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# Legal Guerilla: Jurisdiction, Time, and Abortion Access in Mexico City

GUERRILHA JURÍDICA: JURISDIÇÃO, TEMPORALIDADE E ACESSO AO ABORTO NA CIDADE DO MÉXICO

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## Abstract

This article traces the emergence of a new politics of jurisdiction in legal abortion debates in Mexico. It analyzes how jurisdictional claims work as a kind of lawfare from “above” and “below” examining: 1) how the Mexican Supreme Court invoked technicalities of jurisdiction to settle the constitutional conflict over the decriminalization of abortion in Mexico City, and 2) how a feminist litigator reappropriated the court’s formal principles of legality toward their own ends in what they call “legal guerilla.” Drawing on ethnographic fieldwork in Mexico City, the author explores how competing jurisdictions create ambiguous spaces and temporalities of inclusion and exclusion from legality and clinical care. In closing, she argues that feminist activists who work to create access and people who seek abortion enact their own forms of “legal guerilla” as they move through these overlapping and contradictory legalities.

## Keywords

Jurisdiction; sovereignty; authority; legality; time; feminist politics.

## Resumo

*Este artigo apresenta o surgimento da nova política de jurisdição nos debates sobre o aborto legal no México. Ele analisa de que modo a judicialização funciona como uma forma de lawfare “de cima” e “de baixo”, examinando: 1) como a Suprema Corte mexicana argumentou com base em questões técnicas de competência para decidir o conflito constitucional acerca da descriminalização do aborto na Cidade do México; e 2) como litigantes feministas têm se reapropriado dos princípios formais da legalidade para alcançar determinados fins, o que se chamou de “legal guerrilla”. Com base no trabalho de campo etnográfico na Cidade do México, exploramos como jurisdições concorrentes criam espaços e temporalidades ambíguas de inclusão e exclusão da legalidade e do atendimento clínico. Por fim, argumentamos que as ativistas feministas que trabalham para criar acesso e as pessoas que buscam o aborto promovem as próprias formas de “legal guerrilla” à medida que se movem por essas legalidades sobrepostas e contraditórias.*

## Palavras-chave

Jurisdição; soberania; autoridade; legalidade; temporalidade; políticas feministas.

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## INTRODUCTION

In several recent court cases in Latin America, national supreme courts have used formal reasoning about legal authority to evade discussion of abortion rights. For example, in May 2020, a case led by feminist advocacy organizations following the Zika epidemic in 2016 was dismissed by the Brazilian Supreme Court on the grounds that the association that filed the petition did not have the proper legal standing to litigate on sexual and reproductive rights and health policy before the court. In the words of Gabriela Rondon, who helped file the case, “The court decided not to decide, which is shameful but doesn’t imply any direct setback on the jurisprudence.”<sup>1</sup> In July 2020, the Mexican Supreme Court ruled against an *amparo*<sup>2</sup> brought by a minister of Veracruz state that demanded that it create legislation to decrease barriers to abortion (MURILLO, 2020). Citing formal rules of jurisdiction, the court argued that ruling on the matter would overstep its own constitutional powers (VERZA, 2020). From any standpoint outside the jargon-saturated world of legal expertise, these rulings appear beside the point. Las Brujas del Mar, a feminist collective in Veracruz, put it succinctly in a tweet following the decision: “The problem is that the substance was not discussed, and the form still matters more than women’s lives” (GUARDIAN, 2020).

Las Brujas’ charge that “the form matters more than women’s lives” delivers a sharp critique of the court’s preoccupation with legal rules and their correct application as opposed to questions of moral and political substance. Their point echoes criticisms made by constitutional lawyers and feminist litigators who have called out a tendency of courts to revert to legal formalism when facing questions of reproductive and sexual rights. In this vein, Paola Bergallo finds two “constitutional cosmovisions” at work in Argentinian Supreme Court decisions surrounding abortion (2017). Decisions issued against legalizing abortion have tended to align with conservative-formalist styles of argumentation, while those in favor of extending and protecting reproductive rights mobilize a transformative-feminist approach to constitutional interpretation. The latter, she argues, builds on traditions of social and economic rights protections alongside a sophisticated awareness of the gaps between “law in action vs. law on the books.” Estefanía Vela Barba and Alejandro Madrazo note a similar splitting of modes of argumentation in the Mexican Supreme Court (2013). Taking the examples of the court’s robust recognition of fundamental rights in same-sex marriage and adoption cases versus its “stinginess” in interpreting rights related to abortion,

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1 Personal communication, May 4<sup>th</sup>, 2020.

2 An *amparo* is a legal mechanism whereby citizens as well as officials may appeal to the Supreme Court when constitutional rights are violated by the state. A longer discussion of *amparo* will follow.

they suggest the court suffers from a “personality disorder” due to the complex historical-political juncture in which it is situated (MADRAZO and VELA, 2013, p. 1890). Madrazo and Vela find the catalyst of the court’s split personality in the 1994 reforms that significantly expanded its procedures for constitutional challenge. These reforms coincided with broader transformations of the state marked by the fall of one-party rule by the Partido de la Revolución Institucional (PRI) and transition to electoral democracy, a series of neoliberal reforms, and the proliferation of new human rights institutions. Madrazo and Vela further imply that the Court’s two tendencies map onto its incomplete transformation into a progressive democratic institution. In their words, the Mexican Supreme Court is torn between “its old court-of-law self” which “sees rules, not principles or values to be deployed multidirectionally in creative, nuanced, and changing ways” (MADRAZO and VELA, 2013, p. 1891-1892).

Rather than rest our criticism of these recent court decisions on a dichotomy between “technical” and substantive modes of legal interpretation, I examine how formal rules of legal authority, and specifically questions of jurisdiction, are crucial sites of political contest (see VALVERDE, 2009). We must first shift our focus from courts’ regressive conservatism to a broader problem of how legality and public order, as grounding projects of the postcolonial state, come to organize the limits of what we desire as a good life, as well as the legitimate causes of resistance and conflict (see BERLANT, 2002). John and Jean Comaroff and others have diagnosed this process as the judicialization of politics – or the increasing prominence of “legality” as the organizing language of class struggle in contemporary neoliberal orders (COMAROFF and COMAROFF, 2006, p. 31; CUOSO, HUNNEUS and SIEDER, 2010). The problem with legality as a “form,” then, is not simply an allegiance to the text of law as rules to be applied, but the translation and reduction of unwieldy political demands into narrow legal claims. In Wendy Brown and Janey Halley’s words, “the coartness of norms and political power within legal spaces repeatedly divests political questions of their most crucial concerns” (BROWN and HALLEY, 2002, p. 19).<sup>3</sup>

The concept of lawfare, around which this special issue pivots, carries this concern about legality as a language of political contestation to explore judicialization as an unfinished project that involves competing legal genealogies, aspirations, and strategies both inside and outside the courts (see BIEHL, 2019; GLOPPEN, 2021). This shift in emphasis allows other

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3 “When the available range of legal remedies preempts exploration of the deep constitutive causes of injury (think hate speech and the racial order that makes it sting), when the question of need for the right (think abortion and the way reproductive work is organized, valued and [un]remunerated in male-dominant orders), we sacrifice our chance to be deliberative, inventive political beings who create our collective life form” (BROWN and HALLEY, 2002, p. 19).

kinds of questions to arise. For example, in her ethnographic work with indigenous systems of justice and struggles for sovereignty in Guatemala, Rachel Sieder challenges a Weberian model of the legal-bureaucratic state that progressively absorbs social life. She finds instead that Mayan peoples' appropriations of state-like legal language fundamentally challenge how law is spoken, where and by whom (2010). Then the question becomes: under what conditions can the state (and its courts of law) *hear* alternative visions of justice and normative order – that is, of law spoken otherwise?

Robert Cover addresses this question as a foundational problem of the state and its claim to jurisdiction (1983). According to Cover, the court and the state are “historically and mythically” posed as the solution to the problem of “too much law” – that is, the normative plurality and indeterminacy that collective life gives rise to and depends on in order to flourish (COVER, 1983, p. 40-41). Substantive legal interpretation must therefore respond to the multiplicity of legal norms and meanings – and more radically, to our ongoing capacity to imagine other possible worlds in common (see MOTEN, 2018, p. 6). This “jurisgenerative impulse” of community is constitutively at odds with “the jurispathic function of courts” which must “assert this *one* law, and kill all the rest” (COVER, 1983, p. 53). In order to justify the singular authority of the state to make law, courts rely on a hermeneutic of jurisdiction. When a judge invokes jurisdictional principles, they avoid their responsibility towards the challenge of the multiplicity of legal meaning while securing the superior authority of the state (COVER, 1983, p. 54-55). Cover reviews several U.S. Supreme Court cases in which a “statist orientation of jurisdiction” prevents it “from ever reaching the threatening questions” (COVER, 1983, p. 56).<sup>4</sup> Along these lines, the Brazilian and Mexican Supreme Courts' recourse to the rules of jurisdiction in the cases described above effectively elide the political challenges posed by them, which both made reference not only to the constitutional right to health, but also to wide-reaching issues of socioeconomic inequality and gender-based violence.

Audra Simpson accounts for the violence of the fantasy of singular law in her ethnographic work with Haudenosaunee people living in national territory split by Canada and the U.S. Describing the situation as one of “nested sovereignties,” she holds in difficult analytic tension the fact that the political being of settler-colonial nation-states is premised on the dispossession of indigenous sovereignties – a dispossession exacted through recognition as well as exclusion – and the fact that the ongoing political presence of indigenous people means that the fiction of monolithic state sovereignty does not hold (SIMPSON, 2014,

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4 Importantly, Cover does account for judges' claim to jurisdiction as potential resistance to authority whenever it “implies the articulation of legal principle according to an independent hermeneutic” (COVER, 1983, p. 59).



p. 12). In this vein, anthropologists and sociolegal scholars have taken up jurisdiction as an analytic lens through which “ontological questions of the essence of sovereignty become pragmatic ones” (RICHLAND, 2013, p. 14). Jurisdictional claims, however embedded in architectures of legal violence, also reveal the contingency of sovereignty, its performativity – or need to be spoken and reiterated in order to remain in force (KAHN, 2017; VALVERDE, 2009). Thus at stake in an analytics of jurisdiction is the precarity and unfinishedness of any unified sovereign body, even as liberal ideals of law and the democratic state rest on the clarity of bounded territory. While state claims to jurisdiction are attempts to fix and stabilize legal meaning and authority in time and space – to enact a “legal territorialization” – this never takes place in full (OBARRIO, 2010; see also COOPER, 2018).

In this paper, I explore how arguments of jurisdiction emerge as a vital site of abortion lawfare in Mexico. I trace how they have been mobilized from “above” and “below” in ways that reveal the cracks and fissures of legality and state sovereignty, rather than its seamless consolidation. Most importantly, I attend to how people who are seeking abortion move within and across these fissures. My interest in these issues stem from years of ethnographic research that I conducted between 2009 and 2019 as an *acompañante*, or companion, to people seeking ways to end pregnancy across jurisdictional borders. I was trained and mentored by Fondo MARIA, a Mexico City trans and queer inclusive feminist activist group devoted to providing abortion access support and quality information about sexual and reproductive health and rights. Through Fondo MARIA’s relationships with healthcare providers and officials in Mexico City, I eventually conducted participant-observation in both public and private abortion clinics, and later spent time with *acompañantes* in other states. I also got to know many Mexico-based reproductive rights litigators, advocates and NGO leaders.

In what follows, I first give a brief overview of the 2008 Mexican Supreme Court case that upheld the decriminalization of abortion in Mexico City to highlight how legality and jurisdiction became a key part of the court’s jurisprudence. I then recount a conversation with David,<sup>5</sup> a Mexican lawyer, who describes how he reappropriated the court’s formal use of principles of legality toward his own ends in what he calls “legal guerilla.” In the second part of the paper, I describe an encounter with a teenage couple from the state of Hidalgo outside a Mexico City clinic and how they navigated the ambiguous spaces and temporalities of inclusion and exclusion of abortion legality and clinical care. In closing, I consider legal guerilla as an ethos of skepticism towards the protective capacities of law and as an exigent practice among those who must move through overlapping and contradictory legalities and jurisdictions.

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<sup>5</sup> Pseudonyms are used throughout to protect confidentiality, except when my interlocutors prefer to be cited by name.

## I. JURISDICTION AS LAWFARE FROM ABOVE AND BELOW

In April 2007, the Legislative Assembly of Mexico City decriminalized abortion within the first 12 weeks of pregnancy and inaugurated a public program for “Interrupción Legal del Embarazo” (ILE). One month after the passage of the Mexico City reforms, the president of the Comisión Nacional de Derechos Humanos (CNDH) brought an action of unconstitutionality against the Legislative Assembly of Mexico City to the Supreme Court (SUPREMA CORTE DE JUSTICIA DE LA NACIÓN, 2007).<sup>6</sup> The original CNDH action included the argument that the reforms violate the right to life protected in the Mexican Constitution, drawing on debates about fetal innocence and personhood that have taken shape in the Americas over the last thirty years (GIANELLA, 2018; GUEDES DE MELLO and RONDON, 2020). After an unprecedented appeal to the participation of civil society with a series of public hearings that addressed the juridical status of “life” from many perspectives – including bioethical considerations of fetal development, public health data on maternal mortality, religious and moral questions of ensoulment, and feminist arguments for women’s dignity and right to a life project (see UNAM, 2008) – the court’s final decision rested on an argument about jurisdictional authority. Instead of addressing the substantive questions it heard discussed over the course of several days, it brought to the fore formal issues that had been raised by the CNDH about “the principles of the exact application of the law” and the obligation of legislators to “avoid using indeterminate concepts” that generate uncertainty within the law (SCJN, 2007, p. 84).<sup>7</sup>

In August 2008, eight of eleven justices declared the reforms constitutional on the grounds of Mexico City’s jurisdictional authority *not to penalize* an action even if it is considered a crime under federal law. Rather than commit to an interpretation of sexual and reproductive and fetal rights, it ruled on the CNDH’s contention that there was a formal contradiction between Federal and Mexico City Penal Codes, and the related question of whether there had been an overreach of Mexico City authority. Although the decision was in favor of Mexico City, it was “technically” banal given the several days the court spent hearing philosophical, bioethical, and public health-based arguments in the public audiences.

In January 2015, I traveled several hours by bus to speak with David, a central figure in the circle of feminist constitutional law scholars and litigants in Mexico. He enthusiastically welcomed me to a new office with floor-to-ceiling windows overlooking a dry landscape, calling on his assistant – an extremely bright postgraduate student – to make us coffee, and

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<sup>6</sup> An action was also put forth by the Attorney General’s Office, and the Supreme Court subsequently consolidated their arguments into one case.

<sup>7</sup> These principles speak directly to one of Cover’s other points, that state authority is often justified as a solution to the problem of *uncertainty*, which he contrasts with the problem of *multiplicity* of legal meaning.

later inviting me to continue the conversation over dinner with his family. David had worked on arguments for upholding Mexico City's decriminalization of abortion in the Supreme Court hearings in 2008 and, more recently, had pushed for a new abortion rights litigation strategy through "*controversia constitucional*" or constitutional controversy. He contrasted the relatively conservative approach of the feminist nongovernmental organizations (NGOs) that over the last few decades had spearheaded most of the litigation on abortion rights through the writ of *amparo* and this new, perhaps more radical engagement with law, which he called "legal guerilla."

The writ of *amparo* is the oldest mechanism for the protection of individual constitutional rights from violation by the state, dating back to the 1847 Constitution. To be under an "*amparo*," or "*amparado*," means to be protected or sheltered by law. But situations of unwanted pregnancy are temporally urgent and pursuing an *amparo* takes years. Furthermore, *amparos* usually generate jurisprudence confined to questions of due process and state procedure (see MADRAZO and VELA, 2013). In spite of its history of limited scope, *amparos* have been mobilized to hold state officials accountable for denying individual women access to abortion in those exceptional instances when it should be legal, most often when the pregnancy is the result of rape, such as in the famous case of *Paulina Ramírez v. Baja California*. Paulina was thirteen years old when she was sexually assaulted in 1999 and subsequently denied a legally permitted abortion by health and law enforcement officials. In 2002, an alliance of Mexican and transnational reproductive rights NGOs filed a petition on her behalf with the Inter-American Commission on Human Rights (ICHR, 2007). In the widely circulated pamphlet *Paulina: In the Name of the Law*, reproductive rights advocates denounced public health officials for "prioritizing their own personal religious beliefs over the rule of law" and called for the neutrality of legal institutions necessary for a democratic secular state (GIRE, 2005). More recently, in July 2021, the Mexican Supreme Court decided an *amparo* case initiated in 2018 on behalf of a woman in Chiapas with cerebral paralysis, who was a legal minor and who had been raped (*Amparo en revisión 438/2020*). Although the family secured an abortion through a private clinic, they also pursued an *amparo* against public hospital officials who had denied the abortion on the grounds that her pregnancy had exceeded the legal time limit. The Supreme Court granted the *amparo*, called for reparation for the damages done, and stated that temporal limitations on abortion access in cases of rape are a violation of women's rights (MORALES, 2021).

The problem with this strategy, as David explained, is that a person must be willing to go through years of life-distorting legal battle. She must file an *amparo* against the state either following an illegal abortion, in which case she risks going to prison having made her "criminal act" known by virtue of the suit, or before, in which case she will have to carry the unwanted pregnancy to term due to the slow process of petition. *Amparos* require a pregnant person to sacrifice their immediate needs for the sake of a future-oriented legal argument. This mode of sacrifice implies a certain faith in narratives of democratic progress



and in law as an instrument of shared liberal values. It also demands the construction of a victim-subject that will gain rights only by appeal to the moral outrage of her violation. The irony in this circle of legal constructions is that it works through the displacement of a person's actual bodily and moral needs in the present, who, when facing untenable pregnancy, is urgently caught in embodied time – a time that stands quite at odds with the temporal horizon of the *amparo* procedure.<sup>8</sup>

The strategy of invoking constitutional controversy, on the other hand, foregoes the iteration of liberal ideals of constitutional law as protection that an *amparo* relies upon, and instead invokes principles of legal authority to make a jurisdictional claim. Both are strategies of holding the state accountable within its own terms, but the latter, I argue, involves an especially pragmatic and skeptical kind of legal play. In the cases that David worked on in 2013, municipal governments challenged the authority of their own state governments to pass reforms that protect life from the moment of conception when such laws interfered with the capacity of municipalities to provide adequate health care. Pushing back against the criminalization of abortion with constitutional controversies, in David's words, "brought the debates about abortion back into the legal game of jurisdiction" that the Supreme Court initiated in its 2008 decision. As I came to understand by the following anecdote, the game involves using principles of legality to pose a political challenge to higher jurisdictional authorities.

At first, I thought David's allusion to "guerilla" might have been referencing indigenous movements for jurisdictional autonomy in Oaxaca and Chiapas, and I was amused, and a bit thrown, by the explanation that followed. David's inspiration for pursuing the constitutional controversy strategy was actually President Andrés Manuel López Obrador's (AMLO) brief refusal of the federally mandated switch to daylight savings time in Mexico City a decade prior. In 2001, one year after the defeat of the PRI and the presidential election of Vicente Fox of the Partido de Acción Nacional (PAN), who was previously the governor of Baja California – the state where Paulina Ramírez was denied an abortion – AMLO, the mayor of Mexico City at the time, staged a political confrontation with Fox and the federal government by refusing to adopt daylight savings time. In an interview with *La Jornada*, he associated it with US imperialism, asserting that "they cannot, from abroad, impose on us what time we must wake up, what time we must go to work, what time we must go to sleep" (SMITH, 2001). While AMLO claimed jurisdiction over time in Mexico City, Fox claimed the clocks in federal offices and institutions, such as public schools, airports, and banks. However briefly, the capital city was divided by competing governmental authorities

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<sup>8</sup> See Ratna Kapur (2006) on the exclusionary narratives of the liberal subject at work in human rights as a governance project and Erdman (2017) on the problem of time in abortion law.

in a jurisdictional contest that literally – to the point of absurdity – scattered time into disjointed pieces.<sup>9</sup>

The case models legal guerrilla not so much as a claim to autonomous *territory*, but as a rhetorical style of argumentation that opens up the homogeneous space-time of the state – its chronotopic sovereignty – from within.<sup>10</sup> AMLO’s argument was that the legitimacy of the daylight savings policy was in question because the wrong legal authority had put it into effect. He waged a jurisdictional claim “from below” that challenged the hierarchy of legal power in which the nation-state contains and regulates all authorities subsumed within it, and not incidentally, the claim was made about the world-ordering, life-punctuating figure of time itself. The story left me thinking about how the legal game of jurisdiction pluralizes time and space in abortion law, and what this means for people who navigate its fissures.

## 2. NAVIGATING THE FISSURES IN JURISDICTION

*“Those of us who live in DF [Mexico City] have a lot of rights and the women who live outside don’t have any [...]. They should realize that women are going to come to DF. They can’t stop them [...] I mean, you can’t block the sun with your little finger.”*  
*Doctor A., a provider in a public abortion clinic in Mexico City*

People working in and attending the newly legalized abortion clinics in Mexico City sometimes voiced the idea that the capital city is a place of rights-based citizenship in contrast with the patriarchal religiosity of the “rest of Mexico.” Doctor A.’s remarks above join a familiar narrative of national progress that associates modernity with the cultural, economic, and educational privileges of urban living and imagines Mexico City as a place where citizenship projects are engineered and then applied elsewhere (see LEAL, 2011). A man waiting for his wife inside one of the Mexico City abortion clinics once muttered to me that “the state should guarantee this service [...] it’s not going to happen in any other states, though. We only achieve this kind of thing in DF [...] DF might as well be France!”

Scholars have theorized the “mutations in citizenship,” to use Aihwa Ong’s phrase, that occur in contexts of global health triage and transnational migration for medical care (ONG,

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<sup>9</sup> The anecdote is reminiscent of Jorge Luis Borges’s story *Del rigor en la ciencia* (1954) about an empire that makes a life-size map to cover the entirety of its territory, but which is completely irrelevant for actual use. See also Paz (1990) on Mexican modernity and the search for real time.

<sup>10</sup> For more on the chronotope, see Mikhail Bakhtin (1981). I return to this concept in the conclusion.

2006; ROBERTS and SCHEPER-HUGHES, 2011; PETRYNA and FOLLIS, 2015) and, specifically, travel across borders to access safe abortion (KELLY and TUSZYNSKI, 2016; SINGER, 2019). Over the past several years, Mexican reproductive rights advocates, in concert with feminist movements across Latin America, have advocated for national reforms to legalize abortion, arguing that the right to abortion in Mexico City and its criminalization in other Mexican states amounts to second-class citizenship for those who live outside the city's limits. While Hidalgo and Oaxaca have passed reforms modeled on Mexico City's policy, as of yet they have not been implemented in the public healthcare system. If and when they do, there will be more openings in the abortion access landscape, but no assurance that the states that maintain criminalization will not intensify surveillance and prosecution. Until abortion is fully decriminalized at a transnational scale, the problems of border crossing and of who carries the burdens associated with it remain pressing.

Dr. A.'s comment also reflects the contradiction that besets jurisdiction as a boundary-making device of governance: it is impossible to stop the rays of the sun with your finger – boundaries are going to be crossed. If there is an “inside” where people have rights and an “outside” where people do not, what happens to those who are in transit between these spaces? In referring to the sun, Dr. A. betrays a certain optimism and hope about people's mobility and their arrival to a protected space of rights. But the boundaries between “having” and “not having” rights are much more mutable than Dr. A. suggests. People who seek abortion in Mexico City from other states carry competing jurisdictions in their bodies.

The problem is not only that state lines prohibit entry into the Mexico City ILE program, but that complex geographies of race and class stick to the body, such that even when one is “inside” the space of legality, one might be marked as less deserving of rights and care.<sup>11</sup> Abortion access, in this sense, is an intensely charged site of making and remaking the “interior frontiers” of the body politic (see STOLER, 2012; TICKTIN, 2011). Being in transit, whether from the periphery of Mexico City that overlaps with the neighboring state jurisdictions of Morelos or Mexico, or from further places, only intensifies the labor of carrying the border along as a bodily condition.

One of the key rationales for Mexico City lawmakers in the 2007 reforms was to decrease the maternal mortality and morbidity rates associated with clandestine abortion practices, which are closely correlated with socioeconomic conditions (LAURELL, 2008; CANTÓN,

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11 Elsewhere I explore how exceptional legality makes patients particularly vulnerable to moral stigma and punishment and how this in turn shapes the bodily and affective experience of pain surrounding abortion in public ILE clinics (KRAUSS, 2018). Joaquina Erviti (2005) also traces how poor women and women marginalized by state health care institutions in Morelos are subject to moral suspicion and punishment, often enacted through the denial of pain medications when being treated after an abortion or miscarriage.

FERNÁNDEZ and URIBE, 2012). In addition to the decriminalization of first trimester abortion in the city's penal code, the reforms included a blueprint for implementation in the public health care system aspiring to make safe legal procedures accessible across the city. Rather than integrate legal abortion services into existing hospitals, they envisaged independent clinics that either operate independently or are annexes to Seguro Popular health centers.<sup>12</sup> These specialized abortion clinics, purportedly to meet the needs of poor and uninsured women, entail both a social vision of the right to health and one of quarantine and exception from the standing moral order of citizen entitlements and state responsibility.

Abortion access structured as exception emerges from a long history of Latin American feminist legal advocacy within the constraints of criminalization. Over the last decade, these strategies have been consolidated in the “health exception model,” which seeks to expand access by broadening interpretations of “risk to maternal health,” which exists alongside rape as an “exception” under which abortion should not be punished in many Latin American penal codes (GONZÁLEZ, 2012). While enabling varying degrees of access depending on the political context, exceptional legality sustains a “double normative regime” of criminalization and conditional rights (RAMÓN MICHEL and CAVALLO, 2018). It also channels a great deal of power to health care providers as mediators between women and the law, as interpreters of what counts as an exception and who deserves to be recognized within its framework.

Our analysis of “access” must therefore involve not only the territorial borders between regimes of rights and criminalization but also the ways in which geographies of race and class are enacted through moral transactions of deservingness in health care practice. Such border making practices “inside” spaces of legality and care mark bodies differentially. Khiara Bridges (2011 and 2017) makes this argument in her analysis of how black and women of color patients in a Medicaid prenatal program in New York City (an exceptional form of entitlement limited to the duration of pregnancy) are made especially vulnerable to surveillance and punishment.<sup>13</sup> In other words, gaining access to “rights” and “care” with-

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12 Seguro Popular is Mexico's national public health insurance program that offers an essential package of health care, free of cost to all citizens, with additional medical needs provided on a sliding scale or channeled into the IMMSS or ISTEEL systems (social security-based programs designed for formally employed workers and workers of the state). Although “public,” Seguro Popular relies on many private-public partnerships for funding and varies widely in infrastructure across states.

13 As Bridges (2011 and 2017) argues, the Medicaid prenatal program in the NYC public hospital where she did her ethnographic research exists as an exception within the privatized healthcare landscape of the U.S. where health is generally defined as an individual responsibility rather than a shared social good.



in a space demarcated as exceptional to the general legal and moral order entails racialized and classed constructions, judgments, and exchanges that can remain unsaid in the letter of law but that nevertheless shape the disciplinary and productive effects of state power. What became tangible in my ethnographic work was how jurisdictional borders can be felt in the body as the weight, speed, suspension and dilation of time.

Between 2009 and 2014, I conducted fieldwork as an *acompañante*, or abortion access companion, in the Mexico City-based feminist initiative Fondo MARIA. This work brought me in contact with people from all over Mexico, as well as neighboring countries, as they confronted the situation of undesired or impossible pregnancy and then made practical plans about what to do. As my friend and mentor Oriana once described the work of *acompañantes*, we “shine small lights to open up the tunnel vision so that people can see alternatives.” Many of the women who contacted the fund, and some of them whom I later interviewed, described the experience of searching for safe abortion as *aplastante* – literally, “crushing.” Another person wrote in an email requesting help from the fund that “*el tiempo me viene encima*” – time was running her over. While the legality of abortion in Mexico City opens a new way to access to clinical procedures, ongoing criminalization also condenses time and pressurizes the space of this opening (like a tunnel), making for an intensely stratified politics of access that accompaniment projects attempt to mitigate. Temporality, encounter, and movement, in this sense, are as important to how we understand the constitution of subjects and the force of law as are spaces and bounded territories (see POOLE, 2004).

Data collected between 2013 and 2015 by the Mexico City director of reproductive health services and researchers from the Harvard T.H. Chan School of Public Health show that 66% of women accessing legal abortion clinics are from Mexico City, 22% come from the surrounding metropolitan area, 7% come from bordering states, and only 2% come from the rest of Mexico (SENDEROWICZ, SANHUEZO and LANGER, 2018). The same article, using education levels as an index of socioeconomic status, shows that the farther people live from the city, the more educational, social, and economic resources they needed to be able to make it there. A recent article from the Guttmacher Institute complicates this picture with data on pharmaceutical abortion practices outside legal and clinical settings with misoprostol, a pill that is available for purchase in most pharmacies in Mexico.<sup>14</sup> The widespread circulation of misoprostol means that abortion safety is no longer solely associated with legality but rather with the robustness of NGO mediation and personal networks – what the authors call women’s “informants,” or their partners, relatives, and friends

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14 For the stratified citizenship generated by uneven access to misoprostol in Latin America with a focus on Brazil, see De Zordo (2016).



(JUÁREZ, BANKOLE and PALMA, 2019).<sup>15</sup> Data also show that most women do not consider the presence of legal exceptions in their state’s penal code (such as the risk to health or in the case of rape) when making a decision about what to do. In other words, people rarely consider petitioning the state for a legal abortion outside of Mexico City; the two most viable options are to use misoprostol or travel to a Mexico City clinic. At the same time, most women reported that they feared prosecution and incarceration for practicing an illegal abortion. This all suggests that the moral force of abortion law is still heavily punitive. In fact, the average number of women facing penal charges related to illegal abortions in Mexico has significantly increased: from 62 cases a year between 1992 and 2007 to an average of 226 cases a year between 2009-2011 (SIN EMBARGO, 2013).

There are few data on the particular difficulties that women under the age of eighteen, as minors, face given the requirement for parental consent to access Mexico City clinics. The troubles that teenage women might have with accessing legal clinics intersect with some of the shortcomings of misoprostol in particular ways. First, the safety and efficacy of pharmaceutical abortion depends on the knowledge of how many weeks one has been pregnant, which, in lieu of an ultrasound, is easier to figure out the more experience one has with previous pregnancy, menstruation, and sexual life. Second, the process of self-administered pharmaceutical abortion takes more time, requires attention to one’s body and symptoms, and often includes painful cramping. All of this makes it especially important to have a secure place to go through it and to be in the company of someone else who understands what is happening.

One morning while I was waiting outside an abortion clinic for a woman who was undergoing a procedure, a teenage couple approached me to ask for help. The pair had found the address of the clinic on the internet and decided to come in the middle of the night from Hidalgo, about five hours north. When sixteen-year-old Alondra had presented herself to the clinic secretary, she was told without further explanation that she needed her parents’ consent. After that, she had stayed a few moments in the clinic waiting room watching the other women who, some of them also minors, were simply giving the secretary copies of photo IDs as evidence of their parents’ consent. Alondra and her boyfriend Jorge had since been wandering around outside, looking for someone who would agree to let them photocopy their ID at a nearby internet-copy shop – anyone with the same last name, Morales Cruz.

As they explained their plan to me, I couldn’t help but show my surprise; it seemed at once so determined and so hopeless. “It’s a pretty common last name,” Jorge told me when he saw the doubt move across my face. “When my parents found out [about the pregnancy],

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15 I want to draw attention to how the language of “information network” has come to dominate analyses of the politics of abortion access. We should question the relationship between “care” and “information.”

they threw me out of the house,” Alondra added to highlight the direness of the situation. As we spoke under the tent where other family members and friends waited for women inside the clinic, a guard recognized Alondra and told us to leave the premises, so we walked outside to the street. I called Sofía at Fondo MARIA to see if the accompaniment network could help Alondra access an abortion that day. It was only 7:30 in the morning and Sofia wasn’t yet in the office, so we sat on a park bench and waited. About an hour later, she called back and gave me the number of one of the best private clinics in the city. I wrote it down and handed it to Alondra, who handed it to Jorge.

“The credit’s about to run out,” he said with exasperation between his brows, as he dialed the number on his cell phone. He turned his back to Alondra and me as he spoke in a barely audible voice with the private clinic’s secretary. After a few minutes, he turned back and handed me the phone with a startled look: “They want to see if you will pay,” he said. I hesitated but took the phone and told the secretary I didn’t know if that was possible. “With pleasure, we’ll take care of them,” she said in a sickeningly sweet voice, “but there will be recovery fee of 2,000 pesos [about US\$110 at the time],” and then the phone credit ran out.

I called Sofía again, now with a feeling of unease rising in my chest. Jorge and Alondra stood facing each other silently, glancing at me now and then nervously. “Sofía said she would call back at 10 a.m., after she gets to the office,” I said hanging up. “I think we’ll just get going now then,” Jorge said with some suspicion. “We’ll get the pills instead.” They had heard of Cytotec, the brand name of misoprostol, about a week ago from a friend and had researched it online. They found a website that sold two pills for 500 pesos and gave a protocol for how to use it. I told them that the public clinic dispenses the same pills for free and that you can also buy them in a pharmacy as an over-the-counter medicine for ulcers. Alondra hadn’t had an ultrasound and she didn’t know how many weeks she had been pregnant. Since the efficacy of the pills depends on how far along one is in a pregnancy, it would be riskier to use them without knowing. The couple also had no physical place to be during the process of the abortion and would have to wander the city as Alondra would potentially be experiencing painful cramps. For all these reasons, I told them it was probably worth it to try to go to a clinic where it would be much safer.

Jorge looked at Alondra. “We can wait,” she said softly. We walked back to the park they had slept in the night before and sat on the bench. It was cold in the shade, so we moved back into the sun. We sat there, me checking my phone obsessively, and impatient. Since their phone was out of credit, the only way they could receive the call from Sofía was if I stayed with them until 10 a.m. Jorge and Alondra alternated between nuzzling each other and staring straight ahead blankly. We kept sitting there and sitting there. Alondra was lying against the back of the bench and Jorge was tapping his foot. A man who was waiting for his wife inside the clinic asked us if he could leave his stroller with us as he chased his two-year-old son. When he returned, he sat on the bench beside us and tried to make small talk that no one felt like having.

Finally, Sofía called and Alondra perked up. I handed her the phone. All three of us watched her carry out the conversation. At one point, she laughed and said, “No, actually I’m getting dizzy from not eating.” To go through the manual aspiration abortion procedure at the private clinic, she would need to have an empty stomach – but after the long journey and without any money, she hadn’t eaten anything anyway. “What are you going to do after?” I asked them as we stood up. They shrugged. “Can Alondra go to your parents’ house?” “I don’t think so,” Jorge responded. “Do you have any siblings who would help?” I asked Alondra. “One, but she lives in the same house as my parents.” I asked them if they wanted me to go with them to the clinic, which was on the other side of the city. Again, Jorge deferred to Alondra. She looked at me: “If you have time,” she whispered, and so we walked together toward the metro.

Alondra’s mood changed as we walked. She shivered. “Is it really cold or is it just my nerves?” she asked awkwardly, blurring out the words and then giggling. Neither Jorge nor I answered her. From the metro window, Jorge pointed out places where family members of his had previously lived, and Alondra followed his gestures with big half-hearted eyes. We got off and he asked a passerby where the clinic was. “I couldn’t tell you” the person grumbled. We walked in silence until we saw the clinic across the street. “I’ll leave you here,” I said, and we briefly hugged goodbye. Sofía later received a call from the clinic that Alondra had undergone her abortion procedure. Another *acompañante* went to the clinic to give her and Jorge cash for a bus ticket home. They signed a promissory note to return all or a portion of the money over the next couple of years to Fondo MARIA whenever they found the means.

#### 4. LEGAL GUERRILLA AS ETHOS AND PRACTICE

Bringing David’s story of competing federal and city jurisdictions that scattered time in Mexico City alongside the scenes of Alondra and Jorge’s searching and waiting outside the ILE clinic, we can begin to ask what it means to be crossed by state borders. We might picture how people made do and kept time while official time was split into fragments of city-space. Mikhail Bakhtin (1981) defines the idea of the “chronotope” as the mutual imbrication of space and time that determines or makes possible kinds of action in the novel. As Jessica Cooper examines in the context of U.S. mental health courts’ dealings with its “clients,” court claims to jurisdiction attempt to “fix people in time and space” in order to assign agency and moral responsibility to the individual subject (COOPER, 2018, p. 87). What happens when this fundamental aspiration of the state to what we might call “chronotopic sovereignty” scatters and fissures – becomes multiple? How does this situation afford alternate ways of acting in time and in relation to one another? In closing, I want to think through “legal guerilla,” to borrow David’s phrase, as more than a litigation strategy played in the courts. It is a learned capacity of skepticism

towards the state that grows from moving across fissured space-times of legal authority and sovereignty.

Jorge and Alondra attempted to access the legal abortion clinic by whatever means they had at hand or could come by. They didn't stake a claim for what they needed in terms of what they were entitled to as "rights" – that whole conversation mattered little to them, but they were determined to find a way to pass through. Their search for a photocopied identification that could stand in as parental consent suggests that this politics of passing through must be thought in terms other than those of citizenship based on rights-recognition or the biopolitics of "care" as defined by the public health appraisal and discipline of individual bodies and located populations. Passing, as Rihan Yeh begins her ethnography of the Mexico-U.S. border in Tijuana, entails the "ambiguities, tensions, and anxieties that come of trying to get by in a system in which law aspires to fix identity [...] *passing* highlights the vulnerability of identity in general" (YEH, 2017, p. 3).

Audra Simpson refers to the labor of living for indigenous people crossed by borders and in relation to nested sovereignties. In her context, this labor involves constantly asking oneself the question of which authority one answers to, and the refusal of state recognition in so far as it demands the denial and subjection of alternate moral horizons and indigenous sovereignties. In the case of competing jurisdictions of abortion rights and criminalization, sovereignties are "nested," and also fissured, mobile, and interpenetrating. The authority of state law appears and dissipates in relation to contingencies and conditions. In Alondra's and Jorge's situation, it was whether or not they found a person willing to lend their identification, their happenstance encounter with me and Fondo MARIA, and ultimately their ability to access NGO money so that they could go to a private clinic where state rules and protocols such as parental consent become flexible. The legality of abortion in Mexico City is therefore not an oasis of rights recognition but rather an ongoing contest of jurisdictional authority that creates disjointed times and moral forces of law that people carry with them as they move. The disjunctures of jurisdiction show up quite explicitly in the uneven bureaucratic grid that stratifies people's access to clinical care and in the weight of embodied time for people seeking a way to end pregnancy.

People who seek abortion across jurisdictions are *doing* legal guerilla as they carry the labor of finding the cracks in law and adopting the necessary bureaucratic forms of appearance to access what they need. As they figure out how to move between and across regimes of legality and care, they sometimes find the "capacity to side-step state-time" (KERNAGHAN, 2015, p. 83). This latter dimension is central to how Fondo MARIA defines its principles of action. They are committed to meeting people's needs for abortion in the present and to using the terms of legality when they enable that commitment, but not for the sake of legal argument, or in the name of law (see KRAUSS, 2019). This is what distinguishes their activist practice from the *amparo* work of legal advocacy NGOs. *Acompañantes* work in the interstices and thresholds of legality; they "know the law" and "use it" while enacting an alternative collective nomos.



As the issue editors highlight, feminist movements for reproductive health and gender equality have entered a new era of lawfare intensely focused on the right to abortion (see this whole special issue, “Abortion Lawfare in Latin America” at *Revista Direito GV*, v. 17, n. 3, 2021).<sup>16</sup> The concept of lawfare encompasses both the role of legality in the legitimation of the violence of postcolonial states, and the appropriation of legal tools and rationalities to contest its authority. We might then understand jurisdiction as one of the predominant legal forms through which state authority is currently being challenged or turned back on itself, as well as reconsolidated in abortion debates across the Americas.<sup>17</sup>

In extending David’s idea of legal guerilla to include feminist accompaniment projects and practices of necessity like Jorge’s and Alondra’s, I join a broader conversation about a kind of politics that exceed rights and legality, and that challenges them as the primary objects to which we attach struggles for social justice and feminist world-making (SPADE, 2013; CRENSHAW *et al.*, 1995). When a student of mine in the U.S. asked Oriana who visited our class if “breaking the law or pushing the boundaries of the law is necessary to make the change that you’re looking for” she laughed and replied:

I mean, I am Mexican, so my relationship with law is very different from in the US [...]. When I’m with people from the US and I say, “I’m just going to steal this,” people don’t understand and they say, “What?! Why?!” [...] Argentinian lawyers have this saying: law is not what is written but what is done, and you make law by what you do. I think that has to do with the need to push boundaries and the need to push for the things that you think are just. That can be a philosophical discussion on what we feel justice is. When I say justice, I’m pretty sure I’m not thinking the same thing that law students would be thinking justice is.

Abortion lawfare, as Siri Gloppen (2021) notes, has created many new arenas of legal contestation where “material changes in access to safe abortions may not be what matters most to the contestants [...] [but rather] what is often termed ideational or symbolic effects” (this issue). In other words, symbolic advances in legal abortion rights do not necessarily

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16 Vela Barba (2018) draws on critical studies of mass incarceration in the United States to caution Mexican feminist movements from demanding a punitive state response to escalating gendered and sexualized violence. Such demands have largely asked for more criminal law, and more applications of it, in contrast to feminist struggles for abortion rights, which have sought to limit the scope of criminal law and to broaden the legal discourse of social and economic rights. Jurisdictional claims may also be thought in terms of domains of law and faces of the state, i.e. criminal law vs. social welfare policy.

17 Rachel Sieder and Yacotzin Bravo (2021) examine how Mexican feminist lawyers and associations are increasingly contesting “higher” jurisdictional authorities from the “lower” state and municipal levels to create access to abortion.



translate into better or equal access, nor changes in the myriad political economic and social conditions that surround the situation of needing to end pregnancy. This is a crucial point that Latin American, Caribbean and women of color feminists have made for decades.<sup>18</sup> Drawing on ethnography, I approach legal contest from within the material and moral worlds that people traverse and live through. In this material world, legal guerilla is a critical practice among those who move through overlapping and contradictory legalities and jurisdictions without the economic power to float above them. Oriana's response to the student above suggests that *doing* law is a practice that must exceed what has been written by the state; it must challenge "a statist orientation of jurisdiction." In other words, unless we can learn to imagine laws beyond legalism, we won't be able to feel what we mean by justice. This is not a call to reject progressive liberal values or the human rights project, but rather to acknowledge its failures and exclusions and to stake a claim within our intersectional feminist abortion politics to the capacity to imagine *nomos* beyond the state – to our jurisgenerative wisdom grown from collective practices of solidarity and care.

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18 See for instance Loretta Ross and Ricki Solinger on the exclusion of black and women of color needs and experiences in the white liberal feminist emphasis on "the right to choose" in the United States (2017) and Andaiye's articulation of a demand for legal abortion from the perspective of women as unwaged care workers (TROTZ, 2020).

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