as a sending, receiving and transit country. This next phase and change in policy strategy ultimately led to the new Migration Law, which combines both the human rights discourse and clearly demarcates the link between Mexican immigration and emigration policy.

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<sup>13</sup> Ibid.

<sup>14</sup> Ibid, 22.

<sup>15</sup> Ibid, 22.

<sup>16</sup> Ibid, 9.

<sup>17</sup> Ibid.

In addition to the modification of the migratory policy along the Southern border, the INM also began the program of the Re-dignification of Immigration Detention Centers in 2003. The objective of this program was to improve the physical conditions of detention centers and the institutional capacity to protect migrant rights.<sup>18</sup>

The objective of these efforts has been to improve the capacity of the INM to protect the human rights of detained migrants, within a context of substantial increases in undocumented transmigration, which coincides with elevated media attention, both domestically and internationally, which has resulted in higher standards and endeavors to protect the human rights of immigrants.<sup>19</sup>

As stated, the Re-dignification Program was inaugurated in the aftermath of increased criticism by both international and domestic groups concerning the Mexican government's treatment of foreigners.

According to the INM, there are 47 total detention centers and three different types. Type A centers only provide the conditions for a provisional stay. They are generally small and with limited capacity to provide migratory services. There are eight Type A centers, five in the state of Chiapas and two in the state of Tamaulipas.<sup>20</sup> Type B are the most numerous, with 35 as of 2007. They offer conditions for stays up to 15 days, and are bigger and more comfortable than Type A.<sup>21</sup> Type C detention centers can provide for stays up to 90 days or more and have ample services of sanitation, medical consultation, recreation areas, cafeterias, and family zones. In addition, they each have an office with a representative from the Comisión Nacional de Derechos Humanos (CNDH). There are five total in the states of Chiapas, Federal District, Coahuila, Chihuahua, and Veracruz.<sup>22</sup>

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<sup>18</sup> Calleros Alarcón, *El Instituto Nacional de Migración y los derechos humanos de los migrantes en México*, 157.

<sup>19</sup> Ibid, 179. Author's translation.

<sup>20</sup> Ibid, 156.

<sup>21</sup> Ibid. Type B detention centers can be found in the states of Aguascalientes, Baja California, Campeche, Chiapas, Chihuahua, Coahuila, Guerrero, Michoacán, Oaxaca, Puebla, Quintana Roo, San Luis Potosí, Sinaloa, Sonora, Tabasco, Tamaulipas, Tlaxcala, Veracruz, Yucatán, and Zacatecas.

<sup>22</sup> Ibid, 157.

By the end of 2003, the INM used a budget of 34.5 million pesos to begin the first stage of the Re-dignification Program in 23 different detention centers. Between 2004 and 2005, the INM began the construction, remodeling and maintenance of 24 additional detention centers, with a renewed budget of 83 million pesos.<sup>23</sup> From 2005 to 2007, the INM also completed the construction of three new Type C detention centers in Tapachula Chiapas; Janos, Chihuahua; and Acayucan, Veracruz. The Tapachula detention center is of particular importance due to the fact that 43% of all detained migrants spend a portion of time in this center. This center can hold up to 960 migrants and accounts for 50% of migrants deported back to Central America.

The changing Southern Border strategy and the Re-dignification program are both in line with the new usage of the human rights discourse and are functional aspects of soft reciprocity. These are ways in which Mexico began to institutionalize the strategy of soft reciprocity and spread the specific application of human rights to migrants in Mexico. Although the reciprocity aspect still had not been introduced or articulated publicly, the institutional reframing of Mexican immigration policy in terms of human rights laid important groundwork for later demands of fair treatment of Mexican immigrants and the resulting strategy of soft reciprocity.

### 3.1.2 *Additional Changes to the LGP*

In the most progressive step towards solidifying the protection of migrant rights, an amendment was passed on November 11, 2008, repealing articles 118-124 of the LGP. In addition to decriminalizing the act of being in Mexico without documentation, this amendment states that, in accordance with the 2007 National Development Plan and the INM's initiative to regularize immigration, foreigners who find themselves with an

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<sup>23</sup> Ibid, 158.

irregular status will be able to take steps towards regularization.<sup>24</sup> This regularization is contingent on a number of factors, but ultimately allows the status of undocumented migrants to change to legal immigrant with the characteristics outlined in the LGP.

These initial changes to the LGP illustrate the increasing importance afforded to the protection of human rights. This newfound attention to migrant rights would later be strongly linked to the treatment of Mexican emigrants in the United States and the strategy of soft reciprocity that eventually took hold of Mexican immigration policy. This correlation was recognized by many in the academic and civil society community. One academic interviewed over the course of field research who was a member of the committee responsible for the initial Migration Law proposal drew a direct reciprocal connection in reference to the abrogation of articles 118-124. “They (the Mexican government) have done things like this (repeal LGP articles), but there has not been a complete immigration reform. They ask for immigration reform there (the U.S.), but they don’t do it here.”<sup>25</sup> These amendments and the decriminalization of undocumented immigration mark an important first step of a soft reciprocity strategy that would ultimately become solidified under the new Migration Law.

In addition to changes to the LGP, the Mexican government also implemented a series of institutional changes and initiatives in its endeavor to liberalize Mexican immigration policy and provide greater protection of human rights of foreigners. Most of these have already been discussed in the previous chapter, but they deserve another

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<sup>24</sup> The accord, titled: Acuerdo que tiene por objeto establecer los criterios conforme a los cuales, los extranjeros de cualquier nacionalidad que se encuentren de manera irregular en territorio nacional y manifiesten su interés de residir en el mismo, puedan promover la obtención de su documentación migratoria en la calidad de inmigrante con las características de profesional, cargo de confianza, científico, técnico, familiares, artistas o deportistas o bien, en la características de asimilado en los casos que de manera excepcional se establecen en el presente, was published in the DOF, November 11, 2008.

<sup>25</sup> Personal communication. June 28, 2010, Mexico City.

mention due to their precedential status. One of the most ambitious groups created was the Grupo Beta (Beta Group) in the early 1990s, which was applied to both the Northern and Southern border. Other initiatives already discussed include the Paisano program and Southern border initiatives. The latter includes the creation of an integral southern border policy in 2005. This integral policy highlighted the protection of human rights and served as the basis for an elaboration of a similar strategy for overall immigration policy, constituting a foundation for soft reciprocity.

#### **4.0 Developing the New Migration Policy Strategy**

The creation of a new immigration policy and strategy had its beginnings in nearly a decade of already mentioned initiatives designed to ameliorate challenges experienced by immigrants in Mexico in response to a variety of criticisms explored in previous chapters. The application of human rights discourse to the immigration debate allowed Mexico to seek legitimacy in a power source bigger than its own and also provided a basis for the forthcoming strategy of soft reciprocity, which was further solidified as Mexico began to draw a specific link between Mexican emigration and immigration policy. The evolution of this concept, founding principles and the passage of the new Migration Law will be outlined below.

##### ***4.1 Founding Principles***

In 2005, a group of academics, civil society activists, and governmental officials convened in order to take part in a working group on migration entitled, *Prospects and Design of Platforms for the Construction of a Mexican Migration Policy*.<sup>26</sup> This series of

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<sup>26</sup> Mexican Government, *Mexico and the Migration Phenomenon*, October, 2005. Available online: [http://www.ime.gob.mx/agenda\\_migratoria/Mexico\\_about\\_Migration.pdf](http://www.ime.gob.mx/agenda_migratoria/Mexico_about_Migration.pdf)



discussions culminated in a document, “Mexico and the Migration Phenomenon,” produced in October, 2005. It was a synthesis of the discussions and represented the shared beliefs of a variety of actors from disparate ideological and professional backgrounds.

In line with a joint initiative by the Executive Branch and the Senate of Mexico, a group of federal authorities responsible for the management of migration, senators and congressmen, members of academia, experts in migration issues, and representative of civil society organizations, all agree to make an effort to create a national migration policy that would be founded on shared diagnosis and platforms.<sup>27</sup> This document received such widespread support that it was passed as a Concurrent

Resolution by both the Mexican Senate and House of Deputies on February 16, 2006. It highlighted the complexities of the immigration debate, specifically in response to unilateral immigration passed by the United States that intrinsically affected Mexican immigrants and Mexican policy options. In addition, it highlighted the importance of Mexican civil society in the creation of a new immigration policy strategy.

A consistent theme throughout the document is the idea that human rights should be introduced as a key element in future migration policies throughout Mexico.

Mexico must develop and enforce its migration laws and policy with full respect for the human rights of the migrants and their relatives, notwithstanding their nationality and migration status, as well as respecting the refugee and asylum rights, in accordance with the applicable international instruments.<sup>28</sup>

This was also paired with the principle that migration is a localized phenomenon based in regional contextual circumstances, leading to the recommendation that Mexico take a regional approach in the construction of migration policy. It also stated that any future migration policies should be well acclimated to present-day challenges and should be accompanied by enhanced institutional infrastructure to accommodate such policy.

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<sup>27</sup> Ibid.

<sup>28</sup> Ibid.

The document also focused on the idea of *shared responsibility*, which acknowledged that both Mexico and the United States must do their share in order to obtain the best results from the bilateral management of the migration phenomenon.”<sup>29</sup> The idea of shared responsibility can be viewed as the beginning foundations for reciprocity. Although Mexico at this point still had not explicitly connected the treatment of Mexican emigrants and foreigners in Mexico, the idea of shared responsibility had taken hold.

The migration phenomenon has international implications that demand from Mexico actions and international commitments –in particular with the neighboring regions and countries–, which, in accordance with the spirit of international cooperation, should be guided by the principle of *shared responsibility*.<sup>30</sup> This illustrates that the Mexican government believed not only that all contributing countries to the immigration phenomenon should act responsibly, but also that this should result in international cooperation in order to procure pleasing results to all parties involved. As mentioned previously, the Mexican government had started recognizing the importance of protecting immigrant rights especially along the Southern border and had begun to implement certain programs to guarantee those rights. This was the first step towards a strategy of soft reciprocity, although still not clearly articulated.

The idea of shared responsibility is reminiscent of Keohane’s concept of generalized commitment. This means that the actors involved will act in good faith in a certain issue area even though future benefits are not guaranteed. It does not rely on explicitly calculated benefits; instead it assumes that regime-supporting behavior will inevitably lead to positive outcomes in the future. This was the first step in articulating the new strategy of soft reciprocity. The next step would be overtly connecting emigration and immigration policy in order to better facilitate a system of reciprocity.

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<sup>29</sup> Ibid. Italics in original.

<sup>30</sup> Ibid.

The idea of shared responsibility additionally led to the recommendation that Mexico take into account the individual distinctiveness of surrounding countries and human rights in the contemplation of a new migration policy.

Mexico's migration policy must be adjusted taking into account the characteristics of our neighboring countries, in order to safeguard the border and to facilitate the legal, safe and orderly flow of people, under the principles of *shared responsibility* and respect for human rights.<sup>31</sup>

The importance of this statement is the linking between shared responsibility and the protection of human rights. As the idea of shared responsibility morphed into reciprocity, the importance of human rights was increasingly emphasized.

Furthermore, the document called for comprehensive immigration reform in the near future, linking all three aspects of immigration in Mexico.

Based on the new regional and international realities regarding immigration, transmigration and emigration, it is necessary to evaluate and to update the present migration policy of the Mexican States, as well as its legal and normative framework, with a timeline of fifteen to twenty years.<sup>32</sup>

This recommendation not only emphasizes the recognition of the need for a new migration policy, it also explicitly links emigration and immigration within the Mexican context which was the first step towards establishing reciprocity as a motivating factor in the renovation of Mexican immigration policy.

Finally, the document addressed the concerns the Mexican government had in reference to immigration reform in the United States. These concerns stemmed from the impact such reforms would have on the Mexican population residing in the United States.

Acknowledging the sovereign right of each country to regulate the entrance of foreigners and the conditions of their stay, it is indispensable to find a solution for the undocumented population that lives in the United States and contributes to the development of the country, so that people can be fully incorporated into their actual communities, with the same rights and duties.<sup>33</sup>

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<sup>31</sup> Ibid.

<sup>32</sup> Ibid.

<sup>33</sup> Ibid.

This acknowledged the desire of the Mexican government to protect the Mexican population abroad and its recognition of the fact that policy passed by the United States would inherently affect that population. This was in line with the strategy of extended incorporation, which eventually served as a catalyst in the drafting of the Migration Law.

In the aftermath of the passage of “Mexico and the Migration Phenomenon,” and within the context of hot political debate in the United States concerning comprehensive immigration reform, the Mexican government hired the P.R. firm of Allyn & Company in order to convey the overall ideas found in the document. This statement was released in the United States in 2006 in the form of a decree entitled, “A Message from Mexico about Immigration.”

This historic position sets forth important guiding principles, recommendations and commitments to update Mexico’s migration policy, on topics such as undocumented migration, border and regional security, fighting human smuggling and trafficking, international cooperation based upon shared responsibility and improving economic and social opportunities in Mexico.<sup>34</sup>

The Message promoted the creation of a functioning and efficient guest worker program, while also promising a commitment to update Mexico’s own policy as it urges the United States to do the same.

The presidency of Felipe Calderon in 2006 led to a new proposal for a National Development Plan for 2007-2012. Mexican immigration policy has traditionally been linked to population and development, especially since it was under the official jurisdiction of the General Population Law. Therefore, a new Development Plan was vital to the direction and implementation of a new immigration policy in Mexico. The new Development Plan emphasized the integration of Mexico into the globalized world

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<sup>34</sup> Mexican Government, “A Message from Mexico.” 2006.

system. The Plan specifically highlighted the immigration phenomenon and the application of an adequate foreign policy to address immigration flows.

A responsible and active foreign policy like the one proposed in the Plan should look at, simultaneously, the respect of rights and the improvement of the standard of living for Mexicans abroad and the protection of Latin American citizens who enter our country, many times in an undocumented manner and under implorable security conditions. Therefore, the improvement of immigration policy, in accordance with the collaboration and understanding of our neighbors to the North and the South, holds an important position in the strategy and objective of Mexican foreign policy.<sup>35</sup> This marks an important correlation between the treatment of Mexican emigrants and immigrants in Mexico. The Development Plan began to make the connection and place immigration policy at a significantly high priority for the country's foreign policy.

In addition, the Development Plan spoke to the idea of congruence in the issue of the protection of rights of migrants and emigrants. "A new culture of migration in Mexico should find its foundations in the congruence of guaranteeing the respect and protection of human rights for migrants in Mexico and the struggle for these guarantees for Mexican emigrants abroad."<sup>36</sup> This was an explicit connection between the protection of rights both abroad and domestically. Furthermore, the Development Plan stated that this idea should be integrated into a new culture of immigration in Mexico, thereby placing it as an issue of importance.

The evolution of these founding principles of soft reciprocity was clearly related to criticisms leveled by regional partners and domestic actors. Accusations of hypocrisy exposed the gap between international human rights norms and domestic policy in Mexico, threatening Mexico's strategy of extended incorporation and its regional leadership role. Therefore, Mexico began to slowly rectify institutional blocks to the

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<sup>35</sup> Mexican Government, *Mexican National Development Plan, 2007*, 305. Author's translation. Available online: <http://pnd.calderon.presidencia.gob.mx/index.php?page=documentos-pdf>

<sup>36</sup> Ibid, 307.

protection of migrant rights, which then allowed Mexico to draw from international legitimacy and build a correlation between the treatment of foreigners in Mexico and the treatment of Mexicans in the United States.

All of these elements set the tone for the drafting of a new immigration policy. According to these precedents and preceding initiatives, a contemporary immigration policy should respect the three roles of Mexico as a sending, receiving, and transit country while promoting the protection of human rights and adhering to the strategy of soft reciprocity. As the new Migration Law progressed in its various stages of drafting and legislation, these ideas and policy goals are very clearly articulated and later developed into the strategy of soft reciprocity.

#### **4.2 *The First Draft***

In 2008, the project of constructing a cohesive immigration law in Mexico was once again undertaken by a group consisting of members from Public Administration, the Chamber of Deputies, the Senate, academia, and civil society. Drawing on the principles already delineated by “Mexico and the Migration Phenomenon,” this group constructed a preliminary draft of the new Migration Law.<sup>37</sup> This draft was completed by July 7, 2010 and then submitted for review by a number of governmental organizations.<sup>38</sup> It included seven Titles and 22 chapters. The seven Titles were named the following respectively: “Rights and Obligations of Migrants;” “On Authorities;” “On the International Movement of Persons and the Stay of Foreigners in Mexico;” “Administrative

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<sup>37</sup> Mexican Government, *Anteproyecto de Ley de Migración*, July 7, 2010.

<sup>38</sup> These organizations included: Comisión Mexicana de Ayuda a Refugiados, Secretaría de Relaciones Exteriores, Comisión Nacional de los Derechos Humanos, Subsecretaría de Población, Migración y Asuntos Religiosos, Grupo de Trabajo Técnico, Grupo de Trabajo con Legisladores, Integrantes del Consejo Consultivo, Secretaría de Educación Pública, Unidad para la Promoción y Defensa de los Derechos Humanos, Secretaría de Salud, Dirección General Jurídica y de Enlace Institucional, Registro Nacional de Población, and the Secretaría de Seguridad Pública.

Procedures;” “Sanctions;” “Criminal Migration-Related Offenses;” and “Emigration and Mexicans Abroad.”<sup>39</sup>

The first Title, “Rights and Obligations of Migrants,” included preliminary dispositions and an outline of the rights and obligations of migrants. Article 2 stated the guiding goals of the draft, which very clearly delineated the commitment to the protection of migrant rights:

This law aims to regulate the entry and exit of persons into and out of Mexican territory and the stay of foreigners in the country. This law will be applied within a framework of respect, protection, and safeguard of human rights as well as the preservation of sovereignty and national security.<sup>40</sup>

Furthermore, article 5 stated that all people have the right to enter, remain, transit, and depart from Mexican territory except when prohibited by Mexican laws. This is especially progressive in the granting of rights to foreigners, as most immigration laws state that all people are forbidden to enter, except for when permitted by the laws of the individual sovereign state.

Article 6 contained a list of principles upon which the draft was positioned. The first one focused on the integral aspect of the policy, highlighting the multiple causes, manifestations, and effects of immigration. The second principle emphasized the need for international cooperation and a commitment for shared responsibility among involved national and international governmental institutions. The third principle spoke to the idea of congruence between the demand for the protection of rights for Mexican nationals abroad and the level of protection guaranteed by the Mexican government for migrants in Mexico. This illustrated the incorporation of the National Development Plan and the underlying idea of reciprocity in Mexican immigration policy.

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<sup>39</sup> Mexican Government, *Anteproyecto de Ley de Migración*.

<sup>40</sup> Ibid, article 2.

The fourth principle recognized unrestricted human rights, especially the rights of those who find themselves in a state of vulnerability. Other principles seek to uphold international solidarity and hospitality, the facilitation of the movement of people, the protection of order and security, equality between natives and foreigners, familial unity, and the social and cultural integration between natives and foreigners.<sup>41</sup> These guiding principles were largely steeped in the protection of migrant rights and built on the multiple roles held by Mexico in the immigration phenomenon.

Chapter two of the first Title further elaborated the rights that would be granted to immigrants in Mexico under the proposed law. One of the main objectives of the new Migration Law was to guarantee unrestricted rights to migrants regardless of their status. This is stated in Article 8, the first article of Chapter two, “The Mexican State guarantees the equal treatment of foreigners, irrespective of their legal status, in the exercises of their rights and freedoms recognized by Mexico’s Constitution, international law, and other legal provisions.”<sup>42</sup> As outlined by the following articles, this meant that foreigners would have access to information, education, public medical facilities, emergency medical care, Social Security provisions, gainful employment, family unification, the administration and enforcement of justice, and due process.<sup>43</sup>

In addition, article 14 explicitly stated that all matters of immigration and the implementation of migratory services in Mexico would be conducted without the auspices of discrimination. It declared that all discrimination on the basis of race, age, ethnic origin, national origin, ideology, religious beliefs, sexual preferences, disability,

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<sup>41</sup> Ibid, article 6.

<sup>42</sup> Ibid, Article 8.

<sup>43</sup> Mexican Government, *Anteproyecto de Ley de Migración*, Articles 8-13.



economic status, social or physical characteristics, and civil status would be prohibited.<sup>44</sup>

It further stated that xenophobia and anti-Semitism would also be forbidden under the proposed law. This once again emphasized the importance of the protection of rights in the development of a new immigration law.

Title 2, “On the Authorities,” referred to the delegation of migratory service responsibilities among various governmental institutions. The Secretary of the Interior (SEGOB) was charged with developing and directing migration policies, coordinating with other entities to regulate the entry of foreigners, suspending or prohibiting the entry of foreigners when necessitated by national interests, collaborating with the Secretary of Foreign Affairs (SRE) to promote interagency cooperation in repatriation practices, establishing areas of international transit, and supervising the implementation of readmission agreements.<sup>45</sup>

The draft stated that the Instituto Nacional de Migración (INM) was responsible for the “execution, control and supervision of immigration services as well as the implementation of related policies.”<sup>46</sup> The INM has a largely autonomous role and budget, although the specific duties were taken out of the draft due to a fear that it would impede the ability of the INM to carry out its job in the implementation of migratory services. The Ministry of Foreign Affairs was also listed in a supportive role in order to work in concert with the SEGOB to execute repatriation processes and promote bilateral agreements related to the regulation of migratory flows.<sup>47</sup>

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<sup>44</sup> Ibid, Article 14.

<sup>45</sup> Ibid, Article 21.

<sup>46</sup> Ibid, Article 22.

<sup>47</sup> Ibid, Article 25.

The Ministry of Public Security (SSP) was also ordained an auxiliary role in the implementation of the proposed migration law, through the Federal Police. Article 26 stated that the main responsibilities of the Federal Police included: policing the entry and exit of persons from the country; carrying out of revisions and verification visits in order to confirm compliance with the provisions of Mexican migration law; assist in securing detention centers and the transiting of foreigners in detention; along with any other functions that may be required by this or any related laws.<sup>48</sup> Many other governmental institutions were also named in order to secure the fair implementation and enforcement of this proposed law.<sup>49</sup> Lastly, with the goal of protecting migrants with specific vulnerabilities including adolescents, children, pregnant women, victims of crime, the disabled and the elderly.<sup>50</sup>

The third Title, “On the International Movement of Persons and the Stay of Foreigners in Mexico,” developed a procedural outline for Mexicans and foreigners entering and leaving Mexico. This title provided the requisites for entering along with circumstances of denial of entry that could be exercised by migration authorities.<sup>51</sup> The most substantial contribution of this title was the reclassification of foreigners from the LGP categories of non-immigrant and immigrant to the three categories of visitor, temporary resident, and permanent resident.<sup>52</sup>

The category of visitor referred to those foreigners who only stay in Mexico for a short period of time in one of the following capacities: tourist or a businessperson; a

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<sup>48</sup> Mexican Government, *Anteproyecto de Ley de Migración*, Article 26.

<sup>49</sup> Other governmental entities mentioned are: the Secretary of Labor, the Ministry of Tourism, the Health Ministry, the Education Ministry, the Attorney General, the Social Development Ministry, the National System for Integral Family Development, and the National Institute of Women. *Anteproyecto de Ley de Migración*, articles 27-34.

<sup>50</sup> Mexican Government, *Anteproyecto de Ley de Migración*, article 35.

<sup>51</sup> *Ibid*, articles 38-59.

<sup>52</sup> *Ibid*, article 60.

visitor with a work permit for a stay of less than 180 days; a visitor or worker from the border region; or a visitor due to humanitarian reasons or who has come to partake in the adoption process.<sup>53</sup> The category of temporary resident referred to those who wish to stay in Mexico for less than four years. This category also included students and authorized them to stay for the duration of their studies. Temporary residents were allowed to enter and leave the country as often as they wished and they were granted the right of family unification.<sup>54</sup>

Finally, the category of permanent residents was allocated to those foreigners who wish to stay in Mexico for an indefinite period of time due to reasons of political asylum, refugee status, family reunification, or the expiration of a temporary resident that is able to transfer to that of a permanent resident. Furthermore, in the interest of creating incentives for the attraction and stay of foreigners that introduce economic benefits, there was also a point system for the immediate acquisition of the status of permanent resident. This incentive program was contingent on the fulfillment of certain requisites and specific characteristics of the applicant such as: level of education, work experience, and science and technology aptitude.<sup>55</sup>

Title four, “Administrative Procedures,” was concerned with the procedures to be followed by immigration authorities in order to implement this proposed law and its regulations. This referred to verification visits, detention centers, border patrol, and repatriation processes.<sup>56</sup> In addition, Chapters seven through nine were dedicated to the protection of migrant rights while in Mexico. This once again illustrated the intention of

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<sup>53</sup> Ibid, article 60.

<sup>54</sup> Ibid.

<sup>55</sup> Ibid, article 64.

<sup>56</sup> Mexican Government, *Anteproyecto de Ley de Migración*, articles 74-110.

the Mexican government to uphold certain standards in regards to the safeguarding of migrant rights.

Chapter seven was fully committed to the rights of migrants being held in detention centers. It ensured that detained migrants would be granted a number of rights including: knowledge of the location of the center, the reason for their detention, the option to solicit voluntary repatriation, consular protection, access to a translator, access to a telephone, family visitation, human treatment void of discrimination, and finally the right to a dignified space, food, hygiene produces and medical attention.<sup>57</sup> This chapter also stated that there would be separate areas for men and women within detention centers in addition to guaranteeing that the legal status of detainees must be resolved within 15 days.<sup>58</sup> Chapter eight spoke to the care of vulnerable populations in the migratory process, guaranteeing that unaccompanied minors would be granted similar rights in addition to supplementary supervision.<sup>59</sup> Furthermore, Chapter nine outlined the ability of migrants to regularize their status contingent on a number of factors related to family unification or being the victim of a crime and/or a minor.<sup>60</sup>

The fifth Title, “Sanctions,” outlined the punishments allocated to immigrants and immigration authorities alike in the case of violating any provisions of the proposed law. Due to the fact that an undocumented status was already a decriminalized offense in Mexico, the sanctions against immigrants were largely monetary. Serious offenses that were likely to result in the expulsion of immigrant authorities included: wrongfully using or providing migratory documentation to third persons and the facilitation of the evasion

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<sup>57</sup> Ibid, article 113.

<sup>58</sup> Ibid, articles 115-116.

<sup>59</sup> Ibid, article 117.

<sup>60</sup> Ibid, articles 120, 121.

of migratory controls.<sup>61</sup> Authorities could also be sanctioned due to the violation of migrant rights and the denial of migratory services. Sanctions were based on the severity of the violation and calculated according to the daily minimum wage in Mexico City.

Title six, “Criminal Migration-Related Offenses,” mainly dealt with the illegal trafficking of migrants. Article 151 stated that any person who facilitated the illegal entry into or exit from Mexico, or harbored or transported undocumented migrants for the purpose of direct or indirect payment was subject to eight to 16 years of prison and a fine of 5,000 to 15,000 days of daily minimum wage in Mexico City.<sup>62</sup> Furthermore, these penalties would be doubled by at least half if the crime included a minor, subjected an undocumented migrant to dangerous or inhumane conditions, and/or was perpetrated by a public servant.<sup>63</sup>

Title seven, “Emigration and Mexicans Abroad,” dealt exclusively with emigrant populations abroad and the repatriation of Mexicans. Article 155 pledged that all three levels of government would coordinate in order to encourage the development of high emigration regions within Mexico.<sup>64</sup> In addition, it stated that the Mexican government would promote the signing of international bilateral agreements with the aim of creating safe and legal channels of migration in addition to guest worker programs for Mexicans abroad. It also declared that illegal immigration would be discouraged and that programs would be created in order to address the impact of emigration on the communities of origin, especially in relation to vulnerable populations and the family disintegration.<sup>65</sup>

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<sup>61</sup> Mexican Government, *Anteproyecto de Ley de Migración*, articles 128-131.

<sup>62</sup> *Ibid*, article 151.

<sup>63</sup> *Ibid*, article 152.

<sup>64</sup> *Ibid*, article 155.

<sup>65</sup> *Ibid*.

In terms of repatriation, Articles 156 through 159 secured the dignified repatriation of Mexicans from abroad and set a legal precedent for the establishment of reintegration programs upon return.<sup>66</sup> Finally, the draft of the bill ended with a list of dispositions to be repealed from the LGP and various legislations that were contradictory to the provisions laid out in the proposed bill.<sup>67</sup> The only articles remaining of the LGP were Articles one through six, with the exception of parts eight and nine of Article 3, and Articles 85-114.<sup>68</sup> The chapters on migration, immigration, emigration, sanctions, migratory procedure, and verification and vigilance procedures were nearly completely abrogated.

This original draft of the Migration Law solidified Mexico's commitment to the application of international human rights norms to immigrants in Mexico. The various aspects of the draft simultaneously addressed the issues presented by civil society, regional partners, and shortcomings with the strategy of extended incorporation. The grievances expressed by the three variables all revolved around the lack of access to basic human right on behalf of immigrants. Civil society activists and regional neighbors took issue with the specific treatment of Central Americans in Mexico, especially the violation of their rights. The third variable, Mexico's relationship with its emigrant community and the threat of legitimacy to the success of extended incorporation, also revolved around the protection of migrant rights. Therefore, it is feasible to claim that all three variables were represented in the various articles and chapters present in the first draft.

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<sup>66</sup> Mexican Government, *Anteproyecto de Ley de Migración*, articles 156-159.

<sup>67</sup> Among these are parts seven and eight of article 3; article 7-31 of Chapter 2; articles 32-75 of Chapter 3; articles 76-80 of Chapter 4; articles 81-84 of Chapter 5; Parts two, three and five of article 113 and articles 115-144 of Chapter 8; articles 145-150 of Chapter 9; and articles 151-157 of Chapter 10 of the LGP. *Anteproyecto de Ley de Migración*, Transitorios.

<sup>68</sup> *Ibid*, parts II, III, and IV of article 113 were also abrogated.

Once again, the commitment to the application of international human rights norms to Mexican immigration policy was the first step in the strategy of soft reciprocity. Guaranteeing the protection of migrant rights was instrumental in gaining the leverage and legitimacy needed for demanding the same coveted protections for Mexicans in the United States. In addition, this draft explicitly spoke to the idea of congruence between Mexican emigration and immigration policy.

#### 4.3 *Passage through the Senate*

Once the draft of the proposed immigration law was completed, the Senate created a working group in November 2010 in order to turn the proposal into a presentable bill. The object of this working group was to, “create a new normative migratory framework that can count on the consensus and support of all the different political parties and forces.”<sup>69</sup> This working group was meant to work in concert with the Senate Commission of Population and Development in order to elaborate a project that would garner support from parliamentary groups in addition to gaining societal legitimacy.

The Working Group included groups from all three major political parties represented in the Senate and Chamber of Deputies.<sup>70</sup> The Working Group conducted a series of

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<sup>69</sup> Mexican Senate, “El Senado crea una mesa de trabajo en material migratoria” Comunicación Social, November 3, 2010, accessed May 2011, <http://comunicación.senado.gob.mx>.

<sup>70</sup> Senators from the National Action Party (PAN) included: Humberto Andrade Quezada, the president of the Commission of Population and Development; Rubén Camarillo Ortega, president of the Commission of Nongovernmental Foreign Relations Organizations; and Martha Sosa Govea, secretary of the Commission of Citizen Participation. Senators from the Institutional Revolutionary Party (PRI) included: Francisco Herrera León, president of the Commission of Southern Border Matters; Carlos Jiménez Macías, president of the Commission of Asian Pacific Foreign Relations; and Antelmo Alvarado García, secretary of the Commission of Population and Development. Senators from the Party of the Democratic Revolution (PRD) included: Rosalinda López Hernández, president of the Commission of Parliamentary Regulations and Practices; Jesús Garibay García, president of the Commission on the Limits of Federal Agencies; and José Luis García Zalvidea, secretary of the Commission of Southern Border Matters. Finally, representative from the Department of the Interior and the INM included: René Martín Zenteno Quintero, subsecretary of Population, Migration and Religious Matters; Julián Hernández Santillán, subsecretary of Legislative Link; Natalia Calero, coordinator of subsecretary Zenteno’s advisors; Salvador Beltrán del Río Madrid, Commissioner of the INM; and Carmen del Río Yelmi, legal coordinator of the INM.

forums, incorporating academics and civil society members in order to create a bill that was accepted by all political and societal sectors. An example of such forums occurred on November 17, 2010 and was entitled, “The Role of Civil Society and Governmental Organizations in the Migration Phenomenon.” It involved the Commission of Foreign Relations, a series of nongovernmental organizations, the Commission of Population and Development, the Commission of Southern Border Matters and was coordinated by the Working Group. In addition to conducting various forums, the Working Group also analyzed initiatives previously presented to Congress concerning the creation of a new migration law.<sup>71</sup> Finally, they conducted an overview of comparative legislation from various countries such as Argentina, Spain, Brazil, Colombia, Venezuela, and Uruguay.<sup>72</sup>

Through this process, the Working Group constructed an Initiative that was officially presented to the Mexican Senate on December 9, 2010. The sponsoring Senators included members from the PAN, PRD, and PRI.<sup>73</sup> The Initiative began with an Exposition of Motives that clearly delineated the legal antecedents preceding the bill and the reasons for its creation. It stated that, in order to better facilitate the opening of Mexico to globalization and regional integration, the proposal sought to do the following:

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<sup>71</sup> These previous initiatives were presented by the following: Deputy Maricela Contreras Julián (PRD, 11/29/2007), Deputy Jaime Fernández Seracho (PRI, 4/28/2005), Senator Oscar Cruz López (PRD, 3/28/2006), Senator Manuel Velasco Coello (PVEM, 10/20/2009), Senator Carlos Jiménez Macías (PRI, 3/31/2009), Senator Francisco Herrera León (PRI, 7/2/2008), Senator Humberto Andrade Quezada (PAN, 4/30/2009) and Senator Rubén Velázquez (PRD, 10/21/2008) and were presented in the LIX, LX, and LXI Federal Legislative Sessions. *Iniciativa con Proyecto de Decreto por el que se Expide la Ley de Migración y se Reforman, Derogan y Adicionan Diversas Disposiciones de la Ley General de Población, de la Ley Aduanera, de la Ley Federal de Derechos, del Código Penal Federal, del Código Federal de Procedimientos Penales, de la Ley Federal Contra la Delincuencia Organizada, de la Ley de la Policía Federal, de la Ley de Asociaciones Religiosas y Culto Público, de la Ley de Inversión Extranjera, de la Ley General de Turismo y de la Ley de Comercio Exterior.* Senate of the Republic, Gazette Number 195. Thursday, December 9, 2010.

<sup>72</sup> Ibid.

<sup>73</sup> Senators representing the PAN were Humberto Andrade Quezada, Rubén Camarillo Ortega, Jaime Rafael Díaz Ochoa and Martha Leticia Sosa Govea. Senators Jesús Garibay García, Rosalinda López Hernández, and Rubén Fernando Velázquez López represented the PRD. Lastly, Senators Francisco Herrera León, Carlos Jiménez Macías, and Antelmo Alvarado García were representative of the PRI.



1. Strengthen the protection of the rights and security of national migrants and foreigners, recognizing them as the subjects of rights.
2. Simplify and arrange certain procedures in order to efficiently attend to the elevated mobility of peoples, paying special attention to the migratory flows that specifically affect Mexico.
3. Contribute to the economic, social and cultural development of the country.
4. Lend integrity and coherence to migratory policy and management in Mexico as a sending, receiving, transit and returning country.
5. Strengthen and amplify the tradition of hospitality and refuge in Mexico.
6. Favor a greater contribution to national, public and border security on behalf of migration authorities.
7. Actualize and harmonize the normative migratory framework with legal international precedents and agreements signed by Mexico.<sup>74</sup>

This specifically stated that the new Migration Law has the protection of the rights and security of migrants as one of its primary priorities. An interesting aspect of the first principle is the presumed protection of both national migrants and foreigners, which created a link between immigration and emigration policy. The second and the fourth principles addressed the contemporary challenges of Mexico as a sending, receiving, and transit country and pledged to create a policy that integrates all three roles in the management of migration. Additionally, the Exposition of Motives recognized the need to harmonize domestic policy with international standards of human rights protection.

The Exposition of Motives also contains the 12 main principles outlined by the draft, including the idea of congruence as an important aspect of the law. The importance of congruence was recognized by INM officials prior to the presentation of the Migration Law bill. “In this integral focus, the principle of coherence is incredibly important. Coherence between what we do and what we ask for.”<sup>75</sup> This demonstrates that the Mexican government began to link its three roles as a sending, receiving and transit country and subsequent policy.

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<sup>74</sup> *Iniciativo con Proyecto de Decreto por el que se Expide la Ley de Migración*, Exposition of Motives. Author’s translation.

<sup>75</sup> INM official, Interviewed by Marcelle Beaulieu, July 22, 2010, Mexico City.

The Initiative stated that the proposed Migration Law would therefore dictate procedures concerning the international movement of people, the stay of foreigners in Mexico, transit migration, certain aspects of emigration and the return of migrants. The LGP would dictate matters of population, internal migration, and the remaining issues of emigration. Finally, the Law of Refuge and Complementary Protection would dictate the international obligations to which Mexico must adhere in matters of humanitarian protection.<sup>76</sup>

Due to the fact that immigration policy was essentially nonexistent throughout Mexican history, one of the main goals of this Initiative was to define what migration policy meant and the fundamental aspects and goals of such a policy in the Mexican context. Therefore, this Initiative stated that this definition could be reached through the following aspirations and realizations:

1. The recognition of the contribution to national development as provided by Mexican emigration and the further recognition of the need to incorporate certain elements for their protection and assistance during periods of transit, periods of stay in the destination country, and periods of reinsertion into Mexican society upon return.
2. Recognition of the potential problems and tensions for the national labor market that could derive from a massive immigration, while at the same time facilitating incoming flows of visitors and immigrants who can contribute to the economic, social and cultural development of the country, with the aim of promoting a regulated flow of immigration that is in accordance with the needs of the labor market and national development.
3. Situate migration management within the safeguard of the State of Rights, democracy, and human rights, promoting public and national security while simultaneously watching over the human security of both national migrants and foreigners.
4. Prevent and control undocumented immigration, safeguarding the integrity and human rights of migrants.
5. Effectively combat the trafficking and exploitation of migrants and the criminal networks associated with immigration.
6. Support the integration and social cohesion of migrant populations within receiving societies.
7. Promote the principle of tolerance and nondiscrimination.<sup>77</sup>

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<sup>76</sup> *Iniciativo con Proyecto de Decreto por el que se Expide la Ley de Migración*, Exposition of Motives.

<sup>77</sup> *Ibid.*

The foundations of the new immigration policy in Mexico visibly prioritized the protection of human rights and exhibited an overwhelming concern for Mexican emigrants abroad.

The Initiative was divided into eight Titles and 21 Chapters. The Titles were the same as the ones found in the first draft, with a couple of exceptions. The draft Chapters entitled “Preliminary Dispositions” and “Rights and Obligations of Migrants,” were separated into two separate Titles in the Initiative. Title seven of the draft, “Emigrants and Mexicans Abroad,” was taken out and an additional Title was added, “On the Protection of Migrants in Transit through National Territory.” Furthermore, the 12 guiding principles remained the same as the ones found in the original draft, although they were only placed in the Exposition of Motives and were taken out of the actual law.

In the same spirit as the draft, the Initiative highlighted the protection of the human rights of migrants, regardless of their legal status. This meant that fundamental rights, such as the right to education, public health, due process, family unification, and access to information would be protected and granted under this Initiative even in the case of an irregular migratory status. In addition, it called on the Department of the Interior to direct and mold Mexican immigration policy, taking into consideration the opinions of all other involved governmental institutions. The Initiative also authorized the INM to implement and execute migration policy, while undergoing a process of professionalization and certification in order to deter and de-incentivize corruption.<sup>78</sup>

Title five, “On the Protection of Migrants in Transit through National Territory,” was the main difference between the draft and the Initiative. Title five once again enforced the idea that the irregular status of a migrant would not impede the exercise of his or her

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<sup>78</sup> Ibid.

rights and liberties as recognized by the Constitution, the Migration Law, or any international treaties of which Mexico is a signatory.<sup>79</sup> It also explicitly declared that migrants could only be detained by competent authorities within the legal confines of the document.<sup>80</sup> It further stated that the Secretary of the Interior would work with all levels of government in addition to civil society groups in order to create migrant protection groups, lending legal substance to groups such as Grupo Beta.<sup>81</sup> This especially applied to more vulnerable migrant groups, such as children, adolescents, the disabled, the elderly, and victims of migrant specific crimes.

Finally, the Initiative slightly modified the changes made to the LGP. While most of the LGP remains repealed, The Chapters on emigration and repatriation were reinstalled, with the exception of a few articles. Article 77 was changed to redefine the definition of an emigrant: instead of being considered a Mexican or foreigner that *leaves* the country, an emigrant is a Mexican or a foreigner that is *displaced* from Mexico. Article 76 was expanded to include the promotion of international agreements with the aim of directing immigration flows through legal, safe and ordered channels. An example of a legal channel would be a temporary worker program.<sup>82</sup> In addition, Article 82 remained repealed, which stated that the Secretary of the Interior would stimulate the repatriation of Mexican emigrants.

The Initiative was turned over to the joint Commissions of Population and Development, Governance, and Legislative Studies after it was presented to Congress. The Commissions were to work together in order to analyze the initiative to provide a

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<sup>79</sup> Ibid, article 67.

<sup>80</sup> Ibid, article 68.

<sup>81</sup> Ibid, articles 72-77.

<sup>82</sup> *Iniciativo con Proyecto de Decreto por el que se Expide la Ley de Migración*, Transitorios.

ruling. This ruling would include the joint opinion of the Commissions and their recommendation concerning its passage. In addition, it would include a detailed catalog of proposed changes to the bill.

On January 27, 2011, in conjunction with a varied group of civil society groups and academic partners, the joint Commissions released a statement of preliminary opinions about the Initiative.<sup>83</sup> This press release stated the Commissions' approval of the overall goals of the Initiative, especially in regards to the protection of migrant rights

We emphasize the Initiative's inclusion of the right to judicial process, education, and health to migrants...regardless of their migration status. The elimination of concepts like economic dependence and the amplification of access to regulation of migratory status will favor the security and protection of certain vulnerable populations, such as women and children.<sup>84</sup>

In addition, the press release stated that if human rights were truly to be protected in the migratory process, then the bill should be careful to divorce all associations between migration and national security. This also meant that the bill should eradicate all mention of the discretionary power of the Executive to limit or annul the rights of migrants under the pretext of national security. The Commissions here refer to the authorization of migratory revision and verification visits that would presumably occur according to the discretion of INM officials and without proper motive and the guarantee of due process.<sup>85</sup>

According to this press release, the Commission recognizes the fact that the bill seeks to

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<sup>83</sup> These various groups included the following: Coalición Pro Defensa del Migrante de Baja California, FUNDAR Centro de Análisis e Investigación, I(DH)EAS, Instituto de Estudios y Divulgación sobre Migración (INEDIM), Instituto para las Mujeres en la Migración (IMUMI), Red por los Derechos de la Infancia en México (REDIM), Servicio Jesuita a Migrantes México (SJM-MEX), Sin Fronteras I.A.P., Centro de Derechos Humanos Fray Matías de Córdova, Gisele Lisa Bonnici, Consultora /Consejo Directivo INEDIM, Karina Arias, Consultora, Leticia Calderón, Instituto Mora, Manuel Ángel Castillo García, Consejo Directivo INEDIM/Grupo Guatemala- México Migración y Desarrollo. Mexican Government, "Opiniones Preliminares del Grupo de Trabajo sobre Legislación y Política Migratoria en torno a la Iniciativa con proyecto de decreto por el que se expide la Ley de Migración," Press Release, January 27, 2011.

<sup>84</sup> Ibid.

<sup>85</sup> Ibid.

protect the rights of migrants; however, there are many areas of discretion that could still result in a situation in which rights are violated.

After months of deliberation, the joint Commissions published their ruling on February 10, 2011, which was then submitted to the Senate for review on February 17, 2011.<sup>86</sup> The ruling stated that the joint Commissions were in agreement with the legislators concerning the spirit of the bill:

The rulers express their agreement with the proposing legislators in relation to the urgency of the modernization of migration legislation, with the goal of facilitating and guaranteeing the movement of people in conditions of respect for their life and dignity. These people should be viewed as truthful subjects of local and global development and not as a danger or threat to the communities where they migrate, settle, or attempt to find work.<sup>87</sup>

The joint Commissions stated that this bill was in accordance with the previous steps made to liberalize the LGP and other laws pertaining to immigration matters.

Furthermore, they ruled that the various dispositions of the bill were in congruence with the stated exposition of motives outlined by the sponsoring Senators.

The ruling found that the bill took initiative in reducing institutional corruption through the professionalization and certification of the INM. In addition, the joint Commissions stated that the two most important aspects of the bill were the reclassification of migrants as visitors, temporary and permanent residents, and the explicit recognition of the protections to be afforded by the state to transmigrants with irregular status.<sup>88</sup> Finally, the ruling stated that the bill was, “without a doubt, a viable and visionary project, due to both in its structure and content as well as to its placement of Mexico on the frontline at an international level in the protection and respect of the

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<sup>86</sup> Mexican Senate, *Dictámenes de Primera Lectura*. Thursday, February 17, 2011. Segundo Periodo Ordinario, Gazette Number 210, accessed May 2011, <http://www.senado.gob.mx>.

<sup>87</sup> Ibid, Consideraciones.

<sup>88</sup> Ibid.

human rights of migrants.”<sup>89</sup> Therefore, the joint Commissions approved the passage of the bill with the consideration of a few changes to various dispositions.

The first change was in reference to the definition of immigration policy as determined by the second article. The Commissions stated that this should be an explicit definition and suggest the following wording:

The immigration policy of the Mexican state is the joint strategic decisions made to achieve the determined objectives, with a foundation in the stated principle and other points contained in the present Law, that are represented in its Regulations, diverse secondary norms, programs and actions that are meant to attend to the migratory phenomenon of Mexico in an integral matter as a country of origin, transit, destination, and return migration.<sup>90</sup>

It goes on to state that the Executive power would direct immigration policy, with the consideration of other governmental entities and civil society organizations. These strategic decisions would be made based on the humanitarian tradition in Mexico and its undeniable commitment to the protection of human rights, development, and national public and border security, as demonstrated in the proposed definition of immigration policy.<sup>91</sup>

The remainder of the changes mandated by the joint Commissions were mainly related to exclusionary language or wording that left room for increased discretion on behalf of migration authorities. Throughout the document, the word “expulsion” was replaced by “deportation,” “legal” by “regular,” and “repatriation” by “assisted return.” In addition, it was suggested that any term related to a “minor of age” be replaced with either “child” or “adolescent.” Lastly, the term “refugee” was changed to “solicitant of refugee status.”<sup>92</sup> These changes were made in order to use solely inclusive language

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<sup>89</sup> Ibid.

<sup>90</sup> *Dictámenes de Primera Lectura*, Considerations.

<sup>91</sup> Ibid.

<sup>92</sup> Ibid.

when referring to either migrants and/or vulnerable populations, in consideration of their rights.

The ruling was subjected to debate in the Senate on February 22, 2011. The session began with an introductory speech from Senator Humberto Andrade Quezada on behalf of the Initiative. Senator Andrade Quezada recognized the importance of such a piece of legislation, for the government and the people of Mexico.

This is a fundamental topic that is very important for the country. This is a topic that involves spheres of government, three level of government, the three powers of the country; and has a lot to do with the position that we have adopted in the demand for the treatment other countries should give out co-nationals abroad.<sup>93</sup> The Senator acknowledged that this bill and its adherents were in direct correlation with the procurement of rights for Mexican emigrants abroad.

This was followed by a lengthy discussion in which a number of Senators from various parties spoke either on behalf of the proposed legislation or with specific reservations.<sup>94</sup> Senators Francisco Herrera León of the PRI, Rubén Camarillo Ortega of the PAN, Senator Tomas Torres Mercado of the PRD, and Jorge Legorreta Ordonica of the Ecologist Green Party all spoke on behalf of the law and urged its passage.<sup>95</sup> These Senators echoed the thoughts of Senator Andrade Quezada, stating that this piece of legislation was important due to its commitment to human rights and the subsequent prospective benefits for Mexican emigrants abroad. Senator Herrera Leon stated the same sentiments:

Of course, of course what happens on the Northern border hurts us and we don't want the same thing to keep being reproduced on our Southern border...Nobody can be in agreement with criminalizing migrants, no Mexican can be in agreement with not giving the people that enter our country the same things we hope for on the Northern

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<sup>93</sup> Mexican Senate, Sesión Ordinaria de la H. Camara de Senadores. Tuesday, February 22, 2011. Available Online: [www.senado.gob.mx](http://www.senado.gob.mx). Author's translation.

<sup>94</sup> Ibid.

<sup>95</sup> Ibid.



border... We hope then, that with this new law, we can regulate the transit of migrants, protect their human rights, and try to define a migration policy that helps all of our co-nationals.<sup>96</sup>

This illustrated the conviction with which the ideas of congruence and reciprocity were pursued by Mexican policymakers. Senator Torres Mercado succinctly stated the dilemma, “This is an inexcusable circumstance: Mexico can not dictate laws inferior to the standards that we are demanding for our co-nationals in the United States.”<sup>97</sup> This statement illustrated that the proposed migration law was meant to serve as a tool in the establishment of better treatment of Mexican emigrants abroad.

Senator Ricardo Monreal Avila of the Workers’ Party spoke against the bill due to a series of reservations stemming from his opposition to the criminalization of migrants. His main issue of contention was article 26, which authorized the Federal Police to aid in immigration procedures. He saw this as the militarization of immigration policy and was opposed to it for reasons of congruence and reciprocity.

With what face can we demand that the United States gives dignified treatment to Mexicans looking for employment, education, homes, and wellbeing that they couldn’t find in our country if the migrants from the South, also attempting to reach the American dream, first have to survive the Mexican nightmare, the disappearances and the massive massacres at the hands of delinquent organizations, the humiliations, and the unrestricted trampling of human rights perpetrated in obscurity, many times in complicity with immigration authorities or with various police departments? This happens against both documented and undocumented migrants in our country, and has recently turned the theme of migration into the Aquilles’s Heel of this country’s international right.<sup>98</sup>

The Senator explicitly stated that in order for Mexico to demand the protection of rights of emigrants abroad, it must first adhere to the same standards. Without revising the treatment of immigrants in Mexico and safeguarding their rights, then Mexico cannot legitimately advocate for the same protections of Mexican emigrants, which was a clear indication of the idea of soft reciprocity.

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<sup>96</sup> Ibid.

<sup>97</sup> Ibid.

<sup>98</sup> Ibid. Author’s translation.

Senator Dante Delgado of the Convergence party proposed that the bill be passed in general and discussed in particular the following session. This meant that the general bill was passed but the specific reservations expressed by various Senators would be reconsidered by the joint Commissions and readdressed and voted on in the following Senate session.<sup>99</sup> By the end of the Senatorial session, there were 22 articles reserved.<sup>100</sup> The most common article reserved was Article 26, which authorized the Federal Police to assist the INM in migratory matters. Similar to Senator Monreal Avila, many senators viewed this as a stepping-stone to a police state in which migrants were unnecessarily criminalized.

Many also pointed out the hypocrisy of allowing such an article to pass while simultaneously demanding the United States decriminalize its immigration policy and afford greater rights to Mexican immigrants. The common consensus concerning Article 26 was that the third paragraph should be stricken from the bill, which stated that the Federal Police would support the INM at migratory revisions within areas specifically known as designations for the transmigration of foreigners. At the conclusion of the session, the Initiative and the non-reserved articles were passed with 84 out of 99 votes with no abstentions. It was then decided that the remaining reserved articles would be addressed in the following session.<sup>101</sup>

The joint Commissions of Population, Development, Governance, and Legislative Studies reconvened in the interim to develop more modifications in order to address the concerns expressed during the Senate debate. They presented the second ruling to the

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<sup>99</sup> Ibid.

<sup>100</sup> Articles 2, 3, 26, 41, 53, 69, 70, 77, 80, 81, 93, 94, 97, 100, 101, 102, 106, 107, 112, 113, 119, and 151 were all reserved to be discussed in the following session. Sesión Ordinaria de la H. Cámara de Senadores.

<sup>101</sup> Ibid.

Senate on February 24, 2011. The second ruling made a series of changes to the bill.

Once again, certain language was changed in order to protect the rights of migrants. The term “aseguramiento,” which refers to the detention of migrants, was changed to “presentación,” or presentation.<sup>102</sup> The 12 guiding principles found in the Exposition of Motives that focus primarily on the protection of migrant rights were placed in the second Article, directly under the new definition of the immigration policy of the state of Mexico.

Furthermore, the commission deleted Article 26 in its entirety, refusing the auxiliary role of the Federal Police in general and specifically in terms of verification visits.<sup>103</sup> The second ruling also explicitly stated that organizations lending nonprofit humanitarian aid to undocumented transit migrants were protected by law from any kind of penalization for the administration of such aid.<sup>104</sup> These measures further illustrated the commitment by the Mexican government to protect the rights of migrants and to divorce immigration dialogue from national security concerns. Finally, Article 80 of the LGP was modified, striking the disposition stating that Mexican emigration through informal channels and without the authorization of the destination country would be dissuaded.

The second ruling was once again discussed in the Senate on February 24, 2011. Although the ruling had already passed in general, the particulars still remained to be discussed. This session included the presence of a number of civil society supporters of the bill who worked closely with the Working Group in the drafting of the bill. Civil

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<sup>102</sup> The word *aseguramiento* comes from the verb *asegurar*, which means to secure. This term was used instead of detention beginning in 2005 in order to soften the tone of the term in accordance with changes being made to migration policy from the perspective of the protection of human rights. SRE official, Interviewed by Marcelle Beaulieu, Summer 2010, Mexico City.

<sup>103</sup> Mexican Senate, “Acuerdos y propuestas de redacción a la Ley de Migración y a la Ley General de Población, resultado de la reunión del 23 de febrero de 2011,” February 23, 2011.

<sup>104</sup> *Ibid.*, article 161.

society representatives included: Father Alejandro Solalinde from the migrant shelter, “Hermanos en el Camino;” Fabienne Venet from the Institute of Migratory Studies; Axel García from the Pastoral Dimension; Sister Leticia Gutiérrez from Human Mobility; and various representatives from the National Commission of Human Rights.<sup>105</sup> These were civil society activists who had worked extensively to ensure that the new law would extend certain protection to migrants.

Senator Humberto Andrade Quezada opened the session in order to inform the other Senators of the major changes made, especially the withdrawal of Article 26.

We want to send a very clear message that the Senate of the Republic is conscious of the contributions and value of the migrant, and that without regard, I repeat, to his or her migratory status, whether it is regular or irregular, a migrant can in no way be defined as illicit. This is illustrated clearly through the addition to Article 2 and the complete withdrawal of Article 26.<sup>106</sup>

Senator Andrade Quezada also emphasized the importance of the bill in terms of the correlation between the three roles of Mexico in immigration matters.

Today we can finally say: that in congruence with the magnitude of migration that we have, of the hundreds of thousands of people in transit that we have in this country, we are giving a response as a State. We are doing this without forgetting that Mexico, in addition to being one of the principle senders of migrants, is also a country with very special characteristics; we are a country with every kind of migratory condition; we are a country of origin, a country of destination, a country of transit, and also very important: we are a country of return. This is why we should have a law like the one being proposed today, a modern law that can confront this situation.<sup>107</sup>

The Senator once again emphasized two important aspects of the new Migration Law.

First, it recognized the need to protect the rights of migrants and secondly, it appreciated the fact that Mexico is a country with multiple migratory roles that inherently affect each other. These aspects were indicative of the underlying strategy of reciprocity fueling the creation and passage of the Migration Law.

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<sup>105</sup> Mexican Senate, “Debate sobre Ley de Migración,” Versión estenográfica de la sesión ordinaria, Thursday, February 24, 2011.

<sup>106</sup> Ibid. Author’s translation.

<sup>107</sup> Ibid. Author’s translation.

Next, Senator Francisco Herrera León from the PRI spoke in support of the changes made, citing the importance of the new definition of the immigration policy, the unrestricted protection of migrant rights, and the return of Mexico's moral authority in the demand for the protection of human rights.<sup>108</sup>

We want to recuperate our humanitarian vocation with this law. We want to return moral authority to Mexico. We want to be current, when other regions of the world legislate against human rights of migrants we want to move forward; so that this legislation can be a point of reference for the region and the world, and with all moral authority.<sup>109</sup> He further stated that no migrants should be penalized or persecuted, in a quest for the same treatment of Mexican emigrants, emphasizing the quest for moral authority in regional migration management. A variety of other senators spoke, all in support of the second ruling and with very few reservations. The bill was widely discussed as a success and a historical accomplishment. This was especially due to the fact that the law was drafted in the interest of protecting human right and was in concert with the public opinion and civil society. At the end of the session, the bill was passed unanimously, approving the revisions made by the joint Commissions.

#### ***4.4 Passage through the Chamber of Deputies***

Due to the fact that the bill was first presented in the Senate, the Chamber of Deputies had a negligible role in the legislative process up to this point. The only interaction with the bill thus far had been through the Chamber's joint Commissions of Housing, Public Credit, and Economics in order to review the section of the bill dealing with revisions to the Law of Customs, Federal Law of Duties, and the Law of Foreign Commerce in December 2010.<sup>110</sup> Once the Senate passed the bill in its entirety on February 24, 2011, it

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<sup>108</sup> Ibid.

<sup>109</sup> Ibid. Author's translation.

<sup>110</sup> These areas of law are matters exclusively delegated to the Chamber of Deputies. Chamber of Deputies, "Gaceta Parlamentaria," Friday, April 29, 2011. Gazette number 3251-III.

was sent to the Executive Council of the Chamber of Congress to be ruled and voted upon. The Executive Council turned the bill over to the joint Commissions of Population, Borders, and Migratory Matters and Justice on March 3, 2011.<sup>111</sup> It was also decided that the Commissions of Governance, Budget and Public Accounts, and International Relations would include their official opinions in the ruling.

The bill was sent to the remaining members of the joint Commissions on March 7, 2011. Shortly thereafter, some of the members of the Commissions embarked on a tour of the southern border in order to better understand the immigration phenomenon.<sup>112</sup> This working trip took place on March 12 and 13, 2011 and covered the following agenda priorities:

- Understand immigration and its diverse aspects
- Visit the 10 formal international crossing points along the Southern border in Chiapas
- Understand the logic behind the worker and visitor permits for the border regions
- Observe informal migratory flows
- Meet and converse with civil society advocates for undocumented migrants
- Travel through parts of the migratory routs followed by Central American transmigrants
- Become familiarized with the way in which undocumented migrants board cargo trains to ride through Mexico to the Northern border
- Visit and inspect migratory control posts<sup>113</sup>

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<sup>111</sup> The Commission of Population, Borders and Migratory Matters is composed of 27 members. This number includes 14 representatives from the PRI, six from the PAN, three from the PRD, one from the PVEM, two from the PT, and one unaffiliated member. The Commission of Justice is composed of 28 members. This number includes 12 representatives from the PRI, nine from the PAN, four from the PRD, two from the PVEM, and one from the PT. Chamber of Deputies website. Available online: [http://sitl.diputados.gob.mx/LXI\\_leg/listado\\_de\\_comisioneslxi.php?tct=1](http://sitl.diputados.gob.mx/LXI_leg/listado_de_comisioneslxi.php?tct=1).

<sup>112</sup> Participating members included: Norma Leticia Salazar Vázquez, Adriana Terrazas Porras, Julieta Octavia Marín Torres, Teresa Guadalupe Reyes Sahagún, Guadalupe Valenzuela Cabrales, José Torres Robledo, Gumerindo Castellanos Flores, Carlos Martínez, Juan Manuel Mondragon Toledo, Heriberto Ambrosio Cipriano, Juan Carlo López Fernández, and Salvador Beltrán del Río Madrid, Commissioner of the INM. Chamber of Deputies, Commission of Population, Borders and Migratory Matters. Presentation, April 2011, accessed May 2011, <http://www.slideshare.net/BlogsEntrelaGente/ley-de-migracin>.

<sup>113</sup> Chamber of Deputies, Commission of Population, Borders and Migratory Matters. Presentation, April 2011.

The purpose of the trip to the South was meant to provide a more nuanced understanding of the immigration phenomenon and to illustrate its extreme importance to the legislators of the Chamber of Deputies.

A series of meetings with various governmental officials, international, and civil society representatives quickly followed the tour of the Southern border in order to provide a truly representative ruling of the bill on behalf of the joint Commissions. The members of the joint Commissions first met with the Commissioner of the INM, Salvador Beltrán del Rio Madrid, and then received various ambassadors and consuls from Guatemala, El Salvador, and Nicaragua on March 17. On March 24, a Working Group was convened that included representatives from Migrant Safe-houses in Arriaga and Tapachula, the Pastoral Dimension of Human Movement, and the Scalabrini Sector.<sup>114</sup>

Outreach to the civil society and academic community continued on March 25, 2011 with a telephone conference between members of the joint Commissions and various Mexican migrant associations in the United States, principally in Chicago, Los Angeles and Texas.<sup>115</sup> The same day, the joint Commissions met with the group Mexican Association of Migratory Rights, A.C. and Primitivo Rodríguez Ocegüera, who served as a representative for a conglomeration of over 40 migrant activist groups. In addition, the joint Commissions also accepted written documents from a number of organizations expressing either their concerns or support for the bill, including: the Diocese of Saltillo, the National Alliance of Latin American and Caribbean Communities, the Association of Mexican Professionals Abroad, and the Mesoamerican Migrant Movement.<sup>116</sup>

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<sup>114</sup> Ibid.

<sup>115</sup> Ibid.

<sup>116</sup> Ibid.

On Friday, April 29, 2011, the joint Commissions presented their ruling on the bill to the Chamber of Deputies. The ruling stated principally that the modernization of Mexican immigration policy was of utmost importance. The contemporary challenges of immigration have affected Mexico in multiple ways as a sending, receiving and transit country. The joint Commissions declared that the realities of immigration and the diverse aspects of sending, receiving and transmigration needed to be addressed immediately by the state of Mexico.

The necessity of an integral migration policy is in accordance with the actual conditions of the phenomenon. This acquires even more relevance if we consider the changes and the specific situation in which migratory processes have developed in Mexico in the last decade and that the active legislation is over 30 years old and has a focus essentially on demographics and restricting immigration. The increased intrinsic complexity of the immigration phenomenon in Mexico makes the explicit need for a complete and integral immigration policy even more imperative.<sup>117</sup>

This showed that the LGP was outdated and could no longer manage the diverse aspects of immigration in Mexico. Therefore, the ruling was in agreement with the general principles of the bill.

In addition, the joint Commissions of the Chamber of Deputies stated that the protection of human rights of migrants was a vital aspect of the modernization of Mexican immigration policy. The ruling highlighted specifically the importance of the transit visa created by the bill. This was seen as a significant progression in the protection of human rights. The joint Commissions stated that through the establishment of the transit visa, “This bill rejects the idea that the act of migrating and being a migrant is a crime.”<sup>118</sup> It also commended the bill for recognizing the protections that should be guaranteed by the state to migrants in transit and with an irregular status.

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<sup>117</sup> Chamber of Congress, Gazette number 3251-III. Author’s translation.

<sup>118</sup> Ibid, Considerations.



The ruling further found that the protection of human rights of migrants in Mexico was a strong response to the criticism of other countries and organizations in regards to the hypocrisy of demanding the protection of Mexican emigrants while not providing the same protections domestically.<sup>119</sup>

Without doubt, this Migration Law provides a more just treatment of transmigrants, responding to the criticisms of other nations and organizations who state that our country demands that undocumented Mexicans be treated in a humane way while the rights of transmigrants are violated here in Mexico.<sup>120</sup>

This once again made a connection between the treatment of foreigners in Mexico and Mexican emigrants in the United States, insinuating an informal agreement of reciprocity. It also illustrated that the ideas of congruence and reciprocity were among the main reasons for the drafting of such a bill.

The ruling outlined the various migrations that had taken place in Mexico in order to situate the immigration phenomenon within a contemporary context. It agreed that while undocumented immigration should be controlled, it should be done within the realm of the protection of human rights.<sup>121</sup> Those ruling the bill especially highlighted the fact that a migrant should not have to verify legal status prior to the administration of certain services of health and judicial process. In addition, the joint Commissions emphasized the need to incentivize the migration of those people who would contribute to the economic, social and cultural development of the country. It was agreed that this could be done through the point system and the possibility of the acquisition of nearly immediate permanent residency.<sup>122</sup> The ruling did not propose any further changes to the bill.

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<sup>119</sup> Ibid.

<sup>120</sup> Ibid.

<sup>121</sup> Chamber of Congress, Gazette number 3251-III. Considerations.

<sup>122</sup> Ibid.

The ruling was open to debate on the floor of the Chamber of Deputies on the same date of its publication. The discussion began with Deputy Norma Leticia Salazar Vásquez, president of the Commission of Population, Borders and Migratory Matters. Deputy Salazar Vásquez thanked all those involved, including governmental officials, international ambassadors, civil society groups, and academic experts. She stated that the bill was a testament to the hard work of these groups and was a shining example of the bipartisan work of legislators in the quest to secure the protection of human rights in Mexico.

With this law begins the protection of the obligation to guarantee, through the State of Mexico, that migrants who find themselves in national territory are guaranteed the right to exercise their rights; that independent of their migratory status, they will have the right to health, education, and the procurement and impartment of justice.<sup>123</sup> According to her, the most important aspect of the bill was creating a safe and secure environment for immigrants in Mexico.

Deputy Salazar Vásquez was followed by speeches from Deputy Teresa Guadalupe Reyes Sahagún, Deputy Rodrigo Pérez-Alonso González, Deputy Juan Carlos López Fernández, Deputy Gumersindo Castellanos Flores, Deputy Cristabell Zamora Cabrera, Deputy Jaime Fernando Cárdenas Gracia, Deputy José M. Torres Robledo, and Deputy Beatriz Elena Paredes Rangel. These deputies all represented various political parties and all supported the ruling, urging the immediate and unanimous passage of the bill.

The Deputies once again pointed out the importance of granting the same rights to foreigners in Mexico as was demanded for Mexican emigrants abroad. As Deputy Pérez-Alonso González stated,

This reform to the Migration Law is about social justice, and above all, a historic debt that we had with migrants, not only migrants that come from other Central American

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<sup>123</sup> Mexican Chamber of Deputies, *Diario de los Debates de la Cámara de Diputados*, April 29, 2011.

countries, brother countries from South America, but also with migrants from Mexico who migrate toward the United States.<sup>124</sup>

In addition, Deputy Castellanos Flores emphasized the idea of congruence and the importance of passing legislation with a focus on the protection of human rights. “This law will permit our authorities to offer to foreigners a treatment characterized by dignity and respect for human rights, in the same way that we have solicited for so many years the same treatment for our co-nationals that live abroad.”<sup>125</sup> Therefore, the underlying strategy of reciprocity is equally understood in the Chamber of Deputies as it is in the Senate. At the end of the session, a vote was taken in which the bill passed both in general and in particular with 432 votes in favor, zero against, and zero abstentions. The new Migration Law was signed into existence by President Felipe Calderon on May 24, 2011 and subsequently published in the *Diario Oficial de la Federación* (DOF).

This unanimous vote is significant in reflecting the enormous popularity of the Migration Law among diverse political ideologies. During the same session in the Deputy of Chambers, there were a total of 107 votes for various laws and decrees. Among these, 43, or 40%, of the votes were split, and 41, or 38%, contained abstention votes, which is viewed as another way of dissenting instead of voting in the negative. Unanimous votes comprised 23, or 21%, of total votes. However, the Migration Law amassed the most total votes, with 432 votes in its favor. The second highest amount of positive votes was 422, with the remaining total votes ranging from 309 to 397. This demonstrates that the Migration Law was tremendously popular both with its unanimous vote and its ability to attract the most legislators for the actual vote.<sup>126</sup>

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<sup>124</sup> Ibid. Author’s translation.

<sup>125</sup> Ibid.

<sup>126</sup> Chamber of Deputies website, <http://www.diputados.gob.mx/Votaciones.htm>

#### ***4.5 Congruence: Links between Immigration and Emigration Policy***

The entire concept of soft reciprocity hinges on the direct linkage between Mexican immigration and emigration policy, or congruence, which has repeatedly been cited throughout this chapter. Due to the fact that my concept of soft reciprocity does not signify a strict exchange of benefits between Mexico and the United States and instead relies on the attainment of moral authority as its main proponent, there must be a linear relationship between immigration and emigration policy as exhibited by Mexican policymakers. Without this connection, then there is no direct correlation between the most heavily weighted independent variable, the Mexican emigrant population, and the passage of the Migration Law.

As previously stated, the Mexican government began to draw a connection between emigration and immigration policy with the LGP Regulations in 2000. This idea of congruence was magnified throughout the drafting and passage of the Migration Law. Although it was eventually taken out of the final version of the law, the pre-draft version of the Migration Law contained a section exclusively concerned with Mexican emigration. Despite the fact that the final version of the Migration Law did not include a chapter on emigration, Mexican policymakers continued to be dedicated to viewing migration from various perspectives.

This idea was first articulated in the Initiative presented by the Senatorial working group, when it immediately stated the following: “Mexican immigration policy will be defined in conjunction with strategic decisions to reach certain objectives...and address the Mexican migration phenomenon in an integral manner; as a country of origin, transit,

and destination.”<sup>127</sup> It further states that this integral focus is one of the main focuses of the Migration Law, especially when considering the short-term and long-term consequence of the various migration roles held by Mexico. The Chamber of Deputies continued with this same idea of congruence in its consideration of the Migration Law.

This discussion implies an integral vision, cognizant of the fact that transmigration, emigration, immigration and internal mobility are all part of abstract human processes. The Migration Law will contribute to this vision and change our perception, even though it’s necessary to continue to advance even more in our thinking.<sup>128</sup> This illustrates a continuing commitment to view Mexico in its entirety as a migration country while drafting the Migration Law.

The recurrence of the concept of congruence throughout the Migration Law also highlights the importance of Mexican emigration policy in the creation of a new immigration policy strategy. It is proof that the Migration Law was not drafted in a vacuum: it took many different aspects of migration into account, particularly Mexico’s role as a sending country. This is reflective of the extreme political and economic importance of the Mexican emigrant community. Therefore, the immigration policy was meant to support and bolster Mexico’s emigration policy strategy of extended incorporation, once again proving the validity of Mexico’s relationship with its emigrant population as a vital independent variable.

## 5.0 **Conclusion**

The Mexican Migration Law was passed in May of 2011 with a wide variety of bipartisan and civil society support. Its main proponents focused on the protection of rights of foreigners in Mexico, the principle of congruence in order to simultaneously

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<sup>127</sup> *Iniciativa con Proyecto de Decreto por el que se Expide la Ley de Migración*. Senate of the Republic, Gazette Number 195. Thursday, December 9, 2010.

<sup>128</sup> Chamber of Congress, Gazette number 3251-III.

address the role of Mexico as a sending, receiving, and transmigration country, and the harmonization of domestic policy with international human rights norms. This was a departure from previous policies measures that were considered largely nativist in nature and maintained that the various roles of Mexico in the migration phenomenon were to be relegated to separate spheres. Instead, the new Migration Law seeks to integrate all the complexities of immigration and enforce management from one strategy and one policy.

Although emigration is not explicitly discussed in the Migration Law, it still remains a vital aspect of immigration policy in Mexico mainly due to the strategy of soft reciprocity, as stated by legislators and within the Law. This connection is based on the idea that Mexico must guarantee the protection of certain rights of foreigners in Mexico in order to have the moral authority to demand the same treatment for Mexican emigrants in the United States. The idea of soft reciprocity is the basic strategy underlying the new Migration Law and is also closely linked to the impetuses connected to the passage of this law, both domestic and international.

The major factors contributing to the pursuit of soft reciprocity and the creation of the Migration Law were increased criticisms of hypocrisy from civil society activists and regional neighbors, and, most importantly, the status of Mexico's relationship with Mexicans living in the United States. The importance of civil society can be seen throughout the policymaking process and the predominant incorporation of societal actors in the construction of basic principles and the subsequent Migration Law. The significance of regional concerns are indicative in the overall content of the Migration Law and its focus on the fair and just treatment of Central American migrants. However, the most instrumental variable was the endangerment of Mexico's strategy of extended

incorporation due to a harsh political climate in the United States. The following chapter will demonstrate that the liberalization of Mexican immigration policy and the passage of the Migration Law was chronologically linked to increasingly restrictive immigration policy in the United States, further proving the poignancy of Mexico's relationship with its emigrant population abroad.

## Chapter 6: Immigration as a High and Low Politics Issue: Interrupting Extended Incorporation

### 1.0 **Introduction**

I have argued that the creation and passage of Mexico's Migration Law was largely stimulated by three independent variables: Mexico's relationship with its emigrant community, domestic civil society concerns, and the weakening of regional partnerships. Each of these factors increased in saliency in the early 2000s, culminating in an environment ripe for change by 2011. Although these three variables were independent of each other, they each had specific and overlapping grievances with the LGP. Therefore, Mexico addressed the concerns of all three simultaneously through the passage of the Migration Law, by subscribing to a strategy of soft reciprocity.

Although at first glance it does not seem like these three variables would be intimately connected through immigration policy, Mexican policymakers made an explicit correlation between emigration and immigration policy throughout the drafting and passage of the Migration Law. This is what differentiates this immigration policy theory from others: when countries hold multiple roles in the migration phenomenon, these contrasting roles become integrated and inherently affect the construction of immigration policy. In the case of Mexico, it was its role as a sending country that held precedence in the passage of the Migration Law, which has been proven by the extremely important nature of the government's relationship with Mexicans abroad. Therefore, the



strategy of soft reciprocity emerged as Mexico attempted to benefit its emigrants indirectly by amassing moral authority through the passage of the Migration Law.

However, there is another factor that all three variables interacted with: US immigration policy. Due to the fact that soft reciprocity hinged largely on Mexico's relationship with its emigrant population in the United States, then it holds that policy changes in the US would inherently affect all three variables with varying degrees. As US immigration policy became increasingly restrictive, pressure from all three independent variables augmented, pushing the Mexican government closer to the redefinition of immigration policy. This chapter will outline the changes in US immigration policy, paying special attention to periods of high and low politics and its corresponding effects for Mexican emigrants and the policy of extended incorporation, which is the most heavily weighted variable. It will consider the other two variables to a lesser degree, as their grievances were mainly centered around immigration and transmigration policy as opposed to emigration policy.

## **2.0 US Immigration Policy and Extended Incorporation**

As discussed in the previous chapter, the adoption of the Migration Law was largely stimulated by soft reciprocity, which was a strategy designed to help strengthen Mexico's policy of extended incorporation in its endeavor to better protect Mexicans living in the United States. This policy of extended incorporation experienced two different obstacles beginning in the early 2000s. The first was the increasingly restrictive turn in US immigration policy and a corresponding hostile political environment. This required

Mexico to intensify efforts to advocate for Mexican emigrants in the United States, which resulted in more vocal governmental opposition to US policies on many different occasions. The second challenge presented to extended incorporation was the increase in accusations of hypocrisy leveled by the United States against Mexico concerning the LGP and mistreatment of Central American migrants in Mexico. As long as Mexico's legitimacy in humane migration management was questioned, its policy of extended incorporation would be jeopardized along with its relationship with the emigrant community.

In order to prove the saliency of Mexico's bond with Mexican emigrants and its corresponding role in the creation of the Migration Law, it is necessary to draw a chronological connection between the weakening of extended incorporation and initiatives related to the renovation of Mexican immigration policy. As discussed, extended incorporation was most challenged in the periods of increasingly restrictive immigration policy in the United States, especially when it was accompanied by overtly hostile political debates. Although immigration reform does not always hold national attention in the United States, there have been some recent political periods in which immigration has been at the forefront of highly controversial political battles. During these periods, immigration is considered a high politics issue, which presents a greater challenge to extended incorporation in the form of restrictive policies and increased criticisms of hypocrisy.

There are three main periods of US politics relevant to the adaptation of the new Migration Law in Mexico. The first is a high politics era from 2004 until 2006. This is followed by a low politics period from 2007 until 2009. The final period is another high

politics period that began in December of 2009 and continued until the passage of the Migration Law. By examining the chronology of events in the immigration policy arena in both the United States and Mexico during this time, it is possible to determine causal mechanisms and the primary actors of influence during each era.

As noted, this analysis begins in 2004, which marks both the beginning of the most recent high politics era in the United States and the beginning of the articulation of a new immigration policy in Mexico. It continues with the era of low politics from 2007 until 2009 in which there was little to no legislative action or attention to immigration matters by U.S. policymakers. However, despite the lack of impetus from the United States during this time, Mexican legislators continued in the liberalization of immigration policy due to the widespread popularity and legitimacy of the strategy of soft reciprocity. The chapter concludes with the final era of immigration as high politics in the United States from 2010 until the adoption of the Migration Law, which witnessed a return to the issue of comprehensive immigration reform and the proliferation of increasingly restrictive immigration laws at the state level. It was during this time that the ideas of reciprocity and congruence introduced in 2005 and 2006 were translated into actual legislation, resulting in the Mexican Migration Law. This chapter will review the timing of initiatives presented by the United States and corresponding liberalization of Mexican immigration policy, proving the influence of Mexico's relationship with its emigrants and the strategy of soft reciprocity in the passage of the Migration Law.

### 3.0 **First Period of Immigration as High Politics: 2004-2006**

When immigration is considered a high politics issue in the United States, it generally becomes a highly divisive topic and more often than not has ended in rather restrictive immigration control policy. In these instances, the United States exerts considerable pressure and creates specific consequences for Mexican immigrants, thereby affecting the policy of extended incorporation. There are two overall ways in which the United States has exercised influence over Mexican migration management. The first is direct criticism of Mexican immigration policy, especially in terms of its perceived hypocrisy in its treatment of foreigners in Mexico. The second is the construction of unilateral immigration policy that inherently affects Mexican immigrants in the United States. It is through these two venues that United States rhetoric and immigration policy has become a vital actor in the changing nature of Mexican immigration policy. By producing a sequential order of events of the evolution of the immigration debate in the United States and Mexico, this chapter will show a high degree of causality. As immigration gained notoriety in the United States and policy alternatives were explored and/or passed in the U.S., extended incorporation became increasingly important and challenged, thereby directly impacting and influencing the immigration debate in Mexico, resulting in the passage of the Migration Law.

#### 3.1 ***Policy Initiatives: 2004-2006***

Immigration has long been a low politics issue in US national politics. It is a policy area that generally only affects a select region of the United States and therefore rarely garners the support and attention necessary to transcend the high politics/low politics divide and stimulate national awareness. Prior to current years, the last era of

immigration as a high politics issue and subsequent comprehensive immigration reform was in 1986, with the passage of IRCA. Since then, the trend has been a concentration on the militarization of the border and points of entry as opposed to creating policy that tackles both enforcement and naturalization issues. In 2001, Mexico and the United States entered into promising bilateral discussions with immigration as a focal point. However, these talks lost momentum in the aftermath of the terrorists attacks of September 11, pushing immigration to the back of the bilateral agenda. Immigration did not again gain momentum as a national and high politics issue in the United States until roughly 2004, which corresponded with an increase in immigration flows into the United States.

The Bush administration began to address immigration again in January 2004, when President Bush made a special request to Congress to lay out the administration's position on immigration reform. The plan included a set of objectives and goals, including a temporary worker, an increase in immigration admissions per year, and the modification of the citizenship test to include broader American ideals as opposed to strictly testing historical facts.<sup>1</sup> This plan built on a series of proposals that had recently been introduced by various Republican legislators.<sup>2</sup> The administration's announcement reopened the debate on immigration, which quickly turned into a variety of proposed bills from both sides of the aisle.

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<sup>1</sup> Maia Jachimowicz, "Bush Proposed New Temporary Worker Program," *Migration Information Source*, February 2004. Accessed May 2011, <http://www.migrationinformation.org/USFocus/display.cfm?ID=202>.

<sup>2</sup> The bills introduced included: Senator McCain (R-AZ) and Representatives Kolbe (R-AZ) and Flake's (R-AZ), "Land Border Security and Immigration Improvement Act," "Border Security and Immigration Reform Act of 2003," from Senator Cornyn (R-TX), and "Agricultural Job, Opportunity, Benefits and Security Act of 2003" by Representative Cannon (R-UT) and Senator Craig (R-WY). Ibid.

Nearly immediately following the Bush administration's announcement, another bill was introduced on January 21, 2004 by Senators Hagel (R-NE) and Daschel (D-SD), entitled, "Immigration Reform Act of 2004: Strengthening America's National Security, Economy and Families."<sup>3</sup> The immigration issue was addressed in a special Congressional Hearing before the Senate Committee on Foreign Relations, entitled, "United States and Mexico: Immigration Policy and the Bilateral Relations. The Hearing, which took place on March 23, 2004, highlighted the immediate challenges of Mexican immigration."<sup>4</sup>

The most obvious economic and security concerns related to Mexico stem from Mexican migration across the U.S. border. When Presidents Fox and Bush met in January 2001, they recognized that migration is "one of the major ties that bind our societies," a quote from the two Presidents.<sup>5</sup> It mentioned the increase in both documented and undocumented immigration from Mexico and urged legislators to address it accordingly with efficient policy. This, along with President Bush's tentative plan for immigration reform signify that 2004 marked the beginning of an era of high politics for the immigration issue. The repercussions of increased immigration were starting to be felt, and it began to gain national attention. The renewed importance of immigration were reflected in the following proposals for immigration reform.

In May 2004, a group of Democratic Senators and Representatives introduced the "Safe, Orderly, Legal Visas and Enforcement Act" (SOLVE Act), which closely mirrored the initiatives set forth by the Bush Administration. The main difference was that the

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<sup>3</sup> Ibid.

<sup>4</sup> United States Senate Committee on Foreign Relations, *United States and Mexico: Immigration Policy and the Bilateral Relationship*. March 23, 2004. S. HRG. 108-513.

<sup>5</sup> Ibid.

SOLVE Act included a path to citizenship, which was highly contested.<sup>6</sup> However, the presidential election of 2004 quickly became the most imperative priority, and although all candidates stated their position on the immigration debate, the issue once again became dormant for several months.

After President Bush's reelection in 2004, he returned to the issue of immigration in his February 2, 2005 State of the Union Address. He repeated his commitment to the creation of a temporary worker program that did not include amnesty and focused on border security.<sup>7</sup> Just eight days later, on February 10, 2005, the House passed the Real ID Act.<sup>8</sup> The Real ID Act was viewed as an anti-terrorist measure, as it was originally a component of the Intelligence Reform Act, passed in December 2004. It barred the federal government from legally recognizing state-issued identification cards for certain activities, in addition to increasing requirements for both the attainment of asylum status and the standards of deportability and inadmissibility.<sup>9</sup>

The passage of the Real ID Act spurred a flurry of legislative activity, originating from both Republicans and Democrats. Senators John McCain (R-AZ) and Edward Kennedy (D-MA) worked in conjunction with Representatives Jeff Flake (R-AZ), Luis Gutierrez (D-IL), and Jim Kolbe (R-AZ) to draft the "Secure American and Orderly Immigration Act," which included a plan for comprehensive immigration reform and was introduced

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<sup>6</sup> Maia Jachimowicz, "Democrats Introduce Immigration Reform Bill," *Migration Information Source*, June 1, 2004. Accessed May 2011, <http://www.migrationinformation.org/USFocus/display.cfm?ID=232>.

<sup>7</sup> Jennifer Yau and Betsy Cooper, "Presidential Budget, State of the Union Address, Immigration Issue," *Migration Information Source*, March 1, 2005. Accessed May 2011, <http://www.migrationinformation.org/USFocus/display.cfm?ID=292#7>.

<sup>8</sup> Ibid. The Real ID Act was introduced by James Sensenbrenner, a Republican from Wisconsin.

<sup>9</sup> Ibid.

in both the House and the Senate on May 12, 2005.<sup>10</sup> The proposal contained plans for a new worker visa, conditional legalization, the promotion of circular migration, enforcement and border security measures, and integration initiatives.

Senators Jon Kyl (R-AZ) and John Cornyn (R-TX) immediately issued a response in strong opposition to the McCain-Kennedy bill and what they viewed as unnecessary amnesty measures. The Kyl-Cornyn proposal was introduced to the Senate on July 19, 2005 and varied distinctly from the McCain-Kennedy proposal.<sup>11</sup> Its main objective was to increase immigration enforcement measures and allocated a high percentage of resources to border security. It also included a mandatory departure clause, and required that all immigrants eligible for the temporary worker program first travel back to their country of origin to register. On July 20, the Speaker of the House, Tom Delay (R-TX) stated that a guest worker program would be delayed until the passage of an immigration and border security bill was secured.<sup>12</sup>

On October 18, 2005, Department of Homeland Security (DHS) Secretary, Michael Chertoff and Secretary of Labor, Elaine Chau, released a more detailed plan for the President's proposal for a temporary worker program. This plan was part of a larger immigration reform strategy that included the three aspects of border enforcement, interior enforcement, and a temporary worker program.<sup>13</sup> The temporary worker program included two three year work periods, would be available to undocumented immigrants,

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<sup>10</sup> Jennifer Yau, "Expansive Bipartisan Bill Introduced on the Heels of REAL ID Passage," *Migration Information Source*, June 1, 2005. Accessed May 2011, <http://www.migrationinformation.org/USFocus/display.cfm?ID=316>.

<sup>11</sup> Julia Gelatt, "Immigration Reform Bill and DHS Restructuring Focus on Enforcement and Facilitation," *Migration Information Source*, August 1, 2005. Accessed May 2011, <http://www.migrationinformation.org/USFocus/display.cfm?ID=323>.

<sup>12</sup> Ibid.

<sup>13</sup> Julia Gelatt, "Bush Puts Immigration Reform Back on the Agenda, Approves Funding for DHS," *Migration Information Source*, November 1, 2005. Accessed May 2011, <http://www.migrationinformation.org/USFocus/display.cfm?ID=346>.



and would not contain an automatic path to citizenship. This announcement occurred on the same day as President Bush signed the DHS Appropriations Bill, which included an increase of \$1.2 billion from 2005 in immigration and border enforcement initiatives.<sup>14</sup>

The high level of legislative activity during the majority of 2005 signify the fact that immigration was considered a high politics issue at this time. This was the first time that comprehensive immigration policy reform was addressed in nearly two decades, which closely reflects the realities of increased immigration numbers. The increase in legislative activity in the United States also corresponds with the release of the document, “Mexico and the Migration Phenomenon” in October 2005 which outlined Mexico’s commitment to modernize its immigration policy in the spirit of shared responsibility and the protection of human rights.

This direct correlation in chronological events in the same policy area first in the United States and directly after in Mexico indicates causality, proving that the actions of the United States directly affected policy change in Mexico. Arceneaux and Pion-Berlin state:

To know if the “foreign” matters, we first establish some sequence of related events that may suggest a cause-and-effect relation. When domestic actions follow on the heels of international pressures and appear to flow directly and logically from those pressures, that gives us an initial indication of causality. Timing is important. The shorter the lag between external action and internal reaction, the more persuasive the nexus is.<sup>15</sup> This pattern of causality continued over the next couple of years and indicates the close relationship between external influence from the United States and the creation of the Mexican Migration Law.

The immigration debate continued through the end of 2005, with President Bush continuously reinforcing his commitment to immigration reform through a series of

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<sup>14</sup> Ibid.

<sup>15</sup> Arceneaux and Pion-Berlin, 15.

speeches in November in Arizona and Texas. He reiterated the need to bolster the efficiency of enforcement measures and the creation of a more thorough temporary worker program.<sup>16</sup> A variety of other legislators drafted immigration reform proposals, including Senator Chuck Hagel (R-NE) and Arlen Specter (R-PA).

The House passed its own version of comprehensive immigration reform on December 17, 2005 through the “Border Protection, Antiterrorism, and Illegal Immigration Control Act of 2005.” The bill, sponsored by Republican Representative James Sensenbrenner, made an undocumented status a felony offense in addition to proposals to build a high-tech border fence, promote local enforcement of undocumented immigration, and require that employers verify the status of immigrant employees.<sup>17</sup> The bill also did not include plans for a temporary worker program and was immediately opposed by a variety of civil society organization, including the Chamber of Commerce and Mexican President Vicente Fox. Senate Majority Leader, Bill Frist (R-TN) set the immigration debate for early 2006, stating that enforcement measures would be handled prior to any possible guest worker programs.

It was in the aftermath of this rather restrictive Sensenbrenner bill that Mexico made a move to pass the statements found in “Mexico and the Migration Phenomenon” as a Concurrent Resolution by both the Mexican Senate and Chamber of Deputies on February 16, 2006. It was also during this time that the Mexican government released said document through a public relations company to the United States public. As

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<sup>16</sup> Julia Gelatt, “President Bush Pushes for Increased Enforcement and a Temporary Worker Program,” *Migration Information Source*, December 1, 2005. Accessed May 2011, <http://www.migrationinformation.org/USFocus/display.cfm?ID=363>.

<sup>17</sup> Julia Gelatt, “House Passes Enforcement Bill Lacking Temporary Worker Program,” *Migration Information Source*, January 1, 2006. Accessed May 2011, <http://www.migrationinformation.org/USFocus/display.cfm?ID=367>.

outlined in Chapter Three, these are two instrumental aspects of the evolution of Mexican immigration policy and mark the beginning of the strategy of soft reciprocity. Once again, it fits a chronological pattern in which the United States acts on immigration as a high politics issue and subsequently provokes the Mexican government to act in the same policy area.

The Senate Judiciary Committee voted on a proposal for comprehensive immigration reform on March 27, 2006 that would be discussed in conjuncture with Senator Bill Frist's "Securing America's Borders Act."<sup>18</sup> However, the debate promised to be contentious due to a divide between Senators wanting to focus first on enforcement and those wanting to provide a temporary worker program with a path to legalization. A letter produced by 71 members of the House declared the Senate Judiciary Committee's proposal "fundamentally incompatible" with the bill passed in the House.<sup>19</sup>

The two Senate proposals were converged into an overall compromise bill, or the Hagel-Martinez bill, named after the Republican Senators responsible for its drafting. The bill included a temporary worker program, a path to legalization, and several integration initiatives.<sup>20</sup> The Senate bill was passed on May 25, 2006 and sent to a conference committee in order to be reconciled with the House bill. However, negotiations were delayed over the summer of 2006 so that House representatives could

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<sup>18</sup> Julia Gelatt, "Senate Debates Temporary Worker Program and Path to Legal Status for the Unauthorized," *Migration Information Source*, April 1, 2006. Accessed May 2011, <http://www.migrationinformation.org/USFocus/display.cfm?ID=391>.

<sup>19</sup> Ibid.

<sup>20</sup> Julia Gelatt, "Senate Debate Resumes and DHS Boosts Internal Enforcement," *Migration Information Source*, May 1, 2006. Accessed May 2011, <http://www.migrationinformation.org/USFocus/display.cfm?ID=398>.

conduct a series of hearings on immigration throughout the country.<sup>21</sup> Although reconciliation of the comprehensive immigration reform bills from the Senate and House was not possible before recess due to the hearings, the House did pass a variety of immigration measures focusing overwhelmingly on enforcement.<sup>22</sup> These measures called for increased border fencing, tough punishment of immigrants involved in gangs, local enforcement of undocumented immigration, and requiring the presentation of a photo ID before voting in federal elections.<sup>23</sup>

The “Secure Fence Act of 2006” was also passed by the Senate and signed into law by President Bush on October 26, 2006. The “Secure Fence Act” called for the construction of a 700 mile double-layer border fence in addition to the creation of a virtual fence. It was accompanied by a DHS Appropriations Act that authorized billions of dollars to bolster the border and relevant institutions to prevent unlawful entry into the United States.<sup>24</sup> This fell short of comprehensive immigration reform, due to the fact that the new legislation only addressed enforcement as opposed to including both immigration measures and a temporary worker program. The efficiency of a border fence in reducing undocumented immigration was also contested by a variety of organizations, including the Mexican government.

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<sup>21</sup> Julia Gelatt and Malia Politzer, “Congressional Negotiations Stall while Bush Administration Pushes Enforcement, Integration,” *Migration Information Source*, July 1, 2006. Accessed May 2011, <http://www.migrationinformation.org/USFocus/display.cfm?ID=412>.

<sup>22</sup> Julia Gelatt, “House Calls for Tighter Internal Enforcement and Border Fence, USCIS Claims to Meet Backlog Reduction Deadline,” *Migration Information Source*, October 1, 2006. Accessed May 2011, <http://www.migrationinformation.org/USFocus/display.cfm?ID=443>.

<sup>23</sup> Ibid. These bills included: “The Secure Fence Act of 2006;” The Federal Election Integrity Act of 2006;” “The Community Protection Act of 2006;” The Immigration Law Enforcement Act of 2006;” and “The Border Tunnel Prevention Act of 2006.”

<sup>24</sup> Julia Gelatt, “President Sign DHS Appropriations and Secure Fence Act, New Detainee Bill has Repercussions for Noncitizens,” *Migration Information Source*, November 1, 2006. Accessed May 2011, <http://www.migrationinformation.org/USFocus/display.cfm?ID=491>.

The passage of the “Secure Fence Act” and the overall nature of the immigration debate spurred angry reactions from immigrants in the United States, Mexican immigrants among them. The protests of May 1, 2006 were composed of thousands of immigrants across the country protesting the building of a border fence and the criminalization components of the “Border Protection, Antiterrorism, and Illegal Immigration Control Act of 2005.” It was an outpouring of public opposition to restrictive immigration and militarization measures in the United States.

The effect of the U.S. immigration debate on Mexican immigrants was also noted by the Mexican government. As previously discussed, the Mexican emigrant community at this time had acquired great political and economic influence in Mexican domestic politics. Therefore, the Mexican government, in line with the strategy of extended incorporation, began to react more vocally to restrictive US immigration policy, prompting President Calderón to describe the act of building a border fence as “offensive.”<sup>25</sup>

Immigration was a high politics issue in the United States from 2004 until 2006. This was spurred on by the sharp increase in immigration in the form of both documented and undocumented flows coming from Mexico. As these flows grew, immigration was increasingly situated as a threat to national security, therefore gaining notoriety and attention by federal legislators. The fact that it was a high politics issue during this time is reflected in the high volume of proposed bills and legislation in the arena of comprehensive immigration reform.

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<sup>25</sup> AP, “Rechaza Calderón el Muro en Frontera con EU, en Davos,” *The Universal*, January 26, 2007. Accessed May 2011, <http://www.eluniversal.com.mx/notas/402876.html>.

The years 2004 through 2006 also correspond with a high level of activity on behalf of the Mexican government in the immigration arena. As immigration policy became the center of debate in the United States, it also began to take shape in Mexico. In 2005, the Mexican government outlined its desire and strategy for a change in the bilateral approach to immigration between Mexico and the United States. In addition, Mexico stated a series of goals and principles meant to guide the changing face of immigration management and policy. Furthermore, Mexico stated its intentions to develop a modern immigration policy according to these principles, especially paying attention to the ideas of shared responsibility and the protection of human rights.

There is a direct correlation between the development of immigration as a high politics issue in the United States and the unprecedented attention to immigration policy in Mexico. As policymakers in the United States engaged in a debate and drafted legislation that inherently affected Mexican immigrants, a population of extreme importance to Mexico, the Mexican government began to devise a strategy for optimizing the protection of Mexican emigrants abroad. This strategy was inherently informed by criticisms of hypocrisy on behalf of the US government and eventually coalesced into the idea of reciprocity.

The time frame of high politics from 2004-2006 is particularly important to the eventual passage of the new Migration Law. This is when the main principles and foundations of soft reciprocity and the protection of human rights were first articulated in reference to Mexican immigration policy. This can be seen in the actions that took place in 2005 and 2006, specifically the drafting of “Mexico and the Migration Phenomenon.” The drafting of this document and its subsequent passage as a Concurrent Resolution in

the Senate and Chamber of Deputies serve as the foundations of contemporary Mexican immigration policy and were directly influenced by legislation and political activity in the United States, as evidenced by their close chronological timing. Although it did not lead to the immediate drafting of a new immigration bill, it began a process that had been dormant since 1974.

#### **4.0 Immigration Policy: Receding into Low Politics, 2007-2009**

The national relevance and importance of the immigration debate eventually waned from 2007 through 2009 in the United States, debilitating its position as a high politics issue. Although there was some legislative action at this time, the number of proposed bills pointedly declined and did not garner as much media and public attention. However, despite the fact that it lessened in importance on the national agenda, immigration reform did not vanish completely. The debate continued, albeit on a much lesser scale and with a decreased sense of urgency.

The decline in comprehensive immigration reform activity in the United States from 2007 through 2009 occurred in conjunction with an overall decrease in immigration numbers. Authorized immigration flows peaked in 2006 and began to noticeably decline in 2007. Unauthorized numbers reached a high point in 2007 and began a pointed decline in 2008, thereby reducing the importance of immigration as a high politics issue in the United States.<sup>26</sup>

Comprehensive immigration reform was briefly addressed in March 2007 with the introduction of one new bill and a tentative proposal. The “Security Through Regularized Immigration and a Vibrant Economy Act” (Strive Act) was sponsored by House

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<sup>26</sup> Please see previous Tables

Representatives Luis Gutierrez (D-IL) and Jeff Flake (R-AZ) and included border security in addition to a guest worker program.<sup>27</sup> A White House proposal in conjunction with a variety of Senators, undertook the same issues, albeit in varying degrees. However, negotiations were slow and labored in the Senate, and it was not until June 7, 2007 that the proposal was drafted into the “Secure Borders, Economic Opportunity and Immigration Reform Act of 2007.” However, this bill was criticized by both Republicans and Democrats due to respective issues with amnesty and a merit based system as opposed to a family based system.<sup>28</sup> Due to the difficulties involved with this bill, it failed to pass through the Senate and attention was turned to the 2008 presidential election. Over the next year, comprehensive immigration reform was largely abandoned for an unsuccessful piecemeal approach.<sup>29</sup>

However, despite the fact that immigration was not considered a high politics issue in the United States during this time, efforts still continued on behalf of the Mexican government in the endeavor to modernize immigration policy. Mexican domestic actors, both public and private, had an instrumental role during this time in advancing the liberalization of Mexican immigration policy. The renovated perspective of immigration policy that began during the preceeding period of high politics continued to influence the actions of Mexican legislators. Although external influences decreased in the form of immigration reform and accusations of hypocrisy by the United States, Mexican

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<sup>27</sup> Aaron Matteo Terrazas, Dawn Konet, and Julia Gelatt, “Senate Immigration Bill, Attacked from all Sides, Gains Second Chance,” *Migration Information Source*, June 15, 2007. Accessed May 2011, <http://www.migrationinformation.org/USFocus/display.cfm?ID=607>.

<sup>28</sup> Ibid.

<sup>29</sup> Three bills were introduced in May 2008 that dealt with isolated aspects of immigration reform and did not carry much potential for being turned into law. These included: The SAVE Act, the Save Our Small and Seasonal Business Act of 2008, and the Detainee Basic Medical Care Act of 2008. Muzaffar Chishti and Claire Bergeron, “Congress Addresses Immigration but Appears Unlikely to Pass Piecemeal Bills,” *Migration Information Source*, May 15, 2008. Accessed May 2011, <http://www.migrationinformation.org/USFocus/display.cfm?ID=682>.



policymakers continued to implement reforms in line with the liberalization of immigration policy and the strategy of soft reciprocity. This new strategy of soft reciprocity gained popular support in Mexico due to a high degree of legitimacy, which enabled lawmakers to pursue the modification of immigration policy even without the external impetuses previously imposed by the United States.

In 2007, President Calderón issued the National Development Plan, which specifically placed immigration policy reform as a top priority, in addition to stating congruence and soft reciprocity as guiding principles. In addition, one of the most decisive actions in the redirection of Mexican immigration policy occurred on November 11, 2008 with the decriminalization of immigration and the repeal of articles 118-124 of the LGP, which was an instrumental initiative in pursuing the modification of immigration policy in accordance with the strategy of reciprocity. It was passed as an Administrative Accord, which means that it was decreed unilaterally by the Executive and did not require debate in Congress in order to pass. Although the United States was not active at this time in implementing immigration reform or vigorously calling attention to the hypocrisy of Mexican immigration policy, legislators still moved forward with the transition of immigration policy into a more progressive law.

The widespread popularity of the immigration reforms in Mexico and the eventual adaptation of the Migration Law are indicative of the strong base of legitimacy that supported the legislation. The normative aspect of this legitimacy was founded in the importance of the Mexican community abroad, which resulted in the strategy of soft reciprocity discussed in Chapter 5. The strategy utilized by the Mexican government to protect Mexican emigrants stemmed from the policy of extended incorporation, which

was eventually related to immigration policy through the newly developing strategy of soft reciprocity. The strategy of soft reciprocity focused on protecting the rights of Mexicans abroad partly through ensuring the same protections for foreigners in Mexico. By eliminating the ability of the United States to criticize Mexico's own policy and hypocritical practices through the adaptation of the new Migration Law, Mexico was better able to petition for comparable treatment of Mexican immigrants.

Despite the fact that popular discourse surrounding the new Migration Law was framed within the realm of the protection of human rights, the main guiding factor was founded in the pragmatic desire to protect the wellbeing of Mexicans in the United States. Due to the fact that emigration is such a large phenomenon in Mexico, the fair treatment of Mexican immigrants abroad is in the widespread national interests of the majority of Mexicans. In order to procure their protection, the issue of human rights violations in Mexico had to be addressed and rectified. The commitment to soft reciprocity does not extinguish any altruistic intentions on behalf of civil society activists or Mexican legislators in the endeavor to protect the rights of migrants in Mexico; however, it does take precedence in underlying factors of motivation. This unifying interest in protecting Mexicans abroad lent a high degree of legitimacy to the strategy of soft reciprocity and the liberalization of Mexican immigration policy.

As noted, changing Mexico's official relationship with the protection of migrant rights was a necessary component in implementing the strategy of soft reciprocity through Mexican immigration policy. Therefore, the protection of human rights became a rallying aspect of the policymaking process and eventually turned into one of the main elements of the Migration Law. Modifying the human rights dynamic in Mexico was a

process that endured the span of a few years and was influenced by domestic considerations of soft reciprocity. However, it was also informed by a series of international treaties and a growing international normativity surrounding the topic. This normativity was manifested not only in U.S. accusations of hypocrisy, but also in the legitimacy granted by a series of special reports and international treaties.

As discussed previously, the Mexican government had often been accused of violating the rights of migrants that were either residing or transmigrating through Mexico. The CNDH is the national institution charged with the collection of these complaints and their investigation. The CNDH has published a variety of reports concerning the plight of immigrants in Mexico and their relationship to the state. In addition, Mexico is a signatory to a variety of international treaties that uphold the protection of the rights of migrants. These include the Universal Declaration of Human Rights, the Vienna Convention, the United Nation Convention on the Rights of all Migrant Workers and Members of their Families, and the International Covenant on Economic, Social and Cultural Rights.<sup>30</sup>

However, there were inherent contradictions found in such international treaties and Mexican legislation, due to the fact that the hierarchy of binding agreements placed the Constitution above all else.<sup>31</sup> Rights that were explicitly protected by international treaties, such as the right to due process, were denied by the main components of the Mexican Constitution and the LGP. Abolishing these contradictions through the passage of more progressive legislation and repealing especially restrictive articles of the LGP was another mode in which Mexico was able to implement the strategy of soft

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<sup>30</sup> Calleros, 83.

<sup>31</sup> Ibid, 76.

reciprocity. The fact that the international impulse was also to protect these rights helped bolster this endeavor by the Mexican government.

### **5.0 The Return to High Politics: 2010-2011**

The immigration debate once again returned to high politics in the United States in 2010. This correlates with a slight increase in immigration numbers after their decline during 2006 and 2007. Authorized immigration had once again been on the rise since 2008 and continued to increase into 2010. Unauthorized immigration numbers had reached a low in 2009 and began to indicate growing levels in 2010. Therefore, immigration started to become visible and once again returned to a vital position in United States politics.

The return to high politics was signaled by the introduction of “Comprehensive Immigration Reform for America’s Security and Prosperity Act of 2009,” on December 15, 2009. Authored by Representative Luis Gutierrez (D-IL), the bill included both enforcement measures and legalization procedures.<sup>32</sup> It was perceived as a less restrictive bill than those introduced in 2006 and 2007, as it included less enforcement aspects and focused more on regularization. This was quickly followed by the publication of an outline for a comprehensive immigration reform bill drafted by a bipartisan group directed by Senator Lindsey Graham (R-SC) and Charles Schumer (D-NY) on March 19, 2010.<sup>33</sup> This proposal included both legalization and enforcement measures and was

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<sup>32</sup> Muzaffar Chishti and Claire Bergeron, “New Immigration Bill Edges Comprehensive Immigration Reform Back on the Legislative Agenda,” *Migration Information Source*, January 15, 2010. Accessed May 2011, <http://www.migrationinformation.org/USFocus/display.cfm?ID=769>.

<sup>33</sup> Muzaffar Chishti and Claire Bergeron, “Supreme Court Rules that Attorneys Must Inform Criminal Defendants of the Immigration Consequences of Pleading Guilty,” *Migration Information Source*, April 15, 2010. Available Online: <http://www.migrationinformation.org/USFocus/display.cfm?ID=778>.

praised by President Obama as a “promising, bipartisan framework” for future work on comprehensive immigration reform.<sup>34</sup>

### 5.1 *Arizona’s SB 1070 and its Implications*

As previously discussed, Arizona passed SB 1070 in April, 2010. This was an unprecedented state level immigration initiative which focused on traditionally restrictive aspects of immigration control. It was a highly divisive bill that caused great consternation among many civil society activists, the Mexican public and policymakers, and the US federal government.

President Obama made his position known on the issue of comprehensive immigration reform in a speech on July 1, 2010. This marked his first speech on immigration since he had been elected and highlighted the shortcomings of the system and the need to address the issue.

In recent days, the issue of immigration has become once more a source of fresh contention in our country, with the passage of a controversial law in Arizona and the heated reactions we’ve seen across America. Some have rallied behind this new policy. Others have protested and launched boycotts of the state. And everywhere, people have expressed frustration with a system that seems fundamentally broken.<sup>35</sup> President Obama’s speech was followed up by the filing of a lawsuit against SB 1070 by the Justice Department.<sup>36</sup> On July 28, 2010, one day before the law was to take effect, federal judge Susan Bolton issued an injunction preventing a number of provisions from being enacted, including acting on reasonable suspicion that a person’s status may be

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<sup>34</sup> U.S. Office of the Press Secretary, “Statement by the President Praising the Bipartisan Immigration Reform Framework,” March 18, 2010. Accessed June 2011, <http://www.whitehouse.gov/the-press-office/statement-president-praising-bipartisan-immigration-reform-framework>.

<sup>35</sup> U.S. Office of the Press Secretary, “Remarks by the President on Comprehensive Immigration Reform,” July 1, 2010. Accessed June 2011, <http://www.whitehouse.gov/the-press-office/remarks-president-comprehensive-immigration-reform>.

<sup>36</sup> Muzaffar Chishti and Claire Bergeron, “Focus Remains on Arizona as Justice Department Files Lawsuit against SB 1070,” *Migration Information Source*, July 15, 2010. Accessed June 2011, <http://www.migrationinformation.org/USFocus/display.cfm?ID=789>.

undocumented.<sup>37</sup> The Mexican government also made its position known in President Calderón's address to the United States Congress.

Shortly after President Calderón's speech to the United States Congress and in the aftermath of the controversy surrounding SB 1070, the Mexican government completed the first draft of the new Migration Law that embodied the principles of universal protection of human rights, equality among foreigners and natives, and congruence in the treatment of foreigners of Mexico and Mexican emigrants in the United States. The draft was submitted for review on July 7, 2011 and can be viewed as a direct reaction to increasingly restrictive treatment of immigrants in the United States, and SB 1070 in particular. It was in the first draft of the Migration Law that the principles of soft reciprocity and congruence were fully solidified.

Mexican opposition to SB 1070 continued to inform the construction of the new Migration Law. It was used as an example of what Mexico did not want to impose on Central Americans due to the negative effects such legislation could have on Mexican emigrants in the United States. The popular belief in soft reciprocity and a policy built on the protection of migrant rights was further bolstered by the massacre of undocumented Central American immigrants in the Mexican state of Tamaulipas in September 2010. This explicitly drew attention to the tenuous positioning of foreigners in Mexico. Furthermore, it drew much negative international attention which greatly magnified the hypocrisy with which Mexico was actively demanding the humane treatment of Mexicans in the United States. Therefore, conditions in Mexico in conjunction with the

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<sup>37</sup> Muzaffar Chishti and Claire Bergeron, "Federal Judge Blocks Key Provisions of Arizona Law, Setting Stage for Long Legal Battle," *Migration Information Source*, August 15, 2010. Accessed June 2011, <http://www.migrationinformation.org/USFocus/display.cfm?ID=792>.

restrictive tendencies in the United States and the passage of SB 1070 continued to reinforce the strategy of soft reciprocity.

Consequently, the underlying strategy of soft reciprocity and the influence of US legislation in the development of this strategy is continuously illustrated in various congressional debates. In order to illustrate the importance of protecting the rights of immigrants in Mexico through a new immigration policy, Deputy Teresa Guadalupe Reyes Sahagún referenced SB 1070 before the Chamber of Deputies on April 29, 2011.

On one hand, we as Mexicans confront the application of laws like SB 1070 in the state of Arizona, that criminalizes, discriminates, and permits all kinds of violations of the human rights of our co-nationals. Hurting and offending them is also like attacking each one of us. For this reason, the Worker's Party declares that, as representatives of the public, we demand that the US government respects the life and dignity of our co-nationals as the most minimal act of justice.<sup>38</sup>

This statement indicates that US legislation deeply affected the Mexican immigration policy debate. This, in turn, affected the dynamics of domestic politics due to the extreme importance of Mexicans abroad. Therefore, in an attempt to better protect Mexican nationals in the United States, the Mexican government turned to a strategy of soft reciprocity in the passage of the Migration Law.

SB 1070 was especially instrumental in the discussion of Article 26 in the original draft of the Migration Law. Article 26 authorized the federal police to act in accordance with the INM in order to enforce immigration control. Many argued that the federal police would act according to their own discretion and would impose racial profiling and discrimination on immigrants in Mexico. This level of enforcement was reminiscent of the local authorities clause in SB 1070 and was discussed accordingly by Senator Avila in the debate of the executive council's ruling on the bill on February 22, 2011.

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<sup>38</sup> Mexican Chamber of Deputies, *Diario de los Debates de la Cámara de Diputados*. LXI Legislature, April 29, 2011.

If we don't modify this bill, we will be passing a hostile, persecutory, and enforcement-based law. How do we perceive this power that grants the federal police the authorization to indiscriminately detain migrants? The federal police will be doing the same thing that we criticize of the law in Arizona. What we are criticizing in the North with the Arizona Law is identical to what we are going to pass in order to grant the same undue, excessive, and unconstitutional powers to the federal police.<sup>39</sup>

This illustrates the fact that US immigration policy directly affected the content and direction of the Migration Law. This was due to the paramount importance of Mexican emigrants to domestic politics and the strategy of soft reciprocity that guided the overall legislation.

SB 1070 was once again referenced in the ruling of the Executive Council of the Chamber of Deputies published on April 29, 2011.

In a time in which the situation of undocumented Mexican immigration is becoming more delicate due to the anti-immigrant climate promoted by new and even more restrictive laws (Arizona), the Migration Law in Mexico opens a debate that is centralized in universal rights for migrants.<sup>40</sup>

Therefore, SB 1070 inherently affected the perception of acceptable immigration laws and influenced the tone of Mexican immigration legislation. This demonstrates the role of the United States not only in the timing of the drafting of the Migration Law in Mexico, but also in the main goals and measures included in the law.

## 5.2 *Additional High Politics Initiatives*

A high level of activity in immigration policy occurred immediately preceeding the midterm elections of November 2010. The Development, Relief, and Education for Alien Minors (DREAM Act) was attached to the Department of Defense Appropriations bill by Senate Majority Leader Harry Reid (D-NV) on September 14, 2010.<sup>41</sup> Although it did not pass, it was immediately reintroduced as a stand-alone bill by Senator Richard Durbin

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<sup>39</sup> Mexican Senate, *Sesión Ordinaria de la Cámara de Senadores*, February 22, 2011.

<sup>40</sup> Mexican Senate, *Gaceta Parlamentaria*, Number 3251-III. April 29, 2011.

<sup>41</sup> Muzaffar Chishti and Claire Bergeron, "Midterm Elections Generate Rush of Immigration Measures," *Migration Information Source*, October 15, 2010. Accessed June 2011, <http://www.migrationinformation.org/USFocus/display.cfm?ID=802>.



(D-IL) on September 22, 2010.<sup>42</sup> The DREAM Act would allow for eligible unauthorized students who had been brought to the United States prior to the age of 16 to apply for legalization. The DREAM Act reintroduced the issue of immigration reform to the national agenda.

Later in the month, the first proposal for comprehensive immigration reform was introduced in the Senate since 2007. The Leahy-Menendez Bill, sponsored by Senator Robert Menendez (D-NJ) and Senator Patrick Leahy (D-VT), was introduced on September 29, 2010 and focused specifically on enforcement and integration measures, in addition to an emphasis on the protection of American workers.<sup>43</sup> The Republicans acted in kind with the introduction of the “Strengthening our Commitment to Legal Immigration and America’s Security Act” by Senator Orrin Hatch (R-UT) on the very same day. Senator Hatch’s bill dealt mainly with enforcement issues and did not address legalization measures or a temporary worker program.

The DREAM Act passed the House on December 15, 2010, marking a victory for immigrant advocates who had been lobbying for a path to legalization for a portion of the undocumented immigrant population. However, its passage, along with the realignment of the House after the midterm elections in favor of Republicans, prompted those in favor of more restrictive policies to contribute to the reform of immigration policy.<sup>44</sup> Furthermore, many saw the passage of the DREAM Act as an act of weakness on behalf of the federal government in its treatment of undocumented immigration and as a sign that the federal government was incapable of effectively stemming undocumented

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<sup>42</sup> Ibid.

<sup>43</sup> Ibid.

<sup>44</sup> Muzaffar Chishti and Claire Bergeron, “States Assert New Activist Immigration Role in Altered Political Landscape,” *Migration Information Source*, January 18, 2011. Accessed June 2011, <http://www.migrationinformation.org/USFocus/display.cfm?ID=822>.

immigration. Bolstered by Republican gains across the country in the November elections and the tough stance of SB 1070, many states began to introduce and pass similar restrictive policies.<sup>45</sup>

The first state-led initiative was the challenge of the automatic birthright citizenship granted to children of undocumented immigrant parents born in the United States under the 14<sup>th</sup> Amendment of the Constitution. This initiative was announced on January 5, 2011 by a group of conservative legislators from various states and signified the character of immigration reform that would occur under their direction.<sup>46</sup> Resolutions were introduced both in the House and the Senate in January 2005 in order to revise the 14 Amendment.<sup>47</sup>

In addition, many states began to follow the example set by Arizona and SB 1070 in the pursuit of more restrictive and enforcement-focused legislation. The first quarter of 2011 saw the introduction of several bills fashioned after SB 1070 in the states of Colorado, Illinois, Iowa, Kansas, Kentucky, Mississippi, Nebraska, New Hampshire, Virginia, and Wyoming.<sup>48</sup> Although most of these did not pass due to concerns of financial and economic repercussions, some states did manage to pass bills similar to SB 1070. Indiana passed an enforcement bill on February 22, 2011, while Governor Nathan Deal of Georgia signed an Arizona-style bill on May 13, 2011. In addition, Utah

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<sup>45</sup> Ibid.

<sup>46</sup> Ibid.

<sup>47</sup> These Resolutions were introduced by Senator David Vitter (R-LA), Senator Rand Paul (R-KY), and Representative Steve King (R-IA). Muzaffar Chishti and Claire Bergeron, "Quiet Demise of the Virtual Fence," *Migration Information Source*, February 15, 2011. Accessed June 2011, <http://www.migrationinformation.org/USFocus/display.cfm?ID=827>.

<sup>48</sup> Muzaffar Chishti and Claire Bergeron, "Appeals Court Rules Against Arizona Law as Immigration Measures Lose Steam in State Legislatures," *Migration Information Source*, April 15, 2011. Accessed June 2011, <http://www.migrationinformation.org/USFocus/display.cfm?ID=835>.

Governor Gary Herbert followed suit on May 15, 2011, signing a similar bill into law.<sup>49</sup>

Alabama passed the most sweeping restrictive immigration law on June 9, 2011 with the signing of HB 56.<sup>50</sup> On the national front, a new border security bill was introduced by Representative Duncan Hunter (R-CA) that called for the building of 350 more miles fencing along the border.<sup>51</sup>

The rising trend in restrictive immigration policy on the state level was noted by various Mexican legislators throughout the policymaking process for the new Migration Law. This trend and the subsequent awareness on behalf of Mexican policymakers influenced the relatively swift passage of the bill in addition to its content. The rash of restrictive immigration bills in the United States was referenced in the Chamber of Deputies during the discussion of the Executive Council's ruling on the proposed immigration bill.

With the passage of this bill, we are guided with the undeniable necessity to respect the human rights of migrants. In a special way, this ruling represents a response to a pacifist protest against the inhumane normative that has guided some states within the United States against our fellow countrymen, who settle in that country in search of better working and living conditions. Among these include children, adolescents, and women, those of who are workers and who deserve respect, not treatment reserved for delinquents. This ruling opens the door to the possibility of Mexico recovering its moral and legal power before the international community, in defense of our emigrants.<sup>52</sup> The restrictive nature of recent US immigration policy not only prompted the Mexican government to react with pertinent legislation, it also influenced the nature of the new legislation. In order to procure reciprocal equal treatment of Mexican immigrants and the

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<sup>49</sup> Muzaffar Chishti and Claire Bergeron, "DHS Announces End to Controversial Post-9/11 Immigrant Registration and Tracking Program," *Migration Information Source*, May 17, 2011. Accessed June 2011, <http://www.migrationinformation.org/USFocus/display.cfm?ID=840>.

<sup>50</sup> Muzaffar Chishti and Claire Bergeron, "Supreme Court Upholds Legal Arizona Workers Act with Limited Implications for Other State Immigration Laws," *Migration Information Source*, June 15, 2011. Accessed June 2011, <http://www.migrationinformation.org/USFocus/display.cfm?ID=843>.

<sup>51</sup> Muzaffar Chishti and Claire Bergeron, "Appeals Court Rules Against Arizona Law as Immigration Measures Lose Steam in State Legislatures."

<sup>52</sup> *Diario de los Debates de la Cámara de Diputados*, April 29, 2011

legitimacy to make such demands, the Mexican government made human rights the guiding principle of the new Migration Law.

### 5.3 *Chronological Overview*

The chart below illustrates the fact that once the United States entered the second phase of immigration as a high politics issue from the beginning of 2010 until the passage of the Mexican Migration Law, legislative activity was accelerated in Mexican domestic politics. Despite the fact that some initiatives and programs were implemented by the Mexican government on behalf of the modernization of Mexican immigration policy prior to this era of high politics, it is still of particular importance due to the fact that the bill was drafted and passed within this span of time.

The beginning of the second high politics era began in December, 2009 with the introduction of the first comprehensive immigration reform proposal in the United States in over two years. This reopened the discussion of comprehensive immigration reform, which resulted in the adaptation of SB 1070. The passage of the controversial and restrictive Arizona law preceded the completion of the first draft of the Mexican Migration Law by 75 days. The need for a new immigration policy in Mexico had been addressed in many official capacities for years. This included the Joint Resolution, “Mexico and the Migration Phenomenon,” which stated in 2006 that Mexico would adopt a new law within the next 15 to 20 years. However, this process was stimulated and sped up by the reintroduction of immigration onto the high politics realm in the United States and the passage of restrictive immigration policies that were perceived to adversely affect the Mexican population in the United States.

The trend continued in the United States with the introduction of the DREAM Act in addition to the Leahy-Menendez bill and the Strengthening our Commitment to Legal Immigration and America's Security Act. Although the DREAM Act was considered to be beneficial to immigrants, it failed to pass and had to be reintroduced as a stand alone bill. The two latter bills were mainly concerned with enforcement issues and the second did not include a legalization matter, which was a vital issue to the Mexican stance on immigration reform. Therefore, the Mexican government responded by forming a working group concerning the draft of the immigration bill and presenting it to the Senate within 71 days of the introduction of the Leahy-Menendez bill and the Security Act.

The third block of United States activity began with the passage of the DREAM Act, which was seen as beneficial to the Mexican immigrant population in the United States. However, it was quickly followed by a challenge to the 14<sup>th</sup> ammendment and the issue of birthright citizenship. Within 43 days of the challenge to the idea of birthright citizenship, the Joint Commissions of the Mexican Senate had issued a ruling of the proposed bill and had presented it before the Senate. The process of the passage of the Mexican Migration Law was once again quickened by a restrictive law passed in Indiana, which was fashioned after SB 1070. The Migration Law unanimously passed the Mexican Senate and was sent to the Chamber of Deputies a mere two days after the passage of the Indiana law.

The next United States action consisted of the introduction of a new border security bill, which proposed the building of an additional 350 miles of a border wall. The idea of a border wall has always been viewed as a contentious topic by the Mexican government, which was consistently expressed discontent and opposition to the building of a border

wall along the U.S.-Mexico border, a position in place since the passage of a similar bill in 2006. 45 days after the introduction of the Border Security bill, the Mexican Chamber of Deputies had both issued a ruling on the bill and passed it unanimously. This was followed by the passage of bills similar to SB 1070 in both Georgia and Utah, which was responded to in nine days by the signing of the Migration Law by President Calderón.

The time lapse between United States action and Mexican actions never exceeded more than 75 days, or a month and a half. The short lapse in the chronological order of events between the United States and Mexico in terms of immigration policy shows a causal relationship. As the United States returned to immigration as a high politics issue and began to pass restrictive policy at the state level, the Mexican government began to aggressively engage in the policymaking process in order to pass a reactionary immigration policy. The amount of time that passed from the beginning of the second high politics era until the publication of the Migration Law was 525 days, which is just shy of a year and a half.

However, the main polarizing factor in the most recent era of immigration as high politics in the United States was the passage of SB 1070 in Arizona. This is the legislation that embodied all the components of U.S. immigration policy traditionally opposed by Mexico, due to its exclusive focus on enforcement and a high degree of criminalization. Not only did it signify a dramatic shift in restrictive immigration policy, but it also served as a template for many state-led initiatives that emerged in the following year. It was in the aftermath of SB 1070 that Mexico accelerated the policymaking process. This process, which included the drafting, revising and passage of

the new Migration Law, was completed in just 13 months after the introduction of SB 1070.

In addition, Mexico was consistently influenced to act due to the rise in restrictive immigration policies and accusations of hypocrisy on behalf of the United States.

If we demand that our neighbors in the North treat Mexican labor immigrants with dignity and respect, then we should guarantee the same treatment to migrant workers from the South that are in transit through our country. Our immigration policy cannot be a light in the United States and darkness in our own territory for migrants from Central and South America. The legal mandates that discriminate and criminalize Central and South American migrants in transit through Mexico would not only deny our humanitarian tradition of political asylum and good neighborly practices, but they would also be like a pencil erasing the entire history of Mexican foreign policy.<sup>53</sup> As the growing trend of restrictive policies grew on the state level in the United States,

the poignancy of hypocrisy accusations increased and began to resonate loudly with Mexican legislators. The beginning half of 2011 saw a plethora of policies emulating SB 1070, which made it even more imperative for Mexico to respond with an immigration policy based in the protection of rights in order to safeguard the same rights of Mexican emigrants in the United States.

Table 15: Chronological Legislative Actions

United States Actions	Mexican Actions	Time Lapse
December 15, 2009 Introduction of the Comprehensive Immigration Reform for America's Security and Prosperity Act of 2009		
March 19, 2010 Graham-Schumer proposal for comprehensive immigration reform		

<sup>53</sup> Sesión Ordinaria de la Cámara de Senadores, February 24, 2011.

April 23, 2010 Passage of SB 1070 in Arizona		75 Days
	July 7, 2010 Completion of immigration law draft	
September 14, 2010 Introduction of DREAM Act		
September 29, 2010 Introduction of Leahy-Menendez bill and the Strengthening our Commitment to Legal Immigration and America's Security Act		71 Days
	November 2010 Creation of Working Group in Senate	
	December 9, 2010 Bill presented to Senate	
December 15, 2010 Passage of the DREAM Act in the House		
January 5, 2011 Challenge of 14 <sup>th</sup> Amendment		43 Days
	January 27, 2011 Joint Commissions release statement of preliminary opinions about the bill	
	February 10, 2011 Joint Commissions published final ruling of bill	
	February 17, 2011 Ruling submitted to review by Senate	
February 22, 2011 Passage of Indiana bill	February 22, 2011 Ruling debated in the Senate and passed in general	2 Days
	February 24, 2011	



	Joint Commissions submit final ruling to Senate, bill passes in particular and is sent to the Chamber of Congress	
March 15, 2011 Introduction of Border Security bill		45 Days
	April 29, 2011 Joint Commissions presents their ruling on the bill to the Chamber of Deputies and is open to debate. The bill is passed unanimously.	
May 13, 2011 Passage of Georgia bill		
May 15, 2011 Passage of Utah bill		9 Days
	May 24, 2011 Law signed by President Felipe Calderon and published in the DOF	

The strategy of soft reciprocity gained momentum in Mexico as the United States continued to experience the passage of state level restrictive immigration policy, which was specifically embodied in Arizona's SB 1070. As the rights of Mexican immigrants were perceived to be increasingly threatened in the United States, the Mexican government sought to apply the strategy of soft reciprocity in order to eradicate the accusations of hypocrisy and gain leverage in the struggle for the protection of Mexican immigrant rights abroad. This strategy culminated in the passage of the Migration Law in May 2011, which was a legislative process that spanned only the course of a few months, from the time of its drafting to the date of its publication in the DOF. From the date of its presentation in Congress, it took 167 for the Migration Law to become law and be published in the Official Diary. This is extremely low compared to the average of 689

days for other laws and decrees in the same legislative session in the Chamber of Congress.<sup>54</sup>

The strategy of soft reciprocity lent legitimacy to Mexican demands for the protection of immigrant rights in the United States. Although it will take time to determine the tangible effects of the application of this strategy and Mexico's new Migration Law, legal action on behalf of the Mexican government in the aftermath of the passage of the Migration Law illustrates Mexico's confidence in the newly formed platform of legislative legitimacy. This assurance is illustrated by the series of legal briefs and lawsuits filed by Mexico against various states that have passed immigration laws similar to SB 1070.

In the same fashion as its lawsuit against Arizona, Mexico filed a legal brief in opposition to Utah's immigration law on June 7, 2011. The brief stated that Utah's HB497 was unconstitutional and demanded an injunction against its implementation.

Furthermore, the brief stated that,

Mexico respectfully submits that if HB497 is allowed to take effect it will have significant and long-lasting adverse impact on U.S.-Mexico bilateral relations, and on Mexican citizens and other people of Latin American descent present in Utah.<sup>55</sup> This brief was joined by 12 other countries, all located in Latin America.<sup>56</sup> Similar briefs were drafted by Mexico against Alabama on August 4, 2011 and Georgia on August 31, 2011. Both of these briefs cited the same concerns and were also joined by a variety of Latin American countries, although Mexico was the leader in the filing of the briefs. The

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<sup>54</sup> Mexican Chamber of Deputies, <http://www.diputados.gob.mx/Votaciones.htm>. The shortest time frame was 12 days, and the longest time frame was 2,981 days.

<sup>55</sup> Dennis Romboy, "Mexico, 13 other nations say Utah illegal immigration law could strain diplomatic relations," *Deseret News*, June 8, 2011. Accessed September 7, 2011, <http://www.deseretnews.com/article/705374152/Mexico-13-other-nations-say-Utah-illegal-immigration-law-could-strain-diplomatic-relations.html>.

<sup>56</sup> These countries included: Argentina, Brazil, Chile, Columbia, Costa Rica, Ecuador, El Salvador, Guatemala, Honduras, Nicaragua, Paraguay, Peru and Uruguay. Ibid.

willingness demonstrated by the Mexican government to become even more politically and legally involved in the struggle against restrictive immigration laws is a direct result of the application of the strategy of soft reciprocity. The upward trend in participating in lawsuits against the states in the United States began only when the strategy of soft reciprocity began to gain momentum. Furthermore, this trend has increased with the passage of the new Migration Law, which is indicative of the augmented leverage Mexico is experiencing due to its new legislative reality.

## 6.0 **Conclusion**

Immigration into the United States has increased significantly over the past decade, constituting a significant challenge for the U.S. The augmentation of both documented and undocumented immigration has resulted in the intermittent transition of immigration into a high politics issue from a low politics issue. There have been two recent eras of immigration as a high politics issue in the United States that bear consequence on the construction of Mexican immigration policy. The first phase was from 2004 until 2006, which corresponded with an unprecedented spike in immigration. During this time, the Mexican government articulated the need for a new immigration policy and began to compile a list of principles and goals for the impending change in legislation.

The second phase of immigration as a high politics issue ran from 2010 until 2011. After more than three years of low activity in the immigration realm, immigration once again returned to the spotlight as states began to pass restrictive immigration policies that focused on enforcement. The Mexican government and people perceive immigration

policies that have an exclusive focus on enforcement and are void of a legalization or integration aspect as being detrimental to the interests of Mexican immigrants residing in the United States. Due to the overlying principle of soft reciprocity in Mexican immigration policy, the Mexican government responded with the passage of a fairly progressive immigration law in the aftermath of increasingly restrictive U.S. policy. This is especially evident in the legislative action taken by the Mexican government in response to the passage of Arizona's SB 1070.

The creation of the Mexican Migration Law was also influenced by criticisms of hypocrisy by the United States. Mexican legislators believed that as long as Mexico upheld an immigration policy that created a hostile and repressive environment for foreigners, then the government would not have the moral leverage to counter similar circumstances in the United States. As Mexican opposition to U.S. policies became more deafening, U.S. allegations of a disjuncture in Mexican policy and demands also increased. Therefore, when accusations of hypocrisy were leveled at the Mexican government, legislators reacted with a piece of legislation that would restore the legitimacy needed to advocate for the rights of Mexican immigrants in the United States.

This signifies that US immigration policy had a monumental influence on the passage of the new Migration Law due to its detrimental effects on the emigration policy strategy of extended incorporation. The chronological correspondence between the intensification of the immigration debate in the United States and the policymaking process in Mexico illustrates a direct causal relationship and the importance of international influences. However, the legislative actions of the United States are only weighted so heavily due to the domestic importance of Mexican emigrants in the United States. Without the political

and economic magnitude attributed to the Mexican community abroad, the strategy of soft reciprocity would not have gained such momentum. Therefore, while international influences provided the stimulus for legislative actions in Mexico, domestic concerns for the emigrant population provided legitimacy for the policy direction taken and the final passage of the new Migration Law.

## Chapter 7: Conclusion

### 1.0 **Introduction**

This dissertation seeks to explain the passage of the Mexican Migration Law, including various aspects of timing, internal and external influences and the strategy of soft reciprocity in its conception. This chapter will present those findings, in addition to including a review of implications of these findings in the field of immigration policy theory. In addition, possibilities of future research will be discussed.

### 2.0 **Problem Statement and Methodology**

This project began with a question concerning inherent hypocrisy in Mexican immigration policy and related demands for the increased protection of rights of Mexican emigrants in the United States. Prior to the passage of the Migration Law, the Mexican government implemented a strategy of extended incorporation, which included aggressively advocating for the protection of Mexican emigrants abroad whose rights were seemingly threatened by restrictive US immigration policy. This was in direct contradiction with Mexico's own history of the violation of migrant rights, highlighting the disjuncture between international human rights obligations and domestic policy.

This hypocrisy was eventually dealt with through the strategy of soft reciprocity. Therefore, the issue of hypocrisy was addressed and eventually remedied by the

amendments to the LGP and the passage of the Migration Law. The question of timing and causal mechanisms of change then became the focus of the project. Why did this policy emerge at the time it did and what were the major agents of change, both domestically and internationally?

In order to answer these questions, I utilized a variety of different methods and sources. I first completed a round of field research during which I interviewed a variety of public officials to obtain a panoramic understanding of the complexities of the immigration and policy debate in Mexico. I also visited the southern border in order to have a first hand perspective of the border and the reality of transmigration through Mexico. Finally, I gained access to a number of resources that are only available through the INM headquarters in Mexico City. In addition to field research, I used many primary resources such as drafts of bills, passed legislation, and congressional records from both Mexico and the United States. Through the examination of these sources, I was able to analyze the chronology of the policymaking process and the emergence of popular ideas and theoretical strategies that contributed to the tone and direction of the Migration Law.

### 3.0 **Summary of Results**

Through my research, I found that the passage of the Migration Law was primarily influenced by Mexico's outreach policy for Mexican emigrants and secondarily by civil society and regional criticisms of Mexican immigration policy. These influencing factors intersected and created increasing pressure, eventually coalescing in order to produce the new Migration Law. Although at first glance these three variables seem disjointed under

the umbrella of immigration policy, they are inherently connected through an overall strategy of migration management, referred to in this dissertation as soft reciprocity.

### 3.1 *Intersection of Variables*

Although Mexico is a signatory to multiple international treaties concerning the protection of human rights in general and migrant rights in particular, domestic immigration legislation did not reflect the ideals upheld in these documents. There was a distinct lag in implementation of international human rights norms accompanied by intense corruption and violence. This translated into steep violence against migrants, which was exacerbated by an increase in transmigration and President Calderón's campaign against illicit trafficking. This elicited a strong response from Mexican civil society, as many social organizations fought for the better protection of immigrant rights in Mexico. This popular criticism particularly resonated with Mexican officials in the aftermath of democratization due to an increased need for public accountability.

In addition, Mexico's role as a regional leader in the realm of migration management was jeopardized as a result of this inherent hypocrisy. As migrant violence increased in Mexico, many regional neighbors began to express discontent with Mexican domestic practices. These concerns were augmented in the aftermath of the renovation of Mexican drug policy and the subsequent increase in transmigrant violence. Vocal opposition from both civil society advocates and regional partners both influenced the development of the Migration Law.

Mexico's relationship with its emigrant population was the most poignant factor in the creation of the Migration Law. Mexican emigration has increased in recent years, leading to a powerful emigrant community with great economic and political influence.



After years of emigrant negligence, the Mexican government switched to a strategy of extended incorporation, which involved greater advocacy for migrant rights abroad and a better institutional infrastructure for emigrant outreach. However, this policy of extended incorporation was undermined by accusations of Mexican hypocrisy in terms of Mexican treatment of foreigners in Mexican territory. This contradiction elicited criticism from US policymakers, especially as Mexican opposition became more vocal against restrictive tendencies in the United States. US claims of hypocrisy destabilized Mexico's policy of extended incorporation due to the fact that it highlighted the lack of legitimacy and moral authority in Mexican claims for greater protection of migrants. US criticisms of Mexican immigration policy closely mirrored the discontent expressed by civil society groups and regional partners.

These three variables began to emerge roughly around the same time. Regional grievances were compounded by increased transmigration and violence against migrants in Mexico in the early 2000s, especially during President Calderón's tenure. Civil society complaints were magnified by the same issue of increasing violence. In addition, Mexican democratization in 2000 augmented the saliency of civil society discontent, as policymakers were held more accountable by their constituencies. Finally, Mexico's policy of extended incorporation became more important as emigrant remittances and political capital multiplied in the 2000s. Furthermore, increasingly restrictive US immigration policies threatened Mexico's emigration policy strategy as they called attention to inherent hypocrisy and the lack of moral authority with which Mexico advocated on behalf of its emigrants. As these three variables simultaneously gained strength and notoriety, the need for a new Migration Law became abundantly apparent.

### ***3.2 Soft Reciprocity and the Migration Law***

The concept of soft reciprocity serves a vital function in the next era of theorizing immigration policy. Until now, immigration policy theory has nearly focused exclusively on developed countries with substantial control over incoming population, such as the United States or Western European countries. However, there are many countries that operate at the crossroads of international migration, holding multiple roles and experiencing many obstacles. These countries are forced to confront migration management with an eye on both its front door and its back door. Mexico is a prime example of this as a sending, receiving and transit country. In cases such as Mexico, one migration flow often eclipses the other two but cannot be divorced from them. Mexican immigration policy was deeply flawed and criticized by the three variables discussed above; however, it could not be addressed without consideration of the most salient flow, emigration. Mexico operates at a power disadvantage in its attempt to manage its emigration flow; therefore, it used immigration policy as an umbrella to combine its three roles of migration and generate legitimacy and moral authority that otherwise would not have existed. This is the strategy of soft reciprocity.

The founding principles and legislative process leading up to the Migration Law clearly illustrate the application of the strategy of soft reciprocity. This is mainly due to the confluence of variables previously discussed. In the years leading up to the creation of the Migration Law, a few different processes began to coalesce and present real consequences for Mexico. First and foremost, the Mexican emigrant community became an integral part of Mexico's national interests in both economic and political terms. Therefore, Mexico began to pursue a strategy of extended incorporation, which included

demanding better protection of Mexicans under US immigration law. This strategy came under intense scrutiny as US policymakers accused Mexico of hypocritically denying human rights benefits to Central American transmigrants that it so strongly advocated for abroad. In addition, Mexico was experiencing a rebirth of civil society action, which held human immigration policy in high regard. Finally, Central American neighbors were becoming increasingly exacerbated due to an increase in violence against Central American migrants in Mexican territory. These factors combined to create an impetus for Mexico to drastically rethink immigration policy, culminating in the Migration Law.

Mexico had to find a way to appease such criticisms, retain a leadership role in regional migration management, and strengthen its existing policy of extended incorporation. This is how the strategy of soft reciprocity began to slowly emerge. Due to the fact that Mexico was seeking to influence the area of human rights, which is considered an obligation *erga omnes*, negative reprisals were not possible. Therefore, Mexico began to liberalize immigration policy along the lines of internationally recognized human rights standards, although still initially falling short due to the limitations of the LGP. This was a functional aspect of soft reciprocity, based on the principle that soft reciprocity maintains the assumption that adhering to an international norm will result in benefits in the future. The international norm utilized in the case of Mexican immigration policy is international human rights standards. By harmonizing domestic policy with international human rights ideals, Mexican policymakers aspired to procure the same protections for Mexican emigrants in the United States. The logic underlying this principle is that if Mexico adheres to an international norm, then it will retain moral authority in that area to demand mutually recognized protections in instances

that will benefit Mexico, which in this specific case refers to the wellbeing of Mexicans in the United States. This was explicitly recognized by interviewed representatives of the INM. “Adjusting our law is going to be very important in order to have better moral authority with which to demand or negotiate immigration policy with the United States.”<sup>1</sup> This illustrates that Mexico sought to attain a higher degree of moral authority in order to better implement its strategy of soft reciprocity.

This naturally leads to the next principle of soft reciprocity exhibited by the renovation of Mexican immigration policy: Legitimacy resulting in leverage is a benefit of soft reciprocity. By adjusting immigration policy, Mexico was able to attain legitimacy and subsequent leverage in the fight for migrant rights. Without changing its own policy, Mexico was open to the very same criticisms of hypocrisy that it had endured for years. Therefore, by utilizing international human rights norms and achieving a certain level of moral authority, Mexico now had a stronger bargaining tool it could use to better employ its emigration policy of extended incorporation.

Although Mexico had been trying for quite some time to better implement extended incorporation and effectively sway US immigration policy, it had failed due to the fact that it lacked moral authority and was at such a power disadvantage. It was highly unlikely that Mexico would influence any kind of US policy independently. However, by liberalizing immigration policy and eventually passing the Migration Law, Mexico gained the weight of a powerful international regime. This is reflective of another soft reciprocity principle: Countries with a power disadvantage most often utilize soft reciprocity.

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<sup>1</sup> INM official, interviewed by Marcelle Beaulieu, July 22, 2010, Mexico City.

Additionally, if it is assumed that one of the main reasons Mexico pursued a new Migration Law was to strengthen its policy of extended incorporation, then this specific case study further emphasizes another principle of soft reciprocity. Soft reciprocity is applicable to multilateral situations. Although reciprocity is most often conceptualized in strictly bilateral situations, that need not always be the case. In this instance, Mexico passed a law that greatly benefited neighbors to the South as opposed to its giant Northern neighbor, the United States. However, one of Mexico's primary aims was to use this international human rights norm in order to influence a third party that did not directly benefit from the new law. The logic behind this is that if all parties buy into this international norm, which all of them do in principle if not entirely in practice, then granting benefits to one party could potentially lead to positive consequences from another party. By signing, ratifying and upholding these international norms, then all parties belong to a type of club in which upholding club regulations and obligations to one member intrinsically effects all members, and could possibly benefit a peripheral relationship. In this case, Mexico hoped that providing protection to Central American migrants in Mexico would serve as a tool in procuring the same protections for Mexican emigrants in the United States.

Reciprocity traditionally also speaks to specific equality of benefits. This means that actors often only participate in reciprocity in instances in which benefits are clearly demarcated and equal. However, one of the principles of soft reciprocity states that soft reciprocity does not admit specific calculations of self-interest due to the fact that projected benefits will only be revealed in the future. Therefore, by passing the Migration Law, Mexico is not guaranteed that Mexican emigrants will indirectly benefit from a

comparable liberalization of immigration policy in the United States. Such benefits are not guaranteed and will only be revealed in the future. What can be guaranteed is the fact without passing a new Migration Law, Mexico's demands for less restrictive US immigration policy would have been disregarded as it had been continuously in the past. The strategy of soft reciprocity lends a platform of legitimacy and moral authority to these demands.

This dissertation is not arguing that any future changes in US immigration policy or attempts at comprehensive immigration reform will necessarily be the direct result of Mexico's Migration Law or its strategy of soft reciprocity. It is, however, arguing that its policy of extended incorporation was greatly hindered due to Mexico's own track record in migrant protection and human rights violations. Even if it never has a direct impact on US immigration policy, Mexico is still obligated to do everything feasible to advocate for emigrant rights under its policy of extended incorporation due to their extreme economic and political importance. As long as the LGP stood and human rights violations went unaddressed, Mexico was not perceived as being fully committed to the wellbeing of its own emigrants due to accusations of hypocrisy.

The entire policymaking process supports the theory of soft reciprocity. In more than one occasion, Mexican policymakers directly linked the situations along the Northern and Southern border, arguing that Mexico could not afford to be a hypocrite in terms of immigration policy. In addition, the consternation over article 26 due to its resemblance to US border militarization further demonstrates the extent to which policymakers were trying to escape previously restrictive policies and focus more on a human rights foundation. There were several calls for congruence in immigration and emigration

policy along with an intense concentration on the decriminalization of migrants in Mexico. This illustrates that soft reciprocity was a driving factor in the creation of the Migration Law.

Due to the fact that the Migration Law deals with a normatively positive topic such as human rights and migrant rights, it would be convenient to argue that these steps were taken purely as a result of altruistic motivations. Of course, granting the protection of widespread rights to a vulnerable population would be normatively popular both domestically and internationally. However, if altruism were the sole reason for the renovation of Mexican immigration policy, then there would not have been such a substantial lag of time between the time of ratification of major human rights treaties and the passage of the Migration Law. This is particularly true of the Convention on Migrant Workers and their Families, which entered into force in July 2003. Something prevented Mexico from fully implementing the tenets of this convention and others. This dissertation argues that although altruistic motivations were helpful in choosing from a socially responsible set of alternatives for a new immigration policy, the main stimulus for the Migration Law was self-interest, which found pragmatic benefits in utilizing the international human rights regime and the strategy of soft reciprocity. It was not until Mexico came under scrutiny for rampant human rights abuses and began enduring sustained criticisms of hypocrisy from influential domestic and international actors that immigration policy became a critical issue.

As stated, the most crucial component leading to the liberalization of Mexican immigration policy was Mexico's relationship with its emigrant population and the importance of the validity of extended incorporation. The wellbeing of this population

was perceived to be endangered as the US pursued more restrictive immigration policy. Therefore, under the strategy of extended incorporation, Mexico was compelled to advocate for better protection. However, this was hindered by its own restrictive policy under the LGP and Mexican legitimacy was undercut by criticisms of hypocrisy. Therefore, Mexico liberalized its immigration policy and passed the progressive Migration Law.

#### 4.0 **Discussion of Results**

One of the main contributions of this dissertation is theorizing the way in which a smaller, less powerful country can attempt to exert influence over more powerful neighbors in certain issue areas. In terms of immigration, Mexico has always occupied a less influential role in establishing bilateral policy than the United States. However, as Mexican emigrants were increasingly affected by such unilateral policy, Mexico needed to find a way to legitimately express discontent and extend protection. Therefore, Mexico utilized the international human rights regime in order to gain leverage and moral authority in matters of migration management. Without international legitimacy and backing, Mexico's demands for greater protection of Mexican emigrants were subject to various claims of hypocrisy. By utilizing international human rights norms, Mexico was able to level its own objections from a foundation of moral authority, which was the basis of the strategy of soft reciprocity.

However, there are two crucial issues to be considered. First, it is important to note that the immediate benefit of utilizing international human rights standards through the strategy of soft reciprocity is to garner more leverage and moral authority. In the short



term, this will allow the acting party to continue to advocate from a more powerful position, legitimized by internationally accepted norms. It may or may not be feasible to expect that expressed objections will actually affect change in the policymaking process of a more powerful counterpart. This could be a possible long-term benefit, but it will take time and more analysis to confirm such a phenomenon.

Secondly, there is the important issue of altruism versus state interests in the application of international human rights norms and soft reciprocity. Although it can be treated as a dichotomy, it is important to consider the importance of both aspects in the utilization of human rights standards. State interests play a crucial role in the application of soft reciprocity, mainly because benefits are expected in all cases of reciprocity, otherwise it would not have a reciprocal nature. In the Mexican instance of soft reciprocity, it is assumed that Mexico's policy of extended incorporation and its relationship with Mexican emigrants will be fortified, which serves as a crucial interest for Mexico. Altruism also plays a role in soft reciprocity due to the fact that it deals with issues of obligations *erga omnes*, which are inherently normative issue areas. Therefore, altruism plays a role in identifying a set of socially responsible and accepted alternatives for policy action. In terms of Mexican immigration policy, state interests and altruism intersected to find a normatively acceptable line of action that also benefitted Mexico's relationship with an economically and politically important sector of the population.

This dissertation also speaks to the various aspects to be considered when theorizing immigration policy. The bulk of immigration policy theory deals mainly with the role of receiving countries, which generally occurs within a typical power imbalance in the favor of the receiving country. However, there are many contexts in which the geopolitical

circumstances are more varied and complex than that of an industrialized country receiving high amounts of immigration. An example of a diverse situation is that of Mexico, in which a country experiences the three different flows of emigration, immigration and transmigration. Although this is not the typical scenario, it does help shed light on theorizing the construction of immigration policy within a context lacking a favorable power balance and considering the importance of emigrant populations in the construction of immigration policy.

The argument in this dissertation is founded in a theoretical tradition based partially in the perseverance and protection of state interests. The construction of contemporary Mexican immigration policy was fueled primarily by concern for the Mexican community abroad and the desire to preserve their economic and political investments in domestic affairs, which is what served as the basis for the strategy of soft reciprocity. However, despite the attention to state interests, this is not a strictly realist explanation of the adaptation of the Mexican Migration Law. If it were a purely realist argument, then the Mexican government might have maintained the strategy of militarization begun under the Fox administration and Plan Sur. Instead, due to the hope of future cooperation and reciprocal benefits, the Mexican government chose an immigration policy based in human rights. This illustrates the importance in the belief of cooperation, despite the fact that the strategy of reciprocity was entered into without an explicit agreement of future collaboration in the regional protection of immigrant rights.

Additionally, the Mexican case study serves as a helpful example due to the fact that the outcome achieved through the adaptation of a more progressive immigration policy was different than would be expected theoretically. Generally, it is thought that when

two countries with a definite imbalance of power engage in a cooperative agreement, then it is the policies of the more powerful country that will be emulated. However, with the reduction of militarization practices and the adaptation of a policy based in the protection of human rights and the application of universal rights to foreigners, Mexico has pursued a distinctly different immigration policy than the United States. This once again illustrates the agency contributed to Mexican interests and domestic actors, in addition to providing a model for the study of immigration policies of countries with various roles.

## 5.0 **Possibilities for Future Research**

There are many possible areas of future research for this topic, especially due to the fact that the law is in its beginning stages. The Migration Law is fairly new and there are many challenges to come in the near future. This opens the possibilities of future projects in relation to implementation, enforcement, and benefits.

### 5.1 ***Implementation***

The first issue of implementation was the passage of the Regulations, or Procedures, meant to accompany the Migration Law and explicitly stipulate measures to be taken. Although the Migration Law was passed in May 2011, the Regulations were not published in the Diario Oficial until November 2012. The Regulations carefully lay out the procedures to be followed in order to apply for newly created visas and the process to convert immigration status. There are mixed reviews of the Regulations on behalf of Mexican civil society. On one hand, it is acknowledged that the Mexican government “simulated the participation of civil society organizations that promote and defend

migrants.”<sup>2</sup> On the other hand, any civil society activists claim that the language of the Reglamento is too general, failing to express an explicit protection of migrant rights and creating a large space for discretionary powers on behalf of immigration officials.

Another issue of implementation resides along the border area between Mexico and Guatemala. The Southern border of Mexico has long been considered a significantly porous border due to a lack of resources and personnel. It has been difficult for the Mexican government to maintain a level of authority and control in terms of transmigration and immigration into Mexico. Therefore, it will be a topic of interest to monitor the implementation of the Migration Law and verify if it obtains one of its goals of promoting legal immigration and transmigration. This will require a large degree of infrastructure, training, and resources, which will presumably present a large challenge to the INM and the Mexican government.

Another challenge of implementation that should be examined is the problem of corruption and extra-statal violence. In addition to the legal precedent presented by the LGP and Mexican Constitution, these two factors have continuously added to problems of the violation of immigrant rights. Therefore, if one of the goals of the Migration Law is to foster a safe and secure environment for foreigners in Mexico, than the issue of gangs, cartel violence, and personnel corruption must also be addressed. This is a practical aspect of the new strategy that will be difficult to enforce; however, its importance is paramount.

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<sup>2</sup> Grupo de Trabajo Sobre Política Migratoria, “Reglamento de la Ley de Migración se publica con cambios, pero persisten problemas de fondo que vulneran los derechos humanos de la población migrante en México” October 1, 2012. Available Online: [http://www.sinfronteras.org.mx/attachments/article/1361/Comunicado\\_de\\_Prensa\\_Reglamento\\_1\\_OCTUBRE.pdf](http://www.sinfronteras.org.mx/attachments/article/1361/Comunicado_de_Prensa_Reglamento_1_OCTUBRE.pdf)

Another challenge to be considered is the degree of relevance between the stated objectives of the Migration Law and the consequences of its implementation. One of the main issues of immigration policy is that there tends to be a rather large policy gap between intended and actual results. Due to the fact that immigration policy deals with a human phenomenon, it is extremely difficult for lawmakers to foresee possible issues in the future. Therefore, oftentimes immigration policies are not only not as efficient as originally conceived, but they sometimes tend to produce results that are contrary to original objectives. The main goals of the Migration Law are to produce and promote legal flows of immigration and transmigration while simultaneously increasing the protection of foreigner's rights in Mexico. An interesting future study would produce a quantitative investigation of the increased or decreased protection of rights in addition to the legalization of immigration flows into Mexico.

## ***5.2 Benefits of Soft Reciprocity***

Another outcome that will be a subject of future academic interest is the outcome of the strategy of soft reciprocity. As argued throughout this dissertation, the Migration Law is based upon a strategy of soft reciprocity. This means that by guaranteeing the protection of migrant rights for foreigners in Mexico, Mexico is in turn hoping to gain legitimacy and moral authority in its fight for the protection of rights of Mexican emigrants in the United States. There are two distinct aspects of this topic. The first would be an inquiry into whether or not the strategy of soft reciprocity provided Mexico with a greater degree of legal and moral legitimacy that translated into leverage for demanding the greater protection of immigrant rights in the United States. Since the passage of the Migration Law, Mexico has brought several lawsuits against various states

due to perceived egregious restrictions in immigration laws; however, it will be interesting to note whether or not Mexico continues to be as outspoken, or if this assertiveness increases or decreases.

The second aspect is the actual tangible benefits of the strategy of soft reciprocity. Did the passage of the Migration Law and the creation of a more hospitable environment for foreigners in Mexico translate into better treatment of Mexican immigrants in the United States? Was there a decrease or increase in restrictive immigration policy throughout the United States in the aftermath of the passage of the Migration Law? If not, has the strategy of soft reciprocity been expanded upon in order to stimulate greater benefits?

There has already been a great deal of immigration policy activity in the United States since the passage of the Migration Law. President Obama passed an executive order, Deferred Action for Childhood Arrivals (DACA) on June 15, 2012. DACA, viewed as a modification of the failed DREAM Act, essentially allows immigrants who arrived in the United States prior to the age of 16 a reprieve from deportation and additionally allows them to work legally and obtain a drivers license. This was perceived as a huge victory among immigrants in the United States.

In addition to the passage of DACA, United States policymakers have once again revisited the issue of comprehensive immigration reform for the first time in several years. The “Gang of Eight,” a bipartisan group of Congressmen, presented a bill, which passed the Senate Judiciary Committee on May 21, 2013. The bill includes a comprehensive plan for immigration reform, including border enforcement in addition to

internal visa revisions. These initiatives are considered substantial progress in a policy area that has been stunted and overtly restrictive for several years.

It would be far reaching to conclude that these policy reforms are solely the result of Mexico's strategy of soft reciprocity. It is more feasible that these policy modifications are also related to two distinct factors. The first is the 2012 presidential election, in which the Republican Party suffered a loss many attribute to its lacking relationship with the growing Hispanic electorate. In the aftermath of this election, many Republicans have concluded that this relationship needs to be fostered via a platform change in immigration reform. In addition, Democrats hope to maintain this electoral advantage by continuing courting Latinos with progressive immigration reform.

The second factor is the decrease in net immigration flows from Mexico. The Pew Hispanic Center reports that return migration to Mexico has increased while Mexican immigration to the United States has shown a recent decline.<sup>3</sup> Though net Mexican immigration to the United States was on the rise from 2000 until 2007, a slight decline was registered in 2010, leading to a loss of .6 million Mexican born population between 2007 and 2011.<sup>4</sup> The decrease in net immigration could have resulted in a diminishing pressure for policymakers to uphold draconian immigration policies throughout the United States.

However, it could be argued that, in addition to the two previously mentioned factors, pressure from the international human rights regime have influenced the re-visitation of comprehensive immigration reform in the United States. In addition, Mexico's recent

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<sup>3</sup> Jeffrey Passel, D'Vera Cohn, and Ana Gonzalez-Barrera, "Net Migration From Mexico Falls to Zero-and Perhaps Less," (Washington DC: Pew Research: Hispanic Center, April 23, 2012). Available Online: <http://www.pewhispanic.org/2012/04/23/ii-migration-between-the-u-s-and-mexico/>

<sup>4</sup> Ibid.

ardor for international human rights norms and the passage of the Migration Law signify a regional shift in migration management that bears consequences for the United States in terms of moral authority and legitimacy. President Obama alluded to the underlying normativity in his decision to pass DACA in his Rose Garden Speech announcing the new initiative on June 15, 2012.

There's no reason that we can't come together and get this done. As long as I am President, I will not give up on this issue. Not only because it's the right thing to do for our economy, and CEOs agree with me, not just because it's the right thing to do for our security, but because it's the right thing to do period.<sup>5</sup>

Therefore, a continuing project could attempt to ascertain the degree to which the international human rights community, with renewed commitment from a close partner such as Mexico, will influence future immigration policy endeavors in the United States.

### 5.3 *Comparative Study*

Finally, a comparative study would be of great academic interest in the future. There are many countries that have more than one role in the phenomenon of international immigration. This is certainly true of countries that are placed in between immigration flows from non-developed to developed countries. This can be found in countries that border the edge of the European Union and stand in between countries that wish to enter the European Union. Countries such as Morocco face many of the same challenges confronted by Mexico, as Moroccan citizens are a large percentage of Spain's immigration while Morocco simultaneously presents a barrier to larger flows coming from the rest of Africa.

Both Mexico and Morocco have high levels of emigration and rank among the highest rates of remittances. In addition, both countries have experienced a spike in transit immigration in recent years. Much like Mexico's previous Plan Sur and restrictive

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<sup>5</sup> President Obama. Rose Garden Speech, June 15, 2012.



immigration policy under the LGP, Morocco has closely aligned itself with Spain in issues of immigration control. This is an anti-transit migration project with an increased establishment of internal and external controls, which are often viewed as harmful towards migrant rights. This culminated in a 2003 immigration law in which transit migration was redefined as a criminal activity.<sup>6</sup> However, as emigrants become more politically and economically important, Morocco is receiving increased criticism in terms of hypocritical treatment of transmigrants while advocating for citizens abroad. A prospective project could monitor the trajectory of Moroccan immigration policy in order to verify if the emigrant community holds enough importance to instigate the process of policy liberalization followed by Mexico in recent years.

## 6.0 **Conclusion**

This dissertation speaks to a number of contemporary issues, specifically in the field of international immigration and immigration policy. This is an area of study that holds extreme importance for every country, regardless of status as a sending, receiving, or transit country. Immigration is a phenomenon that disregards traditional concepts of territoriality and international boundaries. With the introduction of transnational livelihoods, it is paramount that countries work together to find sustainable solutions for migration management.

Each country is faced with a choice when confronted by the contemporary challenges of international immigration. These choices may be made from the top down, but their repercussions are exceedingly felt at the level of the individual: by individuals jumping

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<sup>6</sup> Ann Kimball, "The Transit State: A Comparative Analysis of Mexican and Moroccan Immigration Policies" The Center for Comparative Immigration Studies: University of California, San Diego. Working Paper, June 2007. Available online: <http://spot.pcc.edu/~sbentley/mexico.and.morocco.pdf>

trains, crossing deserts and risking their lives in order to find a way to survive. Mexico has chosen to be pragmatically altruistic by passing the Migration Law and placing priority on the protection of migrant rights: a strategy that may yield dual benefits of promoting internationally recognized human rights standards and boosting Mexico's vital relationship with an economically and politically powerful sector. Soft reciprocity represents a new choice in migration management that recognizes the complex relationship between altruism and self-interest. It is a departure from overtly restrictive immigration policy solutions and has the potential to inspire greater cooperation based on international standards of behavior in a variety of issue areas.

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