



## Definiendo problemas perversos para las políticas públicas: El caso de las desapariciones en México

### *Defining wicked problems for public policy: The case of Mexico's disappearances*

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#### NOTA BIOGRAFICA

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#### ABSTRACT

Wicked problem literature is increasingly popular, but empirical studies about its relation to public policy are scarce. Additionally, there is no consensus on the convenience of Public Administration as policy makers addressing wicked problems by artificially defining and structuring them. The purpose of the paper is to address these gaps, specifically how, in practice, governments handle wicked problems. Two possible alternatives are discussed: either policy makers are rational, or rather they use heuristics for problem definition. The research focuses on problem definition as part of the policy process. In particular, how the definition of the particular wicked problematic situation was reflected in legislation: disappearances in Mexico. The case shows that forced disappearances is an heterogeneous phenomenon that can be considered a wicked problem, which further increases the complexity of policies that aim to tackle it. Also, results of applying congruence tests show that policy-makers structure wicked problems when defining them, but after a certain amount of energy has been spent on this task, policy makers employ heuristic devices. This contributes to understand how flesh and bone decision-makers build public policies.

#### KEYWORDS

Wicked problems; public policy; problem definition; public administration; disappearances.

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#### RESUMEN

La literatura sobre problemas perversos es cada vez más popular, pero estudios empíricos sobre su relación con las políticas públicas son escasos. Además, no existe consenso sobre la conveniencia de que la administración pública estructure artificialmente este tipo de problemas. El propósito del documento es abordar estas brechas, específicamente cómo, en la práctica, los gobiernos manejan problemas perversos. Se discuten dos alternativas: o los responsables de la formulación de políticas son racionales o, más bien, utilizan la heurística para la definición del problema. La investigación se centra en la definición de problemas como parte del proceso de políticas públicas. En particular, cómo la definición de un problema perverso particular se reflejó en la legislación: las desapariciones en México. El caso muestra que las desapariciones forzadas son un fenómeno heterogéneo que puede considerarse un problema perverso, lo

que aumenta aún más la complejidad de las políticas que apuntan a enfrentarlo. Además, los resultados del método de congruencia muestran que los responsables de la formulación de políticas estructuran problemas complejos al definirlos, pero después de gastado una cierta cantidad de energía en esta tarea, los responsables de la formulación de políticas emplean heurísticas. Esto contribuye a comprender cómo los responsables de la toma de decisiones construyen políticas públicas.

## PALABRAS CLAVE

Problemas perversos; política pública; definición del problema público; administración pública; desapariciones.

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## 1. INTRODUCTION

Wicked problems are increasingly popular (Xiang & Head, 2013). More and more situations and problems are being considered wicked, from climate change, to terrorism, passing through drug policy, crime, public health, urban planning, poverty, disadvantaged groups, airport baggage handling, etc. Wickedness generally refers to complex, ambiguous and uncertain problems that cannot be solved, but rather resolved (Daviter, 2019; Rittel & Webber, 1973, p. 160).

Rittel first coined the concept, while he was in the Architecture Department of the University of California, Berkeley, to refer to those problems that are «ill-formulated, where the information is confusing, where there are many clients and decision makers with conflicting values, and where the ramifications in the whole system are thoroughly confusing» (Churchman, 1967, p. B141). Initially, in addition of being a proposal for a new category of problems, it was also a call for honesty in disclosing the entanglement of certain problems and solutions (Rittel, 1972; Rittel & Webber, 1973).

Since then, the concept has been applied to a variety of situations and problems (Alford & Head, 2017; Peters, 2017). It may very well be that globalization is the reason behind the increasing complexity of problems (Courtney, 2001). However, if wickedness is the norm, then the concept will be less and less useful towards constructing a research agenda in wicked problems: conceptual stretching (Sartori, 1970) is not without consequences.

The literature on wicked problems can be divided into three types of research agendas. First, the concept itself (Camillus, 2008; Head, 2008; Head & Alford, 2008; Kreuter, De Rosa, Howze, & Baldwin, 2004; McCall & Burge, 2016; Roberts, 2000). Second, classifying a certain problem as wicked (Allen & Gould Jr., 1986; Burge & McCall, 2014; Hunter, 2007; Kramer, 2011; Newman & Head, 2017; Salwasser, 2004). Third, once a wicked problem has been identified, how to best tackle it (Briggs, 2007; Conklin, 2006; Grint, 2010; Klijn & Koppenjan, 2014). On this third category, literature emphasizes the role of coordination and collaboration as a way to tackling these problems (Bouckaert, Peters, & Verhoest, 2010; Daviter, 2017; Khademian & Weber, 2008; Lægreid & Rykkja, 2015; Roberts, 2000), which is transcendent within Public Administration theory, notably post-New Public Management literature.

Nonetheless, there are scarce studies on the empirical relation between problem definition, wicked problems and public policy, especially in developing countries. This relation has been referred to as the «second-generation approach» to wicked problems (Head, 2018).

My purpose is to address this relation, specifically regarding the role of Public Administration in problem definition. The focus is on problem definition in practice, leaving its relation with policy implementation, policy capacities, and other aspects of the policy process for further studies. The specific research question is: *What kind of problem definition strategy is adopted by Public Administration while facing wicked problems?*

In order to answer this question, I set about to see which theoretical approach is more pertinent to explain how Public Administration defines wicked problems, between bounded rationality and heuristics, which can be considered as derivation of the instrumental and institutional perspective, respectively (Christensen, Lægreid, Roness, & Røvik, 2007). The case study is especially interesting, since Public Administration is a source of the problem.

The paper proceeds with a conceptual framework of wicked problems. Afterwards, it establishes two different hypotheses, based on the two different approaches. Thereafter, I test the congruence of the hypothesis by applying a case study: the case of problem definition regarding the particular wicked problem of disappearances in Mexico. Lastly, implications and discussion are presented, giving rise to an organizational typology of disappearances, before concluding.

## 2. CONCEPTUAL FRAMEWORK

### 2.1. Wicked problems

It is important to previously understand wicked problems as a challenge to rationality. The paradigm of rationality is characterized as a linear process of different consecutive steps (Rittel, 1972, p. 391):

1. Understanding the problem.
2. Gathering information.
3. Analyzing information.
4. Generating solutions.
5. Assessing the solutions.
6. Implementing the solutions.
7. Testing the solutions.
8. Modifying the solution, if necessary, and learning.

Most importantly, the concept of wicked problems challenges rationality because solutions for these problems are not attainable. Like Simon, Rittel considers that this paradigm is not enough to approach all problems. But unlike Simon, who considers that rationality is limited due to cognitive restrictions of the human beings, Rittel considers that it is paradoxical for several reasons (pp. 391-392).

First, rationality implies anticipating consequences of action, but thinking about consequences is in itself an action, thus one has to anticipate *ex ante* the consequences of thinking about consequences, *ad infinitum*. Hence, one cannot start to be rational. Second, every consequence has more consequences. Hence once one is rational, we cannot stop being rational. Third, as a rational person identifies more and more causal chains of effects of their action, the less they can act in the present, since in the long run, we are all dead.

These dilemmas of rationality imply a limit to the paradigm, since it necessarily includes irrational elements to defend its rationality. It is precisely from this starting point that Rittel and Webber (1973) propose the concept of «wicked problems», which are characterized by:

9. No definitive formulation of a wicked problem.
10. Wicked problems have no stopping rule.
11. No true-or-false solution, but rather good-or-bad.
12. No immediate and no ultimate test of a solution to a wicked problem.
13. Every solution is a «one-shot operation»; because there is no opportunity to learn by trial-and-error, every attempt counts significantly.
14. No exhaustively describable set of potential solutions.
15. Every wicked problem is essentially unique.
16. Every wicked problem can be considered to be a symptom of another problem.
17. The existence of a discrepancy representing a wicked problem can be explained in numerous ways. The choice of the explanation determines the nature of the problem's resolution.
18. The planner has no right to be wrong.

The proposal of these authors fully coincides with what Simon called satisficing instead of optimizing (Simon, 1996): it is practically impossible to find the best solution to social problems. Since this is not enough reason to not do anything about social problems, adopting a good-enough decision must be satisfactory.

Rittel and Webber affirm that every planning problem is inherently wicked and that the problems of governmental planning and policy planning rely upon elusive political judgment for resolution (1973, p. 160). This is, every policy problem is a wicked problem. If there is nothing particular of these problems in public policy, it may not be a helpful concept towards building specific policies to tackle them.

Nonetheless, some authors have advanced particular dimensions to categorize problematic situations or define the specter in which public problems can be found, in order to identify problems more wicked than others:

**TABLE 1. DIMENSIONS OF WICKEDNESS**

<b>Authors</b>	<b>Dimensions</b>
<b>Head, 2008</b>	Complexity of elements, subsystems and interdependencies
	Uncertainty in relation to risks, consequences of action and changing patterns
	Divergence and fragmentation in viewpoints, values, strategic intentions
<b>Salwasser, 2004</b>	Complexity of the problem
	Complexity of the objectives
	Stakeholders
	Factors influencing objectives
	Uncertainty
	Relative risks
	Role for science
	Coping strategies
	Decision analysis
<b>Alford and Head, 2017</b>	Complexity of the problem
	Difficulty regarding stakeholders/institutions
<b>Meza and Corona, 2018</b>	Cognitive
	Political
<b>Roberts, 2000</b>	Conflict over problems
	Conflict over solutions
	Disperse power
	Contested power
<b>Danken, 2017</b>	Non-resolvability
	Involvement of multiple actors
	Difficulty of problem definition

*Source:* Prepared by the author, on the basis of Alford & Head, 2017; Danken, 2017; Head, 2008; Meza & Corona, 2018; Roberts, 2000; Salwasser, 2004.

A necessary distinction must be made: a public problem is a problematic situation defined from a public policy perspective. Public policy literature highlights the intertwining of technical and political factors in defining public problems, beginning by recognizing that problem definition is a political task, with technical information as a tool (Majone, 1989; Stone, 2012). There is no restrictive menu of public problems, but rather they are socially constructed.

With this at hand, it is possible to argue that wicked problems refer more pertinently to problematic situations than to public problems. Thus, wicked problems need to be transformed into public problems in order to be tackled. Additionally, problem definition, as a decision that transforms problematic situation to public problems, is an organizational process.

## **2.2. Wicked problems and rationality: the instrumental perspective and beyond**

A tool for artificially turning wicked problems into more structured ones, in order to allow the design of public policies, is one proposed by Simon: ill-structured problems (Simon, 1973).

Simon's starting point is limited rationality, in which he acknowledges that social problems are not stringent and solutions are not optimal. Nonetheless, he recognizes that some problems are better structured than other. Ill-structured problems are those in which the decision-maker does not have the initial state, or the solution state or the means to get from one to the other. Even the most capable decision-maker will not be able to solve an ill-structured problem because it does not have the form necessary to understand it.

The elements of ill-structured problems seem to coincide with those of wicked problems in the sense that the causes are unknown, the solutions are unknown, and agreement is difficult since stakeholders are diverse. Nonetheless, Simon admits the possibility of transforming ill-structured problems into well-structured ones, through a process of simplification: Slicing the problem into smaller parts, so that the decision-maker can understand and work on the problem. He exemplifies with chess: the game of chess, in itself, is ill-structured. The possibilities that arise at every move are infinite. But if we analyze move-by-move, chess becomes better structured and it is possible to make a good decision with a simpler goal, always adapting to a new context.

Thus, the virtue is not in solving the problem, but in approaching the problem in an unorthodox manner and adapting our understanding to changing conditions. Simon goes as far as affirming «It is not exaggerating much to say that there are no WSPs [well-structured problems], only ISPs [ill-structured problems] that have been formalized for problem solvers» (Simon, 1973, p. 186).

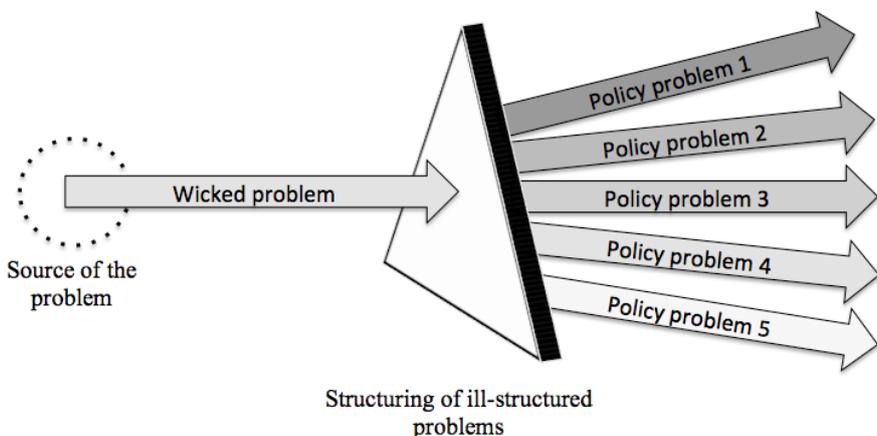
Both wickedness and ill-structured problems are proposed from a bounded rationality perspective. They both present an understanding of problems towards their solution. Not fully understanding a problem is not an excuse for government inaction. This highlights incrementalism as a method of policy making (Lindblom, 1959). Lindblom recognized that «No person, committee, or research team, even with all the resources of modern electronic computation, can complete the analysis of a complex problem. Too many interacting values are at stake, too many possible alternatives, too many consequences to be traced through an uncertain future the best we can do is achieve partial analysis» (1959, p. 518). This description reminds is, once again, of wicked problems.

In the spectrum of the understanding of problems, where in one extreme is scientific or synoptic analysis –and its aspiration to be complete– and on the other is incomplete analysis, the Aristotelian middle is strategic analysis (Lindblom, 1979, 1979). Strategic analysis is «analysis limited to any calculated or thoughtfully chosen set of stratagems to simplify complex policy problems» (p. 518). One form of strategic analysis is disjointed incrementalism, which implies focusing on specific stratagems, and a form of disjointed incrementalism is simple incremental analysis, where the focus is on a few familiar policy alternatives.

Even if the pertinence of incrementalism has been questioned (Bendor, 2015; Pal, 2011), its utility as a tool for the study of collective decision-making is affirmed. Moreover, it is important to stress that the relevant question here is not about the value of incrementalism *per se*, regarding implementation, but about disjointed incrementalism as a tool to understand problematic situation, and its usefulness for ill-structured and wicked problems.

Since the nature of wicked problems makes it impossible to aim for synoptic analysis, a different path must be taken. Figure 1 represents a disjointed strategy towards building public policies for wicked problems:

FIGURE 1: PUBLIC POLICIES FOR WICKED PROBLEMS



Source: Prepared by the author.

The goal is to build an understanding of the problem –even if built artificially–, just like a prism can refract and decompose the light: a tool can help the human eye separate the different components of a problem too complex for our limited human capacities. This implies not focusing on complexity as the main independent variable (Lustick, 1980), but identifying other salient variables and structuring the problem from there.

When dealing with a wicked problem, policy makers will adopt a definition of the problem that structures it for actions and public intervention.

*Expectation 1: When dealing with a wicked problem, policy makers will adopt a definition of the problem that structures it for actions/public intervention.*

### 2.3. Wicked problems and heuristics: the institutional perspective and beyond

Literature on organizational decision-making emphasizes that as stability and certainty-seekers, organizations, just as individuals, use heuristic devices in their decision-making processes (Sunstein, 2014; Thaler & Sunstein, 2008; Weick, 2005). This can be manifested in several constraints: shareability, inference, mindfulness: «The joint effect of these constraints is to direct collective attention towards definites, sequential associations, and remembered labels and away from associables, clusters of association, and fresh labels» (Weick, 2005, p. 431).

But these cognitive shortcuts may be problematic to public policies, since there may be several different problems to deal with, all which fit perfectly under the centripetal umbrella of the legal definition. The underlying simplification of the problem, derived from the legal definition, may lead organization to be unable to respond to crisis, inefficient public policies, and ultimately to cause disasters, all because of the banality of organizational life (Vaughan, 1996).

But this is natural, since imagining is costly –it implies having and understanding information–, and adopting an existing definition is the path of least resistance. Concepts such as an «adaptive toolbox» (Gigerenzer & Selten, 2001) or «extendable rationality» (Secchi, 2011) illustrate how flexibility helps understanding.

Based on these assumptions, one would expect to see that facing a problematic situation, policy-makers adopt a factual statement about a situation as the definition of a public problem (Hoppe, 2010).

I argue that when public organizations deal with wicked problems initially defined by law, such as several crimes like genocide, terrorism and forced disappearance, organizations are likely to adopt a readily available definition as basis for the construction of public policies, rather than building an *ad hoc* definition appropriate for public action (Hoppe, 2010).

*Expectation 2: When dealing with a wicked problem, policy makers will adopt a readily available structure of the problem instead of structuring the problem themselves.*

## 3. EMPIRICAL STUDY

### 3.1. Disappearances as a wicked problem

Since World War II, gross human rights violations have been typically attributed to dictatorships or autocratic regimes. However, democracies are not excluded from this problem (Aidoo, 1993; Davenport & Armstrong II, 2004; Yu, 2016). A particular example is the case of forced disappearances –the disappearance of a person committed by an agent of the State.

Disappearances have been mainly approached from a legal perspective, but it remains an understudied topic, from both a Public Policy and a Public Administration approach. Nevertheless, the management of this crisis is a fundamental task for the State, since it is in direct detriment of its legitimacy: the State, which is supposed to provide security for its population in exchange for the centralization of the use of force, is the one attacking them and ripping apart their security.

The first recorded systematic implementation of disappearances was in the context of the Second World War, where in 1941 Germany's Third Reich, the Führer instituted the Night and Fog Decree (US-OPAC, 1941), which provided that most of the prisoners in occupied territories that were being accused of offenses against the German state, would be transferred to Germany without a prior trial. Only if the German officers considered highly probable that the offender would receive the death penalty, then the prisoner could remain in the occupied territory

(second directive). Also, the decree established that if someone were to ask for information about prisoners taken to Germany, it would be said that they were arrested, but no further information would be provided (third directive).

These disappearances sought, on the one hand, to prevent the prisoners to access the mechanisms of legal protection and, on the other, to intimidate the rest of the family and community, due to the uncertainty of the prisoner's whereabouts (Finucane, 2010). In this way, enforced disappearances was used as a strategy of terror, in a hierarchical, systematic and intentional manner.

This same strategy was implemented by various military dictatorships in Latin-American, notably in notably in Brazil (1964-1979), Argentina (1976-1983) and Chile (1973-1990)<sup>1</sup>. In the Brazilian case, it was possible to determine the intentionality and systematic strategy of the government with the more than 450 disappearances by archival record of its actions (*Brasil: Nunca Mais*, 1985). Those responsible have not been sanctioned, due to an amnesty law.

Regarding Argentina, under the program called "Process of National Reorganization", various acts of torture and forced disappearances were carried out in a systematic manner, under the argument that the government was fighting guerrilla groups. In 1983, President Raul Alfonsín –five days after getting into office– created the National Commission on the Disappearances of Persons. In its final report "Never again" (CONADEP, 1984), the Commission determined the existence of 8,960 disappeared victims, the appropriation of newborns of pregnant women, and proved the existence of a deliberate plan from the government to carry out the disappearances. Later, in 1985, those responsible for the Military Boards would be judged and sentenced for their actions.

In Chile, during the military dictatorship of General Augusto Pinochet, over one thousand people were disappeared by the Army, the *Carabineros* and the Directorate of National Intelligence. In 1991, President Patricio Aylwin established the National Truth and Reconciliation Commission. Its final report, the *Rettig* report, states «there was a will to exterminate, directed systematically and for political reasons, against certain categories of people» (Comisión Rettig, 1996, p. 19). Following the report, several mechanisms were established for the reparation of victims and their families. Like Brazil, the issuance of a self-amnesty law has prevented the punishment of those responsible.

In Mexico, forced disappearance is not a recent phenomenon. Although the first antecedent can be traced back to the revolution era, notably with the case of Belisario Domínguez, considering the moment the concept was defined, after the Second World War, the first forced disappearances formally recorded took place during the so-called *dirty war*. The report "Forced Disappearance in Mexico: a look from the UN System organizations" is illustrative in this sense, since it establishes (UN, 2015, p. 34):

«During the period known as the "Dirty War", from the end of the 1960s until the early 1980s, the security forces carried out a policy of systematic repression against students, indigenous people, peasants, social activists and any suspect of being part of an opposition movement. Serious abuses committed included massacres of students in 1968 and 1971, torture, execution and forced disappearances of hundreds of dissidents and alleged supporters. Until a few years ago, the Mexican State refused to recognize the existence of abuses committed by the security forces. The State has reoriented its course and adopted some measures related to the crimes committed during the "Dirty War". An official report held that the administrations of three presidents were responsible for the crimes, thus rejecting the theory that the atrocities were committed on the initiative of police or certain military units.»

The first action taken by the government to clarify the criminal acts committed during this period took place in 2001: The National Commission for Human Rights issued recommendation 26/2001, the first on the subject (CNDH, 2001), based on the investigation of 532 alleged forced disappearances. It established the need to create a special prosecutor's office to investigate these facts. Thus, in 2001, the Special Prosecutor for Social and Political Movements of the Past was created, FEMOSPP (OJF, 2001). The office was in charge of investigating crimes committed by public servants during the Dirty War.

In 2006, FEMOSPP, after a leak in national and international media, issued its final report in which it recognized the systematic violation of human rights by public security forces during the administrations of Gustavo Díaz Ordaz (1964-1970), Luis Echeverría Álvarez (1970-1976) and José López Portillo (1976-1982) (FEMOSPP, 2006). However, on the last day former President Fox six-year term, the Special Prosecutor's Office disappears (OJF, 2007).

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<sup>1</sup> The military dictatorships of Guatemala, El Salvador, Bolivia, Nicaragua, Peru and Uruguay, during the 1950-1980 also implemented disappearances as a strategy (ANSOLABEHERE, FREY, PAYNE, 2017).

Despite these actions, enforced disappearances committed during the dirty war remains uninvestigated and sanctioned (UN, 2015, p. 43). In 2012, in an unprecedented national effort, the State of Guerrero created a Truth Commission, in order to investigate human rights violations during the dirty war in the State of Guerrero (Comverdad). It was in this State that the greatest concentration of disappearances took place at that time, as is shown in the final report of the FEMOSPP (2006) and exemplified in the case Rosendo Radilla vs. Mexico, in the Inter-American Court of Human Rights (IACoHR, 2009).

The instrument that created the Comverdad established its task to investigate the human rights violations committed in Guerrero between 1969 and 1979, and it would have a two-year period to issue its final report (Official Gazette of the State of Guerrero, 2012). Thus, in 2014, Comverdad delivered its report, which stated that «the federal and local security forces kept a record of the persons to be located, detained or exterminated and of every persons who entered the military installations» (COMVERDAD, 2014, p. 15). This shows the intentionality and systematic use of forced disappearance by state forces as a mechanism of repression.

Other than those related to the dirty war, forced disappearances has not figured on the national public agenda. However, the forced disappearance of Ayotzinapa students marked a breakthrough in the matter, making evident that forced disappearances in Mexico had been increasing steadily since 2007, without anyone knowing why<sup>2</sup>. In addition, missing persons in the country are no longer limited to profiles that inconvenience the government. They have diversified: now migrants, students, peasants, builders, architects, minors, etc. are disappearing.

Although various measures have been adopted in an attempt to tackle this crime –from the adoption of laws, to the creation of commissions– no action against forced disappearance can be effective without its prior understanding. The lack of understanding implies that the efforts carried out will be unsuccessful, with the risk that the crime will continue to increase. The concept of «wicked problem» is particularly useful to this purpose for the Mexican case, as will be discussed in the next section.

Theories that attempt at identifying the root causes of forced disappearance can be put forward: it is possible to argue that it is rotten apples in police forces (Griffin & Ruiz, 1999; Zimbardo, 2007). Also, Latin-American police forces have been characterized by submission to authority and blind loyalty to superiors rather than law. But these theories, rather than being helpful towards building a public policy that tackles the problem, paralyze action in the sense that they imply intervening minds: «If we regard any crime-prevention or crime-reduction program as defective because it does not address the “root causes” of crime, then we shall commit ourselves to futile acts that frustrate the citizen while they ignore the criminal» (Wilson, 2013, p. 36). Knowledge and information are not always power; sometimes they are paralyzing.

Its implementation from governments as a policy to spread fear and eliminate opposition, as is the case with the national-socialist regime in Germany. It may also be due to the commission of a state agent with the logic of rotten apples, or to be committed as a response to a threat by organized crime, or as a result of an abuse of public force. The reasons behind enforced disappearances are as diverse as the circumstances in which they occur.

The disappearance of persons is especially relevant as an illustration of wicked issues, since its implications for trust in institutions, for the legitimacy of the government and ultimately for the mere existence of the State as a security provider.

### 3.2. Wicked disappearances in the Mexican context

The problem of criminal disappearances in Mexico has been highlighted from different national and international organizations, especially in the last decade (CNDH, 2017; IACHR, 2015; UN, 2015). Evidence

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<sup>2</sup> The exact number of direct victims of forced disappearance in the country is unknown. The main source cited as a quantitative reference is the National Registry of Missing and Lost Persons, which contains raw data by not distinguishing between categories of loss, abandonment of home, forced disappearance, absence from natural disasters, etc. This record shows that in 2007, 0.5 people per 100,000 inhabitants disappeared, while in 2016, 4 people disappeared for every 100,000 inhabitants. This implies an increase in disappearances of 800%. Also, 18% of the total number of disappeared persons are children and youth under 18 years of age (CMDPDH, 2018). The National Commission of Human Rights, the United Nations Organization and the Organization of American States have emphasized in their reports the constant increase in forced disappearances in the last decade. Likewise, the Attorney General's Office reports an increase in files for forced disappearance by 60% between October 2016 and March 2018 (MARTINEZ, 2018).

shows that the phenomenon of forced disappearance is widespread (UN, 2015). At the national level, disappearances have been increasing steadily since 2007 (SESNSP, 2018).

Disappearances in Mexico can be considered a wicked problem because of the inherent complexity, uncertainty and ambiguity of our knowledge of the dimensions of the problem. The problem is complex because they involve the participation of multiple actors and institutions, be it at the local, national or supranational sphere: ranging from police and military institutions, to those for the protection of human rights, tribunals, legislatures, and international committees, who all have a different goals and routines. Governments need to come up with ways that facilitate coordination in novel ways between these actors. Also, as resistance between these actors is to be expected, both between and within levels of government. Public Administration is thus at the source of the problem, but it also is at the source of the solution.

The problem is also uncertain, as the crime is committed with the object purpose of obscuring the facts. Additionally, it is a heterogeneous phenomenon where a specific causality cannot be pinpointed. Finally, ambiguity comes from the fact that there is little knowledge about who is systematically being disappeared as well as who are the perpetrators behind it. This, because the National Registry of Disappeared and Missing People has several deficiencies, both in its design and in its implementation (Galindo, Ramírez, & Rodríguez, 2019). Each register is made if there is an ongoing criminal investigation, but seeing as it may be that the police is involved, the number of unreported disappearances may be significant. Several national and international organizations have highlighted the problem of lack of certainty on the scope of the problem (CNDH 2017; IACHR 2015). The only measurement of the scope of this problem available to this day shows that forced disappearances in Mexico have been increasing steadily since 2007 (SESNSP, 2018). This growing problem in Mexico has to be understood in the light of three applicable different conditions: generalized violence, the international legal framework and the sustainable development goals, which together contribute to understand why disappearances continue to increase and even, to a degree, the lack of political will in dealing with this problem.

First, the phenomenon has to be understood in the context of generalized violence. Days after his presidency started –in 2006–, Felipe Calderón declared war on drug trafficking. This had, amongst other consequences, a reverse in the tendency of decrease in the homicide rate, going from 9.4 homicides per one thousand inhabitants in 2006, to 22,6 in 2011 (World Bank, 2017). Since then, gross violations of human rights have been constantly reported (IACHR, 2015). This, together with a criminal justice system in transition since 2008, has generated a climate of impunity in the country. The strategy implemented by Calderon continued during Peña's presidency (2012-2018), with the amount of military personnel assigned to public security doubling (Angel, 2016), and as far as Lopez's presidency goes, the trend of increasingly militarized public security seems to remain (INFOBAE, 2019).

Additionally, Mexico is part of three international conventions that prohibit and sanction forced disappearances: the Inter-American Convention on the Forced Disappearance of Persons<sup>3</sup> (1994), the Rome Statute of the International Criminal Court<sup>4</sup> (1998), and the International Convention for the Protection of All Persons from Enforced Disappearance<sup>5</sup> (2006). As these conventions are hard-law instruments that create binding obligations for the States, not fulfilling them implies the international responsibility of the State, thus creating incentives for the government to argue that they are fulfilling their obligations. In this sense, the Mexican government has resisted accepting the jurisdiction of the UN Committee on Enforced Disappearances, which has been a decade long claim for many of the victims and constitutes an obstacle towards effective human rights protection (UN, 2019).

Finally and with this same logic, Sustainable Development Goal number 16 specifies the target of governments to «Ensure public access to information and protect fundamental freedoms, in accordance with national legislation and international agreements» (UNGA, 2015). One part of its corresponding indicator is the number of enforced disappearances of journalists, associated media personnel, trade unionists and human rights advocates (16-10-1). Literature suggest that a pattern of adaptive behavior should be observed, in order to attain the goal (Merry, 2016; Merry, Davis & Kingsbury, 2015), because these commitments create incentives to underreport the extent of the problem.

<sup>3</sup> Ratified by Mexico May 9, 2002.

<sup>4</sup> Ratified by Mexico October 28, 2005.

<sup>5</sup> Ratified by Mexico March 18, 2008.

The last two conditions generate additional pressure on policy makers to identify different types of criminal disappearance, according to the author and to the victim, so as to be able to report a low incidence of forced disappearance. This reinforces the belief that the expectation 1 will be fulfilled.

Additionally, Mexico's presidential system allows for the chief of the executive power the right to propose legislation. This was the case for disappearances. In 2015, a constitutional reform took place in order to give to Congress the faculty to pass legislation on the matter. This issue was previously reserved for legislation at the local level, which generated legal disorder and *lacuna* and, as a consequence, impunity. Thus, relevant ministries worked together in order to present the draft legislation, which was passed in 2017. This characteristic makes the case relevant for Public Administration understood as policy-makers.

### 3.3. Disappearances in Mexico

The initial state of disappearances in Mexico was the lack of classification of missing people. In 2012, a law established the need of a systematic registry of missing people (OJF, 2012), but without distinction on the specific type of disappearance. In this structure-less world, public intervention to deal with the problem was merely symbolic, since it did not provide any information or space for specific interventions.

In September 2014, 43 students disappeared in the southwest state of Guerrero. National and international attention was set on this problem. Policy makers were pressured to define the problematic situation in order to build a public policy in the issue. The result was the adoption of the General Law on Forced Disappearance of Persons (OJF, 2017).

Public Administrators, as policy makers, had to undertake the task of dealing with this wicked issue, in a context of complexity, ambiguity and uncertainty. This allows us to study a particular case of how wicked problems are dealt with and defined as public problems.

The analysis of the policy on disappearance of persons in Mexico reveals that both expectations are fulfilled. Expectation 1 is verified. This law represents a breakthrough for public policy of disappeared, since it broke the umbrella concept under many different phenomena were included. It clearly distinguishes between non-criminal and criminal disappearances: *missing* people referring to the former, and *disappeared* to the latter (article 4, fr. XV, XXVI). Even more, it provided a distinction between two types of crime according to the author: if a public servant is involved as a perpetrator, then it is the crime of *forced disappearance*; but if no public servants are involved, then it is the crime of *disappearance by private persons*.

No readily definition was adopted, and efforts were put into obtaining consent for this classification, within Public Administration, and with international and non-governmental organizations –who were initially resistant–, as it has the serious policy implication of establishing a priority in the search efforts of missing people. Even the International Committee for the Red Cross opposed this distinction (ICRC, 2015), but after the passing, it expressed satisfaction with the new legislation (ICRC, 2017).

This fits well within the expectation 1 presented: policy makers adopted an artificial structure for the problem, using a disjointed incrementalism strategy that focused on the variable of intentionality and authorship. This allowed for the transformation of a problematic situation to a public problem. The decision adopted reveals a rational effort in order to respond to formal incentives.

Nonetheless, expectation 2 is also fulfilled. Concerning forced disappearances, the problem remains without structure. In this case, heuristic devices such as acceptability, least effort and remembered labels come at play.

Forced disappearance was first defined from a legal perspective. The first conventional definition can be found in the Inter-American Convention on Forced Disappearance of Persons of 1994. The definition that this convention establishes was *copy-pasted* into the General Law, without further structuring.

From the legal perspective, the defining characteristic of forced disappearance is the involvement of an agent of the State. The goal is to punish, not to prevent. But for public policies, this is problematic, since in order for an effective public policy to be built, there is the need to distinguish who is the agent of the state, in particular, to what level of government, to what branch of power, and to what organization it belongs.

A viable explanation is that since too much complexity and social conflict arises from the matter, then policy-makers will adopt heuristic devices to ignore information that further complicates the issue (Hoppe, 2010, p. 75).

But is forced disappearance a monolithic phenomenon? If the answer is no, it means that policies for forced disappearance, understood as a wicked public problem, must avoid adopting a legal definition implies using a definition of a tailor's box in which different phenomena fit. This has implication for public policy since it leads to one-size-fits-all actions that may not correspond to the manifestation of the problem.

Based on a review of news articles in Mexico, from 2007 until 2017, it is possible to identify several different manifestations of forced disappearances by referring to some emblematic cases. It is important to establish that all of these phenomena fit into the legal definition of forced disappearance: the disappearance of a person committed by an agent of the state, yet, as the next paragraphs show, a description of several cases of forced disappearances shows how heterogeneous the phenomenon actually is.

First and foremost, order from a superior. This is the case of the disappearances during the dirty war in the 60s-80s, and of those committed in Veracruz during m 2010 to 2016 (Animal Político, 2018; Zavaleta, 2018). Evidence points towards the fact that the ex-governor of this state, Javier Duarte, knew about the forced disappearances of at least 15 persons by the local police, being committed by members of the local public security institutions. Currently, 19 policemen have been arrested, including the head of the local public security office, trials pending (Angel, 2018). These types of disappearances are committed as deliberate acts by government, where its organizations or parts thereof, align in order to disappear.

Second, some disappearances occur when state's agents act in collusion with criminal organizations. This is the case of the disappearance of the 43 students in Ayotzinapa, Guerrero in September 2014: municipal authorities and policemen detained students, and surrendered them to a criminal organization, *Guerreros Unidos*, which in turn made them disappear. The Inter-American commission has found evidence that the military forces in Guerrero were also providing arms to *Guerreros Unidos*, and there is suspicion that there are family links between members of the military with leaders of criminal organization (IACHR, 2018, p. 90).

Third, forced disappearances can occur as collateral damage in the war against crime: governments may recognize it was a byproduct of organizations, either as an intimidation tactic (Rojas, 2018), or as an accepted accident (Guevara Rosas, 2018). An emblematic case of the use of forced disappearances as collateral damage is the situation in Tamaulipas. There, the Marines have been present since 2011, under the argument of fighting organized crime and drug trafficking in the region. Since their arrival, an increasing number of gross human rights violations have occurred, including extrajudicial killings and forced disappearances. Members of the Marine break into people's houses in the middle of the night and arrest people (Diaz, 2018). Fourth, it may be a result of the abuse of use of force, because of insufficient protocols or training from police forces. This seems to be the case of the disappearance for some days of Marco Antonio in Mexico City in the beginning of 2018 (Villalobos, 2018). This high school student disappeared for five days. The last time he was seen before disappearing, he was being hit by local policemen. In a recent judgment, local authorities were signaled as responsible for denying his arrest to his family (Linares, 2019).

Fifth, rotten apples may cause forced disappearances: individuals, groups or organizations make this a deliberate choice, even if knowing of the illegality of their actions. In Mexico, this situation is not far off, as the country ranks fourth in the Global Impunity Index 2017 (Le Clerq Ortega & Rodríguez Sanchez Lara, 2017).

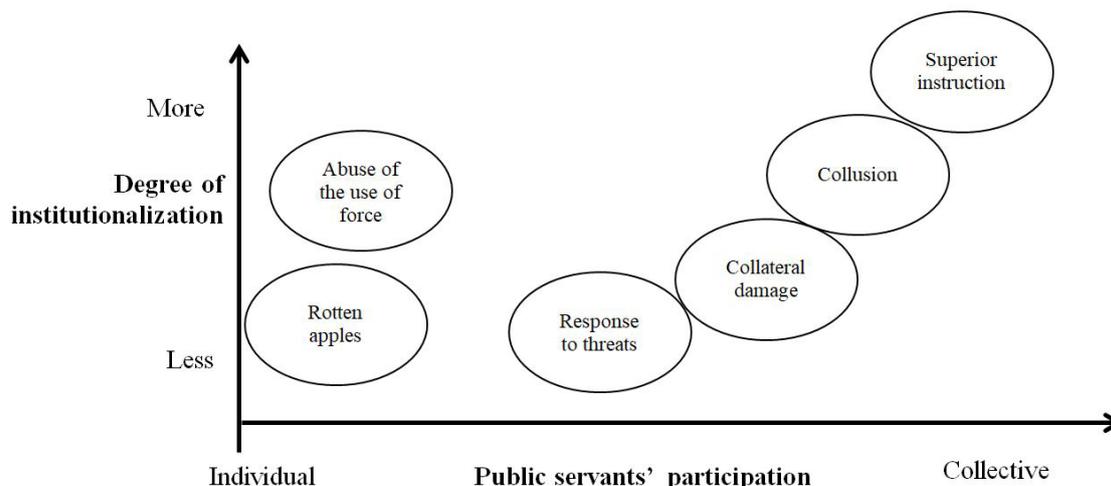
Finally, it is also possible to think that it may occur as a rational response in the face of threats of organized crime: government officials threatened by criminal organization to either disappear or to suffer consequences to their security or that of their families. This implies the weakening to public organizations. This can be illustrated by the *narcomantas*, which are messages left in public spaces by cartels on a cloth banner, usually containing threats to competing cartels and also to public officials, from police officers to mayors (Saldivar Arreola, & Rodríguez Sánchez, 2018).

With the identification of these different phenomena, it is possible to structure the wicked problem of forced disappearance into different public problems, which facilitates the construction of public policies to tackle them.

Two dimensions allow structuring this wicked problem: the number of public servants that participate in the crime, and the degree of institutionalization of the practice, as is shown in figure 2.

Each of these ideal types involves organizational, sociological and legal aspects that can be completely different from each other. This implies that the umbrella concept of forced disappearance can hardly, by itself, be a solid and unique guide to carry out empirical studies that try to understand what happens in specific cases or in systemic situations.

FIGURE 2: STRUCTURING OF THE WICKED PROBLEM OF FORCED DISAPPEARANCES



Source: Prepared by the author.

#### 4. IMPLICATIONS AND CONCLUSION

The policy example of disappearances in Mexico described above can be identified as wicked problem. It illustrates how structuring a problematic situation can help better define it as a public problem in order to design a public policy. This allows for constructing more effective public policies by avoiding one-size-fits-all actions.

The two expectations are verified: policy makers structure wicked problems *from scratch*, and also adopt a borrowed definition. In the case of disappearances in Mexico, Public Administration is both a problem and a solution. This is relevant, since «(t)he manner and ways in which government addresses wicked problems has the potential to affect government's political capital.» (McConnell, 2018, p. 169). Public Administration does spend energy to define wicked issues as public problems, in order to prepare for public interventions.

Policy-makers structure wicked problems when defining them for public policies, but after a certain amount of energy has been spent on this task, policy makers employ heuristic devices. The paper reveals that Public Administration as policy makers adopt both strategies of problem definition: approaches are complementary rather than alternative.

Regarding disappearances, this would generate an interest from the part of public organizations to clearly delineate the affiliation of individual author, as to protect its legitimacy and reputation. This implies that the military, police, navy, and other security forces, would each have a legitimate interest in rejecting taking blame on any disappearance their agents did not commit, and so prevent an attack on their reputation that could affect their legitimacy and continuity. But did is not what is observed. Governments' agendas are so diverse that they cannot afford to focus on a particular wicked issue unlimitedly, considering its scarce time and resources. Hence, after a certain level, heuristics will come at play, along with resistance to policy change.

The case contributes to the discussion on the argument that «wicked problems cannot be properly “tamed” or “fixed” by dissolving them into multiple elements which are then reassembled in a manner suited to a series of small projects» (Head, 2018, p. 4). From a normative perspective, it may be discussed the desirability of this policy tool, but in practice, flesh and bone Public Administrators structure wicked problems.

The main lesson is that in highly complex, ambiguous and uncertain environments, artificial structures can help decision-makers make a bad situation tolerable, easing the political versus technical discussion towards more fruitful government interventions. For the case of disappearances, this means that understanding the problem as a wicked one can help in designing more effective policies, that stand in the middle ground between having a one-solution-fits-all policy and a case by case scenario (Centro PRODH, 2018).

This paper shows that in certain contexts, structuring of wicked problems is not enough, but it can be used as a complement of tackling wicked problems through reorganization and structural change (Lægneid & Rykkja, 2015), a combination of which can lead to more responsive, adaptive and resilient organizations.

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