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## Contesting Human Rights Coherence: Neoliberalism as an Epoch of Brutality

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**Contesting Human Rights  
Coherence:  
Neoliberalism as an Epoch of  
Brutality**



Honors Thesis

David Michael Quick III

Department: Philosophy

Advisors: Ernesto Rosen Velásquez, PhD; Miranda Cady Hallett, PhD

April 2023

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## **Abstract**

The end of the Cold War solidified modern human rights' dependency on neoliberalism. Neoliberal capitalism fosters universal commodification, hyper-individualism, and a standard of excess. A consequence of these developments is that some persons of marginalized populations turn to crime as a means of achieving basic human rights. To particularize, the realization of the self as a rights-holding subject emerges from the brutalization and subsequent de-realization of the other. Furthermore, justifications of such actions may be coherent within the modern human rights discourse. This thesis is contextualized by the historical dynamics and present-day observations of El Salvador, which I take to represent broader global trends in the development of human rights into a discourse of apparently coherent brutality. Given this contradiction, I compare the peril and potential of reclaiming human rights as a popular discourse.

## **Acknowledgements**

I would first like to thank Miranda Hallett for her support of my passions and for introducing me to this world which I will bear in myself forever. To Ernesto Velásquez for always keeping my mind sharp and my nose always in between the pages of some book – you are a model philosopher to me. I owe gratitude for the financial support from the UD Human Rights Center, UD Honors Program, Palermo Founders Fund, and Hull Fellowship; without your support, none of this could have been possible. Finally, thank you to the folks at Cristosal and FUNDAHMER for introducing me to la vida Salvadoreña; never stop your fight for liberation.



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Dayton

# Table of Contents

Abstract	Title Page
Preface: Bearing Witness to the Violent Car Crash	1
Introduction	7
Chapter 1: Inheriting Brutality	9
Chapter 2: Conceiving Brutality	44
Chapter 3: Transcending Brutality	83
Meta-Conclusions: The Passerby	102
Bibliography	104

And of course, their [the gangs'] friends from the “international community”, and I say it in quotes, because it’s not the majority of the international community, and their friends from the so-called “human rights NGOs”, and I say that in quotes, too, because they don’t defend human rights, they are against human rights, they said nothing when these criminals killed tens of Salvadoran men and women. [...] They are profiting from the bloodbath in El Salvador. [...] They need there to be a bloodbath, so they can analyze the bloodbath. Because that’s their livelihood. (Bukele, 2022)

## **Preface: Bearing Witness to the Violent Car Crash**

In the late Winter months of 2022, I was making arrangements to spend a month in El Salvador’s countryside to investigate worker subjectivity in agrarian co-operatives. These plans were immediately cancelled when, on March 27, 2022, after a spike in allegedly gang-related murders, President Nayib Bukele announced the legally mandated “state of exception” (*régimen de excepción*). This mandate would allow a temporary suspension of basic rights while executive forces crack down on controlling the proliferation of violent crime perpetrated by gangs. What began as a thirty-day mandate has extended to this date and has seen the arrest of over 65,000 persons suspected for gang-affiliation – thousands of whom are children, whose arrests were arbitrarily conducted, and/or were conducted with excessive use of force, sometimes even resulting in death – and the construction and opening of the world’s largest prison to attempt to accommodate these numbers near the end of February 2023 (Janetsky & Pesce, 2023; Pappier, 2022; Crime and Justice News, 2023).

Just these facts alone are astounding but are wholly unsurprising to anyone who knows anything about President Bukele, self-proclaimed “coolest dictator in the world” (*El Dictador más cool del mundo mundial*)<sup>1</sup> who has made domestic security the number one priority of his administration and a hallmark of the political party he founded: New Ideas (*Nuevas Ideas*). As Bukele’s party gains political control in every branch and level of Salvadoran government and his popularity remains unwaveringly high – in fact, apparently increasing during the “state of exception” – Salvadorans are expecting another 5-year term under the Bukele administration, despite its current unconstitutionality (Segura, 2022; *El Salvador’s Bukele Says He Will Seek Re-Election despite Ban*, 2022).

The full impact of these arrests is unfathomable to anyone – let alone someone who has the privilege of distance and ability to distance themselves physically or psychologically. I am one of those people who is afforded these privileges. I live far away from El Salvador, sheltered by the militarized borders of the United States constructed to insulate its citizens from those who are not “us” and the things that they do. I knew nobody in the country and could easily distance myself from the affairs of people’s lives which would have no noticeably significant impact on my own life. But if I am right about what human rights discourse permits under neoliberalism, which I will spell out through the course of this essay, then it is absolutely necessary to pay attention to and learn from the events which happen beyond our borders, to people who seem so far away from us. This is because the factors which inform the pains felt by Salvadorans, are felt worldwide. We ought not take a condescending view of sympathizing for Salvadorans because of their poor condition or because they live in a “shithole country”,

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<sup>1</sup> El Salvador President Nayib Bukele’s Twitter profile bio on September 21, 2021.

but because bearing witness to the Salvadoran experience is valid in its own right and because it is in the interest of achieving liberation of humans as such (Beckworth, 2018).

A greater understanding of anything can certainly emerge from bearing witness to those with experiential knowledge. This implies the [contested] fact that one who has experienced something should have greater knowledge of that thing. However, when it comes to experiencing violence, I would hope that no one would attempt to experience violence firsthand to understand it best. It is an immense privilege to capably refuse to bear witness to violence or even to pull away when bearing witness becomes too painful; this is a privilege I wish could be afforded by anyone. But because this is not so, it is necessary to build solidarity with those who can and will bear witness – to prevent the isolation of witnessing violence alone. We do this by prioritizing the voices of those who have learned by experience.

Such a will to bear witness has always been my frame of mind for philosophical research, and was the reason why I found it necessary to record the testimony of the workers whose subjectivities I was interested in. I knew that for me to remain true to my heuristic approach, it was necessary to hear from Salvadoran workers or workers similar to them. I found my way into El Salvador through the help of Cristosal, a Transnational NGO dedicated to the promotion and protection of human rights in the Northern Triangle of Central America. During my two-month internship from the beginning of June to the end of July in 2022, I conducted short interviews with participants of human rights workshops associated with Cristosal and gathered data through participant observation. I asked participants questions about how workers viewed their relationships to work,

themselves, and their environments. The goal was to understand how worker subjectivity is to be understood at the intersection of liberal human rights discourse and neoliberalism.

At the center of this intersection, however, was a violent car crash. Like a car crash, its passers-by could not help but to look, even if, like myself, they could easily look away shortly thereafter. Even if we were only talking about worker subjectivity, I was forced to re-evaluate the meaning of work and how a livelihood is sustained under neoliberalism. I want this metaphor to not cast the slightest shadow of confusion; what we were witnessing was how a livelihood could be sustained by the commodification of violence – a livelihood sustained by the “bloodbath”. Such a bloodbath, as President Bukele describes in his propaganda video announcing the “New Soldiers and Police for the War Against Gangs”, would not be diminished by the apparently small figure of “tens” murdered. But because these murders are so brutal (if the fact is not disturbing enough), we should not be any less disturbed by the small figures. For the “rivers of blood” that run through El Salvador apparently represent a commodity which Bukele’s administration seeks to monopolize.

So, when we ask questions about the intersection, some of us will continue to remain unharmed continuing on our human rights and neoliberal roads. Some will have the privilege to see the wreckage and move on. But this intersection has been the site of many violent car crashes across the world. To bear witness to the car crash is not enough and will not prevent another wreck, so long as these two roads meet at a blind or unforeseen intersection. We must turn our investigation to the roads, especially when viewing the wreckage becomes too much, and if we cannot close the roads, we must seriously rethink their trajectory.



Given the inescapability of my privileges and the undeniability that these privileges amount to my personal benefit, I could have ignored the violence of El Salvador's "state of exception". In passing by the car crash, I could ask, like Cain in the book of Genesis, "Am I my brother's keeper?" or I could even say nothing at all, as brutality intends (Genesis 4: 9). But like in the book of Genesis, "the voice of my brother's blood cries out [to God] from the ground" (Genesis 4: 10).<sup>2</sup>

This essay is an analysis of the so-called "bloodbath" in El Salvador. More critically, this essay is an analysis of the violent intersection of liberal human rights discourse and neoliberalism, whose wreckage I witnessed in the context of El Salvador, but whose violent intersection has been witnessed and analyzed throughout the world. What ties this investigation of El Salvador's "state of exception" to the rest of the world are paradigms of liberal human rights discourse and neoliberalism, which are omnipresent in our time. Furthermore, many of the historical developments in El Salvador presented in this essay are reflective of wider global trends. Of course, the level of understanding similar events in other societies and cultures will correspond in precision to the degree in which Salvadoran society, culture, and subjectivities are similar to that other countries' society, culture, and subjectivities. The goal of this essay is not to say that the subjectivities and events related to El Salvador's "state of exception" will necessarily emerge or even could possibly exist anywhere else. Rather, through a critical analysis of the norms and expectations of liberal human rights discourse and neoliberalism that explain the subjectivities and events related to the "state of exception", we can better trace parallels to how the norms and expectations of liberal human rights

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<sup>2</sup> I thank Mark Ensalaco for this Biblical allusion.

discourse and neoliberalism interact with analogous elements in distinct local contexts. The arguments and solutions I will propose in this essay to transcend the abundance of brutality, namely the re-conception of human rights discourse, should not be taken only to apply to El Salvador, but perhaps to the entire world at large.

Though I could not have done this project without the help of Salvadorans and other scholars writing about the issues presented in this paper, I maintain all responsibility for any misrepresentations of El Salvador and Salvadoran society, culture, and subjectivities. Even more generally, I maintain responsibility for any misrepresentation of so-called “third world” realities, to which I am a mere observer.

## Introduction

This essay is an analysis of the “bloodbath” in El Salvador, located at the intersection of liberal human rights discourse and neoliberalism. Specifically, I attempt to understand the significance of human rights in El Salvador’s bloody war on gangs. This essay, in its most broad sense, seeks to answer the following questions: What does human rights mean as a concept and a political practice and how is does neoliberalism contradict these meanings? What, if at all, should human rights be used for? To answer these questions, I have chosen to focus on the historical dynamics and present-day observations of El Salvador, which I consider to be an archetypal case of the ailments of liberal human rights discourse and neoliberalism. Throughout this essay, I will refer to the scholarship of historians and social scientists, most heavily drawing from Carlos Alberto-Sánchez’s *A Sense of Brutality*, Sayak Valencia’s *Gore Capitalism*, Achille Mbembe’s *Necropolitics*, Enrique Dussel’s *The Ethics of Liberation*, and Joel Pruce’s *The Mass Appeal of Human Rights*.

In Chapter 1, I will historically contextualize the essay. I offer a brief explanation of how the historical dynamics between the state and social actors, specifically gangs, led to present-day human rights conditions in El Salvador. Next, in Chapter 2, I will suggest different ways of conceiving the “problem of gangs and gang violence” in El Salvador. I conclude this Chapter with my central thesis, that justifications for brutality are coherent within liberal human rights discourse under neoliberalism. Finally, in Chapter 3, I provide a critical analysis of the coherence of justifications for brutality within human rights discourse. I question the legitimacy of brutality and discuss why a revolutionary

conception of human rights discourse is necessary. I conclude my essay by arguing that human rights discourse should not be centered around the human being who possesses human rights; rather, by centering human rights discourse around human liberation, popular interpretations of human rights would generate context-specific, non-universal behaviors which are coherent with human liberation and not with justifications of brutality.

## Chapter 1: Inheriting Brutality

In this Chapter, I will provide a brief history of the dynamics of El Salvador that have led to the current state of exception in El Salvador. By tracing the lineage of brutality throughout Salvadoran history, we can better understand why the supposed “problem of gangs and gang violence” is a significant issue and why the state of exception is supposed to be part of a solution to this problem. This lineage will address three more or less distinct eras of Salvadoran history: the armed conflict, the transition to peace, and the war on gangs. This brief history will describe the actors involved in addressing some specific problem, the methods used and solutions offered to solve those problems, and the consequences of enacting those solutions. To best understand the state of exception’s situatedness in the war on gangs, I pay special attention to the relationships between nonstate and state actors that have influenced the relationship between criminal actors the neoliberal state. I conclude this Chapter by arguing that El Salvador’s state of exception is the descendant of a long history of brutality.

### **A. The Armed Conflict**

El Salvador’s history, since its modern colonization, has been one of perpetual and deepening inequality. It is beyond the scope of this essay to recount all of Salvadoran history to trace the inheritance of brutality, so I choose to begin with the armed conflict. This distinct era should sufficiently affirm the inheritance of brutality and identify the causes of the emergence of actors and ideologies present in El Salvador’s state of exception.

The unsustainability of El Salvador's inequality came to bear in the 1977 presidential election. The political power of the ultraconservative and U.S.-backed National Conciliation Party (PCN), which had long-standing control over the politics of El Salvador, was threatened by the rise in populist and revolutionary political activity in the late 1970's (Riding, 1977). However, General Carlos Humberto Romero (PCN) defeated his opponent Ernesto Antonio Claramount Roseville of the National Opposing Union (UNO).<sup>3</sup> This victory was guaranteed through massive electoral fraud, facilitated by the National Democratic Organization (ORDEN), a group of government death squads which had sustained political repression since the early 1970's (Herman & Brodhead, 1984, p. 102; Riding, 1977). In 1979, through a coup d'état led by the Salvadoran Armed Forces, the Romero was deposed and exiled, replacing the presidency with a provisional center-left Revolutionary Government Junta of El Salvador (JRG). Although the U.S. vocally supported the previous Romero administration for economic reasons, the U.S. moved its support to the JRG in hopes of repressing the of revolutionary left, emboldened by revolutions in Cuba and Nicaragua (Knapp, n.d.; "President Ousted By Army Units In El Salvador," n.d.; Reuters, 1979).

This coup marks the beginning of the armed conflict, sometimes called the "civil war" or "Salvadoran war" and did not end until 1992.<sup>4</sup> In the wake of the coup and a long

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<sup>3</sup> UNO is composed of an alliance of the Christian Democratic Party, the National Revolutionary Movement, and the Nationalist Democratic Union.

<sup>4</sup> The reason why I refrain from calling this period a war is because the beginning of the war is contested. My referring to this era as an armed conflict does not mean that I do not believe that a war occurred in El Salvador during this period. My distinction just means that this period is marked by its distinctly motivated political violence enacted through conflicts between armed parties, of which mostly occurred during the war. I take the beginning of the war to have legitimately begun in 1981 after the unification of the five major revolutionary parties under the FMLN banner. Though armed conflict occurs in El Salvador before 1979 and continues after 1992, I believe that the prevalent motivations for and the actors who perpetrate violence distinguish this violence from that of the armed conflict.

history of political repression, the JRG promised government reform and dissolved the ORDEN, whose composite groups went on to operate independently (UN Security Council, 1993, p. 27). The JRG's failure to sufficiently address the demands of the repressed campesinos and the murder of anti-coup protesters emboldened the growth in membership to the five leftist guerilla groups: Farabundo Martí People's Forces of Liberation (FPL), Communist Party of El Salvador (PCES), National Resistance (RN), People's Revolutionary Army (ERP), and the Revolutionary Party of the Central American Workers – El Salvador (PRTC) (Riding, 1979; Knapp, n.d.). In 1980, these five groups joined under the banner of the Farabundo Martí National Liberation Front (FMLN). They soon announced plans for an insurrection and began major offensives in 1981.

At the same time, Ronald Reagan was elected as president of the U.S. and military aid from the U.S. increased ("El Salvador & The Soviets," 1981 as cited in Knapp, n.d). As a result of this aid, one of the most infamous death squads from the armed conflict, the Atlácatl Battalion was created by the armed forces of El Salvador as their first immediate- or rapid-reaction battalion (Wilkinson, 1992). This group, among other death squads, was trained by U.S. forces in counterinsurgency.

This brings us to the methods employed during the armed conflict to solve the problem of insurgency. A significant method or tactic used by Salvadoran Armed Forces is the so-called "scorched earth" strategy, which sought to cripple insurgency by annihilating or otherwise displacing their popular base through "sweeps," a euphemism which signifies the killing of anyone in sight (Thompson, 1995, p. 112). Aryeh Neier, the executive director of Americas Watch in 1984, describes scorched earth tactics: "This

may be an effective strategy for winning the war. It is, however, a strategy that involves the use of terror tactics — bombings, strafings, shellings and, occasionally, massacres of civilians" (Neier, 1985). Even beyond scorched earth operations, death squads operated with remarkable efficiency and anonymity in targeted operations. "The squads customarily wore plain clothes and made use of trucks or vans with tinted windows and without license plates." (Grüntzig, & Mehlhorn, 1988 p. 9). Their tactics ranged from spectacular to clandestine, sometimes using drive-by assassinations in broad daylight, other times quietly enforcing disappearances (Grüntzig, & Mehlhorn, 1988 p. 9). Victims were "customarily found mutilated, decapitated, dismembered, strangled or showing marks of torture or rape" (Grüntzig, & Mehlhorn, 1988 p. 9). The death squad style was "to operate in secret but to leave mutilated bodies of victims as a means of terrifying the population" (Grüntzig, & Mehlhorn, 1988 p. 12).

This kind of extreme violence – which I will refer to as brutality – permeated throughout the history of the armed conflict. Such events were most often perpetrated by Salvadoran Armed Forces or affiliates. From the assassination of Archbishop Óscar Romero and other clergy critical of the political repression and violence, to the massacre at Romero's funeral, to the massacre at El Mozote, it was clear that "regular security and military units [were] responsible for widespread torture, mutilation and killings of noncombatant civilians from all sectors of Salvadoran society" (Gibb, 2000; Grandin, 2015; "El Mozote Massacre," n.d.; *Amnesty International Annual Report 1982*, 1982, p. 133). This does not mean that guerilla forces did not employ similar brutal tactics, because they did (see Gorkin & Pineda, 2011). But FMLN forces are estimated to only be responsible for around 5 percent of atrocities during the armed conflict, while estimates



for those committed by Salvadoran security forces was around 85 percent (*Truth Commission*, 1992).

Toward the end of the armed conflict, in 1987, the FMLN demanded that the government dissolve the death squads and proceed to accountability measures to solve the problem of brutal counter-insurgency.<sup>5</sup> The FMLN proposed that the 1988 elections could be “a step for peace” if the Salvadoran Assembly could ensure “acceptance of the electoral process under conditions which would allow its participation, the fairness of the tallying and acceptance of the outcome, and acceptance of the Army of El Salvador as the only armed force” (Inter-American Court on Human Rights, 1989). The proposal included demands to postpone the election, end the violent repression of social groups, incorporate the Democratic Convergence into the Central Election Board, and grant voting rights to Salvadorans abroad (Inter-American Court on Human Rights, 1989). Though debated in government and at early peace negotiations in Mexico, the FMLN proposal was ultimately rejected (Inter-American Court on Human Rights, 1989). In 1988, another fixed election installed President Alfredo Cristiani of the right-wing Nationalist Republican Alliance (ARENA).

Responding to yet another unfair election, the FMLN launched the so-called “final offensive” across the country in 1989, gaining significant territory in the suburbs of the capital San Salvador, enabling targeted assassinations of political opponents and oligarchs (Crandall, 2016). The government armed forces ramped up their efforts to

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<sup>5</sup> By this time, the JRG had given way to the fixed presidential election of José Napoleón Duarte (PDC) in 1984 (see Chitnis, 1984). Despite the PDC’s previous association with the left and Duarte’s defeat of the newly-founded conservative Nationalist Republican Alliance (ARENA), Duarte was mostly unsympathetic to the guerillas and their sympathizers, possibly because it would not be in the interest of his campaign financiers – notably the United States CIA (Norton, 1985; Hamilton 2019).

repress the insurgency and it became clear that the war was not going to end, and a peace process was necessary. The government and the FMLN signed the UN Agreement on Human Rights in 1990, but death squad operations continued to escalate (Archives, 1988). Violence continued up until 1991, when peace negotiations were renewed. The signing of the UN-brokered Chapultepec Peace Accords in Mexico City brought an end to the war and marked the end of the armed conflict era.

The full consequences of the armed conflict are immeasurable. Over 75,000 people were killed, thousands more were tortured and disappeared, and more than one million were displaced as a result of the armed conflict (Menjívar & Gómez, 2018). Many refugees settled in the United States throughout the 1980's, notably in marginalized neighborhoods in Los Angeles, California (*MS13*, 2021). This became the birthplace of the *Mara Salvatrucha* (MS-13) and *Barrio 18* (18 Street) gangs, which will soon become significant actors in the Salvadoran context. I will return to these actors in the section on the war on gangs. Before this, however, I will describe the transitional period to peace in El Salvador.

## **B. The Transition to Peace**

The signing of the Chapultepec Peace Accords in 1992 marked the beginning of the era which I will call the transition to peace. The Peace Accords themselves represent not only a significant moment in Salvadoran history, but also a moment of growing legitimacy and mainstreaming of liberal human rights discourse and human rights architecture.<sup>6</sup> Though “human rights” were liberalized in 1948, the popularity of asserting

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<sup>6</sup> By “human rights architecture”, I mean the international institutions, such as the United Nations and its component institutions. “Human rights work” is relegated to these institutions, or “human rights architecture”.

demands in the name of “human rights” were relatively rare until after the end of the Cold War; not even Salvadoran guerillas framed their revolutionary struggle as a human rights struggle, though their intended goals (like freedom from violence and fair distribution of resources) would cohere with liberal human rights.<sup>7</sup> It was not until the 1990’s that the UN Commission on Human Rights begins advising states on how to ensure human rights for all members of society, declaring at the World Conference on Human Rights in 1993 “democracy and development as an integral part of human rights” (OHCHR, n.d.). Although this phraseology sounds grammatically flawed since democracy and development are described as one object (an integral part), I think this phrasing is crucial to understanding what liberal human rights discourse entails. This moment in the development of liberal human rights discourse – of which the transition to peace in El Salvador is an experiment, or at least an example – illustrates how human rights comes to depend on democracy and development, unified under neoliberalism. In brief, the end of the Cold War solidified human rights into a liberal discourse which depends on neoliberalism.

I will now describe how the transition to peace in El Salvador exemplifies this development in human rights discourse. I have already mentioned that this begins with the signing of the Chapultepec Peace Accords in 1992 in Mexico City. Here, a treaty was negotiated between the Salvadoran government and the FMLN represented by President Alfredo Cristiani and Schafik Handal respectively, mediated by Álvaro de Soto of the UN Secretary-General, and overseen by several Heads of State and members of the Roman

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<sup>7</sup> This may be because leftists, going all the way back to Marx, have generally been critical of “human rights” as a concept (see Marx, 2014). I will later argue that human rights are not revolutionary because they are not liberatory (Chapter 3).

Catholic Church and the UN (de Rojo, 2008b). The agreement consisted of five major areas: (1.) military reform, (2.) police reform, (3.) judiciary reform, (4.) civil and political reform, and (5.) economic and social reform. These reforms most notably dissolved death squads and military intelligence institutions, established a smaller and more politically diverse civilian police force, established and improved accountability institutions, promised the incorporation of the demobilized FMLN into electoral politics, established guarantees for fair elections, committed the government to modest land reform, and created a forum to discuss social and economic development policy (Graceta Militar, 2002; de Rojo, 2008; de Rojo, 2008b). Reforms were framed with a specific emphasis on institutionalizing human rights to seek reparations for and prevent future human rights abuses.

Emerging from the reform mandates of the peace accords, were two problems for the postwar state. The first problem was socioeconomic inequality and how to encourage socioeconomic development. The second problem was how to re-establish political stability and legitimacy.

The first problem that the state had to address was socioeconomic inequality and how to encourage socioeconomic development. The peace accords occur at a time when, “at an international level, the capitalist, neoliberal agenda [appeared] increasingly consolidated, and socialism was in crisis” which enabled the ARENA government to dominate socioeconomic forums and promised high levels of support internationally through adherence to neoliberal ideologies (Unclés, 1995 pp 174-175). To fund the mandates of the peace accords, like many other postwar states in the so-called Third World, the Salvadoran government accepted neoliberal development policies in exchange

for loans from the U.S. Agency for International Development (USAID), Inter-American Development Bank (IDB), International Monetary Fund (IMF), and World Bank (Unclés, 1995, pp. 174-175; van der Borgh, 2000 p. 43). In El Salvador, the implementation of these neoliberal policies effectively reduced the state apparatus, deregulated the economy, decreased social spending in places like public health and education, and promoted the nationalization of banks and major exports (Menjívar & Gómez, 2018; Unclés, 1995, pp 174-175).

Though macroeconomic variables were relatively positive at the beginning of the 1990's and land reform diminished the power of former oligarchs, agricultural exports became less significant and remittances from Salvadorans abroad rose (van der Borgh, 2000, p. 44). In 1994, remittances amounted to one billion dollars, exceeding all total earnings from exports (van der Borgh, 2000, p. 44). The re-privitization of the banks enabled the rise of a small financial elite to control these financial inflows while the national currency appreciated (van der Borgh, 2000, p. 44). This appreciation made exports more expensive, hurting industrial and especially agricultural sectors, who were forced to provide cheap labor and high production outputs to sustain the postwar neoliberal economy (van der Borgh, 2000, p. 44). As a result of employing neoliberal policies as a method for solving socioeconomic problems, the lower classes of Salvadoran society remained poor and largely excluded from participating in the domestic market as either producers or consumers, the benefits of neoliberal actions accrued to the rich who become richer, and social disparities deepened (van der Borgh, 2000, p. 44; Unclés, 1995 pp. 174-175). Meanwhile, poor communities outside of major cities, especially repopulations during and after the war, inherited responsibility for

rebuilding civil society. Empowered by organizational and educational skills learned in refugee camps, civil and political reform, and sympathetic NGO funding, repopulated communities established functional community infrastructure with grassroots participation, including government, regional community organizations, education, and communal work (Thompson 1995, p. 147). However, as we shall soon see, this inheritance of responsibility mostly excluded these communities from the state apparatus (for better or for worse) and ultimately reflected the interests of neoliberal ideology because they reduced responsibilities or expenses for the state by taking responsibility themselves.

The second problem the state had to solve is how to re-establish political stability and legitimacy. In 1992, the Salvadoran government sent 44 mayors to formerly guerilla-held territories to re-establish political and administrative control, but officials were met with a strong resistance from regional community organizations (Thompson, 1995, p. 146). These unified communities were historically terrorized by government forces seeking to delegitimize them and had already established functional infrastructure without government help (Thompson, 1995, p. 131). While these marginalized communities managed to establish some level of independence from the state, their popular community development models struggled to sustain themselves on NGO and donor aid alone and the effects of El Salvador's neoliberal economy further isolated and constrained community growth (Thompson, 1995, p. 131).

The transition to peace in El Salvador saw the reformed government attempt to utilize neoliberal economic policies to solve postwar problems. With the problem of socioeconomic inequality intensified and the problem of political legitimacy and stability

left largely unaddressed, it is apparent to us that the methods used were insufficient. Additionally, El Salvador during the transition to peace remained flooded with weapons and retained persistent levels of psychosocial trauma that amounted to a “militarization of the mind,” exacerbated by insufficient socioeconomic reform (Menjívar & Gómez, 2018; Martín-Baró, 1989, p. 18). Since the peace accords did not meaningfully address the underlying economic inequalities that underscored the war in the first place and economic alternatives were absent for the majority of the population as a result of neoliberal economic policies, the transition to peace in El Salvador was in many ways, no better than before the war. In fact, the major consequence of these failures is that they created the opportunity for crime and violence to flourish (Silber, 2011 as cited in Musalo, 2018, p. 24).

### **C. The War on Gangs**

To continue this history of the inheritance of brutality in Salvadoran society, we must return to the United States. Earlier, I mentioned that many Salvadoran refugees settled in the neighborhoods of Los Angeles, California which would become the birthplace of the infamous *Mara Salvatrucha* (MS-13) and *Barrio 18* (18 Street) gang rivalry. It is not the case that the Salvadorans that settled in these neighborhoods were pre-disposed to violent crime, nor is it the case that these gangs even began as such. The refugees that settled in Los Angeles were various, from entire families to unaccompanied young people to deserters from both sides of the armed conflict (Garsd, 2015). In the early 1980s, groups of Salvadoran refugees which would become gangs were no more than small social groups in neighborhoods marked by their marginality.<sup>8</sup> MS-13, for their

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<sup>8</sup> Legends of the origins of Barrio 18 go all the way back to the mid-twentieth century in Mexico, so it may not be perfectly accurate to say that both of these groups (MS-13 and Barrio 18) were merely social groups.

part, began as the Mara Salvatrucha Stoners (MSS), who were characterized by their listening to heavy metal music, drinking, and smoking marijuana (*MS13*, 2021).

However, amidst the U.S.'s rising war on drugs and other Latino gang conflicts, the Stoners became MS-13 when they took arms and pledged allegiance to the Mexican Mafia (*el eMe*, "M") to protect themselves on the street and in prisons where gangs allegiant to the Mexican Mafia held power (see Martínez, et al., 2019). Already stigmatized in U.S. society with little social or state support and with minimal prospects for work, gangs ultimately served to bridge this gap of accommodations for a basic quality of life (Farah & Babineau, 2016, p. 60).

The mass incarceration of gang members from tough-on-crime measures throughout the 1980s and 1990s presented new challenges for U.S. officials, who were growing more concerned about border security and immigration. By the mid-1990s, there was an urgent push to handle the problem of gangs and gang violence and near the end of the Clinton administration, the U.S. government began a program of mass-deportations of foreign-born residents convicted of various crimes back to their country of origin, often in the Central American northern triangle – Guatemala, Honduras, and El Salvador (*MS13*, 2021). Gang members returned to states like postwar El Salvador, where institutions were weak, the state apparatus was largely absent, and population vulnerability was widespread, setting fertile ground for the proliferation of gang operations and membership.

In El Salvador, gangs exploited this lack of apparent authority and socioeconomic underinvestment by targeting unemployed youth and, in the absence of family or community support – which was especially common after the war – many youths turned



to gangs for social support, a source of livelihood, and protection (*MSI3*, 2021). But the same absence of opportunities and authority, when compounded by greater gang membership made it increasingly difficult to resist gang recruitment, gang authority, or even to leave the gangs (Farah, 2016 as cited Seelke, 2016, p. 8).

This “absence of state” that many scholars refer to when talking about the conditions for gang proliferation, is the embodied consequence of neoliberal development strategies which liberalized the market, effectively increasing inequality and reducing social mobility. Though the “absence of state” has characterized Northern Triangle countries, it would be incorrect to conclude that these are failed states or even that democratic mechanisms have vanished completely, since these states maintained institutions and legal frameworks that are present in otherwise functional democratic states (Boerman, 2019, p. 6). Rather, as could be expected from liberalizing society through neoliberal market logics, we see El Salvador’s neoliberal democracy at work through “clientized relationships between state and non-state actors, both legal and illicit, [which have allowed] clients or interest groups to access and leverage the resources of the state—legitimate as well as corrupt” (Boerman, 2019, p. 6).

This clientized relationship has often taken shape through corruption of political leaders, which was virtually inevitable given gangs’ territorial reach and violent tactics (Crisis Group, 2020, p. 9). Political leaders seeking to implement social or infrastructure projects have been inhibited by and assisted by gang activity, for example, in negotiating with gangs for electoral support (Alemán, 2019; Jurado & López, 2020). This reinforced gangs’ bargaining power and has served to undermine the already precarious legitimacy of the state (Martínez, 2018; Wolf, 2020 p. 2).

In exchange, corrupt leaders have turned a blind eye to the activities of gangs and their territorial control methods, which, despite their reputations as transnational criminal organizations, have tended to focus on local issues, such as dominating a particular extortion racket or drug distribution area (MSI3, 2021). Infrequently, some gangs have distributed drugs, but their role has more often been as facilitators of drug shipments through their territory in exchange for payment from transnational criminal organizations like cartels and mafias (Lemus, 2015; García, 2016). Even more infrequently, MS-13 members have reportedly been contracted on an ad-hoc basis by Mexico's warring criminal organizations to carry out revenge killings (MSI3, 2021). The more frequent uses of lethal violence by gangs has often only intended to discipline their members or punish those who attempt to leave, dispute territory, confront law enforcement and their families, punish those who fail to comply with their orders, or to eliminate witnesses to crimes.

In response to the rising problem of gangs and gang violence, Salvadoran state officials since the early 2000s under the Flores (ARENA) and subsequent Saca (ARENA) administrations, have traditionally turned to *mano dura* (iron fist) approaches to prevent gang proliferation and gang violence. *Mano dura* approaches are characterized by tough-on-crime measures which have involved the mass-incarceration of thousands of youths through mass-round-ups or "sweeps" for illicit associations with gangs and stiff sentencing for gang membership and gang-related crimes (Seelke, 2016, p. 10). Salvadoran *mano dura* policies initially faced challenges from the Legislative Assembly for its unconstitutionality in 2003, only to be strengthened in 2004, and have also sustained objections from human rights groups over the execution of these policies,

which have often amounted to civil rights and human rights abuses, including torture and extrajudicial killings (Seelke, 2016, p. 11). Despite these obstacles, early public reactions to tough-on-crime reforms were generally supported and reflected in media coverage demonizing the activities of tattooed youths assumed to be gang members (Seelke, 2016, p. 11).

The apparent early success of institutionalizing *mano dura* approaches in Central America, but more specifically in El Salvador, was largely made possible by U.S. officials' interest in combatting transnational crime and gangs since the mid-2000s. The U.S. Congress, for its part, has contributed significant funds to anti-gang efforts, and has conducted oversight in Central America of the efficacy of U.S. program implementation and impact (Seelke, 2016, p. 11). During this time, U.S. agencies created several initiatives dedicated to anti-gang measures. In 2004, an MS-13 Task Force in the Federal Bureau of Investigation (FBI) was created for information and intelligence sharing between Central American officials and U.S. law enforcement; in 2005, under Immigration and Customs Enforcement (ICE) within the Department of Homeland Security (DHS) – a national anti-gang initiative called “Operation Community Shield” and a National Gang Unit; also in 2005, USAID led the initiative for international coordination of anti-gang strategy (Seelke, 2016, p. 15). In response to this, several other FBI initiatives were developed, including the Office of Overseas Prosecutorial Development, Assistance, and Training (OPDAT) dedicated to building Central American law-enforcement, the deployment of a regional advisor from the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF), the 2006 incorporation of the FBI's Integrated Automated Fingerprint Identification System in Central America through the

Central American Fingerprinting Exchange (CAFÉ), the Central American Law Enforcement Exchange (CALEE) to share information and intelligence, and also the 2007 establishment of Transnational Anti-Gang (TAG) Units to assist and vet National Civil Police (PNC) officers in Central America (Seelke, 2016, p. 16; Federal Bureau of Investigation, n.d.).

To further enhance El Salvador's law-enforcement capacity, the U.S. State Department sent a regional gang adviser to El Salvador to coordinate the State Department's Central American gang programs in 2008. Those programs have included training and technical assistance to law-enforcement and corrections officials, anti-gang workshops, and training at the International Law Enforcement Academy (ILEA) in San Salvador, among other regional coordination efforts. Additionally, the U.S. State Department's Bureau of International Narcotics and Law Enforcement Affairs (INL) has sponsored trainings and technical exchanges for police, prison officers, and justice-sector operators from across the Central American region, and has trained hundreds of police officers, who have provided training to more than 200,000 youth through the Gang Resistance Education and Training program (Brownfield, 2016). The U.S. government has expanded its citizen-security and law-enforcement programs in Central America beyond anti-gang efforts and antidrug programs through the Central American Regional Security Initiative (CARSI), for which Congress appropriated roughly \$1.5 billion from 2008 to 2016 (Seelke, 2016 p. 16).

These U.S. initiatives have augmented El Salvador's law-enforcement power in ways that reflect the U.S.'s involvement in training Salvadoran armed forces decades before. Furthermore, the increased police presence in previously marginalized spaces has

at least acknowledged the failure to address the supposed problem of re-establishing political stability and legitimacy during the transition to peace. Despite this attempt, the widespread deployment of *mano dura* measures has presented even more challenges to political stability and legitimacy and has exacerbated the problem of gangs and gang violence.

Salvadoran law-enforcement officers have regularly gathered criticism for strategic and operational abuses. CARSI, for their part, has been criticized for its lack of comprehensive strategy to improve citizen security, over-focus on combatting drug trafficking through more equipped law enforcement rather than legal reform, and for poor officer accountability measures (Eguizábal, 2015 as cited in Seelke, 2016 p. 16). What's more, the massive volume of *mano dura* arrests during the early to mid-2000s exploded the problem of gangs and gang violence in ways that intensified and organized gang violence.

Gang roundups forced thousands of youths into weak and overcrowded prisons. Though many arrested youths were released for lack of evidence that they committed any crime, some youths who were wrongly arrested for gang involvement joined gangs while in prison, probably to protect themselves (Seelke, 2016, p. 11) "For those who were already involved with gangs, prisons served as 'finishing schools' where, rather than being rehabilitated, first-time offenders deepened their involvement in illicit gang activities" (Ward, 2012 as cited in Seelke, 2016, p. 11). High gang membership saw intergang violence within the prisons, resulting in inmate deaths of gang members and civilians alike (Seelke, 2016, p. 11).

To combat this problem of intergang violence in prisons, the Salvadoran government decided to designate particular prisons to specific gangs in 2004 (Valencia, 2014). This process reified the more or less disorderly gangs into organized criminal groups that could consolidate their operations under the protection afforded to them by separated prisons. The absence of gang rivals and the power-in-numbers enabled gangs to carry out criminal activities from behind bars, sometimes with assistance from corrupt prison officials (Seelke, 2016, p. 9). This ramped up and organized extortion operations, targeted kidnapping, and the cornering of drug markets (Dudley, 2010). Orders would be made through cellular and internet communications and finances would flow directly into prisons for new leaders to handle logistics and strategy (Dudley, 2010).

Though initially met with apparent support, it became even more apparent that *mano dura* approaches caused increased homicide rates in the wake of organized criminal activity (Dudley, 2010). The organization of violence enhanced the brutality of prison violence, leading to massacres like the one described by Óscar Martínez:

From seven that night until nine the following morning, the 18s kept swept through every ward, lifting each head to their camera phone, and according to the official record, devouring twenty-seven men. "There were more," another man locked up in a different prison, told me. According to him, there were inmates who were reduced to nothing but blood. A man turned into a puddle. "Like four of them, when they [the 18s] found out what nails they carried,<sup>9</sup> they turned them into ground meat in the shower room. Little pieces that they flushed down the toilets." (2016, p. 176)

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<sup>9</sup> "To carry nails" [*cargar clavos*] in Central American gang slang refers to the revenge or retribution coming to you as a consequence of previous violent action.

But even outside of prison, extrajudicial youth killings by vigilante groups continued throughout *mano dura*'s implementation (Seelke, 2016, p. 11). In response to *mano dura*, gangs have also changed their behavior, including the encouraged retirement of tattoos to avoid detection (Seelke, 2016, p. 11).<sup>10</sup>

Throughout this period, the two ARENA administrations sustained their lack of involvement in preventative, rehabilitative, and reintegrative measures for individuals seeking to leave gangs. The programs that have existed provided individual and family therapy for at-risk youths, intervention efforts to prevent retaliatory violence, and rehabilitation programs for those seeking to leave gangs and for nonviolent offenders in prisons, but these have been primarily funded by church groups or NGOs (Abt & Winship, 2016).

In 2009, Mauricio Funes was elected as the first FMLN president in El Salvador. Despite his administration's attempt to take a different approach to dealing with the problem of gangs and gang violence through crime prevention instead of hardcore *mano dura* measures, crime remained basically the same through the first two years of his administration (Seelke, 2016, p. 11). With the help of the Church, the Funes administration mediated a dialogue between leaders of MS-13 and Barrio 18 in what has become known as the "gang truce" of 2012 with the ultimate goal of reducing killings (Katz, et al., 2016). Gang leaders pledged not to forcibly recruit children, perpetrate violence against women, and reduce homicides of civilians and security forces (Seelke, 2016, p. 11; Crisis Group, 2020, p. 8). The government, in turn, promised to transfer a number of gang leaders to less restrictive prison facilities and to invest in socioeconomic

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<sup>10</sup> The Salvadoran media has not reflected this change in doctrine and still stigmatizes tattoos.

opportunities in marginalized communities (Crisis Group, 2020, p. 8). Between the prison transfers and May of 2013, the Salvadoran government and independent researchers reported a dramatic decrease in homicide rates (Cruz, 2013 as cited in Seelke, 2016, p. 11). Gang leaders also turned in small amounts of weapons and offered to engage in broader negotiations (Seelke, 2016, p. 11).

But the success of this truce may have been illusory. While homicide rates indeed declined, disappearances increased after the truce took effect (OAS, 2013; Farah, 2016; Seelke, 2016, p. 12). Meanwhile, gangs benefitted by garnering media attention and subsequent political power (OAS, 2013; Farah, 2016; Seelke, 2016, p. 12). Gang cellular communications continued in and out of prisons and without immediate government investment in socioeconomic projects and street level gang cliques refused to give up territorial control or to stop extortion (Seelke, 2016, p. 12). But gang leaders themselves and their associates apparently benefitted from the financial flows from officials involved in the truce, allegedly providing as much as \$25 million (Ávalos & Alevar, 2016 as cited in Seelke, 2016, p. 12). By mid-2013, Funes withdrew support for truce mediators and reduced communications between imprisoned gang leaders and their cliques on the outside (Seelke, 2016, p. 12). At the end of Funes's term in 2014, average homicide rates had risen back to around nine murders a day and gang violence against police worsened (Seelke, 2016, p. 12). The failure of the truce can mostly be reduced to its insufficiency in addressing the demands of gangs for socioeconomic investment and lack of political support, both from state agencies and from the Salvadoran public, 75 percent of which reportedly did not trust it (Instituto Universitario de Opinión Pública, 2015, p. 50 as cited in Crisis Group, 2020, p. 8).



The wake of the truce's destruction left Salvador Sánchez Cerén (FMLN) to inherit a homicide rate worse off than the previous *mano dura* administrations. To address the problem of gangs and gang violence, his administration opposed negotiating with gangs wholesale and instead leaned back into tough anti-gang measures. When gang leaders involved in the truce were returned to maximum-security prisons in early 2015, confrontations between security forces and gangs increased. After an apparent massacre in March the same year, El Salvador's attorney general began investigating allegations of police involvement in extrajudicial killings (Beltrán & Scorpio, 2016). In May 2015, the Salvadoran government created three battalions to help police in anti-gang efforts; at that time, nearly 7,000 soldiers were already involved in public security efforts to combat gangs (Risenfeld, 2015). By the end of 2015, El Salvador posted the world's highest homicide rate, 103 per 100,000 inhabitants, gaining its worldwide reputation as the "murder capital of the world" (Seelke, 2016, p. 12; Kurtenbach, 2016).

It was not until mid-2016 that the Salvadoran government was able to begin reducing gang violence, which had simultaneously become more powerful and fragmented after the 2012 gang truce (Castillo & Alemán, 2016). In March 2016, President Sánchez Cerén "deployed hundreds of military reservists and imposed 'extraordinary measures' in jails which led to confinement, communications blocks, and a halt on rehabilitation programs" (Ellis 2016; *Pandilleros asesinan a once trabajadores en una zona rural de El Salvador*, 2016; La Prensa Gráfica, 2016; as cited in Crisis Group, 2020, p. 9). These extraordinary measures had immediate affects in reducing homicide rates, but they increased again slightly in the months that followed (Crisis Group, 2020, p. 9). While some maintain that these homicide reductions may have been

caused by a nonaggression pact among gangs, it remains possible that the extraordinary measures contributed in part to keeping homicide levels lower by hindering communication between jailed and outside members (Martínez, 2016; Gagne, 2020 as cited in Crisis Group, 2020, p. 9).

Even so, the consequences of Sánchez Cerén's apparent revamping of *mano dura* measures left many massacred amid the destruction of gang and anti-gang conflicts. Sánchez Cerén's administration coincided with the most lethal period in the country's post-war history, leading to a total of 23,000 reported homicides (*Gobierno de Sánchez Cerén cierra como el quinquenio más violento, con más de 23 mil homicidios*, 2019 as cited in Crisis Group, 2020, p. 1). "While politically popular, the deployment of the military into the streets has usually failed to produce sustainable reductions in violence and instead has led to massive human rights violations" (Seelke, 2016, p. 13). And gangs have not even been primarily responsible for these abuses. Just between June 2014 and May 2015, the Office of the Ombudsman for Human Rights in El Salvador reported that it received 2,202 complaints of human rights violations, 92% of which were allegedly committed by the police and/or the military (United States, 2015, p. 2). Military and law-enforcement abuses have been exemplified in indiscriminate mass detentions, excessive expressions of force sometimes amounting to torture, and even the re-activation of death squads, which have reportedly been responsible for several extrajudicial killings (see *El Salvador 2020 Human Rights Report*, 2021; Hernández, 2020 as cited in Crisis Group, 2020, p. 7). No one was safe from this violence, as the war on gangs brutalized everything in its path: police, gang members, and civilians alike.

After nearly two decades of failed anti-gang initiatives, corruption, scandals, and overall dissatisfaction from the dominating ARENA and FMLN parties, Nayib Bukele presented himself and the party he created, *Nuevas Ideas* (New Ideas), as part of a non-ideological movement dedicated to developing El Salvador through modern technology, bringing safety and security to Salvadorans, and anti-corruption (Crisis Group, 2020, p. 3).<sup>11</sup> As part of his presidential campaign in 2019, Bukele unveiled his Cuscatlán Plan to address the problem of gangs and gang violence. Crisis Group describes:

It [the Cuscatlan plan] maps strategies for strengthening law and order, such as improving security personnel's working conditions and equipping them with new technologies to boost their investigative resources. It foresees the reactivation of the Rural Police, the creation of communal police units and a battalion of military police for use in prisons, as well as the establishment of an International Commission against Impunity in El Salvador to combat corruption, along the lines of similar commissions that existed in neighbouring Guatemala and Honduras (Breda, 2019; Ávalos & Robbins, 2020). Crime prevention also features prominently in the plan, with a focus on providing opportunities and protection to children and teenagers at risk of being recruited by criminal groups, and strategies

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<sup>11</sup> “Despite Bukele’s frequent attempt to present himself as anything but a regular politician, Bukele had a long-standing career in Salvadoran politics before his presidential campaign, including being a mayor of Nuevo Cuscatlán and mayor of San Salvador under the FMLN flag. “Bukele was expelled from the party in October 2017 for allegedly sowing divisions within the party, violating its values, slandering some of its members, and violating women’s rights. The latter charge refers to an episode in which Bukele allegedly addressed former FMLN mayor Xochitl Marchelli in an offensive manner, for which he was tried and then acquitted in March 2019” (Laguan, 2017; Hernández, 2019 as cited in Crisis Group, 2020, p. 3). After his expulsion, Bukele founded *Nuevas Ideas*, but apparently failed to register the party for the presidential election in time, and instead ran under the right-wing minority party Grand Alliance for National Unity (GANU)” (Crisis Group, 2020, p. 3).

for reintegrating into civilian life young people ensnared in gang activities as well as jailed criminals (Crisis Group, 2020, p. 10; see Bukele & El Salvador, n.d.)

In a landslide election, Bukele won the presidential race (Romero, 2021).<sup>12</sup> Once in power, Bukele announced the Territorial Control Plan (PCT), which government officials have said mirrors that of the aforementioned Cuscatlán Plan, consisting of seven “phases”, costing around \$575 million for 2019-2021, the majority of whose funds were intended to come from foreign loans and donations (Calderón & Alemán, 2019; Sibrián, 2019; Velasquez, 2019 as cited in Crisis Group, 2020, p. 10).<sup>13</sup>

A comprehensive documentation of all seven phases of the PCT has remained unknown to those outside of Bukele’s inner circle, who have asserted the president’s order of secrecy, but have promised that one of the phases will focus on gang rehabilitation (Crisis Group, 2020, p. 10). Details of each phase have been released only once those phases were implemented; to the date of writing, only the details of the first four phases are available (The four initial phases of the territorial control plan have been effective, 2020). The phases are as follows: (1) preparation, (2) opportunities, (3) modernization, (4) raid.

The preparation phase has mostly reflected the efforts of previous administrations to combat the problem of gangs and gang violence. Apparently reinstating some of the *mano dura* measures, Bukele’s preparation phase has permanently deployed police and military patrols, furthered mass detentions, and provided new equipment to security forces (Crisis Group, 2020, p. 10). This first phase also intensified its prison operations

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<sup>12</sup> Bukele won having received 1.4 million votes and about 53% of votes cast.

<sup>13</sup> “The government plans to cover part of its total cost with \$200 million in loans and \$104 million in foreign aid donations.” (Crisis Group, 2020, p. 10).

by announcing a series of “states of emergency” specifically for prisons, intended to further strengthen its grip on communications and financial flows to and from jails while also confining and transferring thousands of gang members in late 2019 (*El Salvador levanta estado de emergencia en cárceles tras baja de homicidios*, 2019; Orellana, 2019, as cited in Crisis Group, 2020, p. 11).<sup>14</sup>

A spike in homicides in April of 2020 proved again that these measures were ineffective in reducing murder rates (García & Maldonado, 2020, p. 11). Bukele alleged that the killing spree was ordered from the jails and decided to stiffen confinement punishments for prisoners, so that “they could not see a beam of sunlight” (Linares, 2020, as cited in Crisis Group, 2020, p. 11). According to Crisis Group,

His government also released disturbing pictures of hundreds of prisoners, stripped to their underwear, sitting closely together, which raised concerns about the possibility of COVID-19 spreading in jails (Hallett, 2020). Bukele ordered that members of different gangs share the same cells, reversing what had become standard practice in El Salvador’s jails over the past sixteen years, (Villamarona, 2006) [...] He also endorsed security forces’ use of lethal force and offered legal support to officers found killing “in [self-defense] or in [defense] of honourable Salvadorans’ lives”. Observers worried that such rhetoric could lead to an increase in police and military abuses. (García & Maldonado, 2020 as cited in Crisis Group 2020, p. 11).

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<sup>14</sup> Crisis group writes, “The government imposed at least three temporary states of emergency in all prisons so far, including one that lasted from the end of June 2019 to the beginning of September, while the law allows for a maximum of fourteen days. Between 20 June 2019 and mid-November, prison authorities transferred around 10,000 detained gang members from one jail to another and seized more than 2,000 *wilas*, pieces of paper on which detained gang members write messages to peers on the outside” (*El Salvador levanta estado de emergencia en cárceles tras baja de homicidios*, 2019; Orellana, 2019, as cited in Crisis Group, 2020, p. 11).

Though apparently ineffective in combatting the problem of gangs and gang violence, the preparation phase of the PCT did prime law enforcement to perpetrate violence with impunity under the emergency regime to come.

Simultaneously exercised with phase one, the second phase, “opportunities” sought to combat the problem of gangs and gang violence through preventative socioeconomic measures. The purpose of the Salvadoran government’s Unit for the Reconstruction of the Social Fabric was to “address the underlying conditions that prompt young people to join gangs, such as social exclusion, economic marginalization, scarce opportunities, and lack of access to sports and recreation” (Prensa, 2022 as cited in Pappier, 2022, p. 41). Despite this unit’s position in the “opportunities” phase of the PCT, there has apparently been no initiative to provide economic opportunities in communities where gangs recruit, but there has been a construction of so-called *Centros Urbanos de Bienestar y Oportunidades* or *CUBOs* (cubes) to serve as recreation centers for at-risk youths (Crisis Group, 2020, p. 12). Though popularly approved even among gang members where the eight CUBOs have been built, only six out of the government’s intended 30-50 are currently under construction (Prensa, 2022 as cited in Pappier, 2022, p. 41). Moreover, without providing other economic opportunities, the sustainability of these CUBOs is at risk, as each requires nearly \$700,000 in building costs alone, plus an annual \$350,000 for personnel, security, bills and maintenance (Crisis Group 2020, p. 13). The full consequences of this phase’s employment remain to be seen because of its underperformance and because the focus of the PCT to date has been mainly about security measures.

The third phase, “modernization”, has also been simultaneous with the first two phases. This phase intended to modernize Salvadoran security forces by providing them with new equipment and technology. This part depended on a \$109 million loan from the Central American Bank for Economic Integration to pay for the security forces’ equipment and technology, but El Salvador’s Legislative Assembly denied the president’s loan request in early 2020 (Madrid, 2019 as cited in Crisis Group 2020, pp. 10-11). In response to this disapproval, “Bukele ordered security forces to occupy the Legislative Assembly’s plenary chamber, raising fears of government shutdown and resembling authoritarian tendencies” (Dada, 2020 as cited in Crisis Group, 2020, p. 16).

Despite Bukele’s supposed assurance that he did not intend to disrupt democracy, civil society groups and independent journalists reported increased restrictions on coverage of the event (Crisis Group, 2020, p. 16). In keeping with his usual confrontational approach to communication, Bukele also accused oppositional deputies of being “corrupt and having a vested interest in letting violence thrive.” (Crisis Group, 2020, p. 15). He gave the Assembly a week to meet to approve the loan, threatening to remove any deputies who refused (Reuters, 2020). Although Bukele said he would obey the Supreme Court’s order that he refrain from such unconstitutional behavior, it was becoming clear that the constitutional order in El Salvador was in crisis (Alemán, 2020).

In the following year, 2021, Nuevas Ideas gained a supermajority in the Legislative Assembly, enabling the prompt dismissal and replacement of five magistrates of the Supreme Court and Attorney General Raúl Melara (jstaff, 2021b). That September, the Supreme Court ruled that Bukele could run for re-election, despite its apparent unconstitutionality, and Bukele famously changed his Twitter bio to “the coolest dictator

in the world” (jstaff, 2021).<sup>15</sup> Despite the barriers to approving the loan, the government has still been able to continually provide new equipment and technology, in addition to better salaries and work conditions for their security forces (The four initial phases of the Territorial Control Plan have been effective, 2022).

Like previous approaches to combatting the problem of gangs and gang violence in El Salvador, the PCT has continued to present new problems and challenges as consequences of poor implementation. However, in the first year of the PCT implementation (2019-2020), homicide rates and overall violent crime rates declined (Crisis Group, 2018 as cited in Crisis Group 2020, p. 19). But according to a report conducted by Crisis Group, there appears to be

no causal relationship between the deployment of police and military officers to the 22 municipalities prioritised by the Territorial Control Plan and the geographical distribution of the drop in homicides, nor does it show that the prison state of emergency in July of 2019 had immediate affects in reducing homicide rates, even though it may have sustained these reductions. (Crisis Group 2020, p. 20; see also p. 21, p. 22, p. 23).

It is more likely that external initiatives caused the reduction of violent crime in El Salvador. The truth is, in the words of one journalist, “in this country, homicides go down only if gangs decide so” (Crisis Group, 2020, p. 24). Crisis Group’s report has backed up the claim that “past experience shows that government policies reduce murder rates only when they can change the gangs’ own calculations.” (Crisis Group, 2020, pp. 24-25).

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<sup>15</sup> El Salvador President Nayib Bukele’s Twitter profile bio on September 21, 2021: “*El dictador más cool del mundo mundial.*”



President Bukele apparently recognized the success of reducing homicides through dialogue when he attempted to broker a new truce to solve the problem of gangs and gang violence. According to an investigation led by former Attorney General Raúl Melara, administrative officials negotiated with El Salvador's major gangs throughout 2020 (Martínez et al., 2021 as cited in Ávalos, 2023). In exchange for a reduction of homicide and assistance in electoral support, gang members asked the government to cease large-scale anti-gang military and police operations, to put an end to indiscriminate persecution of their members "just because of their tattoos," to provide their members with employment opportunities and microfinancing for businesses, to allow conjugal visits in the prisons, and to make changes to the maximum-security prison protocols (Martínez et al., 2021).

The pact apparently fell apart in March of 2022, when MS-13 claimed responsibility for a killing spree that left 87 dead in one weekend in response to a supposed "betrayal" from the Bukele administration (Ávalos, 2023). Predictably, Bukele's government responded with brutal retaliation. In March 27, 2022, the Legislative Assembly decreed a temporary emergency regime or "state of exception" (*régimen de excepción*) and has already been extended 11 times (Ávalos, 2023). It remains in place at the time of writing. In his "NUEVOS SOLDADOS Y POLICÍAS PARA LA GUERRA CONTRA LAS PANDILLAS" (New soldiers and police for the war on gangs), Bukele said that this decree gives the state "the tools [they] lacked to fight crime" marking a step to advance phase three of the PCT (Bukele, 2022). Now equipped for war, security forces can begin phase four: "raid" (Bukele, 2022).

Phase four of the PCT, “raid”, is still underway and has seen the permanent installment of security forces into gang territories to disrupt gang activities and incarcerate criminal offenders (The four initial phases of Territorial Control Plan have been effective, 2022). This process has been assisted by the state of exception, which has suspended constitutional rights which guarantee a right to an attorney and freedom of association (Salvadoran Congress Extends State of Exception for 11<sup>th</sup> Time, 2023). According to Bukele, since the employment of phase four of the PCT, “El Salvador is now the safest place in the continent” and has published statistics touting the lowest homicide rates in decades for El Salvador. The truth of these facts has remained clouded in obscurity, since the Salvadoran government has completely blocked access to public information and has changed what kinds of deaths count as homicides, for example by excluding deaths of suspected gang members in police confrontations (Ávalos, 2023). Furthermore, disappearances are excluded from homicide rates, which have shown before to rise when homicides decline and, in any case, have been inconsistently logged by the government (Noriega, 2022).

Even so, independent human rights organizations have kept a close eye on the consequences of Bukele’s PCT under the state of exception. According to a report created by Human Rights Watch (HRW) and Cristosal, there have been “widespread human rights abuses under the state of exception, including enforced disappearances, torture, deaths in custody, and hundreds of arbitrary arrests” (Pappier, 2022).

Security forces have reportedly conducted hundreds indiscriminate raids or mass round-ups, arresting over 65,000 people, including more than 1,600 children, focusing primarily in communities where the state has been absent and have suffered from lack of

access to socioeconomic opportunities (Ávalos, 2023; Pappier, 2022, p. 1). Arrests have been conducted based on appearance (like having tattoos) or social background, backed up by unverifiable evidence, like anonymous phone calls or allegations on social media, but often, no arrest warrant or explanation to families is presented at all (Pappier, 2022, p. 2). Juan Pappier of HRW reports an officer telling the mother who witnessed her sons arrest, “We can arrest anyone we want” (Pappier, 2022, p. 3).

Mass round-ups have detained hundreds of people without connections to gang activity and no means of legal recourse or contact with their families (Pappier, 2022, p. 2). The rate of mass incarceration has also predictably worsened prison conditions, which have been overcrowded and fraught with violence (Pappier, 2022, p. 3). As a result of the emergency decree also, essential human rights, like food, drinking water, healthcare, and freedom from torture have been violated or at least significantly reduced (Pappier, 2022, p. 3). As of November 2022, 90 people have died in prisons from unclear causes (Pappier, 2022, p. 78). According to Héctor Silva Ávalos in a commentary published by the Washington Office on Latin America, “none of these detainees have had proper defense and most have been detained without seeing a judge within two weeks of their arrests, all of which is allowed by the limitations to the constitutional guarantees that were approved” (Ávalos, 2023).

The abuses perpetrated under Bukele’s state of exception have all been made possible by his party’s exacerbation of the constitutional crisis. Nuevas Ideas has centralized power by affectively reducing separations of powers, dismantled independent governmental bodies which could check the executive, and created hostile environments for journalists, civil society groups, and officials who criticize Bukele’s governance and

abuse of human rights, calling them “gang supporters” (Pappier, pp. 4-5). For example, Bukele has gone as far as to say,

the so-called human rights NGOs [...] do not defend human rights, they’re against human rights. They are profiting from the bloodbath in El Salvador. [...] They need there to be a bloodbath, so they can analyze the bloodbath. Because that’s their livelihood. (Bukele, 2022)

In keeping with ignoring constitutional democracy and democratic participation, it has been apparent that Bukele and his administration will continue their abuses “regardless of how angry the international community gets. Regardless of who protests” (Bukele, 2022).

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Bukele has said that “the population has only God and you [the security forces] to protect them” (Bukele, 2022). I fear that the fate of El Salvador lies only in the hands of God, because the hands of El Salvador’s law enforcement are already stained with blood and are bound to historical replication of brutality. But if Bukele is right that the bloodbath in El Salvador is something to make a profit from and human rights are inconsistent with this kind of violence which I will call brutality, then his accusation against human rights NGOs may be valid. I will address this kind of challenge in the next Chapter.

#### **D. Conclusions: Recycling the History of Brutality**

In this first Chapter of this essay, I provided a brief history of the dynamics that have led to the current state of exception in El Salvador. I have attempted to illustrate several lines throughout this history with the intention that they would meet here, where I argue that El Salvador’s state of exception is the descendant of a long history of brutality.

This history begins at least with the armed conflict. I described how the Salvadoran poor led an armed insurgency against the armed forces of the Salvadoran government for their basic rights to land, safety, and political expression to be respected from the late 1970s into the 1990s. Historically situated within international Cold War politics which saw democracy and capitalism at stake, United States agencies poured support into aiding the Salvadoran government to repress the problem of insurgent guerilla forces. With United States military assistance, Salvadoran death squads were trained in scorched earth and other brutally violent tactics which have left their mark on the war through massacres and thousands dead and disappeared. The end of the Cold War led to a stalemate and peace negotiations in 1992.

But, as I have illustrated, the 1992 Peace Accords failed to substantively address the socioeconomic problems which caused the war in the first place. This process was historically situated after “democracy and capitalism” won the Cold War and within a movement which consolidated human rights norms into a liberal discourse guaranteed only by “democracy and development,” which I have argued implicated that human rights can only be expected through adherence to neoliberal ideology. Throughout the transition to peace in the 1990s in El Salvador, neoliberal policies were adopted with expectations that strengthened democracy and economic development would promote human rights. Instead, the same neoliberal ideologies deepened inequalities and further marginalized the poor.

This left the poor in El Salvador scarred by the war and vulnerable. When gangs entered the Salvadoran context in the 1990s as a result of mass-deportations from the United States’ tough-on-crime and get-tough immigration policies, they exploited the

vulnerability of marginalized communities and weak state apparatus. Gang membership and operations exploded in El Salvador's marginalized communities as joining a gang could secure socioeconomic opportunities, albeit criminal ones. In response to rising levels of violence and apparent threat to state security, the Salvadoran government responded with *mano dura* measures. Resembling the armed conflict, the United States provided training and technology to repress the supposed problem of "gangs and gang violence." While exercising some of the most brutal measures and augmenting violent conflict across the country, *mano dura* measures exacerbated the problem of gangs and gang violence by overflowing prisons, enabling gangs to organize and systematize operations. Rather than substantively addressing the socioeconomic deficits which cause youth to join gangs and which gang members have asked the government to resolve, the government continued to fight back harder. The exceptional cases where the government has negotiated with gangs have been short-lived because of the government's failure to fulfil their end of the bargain. The homicide spikes that have followed these fallouts have proven that gangs maintain control over homicides. Even so, the current Bukele administration has employed the Territorial Control Plan to combat the problem of gangs and gang violence with greater brutality than previous administrations, which has been augmented by the state of exception. What little peace came out of the Peace Accords in 1992 has since been desecrated by the continued war on gangs, which has reinstated death squads, promoted widespread political repression, ignored and dissolved democratic institutions, and permeated violence into the social fabric of Salvadoran society that is still crippled by inequality that predates the war.

This Chapter was intended to show a lineage of brutality in El Salvador, from the armed conflict to the current state of exception which is situated within the war on gangs. If the violent parties in El Salvador's war on gangs did not inherit their brutal methods through the blood of their ancestors, they have at least inherited it through the pouring blood of their friends and family around them. The wars between gangs have been compounded by the government's war on gangs, exacerbating the dynamics of armed violence, solidifying brutality as the only possible means of problem-solving, and silencing alternatives, which, as I will explain, is exactly the telos of brutality (Bergmann, 2020, p. 36). The apparent cycle of brutality, which philosopher Carlos Alberto Sánchez calls "narco-culture" or what philosopher Sayak Valencia calls "gore reality," fosters a context which normalizes and demands extreme violence. In the Chapter that follows, I will explain why interrogating brutality and the contexts in which it is produced, reproduced, and justified – of which El Salvador's current state of exception is but one example – is relevant to and apparently coherent with liberal human rights discourse.

## Chapter 2: Conceiving Brutality

In this Chapter of the essay, I will suggest different ways of conceiving the problem of gangs and gang violence in El Salvador, exhibited by the state of exception within the broader war on gangs. First, I will illustrate the core tenets of neoliberalism and the consequent situations where subjectivities relevant to the problem of gangs and gang violence emerge. I will explain how situations which are characterized by brutality are the consequence of adhering to neoliberal ideologies. Then, I will describe the characteristics of these subjectivities and the processes that cause their emergence. This part will explain how justifications for brutality are made coherent by contemporary liberal human rights discourse. I will utilize the work of Mexican philosophers, Sayak Valencia's *Gore Capitalism* and Carlos Alberto Sánchez's *A Sense of Brutality: Philosophy After Narco-Culture* to provide a phenomenological account of how criminal subjects realize themselves as rights-bearing human beings through the brutalization or derealization of the other. I also draw from Cameroonian philosopher Achille Mbembe's *Necropolitics* to describe how this brutal phenomenology is replicated at the state level by state officials through the state of exception. Finally, having established the conceptual foundations of the problem of gangs and gang violence in El Salvador, I will interrogate the various ways of conceiving this problem. I will conclude this Chapter by arguing that the problem of gangs and gang violence, exhibited in El Salvador's state of exception, is more accurately and more practically understood to be a problem of brutal subjectivities and brutality, whose actions are made coherent by liberal human rights discourse's dependency on and adherence to neoliberalism.



## **A. Neoliberalism as an Epoch of Brutality**

Up to this point, I have written under the assumption that the reader has at least some understanding of the concepts, “neoliberalism” and “brutality”, which are central to the content of this essay. However, these concepts are notoriously vague and present a number of challenges to understanding them, since deeper investigations tend to reveal greater contradictions, muddying our ability to comprehensively understand these concepts. In this part, I will clarify what I take to be the core tenets of neoliberalism or neoliberal ideology. I will then describe how these core tenets are realized in phenomenon which I will describe as brutality. To do this, I will describe the characteristics and contexts of brutality. Rather than claiming that brutality presents a challenge to the dominance neoliberal ideology, I will explain how brutality and the emergence of brutal subjectivities are the consequence of adherence to neoliberal ideologies.

Neoliberalism or neoliberal ideology is a form or theory of political-economy, which asserts that governments’ promotion of free market capitalism is the best way of promoting liberal ideals, such as interpersonal relationships, rights, and liberties. As we have seen in the previous Chapter, neoliberal policies are designed to promote private industry, reduce the government apparatus, and increase development, often through international investment into Third World spaces. As we have also seen, these policies are endorsed by liberal human rights discourse as promoting the consolidated condition of “democracy and development,” which is elemental to a rights-focused regime. States which adhere to neoliberal ideology premise their promotion of free market capitalism with “equality for all”, which was apparently won by the fall of communism during the

Cold War. This historical coincidence also signified a distribution of the phrase “equality for all” to both democracy and the market, since achieving democratic ideals – most significant of these being human rights – reduces to free and equal participation in the market. Thus, the nation-state is synonymous with – or better described as – the nation-market (Valencia, 2018, p. 45).

I take neoliberalism’s iterations to bear three fundamental characteristics: hyper-individualism, universal commodification, and a standard of excess. One might argue that I am just characterizing capitalism in general. Unlike generic descriptions of the concept of capitalism, however, I take neoliberalism to represent a historical epoch which is composed of ever-changing dynamics and developments between its concept and its reality. Neoliberalism’s iterations are always cycling back into themselves with absolutely no restraints; the freedom of the market from the state apparatus allows for society to operate simply by market logics, which – as far as we can observe – do not entail normative codes because these cannot be manipulated through economic maneuvers. In other iterations of capitalism that were not neoliberal capitalism, the state had at least some minimal role in negotiating between an organized working class and their employers. Under neoliberal capitalism, any form of negotiating is the responsibility of the individual.

One consequence of these developments is that some persons of marginalized populations turn to crime as a means of achieving basic human rights. The nation-state’s transition into the nation-market does not involve any reservations over which kinds of markets are supposed to guarantee securing human rights. In fact, neoliberal ideology prohibits the state from doing so. Because securing human rights under the epoch of

neoliberalism depends on participation in a free market, illegal or otherwise, criminal markets become serious contenders to presenting opportunities; risk-assessments are the responsibility of the individual, who is expected to choose the livelihood that presents greater “profits” than “expenses”. Neoliberalism’s resolve to reducing the state apparatus severely alters the ratio, depending on space and where the state apparatus appears or does not. In spaces where the state apparatus is absent, illegal or criminal groups take control of responsibilities once managed by the state and present crime as an economic opportunity within their territorial control.

The proliferation of territory controlled by criminal groups seems to clearly be caused by the state’s adherence to neoliberalism. Returning to the basic tenets of neoliberalism – hyper-individualism, universal commodification, and a standard of excess – we can see how criminal groups adhere to neoliberal ideology themselves. Because we are interested in developing a more comprehensive understanding of brutality and its situatedness in the current state of exception within El Salvador’s war on gangs, we should retrace the conditions that have allowed brutality to emerge through the tenets of neoliberalism.

Beginning with hyper-individualism, we notice the importance of the entrepreneur in free market capitalism. The entrepreneur carves out new markets which did not previously exist. When there is little to no economic activity to begin with in some place, being an entrepreneur is just a matter of paying people to do any kind of work. Because all things are potential commodities under capitalism’s law of universal commodification, criminal commodities are presented as legitimate objects of work. Criminal operations are presented by criminals as serious opportunities – often the only opportunities, but

certainly the most lucrative ones – for the possibility of living a life of luxury. This is the ideal of neoliberalism’s standard of excess. A standard of excess embodied in the drive to consume to realize the version of ourselves which looks best for the market. The ability to consume is interpreted as a reflection of the ability to secure human rights; the more one has, the more securely human they present themselves. The more they can inflate their look, the more unique they present themselves under neoliberalism’s hyper-individualism lens. This constant need for novelty is re-cycled by the next entrepreneur, presenting something *more* than before.

But neoliberalism’s deification of absolutely free markets and market consumption primes this cycle for perversion. Crime commodifies violence. The more criminally sanctioned the work, the riskier the work, the more profitable the work. Suddenly the dystopia of black markets come to bear when criminal actors compete for and pirate the most brutal tactics, leaving a recognizable trace of their criminal identity on the bodies they have brutalized, like a registered trademark (Valencia, 2018, p. 155-156). This is the process of “gore capitalism,” in which “the force of work is replaced by gore practices, understood as the systematic and repeated use of the most explicit forms of violence to produce capital” (Valencia, 2018, p. 72). Valencia’s concept “gore” is helpful for understanding how brutal violence is made into a spectacle, but a more comprehensive concept related to this kind of violence, “brutality,” captures both extremely violent spectacle and extreme violence not meant to be seen.

I think we should be clear about what we mean by brutality. Brutality is a violence which is *more* than violence and cannot be fully captured by the concept of violence; it is a hyper-violence which, in its excessiveness, renders one speechless

(Sánchez, 2020). It denies itself as brutality in the process of derealizing the other (a way of conceiving the other as not really a person), whose annihilation is treated as mundane in its excessive reproduction (Sánchez, 2020). This tension between the reality of brutal violence and its inconceivability is what makes brutality so hard to define, but we can recognize brutality when we see it. Sánchez (2020) writes:

Brutality is what we grasp without understanding but cannot “see” when we announce the *excessiveness* of violence; brutality is what we fear *but of which we cannot speak* when a violent act shocks us and leaves us without words. In this sense, violence is the confrontation between cartel assassins and the state police that leaves countless dead; brutality is the decapitation of a father and the disembowelment of his family that preceded it—that which has us saying, “This is too much.” While violence remains but a concept that points to the force of interruption, intervention, and dislocation, brutality as a concept tries to capture something more—that is, the *shock*, the disbelief, the unsayability, or the excess violence of decapitation, of dismemberment, or of the “unthinkable” destruction of the human being. (p. 78)

I think that Sánchez might be wrong about minimizing the violence between state police and criminals from brutality, especially in the case of El Salvador, but I will return to this in the next section. His description nevertheless captures the gravity of brutality once it surfaces. This surfacing is not always intended; for example, one of the most brutal acts is making “pozole” or “guiso” (human stew) by dissolving whole living bodies in acid in clandestine operations (Valencia, 2018, p. 154; Cordona, 2014 cited in Sánchez, 2020, p. 121).

The clandestine operations ought to be contrasted with Valencia's "gore practices." Valencia coins the term "gore" to refer to the "instances of dismembering and disembowelment, often tied up in organized crime, gender and the predatory use of bodies" (2018, pp. 19-20).<sup>16</sup> Named after film genre of the same name, "gore capitalism" produces such an extreme volume of blood and guts that it is presented as unreal, gimmicky, or parodic (Valencia, 2018, p. 31). Other scholars have described a similar phenomenon as "horrorism," which combines the instrumental value of fear (terror) and extreme, visible violence (horror) (Cavarero, 2009 cited in Sanchez, p. 136). For the purposes of my investigations, I am interested in the ways that brutality is enacted on bodies. This is why I prefer the term gore over horrorism because gore more intuitively illustrates the centrality of the body than horrorism in its terminology. Furthermore, both "horror" and "terror", brought together in "horrorism" focus mostly on the subjective experience of this kind of violence. This kind of experience does not capture the viscosity of seeing the other as unreal until after the body is annihilated. "Gore" or, better yet, "brutality" focuses on both seeing the other's body as unreal in the process of its annihilation *and* after its annihilation.

It is not enough to paint an image in blood and assume that we can comprehensively understand the nature of brutality or to understand the dynamics of the subjectivities which utilize brutality as a form of empowerment. The next part will be dedicated to a phenomenological description of the actions which cause the emergence of what I will call "brutal subjectivities". Before I do this, though, I think it is necessary to

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<sup>16</sup> Gender and misogynist ideology, embodied in machismo, is a fundamental element of the brutal subjectivities and brutality of organized crime. The length of this essay does not permit a sufficient discussion of this dimension, but I choose not to exclude from the definition of "gore capitalism" because distort the definition in egregious ways.

clarify whether this problem (the proliferation of brutal subjectivities and brutality) is symptomatic of neoliberalism's failings or whether the criminal environments where the problem emerges are elemental to neoliberalism.

If the problem of brutal subjectivities and brutality is a symptom of neoliberalism's failure, then we would see a clear separation between the nation-state/nation-market and the dystopian spaces where brutality prospers. Valencia has argued that these disparate realities – legal and illegal, citizen and criminal – represent parallel identities and parallel states that would seemingly have no comparability or point of intersection (Valencia, 2018, p. 120, p. 220).

However, there is not a clean and clear line to draw between the realities of the formal and criminal markets, and by extension, states. It is elemental to neoliberal ideology that the state reduce the power of its apparatus to promote “democracy and development.” The emergence of new markets is exactly what the neoliberal state would expect. The proliferation of criminal markets may actually be beneficial for marginalized spaces under neoliberal capitalist logic, which prioritizes profits over perceived expenses. Those who can leverage resources without the interference of the state are simply embodying the ideals of neoliberalism. Thus, legal actors such as corrupt political actors (politicians, police, judges) are simply living up to neoliberal expectations. But because there is a tension between legitimate power in territory that is controlled by criminal groups and corrupt officials, the state apparatus must defend its claim to democracy within its sovereign borders by suspending democracy itself through a “state of exception.” This strengthens the policing power of the state to compete for a monopoly on brutality and predictably increasing the profitability of criminal and otherwise brutal

commodities. I will draw out the exact details of this “state of exception” in the following section. What is important to recognize here is that the cyclical nature of neoliberalism allows for criminal and formal realities to intersect in ways that are justified as a defense of neoliberalism’s and liberal human rights discourse’s core value: democracy and development.

In this way, we can conclude that the problem of brutal subjectivities and brutality is not just a problem of brutal realities *outside* of formal realities. These realities intersect in corruption and promote neoliberal ideals when they do, most especially when armed forces (armed criminals and law-enforcement) compete over the monopoly of violence because it demonstrates the legitimacy of the nation-market and drives up the value of commodified violence. In this sense, brutality is a commodity which the state is also interested in, both for its practical political purposes to preserve legitimacy and for economic purposes to stimulate the nation’s economy. I will also posit that brutality and brutal subjectivities not only emerge from historically marginalized spaces and populations where crime and criminal dominance proliferate; instead, under the “state of exception,” brutality becomes the fundamental element of reality under the neoliberal state, which is denied as such by the spatial particularism of brutality. Therefore, despite all of its contradictory logics, brutality is the reality of neoliberalism, idealized under the state of exception.

## **B. Brutal Subjectivities and Subjectivation**

In this part, I will describe the characteristics of what I have called “brutal subjectivities” and the processes that cause their emergence. This part will also demonstrate how justifications for brutality are made coherent by contemporary liberal



human rights discourse. I will illustrate a phenomenological account of how criminal subjects realize themselves as rights-bearing humans through the brutalization or derealization of the other. I describe how this brutal phenomenology is replicated at the state level through the “state of exception.” I will outline brutality in two contexts, necrocapitalism and necropolitics, which operate at different levels of legitimate authority and whose relationship between the “self” and “other” is slightly different. Both of these segments will illustrate *who* our perceived brutal subjects are, *why* these subjects emerge, *how* these subjects instrumentalize brutality to secure human rights, and how we are supposed to conceive of these subjects. I will also outline some arguments for and against the application of necrocapitalism and necropolitics to El Salvador’s problem of gangs and gang violence, exhibited by its state of exception within the war on gangs.

### ***A Brief Note on Death***

I have chosen to use the terms necrocapitalism and necropolitics to describe the absurd consequences of neoliberalism which result in the instrumentalization of brutality to secure human rights. The root word “necro” would imply that both of these processes involve death. However, what I will describe includes forms of brutality which do not cause the bodily annihilation of the other. Just as an illustration, torture is captured by the brutality of necrocapitalism and imperialism is captured by the brutality of necropolitics, yet neither entail body-death. I am inclined to justify my use of “necro” in my terminology because these brutal processes cause some form of death, material-body death or social death. I cannot imagine a form of brutality which does not necessarily imply some form of death, since the derealization and desubjectification serves to dehumanize the person, signifying their social death, simultaneous with their body or not.

I have located brutality at the center of these terms necrocapitalism and necropolitics, so it may be more accurate to call these “brutal capitalism” and “brutal politics” if these concepts do not necessarily imply a sort of death.

### *Necrocapitalism*

I take necrocapitalism to refer to the ways that brutality is instrumentalized in the economy by brutal subjectivities to achieve the realization of self as a rights-bearing human being. Necrocapitalism is a more comprehensive version of Valencia’s “gore capitalism.” A different term from “gore” is needed because brutality does not always require its spectacularization to remain valuable. I elect to not use Valencia’s term “snuff capitalism” here either because, while it captures cases of invisible brutality, it excludes those forms of brutality which are spectacularized in gore. Necrocapitalism is to be understood as “the systematically uncontrolled and contradictory dimension of the neoliberal project” (Pratt, 2002, p. 2 as cited in Valencia, 2018, p. 26). It is rooted in commercialization of brutality, promoted in marginalized spaces by criminal organizations who promise the possibility of achieving neoliberal ideals through hyper-consumption. This creates subjectivities defined by their instrumentalization of brutality as “a way of being”; in other words, the ontology of “brutal subjectivities” is brutality (Sánchez, 2020, p. 13). Brutality is the ontology of these subjects because the realization of self is subsumed by market participation under neoliberalism, a participation which is characterized as brutality.

Valencia has called these brutal subjectivities “endriago subjects,” an allusion to the literary figure of the endriago – a monster, the unacceptable, belonging to the realm of the others – and whose brutal actions cause their emergence as so-called “endriagos”

(2018, pp. 132-133). These brutal subjectivities emerge as a consequence of the omnipresence of neoliberalism's drive for hyperconsumption in spaces frustrated and derealized by socioeconomic exclusion and underinvestment (Valencia, 2018, p. 81, p. 135). Brutal subjectivities are characterized by their contradiction; they are "anomalous and transgressive, combining a mentality of lack (poverty, failure, dissatisfaction) with a mentality of excess, frustration, and heroification, a drive to hate and a utilitarian strategy" (Lipovetsky, 2007, p. 189 as cited in Valencia, 2018, p. 137). Brutal subjectivities are not only motivated by the economic survival granted by commodified brutality, but also the possibility of socioeconomic mobility, social inclusion, and ultimately self-realization afforded by wealth (Valencia, 2018, p. 160). Brutal subjectivities are idealized in the "narco" whose material extravagance exhibits the expectations of neoliberalism. I elect to use "brutal subjectivities" to capture a greater range of subjectivities in the market of necrocapitalism, not just narcos who present an unlikely ideal, and not endriagos whose monstrosity can possibly hinder our understanding of them, making them uncanny or unreal, and thus furthering their exclusion.

We know that brutal subjectivities emerge from places of social exclusion, but it is not entirely clear why these subjectivities are defined by their ontology of brutality. These subjectivities instrumentalize violence as a commodity because of neoliberal capitalism's demand for novelty, driven by entrepreneurs who carve out new markets whose only necessity is to produce profits, unrestrained by anything that would resemble normative commitments (like ethics) in neoliberal free markets (Valencia, 2018, pp. 63-64). Entrepreneurs, as the neoliberal ideal subjectivity, become the truth-makers in free

markets. This truth-making power can lead to an *episteme of violence*, in entrepreneurs' reification of violence as a "way of being," both in terms of the possibility of subsistence and as a tool for self-realization (Valencia, 2018, p. 134). These entrepreneurs are considered the "winners" of neoliberalism, not the others of it since their market contributions strengthen the market where it did not inherit the territory of the nation-state when it transitioned into the nation-market.

And the commodification of violence makes sense in resource-poor environments. Here, the commodification of the most unutilized resource (bodies) results in a cycle of providing labor power and conceiving the body as a site of exchange or the object of work (Valencia, 2018, p. 208). Entrepreneurial criminals invest in the rich wealth of unoccupied youth to provide labor power through trafficking (drugs, humans, organs) and encourage violence against the other's body-made-object (kidnapping, contract-killing, armed protection) (Valencia, 2018, p. 19). The regularity of this kind of market encourages growth through a demand for novelty, resulting in commodified brutality as a means of self-realization.

This kind of language is curious, since I have implied that this process of brutalization is instrumentalized to achieve self-realization and security of human rights. This would contradict our intuitive sense of the ethics of human rights, but as we have seen, liberalism – the categorical designation of contemporary human rights discourse – is subsumed by the free market, which does not entail ethical commitments. The fact that brutality is conceived under market logics allows for ethics to be suspended when conceiving brutality. In fact, brutality requires that the other be conceived as an object [of work], an "object-person" so that brutality can be denied as such; instead, it is conceived

as the mere destruction of things (Sánchez, 2020, p. 120). This requires a process of derealization as described by Sánchez (2020):

Derealization is the transformation of concrete persons into abstractions, ideas, concepts, classes, “notions of the human,” or some kind of fictionalized subjectivity. Derealized, the person is no longer human but an abstraction or an idea, and their lives do not count as lives; as abstractions, therefore, they cannot feel, bleed, die, and so on. In their abstraction, violence against them is not really violence against persons but violence against derealized unrealities (p. 143).

The body is conceived as an object and brutality is conceived not as violence against a person, but as destruction of an inanimate thing. The brutality that follows, such as the dismemberment or absolute dissolution, negates any possibility of recognizing the person-made-object as a person post-facto (Sanchez, 2020, p. 121). Because this process is driven by neoliberal ideals, the drive for hyperconsumption saturates marginalized spaces with brutality in a way that normalizes and denies its presence with silence. Meanwhile, these forms of “necroempowerment” are produced and reproduced as model empowerment processes, by which the individual can achieve their status as a rights-bearing subject (Valencia, 2018, p. 219).

This process of brutality is accelerated and supported by the fact that brutal subjectivities emerge from prior conceptions of themselves *as* the other. Out of frustration from their social exclusion and prior categorizations as “criminal,” “poor,” “unemployed,” the self-conceived-as-other transcends these categories of exclusion in a process akin to a sort of suicide of self-as-other. Mbembe writes that this operates in the shadow of colonialism, in which even the conceptions of one’s own body are not their

own, “the suffering subject understood it perfectly well. No doubt this is why he tried on two occasions to commit suicide, to take charge himself of his death, to appropriate it for himself in the manner of a self-offering.” (Mbembe, 2019, p. 152). He kills the other that is a part of him, that has defined him, taking control of conceptions of himself through the legitimacy afforded by market consumption.

Given this dystopian image of the brutal subjectivities of necrocapitalism, we are asked how we are supposed to conceive of these subjectivities. We are challenged by the fact of their positionality, in-between mentalities of excess and lack, and historical positions of vulnerabilities exacerbated by socioeconomic exclusion. This is why it is important not to involve moral judgements in our categorizations, which could further other and delegitimize these subjectivities and their practices. I have described brutal subjectivities in a way that should reflect the conceptions of themselves and the visceral realities which they sustain through normalized and saturated brutal violence, enabling its incomprehensibility. This does not mean that these subjects are incomprehensible, nor does it mean that brutal subjectivities are unreasonable “brutes”. Instead, I have supported Sánchez’s claim that brutality and brutal subjectivities represent the elements of a civilized society, outlined in neoliberal approaches to security of rights (2020, p. 10).

They are subjects who reason and engage in complicated existential negotiations, who participate in the machinations of modern hypercapitalism fully aware that they may succeed or die trying, and who, in their doings and commitments, create and re-create culture and history itself. (Sánchez, 2020, p. 12)

Their instrumentalization of brutality is not to be conceived as a descent into archaic forms of a violent state of nature. Rather, in an epoch that promotes hyper-individualism,

universal commodification, and a standard of excess, instrumentalizing brutality as a “form of life” is the *most rational option* in places marked by their marginality (Sánchez, 2020, p. 11).

**El Salvador.** Now, we return to El Salvador’s current state of exception to attempt to locate the presence of necrocapitalism, embodied by brutal subjectivities’ instrumentalization of brutality to achieve self-realization and security of human rights. I think there is a translation between the problem of brutal subjects and brutality and El Salvador’s problem of gangs and gang violence. It should be noted however, that the actions of all gang members are not identical, so we should avoid the totalizing categorization of all gang members as brutal subjectivities. Most gang members *do not* instrumentalize brutality, but instead rely on relatively insignificant crime such as extortion and trafficking, promoted by their membership in gangs, but not violent enough to qualify their actions as brutal. Therefore, the translation between the problem of gangs and gang violence and the problem of brutal subjectivities and brutality is not total. The percentage of gang members and gang violence that might qualify as brutal subjectivities and brutality is relatively small in comparison to the state’s attempt to comprehensively frame the problem of gangs and gang violence as a problem that we would translate as brutal subjectivities and brutality.

Even so, the state of El Salvador may be totally wrong about this categorization if no Salvadoran gang members or gang violence qualify as brutal subjectivities or brutality. While other scholars have focused on narcos, cartels and mafias, and their exhibition as endriago subjectivities, I think that some gang members resemble those brutal subjectivities in terms of the reasons for their emergence and the processes of their

emergence. The question that might need to be addressed is whether Salvadoran gang members resemble the brutal subjectivities in Mexican cartels described by Valencia and Sánchez.

The reasons why someone would think that Salvadoran gangs are not enough like the brutal subjectivities described by Valencia and Sánchez is because of the different political status of these entities. The U.S. government categorized MS-13 as a Transnational Criminal Organizations (TCO) in 2012, as the first gang to share the title with other, supposedly more legitimate TCOs like the infamous Los Zetas (U.S. Immigration and Customs Enforcement, 2012). However, many are skeptical of the political-economic comparison of these entities, since the economic flows among MS-13 in El Salvador are hardly significant in comparison to those of more serious TCOs. Salvadoran officials at the time questioned the accuracy of this categorization, for example, with president Funes asserting that U.S. officials may be “overestimating the economic risk or financial risk resulting from the criminal actions of the MS” (Ramsey, 2012). Furthermore, “officials from the U.S. Office of Foreign Asset Control (OFAC) have confirmed that the amount of money transferred out of the United States from MS-13 gang members or their families or affiliates is very limited” (Seelke, 2016, p. 19).

Aside from the insignificant, or at least incomparably significant economic impact that gangs have, one might question whether gang activities even bear resemblance to the activities of necrocapitalism to begin with. For example, it may be questioned whether gangs even operate as economic entities to the degree that organized criminal networks do as described by Valencia and Sánchez. Since gangs apparently prioritize identity over economic luxury, it would seem like these groups differ in important ways (Finklea,



2018, p. 7-9). First, TCOs are interested in managing criminal commodities as “wholesalers,” whereas the economic activities of cliques are generally more akin to “retailers” (Finklea, 2018, p. 9). Second, this difference in priorities also prevents Salvadoran gangs from establishing networks and organized hierarchies to the degree that cartels do, causing cliques to splinter off from the leadership of gangs and operate under their own rules (Finklea, 2018, p. 2). This loose organization and divergence of economic operations supports the claim that even if gang members and gang violence could qualify as brutal subjectivities and brutality, this would not capture *all* gang members and gang violence.

Despite the differences in organization and operation between highly organized TCOs and Salvadoran gangs, I think that when brutal tactics are used by some gang members, such as MS-13’s favor for decapitation, they are characteristically similar enough to call some gang members “brutal subjectivities.” The organization and operation of the entities that utilize brutality does not change the ontology of brutality. Fundamentally, brutality a real *phenomenon*, which is instrumentalized by socially and economically marginalized populations as a means to derealize and transcend these categories of marginalization in the context of necrocapitalism. We see this manifest in the criminal violence of gang members in cliques, narcos in TCOs, and everywhere in between. Even if the organizational structure or the priorities (social or economic profits) diverge in more or less significant ways, this would not disqualify their actions as brutality, whose phenomenological realization confirms their ontology as brutal. Thus, even though Salvadoran gang members tend not to profit significantly from necrocapitalism, some use brutality with the expectation that it will produce some (albeit

small) level of economic prosperity and social recognition, qualifying these gang members as brutal subjectivities and their form of socioeconomic participation as brutality. This is not a total qualification, since it would not include gang members who do not instrumentalize brutality, even though they instrumentalize some form of violence.

### *Necropolitics*

I take necropolitics to refer to the ways that brutality is instrumentalized in politics to achieve the realization of self as a rights-bearing human being. Necropolitics depends on the spectacular forms of brutality to assert sovereign control and a monopoly of violence, in order to [re]legitimize state power with the threat of its deployment. Mbembe (2019) characterises necropolitics as “those figures of sovereignty whose central project is not the struggle for autonomy *but the generalized instrumentalization of human existence and the material destruction of human bodies and populations*” (p. 68). In this sense, we may understand necropolitics in the same way I spoke of necrocapitalism, as “the systematically uncontrolled and contradictory dimension of the neoliberal project” (Pratt, 2002, p. 2 cited in Valencia, 2018, p. 26). Necropolitics is rooted in the proliferation of brutality-made-commodity in marginalized spaces as a result of neoliberalism, which justifies the desubjectification of those populations as uncontrollable others, whose actions threaten democracy, indeed life itself. This process of desubjectification empowers brutal subjectivities to instrumentalize brutality by means of an “exit from democracy” or a “state of exception”, which negates conceiving the state’s instrumentalization of brutality through necropolitics *as* brutality. Sánchez writes:

The state, rather than offering a way out of the bondage, labels those marginalized by these conditions as enemies of the public good and thus as untouchable yet

killable, thereby closing off, in advance, any possibility of escape (except by dying, of course). These enemies are, after all, biopolitical bodies that with their labor, their brutality, and their death feed the spectacle that ultimately justifies the limits and function of the state itself. (2020, p. 15).

Because brutality is the ontology of these other, brutal subjectivities, the state adopts a brutal reality of their own to negate that reality or to annihilate the other in defense of the idealized [national] self, enshrined in liberal democracy.

We have already outlined that there are no clear divisions under neoliberalism between criminal and formal; illegitimate and legitimate; illegal and legal. Because of this, we cannot associate the brutal subjectivities *only* with the actors who represent the nation-state (like law enforcement); rather, when I refer to the state, I mean to refer to the political entity who holds sovereignty over some territory, usually enforced through violence or the threat of violence. Thus, the representatives of narco-states can operate necropolitically, gang members from some clique can operate necropolitically, and law-enforcement can operate necropolitically. In each quasi-state, the state apparatus can cause the emergence of some other, who threatens the state's sovereign integrity. All things considered though, the representatives of the nation-state can claim sovereignty over greater territorial bounds than those of other quasi-states, and these claims would be supported and legitimated by modern international political institutions.

The emergence of necropolitics' brutal subjectivities requires the pre-existence of the other. If not pre-existent, then the other must be constructed. The construction of the other has a mythical quality to it which are historically situated within the epoch of

neoliberalism. Thus, these myths bear some of the tenets of neoliberal ideology. Mbembe writes:

Everything is now about preferring ourselves to others, who, in any case, are scarcely worthy of us, and last, it is about making our object choices settle on those who are like us. The era is therefore one of strong narcissistic bonds. [...] There is a refusal to recognize that, in truth, our ego has always been constituted through opposition to some other that we have internalized—a Negro, a Jew, an Arab, a foreigner—but in a regressive way; that, at bottom, we are made up of diverse borrowings from foreign subjects and that, consequently, we have always been *beings of the border*—such is precisely what many refuse to admit today. (2019, p. 30)

What we learn from this description of the other is that he is, almost obviously, anyone who is not ourselves. The other is the subjectivity that emerges from those populations which can no longer be exploited under colonial or paracolony situations, whose new conceptualization requires the coupling of the other's spatial proximity and the conceptual process of derealizing them into things (Mbembe, 2019, p. 47). The state – which conceives of the self as a form of nationalism – preserves their sense of self through this proximity to the other, allowing the state to always bear its counterpart such that any efforts or conceptions to annihilate the other are simultaneously reflected back to us by the other who bears the state-as-the-other too (Mbembe, 2019, p. 47).

This is exactly why the other emerges under necropolitics and whose ontology is given meaning in the process of annihilation. The political drive for security afforded by homogeneity is threatened by others, who are proximate to the post-colonial state. And

under neoliberalism, there is an ever-growing polarity between those who benefit from the reduced state apparatus and those who do not, causing their own quasi-sovereign entities to form, presumed as insurgent to the state. The fear of the other has also been compounded by the other's adherence to neoliberalism exhibited in necrocapitalism. Necrocapitalism's own brutal subjectivities' attempts to establish themselves as legitimate subjectivities with rights through neoliberalism is interpreted by the state as an attempt to destroy "us" by becoming more like "us"; without the other, the state's sense of self is diminished. It also means that necrocapitalism's own brutal subjectivities' use and monopoly of violence and, by extension, control within their territory represents a contestation of the sovereignty of the state (Mbembe, 2019, p. 84). Thus, necrocapitalism's brutal subjectivities or the other more generally, are seen as enemies "whose death is warranted by his existential denial of our own being" (Mbembe, 2019, p. 49). The other is conceived as a "terrorist" whose project is apparently directed at the destruction of the liberal democratic society of human rights, since their instrumentalization of brutality contests democracy's conceptual foundations, justifying that only extraordinary measures can secure state sovereignty (Mbembe, 2019, p. 33). And state sovereignty can only be secured in the brutalization of the other, which is denied as brutality through the "state of exception".

Under the state of exception, both as a temporary condition and as a government regime, the suspension of rights and individual protections is justified by the state as the process by which these same rights are protected (Mbembe, 2019, p. 33). Agamben writes, "[i]n every case, the state of exception marks a threshold at which logic and praxis blur with each other and a pure violence without logos claims to realize an enunciation

without any real reference” (Agamben, 2008, p. 40 as cited in Valencia, 2018, pp. 205-206). Agamben’s quote illustrates how the state of exception serves as a justification for violence, unrestrained by democratic or otherwise rights-protecting norms, in defense of a liberal democratic state which never guaranteed equal protection and rights in the first place. After the process of suspending rights, the state expands its dominion through the expansion of the police-state apparatus into the supposed insurgent colonies, tightening its grip on bodies through increased surveillance and re-relegating space for the other in the camp or the prison, if not deporting or simply disposing of them (Mbembe, 2019, p. 103, p. 87). Furthermore, the state’s mission to reassert its monopoly on violence and – by extension – its sovereignty is assisted by the saturation of spectacular violence in media, capitalizing on the effectivity of fear, so that potential opposition is silenced – both preventatively under the state of exception because it is unprotected and after the fact because of the shock-value of brutality (Valencia, 2018, p. 52).

Under the state of exception where all political subjects are reduced to a condition of being where rights are impossible, *all* subjects are conceived by the neoliberal state apparatus as object-persons, manipulatable by market logics, which, as we have described, include the management of commodified brutality and, because of these same market logics, deny the humanity of persons. The function of the state’s use of brutality is then to derealize the other through their total annihilation, exhibited in brutality. The necropolitical state brutalizes the other both through material destruction of the body in unfathomable death counts and also through immaterial destruction of other’s dignity or sense of self through systematic humiliation and abuse (Mbembe, 2019, p. 58). This process of derealizing the other is not to be understood as something that brings a cruel

sense of pleasure or triumph to the brutal subjectivities of necropolitics, but instead, these processes of social and even bodily dismemberment are empowered by a relation to the other without desire; their brutalization is no more than the destruction of a thing (Mbembe, 2019, p. 65). This process of desubjectification, qualified by the state of exception, causes the emergence of the brutal subjectivities of necropolitics, whose practices are not caused by personal hatred of the other, they are first and foremost in defense of an ideal sense of self enshrined in liberal democracy, but not yet realized. In this way, much like the brutal subjectivities of necrocapitalism, the brutal subjectivities of the necropolitical state emerge from the process of instrumentalizing brutality as a means of achieving self-realization and security of human rights, where the self represents an unrealized nationalistic identity.

Given this dystopian image of the brutal subjectivities of necropolitics, we may ask how we are supposed to conceive of these subjectivities. Much like in the section on necrocapitalism, this discussion will answer some of the questions of the rationality of this form of brutality emerging from the necropolitical state of exception. We might ask whether employing the state of exception really is a defense of democracy or whether it is an escape from it. One might say that the state of exception bears some of the fundamental features of democracy, since it exercises a kind of freedom,

but it is a freedom that is constituted as the ‘power to deprive others.’ In effect, in war, there are the strong and the weak, the clever and the naïve, the victorious and the vanquished, and they are all acting ‘subjects,’ they are ‘free’ even if this freedom only consists of the appropriation, conquest, and submission of other forces. (Lazzarato, 2000 as cited in Valencia, 2018, p. 211)

This kind of equality is a parallel type of equality to the “equality for all” of neoliberal ideology, which merely translates to a base state of life which can be augmented only through participation in the market; the base state of life under the state of exception can only be augmented through violence, directed at the self through suicide or at the other through his brutalization.

This still might not be convincing enough, especially for those already skeptical of neoliberalism’s coherence with democracy. One might say that the proliferation of neoliberalism corresponds with a reduction in democracy, since the freedom of neoliberalism is based in exploitation or violation. But any comprehensive history detailing democracy since the dawn of modernity will include its twin, its “nocturnal body,” the colony (Mbembe, 2019). Mbembe writes,

The violence of democracies was forthwith exteriorized onto the colonies and took the form of brute acts of oppression. [...] This life, it is said, is condemned to be this way. Each time, then, the violence performed by the state pertains to a measure that is not only necessary but also innocent. This is because colonial power is in no way structured by the opposition between the legal and the illegal. Colonial law is unconditionally subject to political imperatives. This conception of the law as an absolute instrumentality worked to free power holders of any meaningful constraint, whether in the exercise of war, in criminalizing resistance, or in the government of the everyday. Its constitutive moment is one of empty force, because as force it is unreserved. (2019, pp. 25-26)

Mbembe tells us that the state’s drive to brutalize is nothing new, it is just that the spatial relegation of brutality operates always in the periphery, which today includes spaces



within its sovereign borders. The deployment of the state of exception resembles the state's political imperative by means of a domestic decree, but it is just the same as the political imperative of the colony which is conceived as a state of exception. Both maneuvers, colonial and neoimperial, represent a fundamental part of democracy that changes relative to where the other is. The other or the territory of the other is not foreign to democracy, "they were [...] the very thing enabling democracy to leave itself behind, [...] and to exercise, when required, dictatorship over itself, its enemies, and those it rejected as different" (Mbembe, 2019, p. 117). Under necropolitics, all subjects are colonized, such that death becomes the mediator between democracy's ideals of equality (to be exploited) and freedom (from exploitation); the brutal subjectivities of necropolitics ought to be conceived as such. Therefore, while the necropolitical state of emergency resembles an "exit from democracy," this process is fundamental to its modern conception; brutal subjectivities' participation in the state of exception's brutality is not anomalous or contradictory, but fundamental to modern liberal democracy.

**El Salvador.** Now, we return to El Salvador's current state of exception to attempt to locate the presence of necropolitics, embodied by the state's instrumentalization of brutality to achieve self-realization and security of human rights. I think there is a translation between the problem of brutal subjects and brutality and El Salvador's problem of gangs and gang violence. However, it is necessary to address whether the problem of gangs and gang violence is directly translatable to the problem of brutal subjectivities and brutality. The first confusion may arise from the fact that the brutal subjectivities of El Salvador's state of emergency in the conceptual context of necropolitics are not always gang members and the corresponding brutality is not always

gang violence. What might be called the brutal subjectivities in El Salvador's state of exception are overwhelmingly law-enforcement officers and what might be called brutality is police and military violence (Chapter 1). This is an important feature to notice since it reveals that the problem of gangs and gang violence is framed from a state-centric perspective and does not recognize the state's own emergence of brutal subjectivities and brutality. This supports the claim that the state of El Salvador employs brutality by framing the problem in ways that deny their own acts of brutality as such. The state's totalized framing of the problem conceives of gangs and gang violence as existing in an episteme of violence, where brutality is gangs' way of being. Sánchez writes of the framing of the state:

[I]t says that excessive violence against another person [brutality] is not excessive because the other person is not a person but a body in a War on Drugs, a "narco," a "criminal," or, when dead, a statistic, a number, or simply "someone who should've known what they were getting into." This person is thus totalized (objectified) in such a way that he can be killed and defiled because it is not irrational to kill or defile these types of people [object-persons] in the narco-context. (2020, p. 9)

Therefore, while we recognize that the problem of gangs and gang violence is *sometimes* a matter of brutal subjectivities and brutality, we also recognize that in the process of the state totalizing all gang members and gang violence as brutal subjectivities and brutality, the state may be empowering itself to brutalize *all* gang members and deny it as such within a state of exception. Since we recognize that El Salvador's framing of the problem enables brutality, we must pay close attention to whether they actually employ brutality

themselves in the form of necropolitics. In what follows, I will question whether the current state of exception in El Salvador can be accurately described as necropolitical.

There are a number of reasons why one would object to declaring El Salvador as a necropolitical state. First, the government of El Salvador is not combatting an armed insurgency with counterinsurgency. The targets of state violence under the state of exception are presumed gang members who do not wish to occupy the state apparatus. Nevertheless, the necropolitical state's deployment of counterterrorism is also a response to terrorism as the perceived threat to democracy and is generally the form of contemporary necropolitical affairs. What's more, the perceptions of the other or their intentions do not have to be true for the necropolitical state to perpetrate violence against them, these conceptions of the other only need to be perceived as true. The second reason why one would object to El Salvador's status as a necropolitical state is that El Salvador was not a colonizer in the modern stage of its democracy. Thus, there must be some sort of violence in the colony to couple El Salvador's democracy. I don't think that the fact that El Salvador was not a modern colonizer disqualifies El Salvador as a necropolitical state. Furthermore, histories of El Salvador that go back further than what has been allowed by this essay would reveal the state's colonization of indigenous land and people in a way that would qualify the state as a former colonizer. In this way, the violence against indigenous populations would describe El Salvador's drive to violence in colonial settings. Finally, one might argue that the brutality perpetrated under El Salvador's state of exception are not the result of El Salvador's necropolitics, but rather the U.S.'s necropolitical operations abroad. After the fall of communism in the Cold War, the new other became TCOs, whose growing presence in the U.S. presented a threat their

sovereignty (Resa, 2003, as cited in Valencia, 2018, p. 173). The U.S., then is responsible for the proliferation of brutality embodied in the brutal subjectivities of necrocapitalism. While it is true that the U.S. is largely responsible for the inheritance and re-inheritance of brutality, it is not the case that it is responsible for El Salvador's current state of exception. In fact, the behaviors of the Bukele administration have caused official U.S. agencies to cease supporting the Salvadoran government and refocus their investment in Salvadoran civil society (Bernal, 2021).

The weakness of these objections, paired with the similarities of reasons for adopting and the deployment of the state of exception in El Salvador more strongly support that El Salvador's current state of exception is necropolitical. Because gangs threaten the state's monopoly on violence in their deployment of brutality in marginalized spaces and on the bodies of state law-enforcement officials, the government of El Salvador has regularly responded through the deployment of brutal tactics to reassert control. Furthermore, when Bukele defends the state of exception as a means to "cut out the cancer that is gangs," who threaten the very existence of El Salvador since this cancer will kill them, he appeals to derealized conceptions of the other as object-persons whose annihilation is celebrated as a move toward democracy (Bukele, 2022). The brutality of the state of exception is not only evident in the number of dead (which is admittedly few), but in the ways in which gang members are systematically treated as objects beyond recognition. Their collective humiliation and destruction of subjectivity through the relegation to the prison exemplifies brutality insofar as their identities as persons are rendered unrecognizable in the spectacularized masses of detainees. El Salvador's brutalization of gang members under the state of exception is underscored by the

neoliberal priority of “democracy and development,” such that brutality is instrumentalized to re-assert the legitimacy of democracy through a reclaimed monopoly of violence and a reduction of expenses caused by mass-incarcerating the poor who may otherwise claim human rights in a legitimate democracy. Because the actions promoted by El Salvador’s state of exception can be declared as necropolitical and brutal, the actors for the state which realize these actions can therefore sometimes be called brutal subjectivities. Even though the state of exception primes all law-enforcement to perpetrate brutality, the qualification as brutal subjectivities fails if these subjectivities do not employ brutality.

### **C. Conceiving the Problem of Gangs and Gang Violence Under El Salvador’s State of Exception**

Now, having established the conceptual foundations of the problem of gangs and gang violence in El Salvador, I will interrogate the various ways of conceiving this problem. A proper conception of the problem should empower us to locate solutions to prevent the intuitive harms that occur under El Salvador’s state of exception. This is why the first move we take is to reframe the problem more accurately as a problem of brutal subjectivities and brutality. I avoid the framing of the problem as a problem of gangs and gang violence because this framing (1) is a tool utilized by the necropolitical state to falsely totalize all gang members and gang violence as brutal subjectivities and brutality, (2) ignores and empowers the emergence of brutal subjectivities and brutality from the necropolitical state of exception, and (3) is more focused on addressing brutal phenomena. This move is simultaneously inclusive of all forms of brutal subjectivities and brutality involved in El Salvador’s war on gangs and exclusive of those who involved

in the war on gangs which do not perpetrate brutality and are therefore not brutal subjectivities. I elect not to use the term “war on gangs” to describe the problem either because while it captures both state and criminal actors, it also includes those who do not perpetrate brutality. The problem that we must focus our attention to is thus *brutal subjectivities and brutality*. In the following discussion, I will interrogate some suggestions of the roots of this problem which may lead us to possible solutions.

### ***Criminality***

The first suggestion is that the root of the problem of brutal subjectivities and brutality is the categorization of criminality. Considering the earlier framing of the problem as gangs and gang violence, one may think that this is caused by the state’s categorization of *some* markets as criminal and their participants as criminal also. This categorization is what primes the state to respond with violence in defense of liberal democracy, which is the cause of most of the violence under the state of emergency (Chapter 1). The logical solution therefore is to decriminalize criminal markets, like drug trafficking. This would presumably increase state finances through taxation of these formerly criminal commodities and disarm the traffickers who must defend themselves and their commodities from state or enemy seizure.

This suggestion is not a good one firstly because its presumed effects would not have significant enough impact. The decriminalization of criminal markets would not prevent the emergence of brutal subjectivities under necrocapitalism since it merely legitimizes them in the eyes of the state. Decriminalization under neoliberalism may reduce the profitability of necrocapitalism since the work would presumably be less risky, but this also offends our intuitive sense of what the state should permit. This does

not present any ethical challenges for neoliberalism, since the emergence of commodified brutality is the direct result of neoliberal capitalism's lack of ethical standards – something which the neoliberal state is obliged to defend.

Furthermore, this solution is implausible because it is not in the interest of the liberal democratic state, especially under neoliberalism. Maintaining the category of “crime” protects the state's interests both democratically and economically. The categorization of a criminal other enables the state to base its identity in being other than criminal other which, in necropolitical contexts, allows for the brutalization of the criminal other in defense of ideals enshrined in liberal democracy. In terms of the economy, this brutalization, enabled by the criminal categorization, reduces potential welfare expenses by exterminating the poor and increases free market profits in necropolitical contexts by increasing risk. The media's spectacular reproduction of the brutality of the war on gangs is given meaning by the categorical other (criminal) which produces profits in control through fear and financial profits which can be predicted by simple market logics; for example, “the more harsh the prohibition [on some commodity] is, the more profitable the business becomes” (Valencia, 2018, pp. 70-71). The massive potential for profits is what encourages corrupt neoliberal officials, especially those in the Global North to invest in the illegal economy of the Global South; if legalized, these profits would disintegrate and a legitimate path for the Third World would emerge, “and the United States would be obligated to use some other new stupid excuse to interfere in countries' international affairs” (Resa, 2003, as cited in Valencia, 2018, p. 181). Even though the Third World may have a path to development, the reduced profitability of crime caused by decriminalization would also presumably increase demands on the state,

since the poor's limited options for securing human rights through economic opportunity are made less effective by their legality.

Ultimately, the only way for decriminalization to be effective in preventing the problem of brutal subjectivities and brutality is if necrocapitalism and necropolitics could be made impossible too. Under neoliberalism, necrocapitalism and necropolitics are likely to continue to emerge. Efforts to decriminalize could have lasting effects which may cause the collapse of modern liberal democracy without an other to form a national identity. In any case, decriminalization either does not prohibit brutality or it at least tolerates brutality expecting it to be a less enticing form of empowerment without its criminal profitability.

### ***Excessive Violence (Brutality)***

The second suggestion is that the root of the problem of brutal subjectivities and brutality is brutality itself. One would think that this is the root which needs to be addressed since the instrumentalization of brutality is what is interpreted as so offensive. While this is true and lies at the root of the issue, addressing brutality alone would not be sufficient for preventing harm in the contexts which concern us. Since we have already said that brutality is something *other* than violence, since it cannot be fully captured by the concept of violence, the elimination of brutality would not necessarily eliminate violence or the instrumentalization of violence in harmful ways. Solutions aimed at eliminating brutality would surely eliminate brutal subjectivities but assumes that a solution is achieved when violence is reduced to a conceivable or acceptable level. Although practical and a step in the right direction, addressing brutality alone would still permit less than brutal forms of violence which may even result in death, like targeted



assassinations or less offensive crimes like extortion. Necrocapitalism and necropolitics may still exist in some version or another, but in more sanitized ways like contract-killing and low-intensity warfare which are not necessarily brutal. So, although relevant to specifically addressing the harms of El Salvador's state of exception, it does not address the contextual roots of this problem, which are necrocapitalism and necropolitics.

### ***Violence***

The next suggestion is that the root of the problem of brutal subjectivities and brutality is violence. If we reduce the problem to a problem of violence, then we make the problem too inclusive. Brutal subjectivities and brutality exist in an ontology characterized as something *more* than violent. We want to be very specific about what we want to achieve in our solutions to the problem, and this suggestion is unspecific in the context of El Salvador's state of exception. Addressing violence overlooks the phenomenon of brutality by categorizing it as something which is not fully reflective of its reality (Sánchez, 2020, p. 99). Addressing violence as a preventative measure may be successful in stopping further brutality, but it prevents us from understanding how to address those who have already been brutalized and need reparative and restorative measures.

Attempts to get specific about violence will not only exclude brutality (by necessity) but should also exclude justified uses of force which many scholars argue to be the groundwork of political legitimacy. But even "justified force" is a contested concept. Mbembe, for example writes, quoting Georges Sorel (1999),

Violence differentiates itself from force. "The object of force," writes Georges Sorel, "is to impose a certain social order in which the minority governs." It seeks

to “bring about an automatic obedience.” Violence, by contrast, “tends to the destruction of that order” and to “smashing that authority.” (p. 165, p. 170 as cited in Mbembe, 2019, p. 22)

If we take this interpretation of violence to be true and we address violence as the solution to the problem of brutal subjectivities and brutality, then we also prohibit revolution or legitimate insurgency, such as that of the Salvadoran armed conflict (see Chapter 1).

One way to avoid this problem is to distinguish violence from other forms of just use of force, so that insurgencies like that of the Salvadoran armed conflict may be justified. However, it is unclear whether this would permit the state to use force as a justified response in counterinsurgency to defend liberal democracy. This was the logic of the Salvadoran armed conflict and is the case today when the war on gangs is framed as counterterrorism in defense of liberal democratic ideals. Since this response might not qualify as violence under this suggestion, it will also fail to prevent the emergence of brutal subjectivities and brutality in necrocapitalistic and necropolitical contexts under neoliberalism. Both versions of brutality may be justified as excessive use of *justified force* qualified as defense of democracy. This may just be interpreted as excessive justice, something which Aristotle reminds us in the *Nicomachean Ethics* is an impossibility.

### ***Coherence***

Because other solutions either fail to sufficiently address the instrumentalization of brutality in general or [also] in necrocapitalistic and necropolitical contexts, I argue that the root of the problem of brutal subjectivities and brutality is that justifications for brutality are apparently coherent within liberal human rights discourse under

neoliberalism. This is the natural progression from the former suggestions which tolerated brutality through decriminalization, tolerated the necrocapitalism and necropolitics through an acute focus on brutality, and presented an excuse for the re-emergence of brutality by acutely focusing on violence. Each of these challenges are underscored by the historical situatedness of El Salvador's state of exception in an epoch of neoliberalism.

Here, we are presented with two possible suggestions related to coherence: (1) since capitalism – especially neoliberal capitalism – promotes the re-emergence of brutality through its instrumentalization in necrocapitalism and necropolitics, we should focus our attention on deconstructing capitalism, or (2) since contemporary human rights discourse depends on neoliberal democracies which promote the instrumentalization of necrocapitalism and necropolitics, we should focus our attention on decoupling the human rights discourse from (neo)liberal democracy.

Addressing (1) is entirely implausible since the entire world and its institutions have come to depend on capitalism and it is functional for the people who depend on it. Even if the death of neoliberal capitalism caused the death of necrocapitalism, this may not prevent the emergence of necropolitics in defense of human rights because the state does not primarily use brutality as a profit-generating instrument – it uses it as an expense-reducing instrument for when the state provides human rights through socialized programs. Furthermore, this would require a total restructuring of truth since, “[i]t has reached a point where today, knowledge is increasingly defined as knowledge for the market. The market in turn is increasingly reimagined as the primary mechanism for the validation of truth” (Mbembe p. 109). So, the gravity of replacing capitalism would

require not only a restructuring of the institutions which we depend on, but the replacement of the qualifying mechanism for truth-making.

Supposing that it was possible the abolition of capitalism, one may still object that with proper distribution of resources in a world where capitalism does not exist, there may be no need for liberal human rights at all, because there may be no need for a state to make this claim to. In this case, the state would not exist even to instrumentalize brutality to ease the distribution of resources that ensure human rights, because the people already have those resources. While this is theoretically true, I am still worried about everything that happens in between now and the full realization of human rights without capitalism because liberal human rights claims will always be pointed to the state, whose role it is to facilitate the distribution of resources; in this case, they may resort to brutality for the sake of easing the distribution of resources that ensure human rights. This necropolitical phenomenon does not require the institution of capitalism.

Addressing (2) is a more plausible approach since – while the entire world depends on human rights discourse – it is apparently dysfunctional to those who depend on it in its liberal form. This is because this form of human rights discourse is ineffective in making human rights claims to the state and serves only as the justification of market activities under neoliberalism. This leads to necrocapitalism. A revolutionary human rights project could make justifications for brutality incoherent within its discourse if it is altered from its liberalized form. The details of what this revolutionary human rights project could look like is the task of the final Chapter of this essay.

All this said, I think both (1) and (2) are definitely worth addressing. I don't think brutality will disappear if we go down either path and we already established that

brutality itself is not the root of the problem of brutal subjectivities' emergence, which is the fundamental concern in this essay. Therefore, I think it is more urgent that we have a practical discourse of human rights which does not encourage the destruction of human life in particular situations.

#### **D. Conclusions**

In this Chapter of the essay, I suggested different ways of conceiving the problem of gangs and gang violence in El Salvador, exhibited the state of exception within the broader war on gangs. I began by clarifying the core terminology of this essay: neoliberalism and brutality. I explained how situations which are characterized by brutality are the consequence of adherence to neoliberal ideologies. I described the characteristics of these subjectivities and the processes that cause their emergence in both necrocapitalistic and necropolitical contexts. Through a phenomenological investigation of the processes which cause the emergence of the subjectivities of necrocapitalism and necropolitics, I illustrated the ways that brutal subjectivities instrumentalize brutality, which is the absolute derealization of the other through a violence which is more than violence, in order to realize the self as a rights-bearing human being. Said a different way, brutal subjectivities instrumentalize brutality as a means to secure human rights. These justifications are made coherent by the supposed truth-making power of neoliberal free markets. I also demonstrated how some gang members and some state officials are the brutal subjectivities of necrocapitalism and necropolitics respectively through their instrumentalization of brutality in El Salvador's current state of exception. Having established the conceptual foundations of the problem of gangs and gang violence in El Salvador, I interrogated the various ways of conceiving this problem, arguing that the

problem of gangs and gang violence, exhibited in El Salvador's state of exception, is more accurately and more practically understood to be a problem of brutal subjectivities and brutality. What disturbs us most about this problem is the coherence of their justifications of brutality as a means of securing human rights. The most practical course of action then, is to address the foundations of liberal human rights discourse which have caused its dependency and adherence to neoliberalism.

### Chapter 3: Transcending Brutality

In this Chapter, I will provide a critical analysis of the coherence of justifications for brutality within human rights discourse. I begin by questioning the legitimacy of brutality. Drawing from Argentine philosopher Enrique Dussel's "liberation principle" from his book *Ethics of Liberation In the Age of Globalization and Exclusion*, I argue that while justifications of instrumentalizing brutality to achieve human rights are coherent within liberal human rights discourse under neoliberalism, these justifications are still not legitimate. The question that must be answered then, is how do we create the conditions for the realization of the self as a rights-bearing, indeed, human subject in ways that are legitimate or otherwise liberatory? Perhaps more urgently, how can we make justifications for instrumentalizing brutality incoherent within human rights discourse? I attempt to answer to both of these issues in two parts. First, I suggest the need for different conceptions of the ontology of human; to do this, I present various African anti-humanist perspectives cited by Mbembe and a transfeminist perspective offered by Valencia. Second, I emphasize the need to reclaim human rights as a popular discourse; to do this, I reiterate political theorist Joel Pruce's conception of "human rights as a politics of resistance" from his book *The Mass Appeal of Human Rights*.

I highlight some of the features I find to be necessary from the theories which reconceive the human and further defend my position that human rights must be a popular discourse. I conclude this Chapter by addressing the peril and potential of these contradictions as they relate to the legitimacy of this revolutionary human rights project. I finally argue that human rights discourse should not be centered around the human being

who possesses human rights; rather, by centering human rights discourse around human liberation, popular interpretations of human rights would generate context-specific, non-universal behaviors which are coherent with liberation and not with justifications of brutality.

### **A. Transcending El Salvador's Brutal Contexts**

The purpose of this essay is to provide a critical investigation of the intersection of neoliberalism and human rights. The historical dynamics and present-day observations of El Salvador have contextualized this analysis and will continue to do so. However, we leave behind overly context-specific solutions to the problem of brutal subjectivities and brutality in El Salvador and instead theorize solutions which could be used in El Salvador but can also be expanded across the globe. Furthermore, we should pay special attention to the fact that “Third World ‘failures’ are not just the result of an incomplete and ill-applied project [...] but also a premonition, an omen of the fate awaiting the First World in the future” (Valencia, 2018, p. 286). The contextualization of El Salvador was not to see El Salvador through binoculars – from a distance, without sight of the periphery or our own situatedness; brutal subjectivities and brutality emerge from the same intersection *everywhere*.

### **B. De-legitimizing Brutality**

State adherence to neoliberalism has promoted the instrumentalization of brutality by the brutal subjectivities of necrocapitalism and necropolitics. These brutal actions can be justified as a means to securing human rights. Liberal human rights discourse would apparently approve these justifications as coherent in an epoch of neoliberalism.



However, despite the apparent coherence of these justifications, the justifications for brutality are not legitimate.

In the previous Chapter, we explored some of the challenges of distinguishing violence from legitimate coercion. We mentioned that in some cases, like during the Salvadoran armed conflict, resorting to the instrumentalization of force (insurgency) is not intuitively prohibited. This is because the instrumentalization of this kind of force is legitimate. I agree with Dussel that the legitimacy of this kind of force is what disqualifies it as violence; however, when this force is made excessive, making it brutality (or excessive *justified force*) the legitimacy of force erodes, qualifying this kind of force as a violence (which is more than violence) (Dussel, 2013, p. 401). The consequence of this is that violence and legitimate coercion are exclusive; the qualifying distinction is legitimacy.

We may still question what grounds legitimacy. Legitimacy is not grounded in liberalism, though liberal codes can be legitimate; legalized repression, exhibited in the Salvadoran counterinsurgency and counterterrorism, for example, is justified because the force of the system of law, but it is not legitimate if it does not entail a transformative or liberatory praxis (Dussel, 2013, p. 401). Legitimacy requires an “ethics of liberation,” that is, the actual potential for liberation of the self and other from the force of oppressive systems (Dussel, 2013, p. 388). “Reformist” acts would not be legitimate, because “[r]eformist’ action is action that fulfills the criteria and principles of a ‘formal system in force’<sup>17</sup>; that is, it is a means within the frames of the *ends* of the institutional reason of a

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<sup>17</sup> Dussel leaves an endnote here saying that “the *formal* ‘systemic must be differentiated from the *formal* ‘discursive’” (Dussel, 2013, p. 643). This is important to reference in our discussion because our project is a transformational project whose ends are in the transformation of human rights. This project is not “reformatory”, but is revolutionary project because this project hopes to decouple the neoliberal capitalistic

given system” (Dussel, 2013, 388-389). Reformist acts are not legitimate because it frames its supposed “transformation” in the alteration of systemic ends which brought about oppression in the first place. A legitimate act is a truly “transformational” act or “liberatory act” if it replaces the formal system in force with a system of liberatory praxis. This requires a revolutionary-transformative approach.

When applied to instrumentalizing force, Dussel writes,

Legitimate coercion is ethical, insofar as it is exerted fulfilling the demands of the material, discursive, formal principles of ethical feasibility: to guarantee the life of all those affected, who symmetrically participate in the decisions of ethically feasible mediations. (Dussel, 2013, p. 400)

We can immediately see now why brutality is not a form of legitimate coercion. Aside from its ontology as being “more than violence” – which would actually make it ontologically different from violence – brutality cannot “guarantee the life of all those affected” because it necessitates the derealization of the other. Although the uses of brutality in necrocapitalism and necropolitics are abnormal in the systems they operate (capitalism and liberal democracy), they do not qualify as revolutionary, because the potential for liberation under these systems (necrocapitalism and necropolitics) is an impossibility. At best, the instrumentalizations of brutality may qualify as “reformatory” in some perverse sense, since the means of transformation operate insofar as they reorient the ends of the formal systems in force – necrocapitalism to reorient the object of work to brutalizing the other and necropolitics to reorient politics to brutalizing the other; both of

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*system* and its rationality (part of its system) from human rights. This is also a revolutionary project because the ends of this new human rights *discourse* are not situated within contemporary human rights systems, because these systems ultimately collapse into neoliberal capitalist systems.

these re-orientations were already made possible by the systems they seek to change, if they seek to change them at all. Thus, liberatory praxis as a revolutionary act would have to *replace* the systems (capitalism and liberal democracy) with *something else*.<sup>18</sup>

To remain focused on the main concerns of this essay, I am not interested in theorizing liberatory solutions to necrocapitalism and necropolitics – or capitalism and liberal democracy for that matter. The focus of this essay is to understand how justifications for brutality’s instrumentalization are made coherent by liberal human rights discourse’s dependency on and adherence to neoliberalism and to find liberatory solutions. We have just proven that necrocapitalism and necropolitics do not resemble liberatory projects, and this remains true in the context of liberal human rights, since liberal human rights discourse collapses into capitalism and democracy under neoliberalism. Our task then, is to conceive a revolutionary project of human rights, which makes the justifications for *only liberatory actions* coherent with human rights. This requires the decoupling of human rights from neoliberalism, or, in any case, from capitalism and liberal democracy.

### **C. [Re-]Legitimizing Human Rights Discourse**

I will attempt to decouple human rights from neoliberalism in this section to [re-] legitimize human rights discourse. In order to be a legitimate or liberatory project, it is necessary to (1) hold a liberatory conception of the human, (2) theorize a liberatory system of human rights, and (3) prohibit the coherence of brutality’s instrumentalization,

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<sup>18</sup> Here, it sounds as though I am endorsing the replacement of capitalism and liberal democracy – I am. I assume that more people would be inclined to support replacing capitalism than liberal democracy because democracy is fundamental to liberation. However, the paradox of modern democracy is that it requires some other which is not part of the free and equal demos to exist. Thus, arguments could be made that liberal democracy is not a democracy at all, or even more radically that democracy is antithetical to liberation. This could be the project of another work.

which is antithetical to liberation. All three of these conditions are interdependent and necessary but are not sufficient to guarantee a liberatory human rights project individually.

This revolutionary human rights project described in this section will attempt to satisfy these three conditions in two parts. First, I will present various ways of conceiving the human, satisfying (1). Second, I will argue for the necessity of a popular conception of human rights discourse, satisfying (2). I have already satisfied (3) in the previous section.

### ***Humanist and Anti-Humanist Conceptions***

The most popular way of conceiving a liberatory human rights project is the “humanist” project. This project begins with an understanding that *if* the other is viewed as like myself, then we would be inclined to treat the other in ways that would guarantee the security of their human rights. This approach may be useful in transcending the neoliberal tendency to conceive of the other in dehumanizing, indeed, derealized ways, as exhibited in the brutality of necrocapitalism and necropolitics. The humanist view holds that by seeing the other as like ourselves, we see a reflection of our own entitlements and rights claims.

The humanist view conceives the entitlement to rights as a matter of re-conceiving the other as a human patient. According to Mbembe, Frantz Fanon held this view:

A patient, Fanon said, is “first of all someone who suffers and who asks for some relief to be given.” Because “suffering provokes compassion, tenderness,” the hospital establishment, which is above all a “curative establishment, a therapeutic

establishment,” cannot be transformed “into a barracks.” [...] For wherever others—or, more specifically, my neighbor or my fellow human—no longer reveal me to myself, and wherever I render myself unable to “encounter the other’s face,” unable to “be here with other humans,” with my fellow beings, illness is nearby. (Fanon, 2018, p. 345, p. 346, p. 181, p. 322, p. 181 as cited in Mbembe, 2019, p. 142)

Fanon’s humanist conception of the other as a fellow human, a patient, appeals to a supposed element of human nature which causes us to treat the other with the dignity of their self. We cannot “hold the other hostage” to our own conceptions of self, for that would be to disregard the other as having a nature like our own selves; we embrace the other who we conceive as like ourselves in all of the entitlements we would expect for ourselves. Without this human community, our own self is vulnerable to the illness and helplessness of our solitude.

While humanism may entail an ethics of liberation, the challenges of modern liberalism erode the legitimacy of humanism without a re-orientation of *how* human rights are systematized. Humanitarianism, as one example of how humanism is systematized, resembles what we would call a reformist approach. Pruce writes, "humanitarianism, as a mode of ethical action in the world, folds neatly into preexisting structures and magnifies and multiplies prevailing forms of authority" (Pruce, 2019, p. 63). As we discussed in the previous Chapter, sometimes recognizing the entitlement of the other, what we now call humanitarianism, can be the very origin point for the emergence of the necropolitical state because it is possible to launch a brutal, necropolitical regime with the genuine sense of care for the other who is like myself – an

entitled subject of the state; this perverted sense of humanitarianism is what causes states to launch counterterrorist operations abroad or even to reduce the potential state expenses of provisions to the poor by means of their extermination (Chapter 2). Thus, humanism, systematized through humanitarianism is illegitimate, non-revolutionary, and non-liberatory. This does not necessarily mean that humanist conceptions are not potentially liberatory.

Other theorists do not find (Western) humanism to have any liberatory potential. This is because humanism, as a Western theory of conceiving the other always locates the Western self at the center of reference. Mbembe writes:

Humanism's function, it is argued, lies in arrogating the power of self-recounting and of defining, in the place of others, where these same others come from, what they are, and where they must go. Humanism is thus a myth that does not want to say its name (Diop, 1955). As a mythology, humanism would be perfectly indifferent to the falsity of its own contents. (2019, p. 161)

Humanism, it is noted, can never be a fully liberatory conception of human because it fails to recognize the origins of self, indeed the conceptions of self at all, are necessarily exclusionary of the mythological other. Humanism serves almost as an attempt to undo the damage that has been done, uncritical of its own responsibility in causing this destruction, but feeling a sense of altruism to the other, rather than viewing the other as entitled to retribution for the process which caused their otherness.

Mbembe catalogues some alternative conceptions of human, which critique humanism. The first is the Afrocentrist view. Under this critical theory, the origins of humanism are interrogated through a historical project. This project reveals the Negro

origins of humanism, indeed the very concept of the modern human being since the Negro was its negative point of reference (Mbembe, 2019, p. 161). Afrocentrism holds that the only way that humanism can be a liberatory project is if it was reoriented to repaying the debt of modern civilization owed to Africa (Mbembe, 2019, p. 161).

The second view is the Afropessimist view. Afropessimism rejects the liberatory potential of humanism because the concept of human is antithetical to liberation. The Afropessimist argues that racial pessimism is the natural consequence of liberal democracy, because “liberal democracy has always needed a constitutive Other for its legitimation, an Other who is and is not at the same time part of the polis” (Mbembe, 2019, p. 162). Taken up as a sort of self-understanding as an other, African or otherwise, “[r]acial pessimism is based on the belief that for white America to exist at all, it must continuously produce a complex of bodies in chains” (Mbembe, 2019, p. 162). Reformative measures for humanism are therefore incoherent with liberation since humanism requires “holding the other hostage” to ourselves. Thus, the Afropessimist sees the only path to liberation in the annihilation of the concept of humanity, a category which “has trapped the Negro in a permanent state of death, social or otherwise” (Mbembe, 2019, p. 163).

The third view is the Afrofuturist view. Afrofuturism is a critique of the paradox of humanism, which objectifies the Negro as the point of reference to conceive of itself. Mbembe writes,

Afrofuturism rejects outright the humanist postulate, insofar as humanism can constitute itself only by relegating some other subject or entity (living or inert) to

the mechanical status of an object or an accident. For Afrofuturism does not rest with denouncing the illusion of the “specifically human.” (2019, p. 163)

The Afrofuturist claims their agency in the conceptual project of human being by embracing their centrality to the humanist project, thus declaring the obsolescence of humanism by turning its gaze to the future human being. Humanism, as an attempt to conceive the specificity of human being always bears in itself the reflection of its other, the object-person; indeed, “no ‘human’ exists that does not immediately participate in the ‘nonhuman,’ the ‘more-than-human,’ the ‘beyond human,’ or the ‘elsewhere-than-human’” (Mbembe, 2019, p. 164). Therefore, the Afrofuturist finds liberation in the humanist conceptualization of human being, only insofar as it makes itself human and non-human at once.

Valencia describes a similar liberatory approach to conceiving the human through tension. Just like how Mbembe locates race at the center of necropolitics’ violence which antihumanist critiques seek to transcend, Valencia’s transfeminist approach seeks to transcend the violence of necrocapitalism, which locates gender and hegemonic masculinity at the core. Valencia envisions what we might call a liberatory praxis by reconceptualizing the human in ways which ultimately de-center hegemonic masculinities, which are antithetical to liberation.

This begins by de-centering maleness from the category of masculinity, “understood as an intrinsic and exclusive property of male bodies” (2019, p. 267-268). Valencia writes, “This de-centering would lead to a discursive, non-violent reconstruction able to multiply the array of possibilities for the construction of new subjectivities, both for women and men” (2018, p. 268).



The way masculinity is decentered from maleness is through re-orienting ontology from objective categories, but more towards *ends* in new, unrealized masculinities such that, as an allusion to Simone de Beauvoir, “constructions of masculinity that are grounded in lived reality and the embodiment of individual masculinities [...] demonstrate how one is not born a man either, but rather becomes one through an always-malleable process” (Valencia, 2019, p. 270).

These individual masculinities are embodied in the contradictory multitudes.

Paolo Virno (2003) defines these multitudes as

a way of being that is open to contradictory developments: rebellion or servitude, a non-state public sphere or a mass base for authoritarian governments, abolition of subservient labor or *limitless flexibility*. The multitude is ... an inevitable point of departure, albeit ambivalent in nature. (p. 19 as cited in Valencia, 2019, pp. 272-273)

Already, we can identify the contradictory multitudes in brutal subjectivities, who are “simultaneously subjects of rebellion and servitude” to the ideals of neoliberalism (Valencia, 2019, p. 272). However, once these contradictory multitudes are reified and reproduced as a predictable kind of subject in some context (necrocapitalism or necropolitics), they lose their liberatory potential found in the dynamism of their contradictory multiplicity.

Where de-centering maleness from masculinity meets the destruction of hegemonic masculinity is in transfeminist subjectivities “not based on sexual preferences or a specific essence,” rejecting the very nature of essence as “reactionary and oppressive,” but instead embodied in the “queer multitudes” (Valencia, 2019, p. 275).

“These *queer multitudes* continue developing categories and enacting practices that result in non-standard agencies, not as an absolute truth nor as infallible actions, which can be applied in a variety of contexts in a deterritorialized way” (Valencia, 2018, p. 263).

The resulting transfeminist subjectivity realized by Valencia’s queer multitudes is a conception of gender which render hegemonic masculinity obsolete in its inability to claim masculinity as a distinguishable category. Distinctions collapsed, gendered expectations formerly enforced by gender hegemons lose any real currency without objective reference. Having a multiplicity of references, the conceptualization of masculinities is directed into the future without any one path.

The transfeminist perspective may be somewhat more challenging than the anti-humanist perspectives provided by Mbembe, to apply to the project of re-conceptualizing the human. But I think that what we can translate over to our conceptualizations of human being are that we should reject human essence by recognizing and embracing the multiplicity of human being. This enables us to move in whichever direction, without the guiding hand of the dominant humanist discourse. This would presumably not reproduce new oppressive systems which require an other, since the other is embraced as fundamental to the human multiplicities.

### ***Human Rights as a Politics of Resistance***

Having described some liberatory ways of re-conceiving of the human, I will now theorize a liberatory system of human rights. Since the conditions of a liberatory human rights project are interdependent, we should keep in mind the criticisms of conceiving the human which are most relevant to our problem of brutality, exhibited by brutal subjectivities in necrocapitalistic and necropolitical contexts. Without ascribing to any

one of the critical theories we just explored, I nevertheless find it critical to consider a human rights discourse which does not base its conceptual ideals as the ends of liberal systemic processes. This is because liberal processes have proven to be antithetical to liberation since liberalism requires objective conceptualizations of the human which will always be exclusive. Thus, for human rights to be the liberatory system or process that we intuit, I argue that human rights discourse should be a popular discourse.

One might ask why I would think that human rights should be a liberatory tool. I think this is true because rights discourses in general, let alone human rights discourse, tend to imagine the ideal democratic relationship between the polis and the state, in which rights claims are made by individuals expecting to elicit some response by the state to ensure that those claims are addressed such that those rights are enjoyed. Thus, rights are political tools for resisting oppression and demanding that the state do something about it (Pruce, 2019, p. 11). Translating this to human rights, Pruce writes,

Human rights on their face are deeply political for the assertion that positive domestic law must be adopted to protect the dignity and autonomy of all human beings. Since legislative processes are political processes, as are demands for accountability or transparency, clearly matters of interest and power factor into human rights claims. [...] If a stakeholder in a society makes demands of her own government, there is a rational expectation of being heard even if only to be denied. Citizens share privileged roles, sometimes codified as rights, and if an individual or group is facing persecution, citizens direct claims at their state.

(2019, p. 18)

Pruce's description of human rights illustrates an empowering dimension to human rights, as the privileges of the citizenry. These human rights norms codified in liberal doctrine are supposed to be the privileged instruments of making political demands, which "propose an ideal world that looks drastically different from ours and [advocate] for this world to be born" (Pruce, 2019, p. 3). Human rights are imbued with a disruptive power, knowing that the state will at some point fail in its duties to its citizenry and need to be reminded through human rights claims. This is why I support Pruce's assertion that human rights are a "politics of resistance" (Pruce, 2019, pp. 163-169).

The problem that we are presented with in this essay is that liberal human rights under neoliberalism stifle the resistant political power of human rights. Under neoliberalism, where the free market is the guarantor of truth, the only coherent uses of liberal human rights are those which adhere to neoliberalism. Whatever form of "resistance" or acts which challenge or disturb the current state of the world must first be given meaning by the free market. This is exactly how necrocapitalism emerges in its presentation as a form of resistance to the failures of (neo)liberalism, while at the same time granted meaning by its adherence to neoliberalism. Neoliberalism aborts the political dimension of human rights because it is systematically inviable; its twin, the economy has absorbed the lifeforce of politics, including anything which could resemble resistance. This is why a reformative project of liberal human rights discourse is insufficient since liberal reform would be ineffective in undermining the truth-making power of neoliberal free markets.

Human rights must be re-systematized to imbue its resistant power under neoliberalism. Because human rights discourse currently does not have any political or

resistant power in its liberal form, this inhibits its *potential* for human rights to be a liberatory discourse; furthermore, we do not seek a reformist method of re-systematizing human rights because the liberal human rights discourse may have been conceptually exclusive from the start, undermining its liberatory potential. This is why it is necessary for a revolutionary human rights project. This revolutionary human rights project is a popular project.

#### **D. Conceiving the Human in a Liberatory Rights Discourse**

Having illustrated various ways of conceiving the human and the reasons why human rights needs a systematic revolution, I will now illustrate the perils and potentials of a popular human rights discourse. I argue that human rights discourse should not be centered around the human being who possesses human rights; rather, by centering human rights discourse around human liberation, popular interpretations of human rights would generate context-specific, non-universal behaviors which are coherent with human flourishing and not with justifications of brutality.

One preliminary task is to describe what a popular project is. Salvadoran social scientist Mario Lungo Unclés writes, “[t]he popular project is the collection of goals of the popular movement. While not a final blueprint for a ‘new society,’ the popular project is based on relations among people which promote social justice and the common good” (Unclés, 1995, p. 154). The popular project is a liberatory project, built from the systematized dialogical participation of all members dedicated to the project of liberation, regardless of socioeconomic or political positionality, so long as they remain dedicated to liberation. This project does not impose a “blueprint” to achieve liberation but relies on the dialogical process itself *as* a liberatory project.

One of the benefits of the popular human rights project is its inclusive potential. The membership of the popular project is important to recognize in terms of its relationship to the popular human rights project because it requires the participation of multiplicities. While we know that human rights are intended to be a politics of resistance, in order for this resistance to be liberatory, the security of human rights for oneself is only liberatory when it is also enjoyed by the other. This fact reveals that the liberatory security of human rights necessitates that the other exists in community with us, despite the differences which make them other from us. The enjoyment of human rights by oneself and others illustrates that human rights are conceived to be enjoyed by the multitudes; returning to the anti-humanist critiques, this serves as an inclusion of those made into object-persons, perhaps even by beginning from a point of their pronounced entitlement to human rights as a result of their dehumanization. The other who appears like myself in the popular project is both like myself and other to myself; human and not-human; the other and I exist among the contradictory human multitudes.

But one challenge of the popular human rights project is it that it is underdetermined. This was exactly the challenge in its liberal form, which, at its extreme, allows for the necropolitical state to leave democracy behind in defense of liberal human rights codified in democracy. Pruce writes,

Rooted in nothing-in-particular, aside from thin moral claims, the clarion call of human rights travels fluidly between groups and movements. All claiming ownership, human rights are talking points for both liberals and conservatives. Dictators and dissidents each articulate their goals in rights language, and each believes theirs is the proper and authoritative interpretation. (2019, p. 20)

But the objector to the popular project is tasked with providing a system that *does* have explicit meaning *and* is liberatory. At best, the objector would theorize a liberal reformist approach, but liberal deployment will always be exclusive unless political democracy works perfectly; under neoliberalism, we know that politics is subsumed into the realm of economics, which enables anything to be true that the market can make true, robbing politics-turned-economics of ethical commitments, which disappear in the free market. Therefore, this approach is not liberatory.

In any case, the objection to the popular project of human rights is unfounded since the popular project does have “some basis for identifying the perspectives that support human rights protection and those that compromise it” (Pruce, 2019, p. 170). The popular human rights project’s basis is simply *human liberation*. The way that the popular human rights project systematizes the achievement of human liberation is through continued dialogue, where the multitudes can contest behavior which does not promote human liberation. In this way, it’s not that human rights mean nothing, it’s that human rights are given meaning through the creativity and dynamism of the multitudes. This approach is beneficial because it generates a vision of human rights that grows from the ground up. This upwards movement enables a multitude of behaviors with their ends in human liberation, such that they are context-specific and are made coherent with human rights only insofar as the popular project declares them to be, where the condition which qualifies this truth is human liberation. These truths may still be directed to the state in the form of claims that some action is required to promote human liberation; an ideal state is expected to respond positively to the demands of human rights however they are articulated.

This is different from liberal human rights discourse which has its basis the *human being with rights*, relying on exclusive categories of rights and persons who can claim those rights. Furthermore, liberal human rights discourse's focus on the individual with rights imagines that human rights can be enjoyed alone. This is further problematized by neoliberalism, which permits the instrumentalization of brutalizing the other to achieve human rights. This is antithetical to liberation.

## **E. Conclusions**

In this Chapter, I critically analyzed the coherence of justifications for brutality within human rights discourse. I illustrated Dussel's "liberation principle" as a means for outlining the behaviors which would be legitimate, even in the case of coercion. I argued that while justifications of instrumentalizing brutality to achieve human rights are coherent within liberal human rights discourse under neoliberalism, these justifications are still not legitimate. In an effort to direct us towards imagining a liberatory human rights discourse, I presented various anti-humanist perspectives. I also emphasized Pruce's stress for the need to reclaim "human rights as a politics of resistance" by underscoring the ways that neoliberalism has stifled the political nature of human rights. Finally, I highlighted some of the features I find to be necessary from the theories which re-conceive the human and further defend my position that human rights must be a popular discourse. I conclude this Chapter by addressing the peril and potential of these contradictions as they relate to the legitimacy of this revolutionary human rights project. I finally argue that human rights discourse should not be centered around the human being who possesses human rights; rather, by centering human rights discourse around the human liberation, popular interpretations of human rights would generate context-



specific, non-universal behaviors which are coherent with liberation and not with justifications of brutality.

The point of this Chapter is not to present a conception of human rights which is absolutely necessary. The point of this Chapter is merely to present some of the relevant information needed to conceive of a human rights discourse which is liberatory. I believe that a revolutionary liberatory human rights project cannot be a reformist liberal human rights project, given the challenges of the categorical other and the historical situatedness of liberalism's adherence to neoliberalism, an epoch of brutality.

## Meta-Conclusions: The Passerby

Must be rush hour.

back to back to back to back

This narrow road must be dangerous.

Every attempted detour seems to loop –

back to back to back to back

– to here.

There must have been a crash here.

The blood still pours across the pavement.

It's been pouring for hours.

Someone called a bloodletting.

I can't begin to imagine what they look like –

back to back to back to back

– but I can't look away from the crash.

Someone said they were going to prison –

back to back to back to back

– but they weren't at fault for the accident.

No sign of the victims,

They must have been taken away -

back to back to back to back

– they do their work in secret.

Behind a tarp and walls of corrugated metal.

And the close shoulders of a battalion.

A plainclothes death squad in front of the naked...

“They ought to do something about that intersection.”

I never saw who was there, but I felt their ghost.

I remember seeing the intersection : Main and First.

It's in every city I've been to.

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