

VOICES *of Mexico*

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National Security and Transparency in Mexico

Alonso Gómez-Robledo Verduzco

Transparency and the Right to Information in Mexico

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The Constitutional Reform On Human Rights

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Canada's Election, North America, and Mexico

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Employment in Mexico In the Twenty-First Century

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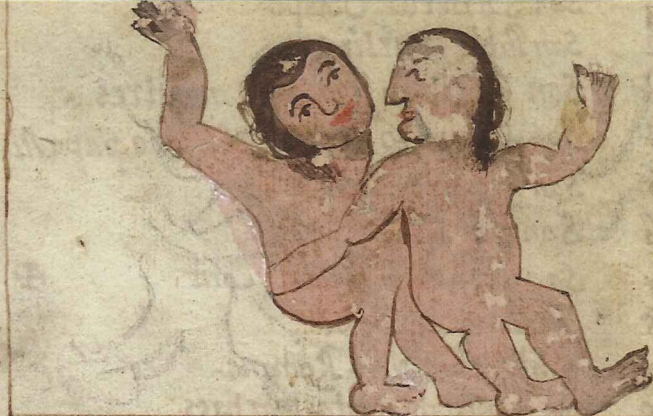


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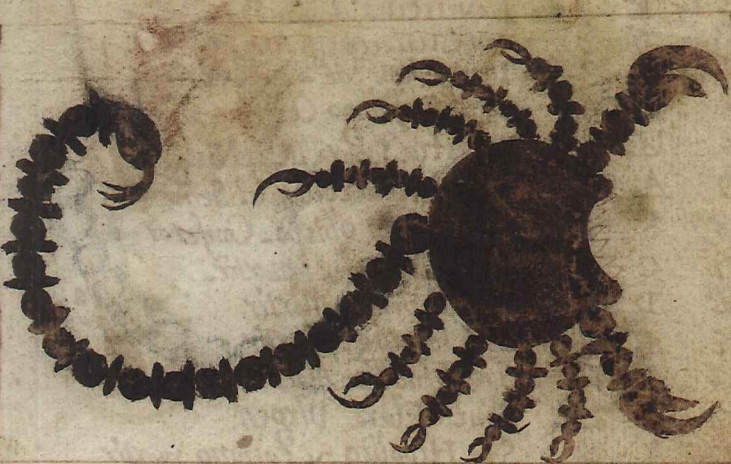
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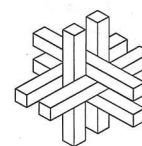
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Alfredo de Stéfano, *Circle of Fire in the Desert*, 2002.
Replenishing Emptiness Series.

Back Cover

Alfredo de Stéfano, *Glacier-Iceland*, 2011
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OUR VOICE

I will deliberately begin this editorial by expressing how profoundly upset and unsettled we Mexicans feel about the increase in violence over recent months. The government has been adamantly maintaining that the victims were, for the most part, members of the drug cartels and their security platoons. However, the horrific scenes that flashed around the world after the August attack on Monterrey's Casino Royale, which resulted in more than 50 dead, force us not only to go into national mourning, but also to seriously reflect about the chaos threatening to devour us.

We were shaken again a month later when the coastal state of Veracruz experienced another chapter in this dramatic saga: 35 more victims were dumped in broad daylight on one of the city's most heavily traveled streets in front of shocked, disbelieving passersby.

Given this scenario, the general perception of the growing number of these despicable acts is that Mexico is not envisioning any alternate route for breaking with this cycle of violence in the short term. Day after day I ask myself what the duty is of those of us citizens who want to recover the future for our well-meaning men and women. And I come to the conclusion that, for a start, we must not add to the confusion, much less divide our positive actions.

It is a fact that violence, corruption, and impunity constitute a perfect triangle in Mexico. What should be done, then, to break it? I also think that persevering in the construction of citizen alliances and networks to promote and monitor the transparency and accountability of all government actors who are directly or indirectly obligated to guarantee our security would be a good beginning. In addition, once and for all, we must rid ourselves of all the daily acts of corruption that many of us Mexicans refuse to recognize because we think they hurt no one. This only legitimizes them under the guise of making life easier.

This issue, then, dedicates its "Special Section" to a detailed reflection about the state of transparency and the right to information in our country, recognizing them as guiding axes for strengthening our democracy. The reader has here the opportunity of looking at details about the origins, characteristics, and specificities of the legal norms regulating them, guided by our expert contributors.

Nevertheless, the application and administration of those norms are an intricate structured maze in which distinguished jurist Alonso Gómez Robledo puts forward a question that stands out in stark relief about the limits that national security puts on access to information, above all in the current high risk scenario the country is experiencing.

In our "Politics" section, Raúl Plascencia's article points to the advances for Mexicans represented by the recent constitutional reform on human rights. This centered, among other things, on the state's commitment to educate the population about the existence and exercise of these prerogatives. Researcher Imer Flores, for his part, brings us a closer look at the recurring practice in Mexico of amending our Constitution in order to "adapt it" to new conditions in which obviously the pressure of political parties stands far and above that of

other traditional actors. In this same vein, the topic of the day is precisely to foster a new political reform, in which the key pieces would be the possibility of putting independent candidates on the ballot, as well as including in our laws the right to hold referendums, among other mechanisms for governing.

I would also invite you to peruse the ideas that several authors offer us in this issue about the current political scene in Canada, as well as its repercussions in North America. We must not forget that this country is the number one destination for U.S. exports, and the second for Mexican ones.

In the cultural sphere, let me invite you to find out about the struggle of women in my country, through the efforts of Dr. Patricia Galeana to realize the dream of having a Women's Museum in Mexico. This sets a precedent: not only does it pay tribute to the firmness and tenacity of generations of true warriors in the political, economic, and social spheres, but, above all, in the spaces of daily life. These women were capable of transcending the stereotypes to pave the way for the freedoms and opportunities that many of us Mexican women today enjoy. However, we must recognize that there is still much that remains to be done; for that reason, it is we professional women who, having had the privilege of an education, are obligated to give and do more for other women.

I must also mention the splendid articles that, to our delight, talk of the indigenous men and women who have been capable of preserving, transmitting, and recreating our ancestral traditions, pursuing health, and also comforting the undeniable spirituality that constitutes us all as human beings.

To conclude, I return to the painful events I mentioned at the start of this editorial, and the meaning of loss, since Mexico has had to say its last goodbye with great sadness to the talented artist Leonora Carrington, to whose memory we dedicate the words of prestigious writer Elena Poniatowska. A proponent of surrealism, Leonora settled in our country, which in turn served her as inspiration. She lived here with passion and intensity until becoming an international figure, characterized by her eminently rebellious, controversial essence.

Paradoxically, the CISAN also recently suffered the loss of a dear colleague, Elsie Montiel Ziegler, who collaborated exceptionally as editor of *Voices of Mexico*, making a fundamental contribution to positioning it as a publication of incalculable value for communicating in English the aims and work of our university.

Let, then, the work and dedication of our academic community act as a tribute to her and Leonora personally, and to the victims of our country's violence and their families, with the aim of reasserting the value of life based on an untiring struggle.

Silvia Núñez García
CISAN Director

The Constitutional Reform On Human Rights

Raúl Plascencia Villanueva*



Rodolfo Angulo/Cuartoscuro

Raúl Plascencia Villanueva, president of the CNDH, Mexico's National Human Rights Commission.

On June 10, 2011, the most profound, far-reaching constitutional reform on human rights in contemporary Mexican history was published in the *Diario oficial de la federación* (Federal Official Gazette). This marked the end of a long legislative process which resulted in amendments to 11 articles of Mexico's Constitution.

The approval of these changes begins a new stage in the defense and promotion of human rights, enormously benefiting the Mexican population, since it seeks to reverse the legislative tendency to increasingly limit individual rights on

the pretext of achieving greater public security. The reform also strengthens the work of public human rights agencies.

The aims of the constitutional reform are the following:

- 1) to recognize human rights in the Constitution;
- 2) to achieve a state commitment to human rights education;
- 3) to create a new institutional design for the public bodies mandated to protect and defend human rights;
- 4) to give public human rights agencies competency to deal with labor issues;
- 5) to establish a new system for accountability before the Senate; and

* President of the National Human Rights Commission (CNDH).

- 6) to foster greater impact of international instruments in the new national legal landscape.

The constitutional obligation that the Mexican state will have from now on of strengthening an educational process on human rights is a fundamental decision for ensuring that current and future generations can know not only their rights, but also the legal mechanisms for making them effective in public service or as members of society. This is because, while investigating human rights violations is undeniably useful, in a country like ours, it is of capital importance to have prevention strategies with effective education and training for public servants and society in general.

By recognizing the importance of inculcating all sectors of the public, especially children and young people, with the content of human rights, it will be possible for society to live together better, as well as to train future public servants and society at large about knowing and respecting human rights and how to make them effective.

The reform also strengthens and updates the Constitution's system for protecting rights, as well as fulfilling the commitments that have been made through Mexico's signing and ratification of international treaties in this field. It is worthy of note that, down through our history, our country has made a little over 100 international commitments in the form of human rights treaties, covenants, or conventions, which require full compliance.

The central point of this change is respect for dignity and the means to defend it through human rights. The reform strengthens the *pro personae* principle, according to which interpretation of norms must favor human beings as much as possible. In applying these norms, the principle of non-contradiction with the Constitution must also be observed; not observing it would call for what is known as an action of constitutional control.¹ In this same sense, norms set up to protect human rights must be interpreted according to the international treaties Mexico has signed and ratified; not observing it would call for what is known as an action to control for compliance with conventions.²

TOWARD A NEW INSTITUTIONAL DESIGN

The new institutional design of the public agencies that exist to protect and defend human rights has two main thrusts. The first is strengthening their autonomy, and the second is

The reform will enormously benefit the Mexican population, since it seeks to reverse the legislative tendency to increasingly limit individual rights on the pretext of achieving greater public security.

to provide them with competency in labor issues, thus broadening out the sphere of protection for individuals in our country. Also, the National Human Rights Commission's faculties for investigating grave human rights violations were also strengthened, thus avoiding duplicating investigations: it will no longer be the Supreme Court that hears a brief, a procedure that was a hang-over from the nineteenth-century, and which in most cases ended without having any effect whatsoever.

The agencies that defend and promote human rights are also given the competency to deal with labor matters. This makes it possible for them to hear and resolve complaints about administrative labor officials' alleged violations by action or omission that injure workers' human rights; this closes a long-open gap in our country's institutional life, and answers a demand from society.

Undoubtedly, since their origin, labor rights have been social human rights. However, since 1990, the right of public human rights commissions to intervene to defend them had not been recognized. Fortunately, this has been overcome and a new space for defending the population against any kind of abuse in this area has opened up.

BRINGING A CASE OF UNCONSTITUTIONALITY TO DEFEND THE TREATIES

On September 14, 2006, an amendment to Article 105, Subsection 2 of Mexico's Constitution was approved, adding subdivision g), stating that the CNDH had active legitimacy to be able to bring a case arguing unconstitutionality when laws and treaties passed by Congress contravene individual guarantees. The addition also confers this faculty on local human rights protection agencies with regard to state legislation; this is a huge step forward in the effective guardianship of human rights.

In the more recently approved reform, the possibility of exercising this right to bring a case of unconstitutionality is strengthened, but now also against laws or international treaties that

endanger human rights guaranteed in the Constitution or treaties our country is already a signatory to. This will foster more coherence between the international commitments we take on in treaties or international covenants and our country's laws.

By incorporating this new aspect, legislators sought to protect constitutional norms as an effective way to maintain and consolidate the rule of law. With the possibility of bringing a action of unconstitutionality before the Supreme Court, the CNDH puts on the table for discussion the possible violation of person's rights, and it is the court that determines if a law violates human rights or not.

This new attribution is not contrary to its character or functions, because, although this action is a form of procedural constitutional control with the characteristic that its resolutions are abstract and have *erga omnes* effects (that is, the effects of general application if constitutional prerequisites have been fulfilled), the CNDH is not the body that makes the decision. It will exclusively have the faculty of prompting the body that has constitutional jurisdiction to begin a proceeding in which the latter will hand down the decision.

With the new reform, it is also possible to review compliance with conventions, that is, to verify if the general norm contradicts international treaties. This is in accordance with repeated requests by international human rights bodies to work on harmonizing legislation to ensure that laws are consistent with the international treaties that are binding for our country. The harmonious interpretation of those laws means that they must be consistent with the Mexican state's international commitments.

It should be noted that the CNDH has the legitimate authority to challenge local legislation; this is consistent with the national protected nature of human rights, recognized in Article 1 of the Constitution. This means that if local legislation contradicts human rights, the CNDH can intervene, as can the local human rights protection agency.

Being able to bring a case of unconstitutionality is a valuable instrument for the rule of law, which updates the prin-

ciple that the Constitution is the supreme law of the land and guide for our national life. Strengthening the CNDH's ability to do this is a call to favor its guardianship of the defense of human rights.

AUTONOMY OF PUBLIC AGENCIES FOR THE DEFENSE AND PROMOTION OF HUMAN RIGHTS

Another aspect that strengthens these bodies is constitutional autonomy, which prevents their resolutions from being subject to review or scrutiny by a higher authority; they can only be reviewed publicly by society and the media.

The autonomy of public bodies that protect and defend human rights is closely linked to the way the people who head them are selected. The second addition to Article 102, Part B stipulates that state Constitutions and the Mexico City Federal District's Statute of Government must establish and guarantee the autonomy of human rights bodies. This norm includes a step forward since it guarantees autonomy to all human rights defense bodies and their equivalents in the states.

NEW REGIMEN FOR ACCOUNTABILITY

The reforms to Article 102 are particularly far-reaching since when recommendations are not accepted or complied with, the authorities or public servants who do so must publicly argue the basis for their refusal. In addition, on the prompting of human rights bodies, the Senate (or the Permanent Commission of Congress when the former is in recess) or state legislatures, depending on the appropriate jurisdiction, can subpoena the responsible officials or public servants to appear before them to explain the reasons for their refusal.

It would be worthwhile to analyze the obligation now imposed on authorities to make public the bases and reasons that led them to reject the recommendations by human rights protection agencies. This obligation is an appropriate instrument to inform and involve society in order to foster its awareness, and in the last analysis, its participation in the actions that assert full respect for human rights. To the extent that the public becomes more involved, it will inform authorities of its opinions and will exercise greater social control over government, which will contribute to strengthening democracy.

The reform also strengthens the *pro personae* principle, according to which interpretation of norms must favor human beings as much as possible.

In accordance with its constitutional mandate, the CNDH issues recommendations and reports about matters under its jurisdiction in the defense of human rights in order to seek respect for rights that have been violated; restitution for damages where deemed appropriate; guarantees that the violations will not be repeated; and sanctions under the law for public servants involved. Since its reports and recommendations are not binding, its effectiveness depends to a great extent on the good offices of federal and state authorities.

When faced with authorities' refusal to accept its recommendations, according to the national legal system and established international principles regarding the status and functioning of national human rights protection and promotion agencies, known as the Principles of Paris, the CNDH has no recourse but to address itself to the public, directly or through the media, and disseminate the situation. This is because it is a legal body that issues opinions.

If non-acceptance of CNDH recommendations continues, and independently of whether the commission itself files complaints against the authorities involved, the victims must follow in a parallel fashion all the public administration procedures available to them. This means they would fulfill all the procedures and obtain sufficient evidence and proof to substantiate that an illegal act took place that had a negative impact on the person whose rights were violated. It should be pointed out that this also has an impact on the impunity that has created so much discontent in our society.

In this context, the reform seeks to ensure that the Senate or, in its absence, the Permanent Commission of Congress, participates as a guarantor of respect for human rights and broadens its advocacy of them through the express attribution of subpoenaing the head of any federal institution that has rejected CNDH recommendations. The aim of this action is to hear the causes, reasons, and basis for that refusal in the cases relevant to its representation; to evaluate public authorities' performance; and to detect systematic patterns of human rights violations and structural flaws with an impact on the lack of respect for human rights.

This generates another sphere of observation and participation by society as a whole since legislators, as popular representatives in a democratic system, will also be able to see the effectiveness of the non-jurisdictional system of human rights defense. They will be able to diversify their relationship with the executive and freely evaluate events that are important for society and the political situation. They will be able to know the real condition of human rights and rights estab-

This constitutional change is our generation's best legacy to society and its institutions. I hope that this is the point of departure for a period that will bring tangible results in daily life.

lished in the country, strengthening their legislative functions, their control over budgets, and their limits on government actions and abuses of power that would contradict the progress attained up until now in this area.

In this sense, the legislature needs to become involved in the situation of those who appeal to the CNDH, carrying out a legal and political analysis of the cases it deems pertinent through a collegiate, impartial, plural body, knowledgeable in the topic, such as the human rights commissions of both chambers of Congress. This undoubtedly strengthens the institutional task of calling to account public servants who do not comply with or accept a recommendation, so they explain the reason for their refusal, putting an end to the idea that nothing would happen if they do not accept or comply. This is a real exercise of the system of checks and balances that will make it possible to put the actions of these public servants into the appropriate context and give rise to more open public scrutiny, thus benefitting society.

Undoubtedly, this will strengthen the work of public human rights defense and protection agencies by giving greater legal effectiveness to their recommendations without prejudicing the institutions' character, since they remain part of the non-jurisdictional system of human rights protection.

FINAL THOUGHTS

The road before us still presents itself with many vicissitudes, but the safest bet the Mexican state can make is to develop and strengthen institutions. This will be achieved through each institution's training and fulfilling the legal function it was created for, always seeking to act in strict compliance of the law to make the national project all Mexicans aspire to a reality.

The objective of the constitutional reform is to ensure the well-being and dignity of all persons. To that end, it gives state institutions new tools that will decisively contribute to reducing arbitrary acts or unjustified omissions by authorities to

the detriment of the public. To achieve this, we must join forces. Committed together, citizens, the state, organizations, defenders of civil society, and communicators are all called upon not to rest until we are able to live together in a culture of legality in effective conditions of security, equality, and respect.

This constitutional reform is our generation's best legacy to society and its institutions. Since its publication, we have entered a new stage with an institution increasingly close to society and defending the victims of rights violations. I hope that this is the point of departure for a period that will bring tangible results in the daily life of our society, and contribute to fortifying the respect for human rights, not only on a federal level but also in local legislation so they can strengthen the work of the state human rights commissions and special prosecutor's

offices, which are part of the efforts to safeguard the rights of all Mexicans, not as a simple theoretical aspiration, but as a demand so that justice and freedom can prevail. **MM**

NOTES

¹ In Mexico, constitutional control is exercised by the Supreme Court and federal judges to safeguard the Constitution. Among the control mechanisms we have are constitutional controversies, unconstitutionality actions and the writ of *amparo*.

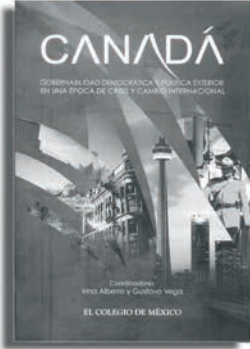
² An action to review compliance with conventions is a legal review to verify if the state in question respects the principles of interpretation and application that must prevail in matters of human rights.

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Globalization and Human Rights Reflections about Mexico

Miguel Carbonell*



Rodrigo Angulo/Cuartoscuro

The Movement for Peace with Dignity arrives at Mexico City's main Zócalo square. One of its central demands is the creation of a strategy to fight organized crime that includes unrestricted respect for human rights.

INTRODUCTION

Many people think that globalization has only an economic or financial dimension. However, they forget that it can and also must be a process that provides shared standards for all on the issue of human rights, so that where a person is born or his/her nationality does not matter in determining his/her ability to enjoy the same rights and live a decent life.

The extremely important constitutional reform on human rights published in Mexico's *Diario oficial de la federación* (Federal Official Gazette) June 10, 2011 provides us with an ideal framework for once again defending the idea that globalization without shared respect for human rights is of scant value.

* Coordinator of the Area of Constitutional Law at the UNAM Institute for Legal Research.

The constitutional reform is certainly original, since it seems to swim against the intuition and historical practice according to which Mexico had been completely closed to any kind of external influence around human rights issues. As with all authoritarian regimes, for decades, Mexican administrations were profoundly perturbed when international observers or officials came to spotlight the enormous problems we had—and to a certain extent, continue to have—in the field of human rights. The excuses they presented, always linked to a very poor understanding of what constitutes national sovereignty, were pitiable.

Fortunately, the advance in the democratic transition and the opening of Mexico's borders have also brought a breath of fresh air to the issue of human rights, as is so correctly expressed in the June 2011 constitutional reform. Let us look at its principle contributions.

THE NEW PLACE OF INTERNATIONAL TREATIES

The reform incorporates into Article 1 a mandate stating that the rights established in the Constitution itself and in the international treaties to which Mexico is a signatory must be recognized for all persons in Mexican territory. This raises human rights treaties to a constitutional level, as has been done in other countries in Europe and Latin America. This is based on the supposition that the Constitution and international human rights treaties are on the same level, so that when they are applied, the norm that protects a specific fundamental right more broadly must take precedence.

As is well known, international treaties have been an essential driving force in the recent development of fundamental rights worldwide, although obviously to a differing degree depending on the country. International treaties and their interpretation by bodies like the United Nations, the International Labor Organization (ILO), and the Organization of American States (OAS), among others, include rights that are not included in the Mexican Constitution. They also provide complementary perspectives to those offered in our Constitution (for example, when an international treaty establishes dimensions of a certain right not included in our document). There are now approximately just under 150 international treaties and protocols on human rights, so that means we can speak of an intense process of international codification of rights.¹

Human rights treaties can be general or sectoral. The former regulate many kinds of rights or ascribable rights in general terms for all people. The latter include rights for certain kinds of persons or that refer to certain issues. Among the first we can mention the International Covenant on Civil and Political Rights, or the International Covenant on Economic, Social, and Cultural Rights, both from 1966. In Latin America, the most important general treaty is the American Convention on Human Rights, known as the Pact of San José, Costa Rica, signed November 22, 1969.

Among the sectoral international treaties used most frequently or cited most often in specialized literature are the Convention on the Rights of the Child, the Convention on the Elimination of All Forms of Discrimination against Women, and the ILO conventions on different aspects of workers' fundamental rights.² In Latin America, we can point to the Inter-American Convention to Prevent, Sanction, and Eradicate Violence against Women, known as the Belém do Pará Convention, and the Inter-American Convention for the Elim-

Inadequate investigation of human rights violations has already earned the Mexican state condemnations internationally. This means that institutional structures in charge of doing this work must be substantially improved.

ination of All Forms of Discrimination against Persons with Disabilities.

WHAT MUST MEXICO DO TO BETTER PROTECT HUMAN RIGHTS?

With the reform, Article 1 of the Constitution stipulates that the Mexican state must prevent, investigate, sanction, and make reparations for the violation of human rights. It is interesting to point out the need to prevent these violations, which will always be "cheaper" than acting after the fact.

Rights violations can be prevented in several spheres and on several levels. Naturally, the rights and their content must be disseminated in such a way that both authorities and private individuals know what the Constitution and international treaties stipulate. Knowledge and dissemination of these rights are valuable tools to prevent their being violated.

At the same time, government agents must be trained so they carry out their tasks stipulated by law in a way that is respectful of rights. This is especially important for officials involved in public security; although it is sometimes said that the effectiveness of the state in pursuing criminals requires a certain "laxness" in respecting rights, there is actually no incompatibility between human rights and public security. Quite to the contrary: no one will have security if human rights are not respected. In addition, we must be clear that public security of all persons is a human right. Training the guardians of security can also prevent many violations of rights.

The third kind of prevention is the creation or improvement of internal mechanisms for supervision and follow-up of public bodies. When employees know they are being closely watched and all their actions must be scrutinized and supervised, they are much more careful about what they do.

The lack of adequate investigation of human rights violations has already earned the Mexican state condemnations

internationally. This means that institutional structures in charge of doing this work must be substantially improved to avoid future condemnations and, above all, to be able comply with the new constitutional mandate.

ASYLUM AND REFUGEE STATUS

The reform adds a new second paragraph to Article 11 of the Constitution as one of many in the context of this important reform on human rights, a reform that has been dubbed the most profound and modernizing in decades. One of this reform's signposts is the vocation to situate Mexico within the international parameters of protection of fundamental rights. Just to cite a few examples, this vocation can be seen in raising to a constitutional level the human rights treaties (Article 1), and the recognition that the protection of human rights must be a guiding principle of Mexico's foreign policy (Article 89, Subsection X). It is in this context that the new second paragraph of Article 11 must be understood.

This addition makes it possible to distinguish between two legal concepts: asylum and refugee status. But it also stipulates that the reasons for requesting either of these two statuses are different. Asylum can be requested on the basis of persecution for political reasons, while refugee status must be argued on the basis of humanitarian causes. We could say, then, that asylum is requested in the case of ideological persecution in the broad sense of the term, without reducing the term "political" to merely electoral questions. Refugee status is appropriate when violations to social rights are proven, as would be the case if these rights were clearly and massively violated by a country, or even if they were violated solely in the case of the applicant or his/her relatives.

The amendment to Article 11 leads us to reflect about the basis for the role that the right to asylum and refugee status plays today in our globalized world; that is, the right of every person to be received by a particular state when certain circumstances arise that do not allow him/her to continue living in his/her own country. This is an issue that brings us face to face with obvious dilemmas, both legal and political. It seems difficult to sustain the universality of rights and their character of essential protections for all human beings if those protections are denied persons who are in the worst situation of all: those who not only do not have the protection of their own state, but are also persecuted and attacked by it. The vulnerability worldwide of refugees, stateless persons, illegal immi-

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grants, and “people without documents” is something we cannot close our eyes to.

HUMAN RIGHTS AND MEXICO’S FOREIGN POLICY

The reform also adds Subsection 10 to Article 89 to incorporate “the respect, protection, and promotion of human rights” as a principle of the Mexican state’s foreign policy, a responsibility which falls to the president. This implies that human rights have become the guiding principle of Mexican diplomacy, and our country can no longer remain neutral about their violation. If violations are proven, Mexico must add its voice to international condemnations and apply the corresponding diplomatic sanctions in accordance with the applicable legal stipulations.

It cannot be said that there is a commitment to rights if they are only defended and protected within our national territory. The Mexican state’s actions must be consistent inside and outside its borders. What is defended internally must be defended externally. In this context, Mexico’s behavior in international and regional human rights bodies must be more active and clear in its defense of human rights.

For many years now, Mexico’s diplomacy has been carried out on a high level, nourished by a corps of professional civil servants who are among the country’s best; this means it has the trained human resources needed to fully carry out the new mandate of Article 89, Subsection 10 of our Constitution.

BETTER RIGHTS, BETTER GUARANTEES

If the proclamation of human rights is not accompanied by an appropriate regimen of guarantees to prevent and, if necessary, sanction the violation of those rights, it will be of very little use. For that reason, the reform also significantly strengthens the National Human Rights Commission (CNDH) and its local counterparts.

In accordance with the new text of Article 102, Section B, public servants who do not accept CNDH or its local counterparts’ recommendations are obligated to publicly substantiate and argue their refusal. All recommendations must be responded to, whether they are accepted or rejected.

If an official rejects a recommendation, he/she can be subpoenaed to appear before the Senate or the Permanent

Though some say that state effectiveness in pursuing criminals requires a certain “laxness” in respecting rights, there is actually no incompatibility between human rights and public security. Quite to the contrary: no one will have security if human rights are not respected.

Commission (if the recommendation is from the CNDH), or the state legislature (if the recommendation was issued by a state commission). In addition, the Constitution mandates the establishment of a mechanism for public, transparent consultation to elect the head of the CNDH and the members of its Consultative Council.

CONCLUSION

Clearly, the reform of the Mexican Constitution contributes interesting elements for moving forward toward globalization with a human face, in which human rights are the main point of reference for public action and peaceful civic life.

Human rights are the parameter for evaluating whether we are moving ahead, standing still, or moving backward regarding respect for human beings’ most important values, shared by all persons regardless of their place of birth, race, religion, sexual preferences, ideology, etc.

As always happens in constitutional matters in Latin America, after the reform has been passed and published comes the most difficult part: turning it into a reality through the dedicated, committed actions of public officials, judges, and social and academic organizations. This will be our greatest challenge in the coming years. ■■■

NOTES

¹ See Carlos Villán Durán, *Curso de derecho internacional de los derechos humanos* (Madrid: Trotta, 2002).

² Especially important are Conventions 87 (on union freedom), 89 (on the right to unionize), 111 (on discrimination in employment), 118 (on equal treatment), 138 (on the minimum age for working), 143 (on migrant workers), 169 (on indigenous peoples), and 182 (on the prohibition of child labor).

Mexico's Cancelled Or Delayed Political Reform Never Ending Story?

Imer B. Flores*

INTRODUCTION

Revising the Mexican Constitution via amendments or reforms has been the traditional way of coping with an ever changing reality and of trying to bring normativity into normality. However, Mexico's political actors are facing charges of not being able to reach the agreements the country requires to foster economic, political, and social development. Analysts usually cite among the pending reforms the ones on energy, labor, taxes, and the political system. The political reform, by the way, is half-approved to the extent that it is not clear whether it has been cancelled or just delayed.



Deputies observing voting on the political reform bill.

POLITICAL REFORM

After Mexico's highly contested 2006 presidential elections, Congress passed a controversial constitutional amendment labeled as political reform, which was ratified by the majority of the state legislatures and published in the *Diario oficial de la federación* (Federal Official Gazette) November 13, 2007, and came into force the following day. This political reform can be characterized by its concentration of power in the political parties. Arguably, this concentration was required to face the increasing influence of the mass media. However, the empowerment of the citizenry continued to be postponed.

Actually, the political parties intended to explicitly prohibit independent candidacies; they failed to achieve this on a federal level in Article 41 of the Mexican Constitution, but apparently they succeeded in doing it at the state level in Article 116, thus reinforcing the prevailing view of a political system without citizens, *i.e.* a party-centered system or "partyocracy."¹

Moreover, in the 2009 midterm elections, a widespread electoral movement called on voters to cast intentionally annulled or defaced ballots as a protest against the prevailing state of affairs; the result was a very significant 5.41 percent of the total votes. Therefore, the call for a political reform centered on citizens was in order. This turnout was significant on its own since any political party is required to have and maintain 2 percent of the popular vote to retain its legal

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The 2007 political reform concentrated power in the political parties; this was required to face the influence of the mass media. However, the empowerment of the citizenry continued to be postponed.

registration, and, especially if compared with a historical average of 2.85 percent of annulled votes in federal elections from 1994 to 2006, which it almost doubled.²

In fact, in this context, different political actors did introduce several political reform bills, including the one presented by the president on December 15, 2009, to empower the citizenry without diminishing the traditional representative institutions and to strengthen our political system as a whole. The different bills included diverse proposals. I will emphasize those I consider directly related to the demands of the electoral movement calling on voters to annul their ballots:³

- 1) Reorganizing Congress, including its reduction, or at least that of the Senate;
- 2) Reintroducing consecutive reelection of the members of Congress and other elected officials to multi-member bodies;
- 3) Reconsidering a two-round or double-ballot mechanism for presidential elections and other elected officials to one-person bodies;
- 4) Recognizing votes for independent and write-in candidates;
- 5) Recognizing annulled or defaced ballots and their direct or immediate effects;
- 6) Reintroducing mechanisms of direct or semi-direct democracy, such as the popular initiative, plebiscite, or referendum, and recall; and
- 7) Reconfiguring electoral bodies with “independent” councilors.

REORGANIZING CONGRESS

Several proposals did coincide in reducing the Chamber of Deputies from 500 representatives to 400 or 432, and the Senate from 128 to 96 seats. Although one proposal suggested a proportional representation system for the election of all

members of Congress, the rest emphasized a model combining the majority and proportional representation systems in the Chamber of Deputies (either 300 and 100 or 240 and 160), while eliminating the 32 Senate seats elected on a proportional basis, since they did not represent the states, but the political parties through their closed party lists.⁴

REINTRODUCING CONSECUTIVE REELECTION

Not surprisingly, all but one of the proposals agreed on reintroducing the reelection of members of Congress and other elected officials to multi-member bodies, such as representatives to the local assembly and even to city councils. It is worth mentioning that the 1917 Constitution was silent on this possibility, and hence did allow reelection until the constitutional amendment published in the *Diario oficial de la federación* (Federal Official Gazette) April 29, 1933 explicitly prohibited it for deputies and senators, in Article 59, and, for mayors and other city elected officials, as well as local deputies, in Article 115. Among the grounds to justify—and to maintain—this prohibition is commonly cited the need for the institutionalization of a party system and the renovation of political elites. Moreover, all the proposals expressly rejected the reelection of incumbents to one-person bodies and agreed not only to reintroduce the reelection of elected officials to multi-member bodies, but also to limit this possibility to 12, 9, or 6 consecutive years in the same post.⁵

RECONSIDERING TWO-ROUND OR DOUBLE BALLOTING

After a too-close-to-call 2006 presidential election with a difference of merely 243 934 votes between the first and second places in a country of more than 100 million, accusations of electoral fraud, without a complete recount, and, hence, questioned legitimacy, the president—elected, by the way, with a 35.89 percent popular support, in contrast to runner-up’s 35.31 percent—did include in his proposal the need to reconsider the two-round or double-ballot system for presidential elections. Objections to this mechanism frequently include the claim that it introduces a distortion not only between the real popular support won in the first round and the fictional support in the second round, which usually takes the form of a

ballotage or run-off between the two leading candidates, but also between the latter support and the corresponding force or political support of the political party in the legislature. To address this criticism, the proposal suggested that the second round of voting should take place on the same day as the election of the members of Congress.⁶ In my opinion, this mechanism can and must also be extended to the election of other officials to one-person bodies, such as governors.

RECOGNIZING VOTES FOR INDEPENDENT AND WRITE-IN CANDIDATES

Some proposals, considered major cornerstones from the point of the view of the citizenry, did reintroduce the possibility of registering independent candidates. The 1917 Constitution did permit independent candidates to be registered; in fact, originally, all candidates were independent, until the Federal Electoral Law, amended in January 7, 1946, excluded them, by suggesting that only political parties could register candidates. Moreover, since then, all ballots have included a box in which the voters could cast their ballots for a write-in candidate, but the problem was that if those ballots were questioned, they were counted as annulled.⁷

RECOGNIZING ANNULLED OR DEFACED BALLOTS

The electoral movement calling the voters to cast intentionally annulled or defaced ballots included at its core the recognition not only of the indirect and medium-term effects of annulled or defaced ballots themselves, but also of the direct and immediate ones. Thus, instead of merely adding the annulled or defaced ballots to the total votes cast and using them to determine the threshold required for political parties to gain—and even to maintain—their registration and entitlement to public campaign financing, the proposals included incorporating a box on the ballot representing the possibility of casting an annulled or defaced vote equivalent either to “None of the Above” (NOTA) or to “ReOpen Nominations” (RON), *i.e.*, in the case that the annulled or defaced ballots get the majority of votes cast, since they represent a vote for none of the above, it would be necessary to reopen nominations for another election in a second round and so on until a candidate wins by a majority.⁸

Renewing the ranks of electoral councilors
for the Federal Electoral Institute
has been problematic: some have been selected
as a quota of the major political parties regardless
of their performance in evaluations.

REINTRODUCING MECHANISMS FOR DIRECT OR SEMI-DIRECT DEMOCRACY

The obvious reforms to be adopted in any proposal that takes the citizenry into account must include reintroducing mechanisms of direct or semi-direct democracy, as a complement not a substitute for representative democracy, such as the popular initiative, the plebiscite or referendum, and recall. Similarly to the case of reincorporating independent candidates, all of these require very thorough regulation and scrutiny to avoid the possibility of manipulation. For example, a popular initiative would require a 0.1 percent of support from the electorate and might gain preferential treatment; the plebiscite or referendum must be called for, among others, by 2 percent of the electorate, but for the result to be binding it would require more than 50 percent plus 1 of the electorate to participate; and, a recall must be called by 5 percent of voters, but for the result to be binding it would also require a participation of more than 50 percent plus 1 of the electorate.⁹

RECONFIGURING ELECTORAL BODIES

In recent years, after the 2000 presidential election, renewing the ranks of electoral councilors for the Federal Electoral Institute (IFE) and other electoral bodies has been very problematic: some have been designated with a mere majority support of the political parties and their representatives in the Chamber of Deputies, not unanimously or with at least a broad consensus; and, others have been selected as a quota of the major political parties regardless of their performance in the evaluations and interviews. What is more, in 2010, three vacancies should have been filled but the political parties came to no agreement. This omission is very problematic since the electoral body has been working with two-thirds of its councilors and its decisions may be questioned as lacking legitimacy. In any case, since the 2012 electoral process will start


Any proposal that takes the citizenry into account must include reintroducing mechanisms of direct or semi-direct democracy, as a complement not a substitute for representative democracy.

with the institute's first session this October, the three remaining councilors must be chosen by then or such infringement will add to the cry for annulling the election. As an alternative for the nomination of "independent" councilors, I want to emphasize the importance of avoiding political party quotas and guaranteeing councilors' independence from them, by pre-selecting, after the appropriate evaluations and interviews, those with proven capabilities in the search for those who could be unanimously supported by all the political parties. If several or none received such support, the decision could be reached by drawing lots.¹⁰

CONCLUSION

As is well known, the Senate did approve a partial political reform April 28, 2011, but so far the Chamber of Deputies has refused to pass it. The "half-approved" political reform includes, among other things:

- 1) Reintroduction of consecutive reelection of the members of Congress—senators and deputies with 12- and 9-year limits, respectively—and the possibility of state congresses allowing reelection not only of local deputies but also of mayors and other city authorities;
- 2) Reincorporation of independent candidacies, and
- 3) Reintroduction of mechanisms of direct or semi-direct democracy, such as the popular initiative and plebiscite or referendum, to be binding if over 40 percent of voters participate.

This overdue and postponed political reform may seem like a never ending story. But I am confident that sooner or later in Mexico, the citizenry and political actors will reach a comprehensive, broad national consensus not only for political reform, but also for the rebirth of the Mexican nation through a renewed Constitution for the twenty-first century. 

NOTES

¹ Imer B. Flores, "Heráclito *vis-à-vis* Parménides: Cambio y permanencia como la principal función del derecho en una democracia incipiente," Luis J. Molina Piñero, J. Fernando Ojesto Martínez Porcayo, and Fernando Serrano Migallón, eds., *Funciones del derecho en las democracias incipientes. El caso de México* (Mexico City: Porrúa, 2005), p. 159; and "Actores, procesos e instituciones democráticas: Hacia una verdadera democracia en México," Luis J. Molina Piñero, Fernando Serrano Migallón, and José Fernando Ojesto Martínez Porcayo, eds., *Instituciones, actores y procesos democráticos en México 2007* (Mexico City: Porrúa, 2008), pp. 338-339.

² Imer B. Flores, "Sobre los triunfos del proceso democratizador en México: A propósito del movimiento anulacionista y del voto nulo," Luis J. Molina Piñero, José Fernando Ojesto Martínez Porcayo, and Ruperto Patiño Manffer, eds., *Balance en el proceso democratizador de México 1988-2009* (Mexico City: Porrúa, 2010), pp. 759-763; and, "El problema del 'voto nulo' y del 'voto en blanco': A propósito del derecho a votar (*vis-à-vis* libertad de expresión) y del movimiento anulacionista," John M. Ackerman, ed., *Elecciones 2012: en busca de equidad y legalidad* (Mexico City: Instituto de Investigaciones Jurídicas, UNAM, 2011), pp. 159-164.

³ Imer B. Flores, "Democracia y participación: consideraciones sobre la representación política," J. Jesús Orozco Henríquez, ed., *Democracia y representación en el umbral del siglo XXI. Memoria del Tercer Congreso Internacional de Derecho Electoral* vol. 1 (Mexico City: Instituto de Investigaciones Jurídicas, UNAM, 1999), pp. 232-234; Imer B. Flores, "Gobernabilidad y representatividad: Hacia un sistema democrático electoral mayoritario y proporcional," Hugo A. Concha Cantú, ed., *Sistema representativo y democracia semidirecta. Memoria del VII Congreso Iberoamericano de Derecho Constitucional* (Mexico City: Instituto de Investigaciones Jurídicas, UNAM, 2002), pp. 233-236; "Actores, procesos e instituciones democráticas...", Molina Piñero, Serrano Migallón, and Ojesto Martínez Porcayo, eds., *Instituciones, actores y procesos democráticos*, pp. 333-340; "¿Es posible la democracia en México?" Luis J. Molina Piñero, José Fernández Ojesto Martínez Porcayo, and Ruperto Patiño Manffer, eds., *¿Polarización en las expectativas democráticas de México 2008-2009? Presidencialismo, Congreso de la Unión, órganos electorales, pluripartidismo y liderazgo* (Mexico City: Porrúa, 2009), pp. 493-495; "Sobre los triunfos del proceso democratizador en México...", Molina Piñero, Ojesto Martínez Porcayo, and Manffer, eds., *Balance en el proceso democratizador*, pp. 763-764; and "El problema del 'voto nulo' y del 'voto en blanco,'" Ackerman, ed., *Elecciones 2012*, pp. 165-168.

⁴ Flores, "El problema de la (eventual) reforma del Senado en México," Working Paper 151 (Mexico City: Instituto de Investigaciones Jurídicas, UNAM), January 2011.

⁵ Flores, "Gobernabilidad y representatividad...", Concha Cantú, ed., *Sistema representativo y democracia*, p. 235.

⁶ Flores, "El problema de la (eventual) reforma del Senado en México," op. cit., pp. 11-12.

⁷ Imer B. Flores, "El problema de las candidaturas a-partidistas, independientes o sin partido," John M. Ackerman, ed., *Nuevos escenarios del derecho electoral: Los retos de la reforma de 2007-2008* (Mexico City: Instituto de Investigaciones Jurídicas, UNAM, 2009), pp. 233-262.

⁸ Flores, "El problema del 'voto nulo' y del 'voto en blanco'...", op. cit., pp. 164-165.

⁹ Flores, "Democracia y participación", op. cit., p. 234; "Gobernabilidad y representatividad," op. cit., p. 235, and "El problema del 'voto nulo' y del 'voto en blanco,'" op. cit., p. 167.

¹⁰ Flores, "El problema del 'voto nulo' y del 'voto en blanco,'" op. cit., pp. 166-167, footnote 21.

Employment in Mexico In the First Decade Of the Twenty-First Century

Ciro Murayama*

The population of Mexico increased by 10 million in the first decade of the twenty-first century,¹ while the number people of working age increased by 12.2 million (18 percent). This means the latter increased at a faster rate than the former. From the perspective of the labor market, the most important thing is that the work force, known in Mexico as the economically active population (PEA), grew 21 percent from 2000 to 2010, to 47.13 million, the highest number in our country's history. These data show that Mexico has abundant labor, boosting its growth potential, but they also imply that the fact that job creation has lagged behind in these years could become a severe problem not only because of the waste of human resources available for production, but also because the wealth needed to meet these challenges is not being created. In just a few decades, this will mean that that entire population that is now of working age will become aged and will need to be supported by others.

While the population flowing into the labor market grew by 8 million, the number of people with jobs increased by 6.6 million. From this, we can derive the fact that unemployment in 2010 reached the also historic figure of 1.48 million. That is, in the first 10 years of this century, unemployment increased 150 percent (see Table 1).



Saúl López/Cuartoscuro

Of the 44.6 million employed persons in Mexico in the third quarter of 2010, 29.2 million hold subordinate positions; of those, 27.2 million are wage-earners. There are 468 000 employers and 10.3 million self-employed. This means that 66 percent of the workers in Mexico have a boss, and 93 percent of subordinate workers are wage-earners, who make up 61 percent of the total. Thus, of every 10 people who work in Mexico, six are wage-earners. The wage-earner, who depends on his or her paycheck every two weeks to subsist, continues to be the predominant figure in the Mexican labor market at the beginning of the twenty-first century. Bosses, for their part, represent one out of every 20 workers (5 percent), and the self-employed are almost one-fourth (23 percent) of the total.

If we look at the growth in the number of workers according to their position in the workplace between 2000 and 2010, we can see that while employment grew 17 percent, the number of subordinate workers increased 21 percent and of

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TABLE 1
POPULATION AND EMPLOYMENT IN MEXICO (2000-2010)

	<i>Total population</i>	<i>Population of working age</i>	<i>Work force</i>	<i>Employed</i>	<i>Unemployed</i>
2000	98 295 235	67 413 678	39 043 393	38 044 501	998 892
2010	108 292 131	79 669 989	47 137 757	44 651 832	2 485 925
Absolute variation	9 996 896	12 256 311	8 094 364	6 607 331	1 487 033
Relative variation (%)	10	18	21	17	149

Source: Table created by author using the INEGI's *Encuesta nacional de ocupación y empleos (2004-2010)* and *Encuesta nacional de empleo urbano (2000 -2003)*.

The increase in subordinate workers without contracts or only temporary contracts is an indicator of the process of employment becoming precarious and jobs unstable in Mexico.

wage-earners, 24 percent, while the number of self-employed increased by 15 percent (see Table 2). In hindsight, over a decade, these figures are interesting because, while workers classified as employers (on whom other workers in turn depend) rose 28 percent, they went from from 4.3 percent to 4.8 percent of the total number of employed persons, at the same time that subordinate workers went from being 65.9 percent to 65.7 percent, and wage-earners from 57.6 percent to 61.4 percent of the total. This behavior of employment statistics is important because it shows that even with the changes in the organizational models of the production of goods and services over recent years, what continues to dominate and grow more rapidly is waged work, not self-employment. This means that labor relations, which imply a relationship between employer and employee, continue to expand. It also means that the issues of subordinate jobs, working conditions, and workers' rights cannot be viewed as matters that belong in the past, but are rather very current: instead of a market of independent suppliers, what is ex-

panding is the typically capitalist labor market, where there is a mercantile relationship in which labor power is exchanged for payment. These are asymmetrical relationships, a context in which labor legislation the world over was designed precisely to ensure that the worker's subordinate relationship would not be unjust *per se*.

The increase in the number of subordinate workers has not been accompanied by an improvement in their hiring conditions. For example, in 2000, 53.7 percent of the 24.3 million subordinate workers had written contracts to regulate their labor relations; in 2010, of the 29.2 million subordinate workers, the percentage with a written contract had dropped to 52.3 percent. In fact, as Table 3 shows, the number of subordinate workers without a contract increased to 22 percent, while those with contracts only came to 17 percent. In addition, among the workers who did have contracts, what grew the most were temporary contracts (54 percent). Workers with temporary contracts were 13.2 percent of all those with contracts in 2000, and 10 years later, their ranks had swollen to 17.4 percent.

The increase in subordinate workers without contracts or only temporary contracts is an indicator of the process of employment becoming precarious and jobs unstable in Mexico. If you do not have a contract, you do not have access to legally stipulated labor rights, like health care and social security benefits for the worker and his/her family. At the

TABLE 2
WORKERS BY POSITION IN WORKPLACE IN MEXICO (2000-2010)

	TOTAL	Subordinate			Employers	Autonomous	Non-paid workers
		Total	Wage-earners	With non-wage income	Employers	Self-employed	
2000	38 044 501	24 294 923	21 900 013	2 394 910	1 649 253	8 917 960	3 171 098
2010	44 651 832	29 280 772	27 227 323	2 053 449	2 117 984	10 262 054	2 991 022
Absolute variation	6 607 331	4 985 849	5 327 310	-341 461	468 731	1 344 094	-180 076
Relative variation (%)	17	21	24	-14	28	15	-6

Source: Table created by author using the INEGI's *Encuesta nacional de ocupación y empleos (2004-2010)* and *Encuesta nacional de empleo urbano (2000 -2003)*.

same time, the increase in temporary hiring affects the periods that workers pay into pension and housing funds associated with stable, formal employment, thus lowering the probability of their being able to access those rights.

It is very revealing to see that in 2010, 6 out of every 10 subordinate workers (61.4 percent) earned no more than three times the minimum wage. In Mexico, though Article 123 of

the Constitution states that the minimum wage must be sufficient "to satisfy the normal needs of a head of household in material, social, and cultural terms, and to provide the obligatory education of his/her children," in practice, workers and their families have seen their purchasing power drastically reduced (see graph). What is more, 2.8 million workers, or 9 percent, earn minimum wage or less. This means that, if they

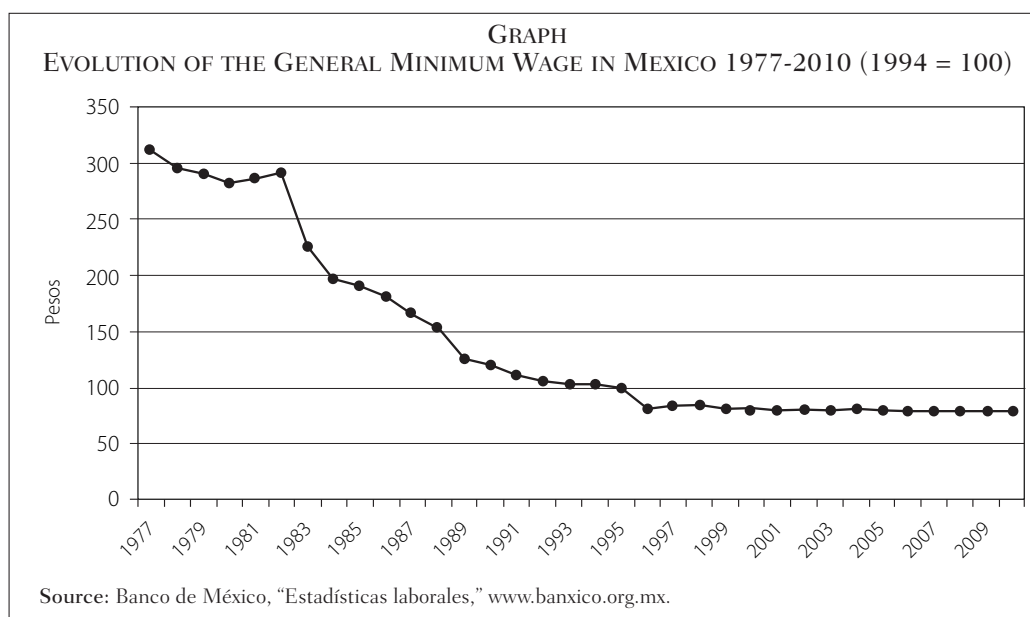


TABLE 3
SUBORDINATE WORKERS WITH AND WITHOUT FORMAL CONTRACTS, MEXICO (2000-2010)

TOTAL	With formal contract				No written contract	Not specified	
	Total	Temporary	Permanent (no time limit)	Non-specified type of contract			
2000	24 294 923	13 053 811	1 729 917	11 235 588	88 306	11 225 528	15 584
2010	29 280 772	15 322 278	2 659 459	12 591 697	71 122	13 729 567	228 927
Absolute variation	4 985 849	2 268 467	929 542	1 356 109	-17 184	2 504 039	213 343
Relative variation (%)	21	17	54	12	-19	22	1369

Source: Table created by author using the INEGI's *Encuesta nacional de ocupación y empleos (2004-2010)* and *Encuesta nacional de empleo urbano (2000 -2003)*.

TABLE 4
CLASSIFICATION OF SUBORDINATE WORKERS BY WAGE LEVELS, MEXICO (2000-2010)

All workers	Up to minimum wage	Between minimum wage and twice the minimum wage	Between twice and three times the minimum wage	Between three and five times the minimum wage	Over five times minimum wage	Not specified	
2000	24 294 923	2 992 290	8 512 163	5 496 236	3 951 440	2 738 485	604 309
%	100	11	33	23	18	12	2
2010	29 280 772	2 796 033	7 809 436	7 543 909	5 938 887	2 728 583	2 463 924
%	100	9	26	26	20	10	9
Absolute variation	4 985 849	-196 257	-702 727	2 047 673	1 987 447	-9 902	1 859 615
Relative variation (%)	21	-7	-8	37	50	-0.4	308

Source: Table created by author using the INEGI's *Encuesta nacional de ocupación y empleos (2004-2010)* and *Encuesta nacional de empleo urbano (2000 -2003)*.

TABLE 5
SUBORDINATE WORKERS BY HOURS WORKED PER WEEK (2000-2010)

	<i>Total</i>	<i>Temporarily absent, but with jobs*</i>	<i>Fewer than 15 hours</i>	<i>From 15 to 34 hours</i>	<i>From 35 to 48 hours</i>	<i>More than 48 hours</i>
2000	24 294 923	745 768	631 189	3 598 479	14 018 750	5 291 642
%	100	3	3	15	58	22
2010	29 230 386	1 205 309	1 083 443	4 242 072	14 342 495	8 158 064
%	100	4	4	15	49	28
Absolute variation	4 935 463	459 541	452 254	643 593	323 745	2 866 422
Relative variation (%)	20	62	72	18	2	54

Source: Table created by author using the INEGI's *Encuesta nacional de ocupación y empleos (2004-2010)* and *Encuesta nacional de empleo urbano (2000 -2003)*.

* This includes workers with jobs who were not at work the week of the survey (on vacation, maternity leave, etc.).

are heads of a medium-sized family with four members, their per capita income barely comes to about one dollar a day; that is, these individuals are close to the threshold of what is internationally considered extreme poverty. On the other hand, one-fourth of workers earn up to twice the minimum wage. On the other extreme are the 10 percent of workers who receive the highest incomes, over five times the mini-minimum wage (about US\$23/day or more), to support their families.

Another way of looking at the situation of subordinate workers is the length of their work day. While most workers labor from 35 to 48 hours a week, a more or less normal full-time job, the number of workers in this range went from 58 percent to 49 percent in a single decade. What have proliferated are part-time jobs of less than 15 hours a week, which must be considered part of the category of underemployment; at the same time, the number of workers who labor more than 48 hours a week (28 percent) continues to rise. These workers hire on for very long working hours to counter the low wages they earn per hour; they would be part of the category of over-employment.

Now, the absence of a formal contract, together with the low wages most workers receive and their non-optimum work-

Though the Constitution states that the minimum wage must be sufficient "to satisfy the normal needs of a household," workers and their families have seen their purchasing power drastically reduced.

days (with unemployment and over-employment superimposed on each other) make it fundamental for workers to have access to public goods, particularly in health. INEGI data show that almost half of Mexico's subordinate workers do not have access to health care (see Table 6) and that this situation has sharpened over the last decade; as a result, employment that does not offer health coverage is the kind that has increased the most in recent years (24 percent), compared to jobs offering health coverage (16 percent). In this sense, as of February 2010, 13.93 million workers were affiliated to the Mexican Social Security Institute (IMSS), showing that the mechanism created for incorporating the population into the social security system is insufficient.

TABLE 6
LEVEL OF ACCESS TO WORKERS' HEALTH CARE INSTITUTIONS

	<i>Total</i>	<i>With access</i>	<i>Without access</i>	<i>Not specified</i>
2000	24 294 923	13 410 275	10 881 656	2 992
%	100	55	45	0
2010	29 280 772	15 524 542	13 509 427	246 803
%	100	53	46	1
Absolute variation	4 985 849	2 114 267	2 627 771	243 811
Relative variation (%)	21	16	24	8149

Source: Table created by author using the INEGI's *Encuesta nacional de ocupación y empleos (2004-2010)* and *Encuesta nacional de empleo urbano (2000 -2003)*.

Under- and over-employment are increasing, and the labor market is incapable of creating jobs that guarantee people access to health care.

Regarding the structural distribution of employment, 8 percent of jobs are in the primary sector, 27 percent in industry (although with a 6-percentage-point drop in a decade, particularly with an absolute and relative drop in employment in manufacturing), while 64 percent are in the service sector: a large part in commerce (15 percent); in social services (12 percent); and in miscellaneous services (12.5 percent).

In short, the panorama of employment in Mexico shows a gap between the increase in the number of people who want to work vs. available jobs. Therefore, open unemployment is growing rapidly; subordinate labor is increasing; subordinate jobs without formal hires is spreading; low wages predominate; and wages have lost significant buying power. Under- and over-employment are increasing, and the labor market is incapable of creating jobs that guarantee people access to health care.

Job instability is associated with the people now in the labor market having a tenuous possibility of being able to materially support themselves. It is particularly serious that workers now active have great difficulties in getting pensions because, if most of the population works in the informal economy, once they stop working, these citizens will not be able to expect a pension. What is worse, for a good part of workers who are today systematically paying into pension funds, it will be very hard for them to get the minimum pension.

The observations presented here make it possible to conclude that the Mexican labor market suffers from a profound structural disequilibrium that has worsened during the National Action Party (PAN) administrations, which is reflected in precarious employment conditions and in the inability to generate the formal, quality jobs that demographics and Mexican society demand. ■■■

NOTES

¹ This figure is from the National Statistics and Geography Institute (INEGI), but it should be corrected upward given that the 2010 census put the population at 112 million, 4 million more than projected.

Southern Border Chronicle of a Journey Without Destination?

Josema de Miguel León*

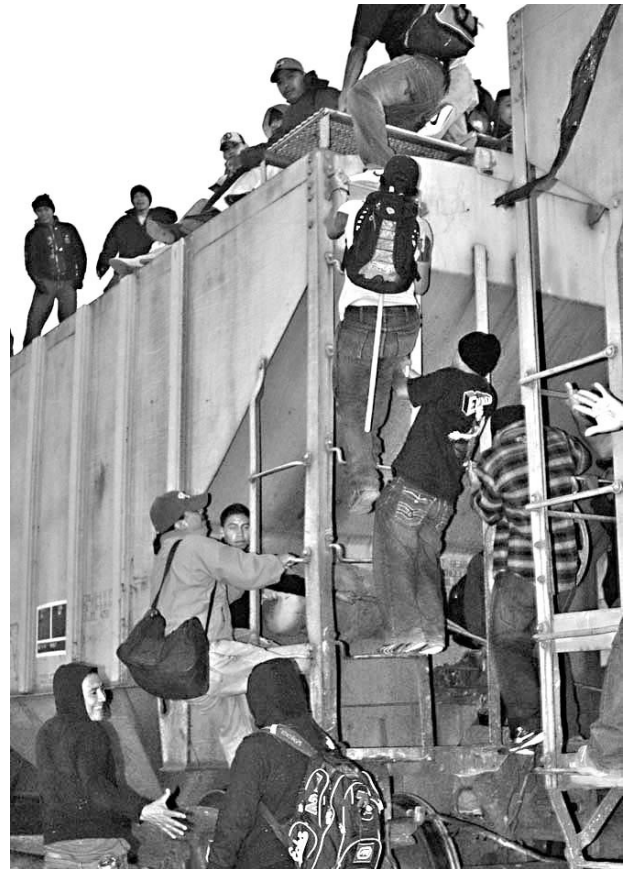
Every year, thousands of undocumented Central American migrants try to reach Arriaga, Chiapas. That's where "La bestia" (The Beast) leaves from, the freight train that will take them across Mexico to their American Dream. But, to get to the train, first they have to get past the southern border nightmare.

TECÚN UMÁN

The Suchiate River separates Mexico from Guatemala, with a bridge joining the two formal border immigration stations. Twenty meters from the bridge and the migration check-points are the *balseiros*, the rafters. On the dock, a *señora* is serving rice and beans. She's still making her chicken soup: it's early. But most of the migrants have already gone by. "They leave at dawn," says Father Ademar Barilli, a Brazilian priest who heads the "Del migrante" shelter in Tecún Umán, Guatemala, where more than 40 000 migrants have passed through, 14 000 of whom have made complaints about their human rights being violated.

As the *señora* serves the food, the dense atmosphere of desperation can be felt along the bank of the Suchiate River. Some take off their jeans and boots and swim across the river. Others, the ones with a little money, pay five quetzals for the "rafters" to take them across.

"It's better not to ask about these high-level kinds of business [the ones implicit in transferring] women, minors, or migrants. It's very dangerous. All of us here have had death threats," says Father Ademar as he leaves. This border region, Brazil, and Thailand are the areas where the highest levels of human trafficking in women (what used to be called the "white slave trade") can be found in the world.



HOT SOUP IN TAPACHULA

At the Belén (Bethlehem) Shelter coordinated by Father Flor Rigoni in Tapachula, Chiapas, the first town on the Mexican route, everybody tells their travel adventures. "I've been deported five times," says "El Pelón" (Baldy). "This is the last time; I want to work there and go back to Nicaragua with dough."

They haven't eaten. His friend, the one with the mustache, asks for some cookies and a cigarette. *Doña* Licha heats water in the kitchen to at least make them some hot soup, the instant powdered kind.

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Photos by Encarnip Pindado, encarnip@yahoo.com

The shelter is an information center. Maps showing the migrant shelters on the way; centers where some priest gives people refuge, in Tecún Umán, Tapachula, Arriaga, Ixtepec. That's the southern border route. A poster says, "Houston, 2 930 kilometers; Chicago, 3 678 kilometers; Los Angeles, 4 025."

Two young men arrive at Father Flor's shelter wearing clean white shirts and carrying a suitcase. They have the faces of middle class school kids, almost like tourists. But no; they're migrants, too, Salvadorans. People don't only leave their country because of poverty; they also leave because of insecurity, and the violence of the "Maras."¹ They're tired, but smiling.

Olga doesn't smile anymore; her eyes don't shine anymore. "The trip isn't the same without money as with money. I can't get used for asking for it; it makes me ashamed." Two days ago, she was repatriated for the second time. "You suffer so much along the way," she sighs as she looks vacantly ahead. She has two daughters, one 7 and the other 17, that she left with her mother in Honduras. Her sister was kidnapped by the "Zetas" when she was also on her way to "Gabacho" (the United States).²

People don't only leave their country because of poverty; they also leave because of insecurity, and the violence of the "Maras."



Crossing the Suchiate River.

In the shelter's kitchen, *Señora* Licha gives Maruchan (instant-ramen-type) soup to two migrant little boys. Their mother is expecting another little brother; she's eight months gone. Their father was shot five times in Guatemala City while he was defending them. "They wanted to steal my children." He's recovering in the shelter while he waits for his wife to give birth. A local group has made sure the two little boys can go to school in Tapachula, even though they're undocumented.

The minivan arrives. The children go to school. "El Pe-lón" is shaving himself. Olga keeps sitting looking out into the void. The young boys with the clean T-shirts sign up for a bed in the shelter; two others say their farewells; they're going to Arriaga to take the train. *Señora* Licha picks up the soup cups, locks the kitchen, and leaves.

THE "BAD GUYS" ON THE ROAD

In the Belén Shelter, a mass begins in honor of Abel, an immigrant who died yesterday after being hit with a rock by another immigrant. Father Flor María Rigoni closes his eyes and thinks it over: "One death tears us all down. How long will Cain continue to kill Abel?" Luis is the priest's right hand. "A few weeks ago, we had six high-level Mara commanders here charging everybody who walked down the street a toll. If they didn't pay, they beat them. The immigrants told me. When we took them to the police, they threatened me; but I'm not afraid. If you were, you couldn't work here. All kinds of people come through here: the good, the bad, and the swine."

He takes a folder out of a drawer. It's full of the records of certain migrants who have passed through the shelter: *polleros*, the ones who take money to act as guides; "Mareros," members of the M18, M13, or Salvatrucha gangs; or *Zetas*. The folder also includes the *enganchadoras* (lures), women who gain migrant's trust to turn them over to the *polleros*.

"Sometimes you can't trust the stories they tell you. Look, yesterday they killed a migrant by throwing a rock at him, but there were more people by the river; they were 'throwing

back a few.' There was also a woman; she was pregnant. Nobody has wanted to say anything, not even the woman, and they left today out of fear," says Luis. The dead migrant's chest was covered with an M13 tattoo, one of the Mara-gang symbols.

THE TRAIN AMPUTEES

Dani's family came from Quetzaltenango, Guatemala. His mother, dressed in a traditional *huipil* smock, could not help but weep when she saw him walking toward her using crutches because he had lost a leg. "How is he going to gather wood like that?" she asked in Quiché, a variety of Mayan. Dani had lost his leg 12 days before, running from a *migra* police operation when he fell from the freight car headed for the United States. Members of the Beta group who picked him up off the tracks took him to the Good Pastor Shelter in Tapachula. He remembers nothing of the incident.

Mary doesn't remember what happened to her that afternoon either when she was coming back from selling chickens at the border, a job that would pay for her journey. The beating left severe marks on her head, practically destroying her. They found her almost dying, almost bled to death. She's Honduran. "I just want to go home to my mother," she weeps as she covers the scars with her hair. "I had such long hair, and now they're going to see me like this?" she says amidst her tears. "Who did this to me? I've never hurt anybody!" Mary doesn't know yet that she's pregnant by one of her rapists. "What should I do to get my period? What did they do to me?" she murmurs.

Ricardo, the shelter's baker, gives Mary a warm piece of bread to calm her, and 10 more to Dani's family, who have not eaten anything all day. They were extorted at the Tecún Umán border when they were coming to see their son. By *migra* police. Ricardo goes back into his bakery. He has bread in the oven. He makes 400 chocolate and cream donuts a day, and 300 pieces of sweet bread. Their sale helps keep up the Good Pastor Shelter. Doña Olga founded it in 1990 for those most in need, the undocumented migrants with physical impediments as a result of accidents or beatings. The facilities are very precarious and it receives no public aid; they live off charitable contributions and the sale of Ricardo's baked goods. They have been able to get prosthetics for thousands of migrants, though.

Dani is waiting for his. His family says goodbye to him. They all kneel in a circle except Dani, who, in his wheelchair

Arriaga, Chiapas. is where "La bestia" (The Beast) leaves from, the freight train that will take Central American migrants across Mexico to their American Dream.

bows his head in respect. They pray together and thank their God, because, after all, Dani's alive.

THE MALE STREET PROSTITUTES

Jonathan fell asleep on top of the train. "I had bad luck: I lost my leg, but today I got my prosthetic and now I'm going to try again," he says with a smile. On his way to the United States, he sells roses to couples in love in Tapachula's park. His friend Guanaco also gives tattoos. "I spent three years in the El Amate jail, but I won't prostitute myself," he says. Jonathan does recognize that he's a male prostitute, a *puto*. He charges Mex\$500 per job. "Right here, in the plaza. A car stops and we get in and go. I don't like women, but I do it for money." Jonathan is 17 and has lived on the streets since he left home at 10. "This time, I'm going to take a bus; now I have a Mexican ID they gave me because of the accident. I won't be hidden on the trains as a undocumented migrant. I want to get there with the other leg intact."

"Let's go to the disco," says Jonathan with a mischievous grin. "I've gotta find some clients; I haven't worked today, and in a week, we have to start our trip."

THE TRAIN FINALLY LEAVES FROM ARRIAGA

After crossing Nicaragua, Honduras, Guatemala, after surviving the Tecún Umán or Tapachula southern border, some of those who began their journey have arrived to Arriaga at the designated time. "La bestia" is slated to leave at six in the morning. Some have lost a limb: these are the "veterans." Others get drunk because it's their first time and "you never know what's going to happen to you, but with the help of God, right?" says one of them as he stumbles near the tracks.

The hundreds of migrants hidden in the homes of the *polleros* that abound in Arriaga are also getting ready. "So, what time does the train leave? So I can tell my people." a



Migrants wait in one of the many shelters that help them in Mexico, most run by non-governmental organizations.

The ones who come
to the shelters are the poorest,
and among them, the most vulnerable
are the women.

fat man asks the station master. He's a *pollero* and the station master works for them. "At 5:30; tell them to come at 5:30."

"Most of the undocumented migrants travel with a *pollero* who's supposed to take them to the northern border," says Father Heyman Vázquez, the man in charge of the Arriaga shelter. "They charge from US\$3 000 to US\$7 000 for taking a Central American to northern Mexico. The ones who come to the shelters are the poorest, and among them, the most vulnerable are the women." Dunia is Honduran. Tomorrow, she'll get on the train, too. She has a prosthetic left leg. "I'm not afraid. I know that tomorrow I'll be able to get on that train," she says smiling.

Father Heyman's House of the Migrant is in a flurry. The news has come that "La bestia" will be leaving the next day. There are about 60 migrants staying there. They'd just had dinner when they heard. Now nobody can sleep. Some look over the maps of the road on the shelter wall. Others rest, watching an English-language movie on television. A group of youths play cards, talking and laughing among themselves. Federico, the Guatemalan, won't be leaving tomorrow: he's waiting for a prosthetic limb. Neither will the woman from El Salvador. "No. I'm going back home. If you don't have anybody to help you, it's very hard." Others who are going set the alarm clock or pray.

Four Honduran youths will spend the night next to the tracks. "That train's not getting away from me," says one. They're not the only ones. It's a hectic night in the dark freight station. At four in the morning, shadows darker than the night begin to appear. They're groups of migrants looking for places on a train without tickets. More than 300 people for four freight

cars. Some won't leave the spot for fear of losing their place, even though the train won't leave until dawn. Others get down and go over to where the Guatemalan consul in Arriaga is passing out cups of coffee from an SUV.

"Many of those who are going on that train are Guatemalan nationals, or '*chapines*.' Last year they deported 30 000 Guatemalans. We try to help them, even if it's only giving them water for the trip," says Estuardo,³ the Guatemalan consul. "Most of the accidents take place in the South of Mexico because of *migra* operations or Zeta attacks," he says as he serves coffee.

It's dawn in Arriaga. "La bestia" starts up. A group of 10 migrants runs up, coming too late. The young Hondurans who slept next to the tracks are on the train. They flash a victory sign with their fingers. "See ya in Houston." ■■■

NOTES

¹ The word "Mara" refers to a kind of gang that has begun to spread in Spanish-speaking countries, including Spain. The term is very commonly used in Mexico, in some Central American countries (El Salvador, Guatemala, and Honduras particularly), and in the U.S. to refer to extremely violent youth street gangs involved in criminal activities. Members of these gangs are called "Mareros." [Editor's Note.]

² The "Zetas" are former elite soldiers recruited in the late 1990s by the Gulf Cartel. They are a highly trained, dangerous criminal group of hit men; in contrast with the Maras, they don't come from the streets. They are thugs for hire and run "protection" and extortion rackets and murder for hire; they hold and transport drugs, and carry out security operations for their members. For more information about the Zetas and other groups, including the Maras, see Laura Etcharrén, "Maras, kaibiles y zetas," published by "Offnews.info. Para el desarrollo sostenible," in Buenos Aires, Argentina, June 29, 2006, <http://www.offnews.info/verArticulo.php?contenidoID=5003>. [Editor's Note.]

³ The author is referring to Edwin Estuardo Figueroa Rodas. [Editor's Note.]

Mexico-U.S. Transborder Transportation and the Resolution Of the 2001 Arbitral Panel

Juan Manuel Saldaña Pérez*



Guadalupe Pérez/Cuartoscuro

Freight traffic at a Mexico-U.S. border crossing.

Since 1995, Mexican truckers have the right to enter the United States to haul freight there, according to the North American Free Trade Agreement (NAFTA). Even though Mexico won a favorable decision by an arbitral panel under the treaty's Chapter 20, which deals with this right, until the time of this writing, the United States has not fulfilled its commitment to Mexico. This is an obstacle to free

trade between the two countries, with the resulting economic losses for Mexico.

BACKGROUND

Before 1980, the United States granted entry to truckers without distinguishing between applicants from the United States, Canada, or Mexico. They only required economic justification for every proposed run. Later, the Bus Regulatory

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Reform Act of 1982 eliminated equal treatment for foreign and national applicants in granting authorization, imposing an initial two-year moratorium on new authorizations to operate foreign motor vehicles in U.S. territory. It is important to point out that in the case of Canada, the moratorium was lifted immediately by the Brock-Godliech Accord, since before 1980, Canada had already reciprocally permitted the access of U.S. truck operators.

In Mexico's case, the 1982 moratorium was renewed in 1984, 1986, 1988, 1990, 1992, and 1995. However, in order to facilitate cross-border trade, an exception was made to allow Mexican companies to continue entering U.S. territory, but only as far as the towns within the border trade area; if they were in transit from Mexico to Canada (applicable for Mexican operators in business before the 1982 legislation); if they were Mexican trucking companies, but owned by Americans;¹ if they were Mexican trucking companies that rented units to U.S. firms (until January 2000); and starting in 1994, if they were Mexican-owned companies headquartered in Mexico that transported passengers on international charter buses or tour bus operations.

Also, as stipulated in NAFTA, the three countries agreed to apply the principle of "national treatment" (Article 1202) and "most favored nation" treatment (Article 1203) for cross-border services, including freight transport in the following terms:

- a. Article 1202. Each Party shall accord to service providers of another Party treatment no less favorable than that it accords, *in like circumstances*, to its own service providers....
- b. Article 1203: Most-Favored-Nation Treatment [in Services]. Each Party shall accord to service providers of another Party treatment no less favorable than that it accords, *in like circumstances*, to service providers of any other Party or of a non-Party.²

The United States drew up a list of "Reservations for Existing Measures and Liberalization Commitments" that included "national treatment" and "most-favored-nation treatment" for land freight transport, as well as the gradual reduction of those reservations. Thus, it committed to authorizing Mexicans to provide services in U.S. border states three years after NAFTA was signed, that is December 18, 1995, and to provide services throughout U.S. territory six years after NAFTA came into effect, that is January 1, 2000, in accordance with the treaty's Annex 1.

In November 1995, one month before the deadline, the governments of Mexico and the United States set up the Land Transportation Standards Subcommittee, which implemented a work program to facilitate eliminating the reservations contained in Annex 1, as well as the process for making compatible the standards-related measures linked to the operation of buses and trucks.³ To this end, every one to three years authorities would check drivers' health, age, and language skills; weights and dimensions, tires, brakes, parts and accessories, maintenance and repair, inspections, and emissions and environmental pollution levels; and each party's supervision of motor carriers' safety compliance and road signs.⁴ As NAFTA Articles 904.1 and 904.3 stipulate, the parties have the right to adopt measures for normalization, but they cannot be applied in a discriminatory manner.

On September 5, 1995, the U.S. Secretary of Transportation issued a press release announcing the measures proposed for a "smooth, safe and efficient NAFTA transition" and the creation of a team of officials from four border states and federal offices to "ensure that operations will be as safe and efficient as possible" and to implement an educational campaign to disseminate the prerequisites for operating land transport vehicles in the United States, Mexico, and Canada.

Later, the U.S. Interstate Commerce Commission (ICC) announced a project for normalization called "Freight Operations by Mexican Carriers-Implementation of North American Free Trade Agreement" and that the proposal would become definitive after December 18, 1995. These were published, respectively, in the October 18, 1995 and December 13, 1995 *Federal Register*.

By December 12 of that year, 32 coalitions of religious, labor, and environmental groups asked President Bill Clinton to suspend NAFTA operations regarding land transportation services. Three days later, the International Brotherhood of Teamsters presented a complaint against the ICC's proposed norms on cross-border land transportation, thus halting the processing of Mexican requests for authorization to be

Up until today, U.S. officials continue to reject all Mexican applications arguing that Mexico does not have legislation ensuring that trucking companies can guarantee safety on U.S. highways.

The U.S. refusal violates the principles of “national treatment” and “most-favored-nation treatment” by answering all Mexican truckers’ applications as a group.

able to provide land transportation services in the United States.

On December 18, 1995, the date when the NAFTA cross-border land transportation services regulations were to take effect, the U.S. Secretary of Transportation issued a second press release announcing that from that day forward, foreign (Mexican) motor carriers would be able to apply to operate in international trade between the Mexican and U.S. border states. However, up until today, U.S. officials continue to reject all Mexican applications arguing that Mexico does not have legislation matching that of the U.S. ensuring that trucking companies can guarantee safety on U.S. highways.

THE CONTROVERSY

Mexico argued that the United States’ refusal to individually process Mexican applications was incompatible with NAFTA stipulations. The Mexican government maintained that the United States had violated the treaty by not initiating the programmed reduction of its restrictions regarding cross-border transport services, starting in December 1995 in the border states and, from 2000, on in the rest of its territory, as the treaty itself had stated.

The United States argued that Mexican legislation in this area was not the same as its own, and for that reason did not comply with safety standards established in local legislation, and that Mexican freight transportation endangered the safety of its highways. As a result, since circumstances were not the same, the principles of “national treatment” and “most-favored-nation” treatment were not being violated given that Canadian legislation was similar to the United States’.

Mexico pointed out that NAFTA does not specify that Mexican legislation on land freight transport had to be the same as U.S. law. Every Mexican truck that goes through U.S. territory must comply with its norms. However, they must be evaluated individually, just like U.S. and Canadian truckers,

so that every Mexican trucker has the full opportunity to challenge a rejected permit for operating in the U.S. Mexico argued that the fulfillment of the obligations by all the parties was not conditioned to Mexico adopting a normative framework identical to that of the United States and approved by the U.S. government.

The U.S. refusal violates the principles of “national treatment” and “most-favored-nation treatment” by not dealing individually with applications for authorization by U.S. and Canadian truckers to operate in U.S. territory, but answering all Mexican truckers’ applications as a group. In fact, it will not even process them, arguing that Mexican legislation on motor carriers does not guarantee the fulfillment of U.S. safety requirements.

U.S. non-compliance is clearly protectionist. Not only does it affect competition and the competitiveness of both countries, but of the region as a whole, and it has an impact on many other sectors of production given that it makes transport more expensive and causes delays in delivery times. For every operation, three trucks are required instead of one, since when the Mexican truck loaded with freight gets to the border, it has to dismount the container and mount it on a second truck called a transfer. This will transport the merchandise 30 kilometers and then transfer it to a third, U.S.-owned truck which will ship the freight to its final destination. It should be pointed out that in 2009 alone, almost 70 percent of the merchandise traded between the United States and Mexico was transported by highway.

Given the U.S. refusal to allow Mexican transportation services inside its territory, on January 19, 1996, at the request of the Mexican government, consultations were effected between the two countries’ governments before arbitration began, but the controversy was not resolved. On December 22, 1998, Mexico requested the arbitral panel be set up under Chapter 20 of NAFTA to resolve the controversy. This panel issued its final report on February 5, 2001; the decision favored Mexico, recommending that the United States carry out the actions necessary to comply with its commitments since its practices did indeed violate the principles of “national treatment” and “most-favored-nation treatment” with regard to cross-border freight transport.

Canada, for its part, exercised its right to participate in the arbitration process as a Third Party, and pointed out that the central issue for interpreting the principle of “national treatment” is the comparison between a foreign (Mexican) service provider and a U.S. service provider. Canada also main-

tained that a “generalized” refusal by the United States to allow Mexican truckers to provide cross-border land transport would necessarily put them in a less favorable position than that of U.S. truckers under similar circumstances. The United States cannot base its arguments on normalization-related measures because even protection levels for normalization must be consistent with “national treatment” stipulations.

Once the panel’s final report was made public, Mexico and the United States should have agreed on a solution to the controversy within the following 30 days, but if the United States and Mexico did not come to an agreement, Mexico had the right to suspend benefits, taking measures that would have effects equivalent to the damage caused by its counterpart’s refusal, until such time that both countries came to an agreement on how to solve the controversy. This action, commonly known as a “reprisal,” can be taken *vis-à-vis* the same sector or others if Mexico considered it would either not be feasible or effective to suspend benefits in the same sector.

U.S. non-compliance is clearly protectionist; it has an impact on many sectors of production given that it makes transport more expensive and causes delays in delivery times.

Since the panel issued its report, both countries have sought to develop a strategy that would open the border up to Mexican trucking, initially trying a demonstration project as the first step toward fulfilling the commitments.

In September 2007, both governments began implementing this project that would last a year. In August 2008, they agreed to extend it for two more years because of the good performance of the companies involved. However, on March 11, 2009, when the United States designed its yearly budget, it canceled the project by not earmarking resources for its operations. It used the same argument presented to the panel: Mexican trucks do not fulfill its safety rules, despite the fact that during the time the demonstration project was applied, more than 46 000 crossings took place with no important incidents.

In this context, and for the first time, on March 18, 2009, the Mexican government levied retaliatory measures against the United States: it increased tariffs on 89 U.S. industrial

and agricultural products that had originally had free access; thus, Mexico stopped being passive in the face of its trade partner’s constant non-compliance of international commitments.⁵

On August 18, 2010, the Ministry of the Economy changed the list of U.S. products subject to trade reprisals since March 2009.⁶ On March 3, 2011, an agreement was announced on cross-border transport between Mexico and its neighbor to the north that will supposedly allow for opening the northern border to Mexican trucks. On July 6, both governments signed a memorandum to open the U.S. border to Mexican freight trucking; therefore, Mexican truckers will have to fulfill the same requirements as U.S. truckers, and will be able to acquire a provisional 18-month permit, and later be evaluated to receive a permanent one.

For its part, Mexico committed to reducing by 50 percent the tariffs it had levied on 99 U.S. products starting July 7, and to eliminate the other 50 percent when the first Mexican truck crosses the U.S. border, slated for October 2011.

Officials are confident that this time the U.S. government will not cave in to pressure groups’ demands and will permanently fulfill its commitment to allow Mexican freight motor vehicles access to its territory.

This dispute is one of the most important in Mexico’s trade relationship with its neighbor. The liberalization of land transportation is key to our country’s being able to take full advantage of its geographical proximity to the United States. **MM**

NOTES

¹ In 1999, only one Mexican trucking company had runs from Mexico to Canada, according to the USDOT Inspector General’s Office. A total of five Mexican companies had the right to this exemption because they had been authorized to operate before 1982. Approximately 160 trucking firms headquartered in Mexico are owned by Americans.

² <http://www.sice.oas.org/trade/nafta/chap-12.asp#A1202>, emphasis added.

³ Before NAFTA came into force, the governments of Mexico and the United States joined the Commercial Vehicle Safety Alliance to coordinate the norms applicable to transportation motor vehicles, particularly in relation to U.S. training of Mexican officials for highway inspections and handling dangerous materials, and also to improve Mexican companies’ knowledge about U.S. security norms.

⁴ As established in NAFTA Article 913.5.a.1 and Annex 913.a-1.

⁵ See *Diario oficial de la federación*, March 18, 2009, http://dof.gob.mx/nota_detalle.php?codigo=5084119&fecha=18/03/2009. [Editor’s Note.]

⁶ See *Diario oficial de la federación*, August 18, 2010, http://dof.gob.mx/nota_detalle.php?codigo=5155736&fecha=18/08/2010. [Editor’s Note.]

Canada's Election, North America, and Mexico Breaking the Circle?

Imtiaz Hussain*
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In the name of conservatism, Canada's May 2, 2011 election could revolutionize domestic and foreign policy, dragging Mexico into a different ball-game: cozy NAFTA-driven Mexico relations are unlikely to be abandoned by Canada, but will probably not receive the priority of previous years as Canada seeks a more assertive global role. An assessment of the broad electoral theme, unresolved issues, and perceived foreign policy impacts suggests Canada's emerging identity diminishes the space for Mexico and any role Mexico might play in a reconfigured North America.

THEME OF THE ELECTIONS

Conservatism, rather than party ideology, values, and interests evidently became the dominant electoral theme: the Conservative Party (CP) flirted with the 40-percent vote barrier for the first time this century;¹ Steve Harper became the third Canadian prime minister (after Sir John A. Macdonald, and John Diefenbaker) to rack up three consecutive election victories;² and he attracted the second highest number of CP votes (5.8 million) after Brian Mulroney in 1984 (6.3 million). Conversely, the Liberal Party (LP), by achieving its lowest parliamentary representation (34 seats) and proportion of voters (20 per cent),³ is no longer even the Official Opposition.

Party ideology, values, and interests became unimportant for several reasons. First, since this was the third election in five years, voters were not just "tired" of fulfilling a duty, but also leery that all their input could produce was a minority government, twice over, downgrading major policy decisions



A polling station in Vancouver.

Andy Clark/REUTERS

from both deliberations and legislation. To avoid another deadlock, they punished the Bloc Québécois (BQ) and the LP for disconnecting with their constituencies.⁴ In short, they voted against ideologies—for example, French nationalism did not play a part—, interests—no single policy issue drove the election—, and values—the "Liberal" flock was not only divided, but this division also mattered: in 20 Ontario ridings, the LP and New Democratic Party had enough votes to collectively defeat the newly dominant CP.⁵

Second, driven to champion "sovereignty" when the 1987 Meech Lake Accord was not ratified in 1990, the BQ simply did not graduate out of its "sovereignty" rationale by the 2011 election.⁶ This is not to say French separation has become a dead issue,⁷ but since the BQ first participated in elections in 1993 and won 54 seats (becoming a balancing legislative force), it seems to have done better "when it didn't talk too much about sovereignty."⁸ With merely 4 seats after Canada's forty-first election, the BQ is no longer an officially recognized party; but that it lost 45 others, mostly to the NDP, reflects less a lost cause than what Peggy Curran attributes to the "school of fish syndrome": sudden changes of direction typical of swimming fish.⁹ Quebec's political atmosphere was

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already reeling with complaints of “Bloc bourgeois,” and its defeated leader, Gilles Duceppe, paid the price of a Québécois “suspicion”: “holding political power in Ottawa.”¹⁰ Wanting to warn Duceppe and the BQ by choosing Jack Layton and his New Democratic Party (NDP),¹¹ Quebec voters, however, did not fully anticipate how the tyranny of small decisions would leave Quebec out in the Ottawa cold.

Third, the continued LP leadership crisis meant the election was lost even before it began. It was not just Michael Ignatieff’s esoteric Harvard profile and inability to connect,¹² but inherent divisions—Finance Minister Paul Martin backstabbing Prime Minister Jean Chrétien—¹³ exposed the LP as a collection of either sticky-footed veterans and political acrobats, or fame-seeking rookies operating against a backdrop of entrenched corruption, in either case completely oblivious of mainstream voters. Many mainstream supporters substituted center-left values, ideologies, and interests for pure centrist preferences (much like Bill Clinton and Barack Obama did with the Democratic Party after the first mid-term election they faced), moving in a conservative direction, dictated no less by a relatively healthy economy. At least three LP pillars crumbled: its solid and critical grip of Quebec seats (lost in the constitutional battles of the 1960s and 1980s);¹⁴ advocating strong nationalism (undercut by LP unpopularity in the west and a secular sentimental public shift against big government); and flexibility from being a centrist brokerage party (Chrétien’s shift to the right began breaking this).

Fourth, crisis, another secular development, is not only not new in Canadian electoral politics, but it typically followed and produced stability: Lester Pearson’s weak prime ministership was sandwiched between the solid tenures of Diefenbaker before him and Trudeau after, Kim Campbell’s in the early 1990s between Brian Mulroney’s and Jean Chrétien’s, and the five years of downwardly spiraling minority governments after Chrétien produced the 2011 electoral outcome. Like Trudeau’s Third Option, multiculturalism, Foreign Investment Review Agency, and National Energy Policy, among other policy shifts, as well as Mulroney’s U.S. free-trade, Harper

gets the chance to both restructure Canada and reverse once and for all Canada’s Liberalist symbol.

Finally, circumstances also chipped in. Canada weathered the 2007-2009 recession better than any other industrialized country, especially since it relied less on bail-outs, recorded more trade surpluses than deficits, and enjoyed profits from escalating oil prices. These gains had to be preserved—better yet, institutionalized—regardless of political proprietorship. Yet, with the country’s dwindling international profile, caused no less by fickle minority governments, more Canadians sought a game-changing solution in 2011 (61.4 per cent of voters turned out) than in 2008 (58.8 per cent).¹⁵ Partisanship could not have been the driving reason behind this, but it became one of the biggest winners.

Past patterns predict stability: Harper has time on his side, understands the political winds better than other political leaders (including how and when to use character assassination as a political tool), and does not have to fear either the LP or BQ.

UNRESOLVED ISSUES

Now that the historical rivals/threats have been sidelined, does a majority Canadian government imply stand-still politics? Hardly, since at least five vectors constantly challenge the status quo. First, Canada’s multiculturalism cannot coexist forever with an ascendant national conservative mood. Harper’s argument that the typical Canadian is a conservative (rather than a liberal) belies the country’s heterogeneous gene. Richard J. F. Day observed at the turn of the last century, without even bringing parties into his analysis, that the schism between what he called “Selves” and “Others” “always produced *resistance*” [italics in the original], beginning half a millennium ago with the French, then the “Savages,” and more recently with “Immigrants.”¹⁶

It is hardly likely in a polemical post-9/11 era complicated further by incorrigible developments. On the one hand, Canada’s shift to deploying combat troops in Afghanistan from its familiar post-World War II peacekeeping role coincides with increasingly stifling conditions for Muslims in Canada, challenging Canada’s multicultural claim. On the other hand, creeping resentment across the Muslim world climaxed in the October 2010 U.S. Security Council vote for non-permanent members when Canada’s almost automatic entry was denied, in part, by Muslim countries unhappy with Harper’s unqualified support for Israel. While the CP may have pen-

Canada’s forays abroad illustrate why widening North America to include Mexico is no longer a Canadian priority: for Harper, Mexico is dispensable.

U.S. interests have become so diffused globally that Canada alone cannot demand the revival of a historical special relationship, especially since the United States is not always on the same page as European countries or Canada.

etrated the LP's "Fortress Toronto" through *chai* parties with immigrant communities in the election, that is small comfort for Toronto's legendary foreign doctoral and engineering students who make their livings as taxi-drivers.¹⁷

Second, business cycles rarely, if ever, remain static for too long, and since Canada has had it relatively good economically,¹⁸ some market-driven correction is overdue. By raising social costs and negatively impacting some social groups, the CP's hands-off, balanced-budget, and deficit-free economic goals could complicate matters.

Third, the LP gets a long time to cultivate new leaders, just as the BQ finds the space to either reinvent itself or await voter reconsideration. Reducing the CP to a minority government would be one step in the right direction for the LP/BQ, but both parties have risen from the ashes before, suggesting they cannot be written off just yet.

Politics-as-usual is a fourth factor. Harper also has a plateful of contentious domestic issues to resolve on the basis of his—or his party's—preferences (gun-control, Senate reform, judicial appointments, eliminating voting subsidy, and so forth), but alienating too many groups sets the condition for the next election to unravel as the perfect political storm. Sidelining Quebec might become a Pyrrhic victory, as could the rapprochement with First Nations,¹⁹ but with the Green Party's first parliamentarian (Elizabeth May) and 75 other women parliamentarians (of whom only 29 belong to the CP),²⁰ the House of Commons might reflect less commonality than one might expect.

Finally, since all stable governments in the past were anchored in a significant foreign policy pursuit (Trudeau's Third Option and anti-nuclear proliferation; Mulroney with the Canadian-U.S. Free Trade Agreement; and Chrétien with NAFTA), Harper's overloaded foreign policy plate offers him both chances and constraints: having combat troops in Afghanistan displaces Canada's peace-keeping tradition; Mexican refugees and the resultant visa elimination fed into Canada's shrinking North American view from the trilateral NAFTA-based configuration into the familiar Canada-U.S.

bilateralism; Harper's bilateral U.S. trade preference and perimeter defense with the United States further sidelines Mexico; full-fledged Harper support for Israel launches an uncharted foreign policy era of "division" over "unison"; and Harper's environmental policy choices, among others, generate more grumbles than contentment.²¹

EXPECTED SPILLOVERS: FOREIGN POLICY DOMAIN

Angelo Persichilli notes how Harper "has the credibility" to "strengthen Canada's position in the world" on the basis of "good relations" with not just the United States (complemented by Barack Obama's "laid-back approach"), but also South American and Asian countries; and "respect" in Europe.²² Yet, there are not only problems on each of these fronts, but the problems are also becoming more entrenched than the opportunities.

U.S. interests have become so diffused globally that Canada alone cannot demand the revival of a historical special relationship, especially since the United States is not always on the same page as European countries or Canada ("Arab spring" responses, Arctic claims, Middle East peace positions are examples). Similarly, though Harper's institution-building "Americas strategy" against drug trafficking and promoting Canadian trade and mining was resuscitated by his August 2011 visits to Brazil, Colombia, Costa Rica, and Honduras, it neglected Mexico, reaffirming his bilateral over trilateral North American preference.²³ On another front, Chinese mining companies seem poised to challenge their Canadian counterparts across Asia, possibly in Latin America.

Canada's forays abroad illustrate why widening North America to include Mexico is no longer a Canadian priority: in the absence of vigorous global U.S. foreign policy commitments under President Barack Obama, Canada wants to step up to the leadership plate drawing upon its "kinder, gentler" past reputation. But the way recent domestic divisions find foreign policy expressions explains Harper's dispensability fix: the United States is indispensable; Mexico is dispensable.

MEXICO'S FIX

Canada's evolving policy-making preferences eventually become a Mexican fix. First and most egregious is the 2009

refugee-no visa disjuncture: Mexico was made a lesser partner, and portraying Mexicans in the Canadian media as low-wage-job-seeking illegal infiltrators disconnected with mainstream interactions cultivated over the 15 NAFTA years. Second, the unhindered growth of Canadian businesses under a conservative agenda, with, for example, over 2 000 mining companies in Mexico alone, revives the *dependencia* mentality which one would have thought was buried with the free trade agreements. Third, the environmental subjugation this entails reaffirms a *have-have not* Canada-Mexico relationship: Canada's more acute environmental instincts invite remedial efforts against abuse, for example, against tar-sand oil exploitation—not that this will be stopped under a conservative agenda—but Mexico's relaxed environmental instincts invite only more business exploitation. Fourth, Canada playing the very game with the rest of the world that it hopes the United States will not play with Canada (prioritizing security interests over trade and economic expansion) only widens the gap with Mexico,

Mexican refugees and the resultant visa elimination fed into Canada's shrinking North American view, moving from the trilateral NAFTA-based configuration toward the familiar Canada-U.S. bilateralism.

where economic betterment is not only the top priority but also the dominant relational vehicle with Canada. There is the final and deepest underlying gap: whereas Canada is explicitly making Mexico a reversible economic partner (by seeking markets and raw materials not just in Mexico but worldwide), Mexico has not even explored alternatives to Canada.

By the time of its own elections in 2012, Mexico might do itself a favor by following U.S. and Canadian steps: finding global partners to strengthen regionalism. **NM**

NOTES

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⁵ Adam Radwanski, "Conservative strategy: Vote splitting aside, Tories dominant in Ontario," *Globe and Mail*, May 4, 2011, p. A4.
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⁸ Philip Authier, "Sovereignty remains, but will Bloc? Bravado is gone, but Barbot says party will be back," *The Gazette* (Montreal), May 4, 2011, p. A3.
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¹³ Patrick Gossage, "Liberal election debacle was years in the making: Party still plagued by infighting and outward methods," *Toronto Star*, May 25, 2011, p. A21.
¹⁴ Whittaker, op. cit.
¹⁵ Aaron Derfel, "Little evidence that hordes of young voters flocked to polls," *The Gazette* (Montreal), May 4, 2011, p. A7.
¹⁶ Richard J.F. Day, *Multiculturalism and the History of Canadian Diversity* (Toronto: University of Toronto Press, 2002), p. 5.
¹⁷ Gloria Galloway, "Tories storm Liberals' last Ontario redoubt: Liberals' once-impregnable Fortress Toronto battered down as Tory tide washes across province," *Globe and Mail*, May 13, 2011, p. A9; and Joe Friesen and Julian Sher, "How the Tories changed immigrant 'askers' into party supporters," *Globe and Mail*, May 4, 2011, p. A13.
¹⁸ See Doug Palmer, "Recovery rolling as U.S., Canada trade takes off," *National Post*, May 12, 2011, p. FP3.
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The Consolidation Of the Conservative Party In Canada (2006-2011)

Óliver Santín*

The results of Canada's May 2, 2011 elections consolidated Prime Minister Stephen Harper and his Conservative Party as the first government with a Conservative majority in the House of Commons since 1993. Many factors have made this new arrangement in the Canadian Parliament possible, but in this article, I will point to the most significant moments that have projected Canada as a country with a broad Conservative majority for the second decade of the twenty-first century.

THE REFORMULATION OF THE CONSERVATIVE PARTY

After Brian Mulroney stepped down as prime minister and his successor Kim Campbell suffered a crushing defeat in the 1993 federal elections,¹ the Progressive Conservative Party of Canada left the field to new conservative groupings like the Reformist Party, with greater electoral presence in the western provinces of British Columbia, Alberta, Saskatchewan, and Manitoba. Later, in 2000, this party became the Canadian Reform Conservative Alliance, whose goal was to extend its electoral presence in the important English-speaking province of Ontario and in the Maritime Provinces on the Atlantic.

This phenomenon of re-founding Canada's center-right electoral platforms was formalized in 2003 with the merger of the Canadian Reform Conservative Alliance and the Progressive Conservative Party of Canada to create what is now called the Conservative Party of Canada.



Canada's PM, Stephen Harper, speaks at the Conservative Party convention in Ottawa.

The first election returns for the Conservative Party of Canada in 2004 placed it as the Liberal Party's main competitor, and its leader, Stephen Harper, as the head of the opposition in the House of Commons. Harper took over as head of the Conservative Party when it was founded in 2003; since then he has tried to take office utilizing the mistakes and political debilitation of his Liberal opponents. This is why Harper took advantage of the conflict between the New Democratic Party (NDP) and the Liberal Party over Liberal Prime Minister Paul Martin's refusal to guarantee access to health care in the face of possible future attempts at privatization. Thus, as leader of the opposition in late 2005, Harper got enough votes in Parliament to request a motion of censure

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against Paul Martin's position. As a result, Martin, weakened in the face of public opinion, was forced to dissolve Parliament and call for new elections in the beginning of the following year.

The January 2006 elections gave the victory to the Conservative Party, its 36.3 percent of the votes awarding it 124 seats, compared to the Liberal Party's 30.2 percent and 103 seats.² This concluded a cycle of 146 straight months of Liberal governments in Canada.

STEPHEN HARPER'S TWO MINORITY CONSERVATIVE GOVERNMENTS

From the beginning of his 2006-2008 term as prime minister, Stephen Harper sought to increase Canada's presence on the international stage. Thus, improving relations with the United States was a priority from the start of his administration. Domestically, he proposed maintaining healthy finances, liquidating major public debt, and not legislating either on abortion or same-sex marriage. Socially, he increased the number of child-care centers and gave parents of pre-school children financial support. He also cut taxes on workers' wages to stimulate domestic consumption, and proposed shortening wait times for receiving medical attention. On a federal level, he committed to increased cooperation with the province of Quebec, guaranteeing its autonomy, and allowing it a greater presence internationally.

As a result, Harper racked up high approval ratings that allowed him to call federal elections early, in October 2008, with the aim of achieving a Conservative parliamentary majority, which would allow him to stop having to negotiate with the other political parties to govern. Although he did not get the absolute majority of 155 seats, the elections did increase Conservative Party presence in the House of Commons, with 143 seats, compared to the 124 it had won in the previous elections.

Harper's second period as prime minister (2008-2011) coincided with the grave world economic crisis in late 2008 sparked by the U.S. sub-prime mortgage crack. So, his new mandate concentrated internally, first of all, on avoiding massive job loss, and, secondly, on guaranteeing sustained economic growth in a capitalist world sunk in the most serious economic crisis since the 1920s.

Although as a result of the global crisis Canada displayed the highest unemployment levels in the previous three de-

The Conservative victory is in great part due to Canada's economic stability during the severe world recession at the end of the last decade, despite having registered record unemployment from 2008 to 2011.

acades, the fact that Harper had not led any kind of bank bailout or nationalization like some of his counterparts in other countries in the West strengthened his image among Canadians. He was seen as a leader who had kept his country in a not-terribly-unfavorable economic situation, versus the straits the rest of its developed partners were in.

In accordance with what Harper had proposed from the time of his first political campaign, Canada participated more intensely in the international arena alongside the United States. One example of this is the intense campaign in Afghanistan. However, given the pressure in Canada resulting from the number of Canadian casualties (155 up to March 2011),³ in 2010, the Harper government announced Canadian troops would begin withdrawal in July 2011.

In March 2011, after the United Nations approved a resolution to create a no-fly zone over Libya, the Harper government decided to send a squadron of F-18 bombers to support operations there, reiterating its commitment and willingness to participate in Security Council-backed missions. This is how Harper has managed to maintain Canada active around international issues as part of his political strategy.

THE 2011 ELECTIONS

After five years of heading up two minority governments, constantly forced to negotiate with other parties, Stephen Harper needed to again seek a parliamentary majority to make his government actions more agile and put into practice a series of more ambitious programs. The events that would lead to the call for new elections in 2011 began as early as August of the previous year, precisely when the Harper government announced its intention of acquiring 65 F-35 fighter planes. Officially, the estimated cost of these planes was Can\$14 billion. However, according to Canadian Parliament reports, the real figure was Can\$29 billion, since it was not clear whether the price of the engines was included in the transaction or

they would have to be built and the U.S. arms industry paid separately for them.⁴

For this reason, opposition parties in the House of Commons asked Harper for documentation regarding several matters, such as the purchase of the F-35 fighter planes and penitentiary reform, which includes the construction of more prisons paid for by the taxpayers. The prime minister refused to provide the documents requested and make the information public. This spurred the opposition parties in Canada's Parliament (the Liberal Party, the New Democratic Party, and the Bloc Québécois, or BQ) to vote a joint motion of censure against him and call for his removal.

It should be pointed out that the call for new elections was not made at the most opportune moment for the opposition, given that national polls gave the Conservative Party a 15-point lead *vis-à-vis* its main adversary, the Liberal Party. Naturally, the prime minister was aware of this and sought to capitalize on it to finally get a parliamentary majority; so, after his removal was requested, new elections were convened for May 2, 2011.

From the start of the campaigns, on March 27, the opinion polls gave the Conservative Party a clear advantage. The Conservative campaign focused on maintaining economic stability and growth, particularly emphasizing the fact that Canada had not suffered financial disasters like those of the United States and several European countries. From this perspective, Harper transmitted to the electorate the idea that alternation in office would be a certain blow to the Canadian economy in general. Aware that a coalition of opposition parties threatened his continuation in office, he dedicated the first part of his campaign to denouncing supposed intentions of creating an opposition alliance to oust the Conservatives from government. He emphasized that the Liberal Party, the New Democratic Party, and the Bloc Québécois had nothing in common, and if they came to power, they would threaten Canada's economic and political stability because they would not be able to agree enough to govern.

Now, while coalition governments are considered a possibility in Canada's parliamentary system, they are not common since the electorate sees them as "governments of losers." Aware of this, Liberal Party leader Michael Ignatieff insistently responded that his party would not seek the prime minister's office in a coalition, underlining that the party that wins the largest number of seats in Parliament would be called on to form the government.⁵

After the April 12 English-language debates and the April 13 French-language debates, electoral trends took a turn for

In accordance with what Harper had proposed during his first campaign, Canada participated more intensely in the international arena alongside the United States. One example is Afghanistan.

opponents of the Conservative Party. While there was no visible winner of the two debates in the eyes of the electorate, Stephen Harper's success lay in keeping his approval ratings up around 39 percent. However, his rivals, the Liberal Party and Michael Ignatieff, suffered a serious drop in ratings, tumbling from 29 to 19 percent in the polls. On the other hand, Jack Layton's New Democratic Party jumped from 18 to 31 percent after the debates.⁶

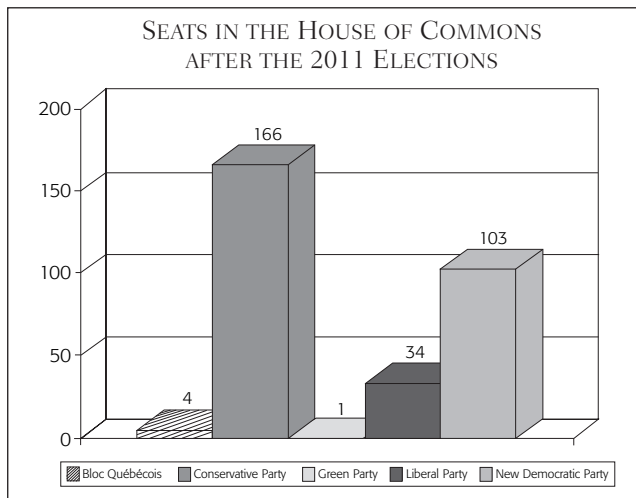
With these opinion poll results and after five and a half weeks of campaigning, the May 2 elections gave the majority to Stephen Harper's party. The balloting won the Conservative Party 166 seats in the House of Commons, compared to the 143 it had had up until May. That is, it surpassed the majority threshold of 155 seats by 11 (see graph).⁷

To a great extent, the Conservative victory is due to Canada's economic stability during the severe world recession at the end of the last decade, despite having registered record unemployment rates from 2008 to 2011. On the other hand, maintaining and guaranteeing Canadian Medicare and not getting into serious political scandals allowed Harper to reinforce his public image nationwide and made a third period of government possible, now in more favorable conditions with a Conservative parliamentary majority ready to support its leader.

CONSERVATIVE CONSOLIDATION AND MAIN CHALLENGES

As soon as the campaigns and the voting were over, Prime Minister Harper's government was obliged to redefine its most polemical policies since, for the first time, the real opposition to the Conservatives in the Commons will be the center-left New Democratic Party (NDP), characterized by its harsh criticism of the Conservative administration's social policies since 2006.

In this sense, Harper will face a more critical, less docile opposition than during his two previous periods. In those



years, the Liberal Party spoke for Canada's opposition. Now, issues like public health care, employment insurance, and access to the university will get the greatest media attention in the debates between the New Democratic Party and the Conservatives in the new legislature.

To this must be added the other big electoral defeat of 2011: that of the Bloc Québécois (BQ). The Bloc only won four seats in Parliament, while in 2008, it had 49; this leads us to suppose that the BQ's traditional regional agenda, focused on Quebec, will make way for a new NDP agenda, more active on social issues and spanning the entire Canadian federation.

In terms of domestic economic policy, the Harper government will seek equilibrium, fulfilling the campaign promise to reestablish internal fiscal equilibrium by 2014 by cutting several million dollars from public spending. This issue in particular will be a measuring stick for public opinion, since, the media focused on it for a good part of the campaigns. The far-reaching thing about this campaign promise is that the adjustment will come precisely one year before the next federal elections, slated for October 2015.

In short, it can be said that the Stephen Harper government proposes to concretize a series of political projects that encountered stumbling blocks during his two first minority government terms. Outstanding among these proposals are the repeal of obligatory hunting weapons registration, writing tougher criminal legislation, building prisons, decreasing public funding of political parties, reducing the number of permanent federal employees, making foreign investment in telecommunications possible, purchasing the 65 F-35 fighter planes that triggered his removal, and even reducing the retirement-age for senators (today they can sit in the Senate until they turn 75). To achieve all this, Harper not only has

a majority in the House of Commons, but also in the Senate, with 52 out of 105 seats.⁸

FINAL THOUGHTS

Canada's new political scenario resulting from the 2011 elections has left the country with a new Parliament in which the left and the right will continually be at loggerheads. Thus, the strategy for Harper's Conservative government will be to avoid direct confrontations and defend the idea among his constituency and society in general that his government will work for Canadians' common good, including that of those who did not vote for him. In this sense, the New Democratic Party and Jack Layton have the historic opportunity of acting as a true opposition, an unprecedented opportunity to bring up more progressive issues and discussions with strong media impact for the first time in an entire generation of Canadians. ■■

NOTES

¹ In that election, the Progressive Conservative Party of Canada received 16 percent of the vote and won only two seats in the House of Commons. For more information, see "Activists Seek Perdue's Apology," Sept 16, 2006, http://chronicle.augusta.com/stories/2006/09/19/met_97222.shtml, accessed Sept 1, 2011.

² The figures and percentages used in this article can be consulted in "Canadian Elections Results by Party 1867 to 2008," <http://www.sfu.ca/~aheard/elections/1867-present.html>.

³ CBC News, "Afghanistan: In the Line of Duty: Canada's Casualties," <http://www.cbc.ca/news/background/afghanistan/casualties/list.html>, accessed in May 2011.

⁴ For more information, see David Pugliese, "Canada's F-35s: Engines not included. Government will be required to provide power plant for stealth fighters, documents show," April 17, 2011, <http://www.montrealgazette.com/news/Canada+Engines+included/4629251/story.html>.

⁵ Jane Taber, "Ignatieff turns coalition accusation back on Harper," March 27, 2011, <http://www.theglobeandmail.com/news/politics/ottawa-notebook/ignatieff-turns-coalition-accusation-back-on-harper/article1958633/>.

⁶ For more information on percentages in different polls during the electoral campaign, see Canada Election 2011, <http://www.electionalmanac.com/canada/polls.php>, accessed in May 2011.

⁷ Figures taken from "Elections. 2011. Canadian Election Results," <http://www.sfu.ca/~aheard/elections/results.html>, accessed in May 2011.

⁸ For more information, see Parliament of Canada, <http://www.parl.gc.ca/SenatorsMembers/Senate/SenatorsBiography/ps-E.htm>, accessed in May 2011.



Red Mummy in the White Desert-Sahara Desert, 2008. All the Deserts Are My Desert Series.

ALFREDO DE STÉFANO

The House and the Grave in the Landscape

Juan Antonio Molina*

Alfredo de Stéfano** has consolidated his presence in Mexican photography as one of the artists who has most consistently worked with landscape in recent years. Perhaps the most evident specificity in his case is that his works treat it more as a concept than a topic. That is probably where the malleability that can be seen in landscape as an object of photography comes from. In a certain way, we are talking about a subjectivity that shares a kind of will and expresses itself both spatially and temporally.

* Art curator and critic.

** Mexican photographer, www.arestefano.com

ALFREDO



Ladders to the Sky, 1999. Replenishing Emptiness Series.

The landscape in these photos is not limited to a fragment of space outlined and codified by the photographic framing. It is not only a space; it is a circumstance.

ESTÉFANO

The landscape in these photos is not limited to a fragment of space outlined and codified by the photographic framing; it is also the summary of a series of moments that cross each other. It is not only a space; it is a circumstance.

To arrive at this interesting formulation of the concept of landscape, Alfredo de Stéfano has been polishing the resources that allow him to aestheticize the perception of space and time using metaphorical, dramatic elements. In this case, aestheticizing also implies reproducing reality as fiction; that is, superimposing on the reality photographed a layer of meanings that do not necessarily remain autonomous outside the photographic act.

Even when Alfredo de Stéfano's working process includes the organization of formal structures before taking the picture, and even when these structures seem to have sufficient

formal and aesthetic density to be able to function autonomously, like sculptures or installations, for example, the truth is that their full realization only happens in the act of photography.

Actually, what De Stéfano does is to pre-construct the photography and reconstruct the space to be photographed. The important thing here is that what is photographed is marked for photography. The photography becomes a kind of destiny or finality of what is photographed; I mean that Alfredo de Stéfano points to the space as something photographable; he indicates that its destiny is in the image and its origin is in the imagination.

For that reason, I have called these photographs "inscriptions on the landscape," although this concept must not be separated from the notion of intervention. If in a previous



Blood Offering to the Licancabur-Atacama Desert, 2008. All the Deserts Are My Desert Series.

stage of this artist's work, putting texts and graphic signs made the viewer think of a strategy of inscriptions on the photography, especially in the 1996 "Vestiges of Paradise" series, now what can be seen is the inscription of photography in space; and this always implies an act of intervention inseparable from the concept of installation.

It is not so much the artificiality in and of itself that gives these operations their character of photographic inscriptions. Actually, more than inscriptions of photography, we are talking about inscriptions for photography. Whereas before the text followed the photo and incrustated itself in it, now these objects and space itself become a text that precedes the photo. Probably the possibility of understanding space as a text is one of the traits characteristic of the new formulations of landscape art in contemporary photography.

Alfredo de Stéfano has been working on that possibility since his first photographic works. But his works tend to make these processes complex to the extent that the conception of space as text is accompanied by a treatment of space as a basis for other significative or textual elements.

In his works from the middle of the last decade, these marks came to have a little more impact, above all because of the protagonist role of light. In addition to the intrusive element of artificial light as a footprint indicating the human presence, several of those photographs incorporated another no less important component: the possibility of metaphorically reading the lighting structure.

We could force the reading of some of those images to find certain implications of violence; that would also help us more precisely define the ecologist discourse often imposed



Fireflies, 2003. Brief Chronicle of Light Series.



Polar Circle in the Desert. 1999. Replenishing Emptiness Series.

De Stéfano polished the resources to aestheticize the perception of space and time using metaphorical, dramatic elements; aestheticizing also implies reproducing reality as fiction.

on Alfredo de Stéfano's photos, which was strengthened above all after his 2002 "Inhabiting the Vacuum" exhibition. In fact, I tend to think of his work not as much as a support for an ecologist position, but as a stimulus for reflecting about the passage of time. If De Stéfano has resorted to the space of the desert to do this, it is precisely because that is an environment where the temporal can be perceived with certain elasticity and where it can be "intervened" or altered. Finally, Alfredo de Stéfano's interventions are not only about

space, but also about time. His references to archaeology or paleontology are in the nature of simulations directed at underlining the temporal dimension in which the phenomena of Nature, and, particularly, existence itself are situated.

When De Stéfano has worked with desiccated animals, when he has placed or represented the bones of dead or extinct animals, and even when he has led to the evocation of absent subjects, he has placed us before the certainty or the possibility of death. In some way, the objects he organizes

before the camera are like simulations of monuments. They have an evocative and commemorative function, somehow an homage to the absent.

The work that Alfredo de Stéfano has done in different deserts of the world since the end of the last decade opens up one of the periods in which his art has evolved most intensely. The idea of death and absence has become more emphatic, marking the desert with implications that involve the landscape not as a geographic but a symbolic space.

In these photographs, the processes of signing that this author uses become more evident, as does his interest in marking the place, in giving it a meaning of localization, of evoking a presence through the absence that the place experiences. Alfredo de Stéfano seems to be re-inhabiting those places, colonizing them in the sense that Heidegger gives the term. This is why he has returned more insistently to structures that we might consider associated with a primitive state: the house, the grave, the monument, and perhaps also the

altar, the place from where the dead are remembered and where their memory is kept (the stone, the burial mound, the pyramid).

If previous works still led us to imagine the desert as a virgin space, little by little, Alfredo de Stéfano has taken us to an image of the desert as a space colonized by the human presence, full of tracks and memories. It is not strange, then, that in this stage, such forceful portraits appear, like those in his 2008 project "Sahara," or that in more recent works the author himself begins to appear in the photographs.

Little by little,
this photographer has taken us
to an image of the desert as a space
colonized by the human presence.



Waiting for the Glacier to Melt, Iceland, 2011. All the Deserts Are My Desert Series.



Cloud Bag, 2004. Brief Chronicle of Light Series.

ALFREDO DE STEFANO



Orix-Namibia Desert, 2011. All the Deserts Are My Desert Series.



Waiting for the Sand Storm-Namibia Desert, 2011. All the Deserts Are My Desert Series.

Despite the dramatic nature of these pieces, I think that a slightly ironic tone can always be intuited, a tone that appears intermittently throughout this author's entire artistic oeuvre. In addition to a particularly effectively channeled sensibility, Alfredo de Stéfano's work demonstrates an intelligent and always imaginative way of re-elaborating not only

representations of space, but also of its most common implications, surprising us every time with new figurations, even when they originate in the most archaic symbologies. Perhaps that is one of the qualities that places him among the most original, versatile creators of contemporary Mexican photography. **MM**

Fernando Gallo's *Process A9*

Luis Rius Caso*

"Artifice of absence perhaps, lacking better art in life. Hermeneutics, too. As a virtue, I think art is not a complacent view of canonized spirits, but in principle an uncertain itinerary, and, despite that, a transferring and transitory act."

Fernando Gallo

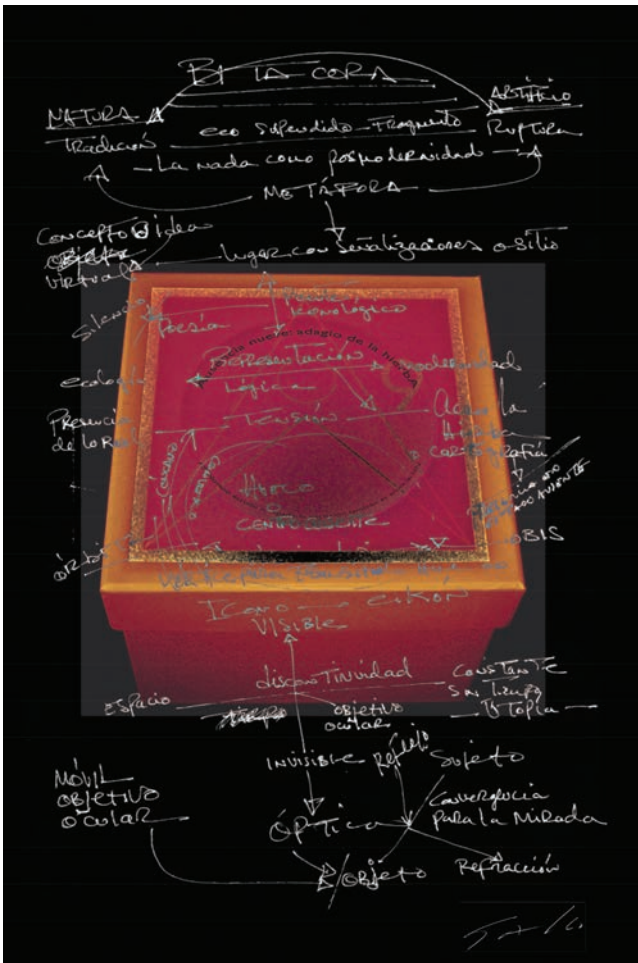


Absence One: Art of Grass. Vicarial Intervention. First shield or sword: patience. Room or Receptacle for Hiding. Bacocho Beach, Puerto Escondido, Oaxaca, Mexico. December 2002.

Admired by certain specific groups of art professionals, Fernando Gallo works almost as a clandestine artist. Like Marcel Duchamp, his career is built more based on the presence of his absence than on constant affirmation in artistic milieus and the show-business crowd. His position implies both a definition and a function as an artist different from those that identify the vast majority.

I am understating it: his position is radically different from that of others in vogue. Not only does it propose a defense of the concept of the artist in its purest, most elevated state, but it counters that of the “producer” linked to the occurrential-daily works that we *consume*

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Log. Altarpiece (detail), 1998-2011, different sizes (old wooden cupboard, electrograph, three ceramic bowls, nine jars with red tops, and typeset).



Diagram Process_A9, different sizes, 1998-2011.

The process of creation or investigation is often more important than the result, or than the work, which can even not exist or act in absentia.

in our day, which is based on diluting the concepts of art and artist; or on the weakening of suppositions inherited from the Renaissance, like singularity, autonomy, creation, inspiration.

Fernando Gallo is one of the world's most disquieting conceptual artists today, not only in Mexico. He comes from the best theoretical strain, as shown by *Process A9*'s multiple references, the clarity of how this complex proposal is put forward. To look at it, it is a good idea to keep certain considerations in mind.

In contemporary art, very diverse positions co-exist in a field of dialogue. Regarding the conceptual, it seeks the creation of a work of art with a discourse and not only—or not necessarily—an object (painting, sculpture, engraving) as its starting point. It is not like in modern art, in which a painting, for example, speaks for itself. On the contrary, in the conceptual line, the discourse is the protagonist, the ideas found in

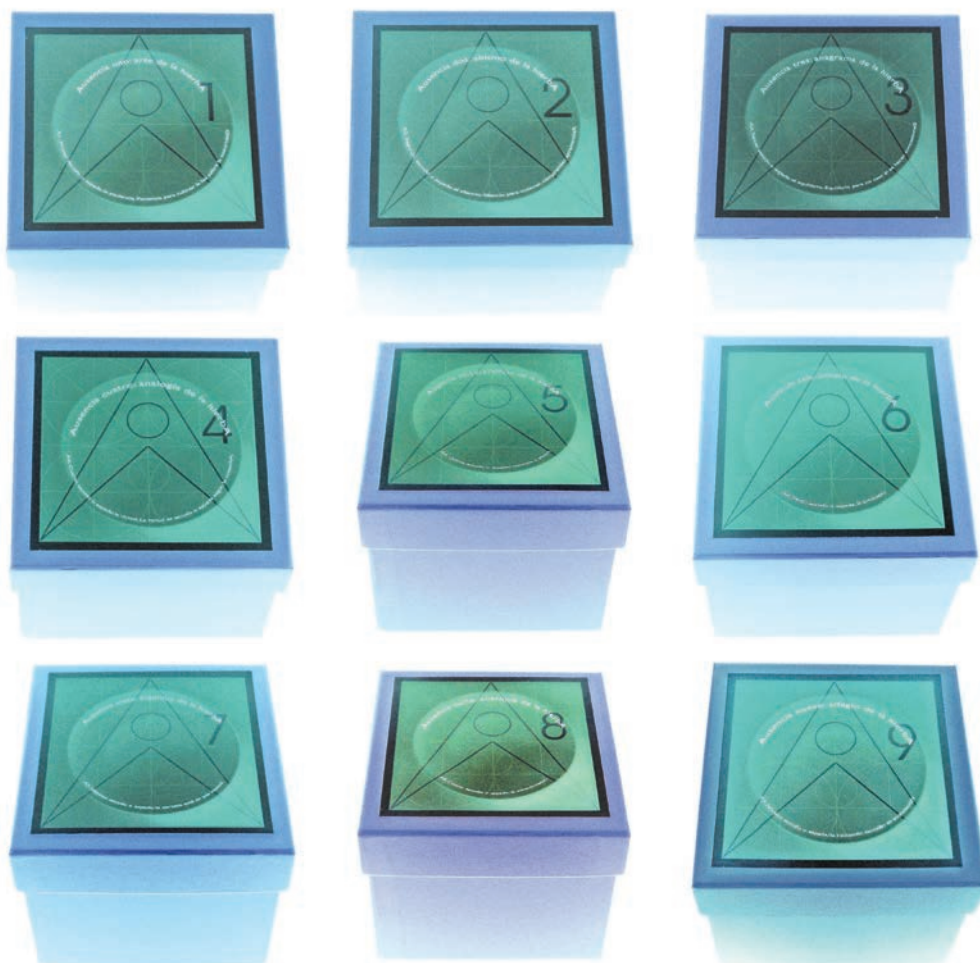
their “gaseous state,” as Yves Michaux says. The process of creation or investigation is often more important than the result, or than the work, which can even not exist or act in absentia. The work is the process, as happens to a great extent with *A9*. In addition, the design work can sustain the conceptual and formal proposition, thus vindicating *disegno* as art for generating ideas, and in the same way, profound distances and differences can be underlined about the art involved with the aesthetic and the beautiful, with visual art's expressiveness, with the content accessible to the majorities (in conceptual art they are often hermetic, polysemous, and polyvalent, as in this case), with immediate aesthetic pleasure, with emotionality.

Those of us who have seen *Process A9*—the author's shadow or the double of his absence, its creator would say—know that the artist has been able to avoid the dual trap Marcel Duchamp warned about in his silence: that of the

work of art and that of the artist's mask. A9 is a process oriented to reflecting about the crisis of the representation of Western culture, but it is important to point out that it is much more than an academic project: it is the road of an initiation in which a true artist is built and on which a true interlocutor can be built, not a "public" or a "viewer." As painter Ángel Orcajo comments in the explanation on the wall at the exhibition "A9 or How an Absence Is Haunting the West," open since September 14 at the Santo Domingo Cultural Center in Oaxaca,

Our author mentions in his *Manifiesto* the complete artists of the Renaissance. Some...work with gnoseological keys. We can follow the tracks of the *illuminati* or of other secret societies in the objects of their art...The initiation for this artist, who is halfway through his life and work, is the peak of the process, the key to his work.

A9 is a process of research and the production of texts, manifestos, poems, objects, sketches, designs, photographs, electrographs, paintings, videos, pieces in materials like cera-



Vicarial Receptacles of Process_A9, 1998-2011 (nine altered digital photographs).

PROCESS_A9, OR HOW AN ABSENCE HAUNTS THE WEST

A vicarial intervention in process, a possible itinerary based on absence. A process-work, situated between the virtual and the vicarial, launched publically *in situ* in the year 2000. A9 is made up of nine rooms, presences, or doubles of nine absences (ideal images of absent objects or vicarial interventions), occluded, placed in receptacles to be hidden in Argentina, Spain, and Mexico. proceso_A9.blogspot.com



Process_A9 Watch, different sizes, 2011
(altered digital photograph).



The Double of My Absence_One, (self-portrait),
different sizes, 2000 (altered digital photograph).



Grass Rack. Project of Rack, 2000 (ink and coffee on paper).

Those of us who have seen *Process A9* know that the artist has been able to avoid the dual trap Marcel Duchamp warned about in his silence: that of the work of art and that of the artist's mask. *A9* is a process oriented to reflecting about the crisis of the representation of Western culture.

mic, wood, stone, paper, glass, etc., that began in 1989, according to the premise “grass, maybe.” In that year, he made nine boxes related to grass —“Look for it,” wrote poet Eduardo Milán at the time, “like someone looking for an absent center”— that he intends to bury in Mexico, Argentina, and Spain, with a content we do not know and that determines the guiding absence of the process. Thus, the absence is present based on copies, replications, shadows, or sojourns that refer to it platonically.

What is presented at the Santo Domingo Cultural Center is the current state of *A9*, based on a large installation that also functions as an intervention, involving architectural and symbolic spaces and diverse viewers from Mexico, Argentina, Spain, Oaxaca, like Orcajo and Complutense University of Madrid scholar Rafael Alberto Pérez.



Living Room. Receptacle of Creation, Documentation, and Research for Process_ A9, carried out between September 1998 and September 2011. Vicarial Intervention In Situ, various sizes (acrylic, cardboard, wood, and glass containers; cupboard; notebooks; ceramic bowls; electrographs on paper; mirrors; photocopies; Polaroid photographs; lamp; art books; the artist's books; light; 1960 model Olivetti lettera 22 typewriter; table; music by John Cage; the novel 1525, o la intuición dorada [1525, or the Golden Intuition] [work in progress]; pigments; chairs; and videos).

It is very surprising to see the artist's studio, his living room, and that that ambience would be the heart of a work that unfolds in beautiful images charged with sensations and meanings. It is also surprising to note the attractive simplicity of the mysterious boxes to be buried, so in tune with the design unifying the whole, in which the colors white, black, red, and yellow rule, denoting an alchemistic discourse, as María Antonieta Marbán so rightly notes. Spanish painter Orcajo again tells us,

Each box, self-contained, uniform, numbered, mysterious, luminous, imperative, symbolic, marks a path to follow, like in goose pens. It is a place that takes to another place. It is an itinerary, or, as

the author says, a labyrinth. A riddle? It is curious that he closes up the grass of paradise in his boxes, as his secret... That is, the grass from a field of silence that resounds among the calls of many atavistic voices brought to this same point by the thread of an old story, as old as time. (The clock completes the log.) They are the voices of other heroes who have convened this dream of knowledge so the rite of art can be completed.

Years ago, I had in my possession one of the cases that hold A9. Different from the boxes designed to hold and be buried, I remember their impeccable design and manufacture, and a kind of aura that surrounded not the object as such, very attractive though it was, or the reproductions, but the project and the ideas. It reminded me of Marcel Duchamp's fascinating portable museum that the French artist made various replicas of to show his works in different places. In its 40x30 centimeters, it contained a real treasure of knowledge: from a rigorous genealogical reflection on conceptual art, to many diverse horizons of knowledge that Fernando Gallo has also journeyed through.

Like Duchamp, Gallo works on projects that take him long periods of reflection, research, and realization. His tem-

A son of Saturn, Gallo knows the ambiguity of the effects of this planet: fearful and at the same time propitious for creation.



Archival Receptacle Process_A9, different sizes, 1998-2011 (altered digital photograph).

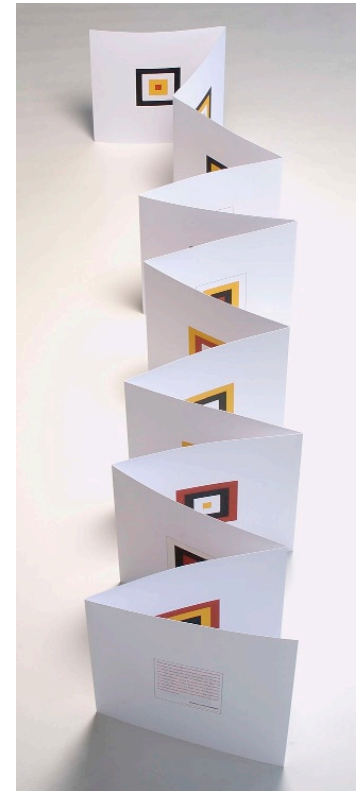
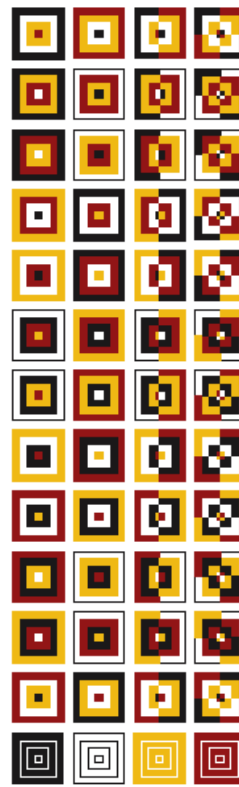
porality as an artist is to a great extent determined by qualities that require patience and maturation. In addition, his objects of study, which are at the same time a poetic motif, presuppose a real deepening of the knowledge based on transferring the Zapatista premise to art, by saying that “theory belongs to he/she who works it.”

In effect, as though he had proposed illuminating the intricate problems of this relationship, contributing not only about the *what*, but, above all, about the *way toward* establishing arboreal and rhizomatic connections, Gallo connects the thinking that comes from philosophical aesthetics with the artistic thinking distinguished from that heritage (the one that differentiates the aesthetic from the artistic, as Adolfo Sánchez Vázquez proposed), with contemporary French thought, with various theories of signification, with diverse poetics, with the discourse of several artists, among them,

His work celebrates the genealogy
of the artist, who becomes
modernist and then conceptual,
in the most disquieting of
his resurrections.



Pretext_Context_Post-text (detail), different sizes, 1998 (installation).

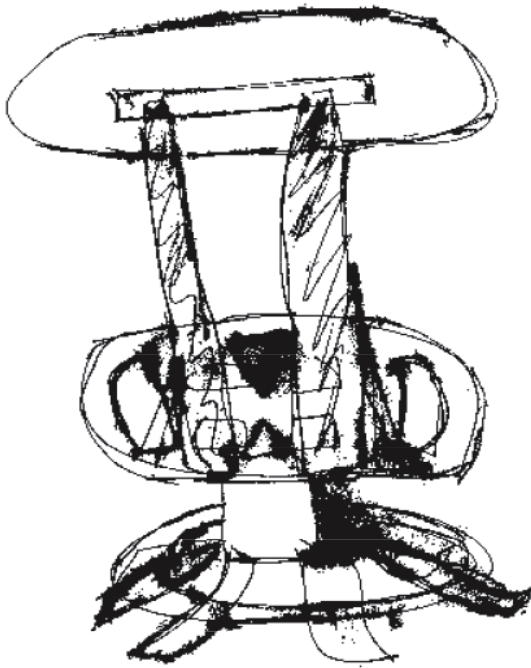


Labyrinthos Espolones Editores Codex, 390 x 30 cm, 240 grams, 2004
(electrography on opaline cardboard).

Duchamp, and with various fields of knowledge that require an initiation.

The map is as broad as it is precise and suggestive in its coordinates. He begins by recognizing his debt to the 1960s, when conceptual art began to be conceived, recognizing in its various tendencies the paternity of Duchamp, and which ends by melting into the artist’s original creation. Conceptual art that emerges from concepts. Above all, originality that originates in a man and truly original artist, who has easily dealt with the extremely difficult challenge of illustrating theories.

In knowing how to exist and be in silence, equilibrium, virtue, cadence, pause, intuition, certainty, knowledge, and initiation, the nine regimes that correspond to the nine presences of nine absent images that constitute the A9 process, Fernando Gallo has traced the initial route that resituates the Renaissance artist, as the exponents of romanticism did in their time; the mental artist imagined by Leonardo, capable of generating knowledge to the same degree as scientists.



Chair, 28 x 21.5 cm, 2000 (ink on paper).

A son of Saturn, Fernando Gallo knows about the ambiguity of the effects of the highest of the planets; fearful and at the same time propitious for creation. Armed with spurs, with shields and swords, with absences and theories, Gallo has journeyed through peaks and abysses, through cursed and ineffable forests, through indispensable blocks of sensations. He knows of the risks of working with the flammable material of art, but he also knows how to affirm lucidity, and with that, the possibility of being an independent artist today. He knows —let’s say it like this— how to journey through astrological corridors and build (“pact with Jupiter,” as the Renaissance men would say): give a transcendental dimension to artistic activity.

His work celebrates the aforementioned genealogy of the artist, who becomes modernist and then conceptual, in the most disquieting of his transformations (his resurrections). We know that that genealogy, of such noble legend, is in Fernando Gallo’s past, present, and future. It will also be in the art capable of emerging from his own absence, from his own shadow. **MM**



Fernando Gallo was born in Oaxaca, Mexico in 1959. He is visual artist, writer, editor, cultural empresario, designer, the founder and director since 2004 of Espolones Editores publishing house, and a founding member of the Iberoamerican Forum on Communications Strategies (FISEC), headquartered in

Madrid. He also founded and headed the cultural company Los Caprichos: imagen arte, headquartered in Mexico City from 1990 to 2003.

He has designed and coordinated art publications, including posters, catalogues, and books by renowned visual artists and poets like Martha Chapa, Eduardo Mitre, and Javier Barreiro. He has also given the courses Theory of Light and Color and The Hermeneutics of the Image, as well as workshops on electrography in Argentina, Spain, and Mexico.

Since 1984, he has participated in collective exhibitions in Argentina, Chile, Spain, the United States, Mexico, and Puerto Rico. In 1991, he created and coordinated the Memesis Project, the first folder of Ibero-American graphic art done in electrography.¹

His work has been chosen to show, among other events, in Mexico City’s Sixth Rufino Tamayo Biennial and the Fifth Diego Rivera Biennial (both in 1992) and at the University of Colorado’s Mexican Art: Images in the Age of Aids (1994). Some of his work has been included in permanent collections in Mexico (Oaxaca, Mexico City, Monterrey) and abroad (Argentina, Chile, Seville, and Cuenca, Spain). Since 2009, he has been living in the city of Oaxaca.²



Living Room. Receptacle of Creation, Documentation, and Research for Process_A9. Domina Chapel, Santo Domingo Cultural Center, Oaxaca, Mexico, from September 14 to November 13, 2011.

Notes

¹ Copy art, or electrography, an artistic genre within the discipline of engraving, began in the 1960s, and consists of producing series of or single graphic works using photocopies. [Editor’s Note.]

² For more information about Fernando Gallo, see <https://librodeartista.ning.com/profile/FernandoGallo>. [Editor’s Note.]

Men and Women Healers In Mexico's Indigenous Regions Today

For a culture to become a culture, a series of bases must be developed that bring cohesion to its life and structure day-to-day events. They are symbolic, that is, they are those highly significant questions that nourish and give form to a specific context. One way to approach that culture is to look at the knowledge about men and women indigenous traditional healers in Mexico through the descriptions of their practices. Even though they have a dynamic of social relations with other actors, in their context, they act according to their



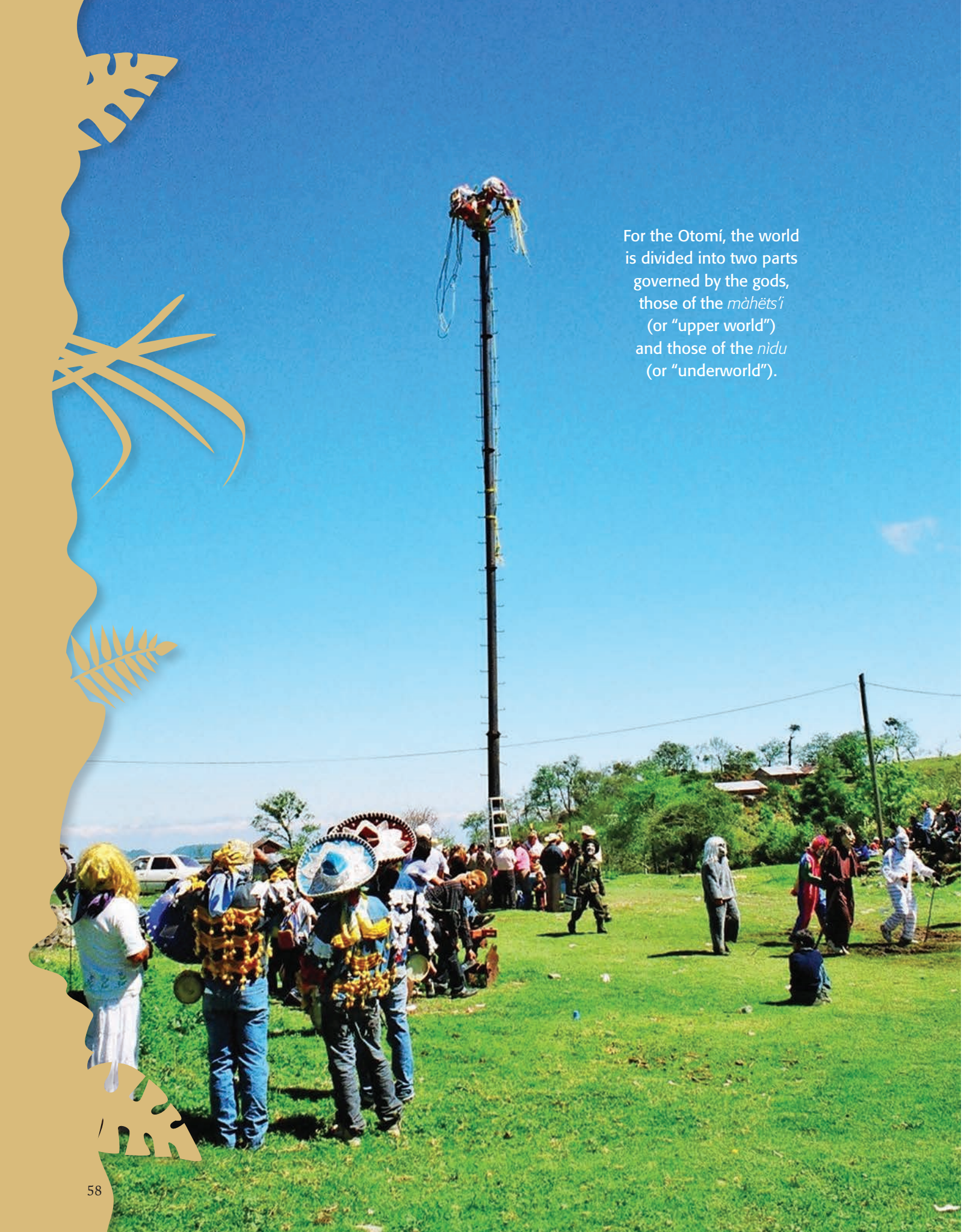
cultural patterns and in relation to other individuals; this is why the personality and recognition of the folk healer is clear to the extent that he or she reproduces the culture of his/her group. That is, the healer is the result of a specific cultural context.

Achieving health in their communities is not traditional healers' only objective. Their function includes offering the community other benefits. One is having knowledge of the cosmos and what inhabits it, as well as being the repository of knowledge of the body and its contents; for that very reason, the folk healer is the initiator of the rituals for establishing health among the population.

This is why we maintain that to be able to approach this topic, we must start from the practices themselves, and not from a pre-established theory. In the following pages, our aim is to show the reader the importance these specialists in healing and their rituals have in four ethnic groups in contemporary Mexico: the Yaqui of Sonora, the Tepehua of the Veracruz Huasteca region, the Nahuas of Puebla's Black Mountains, and the Otomí of Hidalgo's Eastern Mountains.

PATRICIA GALLARDO ARIAS





For the Otomí, the world is divided into two parts governed by the gods, those of the *màhëts'í* (or "upper world") and those of the *nìdu* (or "underworld").

Otomí Specialists from Hidalgo's Eastern Mountains¹

Patricia Gallardo Arias*



In the Otomí areas of the Tutotepec Mountains, healers acquire knowledge and prestige through a particular way of explaining the world: this relates to the gods, and the specialist is someone with the capacity to connect the living with the dead and use that communication to fix things so that life continues.

The inhabitants of this region live in extremely poor areas; their resources for staying healthy and dealing with illness are scant. For this reason, the Otomí continually seek support from their specialists to alleviate pain, treat disease, and explain the constant sudden deaths of children, young people, and adults. In this context, men and women healers are often the only ones who can deal with these and other concerns of daily life.

* Mexican historian doing research about Otomí rituals in the Hidalgo mountains, patriciagallardo1@hotmail.com.
Photos by Patricia Gallardo.



Doing the "cleansing".

For the Otomí, the world is divided into two parts governed by the gods, those of the *màhèts'i* (or "upper world") and those of the *nìdu* (or "underworld"). In this world view, men, women, and gods are inhabited by energies that flow and give them life. One of these is called *nzáki* ("life force") in Otomí. During rituals, whether to pray for rain, to cure a disease, to rid oneself of a curse, or for carnival, anthropomorphic paper figures cut out by the specialists are placed on the altars. For the Otomí, these "bodies" are the *nzáki* of the god, which is activated when the little holes made in the center open and the specialists speak to them in supplication, prayer, or simply chat with them (see left).

The specialists in charge of cutting the paper figures and speaking to the spirits of the gods are called *ya bādi* ("those who know") in Otomí, which, as the name implies, means that

The learning is on-going, and consolidating the knowledge requires rites of preparation and acceptance before the gods of the over-world and underworld.



Creating "life force."

they are men and women who know how to cure disease, speak the language of the gods (through the sounds of bells, whistles, stentorian breathing, and prayer-like speeches), and lead rituals. They are the ones who can explain and give a place to each thing, each element, each situation, each emotion, the ones who can give coherence to their acts and those of others in their two-part cosmos. But, above all, the *ya bādi* have an alliance and communicate with the spirits of the gods attributed with maintaining human life (see above).

Nevertheless, not all Otomí have access to persons of knowledge. To dedicate oneself to the life of ritual, particular skills, attitudes, and aptitudes are required. The transmission of knowledge among the *ya bādi* is a pragmatic issue in which both family and community intervene, in a kind of link that the healer who is just starting out establishes with his/her clientele, so that the *bādi'na's* ("that who knows") learning is always empirical.² On the one hand, it is acquired in the family. The father, mother, aunt, or grandmother teach-

es him/her each of the rules, steps, and ways that must be observed during the rituals. Also, one of his/her daughters or sons is chosen as a successor. Knowledge is also obtained by observing other specialists; that is, they acquire experiences during the rituals themselves.³

However, almost none of these specialists recognizes having gotten his/her knowledge from a relative. To explain this knowledge, they always refer to the “gift” (*yómféni*), or the ability they are born with and that manifests itself associated with illnesses they suffer during childhood and adolescence. This gift is revealed in a dream or when coming into direct contact with the spirits of the gods and “singing” during the rituals. As one specialist I interviewed said, “When you’re a healer, it’s part of your spirit, it’s part of your heart; when you’re little and you cry and cry, they’re going to make their life force to help you” (see below).⁴

The learning is on-going, and consolidating the knowledge requires rites of preparation and acceptance before the gods of the over-world and underworld. Among the Otomí, the initiation is linked to strengthening the *nzáki* and creating a link and an agreement with the gods. To that end, a ritual is held in which the spirits of the gods from the over- and underworld are called: the *bädi’na* cuts paper figures of the *nzáki* of 50 hills which will “be called,” and offerings will be made to them so they bestow their favors on the initiate and give him/her strength. Paper figures of the *nzáki* of the *Màká Tsíbi* (fire), the *Màká Dähí* (air), and the *Màká Déhe* (water) will also be cut. In addition, paper figures of “the life force” of the initiate, consisting of 12 eagles and 12 tigers, the animals that will accompany him/her will be cut out, and then “planted” in a tree. For *Zithü* and the underworld, the world of the dead, a great cleansing is carried out so that “the evil one” also offers its protection to the initiate.

The ritual requires the participation of two little boys and two little girls, who will be the only ones who can touch the water in the gourds placed on the altar because they are “new.”



Speaking with the spirits of the gods.

Almost none of these specialists recognizes having gotten his/her knowledge from a relative. To explain this knowledge, they always refer to the “gift” (*yómféni*).

This ritual involves offerings of food, wax, and flowers, and the sacrifice of birds. This is the way the gods “are invited” to participate in the initiation of the *bädi'na*. At the end, the initiate is given the instruments with which he or she will begin to work: scissors for cutting paper figures, a baton to lead the rituals with, and pre-Hispanic clay figurines that will accompany him/her and give him/her strength for the ritual life. These are the materials of each specialist's prestige: the more figurines the *bädi'na* has, the more powerful he/ she will be (see photo below, upper right).

The explanation of the knowledge and power of the *ya bädi* is linked to the body and its components, among which the *nzáki*, or life force, is a fundamental part. It is said that it is a form of energy that runs out, weakens, strengthens, and is distributed throughout the body. When the person gets old and becomes ill, the *nzáki* weakens and when the person dies, it leaves the body.⁵ Some people may have a stronger *nzáki* than others, as is the case with the *bädi'na* who is attributed with a more potent *nzáki* than that of the rest of the population; for this very reason, he/she shares his/her life force with his/her patients. Both the gods and the *ya bädi* are capable of manipulating their *nzáki* and letting it flow to injure other people or to send it to care for and protect their patients and ritual relatives (see photo below, lower right).⁶



Initiation ritual.

Among the Otomí, the initiation is linked to strengthening the *nzáki* (“life force”) and creating an agreement with the gods.



The offering for the gods of the underworld.



The ritual.

Everything indicates that among the Otomí, the knowledge and power derived from prestige of the *ya bādi* are explained in the intensity of the *nzāki* and their ability to channel it to balance and foster a favorable outcome, so that the *bādi'na* has to assume his/her role as a specialist. This means that his/her effectiveness lies in having a fortunate experience when undertaking an encounter with the spirits of the gods during the ritual. In the eyes of the spectators and the community, this is what gives him/her value, a position, and importance, the aim of which will be to maintain and strengthen the alliance with the gods (see photo above). **MM**

NOTES

¹This article is the product of the fieldwork I have been doing since October 2006 in the state of Hidalgo among the Otomí of San Bartolo Tutotepec and two communities in Huehuetla. Among the Otomí, I have worked particularly with the inhabitants of Pie del Cerro, El Kandehe, San Miguel, Pueblo Nuevo, El Encinal, Tutotepec, Xuchitlán, El Mavodo, San Juan, San Jerónimo, El Veinte, San Andrés, Chicamole, La Huahua, El Nandho, El Jovi6n, and El Progreso. In Huehuetla, I have worked with healers from San Ambrosio and San Francisco.

²In the San Bartolo Tutotepec variety of Otomí, the plural is indicated with *ya* and the singular with *na* as a suffix. Thus, the word *bādi'na* would be translated as “he who knows,” and *ya bādi* would be translated as “those who know.” In this article, I have used the Otomí word to refer to these specialists to show in more detail how they are understood: men and women who know of the rituals, of the myths, of the “custom,” in addition to healing.

³In other regions, like the Huasteca, healers also learn through technical instruction from a person or an institution, through books of herbal medicine and esotericism, and by attending courses organized by government institutions like the National Commission for the Development of Indigenous Peoples (CDI). In the case of the Otomí, these kinds of institutional relationships have not been developed; what is more, in the San Bartolo Municipality, the healers do not refer to themselves or their work as that of “traditional doctors,” since that term was first used by the CDI’s predecessor, the National Indigenist Institute (INI).

⁴Here, the speaker means that the healer will “make the life force” by cutting paper figures of it to use in the ritual to help the patient.

⁵As James Dow explains it, “The life force of beings is called *zaki*....However, *zaki* is not a complete personality; it is only the vital essence that makes up a personality. This is indicated in the translation which is ‘life force,’ and not ‘anima’ or ‘soul.’ *Zaki* is an element of the personality that goes beyond the conscious being. A person who is discouraged has lost his/her *zaki*. He/she will become ill because he/she has lost what allows him/her to deal with the challenges of life; this is why the aim of many healing ceremonies is to restore the patient’s *zaki*.” James Dow, *Santos y supervivencias*, Presencias Collection (Mexico City: INI/Conaculta, 1990), p. 95.

⁶As Jacques Galinier explains it, “The *nzahki*’s very volatility makes it possible to direct it in the opposite direction toward the person manipulating it. The increase in the quantity of energy that circulates among humans produces an imbalance, usually a thermodynamic imbalance, as an excess of heat or of cold....The ambivalent character of the *nzahki* explains why the shaman is seen as a privileged actor, capable of preserving the lives of men (because of his/her healing role) or of taking them, manipulating the same paraphernalia, ‘speaking’ with the same entities of nature, the pillars of energy. All the work of the *bādi'na*, ‘he/she who knows,’ consists of deploying this energy from a pole that generates it toward a patient or a victim.” Jacques Galinier, “Equilibrio y desequilibrio en el cosmos. Concepciones de los otomíes orientales” (Mexico City: unpublished manuscript, 2007), p. 2.

The Eastern Tepehua Shamans Traditional Healers and Diviners Who Make Women and Old Men

Carlos Guadalupe Heiras Rodríguez*



To begin the "custom," the shaman puts the paper dolls on the altar.
Pisaflores, Ixhuatlán de Madero municipality, state of Veracruz.

Like other Native American practices, the ritual cycle of the Eastern Tepehua from northern Veracruz follows the corn-based agricultural calendar, articulating times that alternate according to the different categories of the dead with whom the living relate.¹ Planting time, the moment when the first seedlings burst forth, and the harvest are marked in rites led by different specialists, with ritual participants from households, from neighborhoods, or from the community as a whole. Nevertheless, not all Tepehua rites are directly linked to the pro-

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duction of the Mesoamerican grain; some are completely unrelated. There are rites that, although anchored in the annual ritual cycle, appear in the Catholic ritual, and, instead of referring to peasants and corn fields, make saints their central reference points. There are also therapeutic rituals, and others belonging to the cycle of life. And finally, there are rites derived from the community's civic and political activity, and those which, in the same way, link the local with all three levels of government (municipal, state, and federal).

Among the various kinds of Tepehua rituals, shamans are specialists in the agricultural, therapeutic, and cycle-of-life rituals (called "customs" or *Jalakitúntin*), always preceded by a cleansing ritual (*Katalakapaáú*). These "cleansings" have what we could call a standardized protocol, in the sense that they almost always tend to be the same, regardless of the kind of "custom" that follows. The "cleansing" takes place in the patio



As part of a "cleansing," the shaman sacrifices a young chicken on the head of a young migrant to favor a good journey that he will begin the next day to Tamaulipas. San Pedro Tziltzacuapan, Ixhuatlán de Madero municipality, state of Veracruz.

Among the various kinds of Tepehua rituals, shamans are specialists in the agricultural, therapeutic, and cycle-of-life rituals (called "customs" or *Jalakitúntin*), always preceded by a "cleansing" ritual (*Katalakapaáú*).



To begin the "cleansing," the shaman puts a floral offering on the paper dolls. San Pedro Tziltzacuapan, Ixhuatlán de Madero municipality, state of Veracruz.

Although they follow a generic protocol that almost always runs through the night until after the sun has come up in the East, the "customs" are more varied than the cleansings, which vary according to the type of "custom."

of the house or oratory where the shaman's rite is carried out, frequently from midday until a little before or after sundown.

It has four objectives: first, to clean everything and everyone who participates in the ritual. Women shamans "bathe" the participants with soap, water, drinking alcohol, and a cloth, while the participants "bathe" the shamans and all the ritual paraphernalia; some shamans also "sweep" the participants with a chicken. The second objective is to offer food to the "spirits of the Earth"; for this, the women shamans bind together tree bark to make bodies. The third objective is to chase the "evil air," the pathogenic spirits of those who were murdered or died in an accident, in "misfortune," out of the human space. To do that, the male shaman passes out cut paper bodies to those beings who otherwise would be incorporeal. Once they have become corporeal on the patio floor, the male shaman offers the bad airs an offering of food, only to expel them immediately after. The fourth objective is "to raise the shadow," that is, the souls of the participants in the rite, so that the women shamans take them from the patio into the building where the "custom" will be carried out.

Although they follow a generic protocol that almost always runs through the night until after the sun has come up in the East, the "customs," are more varied than the "cleansings," which vary according to the type of

"custom." Thus, among the community and agricultural "big customs" (*Kadinináu*), the "corn custom," carried out from September 15 to 16, is characterized by the simulation of building a corn field among whose stalks the participants dance. On December 31, the "custom of the Christ Child" is characterized by rocking the image of the rising sun. Among the "concerts" (*Tamá'ošamišín*), which are therapeutic "customs," emblematic of the "concert of the living" is a discussion among a patient's living relatives to discover the cause of his/her illness. In the "concert of the dead," a pair of humans loan their bodies to the souls of the dead relatives who have caused the illness, so that the ill survivor can make them an offering and ask their forgiveness by address and waiting on the bodies of the living. Among the "customs" of the cycle of life, the "bath of the dead" (*Łáti Paškán*) includes as its ritual episodes a series of passages through a rattan ring that the mourners/survivors are brushed with, plus baths in a spring. The "promises" (*Katánit*) are unique because of the repeated baths the participants give the shaman, who offers thanks for the divine gift of being able to officiate at the rituals.

In all the "customs," in addition to these varied rituals, the male shamans cut dolls out of paper (*jalasítnit*), and the women shamans tie dolls made of bark (*talaksín*, or "that which is tied"),² with the aim of giving a body to the spirits of the Earth, the celestial spirits of the living (the "stars," the alter ego of human beings), and to the spirits who are the true owners of the plants cultivated by man. With these spirits thus embodied, the shamans and ritual participants make an offering of food and, above all, of the sacrificial blood of barnyard fowl.

As they perform the “cleansings” and the “customs,” the Tepehua shamans carry out a wide variety of ritual activities in which the sexual division of labor plays an important part. Although a minor shaman rite can be carried out by a single ritual specialist, for optimum conditions a man and a woman shaman, or—even better—two women are required to guide it; this is particularly imperative when they are major “cleansings” and “customs.” Shamans are specialists of the ritual word they offer to the very different beings they relate to in the name of the human community, which makes them the heirs to an ancient Native American poetic tradition. They are true cosmic diplomats who intervene in two different kinds of social orders making it possible to connect with beings who often relate in ways that we could call unharmonious that humans not to tend notice until their consequences make themselves evident. Some Tepehua shamans recognize having received their knowledge directly from the divinities who told them of their designs through dreams in which they announced the gift that allows them to officiate in Amerindian rites. It is true, however that some women shamans began their work as midwives when faced with the urgency of the call from a woman in labor, who rightly recognized in them hints of their shaman vocation. And it happens that, in effect, among the eastern Tepehuas of San Pedro Tziltzacuapan, all the midwives are shamans, and all the shamans are midwives. In the Tepehua language they are *haat'akuunú?*, “she/he who makes women.”³ The state of our research does not allow us to affirm what women she makes; we can imagine that the midwife makes a woman out of the woman in labor; the woman in labor becomes a full woman. The midwife is also called *mayúcan yumaustayanín has'adán*, which our Tepehua friends translate as “she who raises the bed” in which the woman gave birth; linguist Albert Davletshin uses the translation “she/he who raises children to a vertical position.”⁴

Some Tepehua shamans recognize having received their knowledge directly from the divinities who told them of their designs through dreams in which they announced the gift.



To finish the “concert of the dead,” the shaman “signs” the bundles of bark with the blood of the sacrificed bird. El Tepetate, Ixhuatlán de Madero municipality, state of Veracruz.



Shamans are specialists of the ritual word they offer to the very different beings they relate to in the name of the human community, which makes them the heirs to an ancient Native American poetic tradition.

Shamans are health specialists; for this reason they are called “healers.” They are also called “diviners” because of their ability to recognize in the reflections of crystals or the movement of smoke produced by burning copal the signs of a future to come or a past to be revealed. In San Pedro Tziltzacuapan, where there are neither herbal experts nor bone-setters, the healer and the diviner are never confused with one who prays or the catechist, much less with a pastor or a Catholic or Orthodox priest, whose fields of ritual specialization are different. Both men and women Eastern Tepehua shamans, the performers of the “cleansing” and “custom” rites, knowledgeable in the rhetorical Amerindian arts, use dreams to communicate exceptionally with the divinities, are familiar with agricultural times, and manipulate the “seeing” time. They are true accountants of the sacred to the extent that a fundamental trait of their techniques of embodiment



To begin the “cleansing,” the shaman places a floral offering on the paper figures.
El Tepetate, Ixhuatlán de Madero municipality, state of Veracruz.



To finish the “promise,” the two women shamans, each at her respective altar, gather the offering to then pour the sacrificial fowl blood on the bundles of bark. San Pedro Tziltzacuapan, Ixhuatlán de Madero municipality, state of Veracruz.

involves the number of bodies they construct and the counted nature of the offerings and sacrifices they orchestrate. But, above all, they are constructors of bodies. Embodied in paper or in bark, cutting or tying anthropomorphic fetishes, by giving a body to beings who have none and who only with a body can relate in a controlled way with humans, the Tepehua men and women shamans update an art of memory that makes it possible to make the invisible visible, giving it a body, expression, and solution to illness, to the demands of the peasant form of production, and to the life crises of the human condition. Building bodies for non-human beings, the Tepehua shamans make human bodies and the souls that inhabit them viable. And perhaps this is what the Tepehua term for male shamans alludes to: *hapupaaná*, *hapupa?aná* or *haapapaaná?*, “he who makes old men/grandfathers.”⁵ ■■■

Shamans are also called “diviners” because of their ability to recognize in the reflections of crystals, or the movement of smoke produced by burning copal, the signs of a future to come or a past to be revealed.

NOTES

¹ This article will refer to Tepehua communities in Veracruz, but the Tepehua people also inhabit parts of the states of Hidalgo and Puebla.

² Alain Ichon, *La religión de los totonacas de la sierra*, José Arenas, trans., SEP/INI Collection no. 16 (Mexico City: SEP-INI, 1973 [1969]), p. 269.

³ Albert Davletshin, “Notas etimológicas sobre algunos términos religiosos en el tepehua de Pisa Flores,” unpublished text, 2009.

⁴ This information is from personal communication with Albert Davletshin in 2010.

⁵ Albert Davletshin, op. cit.

Traditional Nahua Therapy

Knowing How to See, to Dream, and to Speak

Laura Romero*





The world is a fabric of both reciprocal and rapacious relations between the human domain and that of the Lord of the Mountain. They are permanently tied together, as when the men go out to harvest and cultivate corn, and during therapeutic rituals.



Don Ernesto (above), invoking the presence of non-human entities. Don Pedro (right), diagnosing with an egg.

For the Nahuas of the Sierra Negra (Black Mountains), human beings are just one more creature inhabiting the universe.¹ This extremely complex creature is part of a network of relationships established from the dawn of time among the pantheon of Catholic divinities (saints, virgins, and Christs), the Lord of the Mountain, the Siren, goblins or elves, and the dead, among others. For this reason, the Nahua environment is thought of as a series of overlapping domains, each of which demands a particular kind of behavior.

Thus, the human domain, located fundamentally in the town, is ruled by specific culinary practices (the consumption of maize, salt, and chili peppers) and kinship relations determined by *compadrazgo*,² and the prohibition of incest. In the town, patron saints and the dead cohabit, wandering through the night, in dreams, or during the celebration of All Saint's Day in late October and early November.

Outside the inhabited part of the town is the domain of the Lord of the Mountain (Tepechane, in Nahuatl), master of wild animals and all the goods housed in the immensity of the virgin forest that is the ecosystem of the lower part of the Sierra Negra. There, together with his consort, the Siren (Achane), who in her femininity controls and surveys all the goods of the rivers and springs, he regulates the relations between Man and the forest. The goblins or elves (called *mendez* in Nahuatl), the workers of these places, also live there.

The world is a fabric of both reciprocal and rapacious relations. Both domains are permanently tied together in day-to-day living; for example, when the men go out to harvest and cultivate corn, and, on special occasions, such as during therapeutic rituals. In this sense, illness (*kokolistli*) is the result not only of a biological but also a social maladjustment; it is the reflection of in-harmonious relations between humans and their surroundings.

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Photos by Laura Romero.
Opposite page: Traditional Nahua house.

Among the Nahua, illness is thought of as a function of its causes. This is not superstitious thinking attributable to an archaic society; on the contrary, the Nahua notion of illness is part of a specific way of being and looking at the world, which has incorporated the categories of allopathic medicine with which the inhabitants of the Sierra Negra co-exist.³ So, traditional therapeutic practices include not only the use of herbs, copal, or the images of saints, but also aspirin, injections, vaccinations, etc. It all depends on the elements that have become imbalanced in the person who is ill.

In this sense, the overall symptoms are interpreted in light of the local etiology, and decoded by the ritual specialists, the *ixtlamatkeh*, men and women who know how to see, dream, and speak. In the eyes of the ritual specialist, the sick body becomes a text that must not only be read, but interpreted. Thus, when speaking of the importance of traditional healers, we must take into account three extremely significant aspects: first, the marginalization in which the indigenous peoples live; second, the lack of access to state health services; and third, the cultural aspect, which makes sense of these practices. That is, we can think that the presence of traditional healing is precisely the result of cultural diversity. However we must also recognize that traditional healers or doctors—as people tend to call them— fulfill a fundamental role as co-creators of the well-being of the inhabitants of the communities where they live.

THE HEALING RITUAL

The first step of a cure consists of determining the origin of the illness: “cleansing” the patient means rubbing his/her whole body with a pair of eggs, one at a time, and at the same time



Healers like Don Juan (here with his grandchildren) provide health care in communities where government services fall short.



The old tower.

Traditional therapeutic practices include not only the use of herbs, copal, or the images of saints, but also aspirin, injections, vaccinations, etc.

exhorting the Catholic divinities and the gods of the Earth to lend their aid to determine the reason for the illness. Once this has been done, the eggs are broken, and their contents poured into a glass half full of water. There, the healer can see—and this is where the importance of knowing how to see comes in—what or who has caused the illness. Depending on this diagnosis, the *ixtamatki* will report whether it is a disease that requires a doctor, thus referring to a condition that would not come under his/her area of competency (that of “natural” causes), and thus just a physical imbalance that the allopathic doctor could treat.

However, when it is a matter of envy, evil eye, or fright, things change. The first two are the result of conflictive social relations with relatives or neighbors that will be regulated using simple procedures like wearing red ribbons, sprinkling holy water, etc. In the case of a fright, the procedure will be to get in the middle of a negotiation with the so-called “Dueños” (masters), Tlalokan Teta and Tlalokan Tena (the Lord and Lady of Tlalokan), an esoteric name given to the Lord of the Mountain and the Siren in their ritual contexts. A fright is a very frequent illness among mountain inhabitants, and many other indigenous and peasant populations throughout the country. It basically implies the loss of one of the animate elements that make up the human being, the *tonal*.

The *tonal*, in contrast with the soul-heart (*toanima*) that all living beings have, is a quality exclusive to human beings. It is a subtle, ethereal, multiple, and relatively entity, since it leaves the body when it is in a horizontal position—at death, in dreams, during coitus, and during falls—or as the result of being very distressed, thus causing an sharp intake of breath and the exit of the *tonal* when the person exhales. At that moment, the *tonal*, which gives the human being his/her capacity for thinking and acting as such, is trapped and imprisoned by the entities that live in the non-human space. Recovering it implies an exchange, which

To understand the importance of traditional healers, we must take into account three extremely significant aspects: the marginalization of indigenous peoples, the lack of access to state health services; and their cultures.



Nahua woman and children.

must be achieved through the intermediation of the therapist, who, through his/her knowing how to dream and to speak, accomplishes the trade.

Given the continuity between dreaming and wakefulness, actions in one directly affect the other. Dreaming is not conceived of as a form of rest, but as a different way of being and being in the world, one in which the actions of the *tonal* are carried out. However, during his/her dreams and thanks to the gift (*iixtamalachilis*) the *ixtamatki* acts intentionally, not randomly like the rest of humans. His/her *tonal* goes to the places where during the diagnosis, he/she has been able to locate the lost entity; in addition, if necessary, he/she must fight against the negative forces that have taken control of this very valuable component of the human being.

Once the place the loss happened or the agent of the theft is located, the *ixtamatki* must speak for the patient, trying to convince those entities that they should exchange the *tonal* for copal, eggs, chickens, candles, and flowers, which all together make up a ritual offering called a *tlapatkayotl*, or “its substitute.” The masters will act in accordance with the *ixtamatki*’s capacity for speaking, which he/she has developed throughout childhood, while dreaming, or while accompanying his/her grandparents or parents, also healers, to do the work God had given them.

The *ixtamatki* are men or women who can do things and know things that others cannot and do not. As a result of the initiation to which they are subjected to be able to carry out therapeutic practices, they are recognized by the rest of the people in the world as a voice of authority. Through their knowledge, they call on and evoke the entities to the home of the patient where, in the presence of Catholic images, the therapeutic process is carried out, from the prognosis to the reintegration of the soul. However, we must be certain that the cultural differences in treating and understanding the disease are part of very different ways not only of seeing the world, but of being in it.



Offering to the Dead.

THE PLACE OF TRADITIONAL MEDICINE

In Mexico, more and more people are seeking the legalization of traditional medicine as an alternative; and for indigenous peoples, it is very often their only option. Indigenous medicine covers the spaces that the state has not been able to cover with health care, and, above all, it correlates to a way of conceiving of one's own body, surroundings, and the role the human being plays as one more subject in a world populated with intentions.

Traditional medicine is not only the result of a long historical and cultural process; it is also a real, tangible way of treating disease. It is so real that for many years, and even today, it is the only way that lives can be saved in the remote communities of Puebla's Sierra Negra. **MM**

NOTES

¹ The Sierra Negra region, located in the southeastern part of the state of Puebla, consists of nine municipalities: Ajalpan, Coxcatlán, Coyomeapan, Eloxochitlán, Nicolás Bravo, San Sebastián Tlacotepec, San Sebastián Zinacatepec, Vicente Guerrero, and Zoquitlán. The population is mainly made up of groups of Nahua, who share the territory along the border with Oaxaca with Mazatec communities. The ethnographical data presented in this article have been obtained mainly from the municipality of San Sebastián Tlacotepec beginning in 2002. In this case, interest centers on unraveling the cultural specificities of the therapeutic activities of the *ixtlamatkeh*, or "those who know," specialists in the rituals of the Nahua area of the Sierra Negra in the state of Puebla.

² The complex, institutionalized network of relationships of solidarity and loyalties, traditionally based on the links among godparents and parents, but extending much further than that. [Translator's Note.]

³ Mexico owes its cultural wealth to what it has inherited from its first peoples. Today, of the 112 million inhabitants registered in the 2010 census, approximately 10 million are speakers of one of the 364 varieties of the more than 60 languages spoken in Mexico. However, this variety has fundamentally meant that it is practically impossible to give every Mexican —much less every indigenous person— decent health services. The Commission for the Development of the Indigenous Peoples (CDI) estimates that six out of every 10 indigenous persons live in a highly or very highly marginalized rural or urban region.





The Flower Body¹

María Eugenia Olavarria*
Cristina Aguilar**
Erica Merino***

The *hitebi*, or “traditional healer” in the Yoeme language,² is the person who heals, who has received from God and other protecting entities like virgins and saints the gift of healing. This gift can manifest itself through dreams or experiences in which those entities or the *hitebi*’s relatives confer on him/her the status of healer.

The universe of Yoeme traditional healing is preserved mostly by women, that is, inhabitants of the towns of Cócorit, Tajimaroa, Vicam Estación, and Loma de Guamúchil in Mexico’s northern state of Sonora.

In Yaqui communities at least three different healing traditions co-exist: allopathic medicine, Trinity-based Marianist spiritualism, and traditional healing. However, the latter constitutes a stock of knowledge about the human body, conception, and the cycle of life, passed down for generations, from the pre-Hispanic Yaqui past, the Jesuit Catholic evangelization, and, in some cases, Western biomedical system.

Yaqui theory about the body involves an entire set of notions, concepts, and representations revolving around the person’s image and attributes, gifts from God, from the deer, and from ancestors and relatives, as well as the recompense the individual must offer, expressed in rites.

It is said that in ancient times, bamboo spoke and said, “There will be men and women healers and I am going to help them; I am, so you know me, bamboo; I am going to help the people who have hemorrhages with my work.” This is why they say medicine was born when bamboo spoke.



Yaqui girl.
The deer is the master
of the flower.

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Photos by Cristina Aguilar Rivas.



Yaqui healers have the ability to leave their bodies and cure from afar.

In Yaqui communities at least three different healing traditions co-exist: allopathic medicine, Trinity-based Marianist spiritualism, and traditional healing.

The same thing happens with certain animals and the products made from them. When God made the world, he also made roosters and hens to sing to the Christ Child. They were all there: basil, common rue, the rooster, the hen, and the healer. That is why when the Christ Child was born, so was the egg.

The body of a Yoeme has a physical foundation, *takaa*, and two God-given properties that animate him/her: one common to all beings called *güepul jiapsi*, or “soul” or “spirit,” and another that is possessed only by certain individuals, the *sea takaa*, or “flower body.” The person’s life and health depend on the characteristics of each of these, and the balance between them and the *takaa*.

In this sense, the *takaa* is the material part; it is the organic, visible and tangible entity with skeletal, nervous, and muscular systems from which fluids and secretions, sounds, smells, and humors emanate, and by definition, is sexualized. Being sexualized is not exclusive to the *takaa*: the sun, *taa’a*, is a man, and behind him is God. The sun is a man and the moon, a woman, that is *jamut*, “mother moon” or *mala mecha* in Yaqui. The sun is the father of all men, and the moon is the mother of all women. The moon is Holy Mary, and the sun is Apo Señor, the Lord.

Man and the sun are strongly connected; even when a man is going to fight, he says with wrath, with hatred, “Tomorrow the sun will come up stronger, blazing strong.” This is what men say when they have problems with other men to show they are stronger than their foes.

The soul or spirit, *güepul jiapsi*, is the air God gave to Man. When he created the world, he made a pair of monkeys out of clay, one white and the other brown; he blew into them and gave them life; in this way, he gave men the spirit that is the Holy Spirit. We have this spirit on the left, in the heart. The *güepul jiapsi* is the strength of the heart; it gives understanding and reason; it can exit during sleep, leaving the body at rest, but when it abandons it definitively, the *takaa* (physical body) dies because it is only a temporary abode for the *güepul jiapsi*. The spirit then continues in an existence that depends to a large extent on the activities and behavior the person had in life: it can go to the glory of God or do penance.

The *sea takaa*, or “flower body” is the dual spirit that only certain individuals such as healers, dancers, and musicians have. When a Yoeme has *sea takaa*, it is said that he/she has two spirits and a gift from God. Whoever does not have this is considered *kia polobe*, a “poor little thing.” This property is manifested corporeally in different ways: it can be through white blotches on the nails,



Pascola mask. Pascola mediates between Jesus and the devil.



Pascola and deer dancer and his wife.

There is an angel who helps healers. When they see a sick person, suddenly they say, "Take this," and the person gets well. It is as though they received a message about what they have to do.

called *sutum sewa* or "flowers of the spirit"; or it can be when the individual, instead of just having one cowlick on his/her scalp, has two or more, usually on either side of the nape of the neck.

At the same time, the healer find their link to the ancestors who gave them the gift and with their patron saint, Saint Ramos. One of these healers says, "At the age of seven, I started with my nana; she had sores and was lying on a straw mat. I said to her, 'I'm going to cure you.' [She answered] 'No; you're just a little girl. How are you going to cure me?' [Then] she lay down; she covered herself with a little cloth and went to sleep. I went up to her and I could see that a worm that was eating her flesh was sticking out of her sore. I grabbed the worm. She woke up and I said to her, 'Look, nana, what was inside you!' Then I took it to my mama and told her, 'Look, mama, what I took out of nana.' 'Oh, you're making it up!' She didn't believe me, and I said to her, 'You go over there and look at her and you'll see.' She went over to nana and saw that I wasn't lying, so she said to me, 'Maybe you're going to be a healer.'"

Being a healer is something the Creator himself chooses. There is an angel who helps healers. When they see a sick person, suddenly they say, "Take this," and the person gets well. It is as though they received a message about what they have to do. They look at plants in a special way, not like everyone else. Their gift can come through a dream or in the midst of strange events, and that is when these people realize they can heal.

Healers and plants come into contact through a genealogical chain that in most cases is expressed in dreams, and, less frequently, through visions when they are awake (this mostly happens to the elderly). One of them commented once, "I dreamed about seeds with little legs that completely covered my face; they didn't frighten me because I knew they were medicinal plants revealing themselves to me. I almost always had this dream. This also happened to my *mamá grande* [grandmother]; she also had the same dream. After the dream I began healing my children because God had already given me this gift."

Healers also have the ability, and in a certain sense, the obligation, of transmitting that same gift through the act of healing. "I cannot stop being a healer," said one interviewee, "because if I stop, I will die. God has given me this gift, this work of curing people, and if I leave it, then my God will take me. 'If you're not going to work, then, let's go,' he'll say to me, and I don't want to go because I'm very happy with my patients."

They enter into communication both with God and with the plants, like the case of the stone flower, a messenger from God who, they say, aids in deciding to treat or refuse a patient. The Yoeme

healer manipulates the polarities of the body through physical contact, her management of space, prayer, and the invocation of her supernatural helpers, the saints and the Virgin. For her, the human body is inscribed in a hierarchical polarity that creates two axes, one vertical and the other horizontal. Using the navel, *siiku*, as a reference, differentiated values are located: right (*batataza*), up (*jikat*), forward (*bat*), related to the east, or life; on the other side, the left (*micoi*), down (*betukuni*) and behind (*amau*), related to the west, or death. Thus, a healer's altar must face the place where the sun rises because that is where light is born and there is life. It must not face the west because that means death. These positions are related to the way in which people are buried: the head must be facing east, and the feet, west, "because they must walk with the sun, from the time they are born until they die."

When a person recognizes him- or herself as a healer, the saints and virgins, prayers, medicinal plants, incense burner, water, the egg, and the candle light can be replaced by his/her hands. Everything that constitutes the shrine and the altar is found in the body of the healer: the healer is the temple, the center. And for that reason, they say, we must follow the paths of God, regardless of whether we go to mass or not. The important thing is to do things right. The body is the church; every part has a task; the healer protects it with medicinal plants, and with the protector who is Jesus Christ. ■■

NOTES

¹ Information for this article is from María Eugenia Olavarría, Cristina Aguilar, and Érica Merino, *El cuerpo flor. Etnografía de una noción yoeme*, Las ciencias sociales Collection (Mexico City: Miguel Ángel Porrúa/UAM, 2009). This book was written with the support of the National Science and Technology Council (Conacyt) for the project "Kinship, Body, and Reproduction. Representations and Cultural Contents in the Context of Contemporary Mexico," directed by María Eugenia Olavarría.

² The term *yoeme* is the generic ethnic name for Yaquis and Mayos; the Yaqui language variant uses *yoeme* for the singular and *yoemem* for the plural. In this text, we use the terms Yaqui and Yoeme synonymously.



Chapayeca mask,
used during Lent and Holy Week.

A Women's History Museum in Mexico

Patricia Galeana*



Mar. Hernández

Glenda Hecksher,
Integrated Coyolxahuqui,
86 x 54 x 19 cm
(bronze on stone).



Patricia Pérez

Ángel Bolívar, *Women of Mexico* (detail), 1960 (oil on canvas).

On March 8, 2011, International Women's Day, the rector of our university, Dr. José Narro Robles, inaugurated Mexico's first Women's Museum, the second in Latin America. Its objective is to ensure that women's history no longer be forgotten, that their contribution to the construction of our country be recognized, and women's human rights respected.

The first Women's Museum in the world was founded in 1981 in Berlin by Marianne Pitzen and a women's group called *Frauen formen ihre Stadt* (Women Form Their City). Today, there are 50 women's museum across the globe: 21 in Europe,¹ six in Asia,² five in Africa,³ and two in Australia. In the Americas, the United States has 12; Argentina, one; and now Mexico has another.⁴

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The museum's objective is to promote respect for women's human rights, a pressing need in Mexico, which ranks first for feminicides and gender violence among countries not at war.

The First International Congress of Women's Museums was held in Merano, Italy on June 11, 2008. It was presided over by 2003 Nobel Peace Prize winner Shirin Ebadi, pioneer in the struggle for women's and children's human rights in Iran. The meeting's objective was to create the International Network of Women's Museums to make them more visible, promote their existence in all countries, and recover documentation about women's lives.

Conceived as an open book for the people, the Women's Museum was founded by the Mexican Federation of University Women and the UNAM.⁵ It is located on a meaningful

Women's lives during the colonial period are presented through the houses where they were confined: the family home, the house of God, shelters and correctional facilities, and brothels.

site for university life in Mexico City's historic center: the building housed the first university printing house.⁶

A visit to the permanent exhibition begins in the room dedicated to equity, which summarizes the museum's objective is to promote respect for women's human rights, a pressing need in Mexico, which ranks first for feminicides and gender violence among countries not at war: in 2010, 2 500 women were murdered.⁷

The journey through women's history in Mexico begins with a look at the condition of women in the country's original cultures. The Meso-American peoples conceived of the world divided into two equal parts that maintained equilibrium in the universe: the feminine and the masculine. For this reason, every masculine deity had a corresponding feminine deity. However, in practice, women had fewer rights than men, depending on the existing political system.

In the Mexica Empire, women's condition did not fit into that dual world view; rather, they occupied a secondary position. They did not participate in political life or in public religious rites, and they participated little in commerce. They occupied themselves with reproductive and domestic tasks, as well as making cloth and clothing. In the Mayan cities, by contrast, there were even cases of women rulers.⁸

Women's lives during the colonial period are presented through the houses where they were more or less confined: the family home, the house of God, shelters and correctional facilities, and brothels. Marianism, or the imitation of the Virgin Mary, was the model to follow for the 300 years of New Spain. For women, there was no middle ground: their conduct could only be

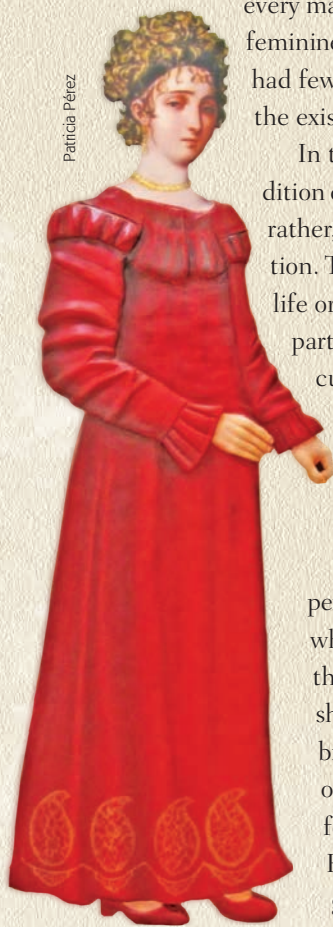


Guillermo Ceniceros, *Duality and Equity*, 80 x 100 cm, 1997 (acrylic on canvas).

that of self-sacrifice or that of sin. Their lives played out in the sphere of the private, in silence. Very few were able to break out and transcend this situation: Sister Juana Inés de la Cruz did it, but she suffered the consequences.⁹

Women participated actively in the construction of Mexico. In the struggle for independence, there were women leaders and "transgressors";¹⁰ some became well known not only because of their support for the insurgency, but also for transgressing the boundaries of what women "should be." Thousands whose names have been lost not only accompanied and cared for the insurgents, feeding and nursing them, but also worked as spies and couriers. Some took up arms themselves, while others were the prize of war, raped, jailed, or executed to put down the insurgency.¹¹

With independence, women's lives did not change a great deal until the victory of the Liberal Reform, when what survived of the old colonial regime was suppressed. Women's participation was needed to change structures, consolidate the national state, and reform society; and to participate, they had to be educated to be good citizens.



Patricia Pérez



Ivar Hernández

Clementina Díaz y de Ovando Room.

The victory of the Liberal Republic brought the establishment of free, mandatory, secular primary education and the creation of a secondary school for young ladies, the school of arts and trades for women, and the normal school for women teachers. This gave women access to an education similar to the one men received, not only religious training, but the opportunity to enter the university. All this constituted a profound cultural revolution.¹²

During the Porfirian dictatorship, Liberalism stopped being revolutionary; a conservative regime was imposed and freedoms were suppressed. The concentration of both power and wealth increased inequality until it sparked a revolutionary upheaval. The social insurrection demanded not only political, but also social rights. At the end of the nineteenth century and the beginning of the twentieth, women had begun to organize political clubs against the dictatorship. The participation of normal-school-trained women teachers was fundamental to this: they created awareness about injustices, organized anti-reelection clubs, and participated in every revolutionary process, in all the groups, collaborated in writing plans for the nation, and disseminated their ideas through periodicals.¹³ They also bore arms and commanded troops, with some promoted to the rank of colonel.



Patricia Pérez

After the victory of the Liberal Reform, women's participation was needed to change structures, consolidate the national state, and reform society; and to participate, they had to be educated to be good citizens.



Patricia Pérez

"From the Feminist Revolution to the Present" Room.

An essential part of the social revolution was the group of *soldaderas* who accompanied all the revolutionary armies, feeding and nursing the troops, serving as spies, carriers, and as soldiers.¹⁴ Women made the Revolution, but the revolution did not do women justice: it did not recognize them as citizens. An exceptional, small group of women from the state of Zacatecas had applied for citizenship in 1824, but they never received an answer. Almost a century later, the Revolution pushed them to participate politically.

When the 1917 Constitution did not recognize women's political rights, their struggle for suffrage continued. In the second and third decades of the twentieth century, many women's associations emerged.¹⁵ A few states gave women the right to vote and run for office in local elections from 1923 to 1925,¹⁶ but the few local deputies elected had to resign from their deputyships when the governors who had supported them left office.



Patricia Pérez

Josefa Ortiz de Domínguez (1773-1829).



Esther González painted Sister Inés de la Cruz especially for the museum.

It was in 1947 when President Miguel Alemán got women the vote in municipal elections. However, women's suffrage in federal elections was not given until the administration of Adolfo Ruiz Cortines in 1953, after the United Nations recommended to countries lagging behind that had not yet recognized women's citizenship that they do so as a condition for there being democratic regimes.

The trip through Mexican history with a gender focus concludes in the "From the Feminist Revolution to Present Day" Room. Here, we find information modules by decade, from the 1950s to 2010.¹⁷

In the 1950s, something decisive for women worldwide was invented. Thanks to the contribution of Mexican chemist Luis Ernesto Miramontes, who invented the contraceptive pill in October 1951, women were able to exercise their reproductive rights with greater freedom.¹⁸ In the 1960s, the 1968 movement marked the lives of university women, who not only demanded the liberalization of the political system, but their sexual freedom as well. In the 1970s, the struggle to legalize abortion began.¹⁹ Also in the 1970s, Article 4 of the Constitution was amended to establish the equality of men

and women before the law, an important step.²⁰ During the 1980s, for the first time a woman was appointed to head a ministry, the first woman ever ran for the presidency, and the first opposition senator was elected.²¹ In June 1996, Mexico ratified the Belém do Pará Convention. As a result, in July the Law to Lend Assistance and Prevent Family Violence in Mexico City's Federal District was passed, and a year later, family violence and rape inside marriage were classified as crimes under federal law. These actions were also the product of UN recommendations, and were an initial platform for Mexican women to have access to a life free of violence.

In the first decade of the twenty-first century, the Supreme Court handed down a decision declaring constitutio-

Museo de la Mujer (Women's Museum)

17 Calle República de Bolivia, Col. Centro, México, D. F.
Open to the public: Tuesday to Thursday, 9 a.m. to 5 p.m.;
Saturday and Sunday: 10 a.m. to 3 p.m. Admission Free
For information, scheduling guided tours, and activities,
call Federación Mexicana de Universitarias
at (55) 5622-2637/38; www.femumex.org.

Soldaderas were essential to the social revolution; they accompanied all the revolutionary armies, feeding and nursing the troops, serving as spies, curriers, and soldiers.

salaries are between 13 and 33 percent lower than men's. The feminicides in Ciudad Juárez and other cities, as well as the fact that 47 out of every 100 women suffer from some kind of violence, are concrete evidence of the grave situation Mexican women are facing.

All of this shows how much work we have before us in defending women's human rights in Mexico. An appropriate legal framework is required, as is a formal and informal educational system that can generate a new culture, a mentality that will overcome all kinds of discrimination



Patricia Pérez

House of Prostitution (video), duration, 1 minute, 17 seconds..

nal the law that stipulated that a person who had an abortion when the fetus has congenital defects (that is a eugenic abortion) should not be punished.²² Later, the Federal District Legislative Assembly approved the decriminalization of abortion before the end of the twelfth week of pregnancy in Mexico City, guaranteeing pre- and post-abortion counseling.²³

However, the Catholic Church condemned these laws and began a national campaign with support from authorities and political parties. As a result, by 2010, 18 states had established "right to life from the moment of conception" clauses in their legislation.²⁴ This has constituted a step backward in Mexican women's reproductive rights and their criminalization. Many women have been jailed and sentenced to up to 35 years in prison, something unprecedented in Mexican penal history.

Today women are under-represented in the three branches of government on a federal, state, and local level. The constitutional precept of equal pay for equal work is not followed. Both in lower-level jobs and managerial positions, women's



Patricia Pérez

Glenda Hecksher, *Guadalupe Tonantzin*, 103 x 86 x 40 cm (bronze on stone).



Patricia Pérez

Sebastián, *Dress*, 168 x 162 x 33 cm, 400 kilograms, 1985 (acrylic enamel on iron).

A people goes as far as its education allows it. Although illiteracy is higher among women because of their lack of access to education, when they are able to exercise this right, very often they get better grades.

and prevent violence. For that reason, in the framework of the 1995 UN call for the Decade for Human Rights Education, I proposed creating the Women's Museum in Mexico.²⁵ The idea resulted from the impact the Holocaust Museum in Jerusalem had on me; I thought that the discrimination women have suffered down through history should be shown publicly to promote the reaction against it.

We are aware that a people goes as far as its education allows it. Although illiteracy is higher among women be-



Patricia Pérez



Patricia Pérez

"From Teachers to Revolutionaries" Room.

cause of their lack of access to education, when they are able to exercise this right, very often they get better grades. In the UNAM, women are the largest percentage of recipients of Gabino Barreda Medals.

The common denominator among students of both genders with the highest grade-point averages is that they have mothers with more schooling. This is why the best investment a government can make is in the education of women, since they are the ones who reproduce cultural models. The best way to measure how civilized a people is is the condition of its female population; and in the Women's Museum, we want to contribute to overcoming our deficits. **MM**



Patricia Pérez

Raúl Anguiano, *Portrait of a Lady*, 1947 (oil on canvas).
Federation of University Women (Femu) Collection.

NOTES

- ¹ Four in Germany; three in Holland; two each in Austria, France, and Italy; and one each in Belgium, Denmark, Norway, Poland, Rumania, Spain, Sweden, and the Ukraine.
- ² Vietnam has two; and China, India, Japan, and Korea all have a women's museum.
- ³ In the Ivory Coast, Gambia, Mali, Senegal, and the Sudan.
- ⁴ Of all these museums, 22 focus on women's history, seven on art, six on collections, and five on ethnography and folklore. Seven are virtual museums, and the others are site museums.
- ⁵ The Federation of University Women (Femu) is a national organization of academics affiliated to the International Federation of University Women (IFUW), the world's first university women's organization, founded in 1919 to promote pacifism. Since then, it has become a consulting body to the United Nations.
- ⁶ The building is located at 17 República de Bolivia Street. The university printing house was founded in 1937 to ensure that university publications would be of the best quality at the lowest cost, to reach the largest possible readership. This is where the first issues of *Revista de la Universidad de México* (University of Mexico Magazine), *Gaceta* (The Gazette), and all the university's didactic materials and publicity were first printed. Outstanding among the first books printed there were *Historia del pensamiento filosófico* (History of Philosophical Thought), by José Vasconcelos, *La universidad y la inquietud de nuestro tiempo* (The University and the Concerns of Our Time), by Luis Chico Goerne, and *Tratado elemental de biología* (Elementary Treatise on Biology), by Isaac Ochoterena.

- ⁷ Chamber of Deputies Special Commission on Femicide.
- ⁸ In the room dedicated to this topic, the visitor can see the difference between the myth and the real lives of Meso-American women through illustrations, original pieces from these cultures, a contemporary sculpture of Coyolxahuqui by Glenda Hecksher, electronic informational displays, audiovisuals, and three-dimensional recreations.
- ⁹ The "Marianism in New Spain" room has a seventeenth-century articulated virgin, and a painting of Sister Juana, done especially for the room by Esther González.
- ¹⁰ Josefa Ortiz, Leona Vicario, Mariana Rodríguez del Toro, and Gertrudis Bocanegra; or María Ignacia Rodríguez de Velasco y Osorio Barba, known as "La Güera Rodríguez" (Blondie Rodríguez).
- ¹¹ In the room dedicated to "Women Insurgents," we find photo-sculptures of the most outstanding heroines and lithographs depicting the activities of the women of the time.
- ¹² The museum's Freedom and Education Room is framed, quite literally, by a reproduction of the door to the university and boasts photos of the first women who graduated from it. Margarita Chorné y Salazar was the first woman in Latin America to be awarded a degree, in dentistry. Matilde Montoya studied medicine in university classrooms.
- ¹³ Dolores Jiménez y Muro wrote the Tacubaya Plan and the prologue to the Ayala Plan; Juana Belén participated in writing the Ayala Plan, and published *Vesper*, while Hermila Galindo published *Mujer moderna* (Modern Woman).
- ¹⁴ Their photographs are on view in the "From Teachers to Revolutionaries" Room, where visitors can also listen to revolutionary *corrido* songs.
- ¹⁵ The United Front for Women's Rights brought together about 800 groups from around the country, with a total membership of almost 50 000, to fight for citizenship and the right to vote.
- ¹⁶ Yucatán, San Luis Potosí, and Chiapas.
- ¹⁷ In addition to the national and international historical context, it underlines Mexican women's political and economic participation, and the current state of their health and education and with regard to violence.
- ¹⁸ Made with the compound called norethisterone, the Mexican Academy of Sciences classified the invention as the most important Mexican contribution to world science in the twentieth century; in 2009, its discoverer was awarded recognition as the most outstanding graduate of all time from the UNAM School of Chemistry.
- ¹⁹ The Coalition of Feminist Women and the National Front for the Fight for Women's Liberation and Rights (FNALIDM) were founded in the mid- and late 1970s.
- ²⁰ February 3, 1973.
- ²¹ Minister of Tourism Rosa Luz Alegría; Rosario Ibarra de Piedra, first woman presidential candidate; and Ifigenia Martínez, first woman opposition senator.
- ²² January 29, 2002.
- ²³ April 24, 2007. See Patricia Galeana, "Impacto social de la penalización del aborto," Lourdes Enríquez and Claudia de Anda, eds., *Despenalización del aborto en la ciudad de México* (Mexico City: PUEG, UNAM, 2008), pp. 55-58.
- ²⁴ Grupo de Información en Reproducción Elegida (GIRE), "Leyes sobre aborto en México, 2008-2010," December 2010, <http://www.gire.org.mx/contenido.php?informacion=70>.
- ²⁵ The museum's documentation center is named after Clementina Díaz y de Ovando, the lifetime president of the Mexican Federation of University Women and the first woman to head a research institute in Mexico. In addition to the art work already mentioned, sculptor Sebastián and painter Guillermo Ceniceros did works especially for the museum. Also on display is the splendid oil painting by Ángel Boliver, *Women of Mexico*, the symbol of our museum, as well as work by other outstanding artists: Federico Silva, Raúl Anguiano, Pablo O'Higgins, Laura Elenes, Namiko Prado, and different young artists. In addition, all manner of cultural activities, courses, workshops, lectures, book launches, and documentary screenings are held there, as are sessions of a gender film club, and literary and musical evenings.



ELSIE MONTIEL ZIEGLER

1956-2011

Editor of *Voices of Mexico*



Thank you for all your teachings and your unswerving friendship.

Thank you for the passion and conviction you always invested
in everything you did.

We will always remember you.

Leonora Carrington (1917-2011)

Elena Poniatowska*

She took with her our possibilities
of entering Westmeath, Ireland,
that region of the spirit where the Sidhe
teach that you should take life as a merry,
magical adventure.

On May 26, Leonora Carrington died of pneumonia at what in Mexico we call the English Hospital. It was a great loss and very painful for Mexico because Leonora opened up a door here in your forehead and here in your heart into another world, into another dimension, as the cool kids would say. She took with her our possibilities of going beyond ourselves and entering Westmeath, Ireland, that region of the spirit where the Sidhe teach that you should take life as a merry, magical adventure. The Sidhe are invisible beings that accompanied Leonora much better than her guardian angel, and right now are hugging each other and tiptoeing over her grave in the English Cemetery, on Mexico City's México-Tacuba Boulevard.

A journalist once said that Leonora was Mexico's best kept secret, because this painter hated being on display and avoided intrusions into her daily life. No one was as jealous of her iso-

* Mexican writer, author of the biographical novel *Leonora*, reviewed in this issue.



Leonora Carrington, 1934.

© Walter Gruen

lation—that thing the English call “privacy”—but no one was as courteous to her visitors, because once you were inside her home, Leonora almost automatically offered, “Tea or tequila?”

In the last few years, any time I proposed anything different from drinking tea at her kitchen table, she would say to me, “I pass.” What she did do was go out to take a turn around the block with her caretaker and her dog Yeti. Álvaro Obregón was her favorite street. Our city's insecurity took her walk away from her. “I wouldn't want them to mug me; I wouldn't want them to snatch my purse,” she used to say fearfully.

Leonora never sacrificed her true self to what conventional society expected; she never accepted the mold into which we are all poured; she never stopped being herself.

Leonora arrived in Mexico in 1942, almost at the same time that the great wave of Spanish exiles disembarked in Veracruz from the ships the *Sinaí*, the *Marqués de Comillas*, the *Méxique*, exiles who have honored Mexico so much and meant so much in our cultural and social life. If the Spanish exile community enriched us, if Luis Buñuel and Remedios Varo were her friends, the émigré status of the fabulous English painter and the presence of the surrealists who took refuge in Mexico have also been an invaluable contribution for us.

Much of what I relate in the novel *Leonora* had already been written. She described herself at several moments in her life. She just changed her name and Max Ernst's or Joe Bousquet's. In Mexico, she published the short stories "El séptimo caballo" (The Seventh Horse), "La dama oval" (The Oval Lady), "La trompetilla acústica" (The Hearing Trumpet), "La casa del miedo" (The House of Fear), "Memorias de abajo" (Down Below), and the novella "La puerta de piedra" (The Stone Door), and critics and specialists in surrealism have analyzed her extraordinary body of work and life as well. Mexican art critic Lourdes Andrade had the key to many secrets of the alchemy, the Jungian psychoanalysis, and the esotericism that attracted both Remedios Varo and Leonora.

I would like to emphasize two topics about Leonora that have been little touched upon. Her attitude toward Nazism after the Nazis entered France on June 24, 1940, when she denounced Hitler, Franco, and Mussolini on the streets of Madrid is little known. If people called her mad, it was because she was clairvoyant and realized the danger before anyone else.

From the moment that, for the second time, two gendarmes took the greatest surrealist painter Max Ernst away to Les Milles, a French concentration camp, Leonora fought against injustice. The invasion of Poland, of Belgium, and of France filled her with rage, and in Madrid, desperate, she requested an interview with Franco to tell him not to ally with Hitler and Mussolini, and passed out leaflets on the streets

asking for a ceasefire. Before many others did, she confronted Hitler and fascism. They called her mad then, when she was actually simply ahead of the immense madness that is war. They locked her up in a madhouse in Santander. Who was normal? The ones who hid their heads like ostriches or Leonora, the visionary, who rose up against the war because she divined the danger?

Another moving aspect of her long life —on April 6 she had her ninety-fourth birthday— was her solidarity with the Jews. The suffering of Chiki, the photographer Emerico Imre Weisz, her husband and the father of her two sons, Gaby and Pablo, is linked to the Spanish Civil War. Chiki was the one who rescued the suitcase of Robert Capa's negatives that surfaced in Mexico more than a year ago and is now the subject of a film and documentary.¹ Leonora, who was not Jewish, became more incensed than any other artist about the treatment received by men and women, the aged and children, who were shut up in boxcars without light or air and shipped to extermination camps. From then on, she never stopped expressing her rejection of one of the great abominations of humanity: the Holocaust.

With *Leonora*, my intent was to pay homage to her, to make a loving tribute. Leonora never sacrificed her true self to what conventional society expected of her; she never accepted the mold into which we are all poured; she never stopped being herself; she chose to live in a creative state that today exalts us and fills us with admiration; she defended her talent from dawn until dusk, first against her father and then against a social class that intended to impose strict laws on her, the same laws that have impeded the flowering and creativity of men and women of talent who finally gave up and returned to conformism. Leonora Carrington never gave in; she never cared about appearances, never had a façade; she lived to paint and for her children, with whom she had a profoundly loving relationship, the closest that can exist between a mother and her sons. The only aim in her life was to defend her vocation as a painter and write texts that no one but she could write, like the story of her confinement in the Santander mental asylum, which she wrote first in French, entitled "En bas" ("Down Below" in English, or "Memorias de abajo" in Spanish).

Little brouhaha was made about her in Mexico because she herself insisted on seclusion, being anonymous, silence, life far from the amplifiers of sound and images alien to her isolation. Her house was finally a retreat and her solitude, voluntary. "Oh, what a bloody nuisance!" she used to exclaim



© Carole Patterson

Leonora Carrington.

when I asked her for an interview. However, until very recently, she went to all the honors ceremonies because she didn't want to offend anyone and because, within her rebelliousness, Leonora was a person of infinite courtesy.

Oscar Wilde used to say the last thing he wanted was to be understood. Like her brilliant predecessor, Leonora did not seek understanding, or even acceptance; what was essential for her was arriving at a space that very few reached. André Breton used to say that the surrealist cause in art and in life is the cause of liberty. "Sentimentalism," said Leonora, "is a form of weariness." "You can not believe in the magic, but something very strange happens at that same time. Your head has dissolved in the air, and I see rhododendrons in your stomach. It's not that you're dead or anything dramatic like that; it's just that you're simply fading away and I can't even remember your name." Another of her quotes is, "Painting is a necessity, not a choice," and another, "In my opinion, it is not good to admire anyone, including God."

She destroyed any and all impositions,
even that of being a surrealist, with her sense
of humor. More than surrealistic,
her interior world was Celtic.

The Englishman Edward James was the one who believed the most in her art and did the most for her in Mexico. It was rumored that this eccentric personage was interested in the visual arts because he was a painter himself and that he was the illegitimate son of King Edward VII; he never bothered to refute this. Certain rumors can be favorable for the biography of a life.

Was Leonora happy? Who knows? Are we happy? You must be the ones to say. Leonora once stated that she did not have a name for happiness, but she did for rebelliousness, and she rose up against the church, the state, the family. Her imagination went beyond laws, beyond setsquares, beyond what other people think. Her only rite was to pick up a brush or a pen or cook. Once she put the archbishop of Canterbury to boil in green mole sauce, and all her fantasy and her particular sense of our reality burst forth in her plays, *La casa del miedo* (The House of Fear); *Penélope*, staged by Alejandro Jodorowsky in 1957; *La invención del mole* (The Invention of Mole Sauce) in 1960; and *El séptimo caballo* (The Seventh Horse) in 1988.

She destroyed any and all impositions, even that of being a surrealist, with her sense of humor. More than surrealistic, her interior world was Celtic and her work is linked to that of her childhood, a world completely divorced from logic, an unexpected world of poetry, the world of the Sidhes, the gentry, the "little people," who for us Mexicans are the *chaneques* who accompany us, pull on the corner of our mouths to make us smile, and untie our shoelaces. **MM**

NOTES

¹ Robert Capa (born Endre Ernő Friedmann, October 22, 1913-May 25, 1954) was a Hungarian war correspondent and photojournalist who covered five different wars. He also documented the liberation of Paris. In 1947, Capa co-founded Magnum Photos with, among others, Henri Cartier-Bresson. The organization was the first cooperative agency for worldwide freelance photographers. [Editor's Note.]

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Transparency and the Right To Information in Mexico



IFAI/Cuartoscuro

Sigrid Arzt, María Marbán, Jacqueline Peschard (IFAI's president), Ángel Trinidad Zaldívar, and María Elena Pérez-Jaén, IFAI commissioners.

The reforms on the issue of the right to information in Mexico are a major event that began in the last decade. Without a doubt, the process is being perfected and re-institutionalized; by no means is it complete. Rethinking this fundamental right is a joint task for civil society and the authorities. In the time it has been put into practice, a series of variables have emerged that were not initially foreseen, such as the lack of know-how about how to exercise this right, the resistance of many officials to handing over the most elementary information about their administrations, the uneven actions of the different states in performing their duty to provide information, and a series of elements examined in this section.

For this reason, we wanted to gather the experience of officials who deal day to day with the exercise of this right. Outstanding among them are the articles by former Federal Institute for Access to Public Governmental Information (IFAI) Commissioner Alonso Gómez-Robledo Verduzco and current IFAI Commissioner Ángel Trinidad Zaldívar, as well as Mexico City Commissioner Óscar Guerra Ford, who relate the current state of affairs of this right. We also present here the opinion of academics who have participated, either from academia or as part of civil society, in the institutionalization of this right in Mexico. As a result, the reader of these brief but substantial essays will be able to peruse the issue from different vantage points, ranging from the relationship the right to information has to environmental policy to its impact on elections.

Fausto Kubli-García
CISAN researcher

National Security and Transparency

The Case of Mexico

Alonso Gómez-Robledo Verduzco*



Ivan Stephens/Cuartoscuro

Ministry of Public Security monitoring center. National security and access to information policies must not be at odds, but balanced.

The incredible ideological confrontation between East and West that would end with the dismemberment of the Soviet Union and the end of bi-polar equilibrium was followed by a period seemingly characterized by a diversification of the factors in conflict and the transition from a focus on the geopolitical sphere to that of geo-economic rivalries.

Overnight, the world was subject to profound transformations, in which the hierarchy of national security threats and risks changed, and technological progress sped up along with the massification of information. All of this imposed changes in mentality and organization on states, since the patterns and reference points inherited from the recent past had become obsolete.

The virulence of all these phenomena substantially changed forms of power, elevating access to information to a strategic priority, making it, therefore, a national security issue. In this sense, control over “information flows” became a component of the first water for state economies. The so-called “principle of popular sovereignty” began to be completely affected by the old, deeply-rooted “rule of secrecy.” This can be seen on three successive planes: deficient flow—or even the complete absence of flow—of information to the citizenry; the absence of consultations with the population; and the non-existence of public officials’ authentic responsibility *vis-à-vis* the citizenry.

It was long ago demonstrated that one of the fundamental requirements of every democracy is undoubtedly ensuring that its citizens have access to the greatest amount of and most useful information possible. In that sense, as Thomas Paine used to say, a democratic rule of law makes sense with the existence

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of a public that is truthfully informed about the content of its own government's affairs. Along those same lines, a particularly relevant case is the impeachment proceedings against President Richard Nixon for the famous Watergate scandal. During the proceedings, the U.S. Congress, instead of immediately and unflinchingly directing the operations, first sought considerable support from the public. The revelations made to the citizenry were much more important and had a much greater impact on parliamentary oversight than any other kind of report solely presented to Congress. The House Judiciary Committee proposed that President Nixon be impeached and tried by the Senate for having directed a criminal conspiracy to cover up the scandal.¹

The traditional doctrine of what are called *arcana imperii* (the most intimate secrets of those in power), which maintains that the power of the state is all the more effective the more hidden it is from the eyes of the common people, gradually became what we now know as “official secrets.” According to Norberto Bobbio, this term is applicable to areas considered vital and transcendental for state security and stability.

Just like in the United States, Canada, or France, in Mexico even the most ardent defenders of administrative transparency also unwaveringly recognize the existence of certain types of information in the hands of the different branches of government that, under certain circumstances, legitimately can and must be classified as reserved or confidential.

Freedoms and rights frequently presented as contradictory mark the need for us to seek a balance between what must be communicable and what can be temporarily kept back. Thus, the right to access to information must be reconciled with the demands of a possible military secret, on-going diplomatic negotiations, or presumed damage to financial stability, as well as in the face of the primordial right of respect for privacy.

It is a matter, no doubt, of making a democratic, lawful system viable, but without this implying that something that must be reserved or confidential be confused with “discretionary secrecy,” since that would be the equivalent of corrupting the structure of the system that, by definition, is being preserved.

In order to achieve an appropriate equilibrium between transparency and the justifications for classifying information, to protect both public and private interests, each country's laws on transparency establish a series of limitations or exceptions to the fundamental right of access to information.

It was long ago demonstrated that one undoubtedly fundamental requirement of every democracy is ensuring citizens access to the greatest amount of information possible.

However, it should always be kept in mind that these specific restrictions, like any stipulation that restricts a public freedom, must always be the object of “strict interpretation.” Despite this important rule of interpretation, very often in practice, we see that the formulation of these restrictions is not free from ambiguities and uncertainties; this naturally gives rise to extremely extensive —not to say arbitrary— interpretations.

Almost all legislation regulating transparency and access to information —or at least the best known— give the government the faculty of not publishing information that falls under one of the exceptions or limitations, but what is often not emphasized enough is that the law does not oblige government bodies to do this. In other words, it is a legal faculty, not a legal obligation.

This means that, even in the cases in which the government, strictly applying the legal norms, may refuse to hand over a document, at the same time, it will have the legal possibility of “opening the file” if it considers that this would better serve the public interest.²

Our current Federal Law on Transparency and Access to Public Governmental Information (LFTAIIPG), in effect since June 11, 2002, stipulates that information may be classified if its dissemination could compromise national security, public safety, or national defense (Article 13, Subsection 1).³

For information to be classified for reasons of national security, it is not sufficient for its content to be related to the matters protected (as with all the other suppositions of Article 13), but —and this is extremely important— the existence of objective factors that make it possible to determine if the dissemination of said information would cause present, probable, and specific harm to the interests protected by the legal precept must also be taken into consideration.⁴

Now, when is national security supposed to be compromised? According to the eleventh stipulation of the “Lineamientos generales para la clasificación y desclasificación de la información de las dependencias y entidades de la ad-

ministración pública federal” (General Guidelines for Federal Bodies for Classifying and Declassifying Information), in principle, national security is compromised when the dissemination of the information puts at risk actions whose aim is to protect the integrity, stability, and permanence of the Mexican state, its democratic governance, and the external defense or internal security of the federation.⁵

From here on, we can say that one of the most obvious situations in which national security would be put at risk would be when the dissemination of the information would be an obstacle to or would affect intelligence or counterintelligence activities.⁶

In a complaint filed against the Ministry of Foreign Relations (SRE-4262/07), the complainant went to the IFAI when the ministry refused to hand over the “number of DEA agents in Mexico, as well as their circumstances and locations.” In response, the ministry argued that the specific information had been declared classified for a period of 12 years, with the possibility of prolonging that time (Article 15), among other reasons because it could compromise national security.

One of the most curious points about this case was that the IFAI found a meticulously detailed report by none other than DEA Chief of Intelligence Anthony Placido dated February 7, 2008 on the U.S. Embassy website. In this report, Mr. Placido expressly referred to his country’s obligations in the framework of the Mérida Initiative, saying, “DEA works with a congressionally funded Special Investigative Unit made up of approximately 227 police officers assigned to thirteen locations around the country,” adding that in 2007 alone, more than 80 extraditions had been effected to the United States.⁷ Because the anti-narcotics agency itself had already made the information requested public on several occasions, the IFAI revoked the “classified” nature of the information about the number of DEA agents in our country and accredited by the Ministry of Foreign Relations. It also instructed the ministry to turn over the information requested in the generic form of statistics within a period not to exceed 10 business days after the notification, since, according to Article 18 of the law on transparency, information found in public registries or sources available to the public was not considered confidential, that is, “classified.”

In another another complaint, this time brought against the Center for Investigation and National Security (CISEN-2941/06), the applicant had requested “the list of names of those who have been agents of said center since its creation to date (September 2006) and who served the institution as

Freedoms and rights frequently presented as contradictory mark the need for us to seek a balance between what must be communicable and what can be temporarily kept back. Thus, the right to access to information must be reconciled with the demands of security.

informers in the state of Jalisco, as well as the pay they received for this service.”

In this case, the IFAI ruled that turning over the names of the government employees and external persons who provided information to the CISEN would make both identifiable. This would mean they could be located precisely, which would affect not only the center’s strategies for carrying out its intelligence and counterintelligence activities, but could also affect the security and safety of the persons whose job it is to turn over information. This would constitute a threat or risk to national security efforts.

However, on the other hand, the IFAI also stated that, given that internal personal work inside the CISEN who do not carry out activities directly related to intelligence and counterintelligence activities, the name of these public servants should in principle be public, according to the LFTAIPG, which mandates those subject to it to make available to the public the directory of public servants, from the level of department head or its equivalent and up (Art. 7-III).

Thus, on the one hand, the IFAI confirmed the classified nature for a period of 12 years of the names of CISEN employees who carry out intelligence and counterintelligence activities, as well as of those persons hired by it who provide information so it can carry out its work. On the other hand, however, and along these same lines, the IFAI quashed the CISEN’s answer about pay to its informants, underlining in its text that, while the information should be given, by no means should it be correlated with the specific employees’ names.

In another complaint, this time brought against the President’s Office (7966/10), the complainant requested, first of all, information about how many members of the Presidential Guard had been assigned to private persons by federal executive order, and secondly, how many had been assigned to members of the cabinet. The President’s Office responded that it considered the information classified because it was a matter of national security.

The IFAI revoked the classification invoked by the Presidential Guard, arguing that informing about the total number of guard members assigned to personal security or to security for cabinet members by no means made it possible to deduce how many had been assigned to each of the individuals receiving that special protection.

In a complaint against Mexico's government-owned oil company, Pemex (2997/07), the applicant expressed his/her objection to the state-owned company's having refused to provide the "Atlas of institutional risk concluded in 2006." Pemex argued that it considered that, according to the LFTAIPG, and the Law of National Security (Article 13, Subsection 1, and Article 5, Subsection 1, Paragraph 12, respectively), the dissemination of that information would clearly put national security at risk. However, the unfortunate December 26, 2005 Law of National Security is not only far from the transparency it purports to defend, but it also contradicts the LFTAIPG itself. Thus, for example, its Article 51 adds two causes for being able to classify information, stating that "information classified for reasons of national security is that whose application implies revealing norms, procedures, methods, sources, technical specifications, technology, or useful equipment for generating intelligence for national security, regardless of the nature or origin of the documents it appears in or... whose publication can be used to update or further a threat."

We can also mention other norms that contradict the LFTAIPG, among others Article 52 of the Law of National Security, which clearly states, "The publication of non-classified information, generated or archived by the Center (CISEN), will invariably be done following the principle of confidential government information [*sic*]." This is particularly serious since the principle of interpretation that the law establishes must prevail in handling governmental information in our country is the principle of "the maximum publicity," established not only in the LFTAIPG, but, as if that were not enough, in Article 6, Paragraph 2 of the Constitution. This article states

One of the most obvious situations that would put national security at risk would be when the dissemination of the information could be an obstacle to or affect intelligence or counterintelligence activities.

that all information in the possession of any federal, state, or municipal authority, body, or entity is public and shall only be classified temporarily for reasons of public interest in the terms established by law. In interpreting this right, the principle of maximum publicity must prevail.

When the IFAI requested access to the atlas of risk, it was able to verify that it contained maps or satellite photographs that covered the entire republic, which showed perfectly the pipelines in any given area, as well as its geographical position, through identification of locales, municipalities, and state boundaries. They also show the coordinates and intersections of the pipelines used by all of Pemex's subsidiaries, the different kinds of products that each one transports, etc. The atlas also included Pemex's comprehensive information system, with its data bases, which would make it possible to carry out vulnerability analyses of the infrastructure in the case of any kind of national, regional, state, or municipal disaster.

Therefore, the IFAI confirmed the validity of Pemex's classifying the information, fundamentally because disseminating the "institutional atlas of pipeline risk" could update or increase a threat to national security, given the importance, quantity, and quality of the detailed information it includes.

In other words, in this case, the IFAI did find that there was a specific threat to national security, taking into account that the atlas reveals the vulnerable points of the country's oil infrastructure, potentially exposing it to acts that could destroy or disable it.

Lastly, we should recognize that it is very true that there will frequently be a tension specific to the relationship between transparency in information and the classification of information considered a matter of national security. Specialist Eduardo Guerrero Gutiérrez, in a brilliant study following the example of Professor Geoffrey Stone, states that a dilemma between informational openness and national security appears when the dissemination of a government secret is harmful to national security and, at the same time valuable for transparency and accountability.⁸

Does the value of giving access to information go beyond or surmount a potential danger in a matter of national security? In the absence of absolutely objective criteria, it will not be easy to reconcile the important national interests related to national security with the equally important interests of an open society. In this sense, and in a very illustrative way, Professor Stone offers the following example: suppose a government does a serious study about the efficacy of its security measures in certain nuclear energy plants, and comes to the

conclusion that the plants are potentially vulnerable to a terrorist attack. In these conditions, should the study be kept secret or be classified, or, on the contrary, should the citizens be allowed to see the content of that report?⁹

The dilemma here would be the following: on the one hand, publishing the report could endanger national security by revealing vulnerable flanks and points to subversive or terrorist groups. However, publishing that information could have a beneficial effect by alerting the citizenry to the situation, which could in turn exert pressure on authorities to remedy or solve the grave problem and, therefore, make it possible to request accountability from those responsible for the nuclear plants' proper functioning.

Curiously, we recently became aware that in Spain, the National Security Council, the country's highest nuclear authority, publicly ordered the opening of a file about a nuclear plant in Tarragona; the plant was using erroneous procedures for reviewing at least 60 safety valves. This led to a request for sanctions against those responsible in the plant for persisting in their error during the process of calibrating the valves. Spain's Security Council explained that the safety valves in a nuclear plant are designed to open or shut hermetically as a circuit when it a specific level of pressure is reached, and that the very fact of being badly calibrated can cause a leak of radioactive particles of greater or lesser importance.¹⁰

Clearly, neither in this case nor in many others is there a single response that can satisfy everyone. Actually, everything will depend on the concrete case, its particular context, and

the moment when it arises, together with a delicate, but necessary weighing of what appear to be conflicting values. ■■■

NOTES

¹ This recommendation to impeach was made once the Supreme Court ruled on July 24, 1974 that executive privilege was not in doubt, but could not prevail against the fundamental demands of due process. See Leo Rangell, *The Mind of Watergate* (New York: Northon and Co., 1980), pp. 163-165.

² See D. Jacoby, "Recent Developments in U.S. Federal Freedom of Information Law," *International Legal Practitioners*, September 1990, and A. Roux, "La transparence administrative en France," *Annuaire d'administration publique* XII (Paris: CNRS, 1989).

³ <http://www.ifai.org.mx/transparencia/LFTAIPG.pdf>. [Editor's Note.]

⁴ "Lineamientos generales para la clasificación y desclasificación de la información de las dependencias y entidades de la administración pública federal," August 18, 2003, <http://compilacion.ordenjuridico.gob.mx/ficha-Ordenamiento.php?idArchivo=5447&ambito=FEDERAL>.

⁵ *Ibid.*

⁶ According to the Law of National Security, intelligence is understood as "the knowledge obtained by the collection, processing, dissemination, and exploitation of information for decision-making in national security matters," and counterintelligence is understood as "the measures to protect government bodies against harmful acts, as well as the actions aimed at dissuading or countering their being committed" (Articles 29 and 32).

⁷ <http://www.justice.gov/dea/speeches/s020708>.

⁸ Eduardo Guerrero Gutiérrez, *Transparencia y seguridad nacional*, Cuadernos de transparencia no. 18 (Mexico City: IFAI, 2010).

⁹ Geoffrey Stone, *Top Secret: When Our Government Keeps Us in the Dark* (Lanham, Maryland: Rowman & Littlefield Publishers, 2007).

¹⁰ Ferrán Balsells, "La nuclear Vandellós II revisa mal válvulas de seguridad desde 1988," *El País*, May 28, 2011, p. 26, http://www.elpais.com/articulo/sociedad/nuclear/Vandellos/II/revisa/mal/valvulas/seguridad/1988/elpepisoc/20110528elpepisoc_3/Tes. [Editor's Note.]

Transparency Or Accountability in Mexico

Ángel Trinidad*

INTRODUCTION

On May 25, 2001, exactly a decade ago, a group of citizens, including academics and journalists, later known as the

Oaxaca Group, published a paid ad in the newspapers pointing out not only Mexico's need for a law on transparency and access to public information, but also offering minimum coordinates to guide that legislation.¹ A year later, after much debate, Congress approved the Federal Law on Transparency and Access to Public Governmental Information (LFTAIPG).²

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The first interesting lesson we can learn from this process involves the citizenry's active participation in setting the public agenda. In the words of Luis Aguilar Villanueva, "the way in which the governmental agenda is designed gives it form and content, [and] expresses the vitality or flaccidity of public life...; the design of the government agenda...shows the health or disease of public life."³ Thus, the so-called Oaxaca Group demonstrated that our political system began to show signs of recovering its health and that society was recuperating a life force that had been dormant for decades.

The change in the regime that took place in 2000, after 70 years of Institutional Revolutionary Party (PRI) hegemony, was like oxygen for the political system, breathing new life into society as well, which caught sight of an enormous opportunity to influence the governmental agenda, and managed to do so. Seldom had civil society been seen with the impetus that would conclude in legislation of this import. The transition to democracy brought with it a novel element without which it would be very difficult to consider Mexico a democratic system today. Transparency of government actions and the right to access to public information converged in a substantial idea: bringing down the old edifice of the political system that had been built without windows and with a tiny door through which only a chosen few could pass. The rest of the population was alien to what went on behind those high, dark walls.

The result of this institutional arrangement was predictable. Corruption had grown alarmingly. Enclosed spaces further decomposition; mold takes over everything and the air becomes unbreathable. The remedy for this decomposition was simple: open up the spaces, the windows, and the doors so that air, light...and the eyes and ears of the citizens could come in. U.S. Supreme Court Justice Louis Brandeis put it very simply and profoundly when he said that the light of the sun is the best disinfectant and electric light, the most effective policeman.⁴ And, in effect, everything done under the mantle of secrecy and in the shadows cannot be good for society. If the decision-making process is hidden, something bad will happen.

The defenders of opacity or operating in the shadows will argue that it is necessary. Bentham already said that he did not try to negate that secret policies avoided certain inconveniences, but that he did not doubt that in the long run, they caused more than they prevented.⁵ For that reason, as Bentham himself said, the more political power is exposed to innumerable temptations, the better it is to give those who wield it more powerful reasons to resist them. But public monitoring

Transparency and the right to access to public information converged in a substantial idea: bringing down the old edifice of the political system, built without windows and with a tiny door through which only a chosen few could pass.

is the most constant and universal of all of these reasons. The body politic forms a tribunal, one that is worth more than all the others together.⁶

For 70 years, the Mexican political system made public issues private, a matter for the elite. Only "the rulers" had access to information. Paradoxically, that same closed attitude gradually asphyxiated the system itself, like in the story of the miser who, to prevent anyone from taking his money away from him, locked himself up in a safe until he died of starvation. That is, no matter how strong a system is, sooner or later, it needs oxygen, new ideas, different actors. Mikhail Gorbachev realized this 25 years ago when he sent the world a kind of cry for help and a governmental program: *glasnost* ("transparency"). No one could have imagined that the so-called Soviet bloc—and there is no better word to describe a closed system than the word "bloc"—which seemed so solid and developed, was crumbling because of a lack of light, of air, of social participation. Gorbachev's diagnosis was electric:

An impartial, honest look led us to the logical conclusion that the country was on the verge of a crisis....We need public organizations to function in a healthy, vigorous way, new kinds of activity for the citizenry; in short, a broad democratization of all aspects of society....We want more openness about public issues in every sphere of life...as never before. We need no more dark corners where the mold can reappear, where everything we have begun a resolute struggle against can begin to accumulate. *Glasnost* is an effective form of public control.⁷

Neither politicians nor those in public service "can be a caste living behind the backs of the citizens, forging their alliances, relations, plans, and projects behind the backs of the citizens, without the latter ever being able to penetrate that world."⁸ In a democracy, the citizens have the right to be informed of what their government is doing so they can decide if they ratify their trust in it through their vote or if, to the contrary, they demand someone assume responsibility

In a democracy, citizens have the right to be informed of what their government is doing so they can decide if they ratify their trust in it or if they demand someone be held responsible.

and sanctions be imposed. If each government action is scrutinized by tens of thousands of eyes, it will be very difficult to act irresponsibly or commit acts of corruption. An Orwellian state turned upside down.

While today we must celebrate that we have a Federal Law of Transparency and Access to Public Governmental Information, this does not suffice if we do not take it to its ultimate consequences. In Mexico, the governing class likes very much to sail on the surface and not get to the bottom of things. In short, it is expert at simulation, which is why we must not be satisfied with there being transparency and access to information, but must rather get at the root of government actions, which involves the decisions implicit in the documentation put at our disposal. This is the only way we can go past the epidermis to the neuralgic center of the control of power, and that is accountability, which we will analyze in the next section.

CURRENT SITUATION

Before reflecting on how we are doing, we should underline some of the essential characteristics of our law: a legal reason is not required for requesting information; any *person* can do it; he or she does not even need to be a *citizen*. In addition, the publication of certain minimal information on web sites is obligatory; the right to make complaints exists (called a request for review); and an autonomous body has been set up called the Federal Institute for Access to Information (IFAI). Thus, we can talk about advances, but also of resistances and unresolved issues.

ADVANCES AND RESISTANCES

Taking advantage of the dizzying progress in information technology, the IFAI has developed an electronic system to handle



Commissioner Ángel Trinidad Zaldívar.

Cuartoscuro

requests for access to information that allows any individual to request information and documentation about the exercise of the attributions of more than 240 federal government bodies.⁹ Thanks to this tool, more than 640 000 requests for information have been handled, with the number growing every year.¹⁰ Of these, around 94 percent have been responded to, while the other 6 percent have been the subject of complaints that have forced the IFAI to intervene.

It should be noted that some of the requests have not been well received. On the one hand, because they imply additional work, and, on the other hand, because officials feel their territory has been invaded (how is it that someone dares ask them something or ask them for a document that is “their property”?). The questions make them uncomfortable because “all questioning is an incursion [and because] when the question is asked as a means of power, it cuts like a knife in the body of the person questioned. They may be unimportant, superficial things, but they have been extracted by someone unknown. At the end of the day, a question is a kind of dissection” that allows us to get a look,¹¹ colloquially speaking, at the government’s “guts.” And officials do not like that. The intrinsic aspect of power is secrecy. Writer Elías Canetti says that “secrecy is in the very marrow of power.”¹² For that reason, trying to know them is to want to disrupt the essence of those who rule; it strips them naked. This is the reason the Leviathan (authoritarianism) will never cease its attempts to return to the time in which it shared no decision, no information with anyone. As the Marquis de Croix used

to say supremely unconcernedly, “the subjects of the Great Monarch who sits on the throne of Spain must know that they were born to be quiet and obey and not to reason or express an opinion on the high matters of state.”¹³ What those in power do not like is for there to be citizens instead of subjects. The former like peeking into the corners of power to reason and express opinions, while in contrast, subjects are submissive and leave governments and their secrets in peace. As Escobedo says, “authoritarianisms live on with subjects, not with citizens.”¹⁴

PENDING ISSUES

The exercise of this right has brought out into the light diverse topics that deserve government attention and constant demands by the citizenry. The first is that the government lacks statistics. Many requests for information cannot be answered or are responded only partially because the statistical data simply does not exist. Several questions arise out of this: without statistics, without hard data, how are decisions being made? What are the criteria for knowing whether a public policy has worked or not in the last decade—let us not demand more than that—so it can be rectified or adjusted? For example:

- a) In 2010, a request was made to the State Employees Social Security System (ISSSTE) for information about different health issues.¹⁵ The institution responded that those data did not exist.
- b) A request was made to the Tax Administration Service (SAT) for the amount of monies collected as income tax (ISR) and value added tax (IVA) in the State of Mexico, by type of taxpayer (individual or institutional), for the years 2006 through 2009. In its answer, the SAT said that the information requested did not exist on that level of detail, since it only had the kind of data requested nationally (File 615/10).
- c) Another request was made to the SAT about the number of cases in which it had had to pay reparations to taxpayers after having lost a tax case before the Federal Court of Fiscal and Administrative Justice (TFJFA), including the amount involved and the trial file number. The response was that the institution “does not have any document containing the statistical information with the level of detail requested” (File 4260/10).

The IFAI has developed an electronic system to handle requests that allows any individual to request information and documentation about the actions of more than 240 federal government bodies.

Another problem is related to the quality of the information provided. That is, there is a great deal of information available, but is it quality information? Is it verifiable? Is it useful for making decisions? The answer is not always yes. In addition, the defects in archive preservation are of concern since, if this law turns on the existence of the documentation, if the documents do not exist or are impossible to consult, the law has no meaning.¹⁶

TRANSPARENCY OR ACCOUNTABILITY?

Making governmental purchases transparent or having access to certain documents should not be understood as ends in themselves, but as a means whereby citizens, once informed, will be able to demand accountability from those in government. Society not only requires documents, but also wants explanations.

Accountability is more than access to information; it is the following step, it is the aim of the system, the final end. It is useless to know a highway or a clinic cost a certain amount if we cannot know who decided to build it and why that option was better than others. This gives us the certainty that it was done taking into consideration the greatest benefit to society and that it was not a discretionary decision. Even if the money is “correctly” disbursed—that is, nobody steals a cent—if it is an unnecessary public work, that is another kind of corruption.¹⁷

For Andreas Schedler, accountability allows the citizenry to demand that public officials report on their decisions, but that they also explain their decisions and provide the arguments underlying public policies and their implementation.¹⁸ Society does not want information *per se*; as we said before, it wants information to be able to evaluate the government and, if necessary, to sanction it. Sergio López Ayllón and Mauricio Merino have concurred with this, saying, “Accountability by governmental agents is about the exercise of fa-

culties and for that reason, there can be no supervision or judgment of it without information about the decisions public authorities make in the exercise of their attributions, about the procedures they follow to do so, and about the results they obtain.”¹⁹

Accountability makes it possible to avoid falling into what Jonathan Fox calls “opaque (or diffuse) transparency,” which

refers to forms of dissemination of official information that do not reveal how institutions perform in practice, whether in terms of how decisions are made or what the results of their actions are. This is to be contrasted with “clear transparency”—that is, accountability—which sheds light on institutional behavior, specifying the responsibilities of their officials, particularly with regard to decision-making.²⁰ ■■

NOTES

¹ The Oaxaca Group was not founded under that name, nor was it just a formal organization. Unprecedented in mobilizing public opinion, its first activity was to hold a national seminar, “The Right to Information and Democratic Reform,” convened by the Ibero-American University, the Information and Democracy and Konrad Adenauer Foundations, the *El Universal* daily newspaper, the Association of Publishers in the States, the Mexican Association of Publishers, and the Fraternity of Reporters of Mexico, in Oaxaca City on May 23 and 24, 2001. Once the group began to have an impact on public opinion around the issue of the right to public information as part of the right to information in general, it became necessary to give it a name. Journalist and *New York Times* correspondent Ginger Thompson was the one who for the first time called the emerging mobilization the Oaxaca Group, naming it after the place the academic conference had been held. See Juan Francisco Escobedo, “Movilización de opinión pública en México: el caso del Grupo Oaxaca y de la Ley Federal de Acceso a la Información Pública,” *Derecho comparado de la información* no. 2, July-December 2003, Instituto de Investigaciones Jurídicas-UNAM, p. 71, [http://www.juridicas.unam.mx/publica/rev/ indice.htm?r=decoinc&n=2](http://www.juridicas.unam.mx/publica/rev/indice.htm?r=decoinc&n=2).

² The Chamber of Deputies passed it on April 24; the Senate, April 30, 2002.

³ Luis Aguilar Villanueva, “Estudio introductorio,” *Problemas públicos y agenda de gobierno*, Antologías de política pública Collection (Mexico City: Miguel Ángel Porrúa, 1993), pp. 26-27.

⁴ Jonathan Fox, “Transparencia y rendición de cuentas,” John Ackerman, comp., *Más allá del acceso a la información* (Mexico City: Siglo XXI/IJ-UNAM, 2008), p. 174.

⁵ Jeremy Bentham, “Tácticas parlamentarias” (Mexico City: Senado de la República, LX Legislatura, 2006) p. 99.

⁶ *Ibid.*, p. 97.

⁷ Mikhail Gorbachev, *Perestroika, nuevas ideas para mi país y el mundo* (Mexico City: Diana, 1988), pp. 23, 32, 33, 59, 83, and 84. In his *Memorias*, Gorbachev writes, “How did it all begin? A few men in [very high] positions in the party hierarchy had realized the need for reform, but what was more decisive was that, in addition, they were willing to run the enormous risk of undertaking not only cosmetic measures or a repair job, but a profound transformation of that highly centralized, bureaucratized, and ideology-ridden system that had atrophied over seven decades.” See Mikhail Gorbachev, *Memorias*, José Luis Gil Aristu, trans., Círculo de Lectores Collection (Barcelona: Plaza & Janés, 1996), p. 587.

⁸ Fernando Savater, *Ética, política, ciudadanía* (Mexico City: Grijalbo/Hoja Casa Editorial, and Causa Ciudadana, 1998), p. 52.

⁹ The system, called Infomex, has gradually been perfected thanks to disinterested support from many institutions like the Supreme Court, the Federal Electoral Institute (IFE), the Federal Judiciary’s Electoral Tribunal (TEPJF), the National Institute of Statistics and Geography (INEGI), as well as certain state-level IFAI-like institutions, which have contributed ideas and experience for facilitating people’s access to information.

¹⁰ The cut-off point was March 21, 2011. In 2003, there were 24 097 requests; in 2004, 37 732; in 2005, 50 127; in 2006, 60 213; in 2007, 94 723; in 2008, 105 250; in 2009, 117 597; and in 2010, 122 138.

¹¹ Elías Canetti, *Masa y poder* (Madrid: Alianza/Muchnik, 1999), p. 281.

¹² *Ibid.*, p. 286.

¹³ Martín Quirarte, *Relaciones entre Juárez y el Congreso* (Mexico City: Miguel Ángel Porrúa/Cámara de Diputados, 2006), p. XLVII.

¹⁴ Juan Francisco Escobedo, *México: poliarquía en construcción. Democratización, comunicación, información y gobernabilidad* (Mexico City: Universidad Iberoamericana/Fundación Información y Democracia A.C. /Fundación Konrad Adenauer, 2004), p. 16.

¹⁵ File 3225/10: 1) the number of cardiovascular cases; 2) the number of cases of rheumatoid arthritis; 3) the number of cases of breast cancer; 4) the number of type-two mellitus diabetes; 5) the number of cases of chronic myeloid leukemia; 6) the number of cases of schizophrenia and bi-polar disorder; 7) the number of kidney and liver transplants; and 8) the number of HIV-AIDS cases.

¹⁶ In File 1015/11, Mexico’s state-owned petroleum giant, Pemex, refused to hand over information saying that “with regard to the information requested, *it would be difficult to determine with any certainty whether it ever existed*, since in the past, there were no requirements mandating the institution to specifically safeguard the documentation contained in the archives.”

¹⁷ In Mexico, one president built an international airport in his hometown of fewer than 2 000 inhabitants, and different officials have built avenues near their residences or highways to service their private ranches.

¹⁸ Andreas Schedler, *¿Qué es la rendición de cuentas?* IFAI Cuadernos de transparencia Collection no. 3 (Mexico City: IFAI, 2005), p. 14.

¹⁹ Sergio López Ayllón and Mauricio Merino, “La rendición de cuentas en México: perspectivas y retos,” www.rendiciondecuentas.cide.edu.mx, 2009, pp. 17-18.

²⁰ Jonathan Fox, *op. cit.*, p. 190.

The Social Focus On Public Information

Issa Luna Pla*



The Oaxaca Group, made up of academics and members of organized civil society, was the main driving force behind Mexico's current Federal Law on Transparency and Access to Public Governmental Information.

In the 1980s, a group of citizens in India concerned about local government spending created a model known as “social audits.” In their first efforts, they realized what the model’s main problem was: it did not get results because they did not have access to public information. So, their strategy changed. They decided to wage a campaign to demand a law that would guarantee their right to know. In public plazas they chanted, “We don’t want Pepsi-Cola. We don’t want expensive cars. We want information!” India’s law guaranteeing access to public information was passed in 2005.

Eastern Europeans threw out the Communist governments in the 1980s and 1990s, joining the huge Western wave of democratization, ready to change the rules of the game. New governments took office with conditions: they had to

The language of civil society demanding the “right to know” gained greater impetus, assigning it a supreme value, almost to the point of religious fervor. It managed to take the step from a policy of openness to the guarantee of a right.

take a first step toward democracy guaranteeing access to public information for all citizens. Never again would truth be hidden behind power, populism, and an opaque government: thus, the law guaranteeing access to public information in Latvia was passed in 1998, in Bulgaria in 2000, in Hungary in 2005, and in Macedonia in 2006.

In 2000, for the first time since the 1910 Revolution, Mexicans achieved alternation in office. The rules of hegemonic

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What globalized civil society has provided are standards adapted to political and social changes, to the needs of creating counterweights to the exercise of public power, empowering society itself with the guarantee of the right to access to public information.

power had to be replaced with democratic ones. The society that voted for a change in administration would no longer tolerate lies, irresponsibility, the truth being hidden, and simulation. It demanded a law guaranteeing access to public information to empower citizens and safeguard itself against arbitrariness and authoritarianism. Thus, legislation guaranteeing transparency and access to public information was passed in 2002, and within four years, all the states had followed suit with local laws. The Mexican law was an example for other countries in the region: Ecuador and the Dominican Republic each approved their law in 2004, Chile in 2009, and El Salvador in 2011.

Today, according to the organization Privacy International, 90 countries have laws on access to information, all with similarities in procedures, the actors identified as mandated to report, and the design of how to monitor compliance. How were civil society groups involved in this in Asia, Eastern Europe, and Latin America?

For many centuries, Western democratic governments had rules about transparency that played the role of norms to ensure the integrity of government actions, a moral standard for those who exercise government, and a kind of exchange with the society that had ceded them power. Open mechanisms for government decisions, the exercise of their finances, their plans and their effectiveness were considered an issue of democracy and efficient government. At the beginning of this century, there was a 180-degree turn: the rules of transparency would be defined by society and no longer as a gracious, top-down, populist concession from the state. These clauses in the social contract had to be determined by civil society, with strict rules for monitoring compliance.

Access to information was not originally formulated as a fundamental right. Until the recent turn of the century, universal and regional international law had not been interpreted to state that individuals have freedom to access information and that that freedom creates specific obligations on the part of states to guarantee access to that information. How-

ever, some voices pointed out the importance that the issue was taking on in certain countries and the growing enthusiasm about it in civil society. These voices took a few years to formulate their discourse.

The language of civil society demanding the “right to know” gained greater impetus, assigning it a supreme value, almost to the point of religious fervor. It managed to take the step from a policy of openness to the guarantee of a right. As never before, world civil society crystallized the idea of exporting experiences, transforming states in the same way, moving social groups, and arming itself with the same tools for advocating a fundamental right. In short, it demonstrated that from one continent, the decisions a state would make on the other side of the globe could be influenced.

Civil society organizations created networks with quite complex modes of operation and sufficient public and private funding to hold many meetings of their members. At these conferences, they heard stories about the state of the written and unwritten rules about government openness; debated advocacy strategies to get legislatures to pass access-to-information laws; designed publicity campaigns for audiences completely unfamiliar with the issue; and in some cases, people opted to enter into litigation to get an initial broad, cutting-edge interpretation from constitutional courts about freedom of information in their countries.

Globalized civil society has created know-how of its own to get legislatures and governments to jointly commit to adopting and implementing laws on access to information. In some countries, these strategies have had an impact after 10 years, like in Guatemala. But sooner or later, states realize that the society that is asking for it is in line with the major political transformations and the trends in international funding. This is because the states are no longer alone; they are also globalized and concerned about international affairs and their demands.

What globalized civil society has provided are standards adapted to political and social changes, to the needs of creating counterweights to the exercise of public power, empowering society itself with the guarantee of the right to access to public information. At the beginning of this century, these standards were adopted extensively, particularly in the Inter-American System of Human Rights, which was undoubtedly also important in the interpretation of the right to access to information for the European Union, the African Union, and the League of Arab States.

At the end of the 1990s, the Human Rights Commission’s Office of the Special Rapporteur for Freedom of Expression

already included in its annual reports a specific section on access to information in the region. This office took the pulse of the social movements that most dealt with issues of access to information, who reported the obstacles and abuses defenders encountered in the course of their activism.

Civil society groups understood that international legal institutions could be allies in promoting standards and applying the right to access to information by states. Groups like the civic organization Article 19 promoted a Joint Declaration of the Rapporteurs for Freedom of Expression of the Inter-American and Universal Systems of Human Rights. Others lobbied and convinced the Organization of American States (OAS) Juridical Committee to emit a set of principles about the right of access to information. Civil society and renowned activists in Chile litigated for an individual's right of access to information, bringing a case before the Inter-American Commission on Human Rights and the Inter-American Court on Human Rights. In 2006, they achieved an internationally cutting-edge exemplary sentence from that court in the case of *Claude Reyes v. Chile*, which had been supported by expert opinions and the introduction of *amicus curiae* briefs, all on the initiative of civil society organizations.

The social movements became so widespread in the regional system that in 2010, the OAS General Assembly ordered its Juridical Committee to write a Model Law on Access to Public Information. In an unprecedented move, the Juridical Committee brought together a group of experts and members of civil society to write it. This standard, approved by the General Assembly in 2011, includes and systematizes the regional standards civil society has studied, plus its experiences over the last decade.

A product of civil society's activities in the region, countries with laws on access to information prior to the social upsurge, like the United States (1966) and Canada (1983), have amended their legislation to incorporate recent standards. The scope of these reforms and of the regional standards are now used by civil society organizations to demand advances in this area toward guaranteeing the right to access to information in other regional systems, like Europe's.

Examined under the magnifying glass of analysis, the laws on access to information are the only legal norms that regulate the power of citizens and not among public institutions. They transfer part of that power to the citizenry in the form of information, but, to be honest, these laws do not radically change forms of government; they do not directly combat corruption; they do not improve the efficiency of public spend-

The social movements became so widespread in the Americas that in 2010, the OAS General Assembly ordered its Juridical Committee to write a Model Law on Access to Public Information, systematizing the regional standards civil society has studied.

ing *per se*. They do not guarantee that public servants will act in accordance with the public interest and stop pursuing their own private interests. Nevertheless, they do create the possibility that society participate in those changes and that the public become aware of the issue, but they can bring citizens closer to or move them away from their governments; they make governments more popular in some ways, and in other ways, they play against that.

Civil society must now look back at the road traveled and its achievements to understand its present and the challenges it must take up in the future. In the origins of each of the laws passed are the primary problems that led groups to defend them; however, after applying and implementing these laws, different aspects of the ambivalent nature of these rules have come to light. A certain philosopher would say that we could count on the truth of the idea that the laws on access to information contain elements that have repercussions on governance and the public administration; they are not only human guarantees. It is imperative that civil society recognize these attributes and fine distinctions that make transparency and the right to access to information less religious and more secular.

After promoting the passage of access to information legislation, civil society organizations are concerned about the real, good-faith implementation of the norms. However, this must not be the only task of a vibrant society that has shown its muscle throughout this experience. The causes of civil society can be reoriented toward broader ends, such as demanding useful public information about diverse kinds of human needs; defending the right of the poor to access to public information at the level of their capabilities; and using public information to promote common causes. There can be no doubt about its capacity to continue to search out explanations and demand a moral commitment from those in government. The only thing that would be unpardonable would be for civil society to lower its guard on putting checks on those in power and on its own quest to reduce arbitrariness. ■■

Looking Ahead Information in Mexico City's Federal District

Óscar Guerra*



Oscar Guerra, commissioner-president of Mexico City's Federal District Institute of Access to Public Information and Protection of Personal Data (Infodf), explains the INFOMEX informational system platform.

Mexico City's Federal District Institute of Access to Public Information and Protection of Personal Data (Infodf) is the local guarantor of the right to information established in Article 6 of the Mexican Constitution. As such, on a daily basis, it carries out different kinds of actions to consolidate the exercise of this right. It has also ensured that the Federal District continues to be at the cutting edge on issues of transparency, accountability, and the protection of personal data.

Infodf's actions, together with its accumulated experience, have made it possible to foster in the Federal District Leg-

islative Assembly (ALDF) as the result of its day-to-day work with the responsible actors.

Access to public information in government hands is important for several reasons: firstly, because the real owners of that information are the people, who elect a government, depositing in it the capacity to decide about public issues. The government accumulates information and makes decisions that are written down in different documents. However, it does all this in the name of the citizenry, as its agent, and therefore, the citizens themselves have the right to know about and have access to all the information the government has generated.

In the second place, it is important because access to information is one of the pillars of accountability, which, in turn is one of the conditions necessary for an effective democracy. Accountability means that public officials are obligated to inform the citizenry about their acts of government. Many

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regulations about access to information obligate the government to publish different kinds of data, and therefore they become another instrument for accountability.

In the third place, access to information is an effective mechanism for evaluating and controlling the exercise of power. Through this kind of legislation, any person or organization can request information to review the acts of those in different spheres of government. Public servants know this, and that knowledge is an incentive to act in accordance with their mandates and the relevant legislation in their spheres of responsibility.

The ALDF recently approved amendments to the Federal District Law of Transparency and Access to Public Information (LTAIPDF) to harmonize it with international obligations. This will guarantee further access to information by the governed.

Along these same lines, Paragraph 3 of the new LTAIPDF Article 1 states that the fundamental right to information includes disseminating, investigating, and gathering public information. This recognition complies with the stipulations in Article 13 of the American Convention on Human Rights, which protects the right of every person to request access to government-controlled information by explicitly pointing out the right to “seek” and receive information. In consequence, it backs the right of individuals to receive information and the government’s positive obligation to provide it, recognized in 2006 by the Inter-American court of Human Rights, since providing information to an individual means it can be disseminated in society so that the public can receive and evaluate it.

TRANSPARENCY AND ITS RELATIONSHIP TO OTHER RIGHTS

Transparency must be reconciled with other rights of persons, particularly with a fundamental one, the right to privacy. Because these are two essential rights, there can be conflicts between them, given that neither can be exercised in all cases absolutely.

Generally, two types of information can be considered exceptions to the right of access: the first is the data the government must classify for reasons of national security. The other is information about private legal entities and citizens. In the case of individuals, personal data must be protected both by the laws on access to information, since they are confidential, and by legislation specifically on protection of personal data.

In this sense, and given the importance and need for the authorities to protect data they might have in their power both about individuals and private legal entities, on October 3, 2008, the ALDF published in the *Gaceta oficial del Distrito Federal* (Federal District Official Gazette) the Law to Protect Personal Data for the Federal District.¹ This created a specialized legal norm in this sphere, creating certainty among the population that personal data would not be disseminated, and establishing rights called “ARCO”: the rights to access, rectification, cancellation, and opposition.

While all democratic regimes must guarantee the right to public information, it is also true that the right to privacy must be safeguarded. Both rights have the same status, mentioned in Article 6 of the Constitution and in the Universal Declaration of Human Rights, whose Article 19 states, “Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive, and impart information and ideas through any media and regardless of frontiers.” In the same fashion, the declaration’s Article 12, states, “No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honor and reputation. Everyone has the right to the protection of the law against such interference or attacks.”

Both the right to access to public information and the right to the protection of personal data have their limits, expressed in legal documents specifying the reasons that would impede their being made public, in the case of the former, and that would allow them to be opened up to scrutiny, in the case of the latter. In this sense, when it is said there are excep-

tions or limits to access to information in government hands, this is known as an exceptional or special case. Naturally, personal information must be confidential and only subject to restricted access (usually available solely to the interested party). However, there is another kind of information that the government may refuse to provide, the kind that would cause serious damage to the institution in question in different ways, or that would pose a threat in delicate matters of state, such as national security.

The exception is one of the most complex items any law on access to information must deal with. In addition to personal data, different kinds of proof, such as proof of damages and proof of public interest, should be considered. These make it possible to clearly establish in which cases the public institution must refuse information to the applicant; these kinds of proof are included in Article 4, Subsections 16 and 26 of the new LTAIPDF as follows:

XVI. Proof of Damages: It is the responsibility of the entities mandated to demonstrate that the dissemination of information damages the interest protected by law, and that the damage that would be caused by making the information public is greater than the interest in knowing it...

XXVI. Proof of Public Interest: It is the obligation of the Institute to objectively, quantitatively, and qualitatively argue and motivate the benefit of ordering the dissemination of the information whose access is restricted for reasons in the public interest.

However, situations can exist in which the public interest must prevail over individual interests; that is to say, it could be the case that the benefit the state seeks to achieve by divulging the information is superior to the damage that would be caused to private interests by violating his/her/its right to privacy. This obligates the authority to carefully ponder in detail the interests in conflict in order to, under exceptional circumstances, allow the possibility of divulging certain personal data.

This decision cannot be discretionary or arbitrary, since it must be based on and motivated strictly by the objectives pursued in the laws themselves. In addition, the procedures ensuring the holders of the rights in conflict their due guarantee to a hearing must be complied with.

The right to a hearing is an essential element that all authorities must respect and comply with, since only through the exercise of this right will it be possible to come to a decision about the dissemination of a specific piece of information according to Article 87 of the Federal District's new law on

transparency. This article states that when a request for review has been presented based on Subsection 3 of Article 77, for duly accredited reasons of public interest related to the objectives of this law, as an exception, the dissemination of information classified as of restricted access can be ordered. In this case:

- I. The applicant can present proof arguing that it is in the public interest to disseminate the information;
- II. During the substantiation of the request for review, and in the case that the information under review contains confidential information, the guarantee of the right to a hearing of the holders of the personal data will be respected; and
- III. The decision handed down must contain an objective, quantitative, and qualitative evaluation of the interests in conflict that would reasonably ensure that the benefits to society of divulging the information will be greater than the damage it could cause.

Finally, this kind of resolution, known as proof of public interest, can be carried out solely on the request of one of the parties involved and only in exceptional cases. In addition, it must be established in the specific case that the public interest contained in a law must prevail over private interests, a general principle of law recognized in our Mexican legal system.

FORMS OF ACCESS TO INFORMATION

The right to access to information brings with it the obligation to publish on the internet information that would be of interest to society. However, it should not be forgotten that the number of Mexican homes with a computer and internet service is still low. Therefore, access via telephone, whether a land line or cellular phone, should also be provided. So, promoting the use of the internet to exercise the right to access to information only serves an as yet small sector of society.

Access to information is one of the pillars of accountability, which, in turn is one of the conditions for an effective democracy. This means that public officials are obligated to inform the citizenry about their acts of government.

In Mexico City's Federal District, a mechanism called *Tel-Infodf* has been created. Using it, any individual can request information from all those obligated by the law to provide it via a simple phone call.

Based on this, in Mexico City's Federal District, a mechanism called Tel-InfoDF has been created. Using this, any individual can request information from all those obligated by the law to provide it via a simple phone call.

Opening up government information to all citizens is undoubtedly a step forward in guaranteeing this right. However, this generalized opening must be focused so that certain processes, administrative paperwork, and specific social sectors can improve and benefit from transparency. The focused transparency included in Article 22, Subsection 10 of the new LTAIPDF points out that it is a fundamental task

to guarantee that the information published by the entities under obligation to do so be accessible in a focused way to persons with physical, auditory, and visual impairments, as well as persons who speak different recognized languages. . . . This is a response to the need to obtain specific benefits in transparency, as well as to the demand for greater order in the information the government offers, which requires that it standardize and publish specific information that seeks to resolve a concrete social problem and stimulate the market mechanisms to achieve a specific social benefit.

Equally, we can speak of civic transparency, transparency in administrative procedures and services, as well as socially useful information; all these concepts express the interest in guaranteeing that all information in the public interest, administrative procedures and services the government provides, be published on internet portals and that searches for it be agile. On this point, Article 14 of the new law stipulates that

the entities obligated [by this law] will update the information about the topics, documents and policies detailed as follows in printed form for direct consultation and on their respective internet websites, according to their functions. . . . The Offices of Public Information of these entities obligated by law must provide interested persons with computer equipment so they can directly obtain information or print information to be paid for

in accordance with the rate set by the Federal District's Fiscal Code. They must also provide support for clients who require it and all manner of assistance in carrying out the paperwork and procuring the services they provide.

It is important to point out that in order to substantially advance on issues of transparency, the aim is to write regulations using language that can be more easily understood by citizens unfamiliar with legal terminology. This is because obscure language makes it difficult to understand texts, meaning that what they stipulate cannot be applied correctly, thus limiting the effective exercise of the right to information. On this note, several European countries have already duly modified their legal regulations.

Along these same lines, mechanisms must be encouraged that make it possible to automatically and immediately access information by a telephone service set up by the body that is obligated by law to serve applicants. Also, in the case of information published on the internet portals of the obligated bodies, whatever is requested must be provided immediately, without having to make an official request for information. This is known as expeditious transparency. However, if the information does not exist on the internet portal at that time and cannot be provided electronically or by telephone, an application must be submitted, which must go through the proper channels.

When these new concepts are implemented, transparency, accountability, and the protection of personal data will be strengthened, allowing them to develop further. It is fundamental that in the development of legislation about the right to information, we always keep in mind the greatest benefit to society that our actions can contribute and that we always seek to ensure that the government offers all Mexicans all the means at its disposal to ensure that transparency is a mechanism that contributes to a more equitable, democratic society. ■■

NOTES

¹ See at http://www.consejeria.df.gob.mx/uploads/gacetas/OCTUBRE_3_08.pdf [Editor's Note.]

The Right to Environmental Information in Mexico The Key to a False Door

Marisol Anglés Hernández*

Today's governments are at work creating the mechanisms for guaranteeing a social, democratic state with the rule of law, in which transparency about the activities of public entities has become the rule, and secrets the exception. There is therefore an attempt to make the way of controlling and handling public information that left citizens defenseless in favor of supposed "confidentiality" a thing of the past.

This is linked to the trend in international instruments to foster public participation in decision-making, which began to be introduced into national spheres by movements for democracy. Through that process, participation has expanded, fostering the involvement of non-state actors in the construction, design, implementation, and evaluation of public policies, including environmental policies. This has particularly been the case since the 1970s, when the human right to live in a suitable environment began to be recognized.

This governmental effort to make rights effective (like the right to access to public information as a tool for concretizing the other fundamental rights: the right to consultation, to participate in decision-making, and to a suitable environment) poses new challenges for the law and tremendously significant responsibilities for the state. It is the latter that must create appropriate instruments for this task. In this context, many countries' legal systems, like Mexico's, have been revolutionized. Access to government information has been made into an individual guarantee, which makes possible people's

access to the information that any federal, state, or municipal authority or body may have. In Mexico, this led to the passage of the Federal Law on Transparency and Access to Public Governmental Information (LFTAIPG), which aims to guarantee all individuals' access to federal public information, including that pertaining to the environment, with the exception of classified information. One point in the law that should be underlined is that it does not demand the individual argue cause or involvement for his/her request for information; in addition, it establishes different ways of accessing it: the internet, the mail, or a direct, personal application at the federal administration's Community Outreach Units. If access to the information is denied, the law stipulates a process whereby the applicant can appeal to the Federal Institute for Access to Information and Data Protection.

In theory, the bases for changing the relationship between society and the state have been established, since government actions can be legitimized by ensuring that every public action or omission is subject to the scrutiny of an individual whenever he/she requests it. If we look at environmental issues, we will see that their complexity requires involving all the actors in society to deal with them. At the same time, this requires guaranteeing access to the available environmental information as a prerequisite for participating in making decisions that are appropriate and supported by society, and which would make it possible to move ahead toward sustainable development.

Parallel to guaranteeing the right to access to public information, the rights to access to participation and justice have

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also been consolidated. These three rights are the pillars needed to concretize the right to a suitable environment. These rights of access began gaining strength by being recognized in diverse international instruments, among them, the Declaration of Rio, adopted in 1992 at the United Nations Summit on the Environment and Development. The Rio Declaration's tenth principle stipulates that the best way of dealing with environmental issues is with the participation of all interested citizens. But, to participate in decision-making, a fundamental premise is guaranteeing access to information. Based on this, individuals can reflect and make judgments about the actions, measures, or decisions that could affect them, and take appropriate action.

In addition, access to environmental information is also an essential instrument for public management, the creation of awareness, education, and co-responsible social participation. The latter can be carried out when society is fully informed about the environment, its deterioration, fragility, and the interrelationship between the environment and society, as well as of the impact that our actions have, including the negative effects on our health and well-being. Clearly, the guarantee of access to information also makes it possible to further conscious actions oriented to identifying risks and, based on that, making decisions that will tend to reduce or eliminate them; plan for sustainable development; and create incentives for all sectors of society to participate in improving the environment. At the same time, all this contributes to making the right to a suitable environment a reality.

It should be pointed out that two subjects are involved in this right: in the first place, public authorities, the main people responsible for gathering, managing, and updating environmental information. In the second place, citizens are validated to exercise this right directly. For this reason, the guarantee to access to information is a *sine qua non* condition for exercising the right to a suitable environment, in which individuals and public bodies must participate co-responsibly.

In order to guarantee the full exercise of this right, the Federal Law of Ecological Equilibrium and Environmental Protection (LGEEPA) was reformed in 1996 to incorporate two categories of the right to environmental information. The first involves the obligation of transparency on the part of the environmental authorities, the Ministry of the Environment and Natural Resources (Semarnat) and its different technically semi-autonomous bodies, like the National Commission for Water, the National Ecology Institute, the Federal Environmental Protection Agency, and the National Commission for Protected Natural Areas. This requires the establishment of a National System of Environmental Information and Natural Resources based on the data on emissions, dumping, trade in biodiversity, cross-border movement of dangerous waste, etc., provided by those the law itself stipulates must do so. The second category is the right of all persons to access to existing environmental information.

Under the LGEEPA, environmental information is considered any written, visual, or database information environmental authorities have about water, air, soil, flora, fauna,

In theory, the bases for changing the relationship between society and the state have been established, since government actions can be legitimized by ensuring that every public action or omission is subject to scrutiny.



Alfredo Guerrero/Cuartoscuro

The right to information has expanded, among other reasons, due to demands for environmental protection after the 1992 Rio Summit.

and natural resources in general, as well as the activities or measures that affect or could affect people. The law also includes the possibility that environmental information requested may be denied if it is legally considered confidential or when, by its very nature, its dissemination could affect national security; when it is linked to the legal process or ongoing inspections or surveillance; when it has been provided by third parties who are not legally mandated to provide it; and when it involves inventories, inputs, and technologies for processes, including their description.

It should be underlined that, according to Semarnat figures, from September 2009 to August 2010, 3 315 requests for information were made, placing this ministry among the top four that information was requested from. Nevertheless, this does not mean that these requests were satisfactorily dealt with; in many cases, the application has been received, but the information has not yet been provided.¹ The only thing this demonstrates is that, despite legislative progress, the adoption of international instruments, and the mechanisms for environmental management, the authorities are not really committed to fulfilling the mandate of generating, processing, updating, and disseminating environmental information. This, in turn, makes it difficult for people to exercise their environmental rights in practice based on the use of the existing mechanisms.

To that end, it is indispensable to improve and update environmental information systems; adopt indicators to monitor the processes fostering environmental democracy; create networks and alliances to bolster efforts in evaluating environmental management; and create inter-sectoral cooperation programs that would make it possible to improve the current information access systems. It is also necessary to establish uniform criteria for fulfilling environmental information obligations, such as in the Registries of Emissions and Transfers of Contaminants, so that it is really possible to evaluate and measure the data they contain. Lastly, public participation in formulating and evaluating policies, plans, and programs must be promoted.

In the imaginary of a country in which everyone becomes involved in the effort to concretize the right to a suitable environment, diverse legal instruments make public participation possible. Among them are the evaluation of environmental impacts, environmental audits, and declaring certain natural areas protected. All these mechanisms include participation through consultation mechanisms. However, it is not enough to have institutional means if we lack the fun-

The Rio Declaration in 1994 stipulates that the best way of dealing with environmental issues is with the participation of all interested citizens and a fundamental premise is guaranteeing access to information.

damental element for maintaining our demands, that is, if we do not have guaranteed access to truthful, timely, impartial information. This makes it materially impossible for society to participate co-responsibly in planning, executing, evaluating, and monitoring environmental policy, as well as to demand its right to a suitable environment.

In addition to this, we find that, with these omissions, the Mexican state infringes on certain human rights guaranteed in the international instruments it is a party to. This is the case of Covenant 169 of the International Labor Organization on Indigenous and Tribal Peoples in Independent Countries, which includes among its objectives the guarantee of the right to information and consultation through an open, frank, meaningful, timely discussion among governments, communities, and first peoples about the measures that could affect the natural resources on their lands and territories, in order to allow them to participate effectively in the decision-making process.

Based on this premise, in the current context of globalization, the clash between economic and sustainable development policies is unquestionable. Although in political discourse, they seem to be in harmony, practice shows us that what is happening is that large foreign development projects are being encouraged, with no regard for the fact that they create environmental and social strife as a result of violating the right of access to information, consultation, and participation in making the decisions that may affect those involved. Obviously, the legal systems in and of themselves do not ensure public access to environmental information.

Undoubtedly, the recognition of the right to access to public information is an important achievement. However, real access to information is a challenge that remains to be realized. In Mexico, people need government information about environmental impact, contaminating emissions, dangerous waste, environmental liabilities, endangered species, etc., to be able to contribute to strengthening environmental co-responsibility, the rule of law, and respect for human rights.

It is important to be clear that it is not enough to include ineffective stipulations in the environmental legislative catalogue; their deficiencies limit the full exercise of rights, in this case, the right to access to environmental information. Instead, they open a false door to expectations that fall apart together with other rights, like the expectation of being able to be part of the deliberative process that all governmental decisions go through—or should go through—as well as

their implementation and follow-up. This means that in our country, we have a long way to go before we achieve the full guarantee of the rights to access to environmental information, participation, and justice. ■■

NOTES

¹ Semarnat, *Cuarto informe de labores* (Mexico City: Semarnat, 2010), p. 207.

Reflections on the Right Of Access to Information And Political Parties in Mexico¹

José Reynoso Núñez*

Adriana Bracho Alegría**

There is a deeply rooted idea that in a representative democracy, representatives should share with their constituencies the conviction of approving measures to favor the citizenry. This idea is even more firmly entrenched in matters with an intrinsically positive connotation or a generally accepted positive judgment. This is the case of the right to access to information. However, as it happens, this generally accepted positive judgment and that conviction shared by representatives and their constituencies does not exist. It is often the case that what the legislators approve does not coincide with an idea that it was thought they should share with the citizenry. For example, there is an idea that political parties should be bound by Article 6 of the Constitution; but this is not the case. Regulation of political parties in this matter is still far from a normative ideal, which would bind institutions in

the public interest, the recipients of copious amounts of public funding, to effectively be obliged to respond to requests for information from the citizens they represent, both from the perspective of those citizens' rights, and also as a mechanism for accountability. Why is this not the case? In this essay, we will try to pose an answer.

It is true that the Federal Code of Electoral Institutions and Procedures (Cofipe) has several ways of accessing information about political parties. We can mention the System of Supervision and Accountability of Political Parties.² This system establishes parties' obligation to report on the utilization of the resources assigned to them and as well as publish their basic documents; to provide information about the powers of their leadership bodies; and to report all the general decisions made by their leadership bodies. It also requires they make available a directory of their internal bodies; the wages of their paid employees; electoral platforms and government programs they register with the Federal Electoral Institute (IFE); any agreements to create a front, a coalition, a merger, or to participate in elections; the calls they put out to convene

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elections for their leaderships or to register their candidates to run for public office; the amount of public funding they receive monthly; their annual or partial reports on income and spending; the state of their holdings; an inventory of any real estate they may own; a list of donors and the amounts they donate; the resolutions passed by their disciplinary boards on any level, once the process is finalized; the names of their representatives before the institute's bodies; and the list of the foundations, centers, or research or training institutes they may give on-going economic support to, among other items.

However, political parties are not directly obliged to provide indicators of their activities or of their exercise of public funds, since they are not bound under Article 6, Subsection 1 of the Constitution, which refers to federal, state, or municipal authorities, states, bodies, or organisms. The circumstances of political parties are different from those of public bodies, since the former are only accountable through indirect procedures.

Is there really a regulatory problem in this sphere? Can the probable deficiencies in political parties' behavior regarding their handling of public resources be attributed to existing regulations? To respond to these questions, it is necessary to distinguish between the right to access to information as the citizens' right to obtain information from political parties and the mechanism for accountability that could exist. We also have to think in terms of cause and effect, and evaluate if access to information is the cause of political parties' more or less proper performance. Three central themes guide the argumentation presented here: first, the feasibility of approving institutional reforms; second, the ability of legal norms to explain the situation; and third, the role of political parties *vis-à-vis* the citizenry.

THE FEASIBILITY OF PASSING INSTITUTIONAL REFORMS

Why do the political parties not amend Article 6 of the Constitution and include themselves among those bound by it? The obvious answer would be that the parties are not about to do anything against their own interests. The answer seems so convincing that it does not seem worth looking for another. However, it is appropriate to point out the following.

It is necessary to distinguish between the right to access to information as the citizens' right to obtain information from political parties and the mechanism for accountability that could exist.



Ivan Stephens/Cuartoscuro

Transparency strengthens democracy and the party system.

It is not sufficient to develop an accepted normative solution or the appropriate technical proposal for there to be a decision to approve and apply it institutionally: it is not enough to have the will to reform. In the debate about institutional reforms, emphasis is often placed on the direction and content that each reform *should have*. The starting point is the premise of what should be, and based on that, proponents argue in favor or against the proposal. The reform would be approved, they say, once decision-makers decide to do so. This reasoning seems to refer to an individual will personified by the legislators. It should then be enough that the legislators want to take into account the best proposal for it to be put into practice. So, their refusal to approve it would be a defect attributable to that individual will.

However, the will required to approve reforms is not individual; it is collective. Since it is collective, it includes diverse perspectives that constitute the proposal to be approved. Reality indicates that when proposals are discussed, they get watered down; they become minimized; they end up looking different because, in order to be approved, they have to include or exclude the points of view of those who participated

in the decision. In the negotiation process, the technically correct or normatively accepted proposal becomes blurred, and one that can be approved develops.

The solution is not to be found in a mere effort of will. Commonly, many proposed solutions for overcoming what are considered the causes of the problems have already been presented in the discussion. However, they have not generated the majority needed for approval. Neither the parties that have proposed them nor those that have rejected them recognize that they have to negotiate, tolerate, concede, and come to consensuses.

THE EXPLANATORY ABILITY OF LEGAL NORMS

What is the role of legal norms in the behavior of political parties in managing their public resources? Can the virtues or deficiencies of party behavior in this sphere be attributed to current regulations? It is true, as Dieter Nohlen has pointed out, that institutions—in this case legal norms—are important but relative.³ We could have the most exhaustive, advanced regulations about the right of access to information from political parties, but if political actors and we citizens do not have a deep-rooted culture of fulfilling these norms, the situation will not be very different from the one we are criticizing.

Let us look at it from the perspective of the rule of law. It can be said that the essence of the rule of law is the rationality of the exercise of power. This rationality, concretized in the law's limitations on the state, is ruled over by a few principles that indicate the characteristics of this subjection: among others, the principle of the supremacy of the Constitution, that of legality, and that of lawfulness.

The rule of law, however, cannot refer only to the rationality emanating from legal norms. It is necessary to differentiate three dimensions of the rule of law: as an aspiration expressed conceptually or in theory; as a demand expressed

in normative law; or as a situation that indicates the distance between reality, the aspiration, and the legal norm. Thus, in realizing the aspiration put forward by the concept of the rule of law, the legal-normative manifestation of the theoretical aspiration is insufficient, which, in our country can even be considered technically very sophisticated in the case of the regulation of political parties. It is not sufficient because, among other reasons, as Efraín González Morfín has pointed out, law is not only the legal norm that determines and establishes what is objectively just, with the corresponding rights and obligations.⁴ It also means the faculty the other has *vis-à-vis* what is objectively just that is due him/her; but, above all, what is objectively just means the conduct and the thing that is owed to another. The rule of law is not only a set of norms; it also requires behavior that is in line with those norms. Then, three levels of discussion exist in applying the concept: as an aspiration expressed in concepts or in theory, as a demand expressed in normative law; or as a situation that indicates the distance between the reality, the aspiration, and the legal norm.

THE ROLE OF POLITICAL PARTIES VIS-À-VIS THE CITIZENRY

Can the responsibility for the absence of appropriate regulation be attributed to the political parties? It is important to not imbue the defense of rights with an anti-party discourse that does not take into account how important parties are for democracy. What do we mean by this? We are referring to the principle we mentioned at the beginning of this essay: that the regulation of political parties in this matter is still far from fulfilling the normative idea in which institutions in the public interest that receive large amounts of public funds should be subject to effective requests for information from the citizens they represent. This conclusion sparks the critique of the existence of a distancing between representatives and constituency, in which the latter seem to be right because their argument is based on an *a priori* positive position, while the representatives' argument is based on an *a priori* negative position.

Could we say that if the citizenry were directly responsible for passing legislation, the legislation would be different? The answer is no. The restrictions that the decision-makers are subject to and the vested interests involved in creating public policies cannot be solved by replacing the political

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class with citizens. The political class is the product of Mexican society, and its behavior cannot be alien to it. The problem of the parties and the elite in Mexico is intimately linked to Mexican society, its mentality, its perception of life, of the other, and of politics. The critique of the parties and the elites seems to be saying that they have no relation to the society they spring from or in which they operate, as though it were possible for political parties and elites from a culture different from that of their own country to exist; as if politicians were not Mexican citizens and did not share with them their virtues and defects; as though the virtues were concentrated in the citizenry and the defects in the politicians.

RECAPITULATING

At the beginning of this essay, we asked ourselves why the regulation of access to information about political parties was still far from a normative ideal. We can conclude that what seems clear at first glance, that is, the normative ideal, is not so clear when transferred to the examination of feasibility.

It turns out that decision-makers are subject to multiple restrictions and must take into account different points of view to get reforms passed. In the negotiation process, the technically correct or normatively accepted proposal is de-configured, and the proposal that can be passed is pieced together. In addition, we must consider that the ideal we aspire to regarding the right to access to information about the political parties depends not only on legal norms, but also on the legal and political culture of both the political elites and the citizens. ■■■

NOTES

¹ We would like to thank Antonio Márquez Aguilar for his support in developing this essay.

² See http://www.ife.org.mx/portal/site/ifev2/Fiscalizacion_y_rendicion_de_cuentas/.

³ Dieter Nohlen, *El contexto hace la diferencia: reformas institucionales y el enfoque histórico empírico* (Mexico City: IJ-UNAM, 2005).

⁴ Efraín González Morfín, *Temas de filosofía del derecho* (Mexico City: Universidad Iberoamericana/Oxford University Press, 1999), p. 85.

The Right to Information in Mexico

Quo vadis?

Fausto Kubli-García*

requently, structural reforms of states originate in transcendent social movements: revolutions, civil wars, and even coups d'état often conclude with a legal and political restructuring centered on fundamental rights. In the case of the right to information in Mexico, a struggle—unarmed, of course—has arisen, spearheaded by civil society organizations and also by different public officials working for change in their country.

In this same vein, we can say that in the last 15 years, discussion about certain fundamental rights has steadily increased in Mexico's national legal system. The most recent constitutional reform changed the name of Title One, previously called "De las garantías individuales" (On Individual Guarantees), to "De los derechos humanos y sus garantías" (On Human Rights and Their Guarantees).¹ The much celebrated reform on indigenous rights was also affected, seeking to broaden constitutional protection for Mexico's first peoples whose rights were highly vulnerable because of marginali-

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Bernardino Hernández/Cuartoscuro

A memorial to the massacre in Aguas Blancas. After this case, the Supreme Court recognized the right to information in the Constitution.

zation and poverty. Criminal procedures were also modified: from being predominantly written, trials became fundamentally oral, making for greater certainty, and above all greater transparency, in the difficult task of administering criminal justice. There were also advances in the right of protection of personal data, and, of course, in the area that is the topic of this brief essay: the right to information and the important amendment of constitutional Article 6 that gave it both principles and bases.

Despite the fact that the Constitution had already established the right of information in 1977, today, the debate takes on another dimension. This is due to the vagueness with which the Constitution had recognized and interpreted the right; some court decisions in the interim even affirmed that this was not a fundamental right giving persons the ability to access public archives; it was even thought that the right to information was part of the duties of press offices and was limited to control of the content of what the mass media presented to the public. It was not until 1996, when the Supreme Court handed down a decision on the case that came to be known as “Aguas Blancas,” involving a genocide perpetrated by paramilitary personnel in the state of Guerrero, when two main issues were identified: the first is that the right to information, in effect, involves the possibility that private parties can access

Without a doubt, it was during Vicente Fox’s administration that this fundamental right was institutionalized: The Federal Law on Transparency and Access to Public Governmental Information was passed, and the Federal Institute for Access to Information was created.

public archives. But, it is also related to the fact that in our country there is a culture of deceit, scheming, and cover ups; that is, like any other practice entrenched in a society’s culture, non-transparency and lies are systematic and recurrent. This widespread behavior affects public policies, and the entire daily operation of the Mexican state as a whole.²

A growing awareness about the scope of the right to information began to germinate in Mexican environmental legislation with the creation of a rudimentary system for accessing environmental information. On the basis of this, the idea emerged that environmental information was public and its access was conditioned only on the need to establish a legal interest, a prerequisite now defined as unconstitutional.³

However, the real qualitative leap, considered a profound structural reform, was the passage of laws on access to information, both federally and locally, as well as the forging of

agreements, regulations, and guidelines for non-executive branch public entities like the federal judiciary, autonomous constitutionally-created bodies (the National Human Rights Commission, the Federal Electoral Institute), and public universities.

However, this whole broad legislative deployment was insufficient and inoperative because each public entity created its own distinct set-up. This meant that access to information was restricted by improper fees, by the supposed lack of proof of legal interest, or by overregulation through many local statutes. For this reason, in 2007, an important amendment was made to Article 6 of the Constitution, establishing a new structure for the right to information throughout Mexico. This change stipulated the current dimensions of the right to access to public information, recognizing it as a fundamental right by clearly stipulating that all information is public and access to it will only be denied for reasons in the public interest or to protect personal data.

Another principle for interpreting the Constitution was also included, the one establishing the principle of maximum publicity. The amendment stipulated that access to information must be free of charge and did not require proof of any kind of interest beyond the simple request for it. Also, the bases were established for operating the bodies that would be the guarantors of access to information, and it was stipulated that review procedures had to be swift. The changes also set certain guidelines for archives, for absolute transparency in the use of public resources, and a framework of sanctions if the laws were not complied with.

Without a doubt, it was during the administration of Vicente Fox (2000-2006) that this fundamental right was institutionalized. The Federal Law on Transparency and Access to Public Governmental Information (LFTAIPG) was passed, and the Federal Institute for Access to Information (IFAI) was created. That is, generally speaking, this right was more or less consolidated, although the task is not concluded. On the other hand, corruption and the excesses of the federal government itself began to be documented,⁴ from the wasteful management of towels and bathroom products in the President's Office, to cases of fraud and siphoning off monies to favored organizations like Provida.⁵

In addition to this, many high-level government officials began to resist the process—something that continues today—reluctant to hand over the archives of their particular institution, arguing that that specific information came under the heading of the federal legislation's exceptions, or simply pre-

tending that the information requested did not exist. One example of this was the issue of files in criminal investigations: at the start there was no great resistance to opening them up to the public. However, after officials realized that they were evidence of the generally mediocre job federal investigators were doing, the Criminal Procedural Code was amended to put a stop to prosecutors' offices being accountable for their work by opening up these archives, which, by nature, should be public.

Felipe Calderón's administration has not focused a big spotlight on the right to information,⁶ but rather used its time trying to bring down the big organized crime cartels using a strategy often called ill-advised. One of the negative effects of this war is that the public is afraid of being caught in the cross-fire between federal forces and the criminals.⁷ Despite this, there have been advances, since the IFAI was given new faculties to be able to control personal data bases in private hands; this is a big challenge for IFAI officials.

I think the challenges of the right to information in Mexico are huge, particularly given that the federal and local governments continue to maintain a position implying that they own the information they have and that it is theirs to use as they see fit. This is why public policies are developed unilaterally—almost personally—without any projection and in many cases in an authoritarian way. It is important to point out that access to public information is the platform of good government; that is, the basis for the art of governing, or governance, is carrying out actions that involve society in decision making. As long as access to information is marginalized, a great many risks will be run in the exercise of public administration, from the lack of trust and the discrediting of public management, to a series of factors that could even lead to social violence.⁸ An example of good governance is the construction of the Itaipú Dam on the Paraná River in South America, a project which Argentina participated in, despite its being built in territory shared by Paraguay and Brazil, because it was situated on the tributaries of the La Plata River. The late

The challenges to the right to information in Mexico are huge, particularly because the federal and local governments continue to act as if they own the information they have and that it is theirs to use as they see fit.

When the government provides information, this institutionally strengthens public administration and translates into a systematic betterment of power relations between government agents and the population.

Argentine internationalist Julio Barberis, who was a fundamental part of the negotiations on building the dam, underlined the important participation of the communities that were going to be displaced by the reservoir it would create. Not only should they be compensated for the land expropriated from them, but they also had to be informed and had to be participants in the undertaking.⁹ The conclusion to be drawn from this is that when the government provides information, this institutionally strengthens public administration and translates into a systematic betterment of power relations between government agents and the population.¹⁰

It is important to point out that the 2007 constitutional reform, which attempted to harmonize the right to information, was insufficient to ensure uniform agility and institutional development nationwide. Today, in Mexico City and in the states and municipalities, conditions for implementing this fundamental right continue to be uneven. Despite the fact that the states and the capital all have laws and institutions charged with ensuring the exercise of the right to information, there are notable differences among local legislatures, among the institutions charged with guaranteeing this right, among the norms stipulating the kind of information that must be provided on line for transparency, and in operational, functional capabilities. It has taken years for the states to simply adopt the Infomex informational system; some of them have not installed it at all.¹¹ These profound differences can give rise to dividing the country between transparent and non-transparent states according to their actions, since this right continues to operate differently nationwide.¹²

One way out of this situation is to repeal all the country's laws on access to information and pass a single general law. This would mean we would have identical local institutions and procedures and no one would be able to allege the supposed "state's right to sovereignty" to justify blocking the exercise of this right. It is a matter, on the one hand, of fighting corruption with laws, institutions, and a strategy that would involve the entire country, and, on the other hand, of arriving at what I call a "generalized state of accountability."

A general law on access to information would distribute competencies among all government bodies. If we have these kinds of laws for the environment, health, and public accounts, why should we not establish one for access to information? The struggle continues, and the road toward ideal accountability and governance is still very long. We know we are moving; the question is: where are we headed? **MM**

NOTES

¹ Decree published in the *Diario oficial de la federación* (Federal Official Gazette), June 10, 2011, http://dof.gob.mx/nota_detalle.php?codigo=5194486&fecha=10/06/2011.

² *Semanario judicial de la federación* and its *Gaceta*, 9th period, vol. 3, June 1996, <http://www.mexicolegal.com.mx/links2.php?id=406>.

³ I am referring here to the 1996 General Law on Ecological Equilibrium and Environmental Protection.

⁴ María Vallarta Vázquez and María Concepción Martínez Medina, "Citizens Claim for Transparency and Accountability: Experience in Public Resources Deviation Monitoring," *Right of Access to Information in Mexico: A Diagnosis by Society*, IFAI, 2005, <http://www.ifai.gob.mx/Publicaciones/publicaciones>.

⁵ In Mexico, Provida (or Pro-Life) is a polemical, ultra-rightwing organization that presents itself as the defender of the right to life and dignity. During the Fox administration, it was also discovered to be involved in diverting public monies, <http://www.cimacnoticias.com.mx/noticias/04ago/s04080201.html>. [Editor's Note.]

⁶ In other branches of government, like the judiciary, however, this fundamental right has been seriously fostered.

⁷ "Segunda encuesta nacional de cultura constitucional: legalidad, legitimidad de las instituciones y rediseño del Estado," (Mexico City: IFE/IIJ-UNAM, 2011), <http://info.juridicas.unam.mx/invest/areas/opinion/Encuesta-Constitucion/>.

⁸ One example of this is what is happening in the port of Veracruz, where the mayor has ordered public works be carried out on Díaz Mirón Avenue and in Zamora Park, located in the city's historic downtown area, despite opposition of local inhabitants and without even attempting to duly inform the public or involve it or to obtain the necessary permits from the National Institute of Anthropology and History (INAH).

⁹ Julio A. Barberis, *Los recursos naturales compartidos entre Estados y el derecho internacional*, Ciencias Sociales Collection (Madrid: Tecnos, 1979).

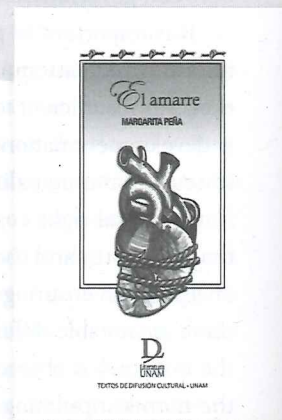
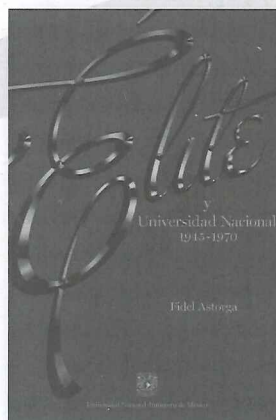
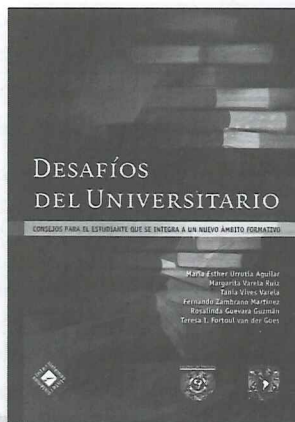
¹⁰ This experience should be compared to the Mexican government's attempt to build an airport in San Salvador Atenco, Texcoco, where a lack of foresight and involvement of society sparked outbreaks of insurrection just a few kilometers from Mexico City; the government then responded with a cruel, despicable police action perpetrated by the State of Mexico police, in which, among other reprehensible acts, several women were subjected to sexual assault. <http://www.amnestyusa.org/our-work/cases/mexico-women-of-atenco>.

¹¹ See <https://www.infomex.org.mx/gobiernofederal/home.action>. [Editor's Note.]

¹² For more information about the right to information in the different states nationwide, see *Métrica de la transparencia 2010*, written by the Center for Economic Research and Teaching (CIDE) and the Mexican Conference for Access to Public Information (Comaip), http://www.metricade.transparencia.cide.edu/Metrica2010_ENGLISH.pdf.

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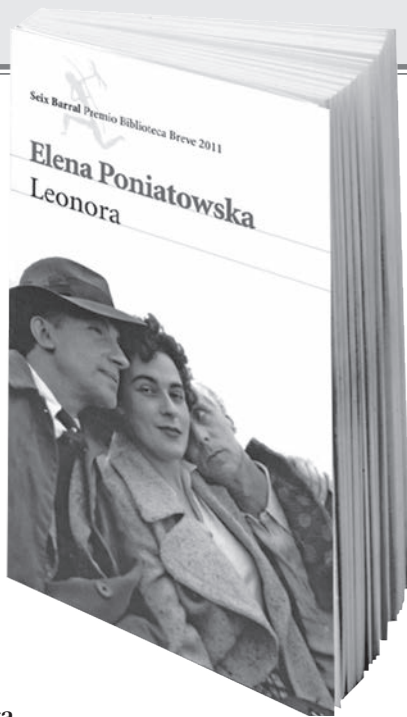
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Reviews



Leonora

Elena Poniatowska

Seix Barral, Barcelona/Editorial Planeta
Mexico City, 2011, 510 pp.

“THE MOST BEAUTIFUL SORCERESS
TO HAVE SURVIVED INTO OUR TIMES”

This is how Elena Poniatowska situates Leonora Carrington, the last living surrealist, who made “magic with each and every color,” as an epigram on the map of the reader’s consciousness. But it takes Poniatowska over 500 pages to spread the “sorceress’s” life as a scintillating cobweb that mesmerizes the reader. This is no doubt one of the reasons *Leonora* was awarded this year’s prestigious Brief Library Prize in Spain.

In her epilogue-like piece Elena Poniatowska claims, “This novel... in no way attempts to be a biography, but rather a free approach to the life of an artist by far out of the ordinary.” One might add that it takes a great and outstanding woman to write significantly and exhilaratingly about a great and outstanding woman. *Leonora* is certainly the case.

Elena Poniatowska met Leonora Carrington in the 1950s and for half a century visited her as a friend. They shared a European upper-class childhood —English and French— and a life in Mexico, loved by each in her own way, among

other common interests. During that time Elena also interviewed Leonora with her finely spun talent webbed into an art by grueling journalist training that included a daily interview routine for many years. But, it is also Elena’s generous heart and shrewd eye for human nature’s myriad miracles, foibles, and quirks that make *Leonora* such a great read.

The style is fresh, determined, poetic. The narrative trots, canters, and gallops, perhaps in emulation of Leonora’s own core conviction, and a leitmotif throughout the novel: that she is a mare in the guise of a woman. The narrative keeps pace with Leonora’s unbridled, dazzling, hyperbolic energy; it also fills pages with anecdotes and brushstroke cameos of well-known figures who touched or were enmeshed at different times in Leonora’s life.

The publication of this novel celebrating Leonora Carrington has been uncannily timely: prior to her ninety-fourth birthday (April 6) and to her death (May 25). Leonora herself was not eager to receive awards and public homage, which she did anyway during her lifetime; but, as the novel makes clear, she most certainly enjoyed becoming the center of attention when it was worth provoking.

Leonora is depicted at the epicenter of several groups, particularly as a major female exponent of the surrealist movement, even though she kept a distance from anything that would pin her down to any specific movement, dogma, religion, or cult. Poniatowska writes, “Celtic mythology was Leonora’s only religion.” In the novel, she stands on her own, often surrounded by people, some of them renowned, and by an extraordinary array of beings inhabiting her imagination, dreams, and unconscious, that seeped into her paintings and writings. Poniatowska poignantly lays bare the solitude that at times gallops wildly within and at others drags her into dark caves and pits. Solitude remains faithful at the end of every tunnel.

At the core of Poniatowska’s portrayal is a careful objectivity that refrains from masking Leonora’s eccentricities and

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weaknesses, her self-obsession and self-pity, her standoffishness and arrogance. Elena's deep and translucent respect for Leonora helps her walk the thin line between being true to Leonora as she unabashedly was, and exerting tactful caution regarding certain information: as Leonora would say to Elena, "Let's not get too personal." This might be why Poniatowska left out of the novel some 250 pages of the original manuscript, as she recently revealed.

Poniatowska's complex portrait of an extraordinary woman and artist is remarkable: it unfolds Leonora's personal and public transits through Europe, New York, and Mexico, and various *ambiances* that tic-tocked in Leonora's ever-surprising destiny. One is her childhood in an aristocratic and stiff-upper-lip English family, dappled with the wisdom of her Irish grandmother and her beloved Irish Nanny (who understood Leonora's clairvoyant gifts), both of whom instilled in her love for all things Celtic and for the Sidhes who would keep her company and find their way into her paintings. A rebel at an early age, demanding her brothers' freedom while she was trained to be a good wife, she was expelled from several schools run by nuns and did not live up to her parents' expectations as a court debutante at Buckingham in London.

Another *ambiance* depicted in detail is her sizzling life in Paris where her true vocation as an artist was unbridled. Strikingly beautiful, having just turned 20, she met Max Ernst, 27 years older than her, who called her "the wind's bride," both living out to the hilt what surrealist André Breton named "*l'amour fou*." At the time she met and mingled with prominent surrealists and figures such as Pablo Picasso, Salvador Dalí, Breton, Paul Éluard, Man Ray, Leonor Fini, and Marcel Duchamp, among many others.

When Ernst was arrested and sent to a concentration camp, chaos and despair were unleashed in Leonora, still in her early twenties; her quasi-visionary madness, so the novel suggests, had its affinity with political clarity, a frenzy not unrelated to the chaos and despair in a war-torn, Nazi-infested Europe. She was interned, as per her father's instructions, in an asylum in Spain, a terrifying experience that marked her

deeply and which she was to recount much later in the hundred pages of her memoir titled *Down Below*.

Also depicted in detail is her escape—it could almost be an excerpt from a work of fiction—from being sent to another sanatorium in South Africa. During a stop in Lisbon, with nothing but pocket money to buy some gloves, she eluded her caretakers and took a taxi to the Mexican Embassy where the well-known Mexican diplomat and journalist Renato Leduc she had known previously in Paris took her under his wing.

Shortly after this, they would marry and sail to the U.S., but not before Leonora's destiny with Max Ernst was played out in Lisbon and later in New York: now he was Peggy Guggenheim's lover. The novel suggests that Leonora's decision to take an unpredictable route away from the surrealist crowd in decadence, was to go to Mexico with Leduc, although they would soon divorce.

Leonora's life in Mexico for over 60 years becomes richly entwined in the novel with an amazing array of people and events. Her life took a turn when she met and later married Hungarian Jewish photographer Csizi Wiesz, known as Chiki, and discovered the centering bliss of motherhood with the birth of her two sons, Harold Gabriel, or Gaby, and Pablo. Also life-changing was the happy meeting in Mexico with Spanish surrealist painter Remedios Varo, her "twin soul" who "[taught] her to pronounce *Quetzalcóatl*" and was to become her dearest and closest friend. Eccentric British millionaire Edward James, with his yellow socks, saved the family finances by becoming her enthusiastic admirer and mentor for many years. She also knew and mingled with other figures like Kati Horna, Eva Sulzer, Alice Rahon, Herbert Read, Wolfgang Paalen, Günther Gerzso, Octavio Paz, Ignacio Bernal, Luis Buñuel, Alejandro Jodorowsky, Laurette Séjourné, Diego Rivera (of whose frescoes she is quoted as saying in English "They are not exactly my cup of tea"), Frida Kahlo, and others.

What Elena Poniatowska is also able to regale the reader with in the part of the novel centered in Mexico is her ability to succinctly cameo not only people but places, and historical moments and to extract precious filaments from the rich tapestry of Mexican culture and history. The binocular effect in which biographical protagonist and narrator-writer merge into a single perspective is prevalent in the novel and brings the reader lines such as these: "In Mexico, miracles, like idols, come out even from under the stones" (p. 324); in Mexico, "to be a foreigner is a stigma,"; and "This land that at each moment expels the remains of an extraordinary culture

moves Leonora.” Other statements, though, are clearly direct quotations from Leonora: “Mexico has made me what I am because had I stayed in England or in Ireland I would not have yearned for the world of my childhood as I have here [in Mexico]” and, “What I paint is my nostalgia.”

Leonora is, in a sense, also about how Mexico homed an outstanding British artist, as it has done so for many foreigners at different times. And one could venture to say that, as happens with novels, it’s as much about Leonora as it is, in some ways, about Elena.

Leonora Carrington will not be forgotten for many reasons. One is no doubt this remarkable book, which will most certainly find its way very soon into English-language bookshelves in the U.S., the United Kingdom, and elsewhere. An ode to Leonora’s life, talent, suffering, inner strength, eccentricity, uniqueness, keen wit, and sense of humor, this novel is a valuable gift to us readers for which we have Elena Poniatowska to graciously thank. **MM**

Claire Joysmith
Researcher at CISAN



**Los derechos humanos
en las ciencias sociales:
una perspectiva multidisciplinaria**

(Human Rights in the Social Sciences:
A Multidisciplinary Perspective)

Ariadna Estévez and Daniel Vázquez, *comps.*

CISAN and Flacso-Mexico
Mexico City, 2010, 292 pp.

This book offers everyone interested in human rights a view different from the predominantly legal outlook, a view centered on the social sciences with a multidisciplinary perspective. Compiled by Ariadna Estévez (CISAN-UNAM) and Daniel Vázquez (Flacso-Mexico), it emerges from a space fostered by the authors’ two academic institutions: the multidisciplinary seminar for the analysis of human rights. As the

compilers explain in their introduction, despite the fact that the academic study of human rights has been situated in the social sciences for at least 30 years, in Mexico “it continues to be confined to the legal field.” For this reason, the seminar was founded to begin to “take research on human rights out of the legal sphere and deepen it, taking into account its complexities, by situating it in the social sciences.”

The nine essays in this work are written from the point of view of everything from legal and political sociology, international relations, democracy studies, political science, to public policies, historical memory, gender, feminism, and anthropology. This book allows the reader to see how the social sciences currently understand their role in the study of human rights, and to recognize the extremely important role they are playing in comprehending the impact of human rights in today’s world.

While all the essays can be read separately, it is really necessary to read the introduction first since it situates the reader perfectly in the context in which the work was developed. It underlines the debates about the borders between disciplines that emerged during the seminar, the inevitable bias produced by each essayist’s training, and his/her “access to only a fraction of the literature produced in the field.” It also emphasizes the agreements in the production of social knowledge about human rights.

This book shows the extremely important role the social sciences are playing in comprehending the impact of human rights in today's world.

The book boasts the splendid quality of being profoundly didactic and easy to read. It does not matter if the reader has had prior contact with the discipline or sub-discipline in question, since the different essays manage to lay out a general panorama of the various existing currents of thought and perspectives. They then look more deeply at how human rights are dealt with by each discipline, particularly in Mexico, to show what the state of the art is for academic production on the topic. This is particularly noteworthy in the chapters about legal sociology, political sociology, international relations, democracy studies, and anthropology. In addition, the reader will be grateful for the synoptic tables summarizing the different positions, debates, methodologies, etc., and helping him/her to gain an overall view of what he/she just read. The lengthy footnotes also make understanding easier for those unfamiliar with the field.

The book's being a compilation of essays mandates a brief mention of what can be found in each of them. As the introduction explains, the chapters are structured in two ways: a sociological bibliographical review about human rights and the historical review of the incorporation of the concept itself. In my opinion, this is how they should be ordered in the book, and not in alphabetical order by authors' last names.

Among the authors who do a sociological bibliographical review about human rights, we have Karina Anolabehere, whose chapter focuses on socio-legal studies, characterized by an eminently empirical examination of the law in action. This essay touches on the main discussions about human rights based on two processes, their institutionalization and their experience, framed in three conceptions about law and legal institutions: juridical realism, critical law studies, and constructivist perspectives of law and society.

Ariadna Estévez, for her part, presents from the viewpoint of contemporary political sociology and its constructivist vein how human rights have been situated as a political discourse constructed by the collective action that articulates them, and that in turn, constructs empowered and disempowered subjects. She clearly and concisely develops

the agenda of study along three axes: the articulation of social movements and the role of human rights; social subjects as the object and subject of the construction of the human rights discourse; and human rights as a means to reformulate the concept of citizenship, laying out the different existing proposals. Finally, she underlines that, despite the immense social laboratory still existing in Mexico, little socio-political work has been done on human rights.

Alejandro Anaya looks at the main debates on international human rights regimes among the most influential schools of international relations theory: realism, institutionalism, and the liberal theory of preferences and constructivism. He emphasizes the latter a little more; its hypotheses about the establishment of international human rights regimes are oriented toward achieving objectives linked to "ideas based on principles," and not the generation of material goods.

The last article that reviews the sociological bibliography is Daniel Vázquez's. He bases himself on four models of democratic theory to lay out the two controversies that emerge from the different concepts of freedom and equality: representative or elitist democracy versus participatory democracy, and procedural versus substantial democracy. He presents deliberative democracy as a separate model. He also explains the development of empirical studies along three lines: studies of the transition to democracy, the process of construction of a democratic regimen with a liberal tinge, and the role human rights would play in the design and construction of a global democracy. He criticizes the fact that in these exercises up until now, only civil and political rights have been used.

Among the essayists who base their articles on a historic review of the incorporation of the concept of human rights is Rachel Sieder, who analyzes the relationship between legal anthropology and human rights, as well as the changes in the discipline's perspectives on them, emphasizing the implications for indigenous peoples, particularly in Mexico. She sketches the main theoretical-methodological trends in relation to human rights' universality and cultural relativism, and looks over the role of indigenism in Mexico all the way up to the new indigenous feminisms.

For his part, Richard Miskolci presents a brief history of the relationship between feminism and the emergence of human rights. He underlines the emergence of the concept of gender, which led to the reformulation of feminism's basic assumptions, to then look at the proposals of queer theory and question the heterosexual matrix of feminism itself. He puts forward a new politics of gender, which incorporates the

demands of gender or sexual dissidents, and in which queer theory positions itself importantly in the discussions on human rights, challenging their discourse.

José Luis Velasco conceptualizes international human rights instruments as a set of political norms from the viewpoint of political theory or political philosophy. He emphasizes the historicity of human rights, pointing out that they are norms intended to be universal. He also identifies the political doctrines that came together and against which the current *corpus* of human rights was formulated, becoming a doctrine in itself. He ends with a sketch of the institutionalization of human rights nationally and internationally, emphasizing the need for strong states as a condition for upholding them.

Silvia Dutrénit puts forward how the history of the present is a discipline that has dealt with human rights because of the need to investigate the truth and obtain justice in the face of their violation, particularly in the international context. She explains that the history of the present emphasizes events more than structures and the figure of the victim, which tend to obscure the figure of the social fighter, and that the historian has also become a witness, particularly in truth commissions and international tribunals.

Manuel Canto presents an outline of the rise and development of the public policy focus in different political contexts, and how human rights emerge as criteria for public policies, appealing to the discussion about human rights indicators, international standards, and components, as well as the possibility of making rights into law and demanding they be respected. He also points out the gaps in the academic work

of systematization and criticism about the scope and restrictions in designing public policy with a human rights perspective, and the stagnation of the ideological debate about public policies in Latin America.

In general, this work more than fulfills its aim of “elucidating the specific focus of each of the social disciplines when studying human rights, and establishing a general state of the question,” as a contribution to anyone who wants to take the study of human rights beyond “the useful but restricted frontiers of the law.” And for those of us who work in human rights, it is refreshing to read about the topic separate from the law. While it has some limitations, these are clearly recognized in the introduction and are owed to the nature and aspirations of the multidisciplinary human rights seminar itself.

For those of us who take an interest in the topic, whether as academics or as social activists, this book is indispensable and an invaluable opportunity for getting a broad panorama of the main discussions and debates in the social sciences regarding human rights. At the same time, it motivates the reader to contribute to this discussion, from the academy, but also from the committed work in the fight for human rights. **MM**

Emma C. Maza Calviño
Human rights defender

Un séptimo hombre

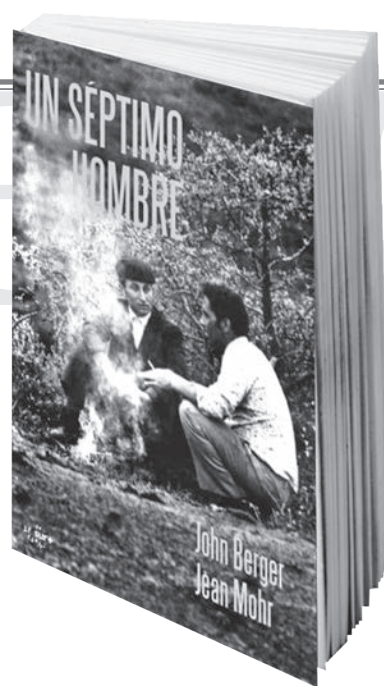
(A Seventh Man)

John Berger and Jean Mohr

Sur+

Mexico City, 2011, 252 pp.

International South-North migration has been the topic of many publications in recent decades. However, few have been capable of capturing and laying out as lucidly and radically as John Berger the experience of the migrant worker within the capitalist system, as well as the key questions for



reading these human movements, going beyond the hegemonic discourses. The latter reduce migrants to their remittances or numbers of deportees, dead, and returnees and represent them as victims or criminals, traitors or heroes, the “problem” or the “solution.” All these discourses act efficiently in our collective imaginary to hide the development of the other stories that Berger, in complicity with photographer Jean Mohr, narrates for us in this book.

Un séptimo hombre (A Seventh Man) is a book born of an eminently political intent: “to awaken from a dream-nightmare” (p. 21). Berger uses this metaphor to point to what happens to us as we are subjected to the course of history and to a system about which we are not sufficiently aware and that we cannot influence as we would like, but where there is always the possibility that the “dreamer can break into his/her own dream and deliberately try to awaken” (p. 21). In other words, the book aids in making visible the fact that every decision about migration takes place in a world capitalist

“For the economy of the metropolis,
migrant workers are not born;
they do not age, or tire, or die.
They have a single function: to work.”

system where countries are articulated unequally and the economy of rich nations depends on the labor of the poorest ones. To demonstrate this, the author does not resort to a lifeless macro-structural discourse, but to the subjective experience of workers during their travels, always situating them physically and historically in the context of global capitalism.

This book was written in the early 1970s and deals basically with male migrants from poor European countries who go to rich European countries with temporary work contracts: the Portuguese, Spaniards, Italians, and Turks were then the poor of Europe, seeking their future in France, Germany, Switzerland, and England, where they worked in mines, factories, and construction sites. However, the meaning of these workers’ experience is global because it speaks to us of situations and paradoxes present in other latitudes: for example, of the lack of freedom to cross borders and settle where every person considers he/she might be able to have

a better life; of over-exploitation; of non-recognition; but also of the hope that drives these movements; of the personal transformations those who cross borders undergo; of the joy of going home; of nostalgia, absence, and the improbable return.

The author narrates the migratory experience in three moments: departure, work, and return. In doing it, Berger points to different paradoxes or key questions that dismantle the hegemonic discourses about migrations and establishes a new interpretation with the “other,” the migrant, at its core.

The first thesis that he deconstructs is that migration by contract is a perfect form in everyone’s interest. This is a frequent government discourse, both in rich and poor nations. The technocrats call it “win-win” migration. The model’s apologists maintain that these agreements between states make it possible for poor countries to receive resources in the form of remittances that their own economies are not capable of producing; that they help them solve the unemployment problem without having to create jobs; that they lessen the pressure for land without having to distribute it; and that they benefit from the newly skilled labor of the returnees that will help develop their regions.

Berger shows a different situation. He points out that while local unemployment does drop, entire regions lose almost all their men at the time they are most productive and creative: in their youth. He also shows that the departure of young men degrades the peasant economy, which becomes dependent on remittances and loses its self-sufficiency. He states that, no matter how enterprising returnees are, they rarely find the social and economic conditions needed to be able to work and contribute in their own countries the knowledge and skills they have acquired abroad (p. 92).

One of the central questions Berger reveals is the paradox that rich nations want to import labor, but without the worker as a person. That is, they write agreements to import labor, and in this way accept and promote the presence of migrants to do the jobs local workers avoid because they are the hardest, most degrading, and worst paid, but they reject the other dimensions of migrants’ identities. For example, when they do not allow them to bring their families to live with them, they negate them as fathers, sons, and husbands; also as the subjects of social and political rights; they even negate them as human beings with emotional needs. Berger writes, “For the economy of the metropolis, migrant workers are not born, they do not age, or tire, or die. They have a single function: to work” (p. 78).

A second paradox he points out is that the countries of origin pay the cost of creating the migrant work force, thus subsidizing the rich economies. It is very important to mention this, since the dominant discourse harps on migrants supposedly being “a burden to society” for the receiving country. This kind of discourse is very convenient for stigmatizing them and making it possible to deport them when they are no longer needed without major repercussions. Berger poses the issue in reverse: he shows how the receiving country enjoys the labor that cost it nothing to produce because it was in the country of origin where the migrant was born, grew up, was educated, and founded a family, and where he will return once he is no longer able to work; and it will be his family who will cover the costs of his support, illnesses, and death. In other words, the powerful economies *externalize* the costs of reproducing the work force, saving themselves an unimaginable amount of resources.

Another myth about migration under contract that Berger debunks is that it permits the free circulation of migrants across borders, avoiding their having to opt for undocumented crossings that put them at more risk. Actually, the freedom involved is very restricted since they cannot return home when they want, or change jobs, or employers, much less geographical area. They will always be tied to their employers in dependent, dominated relations. All this is why workers who enter the country under contract prefer to pass into “illegality,” since, paradoxically, as undocumented migrants, they can move more freely, although undoubtedly also at greater risk.

Another myth is that this kind of migration is temporary. These contracts usually give migrants the right to work for extended periods of the year. Supposedly this is a factor in their favor because it allows them to return to their countries. The problem is that the temporary nature of their employment is the justification for them not being able to bring their families with them and have a normal life. Also, they do not have the same rights as other workers. For example, neither their children nor their wives can avail themselves of health and educational services. They will also not have the right to retirement or medical insurance like local workers. In short, the fact that they are temporary workers makes it possible to legally justify their not having the same rights as other citizens. This favors above all the economy of the receiving countries since with little investment, they obtain enormous profits.

Although Berger does not explicitly mention racism, he does deal with two matters that are intrinsic to it: the “infe-

riorization” of migrants and their not being recognized. The capitalist system organizes the relations of production based on ethnic and social hierarchies in which migrants are on the lowest rung. In destination societies, these workers are considered of inferior status, an idea that is almost always supported by affirming their cultural, religious, and social differences *vis-à-vis* the local population. These supposedly unbridgeable gaps constitute the “other” not only as inferior, but as dangerous and impossible to assimilate. The migrant’s supposed inferiority is “naturalized” to the degree that it permeates equally the imaginaries of the new society’s population and institutions. In this context, innumerable stigmatizing prejudices emerge that do nothing but reinforce this internalization and incite hostility. For example, the idea exists that they have come to take money out of the country and steal local jobs, neighborhoods, homes, and even women (p. 128). “Inferiorization” is almost always accompanied by insufficient recognition. As mentioned above, the migrant in

The migrant’s supposed inferiority is “naturalized” to the degree that it permeates equally the imaginaries of the new society’s population and institutions.

the destination country only has worth as a worker; for that reason, when he leaves work, he becomes invisible. To be recognized, he will have to wait until he returns to his country. Berger writes, “When he boarded the train with his suitcase...everything that had been taken away from him was returned: his independence, his manhood, a private address, his voice, his proclivity for love, his right to age...Finally, he returns to himself with recognition” (p. 223).

Another of the fundamental issues Berger deals with is the tension and lack of solidarity of local workers and unions with migrants. According to the capitalist logic, the migrant is the ideal worker: he wants overtime and night shifts; he wants two jobs; when doing piecework, he speeds up the production line; he makes private agreements with his employers; he accepts worse working conditions, etc. (p. 152). All of this is due to the fact that his situation is extremely vulnerable and he needs to earn money quickly because his stay is temporary and he has concrete goals to fulfill during his stay. This

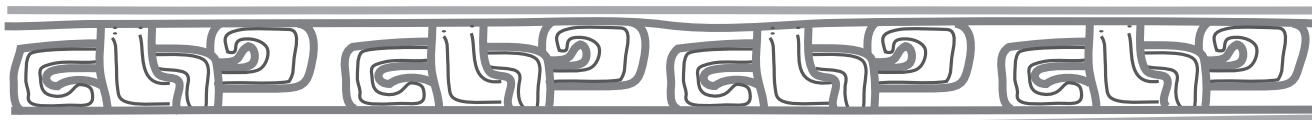
situation obviously creates tensions with local workers and reinforces their emphasizing the differences and affirming their supposed “superiority” instead of what they share with as him exploited workers or day-workers (p. 154). Berger undertakes a severe critique of unions, above all because they have not managed to stop believing that “the migrant worker belongs to the country he has left behind, and therefore not to the place where he works” (p. 159). He finalizes by saying that the only possible way to get past this reductionism would be for unions to question migrants’ inferior status and defend their right to be active politically; to be promoted on the job; and, above all, to demand their right for indefinite residence and reunification with their families in the destination country (p. 161).

Definitively, *A Seventh Man* is a profound, humane book in which the author very skillfully and sensitively presents a

critique of the capitalist system, giving no quarter. This book is very current because migration today has become an especially acute lens through which to observe the state of our societies, since, due to their structural situation, migrants experience more intensely the evils societies are undergoing. Knowing their situation, therefore, allows us to make visible the failings of our institutions, the limits of the current models of democracy and citizenship, and our own capacity or incapacity as societies to generate solidarity and include “the other,” whomever that may be. The corollary of this would be: tell me how you treat your migrants, and I’ll tell you what kind of society you are. ■■■

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